



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Anita DiPasquale, Ohio Board of Nursing

FROM: Michael Bender, Business Advocate

DATE: October 4, 2022

RE: **CSI Review – Board Organization & Records, Definitions, Continuing Education, Pre-licensure, Nursing Education, and Nurse Licensure Compact Fees (OAC 4723-1-01, 4723-1-02, 4723-1-03, 4723-1-04, 4723-1-05, 4723-1-06, 4723-1-07, 4723-1-08, 4723-1-09, 4723-1-10, 4723-1-11, 4723-3-01, 4723-3-02, 4723-14-01, 4723-14-03, 4723-14-04, 4723-14-05, 4723-14-06, 4723-14-07, 4723-14-08, 4723-14-09, 4723-14-10, 4723-14-11, 4723-14-12, 4723-14-13, 4723-14-14, 4723-14-15, 4723-14-16, 4723-14-17, 4723-14-18, 4723-5-04, 4723-5-23, and 4723-11-02)**

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 one new rule, sixteen amended rules, and sixteen no-change rules proposed by the Ohio Board of Nursing (Board) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on September 15, 2022, and the public comment period was held open through September 23, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 15, 2022.

Ohio Administrative Code (OAC) 4723-1-01 provides for the organization of the Board, including the election of a president, vice-president, and a supervising member for disciplinary matters. OAC 4723-1-02 requires the Board to appoint an executive director who shall be responsible for its administrative functions. OAC 4723-1-03 requires the Board to maintain records of both its licensees

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

and applicants for licenses and certificates that it issues, requires the Board to approve and post on its website a list of disqualifying criminal offenses, and references various forms and applications. The rule is amended to update dates for certain referenced materials and implement name changes electronically through an individual's eLicense account. OAC 4723-1-04 requires all fee payments to be made in the form provided by the Board. OAC 4723-1-05 requires the Board to provide public notice of its intent to adopt, amend, or rescind any rule. OAC 4723-1-06 requires the Board to ensure that any person can determine the time and place of its meetings. OAC 4723-1-07 specifies definitions related to personal information. OAC 4723-1-08 sets forth the procedures and criteria for an employee of the Board to access confidential personal information. OAC 4723-1-09 specifies the valid reasons that a Board member or employee may view confidential personal information. The rule is amended to remove the terms "certificate of authority" and "certificate of prescriptive authority." OAC 4723-1-10 specifies the statutes and regulations/rules at the federal and state level that identify the type of confidential personal information that falls within the scope of the rules promulgated by the Board. The rule is amended to remove the term "certificate of authority." OAC 4723-1-11 provides for the recording and logging of access to confidential personal information in computer systems by employees of the Board. OAC 4723-3-01 specifies definitions pertaining to licenses and practices related to the Board. OAC 4723-3-02 specifies definitions for the terms "mental impairment" and "mental disability" as well as "impaired" and "impairment." The rule is amended to incorporate the inability to practice safe dialysis in the definition for "impaired" and "impairment."

OAC 4723-14-01 specifies definitions related to continuing education for nurses. The rule is amended to add, delete, and revise terms. OAC 4723-14-03 provides for the continuing education requirement for licensed practical and registered nurses. The rule is amended to correct a typographical error and remove certain contact hour content requirements for an applicant whose license has been inactive or lapsed for more than two years. OAC 4723-14-04 provides for the determination of continuing education credit. The rule is amended to remove a redundant description of a contact hour. OAC 4723-14-05 specifies the types of educational activities that do and do not satisfy the continuing education requirement. The rule is amended to incorporate enduring continuing education activities and to require a nurse who completes the described continuing education activities to retain and submit upon audit proof of completion of such activities. OAC 4723-14-06 provides for the information that serves as proof of completion of continuing education. OAC 4723-14-07 allows the Board to conduct audits of any licensee or certificate holder to determine compliance with continuing education requirements. OAC 4723-14-08 outlines the qualifications for a provider unit to be able to apply to the Board to become an approver of continuing education. OAC 4723-14-09 sets forth the process by which a proposed Board approver obtains initial approval from the Board. OAC 4723-14-10 provides for the reapproval of a Board approver. The rule, originally submitted as a no-change rule, is amended to remove an unnecessary paragraph. OAC 4723-14-11 provides for termination of a Board approver's approval status. OAC 4723-14-12 requires a Board approver to establish,

implement, and enforce processes to addresses various actions and functions with respect to continuing education activities. The rule is amended to incorporate enduring continuing education activities, require the approver to ensure content integrity, update language regarding relationships with ineligible companies, and remove a provision requiring the approver to develop an organizational chart. OAC 4723-14-13 requires a Board approver to give written notice to the Board within thirty days of certain changes. The rule is amended to clarify which type of information must be provided.

OAC 4723-14-14 authorizes a Board approver to approve individual continuing education activities offered by a provider as well as entire continuing education systems of an approved provider unit. The rule is amended to incorporate enduring continuing education activities and to clarify language regarding courses whose approval statuses have not been determined. OAC 4723-14-15 outlines what must be included in the application for approval of continuing education activities, other than independent study activities, by a provider and specifies requirements for the administration of such activities. The rule is amended to revise the rule title, remove the term “faculty-directed” as it relates to continuing education activity, incorporate enduring continuing education activities, update language regarding relationships with ineligible companies, require applications to include the method used to determine the number of contact hours awarded, clarify language regarding courses whose approval statuses have not been determined, and remove the requirement that a summary evaluation be maintained for each date that the continuing education activity is offered. OAC 4723-14-16 outlines what must be included in the application for approval of an independent study continuing education activity by a provider. OAC 4723-14-17 outlines what must be included in the application for approval and reapproval of a continuing education system by a proposed provider unit and specifies requirements for the administration of the system. The rule is amended to correct typography, update language regarding relationships with ineligible companies, specify who qualifies as key personnel directly responsible for the provider system, and remove the term “faculty-directed” as it relates to continuing education activity. OAC 4723-14-18 provides for the actions that a Board approver must complete if it wishes to voluntarily terminate its approval status. OAC 4723-5-04 sets forth the procedures for the Board to determine the status of a prelicensure nursing education program. The rule is amended to update a citation to reflect a proposed revision of OAC 4723-5-23. OAC 4723-5-23 outlines the actions that must be performed by both the Board and a prelicensure nursing education program with respect to the program’s approval status depending on whether or not the program’s pass rate for the National Council Licensure Examination (NCLEX) meets the ninety-five percent threshold. The rule is amended to authorize the Board to abstain from changing a program’s approval status during an emergency declared by the state or federal government or during a state or local disaster. OAC 4723-11-02, a new rule, establishes fees for obtaining an Ohio multistate license.

During early stakeholder outreach, the Board created an Advisory Group on Rules in May 2022 to

review the rules and make recommendations. The Advisory Group on Rules consisted of three Board members and two members of the public, all of whom were licensees. In July 2022, the Board also provided notice by email to stakeholders of its five-year review of the rules and requested comments. Nineteen individuals sent forty-two comments which were summarized and provided to the Advisory Group on Rules for review in August 2022. The Board also received input from the Advisory Group on Continuing Education, which consisted of stakeholders including continuing education providers and continuing education approvers. The Advisory Group on Continuing Education reviewed the rules in March and June 2022 and made recommendations that were shared with the Advisory Group on Rules in August 2022. The Advisory Group on Rules in turn issued its recommendations in September 2022 to the Board, which adopted all but one of the recommendations. Many of the proposed changes were done to conform Ohio administrative rule language to that used by national organizations that approve or provide continuing education, particularly in order to distinguish between enduring materials and independent study, or for the sake of clarification. During the CSI public comment period, the Board received comments from eight individuals in the nursing field. Comments focused on topics such as typography, the multistate license fee, the amount of continuing education, the requirement to disclose financial relationships, pronouns, continuing education requirements for registered nurses, and continuing education topics.

Two individuals expressed support for the rules as they were proposed. One individual pointed out that a paragraph seemed to have been accidentally copied and pasted in one rule from another. The Board replied that the paragraph had indeed been inadvertently copied from one rule to the other and subsequently removed it from the rule where it was not intended. Another individual stated that it was unfair to impose a fee on multistate licenses. The Board replied that the General Assembly had authorized it to impose such a fee while prohibiting it from passing costs along to traditional license holders, adding that the fee could be reduced in the future. One person believed that the number of continuing education hours for nurses applying for reinstatement should be increased to include all areas of patient care in order to ensure the safety of patients. The Board responded that it was not considering changing the number of required continuing education hours for those applying for reinstatement. Another person urged the Board to maintain the financial relationship disclosure requirements only in instances where the content of the activity was clinical so as to align with national standards more closely. The Board replied that the individual's concerns were addressed by the definition of "ineligible company." One comment suggested updating areas with regards to gender-based pronouns. The Board stated that this input would be part of its discussions going forward. One final comment asked the Board to verify whether any changes were concerned with continuing education requirements for registered nurses and asked for clarification on the continuing education topic requirements. The Board said that the continuing education requirements for registered nurse licensees were not changed, and neither was the Category A requirement. Lastly, the Board made some typographical corrections upon inquiry from the CSI Office.

The business community impacted by the rules includes licensed registered and practical nurses in Ohio, entities that approve and provide continuing education, and prelicensure nursing education programs. The adverse impacts created by the rules include continuing education requirements for license renewal or reinstatement, reporting compliance with continuing education requirements, fulfilling recordkeeping requirements, disclosing potential conflicts of interest, paying fees to become a continuing education approver or renew continuing education approver status, submitting an action plan to improve NCLEX scores and a subsequent report evaluating the plan, being placed on provisional approval status, and paying fees to obtain or renew an Ohio multistate license. As noted by the Board, twenty-four hours of continuing education must be performed every two years by licensees, the fees for becoming a continuing education provider or renewing continuing education approver status range from \$150 to \$1,000 as set by the ORC, and the fees for obtaining or renewing an Ohio multistate license range from \$25 to \$150 as set by rule. The Board states that the adverse impacts to business are justified to fulfill ORC requirements to implement the National Licensure Compact and to safeguard the health of the public by ensuring quality continuing education and prelicensure nursing education.

Recommendations

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

Conclusion

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