



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Alicyn Carrel, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: September 9, 2022

RE: **CSI Review – Nurse Aide Training and Competency Evaluation Programs/ Train the Trainer Programs (OAC 3701-18-01, 3701-18-02, 3701-18-03, 3701-18-04, 3701-18-05, 3701-18-06, 3701-18-06.1, 3701-18-08, 3701-18-09, 3701-18-10, 3701-18-11, 3701-18-12, 3701-18-13, 3701-18-14, 3701-18-15, 3701-18-16, 3701-18-17, 3701-18-18, 3701-18-19, 3701-18-20, 3701-18-21, 3701-18-22, 3701-18-23, 3701-18-24, 3701-18-25, 3701-18-26, and 3701-18-27)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of eight new rules, fourteen amended rules, five no-change rules, and eight rescinded rules proposed by the Ohio Department of Health (ODH). The amended, no-change, and rescinded rules are submitted as part of the statutory five-year review process. This rule package was submitted to the CSI Office on August 19, 2022, and the public comment period was held open through September 1, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 19, 2022.

Ohio Administrative Code (OAC) 3701-18-01 specifies definitions related to nurse aide training and competency evaluation programs (NATCEP). OAC 3701-18-02 sets forth the role of designees of the Director of ODH (Director) with regards to NATCEP's and train-the-trainer (TTT) programs. The rule is amended to update language. OAC 3701-18-03 authorizes the Director or Director's designee to inspect approved NATCEP's and TTT's and to suspend, deny, or revoke approval of a

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program that is not in compliance. The rule is amended to update language and allow ODH to publish on its website information that it must provide concerning a program's approval status. OAC 3701-18-04 is rescinded and replaced by a new rule with the same number due to Legislative Service Commission (LSC) drafting requirements and to be redrafted for clarity. OAC 3701-18-04, the proposed new rule, outlines the application requirements for a long-term care facility, employee organization, person, or government entity seeking approval of a NATCEP. OAC 3701-18-05 is rescinded and replaced by a new rule with the same number due to LSC drafting requirements and to be redrafted for clarity. OAC 3701-18-05, the proposed new rule, outlines the application requirements for reapproval of a NATCEP.

OAC 3701-18-06 provides the criteria by which the Director or Director's designee approves an application for approval or reapproval of a NATCEP. OAC 3701-18-06.1 is rescinded and replaced by a new rule with the same number to be redrafted for clarity. OAC 3701-18-06.1, the proposed new rule, specifies general requirements that an approved NATCEP must follow post-approval. OAC 3701-18-08 is rescinded and replaced by a new rule with the same number to be redrafted for clarity and to allow a NATCEP to request a variance allowing the clinical portion of the program to be conducted in a laboratory setting. OAC 3701-18-08, the proposed new rule, contains special requirements for approved NATCEP's, particularly regarding the classroom and clinical portions. OAC 3701-18-09 is rescinded and replaced by a rule with the same number to be redrafted for clarity, better reflect federal regulations, make the program coordinator an administrative position while shifting the training/work experience requirements to the primary instructor, allow a primary instructor to meet applicable requirements through supervisory experience, clarify who may supervise clinical experiences, and allow online instruction for the classroom portion. OAC 3701-18-09, the proposed new rule, contains personnel requirements for NATCEP's with regards to program coordinators, primary instructors, and supplemental instructors. OAC 3701-18-10 sets forth the requirements that a physical facility must meet to be used by a NATCEP. An appendix cited in the rule is provided and amended to include personal protective equipment such as gloves, gowns, and masks as well as sanitizing wipes. OAC 3701-18-11 requires NATCEP's to maintain certain program records for at least two years. The rule is amended to replace the term "guest lecturer" with "supplemental instructor." OAC 3701-18-12 outlines curriculum criteria for approved NATCEP's. The rule is amended to better cite the appendix to the rule and to reflect an allowed variance from the Director. The appendix cited in the rule is provided and amended to include the most recent infection control and oral health practices. The bibliography to the appendix is also provided and updated.

OAC 3701-18-13 provides for the evaluation of NATCEP trainees, including skills testing. The rule is amended to reflect an allowed variance, reduce the passing score of exams and quizzes from eighty to seventy percent, and update language. OAC 3701-18-14 is rescinded and replaced by a new rule with the same number due to LSC drafting requirements and to be redrafted for clarity. OAC 3701-18-14, the proposed new rule, outlines the application requirements for a long-term care facility, employee organization, person, or government entity seeking approval of a TTT program. OAC

3701-18-15 is rescinded and replaced by a new rule with the same number due to LSC drafting requirements and to be redrafted for clarity. OAC 3701-18-15, the proposed new rule, outlines the application requirements for reapproval of a TTT program. OAC 3701-18-16 provides the criteria by which the Director or Director's designee approves an application for approval or reapproval of a TTT program. The rule is amended to update language. OAC 3701-18-17 contains special requirements for approved TTT programs. The rule is amended to remove a reference to a program coordinator and update a citation. OAC 3701-18-18 contains personnel requirements for TTT programs with respect to faculty members. The rule is amended to update language and allow for programs to be conducted online. OAC 3701-18-19 sets forth the requirements that a physical facility must meet to be used by a TTT program. The rule is amended to require facilities to be equipped with computers or similar technology. OAC 3701-18-20 requires TTT programs to maintain certain program records for at least two years. The rule is amended to replace the term "guest lecturer" with "supplemental instructor." OAC 3701-18-21 outlines curriculum criteria for approved TTT programs and provides for the evaluation of program participants. The rule is amended to reduce the passing score of the written exam from eighty to seventy percent and add language for clarity. The appendix cited in the rule and a bibliography to the appendix are also provided.

OAC 3701-18-22, which was not included when the rule package was originally submitted to the CSI Office, was added to the rule package on August 31, 2022. OAC 3701-18-22 requires the Director or Director's designee to conduct a state-administered test to NATCEP registrants, who must successfully complete the test to fulfill certain ORC requirements to work as a nurse aide in a long-term care facility. The rule is amended to clarify that the one year of experience in a long-term care facility required for the registered nurse who serves as an evaluator for the performance demonstration component of the test must be nursing experience. The CSI Office determined that, because the change was minor, the public comment period did not need to be extended. OAC 3701-18-23 specifies who is eligible to take the state-administered test to be registered as a state-tested nurse aide. OAC 3701-18-24 describes how to register for the state-administered test. OAC 3701-18-25 is rescinded and replaced by a new rule with the same number due to LSC drafting requirements and to reflect changes to the ORC allowing ODH to publish fees on its website. OAC 3701-18-25, the proposed new rule, provides for the registration fees for the state-administered test. OAC 3701-18-26 provides for the scheduling and administration of the state-administered test. The rule is amended to update language and allow a registrant to present a visa issued by the United States Citizenship and Immigration Services Agency as a form of identification. OAC 3701-18-27 describes how to successfully pass the state-administered test and outlines the actions that the Director or Director's designee must take with respect to the registrants depending on the results of the test. The rule is amended to clarify that the passing score of the test is seventy percent.

During early stakeholder outreach, the ODH reached out to stakeholders and held a virtual meeting in May 2022 to receive feedback on the rules in this package. The stakeholders who participated in the virtual meeting were C-TEC of Licking County, LeadingAge Ohio, Clark State Community

College, Apollo Career Center, Windsor House, Paradigm Health Services, Arbors at Gallipolis, Court House Manor, JAG Healthcare, Arbors at Pomeroy, Inspira Health Group, Oral Health Ohio, Alia Healthcare, Cincinnati State Community College, Great Oaks Career Campuses, the Health Collaborative, the Ohio Health Care Association, the Ohio Academy of Senior Health Sciences, Capital Health Care Network, the Ohio Department of Aging, and the Office of the State Long-term Care Ombudsman. Stakeholders provided significant input during the virtual meeting, and the draft rules reflect their comments and suggestions. During the CSI public comment period, ODH received comments from four individuals, three of whom were registered nurses and one who worked with a human services agency. Comments were concerned primarily with the primary instructor requirements but also with the infection control curriculum and the inclusion of advanced practice registered nurses or nurse practitioners.

One of the individuals thought that providing at least one year of direct supervision of nurse aides as a registered nurse in a long-term care facility did not give a registered nurse the information needed to teach a NATCEP. Two of the other individuals believed that such a qualification was too restrictive which, along with the qualification of one year of experience teaching adults while possessing the training manual from an approval TTT program, would prevent training sites from being able to find nurses that fit the personnel requirements. ODH replied that it could not override federal requirements for long-term care experience or allowing instructors to have either completed a course in teaching adults or have experience in supervising nurse aides but did note that these qualifications are simply alternatives among three total possible options to be approved as a primary instructor. One of the individuals asserted that most of the new verbiage in the infection control curriculum was beyond the sixth to eighth grade reading level of the average state-tested nurse aide student and wondered why students needed to know which diseases precluded working. ODH responded by saying that the curriculum is designed and written to be a tool for professional nurses to provide practical instruction to nurse aides, not as a tool for the students themselves, and that students must be aware of how their own health impacts the health of residents in nursing homes. One of the individuals did not understand why advanced practice registered nurses (APRN) or nurse practitioners (NP) were not mentioned in this rule. ODH stated that APRN's and NP's are captured under their status as registered nurses. This same individual made numerous other suggestions that ODH stated were already captured in the rules, would go against federal requirements, or were not seem as problematic as currently practiced. Lastly, ODH made several typographical and grammatical corrections upon inquiry from the CSI Office.

The business community impacted by the rules includes individuals aspiring to be nurse aides or who wish to train aspiring nurse aides as well as long-term care facilities, employee organizations, governments entities, and other persons who seek to provide NATCEP's or TTT programs. The adverse impacts created by the rules include application fees, test fees, completing and submitting required forms to ODH, reporting information to ODH, equipment costs, keeping records, and completing or offering a NATCEP or TTT program. The application fees for NATCEP and TTT program approval and reapproval are \$300 and \$600, respectively. The test taking fees for students

are \$26.00 for a written exam, \$36.00 for an oral exam, and \$78.00 for the performance demonstration. ODH estimates that it would take an hour to read applicable OAC rules and that it would take a registered nurse, working at an average of \$35.62 per hour according to the Bureau of Labor Statistics, eight to twelve hours to compile and file the required applications and four hours to send required notices. Additionally, ODH says that, based on discussions with stakeholders, an organization providing a NATCEP could spend up to \$10,000 to buy a new long-term care bed if it does not have one already while an organization providing a TTT program may spend up to \$2,500 on necessary equipment. ODH states that the adverse impacts to business are justified to fulfill ORC requirements to establish rules regarding the approval of training programs so that the nurse aide workforce may obtain a baseline of knowledge and skills to provide direct care to residents of long-term care facilities and so that individuals training nurse aides may have the experience and ability needed to teach the subject matter.

Recommendations

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

Conclusion

The CSI Office concludes that ODH should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.