



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Holly Fischer, Ohio Board of Nursing

FROM: Joseph Baker, Business Advocate

DATE: October 6, 2021

RE: **CSI Review – Five Year Rule Review: OAC Chapters 4723-5, 4723-7, 4723-13, 4723-27 (OAC 4723-5-01, 4723-5-02, 4723-5-03, 4723-5-04, 4723-5-05, 4723-5-06, 4723-5-08, 4723-5-09, 4723-5-10, 4723-5-11, 4723-5-12, 4723-5-13, 4723-5-14, 4723-5-15, 4723-5-16, 4723-5-17, 4723-5-19, 4723-5-20, 4723-5-21, 4723-5-23, 4723-5-24, 4723-5-25, 4723-7-01, 4723-7-02, 4723-7-03, 4723-7-04, 4723-7-05, 4723-7-06, 4723-7-07, 4723-7-09, 4723-7-10, 4723-13-01, 4723-13-02, 4723-13-03, 4723-13-05, 4723-13-06, 4723-13-07, 4723-27-01, 4723-27-02, 4723-27-03, 4723-27-04, 4723-27-05, 4723-27-06, 4723-27-07, 4723-27-08, 4723-27-09, and 4723-27-10)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Board as provided for in ORC 107.54.

Analysis

This rule package consists of 23 no change and 24 amended rules proposed by the Ohio Board of Nursing (Board). This rule package was submitted to the CSI Office on August 17, 2021, and the public comment period was held open through August 31, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 17, 2021.

The rules in this package address nursing education program requirements, licensing and examination standards for registered and licensed practical nurses, delegation of nursing tasks, the administration of medication by certified medication aides acting under the supervision of a nurse,

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qualifications for certified medication aides, and program standards for certified medication aide training programs.

OAC 4723-5-01 establishes definitions relating to nursing education programs and has been amended to define associate program administrators for purposes of the chapter. OAC 4723-5-02 states that such programs must meet the requirements specified by the Board to maintain approval and requires the Board to evaluate programs accordingly. OAC 4723-5-03 requires the controlling agency of a program to submit various information to the Board should the entity controlling the program change. OAC 4723-5-04 requires the Board to grant full approval to programs that meet requirements and allows for provisional or conditional approval if the program does not meet all requirements initially but does complete various additional activities. OAC 4723-5-05 states that education program annual reports must be completed by program administrators for each reporting period submitted to the Board. OAC 4723-5-06 outlines the authority of the Board to conduct a survey visit for the purpose of determining whether the program meets the requirements, including both announced and unannounced visits.

OAC 4723-5-08 sets forth the process for program applicants seeking conditional approval to provide a Nursing Education Program, including submitting a letter of intent to the Board and providing the program administrator's resume, official transcripts, and a list of sites for students to obtain clinical experience, among others. OAC 4723-5-09 establishes requirements for programs to have a plan of organization and administration and be administered by a registered nurse administrator who has the authority, accountability, and responsibility for all aspects of the program. The rule is amended to clarify that the administrator is responsible for teaching assistants as well as faculty, students, and clinical agencies, to clarify that registered nurses may only serve as interim program administrators, and to adopt other technical changes. OAC 4723-5-10 and OAC 4723-5-11 establish minimum qualifications for administrators, faculty, teaching assistants, and preceptors of nursing education programs, including requirements that administrators complete a registered nursing education program, have at least five years of experience as a registered nurse, and hold a valid license as a registered nurse, among others. The rules are amended to specify that interim program administrators must have the same qualifications as associate administrators.

OAC 4723-5-12 requires the administrator of nursing education programs to establish written policies regarding student admission and readmission, the process for determining the amount of credit granted to an applicant, student progression, program completion requirements, payment and refund policies, and others. OAC 4723-5-13 and OAC 4723-5-14 establish curriculum standards for nursing education programs and have been amended to specify that the curriculum plan shall be implemented as written and distributed to each student. OAC 4723-5-15 requires the administrator of the program to establish a written systematic plan for evaluating each aspect of the program and

has been amended to clarify that the administrator is required to implement the plan. OAC 4723-5-16 states that the Board must approve any curriculum revision that results from a change in a program's philosophy, conceptual framework, organization theme, or program objectives and outcomes, and sets forth processes related to submitting a revision approval request to the Board. The rule is amended to include changes to program objectives and outcomes as criteria that, if changed, must be approved by the Board. OAC 4723-5-17 requires nursing education programs to maintain a written agreement with any cooperating entity and for the agreement to be current, signed, and on file.

OAC 4723-5-19 describes the responsibilities for faculty of nursing education programs, including requirements to provide a syllabus to each student, to design and implement teaching strategies to meet course objectives, and to evaluate each student's achievement and progress, among others. The rule is amended to adopt clarifying changes and to require the faculty member to describe the related qualifications of any individual providing course content as a component of the syllabus. OAC 4723-5-20 requires faculty members to plan students' clinical experience and evaluate performance, including providing supervision of each clinical experience. The rule is amended to clarify that faculty or teaching assistants function in an educational capacity only during clinical experiences. OAC 4723-5-21 states that the administrator of a nursing education program must maintain various records, including admission or transfer records, transcripts, clinical experience evaluation records, laboratory evaluation records, and others.

OAC 4723-5-23 states that only programs that are fully approved, conditionally approved, or provisionally approved by the Board may issue program completion letters, requires the program to submit a plan to improve National Council Licensure Examination (NCLEX) scores of its students if the program's pass rate is less than 95% of the national average, and states that the Board may take action on the approval status of the program if it fails to meet minimum pass rates. The rule is amended to adopt a clarifying change. OAC 4723-5-24 sets forth the responsibilities of the administrator of a nursing education program should the program no longer admit nursing students or change to a different type of program. OAC 4723-5-25 prohibits any program or applicant from making false, misleading, or deceptive statements or information to the Board.

OAC 4723-7-01 establishes definitions related to nurse licensure examinations. OAC 4723-7-02, 4723-7-03, and 4723-7-04 specify that the NCLEX-RN and NCLEX-PN shall be used to examine registered and licensed practical nurses in Ohio, outlines standards that must be met to apply for licensure, establish policies for testing authorization, accommodations and retesting, and requirements for licensure for foreign-educated nurse graduates. The Board notes that the rules are amended to remove language specifying criminal offenses that may disqualify an individual from licensure in accordance with H.B. 263 (133rd General Assembly). Additionally, OAC 4723-7-04 is

amended to specify various methods that a foreign-educated nurse may provide evidence of competency in the English language. OAC 4723-7-05 and 4723-7-06 outlines requirements for licensure by endorsement or registered nurses and practical nurses and has been amended to remove references to specific disqualifying criminal offenses. OAC 4723-7-07 states that a certificate shall be made available to each licensed nurse and has been amended to reflect that license certificates are now self-printed through the electronic licensing system maintained by the Board. OAC 4723-7-09 sets forth the license renewal process for licensed practical nurses and registered nurses, including that the Board may request that the licensee provide nursing practice, education, and demographic information, assess a late processing fee of \$50, allows the licensee to place the license on inactive status, and allows licensees engaged in active military duty to be eligible for an extension of time to complete continuing education, among others. OAC 4723-7-10 permits individuals with a lapsed nursing license to obtain a volunteer nursing certificate if the applicant has completed 24 hours of continuing education in the previous 24 months addressing various components of the nursing profession for purposes of providing nursing services to indigent and uninsured persons at no cost.

OAC 4723-13-01 establishes definitions related to the delegating of nursing tasks. OAC 4723-13-02 states that a nursing task may be delegated to an unlicensed person only by a licensed nurse in certain manners and outlines certain exceptions and tasks that may be performed by unlicensed individuals. OAC 4723-13-03 prohibits individuals who have been delegated nursing tasks from assigning the task to another person and states that individuals who perform nursing tasks absent licensure are engaging in the unauthorized practice of nursing. OAC 4723-13-05 sets forth procedures for delegating tasks, such as ensuring that the task is within the scope of practice of the delegating nurse, that the nursing task requires no judgement based on nursing knowledge and expertise, and that the results of the task can be performed safely. The rule is amended to specify that the nurse must consider whether the nursing tasks in totality that have been assigned to the individual performing the tasks indicate that the patient requires licensed nursing care. OAC 4723-13-06 sets forth information that must be provided by delegating nurses to an unlicensed person when teaching an unlicensed person to perform a nursing task, including a demonstration of the task, presentation of information on infection control, and presentation of information on the concepts underlying the task, among others, while OAC 4723-13-07 specifies the supervision responsibilities of the delegating nurse concerning the unlicensed person performing the task.

OAC 4723-27-01 establishes definitions related to the administration of medication by a certified medication aide (aide). OAC 4723-27-02 states that aides may administer medications exclusively at the delegation of a nurse and sets forth the types of medications that may and may not be administered by an aide as well as certain prohibited activities, such as theft, inappropriate involvement in personal relationships, and any sexual conduct with a resident, among others. OAC 4723-27-03 describes the criteria that must be considered when a nurse opts to delegate the

administration of a medication to an aide, such as evaluating the needs of the resident, the medication to be administered, and other factors. OAC 4723-27-04 requires aides to be certified and establishes minimum criteria for certification, including a minimum age of 18 years, completion of a high school degree or equivalent, and experience or training as a nurse aide. The rule is amended to remove references to certain disqualifying criminal offenses. OAC 4723-27-05 establishes renewal processes for aides, including payment of a renewal fee, completion of an online application, and other factors. The rule is amended to no longer require that continuing education requirements be documented as a component of the online application. OAC 4723-27-06 requires certified medication aides to obtain 15 continuing education hours each certifying period and allows the Board to require the aide to demonstrate completion upon request.

OAC 4723-27-07 establishes criteria for providing medication aide training programs, including payment of a fee, completion of an application, demonstrating completion of a minimum of 120 clock hours of instruction, and other factors, while OAC 4723-27-08 establishes curriculum standards for medication aide training programs. OAC 4723-27-09 allows the Board to take disciplinary action against aides for various violations and to perform investigations. Lastly, OAC 4723-27-10 allows the Board to impose fees for various licenses and certificates, including the following: \$50 for initial medication aide certificates and even-year renewals, \$100 for odd-year medication aide certificate renewals, \$100 for reinstatement of a lapsed certificate, \$50 for reactivation of an inactive certificate, \$15 for verification of a certificate from another jurisdiction, \$25 for providing a replacement copy of a certificate, \$1,000 for an application to provide a medication aide training program, \$500 for reapproval of a medication aide training program, and a \$25 fee for insufficient funds if a payment is returned by a financial institution for that reason.

During early stakeholder outreach, the Board notified stakeholders and held an interested party meeting on June 24, 2021. According to the BIA, the stakeholder meeting consisted of 43 different individuals, including representatives from the Ohio Organization for Nursing Leadership, the Ohio Nurses Association, the Ohio Association of Advanced Practice Nurses, the Ohio Network for Nursing Workforce, the Ohio Council of Deans and Directors of Baccalaureate and Higher Degree Nursing Programs, the Ohio Organization of Practical Nurse Educators, the Ohio Council for Associate Degree Nursing Education Administrators, and the Council for Ohio Health Care Advocacy, among others. Based on feedback from stakeholders, the Board determined to revise the proposed rules prior to filing with the CSI Office. One comment was received during the CSI public comment period from the Ohio State University School of Nursing suggesting that the requirement that accelerated nursing programs take place over the course of 52 weeks is problematic and should instead be revised to allow for a 12-month calendar year of clinical courses as the 52-week requirement prevents the program from being completed in a typical 3-semester, 12-month program calendar. Additionally, the university indicated that other programs across the country are currently

successfully concluding accelerated nursing education programs in a 3-semester, 12-month timeframe. The Board responded to the comment suggesting that a representative of the university participate in the next Advisory Group on Nursing Education meeting to discuss the accelerated program format and to enable a broader stakeholder discussion with other educators prior to adopting the change, as the Advisory Group had previously determined that a change could impact program policies and curriculum rules. The Board noted that depending on the outcome of the meeting discussion, the rules could be revised in the future.

The business community affected by the rules includes individuals licensed or seeking to become licensed as practical nurses, registered nurses, or certified medication aides, nursing education programs, certified medication aide training programs, and other individuals licensed or certified by the Board. The adverse impacts to business include costs associated with complying with curriculum and staff standards, records retention requirements, and reporting responsibilities of nursing education training programs. The adverse impacts to business also include licensure expenses and effort associated with completing examinations and applications for licensure as a registered or practical nurse, or an application to obtain a volunteer certificate, as well as costs connected to completing continuing education requirements. Certified medication aide training programs also face adverse impacts such as payment of an application fee to provide the training program (or to renew the license to provide the program), and costs connected to complying with curriculum, staff, reporting, and record retention standards instituted in the rules. Individual certified medication aides are also required to pay an application fee and to comply with continuing education and training standards. Lastly, the Board is authorized by the rules to take disciplinary action including the assessment of fines, restrictions on licensure, suspension, or revocation. The Board states in the BIA that the rules are necessary to ensure that Ohio residents receive safe and competent nursing care, to reduce health care errors, to minimize harm to patients, and to ensure that applicants for licensure meet minimum statutory qualifications and that such standards are applied uniformly.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Ohio Board of Nursing should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review