



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Board of Nursing

Rule Contact Name and Contact Information: Holly Fischer, Chief Legal Counsel,  
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Regulation/Package Title (a general description of the rules' substantive content):

Technical Change Rules

Rule Number(s): 4723-1-01, 4723-1-03, 4723-8-04, 4723-8-12, 4723-8-13, 4723-9-10, 4723-16-01, 4723-16-02, 4723-16-13, 4723-23-05, 4723-26-01, 4723-26-04

Date of Submission for CSI Review: August 17, 2021

Public Comment Period End Date: August 31, 2021

Rule Type/Number of Rules:

New/ 2 rules

No Change/      rules (FYR?     )

Amended/ 10 rules (FYR? No)

Rescinded/      rules (FYR?     )

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

***Please include the key provisions of the regulation as well as any proposed amendments.***

The Board proposes to amend rules 4723-1-01, 4723-1-03, 4723-8-04, 4723-9-10, 4723-16-01, 4723-16-02, 4723-16-13, 4723-23-05, 4723-26-01, 4723-26-04, and implement new rules 4723-8-12 and 4723-8-13, to make technical corrections (correct typographical errors, update references, delete obsolete or redundant language), clarify language at the request of stakeholders, increase operational efficiency, or respond to legislative changes.

#### **New Rules**

The Board proposes to adopt new Rules 4723-8-12, 4723-8-13: Advanced Practice Registered Nurse Consult Agreements to implement HB 203 (133<sup>rd</sup> GA). The rule language was reviewed in the spring by the State Medical Board and State Board of Pharmacy as required by ORC 4729.39(E). The rule language was approved by the Advisory Committee on Advanced Practice Registered Nurse at its March 9, 2021 meeting. Rules 4723-8-12 and 4723-8-13 are virtually identical to the Medical Board rules (4731-35-01, 4731-35-02) for physicians, which were effective in October 2020.

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### Amendments

- Rule 4723-1-01: Revise to refer to the latest edition of Robert's Rules.
- Rule 4723-1-03: Update form references for titles and dates of forms/applications located on the Board's website. Add paragraph (H) consistent with HB 263 (133<sup>rd</sup> GA).
- Rule 4723-8-04: Update to include reference to consult agreements (see above, new proposed Rules 4723-8-12 and 4723-8-13).
- Rule 4723-9-10: Update to include reference to consult agreements (see above, new proposed Rules 4723-8-12 and 4723-8-13). Delete reference to obsolete language regarding the Committee on Prescriptive Governance (CPG), as the CPG was disbanded by SB 331 (133<sup>rd</sup> GA) at the recommendation of the Sunset Review Committee.
- Rule 4723-16-01(B)(3): Revise to allow for after-normal business hour filings by email or fax to be considered filed as of the date received.
- Rules 4723-16-02(D), and 4723-16-13(F): Revise to allow for hearings to be conducted by videoconference in the sole discretion of the board hearing committee or hearing examiner, if mutually agreed upon by the parties.
- Rule 4723-23-05(I) and (J) and Rule 4723-26-04(E): remove requirement that dialysis technician and community health worker renewal applicants upload continuing education (CE) documentation with license applications consistent with changes made in by the Board to Rule 4723-14-03 for nurses (effective February 1, 2021).
- Rule 4723-26-01(Q): Healthcare Access Now requested that language be added clarifying that when a Certified Community Health Worker is performing non-nursing tasks, supervision does not need to be by a RN.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Ohio Revised Code (ORC) Section 4723.06, 4723.07 – all Rules

ORC 4723.02, 4723.05 (Rule 4723-1-01)

ORC 4723.05 (Rule 4723-1-03)

ORC 4723.431 (Rule 4723-8-04)

ORC 4723.50, 3719.062, 4723.481, 4723.49, 4723.491, 4723.492, 4723.486, 4723.487, 4723.488 (Rule 4723-9-10)

ORC 4729.39 (Rules 4723-8-04, 4723-9-10, and new Rules 4723-8-12 and 4723-8-13)

ORC 4723.28 (Rules 4723-16-01, 4723-16-02, 4723-16-13)

ORC 4723.79, 4723.77 (Rule 4723-23-05)

ORC 4723.81 to 4723.88 (Rules 4723-26-01)

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- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

The answer is no to both questions as to all the rules in this package.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The question is not applicable to this package.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose for the rule package is to actively safeguard the health of the public through the effective regulation of nursing education and practice.

ORC Section 4723.06 requires the Board of Nursing to administer and enforce the provisions of Chapter 4723., ORC, including the taking of disciplinary action for violations of ORC 4723.28 and any other provisions of the law or rules adopted thereunder.

ORC Section 4723.07 requires the Board of Nursing to adopt, amend and rescind rules for the Board's government and control of its actions and affairs; standards and procedures for issuing licenses and certificates; standards for continuing education; and other rules necessary to enforce ORC Chapter 4723.

ORC 4723.79 requires the Nursing Board to adopt rules to administer and enforce ORC 4723.71 to 4723.79, including dialysis technician application processes and continuing education requirements.

ORC 4723.88 requires the Nursing Board to adopt rules to administer and enforce ORC 4723.81 to 4723.87 including standards for community health worker certification, applications processes and continuing education and practice.

ORC 4723.431 requires advanced practice registered nurses (APRNs) designated as CNPs, CNSs, or CNMs, to practice with standard care arrangements and to include in the standard care arrangement criteria set forth in Nursing Board rules.

ORC 4723.50 requires the Nursing Board to adopt rules regulating APRN prescribing.

ORC 4729.39 requires the Nursing Board to adopt APRN Consult Agreement rules.

**7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Success will be measured by having clear rules written in plain language, by licensee compliance with the rules, and minimal questions from licensees and the public regarding the requirements of the rules.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

**Development of the Regulation**

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The Board proposes to adopt new Rules 4723-8-12, 4723-8-13: Advanced Practice Registered Nurse Consult Agreements to implement HB 203 (133<sup>rd</sup> GA). The rule language was reviewed in the spring by the State Medical Board and State Board of Pharmacy as required by ORC 4729.39(E). The rule language was approved by the Advisory Committee on Advanced Practice Registered Nurse at its March 9, 2021 meeting. Rules 4723-8-12 and 4723-8-13 are virtually identical to the Medical Board rules (4731-35-01, 4731-35-02) for physicians, which were effective in October 2020.

During the pandemic parties to Chapter 119., ORC Board administrative disciplinary hearings continued to conduct the hearings via videoconference upon mutual agreement and under the order of the hearing examiner or Board hearing committee. Following the lift of the Ohio state of emergency, parties continue to request to conduct hearings remotely. Changes to Chapter 4723-16 rules are proposed to reflect this. In addition, the Board is proposing to time-stamp electronic filings received in administrative disciplinary cases after normal business hours as received on the calendar day, as this has been requested in a number of cases by licensees and/or their legal counsel.

On June 7, 2021, the Board posted notification on its website of a June 24, 2021 interested party meeting, with links to proposed rule language. This notification was also emailed to interested parties and distributed via social media. Feedback or comments were requested prior to the meeting if possible. Interested parties included law firms/attorneys who have represented

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licensees in administrative hearings before the Board of Nursing; the Ohio Organization for Nursing Leadership (OONL), the Ohio Nurses Association (ONA), the Ohio Association of Advanced Practice Nurses (OAAPN), the Ohio Network for Nursing Workforce, the Ohio Council of Deans and Directors of Baccalaureate and Higher Degree Nursing Programs (OCDD), the Ohio Organization of Practical Nurse Educators (OOPNE), the Ohio Council for Associate Degree Nursing Education Administrators (OCADNEA), the Council for Ohio Health Care Advocacy (COCHA), Community Health Worker, Medication Aide, and Dialysis employers and training programs, other associations, health care system representatives, state entities (e.g. ODH, DODD, State Medical Board, Pharmacy Board), and other stakeholders. The June 24, 2021 interested party meeting was conducted virtually on Microsoft Teams and over 43 individuals participated.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Rule 4723-26-01(Q): Healthcare Access Now requested that language be added clarifying that when a Certified Community Health Worker is performing non-nursing tasks, supervision does not need to be by a RN.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No specific scientific data was used to develop the rules listed in this package. The Board utilizes the expertise of practitioners and specialists appointed to advisory groups and committees in the development of administrative rules, including: The Advisory Committee on Advanced Practice Registered Nursing, the Advisory Group on Continuing Education, the Advisory Group on Dialysis, and the Advisory Group on Nursing Education. The Board also convenes Practice Committees on focused issues that invite data and research for review and recommendation, from specialists in both the private and public sectors.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternatives were considered because minimum licensing, education and practice standards are the essential foundation for competent nursing and community health worker practice, patient safety, and public protection, and these standards are consistent with prevailing nursing and community health worker practice and evidence-based nursing research.

**13. Did the Agency specifically consider a performance-based regulation? Please explain.**

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***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

The proposed rules set out the required activities but do not specify the means of performing the required activities.

**14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Nursing Board is the only agency authorized to regulate its own governance processes, maintenance of its records, and processes for disciplinary hearings related to violations of Chapter 4723., ORC or the rules adopted thereunder. The Board is the only agency authorized to promulgate rules establishing standards for advanced practice registered nursing standard care arrangements and prescriptive authority, and to regulate dialysis technician continuing education and certified community health worker practice and certification.

**15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Meetings with interested parties and Board advisory groups/committees help ensure that rules are applied consistently and predictably for the regulated community. The rules will be posted on the Nursing Board's website, and information concerning the rules will be included in information material e-mailed to attorneys, licensees, health care systems, continuing education providers, community health worker training programs, associations, health care system representatives, and other state regulatory boards, and information will also be disseminated via social media. Nursing Board staff members provide answers to practice and licensing questions, via designated email addresses and by telephone. The Board will provide educational materials as needed through FAQs and a quarterly newsletter (*Momentum*). See also #20, below.

**Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community; and**

\*Certified community health worker employers or agencies

\*Dialysis technicians and certified community health workers certified by ORC Chapter 4723., who are required to renew their certificates and document completion of continuing education

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\*Advanced practice registered nursing licensed under ORC Chapter 4723.

\*Individuals holding licenses/certificates issued under ORC Chapter 4723., or applicants who have applied for license under that Chapter, who have requested administrative hearings following the issuance of Notices of Opportunity for Hearing by the Board, and/or their legal counsel

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

Should APRNs decide to enter Consult Agreements, there may be time expenditures or private attorney fees associated with revisions to standard care arrangements.

APRNs who violate Chapter 4723., ORC or rules adopted thereunder are potentially subject to disciplinary action according to ORC 4723.28, including the imposition of fines.

Should an applicant or a licensee/certificate holder request that their administrative disciplinary hearing be conducted via videoconference, technology would be required (e.g., internet connection and a computer or other device).

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

See Item 16.b., above.

There is a cost inherent in engaging in advanced practice registered nursing. The costs are variable and determined by individual business operations.

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The rules in this package are minimally revised in order correct typographical errors, update cross references, and implement legislative changes. The impact of the rules, if adverse, is minimally so. Although technology (internet connection, computer or device) is needed to conduct administrative disciplinary hearings via videoconference, authorizing hearings to be conducted remotely at the mutual agreement of the parties and as approved

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by the hearing examiner or board hearing committee would reduce travel/mileage and legal time costs associated with attending in-person hearings.

### **Regulatory Flexibility**

- 18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Existing rules, designed for public protection and safe patient care, must be consistently applied, so the regulations do not provide exemptions or alternative means of compliance.

- 19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Waivers of fines and penalties for paperwork violations and first time offenders may be considered consistent with ORC Sections 119.14 and 4723.061 which do not require the Board to act on minor violations of the Nurse Practice Act or the rules adopted under it, if applicants or individuals licensed under Chapter 4723 of the Revised Code commit violations and following review the Board determines that issuing a warning to the alleged offender adequately protects the public.

- 20. What resources are available to assist small businesses with compliance of the regulation?**

The Board employs staff dedicated to assist the public and small businesses by responding to any questions or concerns about the implementation of the rules. Board advisory groups and committees, composed of continuing education approvers, providers, educators, practitioners, and licensees also may respond to questions from small businesses. The Board provides Interpretive Guidelines related to specific practice standards to assist the practitioner and employer. Nursing Board license staff members provide answers to licensing questions via email and by telephone. The Nursing Board provides continuing educational materials as needed through FAQs posted on its website, and through a quarterly newsletter (*Momentum*). All relevant forms and information for community health worker training programs are available on the Board's website.

Regarding certified community health workers (CHW), in July 2021 the Board voted to convene an advisory group to discuss information and issues related to certified CHW roles and training programs; assist in identifying and promoting recognition and understanding of certified CHW roles and responsibilities in the health care community; identify and discuss opportunities for certified CHW employment in community based organizations and hospitals/health systems; and provide review and comment regarding

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proposed revisions to the Nurse Practice Act and administrative rules relating to certified CHW roles and education.

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