



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

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Regulation/Package Title (a general description of the rules' substantive content):

Five Year Rule Review: OAC Chapters 4723-5, 4723-7, 4723-13, 4723-27.

Rule Number(s): 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, 4723-27-10.

Date of Submission for CSI Review: August 17, 2021

Public Comment Period End Date: August 31, 2021

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Rule Type/Number of Rules:

New/ ___ rules

No Change/ 23 rules (FYR? Yes)

Amended/ 24 rules (FYR? Yes)

Rescinded/ rule (FYR?)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.

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.

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The Board proposes to amend or file no change rules following the five-year review for Ohio Administrative Code Chapter 4723-5 Nursing Education Program, Chapter 4723-7 Examination and Licensure, Chapter 4723-13 Delegation of Nursing Tasks, Chapter 4723-27 Medication Administration by Certified Medication Aides.

Chapter 4723-5 Nursing Education Program

- At its May 2021 meeting, the Board approved amendments recommended by the Advisory Group on Nursing Education¹ on May 6, 2021, as follows:
 - Rule 4723-5-01: add definition for “Associate Program Administrator”.
 - Rule 4723-5-08(O): add clarifying language.
 - Rule 4723-5-09(A): require a “written” plan. Paragraph (B): add references to “teaching assistants”. Paragraph (D): add clarifying language. Paragraph (D)(4): add language to address an interim program administrator.
 - Rule 4723-5-10(A): add a reference to “interim program administrator”. Update Rule 5-01 references.
 - Rule 4723-5-11(A): add a reference to “interim program administrator”. Update Rule 5-01 references.
 - Rule 4723-5-12(B): add clarifying language.
 - Rule 4723-5-13(D): add clarifying language. Update Rule 5-01 references.
 - Rule 4723-5-14(D): add clarifying language.
 - Rule 4723-5-15(A) and (B): add clarifying language.
 - Rule 4723-5-16(A): include language so that Board approval is required for changes in program objectives or outcomes.
 - Rule 4723-5-19(A): add clarifying language. Add paragraph (A)(10) regarding the use of non-faculty who provide course content.
 - Rule 4723-5-20(B): add clarifying language regarding supervision of nursing students during clinical experiences. Paragraph (C): remove “teaching assistant.” Paragraph (D): add “teaching assistant.”
 - Rule 4723-5-23(C): paragraph (A) limits consideration of NCLEX scores by the Board to students who took the exam “within six months” of program completion. Add similar language to paragraph (C).

Chapter 4723-7 Examination and Licensure

¹ This Advisory Group is composed of the following stakeholders: two educators in PN programs; two educators in ADN programs; two educators in BSN programs; one educator in a Diploma program; one nurse in acute care practice; one nurse in long-term care practice; one administrator or employer of nurses; one administrator or employer of nurses in a rural area; one staff development nurse; one consumer; and two LPNs, one of whom may be the representative for long-term care practice. The Advisory Group is charged with discussing information and issues related to nursing education programs and providing comment and review on proposed revisions for the Nurse Practice Act and administrative rules relating to nursing education.

- Rule 4723-7-02: remove language as required by HB 263 (133rd GA).
- Rule 4723-7-03: remove language as required by HB 263.
- Rule 4723-7-04: remove language as required by HB 263. Remove language requiring CE documentation to be uploaded with license applications consistent with changes made to Rule 4723-14-03. Rule 4723-7-04(B): Add language clarifying what kind of evidence may be submitted by a foreign educated endorsement applicant to demonstrate “working knowledge of the English language,” as the lack of clarity has proven confusing to applicants. Note that unlike exam applicants, endorsement applicants are not required to pass the English proficiency exam, although that is one method of establishing a working knowledge of English. The historic rationale for the Board not requiring the proficiency exam for endorsement applicants was based on the assumption that an endorsement applicant would have actual working experience as a nurse in the United States.
- Rule 4723-7-05(B)(4): remove language requiring CE documentation to be uploaded with license applications consistent with changes made in by the Board to Rule 4723-14-03. Remove language as required by HB 263.
- Rule 4723-7-06(B)(4): remove language requiring CE documentation to be uploaded with license applications consistent with changes made in by the Board to Rule 4723-14-03. Remove language as required by HB 263.
- Rule 4723-7-07: revise to reflect that license certificates are no longer “framed wall certificates” (licensees self-print certificates through a secure eLicense account).
- Rule 4723-7-10(B): Interested parties (Jeri A. Milstead and Janice K. Lanier) requested that language be added clarifying that the RN or APRN applicant complete CE in the RN scope, and the PN applicant complete CE in the PN scope.

Chapter 4723-13 Delegation of Nursing Tasks

- Rule 4723-13-02(D)(1): update cross-references.
- Rule 4723-13-05(E)(5): correct typo (should refer to 4723 not 4732); paragraph (C): update cross reference (HB 216, 131st GA revised numbering in 4723.48, ORC).
- Rule 4723-13-05(E)(6)(g) and (F)(2)(c): Members of the Ohio Nursing Collaboration (consisting of Ohio Family to Family, Ohio Department of Developmental Disabilities/DODD, Ohio Department of Medicaid, and family members) requested language to underscore that when delegating a nursing task, a licensed nurse shall consider the total number of delegated nursing tasks to be performed for an individual. Note that this concept is already incorporated in Rule 4723-13-07(C)(2), which references the types and number of nursing tasks that will be delegated.

Chapter 4723-27 Medication Administration by Certified Medication Aides

- Rule 4723-27-04: remove language as required by HB 263 (133rd GA).
- Rule 4723-27-05(D): remove language requiring CE documentation to be uploaded with license applications consistent with changes made in by the Board to Rule 4723-14-03.

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.

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Ohio Revised Code (ORC) Section 4723.06, 4723.07 (All Chapters)

ORC 4723.08, 4723.09, 4723.10, 4723.24, 4723.26, 4723.271, 4723.28 (OAC Chapter 4723-7)

ORC 4723.01, 4723.03, 4723.48, 4723.489, 4723.071 (OAC Chapter 4723-13)

ORC 4723.61 – 4723.69 (OAC Chapter 4723-27)

- 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 to develop criteria for eligibility for licensing exams and define the minimum educational standards for schools and programs of RN and PN nursing. ORC Section 4723.07 requires the Board of Nursing to adopt rules governing the practice of nursing, including standards and procedures for licensure, minimum standards for nursing education programs, standards and procedures for delegation under 4723.48, ORC, and other rules necessary to enforce ORC Chapter 4723. ORC 4723.071 requires the Board to adopt rules it considers necessary to govern nursing delegation as it applies to developmental disabilities personnel. Section 4723.69, ORC requires the Board to adopt rules to implement 4723.61 to 4723.68, ORC regarding medication aide certification, including minimum standards for training programs, certification, disciplinary actions and other topics.

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

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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 Advisory Group on Nursing Education (see footnote 1) met on May 6, 2021 and made recommendations for revisions to Chapter 4723-5, OAC, which were adopted by the Board at its May 2021 meeting.

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 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?

Based on input from stakeholders, changes were made to rules as follows: Rule 4723-13-05(E)(6)(g) and (F)(2)(c): Members of the Ohio Nursing Collaboration (consisting of Ohio Family to Family, ODOOD, Ohio Department of Medicaid, and family members) requested language to underscore that when delegating a nursing task, a licensed nurse shall consider the total number of delegated nursing tasks to be performed for an individual. Note that this concept is also referenced in Rule 4723-13-

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07(C)(2), which references the types and number of nursing tasks that will be delegated. Rule 4723-7-10(B): Jeri A. Milstead and Janice K. Lanier requested that language be added clarifying that the RN or APRN applicant complete CE in the RN scope, and the PN applicant complete CE in the PN scope.

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?

Regarding the five-year review rules, 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?

Regarding the five-year review rules in this package, no alternatives were considered because minimum licensing, education and practice standards are the essential foundation for competent nursing care, patient safety, and public protection, and these standards are consistent with prevailing nursing practice and evidence-based nursing research.

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

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 nurse licensing, minimum nursing education standards, and certified medication aide certification, training and practice standards. Regarding delegation of nursing tasks, other law may regulate aspects of delegation and this is noted in Rule 4723-13-02 (B).

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 with links to the rules will be e-mailed to attorneys, licensees, nursing and dialysis practice associations, colleges, universities and other nursing education programs, health care system representatives and other regulatory agencies, and will also be distributed via social media. Nursing Board staff members provide answers to practice questions, via a designated email address and by telephone. The Board will provide educational materials as needed through FAQs and a quarterly newsletter (*Momentum*). Board staff will be participating in upcoming quarterly Ohio Nursing Collaboration meetings to assist in addressing nurse delegation questions.

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;

- Individuals applying to obtain licenses as licensed practical nurses, registered nurses, and medication aides;
- Nursing education programs;
- Medication aide training programs;
- Individuals licensed/certified by ORC Chapter 4723.

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

Chapter 4723-5, OAC establishes minimum curriculum, staff qualifications, reporting, and record retention requirements for nursing education program that colleges, universities, and other pre-license education programs must comply with to be approved by the Board. Rules in Chapter 4723-7 establish a licensure process for registered and licensed practical nurses by examination and endorsement, including fees and required application information for initial licensure and renewal; and an application process for volunteer certificates. The rules establish continuing education requirements which may require expenditures to complete coursework. Chapter 4723-27 sets forth application requirements including approval and reapproval fees for medication aide training programs, minimum curriculum, staff qualifications, reporting and record retention requirements for medication aide training programs to be approved by the Board; certification requirements including fees for application/renewal to practice as a medication aide, and continuing education and practice standards for medication aides. Sanctions for violation of Chapter Chapter 4723-05, Chapter 4723-13 and 4723-27 OAC may include fines, license/certificate restrictions, suspension or revocation.

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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.

ORC Section 4723.08, ORC, establishes fee payments for RN and LPN licensing, renewal and reinstatement as follows: RN/LPN license, \$75.00; RN/LPN renewal, \$65.00 and \$50.00 late processing fee; RN/LPN license reinstatement, \$100.00. Rule 4723-27-10 establishes fees for medication aides and medication aide training programs as follows: Medication aide certificate, \$50.00; certificate renewal, \$50.00 if by March 1, and \$100.00 if after March 1; reactivation, \$50.00; reinstatement, \$100.00; training program approval, \$1000.00; reapproval, \$500.00.

Nurses and medication aides who violate minimum standards of care set forth in Chapter 4723-13 (Delegation of Nursing Tasks) or 4723-27 (Medication Administration by Medication Aides), OAC, respectively, may incur disciplinary sanctions, which may include fines, continuing education, or restriction, suspension or revocation of the license or certificate. There may be associated costs for licensees or certificate holders to comply with the terms and conditions of the sanction and demonstrate compliance and the ability to provide care. These are not new costs as Chapters 4723-13 and -27, OAC, have established minimum standards of safe nursing delegation and medication aide practice for many years with the potential for disciplinary action based on violations.

There is a cost inherent in engaging in the business of being a Board approved nursing education program (Chapter 4723-5) or medication aide training program (Chapter 4723-27). 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 minimum standards for curriculum, staff and faculty for pre-license education programs, and standards for safe delegation of nursing tasks, are essential to ensuring that Ohio residents receive safe and competent nursing care. The minimum curriculum, certification and practice standards for training of medication aides are essential for public protection and are designed to reduce health care errors, harm to patients and substandard practice. The information sought in forms required

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for licensing and certification are needed to ensure that applicants meet minimum statutory qualifications, and that application standards are applied in a fair and legally consistent manner.

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 in order to assist the practitioner and employer. Nursing Board staff members provide answers to practice and prescribing questions, via a designated email address and by telephone. The Board provides educational materials as needed through FAQs posted on its website, and through a quarterly newsletter (*Momentum*). All relevant forms and information for RN/LPN Licensure, Nursing Education Programs and Medication Aide training programs are also available on the Board's website. For example, during Covid-19, the Board posted numerous communications/alerts, articles and links to assist the regulated community. See e.g., <https://nursing.ohio.gov/nursing-education-nalex/programs/>. The Board also hosts a Nursing Education Program Workshop semi-annually for colleges, universities, and other pre-license education programs with detailed information on the licensing application process for students, information concerning any law or rule changes, and other information of interest to educators.