



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 – Technical Change Rules (OAC 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, and 4723-26-04)**

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 two new and ten 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 Board membership and organizational structure, record-keeping responsibilities, nursing care arrangements, consideration of documents submitted to the Board, license renewal processes for dialysis technicians and community health workers, and nursing consult arrangements.

OAC 4723-1-01 sets forth requirements for the organizational structure and selection processes for Board membership. The rule is amended to reflect the most current edition of a material incorporated by reference. OAC 4723-1-03 describes the responsibilities of the Board to maintain various records

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relating to applicants and licensees. The rule is amended to update references to various licensing types as they are described on the Board's website and to adopt language that requires the Board to approve a list of criminal offenses that may disqualify an applicant from licensure and to publish the list on the website, consistent with H.B. 263 (133rd General Assembly). OAC 4723-8-04 describes requirements for standard care arrangements between physicians or podiatrists and certified nurse-midwives, certified nurse practitioner, or clinical nurse specialist collaborates. The rule is amended to specify that standard care arrangements must include an authorization to enter consult agreements for patients, if applicable. OAC 4723-9-10 establishes limitations, requirements, and standards related to the types of drugs that may or may not be prescribed by an advance practice registered nurse designated as a certified nurse practitioner, a clinical nurse specialist, or a certified nurse-midwife. The rule is amended to remove references to the Committee on Prescriptive Governance, which no longer exists due to statutory changes made in S.B. 331 (133rd General Assembly).

OAC 4723-16-01 describes the delivery process and timeline of documents delivered to the Board. The rule is amended to allow for documents delivered to the Board after the close of business hours to be considered formally delivered on the day of delivery, rather than the subsequent business day. OAC 4723-16-02 and 4723-16-13 sets forth privileges and responsibilities for respondents engaged in formal Board hearings and the Board hearing committee or hearing examiners. The rules have been amended to allow for videoconference hearings if agreed to by both parties.

OAC 4723-23-04 and OAC 4723-26-04 describe the process for dialysis technicians and community health worker licensees to renew their licenses through the Board's online system and have been amended to remove a requirement that the applicant upload documentation of continuing education requirements as a component of the renewal process. OAC 4723-26-01 sets forth definitions related to community health workers and has been amended to clarify that community health workers do not require supervision by a registered nurse if they are performing tasks that do not involve nursing.

New OAC 4723-8-12 establishes standards for consult agreements between a practitioner (certified nurse-midwife, certified nurse practitioner, or clinical nurse specialist) and a pharmacist. New OAC 4723-8-13 sets forth responsibilities for practitioners who elect to manage the drug therapy of an established patient by entering into a consult agreement with a pharmacist. The Board states in the BIA that the two new rules implement H.B. 203 (133rd General Assembly), and that they mirror Medical Board rules for physicians that have been in place since October of 2020.

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. Two comments were received during the CSI public comment period. The first suggested that the list of disqualifying criminal offenses that would prevent an individual from being licensed as a nurse be listed specifically in rule, rather than defined in an external list. The Board responded to the comment noting that recent legislative changes in H.B. 263 (133rd General Assembly) repealed language that allowed the Board to automatically bar licensure for certain crimes. A second comment from the Cleveland Clinic suggested that the Board clarify the disqualifying offenses on the disqualifying list and how the list would be applied to current licensees and their employers. The Board responded that the disqualifying list exclusively relates to initial applicants for licensure through the Board (not existing licensees) and that renewal applications only require applicants to indicate any felony or misdemeanor offenses committed since the last licensure renewal period. Additionally, the Board clarified that this specific rule does not require employers to establish a criminal record check process to determine whether applicants are able to hold a license based on the revised disqualifying offense list.

The business community affected by the rules includes certified community health worker employers or agencies, dialysis technicians and community health workers, advance practice registered nurses and their employers, and other individuals who are licensed or hold a certificate in a profession regulated by the Board. The adverse impacts created by the rules include time and expenses associated with advance practice registered nurses entering consult arrangements and any modifications that may need to be made to such arrangements, potential disciplinary actions for violation of the rules, and any capital or technology costs necessary to participate in potential videoconference hearings. According to the BIA, the costs associated with the adverse impacts to business vary based on the business operations of the entity affected by the rules. The Board notes that the costs associated with administrative videoconference hearings are only realized if both parties agree to conduct the hearing in such a manner and that videoconference hearings have the potential to reduce travel, mileage, and legal costs associated with in-person hearings. The Board states that the adverse impacts to business are necessary to safeguard the health of the public through effective regulation of nursing education and practice.

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.