



## Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

### Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Chapter 4723-1, Board Organization and Records; Chapter 4723-4, Standards of Practice Relative to Registered Nurse or Licensed Practical Nurse; Chapter 4723-5, Nursing Education Program; Chapter 4723-6, Alternative Program for Substance Use Disorder Monitoring; Chapter 4723-7, Examination and Licensure; Chapter 4723-9, Prescriptive Authority; Chapter 4723-11, Fees; Chapter 4723-14, Continuing Nursing Education; Chapter 4723-17, Intravenous Therapy Courses for Licensed Practical Nurses; Chapter 4723-18, Practice Intervention and Improvement Program (PIIP); Chapter 4723-20, Prevention of Disease Transmission; Chapter 4723-23, Dialysis Technicians; Chapter 4723-26, Community Health Workers; Chapter 4723-27, Medication Administration by Certified Medication Aide

Rule Number(s): 4723-1-03; 4723-4-01, 4723-4-02, 4723-4-03, 4723-4-04, 4723-4-05, 4723-4-06, 4723-4-07, 4723-4-08, 4723-4-09; 4723-5-04, 4723-5-20; 4723-6-01, 4723-6-02, 4723-6-03, 4723-6-04, 4723-6-05, 4723-6-06; 4723-7-06, 4723-7-07, 4723-7-08; 4723-9-08, 4723-9-10, 4723-9-11, 4723-9-13, 4723-9-14; 4723-11-03; 4723-14-01, 4723-14-12, 4723-14-17; 4723-17-01, 4723-17-03, 4723-17-04, 4723-17-05, 4723-17-06, 4723-17-07; 4723-18-01, 4723-18-02, 4723-18-03, 4723-18-04, 4723-18-05, 4723-18-06, 4723-18-07, 4723-18-08, 4723-18-09, 4723-18-10; 4723-20-01, 4723-20-02, 4723-20-03, 4723-20-04, 4723-20-05, 4723-20-06, 4723-20-07; 4723-23-01, 4723-23-02, 4723-23-03, 4723-23-04, 4723-23-09; 4723-26-03; 4723-27-04, 4723-27-06, 4723-27-11

Date of Submission for CSI Review: August 10, 2023

Public Comment Period End Date: August 24, 2023

**Rule Type/Number of Rules:**

New/ 6 rules

No Change/ 22 rules (FYR? Yes)

Amended/ 28 rules (FYR? 10)

Rescinded/ 6 rules (FYR? No)

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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.*

See attached tracked rules and overview as to each rule below. All references to state legislation, HB 193, HB 509, and SB 131, are to the 134<sup>th</sup> General Assembly.

**Chapter 4723-1, Board Organization and Records.** This chapter addresses the Board's organization and governance requirements including election of officers and organization and maintenance of Board forms and records.

4723-1-03 Board records and documents. AMEND. Delete 4723-1-03(G)(8) because HB 509, effective 4/6/2023, eliminated Board *certification* of LPN IV therapy.

Delete 4723-1-03(G)(18) because HB 509, effective 4/6/2023, eliminated Board *certification* of Dialysis Technician Interns.

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Delete 4723-1-03(H) because it is redundant of the underlying statute, Section 9.79, ORC, without amplifying it.

**Chapter 4723-4, Standards of Practice Relative to Registered Nurse or Licensed Practical Nurse (five-year review).** This chapter addresses standards of nursing care.

HB509 eliminated Board certification of LPN IV therapy. This eliminated the need for most of the rules in Chapter 4723-17 (course requirements and Board certification requirements for LPN IV therapy). HB 509 did not otherwise change the scope and standards for LPN IV therapy currently found in Chapter 4723-17. For this reason, definitions for LPN IV therapy currently found in Rule 4723-17-01, are proposed to become part of Rule 4723-4-01. Scope and standards for LPN IV therapy, currently found in Rule 4723-17-03(A)(B) and (C), are proposed to become new Rule 4723-4-02(A)(B) and (C). Moving the content of still-relevant sections of 4723-17 to Chapter 4 allows for rescission of Chapter 17 entirely. This streamlines the rules overall.

4723-4-01, General information. AMEND. Move the content currently in Rule 4723-17-01(A)-(G) to 4723-4-01(C)(1)-(6). This allows for rescission of Chapter 17 (as discussed above) to streamline the rules overall.

4723-4-02, Intravenous LPN IV Therapy. NEW. Move the content currently in Rule 4723-17(A)(B) and (C) to new rule 4723-4-02. This allows for rescission of Chapter 17 (as discussed above), to streamline the rules overall by placing these standards in the Chapter 4723-4 where other standards of nursing practice are located.

4723-4-03, Standards relating to competent practice as a registered nurse. No Change.

4723-4-04, Standards relating to competent practice as a licensed practical nurse. No Change.

4723-4-05, Standards relating to competent practice as a certified nurse-midwife, certified nurse practitioner, certified registered nurse anesthetist, or clinical nurse specialist. No Change.

4723-4-06, Standards of nursing practice promoting patient safety. No Change.

4723-4-07, Standards for applying the nursing process as a registered nurse. No Change.

4723-4-08, Standards for applying the nursing process as a licensed practical nurse. No Change.

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4723-4-09, Specialty certification. No Change.

**Chapter 4723-5, Nursing Education Program.** The Board regulates prelicensure nursing education programs through enforcement of Chapter 4723-5, including setting minimum standards for program approval and for maintenance of approval status.

4723-5-04(E), AMEND. Technical changes to correct cross-references to paragraphs in Rules 4723-13 and 4723-5-14.

4723-5-20(D), AMEND. To reduce confusion delete paragraph 4723-5-20(D) because 4723-5-20 addresses clinical experiences which do not include observational experiences. Observational experiences are still defined in Chapter 5 and available.

**Chapter 4723-6, Alternative Program for Substance Use Disorder Monitoring (five year review).** The Board provides an alternative to discipline under certain circumstances. Titles are being changed throughout from the alternative program for substance use disorder to the alternative program, as tracked.

4723-6-01, Definitions. AMEND. In (B), broaden definition of eligible approved treatment programs. Change “alcoholism or drug treatment program” to alcohol or substance use disorder program. In (I) change “alcoholic beverages” to alcohol. In (K) change “alcoholism or drug treatment program” to alcohol or substance use disorder program.

4723-6-02, Eligibility requirements for participation in the alternative program for chemical dependency. AMEND. Change in title from “alternative program for substance use disorder” to the alternative program. Delete reference current, valid licensure; delete references to dialysis technician intern certificates; change “mailed” to provided; streamline and add flexibility in (A)(3) and in (B).

4723-6-03, Terms and conditions a participant must meet to successfully complete the alternative program for chemical dependency. AMEND. Change titles throughout from the alternative program for substance use disorder to the alternative program, as tracked. Delete references to dialysis technician intern certificates; provide program and participant flexibility in (B), including removing the requirement for a written personal statement and the requirement for in person meetings.

4723-6-04, Successful completion of the alternative program for chemical dependency. AMEND. Change titles throughout from the alternative program for substance use disorder to the alternative program.

4723-6-05, Causes for termination from the alternative program for chemical dependency. AMEND. Change in title from “alternative program for substance use disorder” to the alternative program.

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4723-6-06, Confidentiality regarding the alternative program for chemical dependency. AMEND. Change in title from “alternative program for substance use disorder” to the alternative program.

**Chapter 4723-7, Examination and Licensure.** This chapter establishes processes and standards for licensure by examination and by endorsement.

Rule 4723-7-06, Practical nurse licensure by endorsement. AMEND. Delete (C) because HB 509 eliminated Board certification of LPN medication administration and Board certification of IV therapy.

Rule 4723-7-07, Original certificate and license. AMEND. Delete (C) because HB 509 eliminated Board certification of LPN medication administration and Board certification of IV therapy.

Rule 4723-7-08, Reporting a misdemeanor or felony. NEW. Requires all licensees and certificate holders to report felonies and certain misdemeanors within 30 days of the event rather than only during licensure renewal (licensure renewal only occurs once every two years). This requirement expedites Board receipt of, and opportunity to process, information.

**Chapter 4723-9, Prescriptive Authority.** This chapter addresses scope and standards of Advanced Practice Registered Nurse (APRN) prescriptive authority.

4723-9-08, Safety standards for personally furnishing drugs and therapeutic devices. AMEND. Consistent with HB193 and Ohio Board of Pharmacy law 4729.01(CC), ORC, the term “naloxone” is changed to “overdose reversal drug” throughout Chapter 9. This change reflects that the Ohio Board of Pharmacy may classify a drug other than naloxone as an “overdose reversal drug.”

4723-9-10, Formulary; standards of prescribing for advanced practice registered nurses designated as clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners. AMEND. Delete language in Rule 4723-9-10(D) (E) and (F) that is redundant of the underlying statute, 4723.481(C), ORC, to streamline the rules.

4723-9-11, Course in Ohio law governing drugs and prescriptive authority. AMEND. Amend Rule 4723-9-11(B) and (C) streamlines and expedites the APRN application process to allow applicants to attest to completion of the required course in Ohio law and to only supply documentation of completion of the required course if documentation is requested by the Board.

4723-9-13, Medication-assisted treatment. AMEND. Consistent with HB193 and Section 4729.01(CC), ORC, the term “naloxone” is changed to “overdose reversal drug” throughout Chapter 9. This change reflects that the Ohio Board of Pharmacy may classify a drug other than naloxone as an “overdose reversal drug.” Also, amend

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4723-9-13(A)(9) to add a definition of “overdose reversal drug” to have the same meaning as in Ohio Board of Pharmacy law, Chapter 4729, ORC. In addition, Rule 4723-9-13(B) and (C) are amended due to recent changes in federal law that removed the requirement for prescribers to obtain a federal “DATA waiver” in order to prescribe buprenorphine for opioid addiction treatment. Section 1262 of the “Consolidated Appropriations Act of 2023” (P.L. 117-328), signed into law on December 29, 2022.

4723-9-14, Standards and procedures for withdrawal management for drug or alcohol addiction. AMEND. Consistent with HB193 and Section 4729.01(CC), ORC, the term “naloxone” is changed to “overdose reversal drug” throughout Chapter 9.

In addition, Rule 4723-9-14(B)(3) and (C)(2) are amended due to recent changes in federal law that eliminated the DATA waiver program and removed the requirement for prescribers to obtain a federal “DATA waiver” in order to prescribe buprenorphine for opioid addiction treatment. Section 1262 of the “Consolidated Appropriations Act of 2023” (P.L. 117-328), signed into law on December 29, 2022.

**Chapter 4723-11, Nurse Licensure Compact.** Through Section 4723.11, ORC, the Nurse Licensure Compact was enacted into law effective January 1, 2023. Chapter 4723-11 includes rules related to Board implementation of the NLC.

4723-11-03, Employer obligations regarding nurses holding multistate licenses issued by states other than Ohio. NEW. Consistent with requirements of Section 4723.114, beginning January 31, 2024, this rule will require employers to report to the Board the number of nurses they employed in the previous year who held a multistate license, if the multistate license was issued by a state other than Ohio. The information will be reported through eNotification as specified in the rule. Consistent with requirements of Section 4723.114, The rule also requires employers to provide Board-prepared material regarding Ohio nursing law and rule.

**Chapter 4723-14, Continuing Nursing Education.** This chapter establishes CE requirements for licensure applicants and also establishes requirements for CE approvers and providers.

4723-14-01 Definitions. AMEND. Define “clinical content” in new rule 4723-14-01(F). Rules 4723-14-12(A)(11) and 4723-14-17(A)(5)(g) are being amended to state that the required disclosures apply only to clinical content. This change was requested by stakeholders for consistency with the extensive changes to Chapter 4723-14 that became effective 2/1/23.

4723-14-12 OBN approver processes and statements. AMEND. Amend Rules 4723-14-12(A)(11) to state that the required disclosures apply only to clinical content. This change was requested by stakeholders for consistency with the extensive changes to Chapter 4723-14 that became effective 2/1/23.

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4723-14-17 Approval of the continuing education system of a provider unit. AMEND. Amend 4723-14-17(A)(5)(g) to state that the required disclosures apply only to clinical content. This change was requested by stakeholders for consistency with the extensive changes to Chapter 4723-14 that became effective 2/1/23.

**Chapter 4723-17, Intravenous Therapy Courses for Licensed Practical Nurses.**

This chapter established course requirements and Board certification requirements for LPN IV therapy as well as standards for LPN IV therapy.

HB509 eliminated Board *certification* of LPN IV therapy. This eliminated the need for most of the rules in Chapter 4723-17 (regarding course requirements and Board certification requirements for LPN IV therapy). HB 509 did not otherwise change the scope and standards for LPN IV therapy currently found in Chapter 4723-17. For this reason, definitions for LPN IV therapy currently found in Rule 4723-17-01, are proposed to become part of Rule 4723-4-01. Scope and standards for LPN IV therapy, currently found in Rule 4723-17-03(A)(B) and (C), are proposed to become new Rule 4723-4-02(A)(B) and (C). Moving the content of those still-relevant sections of 4723-17 to Chapter 4 allows for rescission of Chapter 17 entirely. This streamlines the rules overall.

4723-17-01, Definitions. RESCIND. HB 509 eliminated OBN certification of LPN IV therapy, eliminating the basis for most of Chapter 17. Retain content of 4723-17(A)-(G) by adding it to existing Rule 4723-4-01 as 4723-4-01(C)(1)-(6).

4723-17-03, Intravenous therapy procedures. RESCIND. HB 509 eliminated OBN certification of LPN IV therapy, eliminating the basis for most of Chapter 17. HB 509 did not eliminate the scope and standards of LPN IV therapy so the content of 4723-17-03(A)(B) and (C) will be retained by moving it to new Rule 4723-4-02.

4723-17-05, Standards for intravenous therapy continuing education course personnel. RESCIND. HB 509 eliminated OBN certification of LPN IV therapy, eliminating the basis for this rule.

4723-17-06, Minimum curriculum requirements. RESCIND. HB 509 eliminated OBN certification of LPN IV therapy, eliminating the basis for this rule.

4723-17-07, Proof of completion of an approved course in intravenous therapy. RESCIND. HB 509 eliminated OBN certification of LPN IV therapy, eliminating the basis for this rule.

**Chapter 4723-18, Practice Intervention and Improvement Program (PIIP) (five year review).** PIIP provides an alternative to discipline under certain circumstances.

4723-18-01, Definitions. No Change.

4723-18-02, Process and criteria to use when identifying an individual's practice deficiency. No Change.

4723-18-03, Eligibility requirements for participation in the practice intervention and improvement program (PIIP). No Change.

4723-18-04, Provisions of the participatory agreement for the practice intervention and improvement program (PIIP). AMEND. In Rule 4723-18-04(A), remove the requirement for a written personal progress report and the requirement for in person meetings, to provide flexibility to incorporate those on a case by case basis rather than in every case.

4723-18-05, Grounds for termination from the practice intervention and improvement program (PIIP). No Change.

4723-18-06, Requirements for educational intervention. No Change.

4723-18-07, Standards and procedures for remediation. No Change.

4723-18-08, Standards and procedures for workplace monitoring. AMEND. Amend 4723-18-08(E) to states that a workplace monitor may have less than five years experience if approved by the Board Supervising Member , to provide additional flexibility to the program, and to participants and participating employers.

4723-18-09, Terms and conditions a participant must meet to successfully complete the practice intervention and improvement program (PIIP). No Change.

4723-18-10, Confidentiality of records for the practice intervention and improvement program (PIIP). No Change.

**Chapter 4723-20, Prevention of Disease Transmission (five year review).** This chapter addresses standards of care specific to infection control and prevention of disease transmission.

4723-20-01, Definitions pertaining to prevention of disease transmission and infection control. No Change.

4723-20-02, Practices to control infection and minimize exposure to disease. No Change.

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4723-20-03, Hand hygiene. No Change.

4723-20-04, Disinfection and sterilization. No Change.

4723-20-05, Handling and disposal of a sharp or waste. No Change.

4723-20-06, Personal protective equipment. No Change.

4723-20-07, Failure to use universal and standard precautions. No Change.

**Chapter 4723-23, Dialysis Technicians.** This chapter establishes requirements for Board approval of Dialysis Technician (DT) training programs. It also addresses requirements to obtain certification as a DT and standards governing DT practice.

4723-23-01, Definitions. AMEND. HB 509 eliminated Board certification of the Dialysis Technician *Intern*, repealed Section 4723.76, ORC, and amended the definition of Dialysis Technician Intern in 4723.01(S), ORC (effective 12/29/23). This amendment revises 4723-23-01(D) to be consistent with 4723.01(S), ORC (effective 12/29/23).

4723-23-02, Dialysis technician intern certificate. RESCIND. Delete this rule entirely because HB 509 eliminated Board certification of Dialysis Technician Interns.

4723-23-03, Dialysis technician certificate. AMEND. Eliminate text that is redundant of the underlying statute, Section 4723.75, ORC, in order to streamline the rules.

4723-23-04, Dialysis Technician Certification by Endorsement. NEW. The proposed rule establishes the initial certification process for individuals who are applying for certification under SB131/Chapter 4796, ORC and Section 4723.75, ORC (effective 12/29/23), which require the board to issue a certificate to practice as a dialysis technician in accordance with Chapter 4796, ORC, to an applicant if the applicant holds a certificate or license in another state, or, the applicant has satisfactory work experience, a government certification, or a private certification as described in Chapter 4796, ORC, as a dialysis technician in a state that does not issue that certificate or license.

4723-23-09, Information required when attesting to the competence of an applicant for a dialysis technician intern certificate or a certificate to practice as an Ohio certified dialysis technician. AMEND. Amend title to remove “dialysis technician intern certificate” and remove references to dialysis technician *intern* certification and dialysis technician *intern* certificate throughout the rule.

**Chapter 4723-26, Community Health Workers.** This chapter establishes requirements for Board approval of CHW certification programs. It also addresses requirements to obtain CHW certification and standards and standards governing CHW practice.

4723-26-03, NEW. Community Health Worker Certification by Endorsement. The proposed new rule sets the initial certification process for individuals who are applying for certification under SB 131/Chapter 4796, ORC, and Section 4723.85(B), ORC (effective 12/29/23) which requires boards to provide a path for certification for individuals with out-of-state licenses/certificates, or certificates or work experience in states that do not issue licenses/certificates.

**Chapter 4723-27, Medication Administration by Certified Medication Aide.** This chapter establishes requirements for Board approval of MA-C programs. It also addresses requirements to obtain certification as an MA-C and standards governing MA-C practice.

4723-27-04, AMEND. Delete (G), which prohibits certification by endorsement, because SB 131/Chapter 4796, ORC, require boards to provide a path for licensure/certification for individuals with out-of-state licenses/certificates, or certificates or work experience in states that do not issue licenses/certificates.

4723-27-06, AMEND. Amend (A) to exempt renewal applicants from continuing education requirements during the first renewal following certification, consistent with the exemption available to other Chapter 4723 licensees and certificate holders. Amend (G) to clarify that the renewal applicant may verify completion of required continuing education, consistent with 4723-27-06(B).

4723-27-11, NEW. Certified Medication Aide Certification by Endorsement The proposed rule sets the initial certification process for individuals who are applying for certification under SB 131/Chapter 4796, ORC, and Section 4723.651, ORC, (effective 12/29/23) which requires boards to provide a path for certification for individuals with out-of-state licenses/certificates, or certificates or work experience in states that do not issue licenses/certificates.

**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.**

- 4723-1-03: Authorized By: 4723.07, Amplifies: 4723.06.
- 4723-4-01: Authorized By: 4723.07, Amplifies: 4723.01, 4723.28(B)(19), 4723.18, 4723.181.
- 4723-4-02: Authorized By: 4723.07, Amplifies: 4723.01, 4723.28(B)(19), 4723.18, 4723.181.
- 4723-4-03: Authorized By: 4723.07, Amplifies: 4723.01, 4723.28(B)(19).
- 4723-4-04: Authorized By: 4723.07, Amplifies: 4723.01, 4723.28(B)(19).
- 4723-4-05: Authorized By: 4723.07, Amplifies: 4723.28(B)(19), 4723.43, (28), (27).
- 4723-4-06: Authorized By: 4723.07, Amplifies: 4723.28.

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- 4723-4-07: Authorized By: 4723.07, Amplifies: 4723.01, 4723.28 (B)(19), (27), (28), 4723.43.
- 4723-4-08: Authorized By: 4723.07, Amplifies: 4723.01, 4723.28 (B)(19).
- 4723-4-09: Authorized By: ORC 4723.07, Amplifies: ORC 4723.42.
- 4723-5-04, 4723-5-20: Authorized By: 4723.07, Amplifies: 4723.06.
- 4723-6-01, 4723-6-02, 4723-6-03, 4723-6-04, 4723-6-05, 4723-6-06: Authorized By: ORC 4723.35, 4723.07, Amplifies: ORC 4723.35.
- 4723-7-06: Authorized By: 4723.07, Amplifies: 4723.06, 4723.09.
- 4723-7-07: Authorized By: 4723.07, Amplifies: 4723.06.
- 4723-7-08: Authorized By: 4723.07, Amplifies: 4723.06(A)(1) and (3).
- 4723-9-08: Authorized By: 4723.07, Amplifies: 4723.481
- 4723-9-10: Authorized By: 4723.50, 4723.07, 3719.062, Amplifies: 4723.481, 4723.492, 4723.491, 4723.49, 4723.488, 4723.487, 4723.486.
- 4723-9-11: Authorized By: 4723.50, Amplifies: 4723.482.
- 4723-9-13: Authorized By: 4723.50, 4723.51, 4723.07, Amplifies: 4723.50, 4723.51.
- 4723-9-14: Authorized By: 4723.07, Amplifies: 4723.481.
- 4723-11-03: Authorized By: 4723.07, Amplifies: 4723.11, 4723.114.
- 4723-14-01: Authorized By: 4723.07, 4723.79, Amplifies: 4723.24.
- 4723-14-12, 4723-14-17: Authorized By: 4723.07, 4723.69, 4723.79, Amplifies: 4723.24, 4723.651, 4723.77
- 4723-17-01, 4723-17-03: Authorized By: ORC 4723.07, Amplifies: 4723.01(F), 4723.18, 4723.181.
- 4723-17-05: Authorized By: ORC 4723.01, Amplifies: ORC 4723.18, 4723.19.
- 4723-17-06: Authorized By: ORC 4723.07, Amplifies: ORC 4723.19.
- 4723-17-07: Authorized By: ORC 4723.07, Amplifies: ORC 4723.18, 4723.19.
- 4723-18-01, 4723-18-03, 4723-18-04, 4723-18-05, 4723-18-06, 4723-18-07, 4723-18-08, 4723-18-09, 4723-18-10: Authorized By: 4723.07, 4723.282, Amplifies: 4723.282
- 4723-20-01, 4723-20-03, 4723-20-07: Authorized By: ORC 4723.07, Amplifies: ORC 4723.07
- 4723-20-02, 4723-20-04, 4723-20-05, 4723-20-06: Authorized By: ORC 4723.07(K), Amplifies: ORC 4723.07(K)
- 4723-23-01: Authorized By: 4723.79, Amplifies: 4723.71, 4723.72, 4723.73, 4723.74, 4723.75, 4723.76, 4723.77, 4723.79
- 4723-23-02: Authorized By: 4723.79, Amplifies: 4723.73, 4723.751, 4723.76.
- 4723-23-03: Authorized By: 4723.79, Amplifies: 4723.75, 4723.751.
- 4723-23-04: Authorized By: 4796, 4723.79, Amplifies: 4723.75 (effective 12/29/23).
- 4723-23-09: Authorized By: 4723.79, Amplifies: 4723.75, 4723.76.
- 4723-26-03: Authorized By: 4796, Amplifies: 4723.83, 4723.84.
- 4723-27-04: Authorized By: 4723.69, Amplifies: 4723.61, 4723.64, 4723.65, 4723.651, 4723.652, 4723.653, 4723.66, 4723.67, 4723.68, 4723.69.
- 4723-27-06: Authorized By: 4723.69, Amplifies: 4723.61 to 4723.69.
- 4723-27-11: Authorized By: 4796, 4723.69, Amplifies: 4723.651 (effective 12/29/23).

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- 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.*

No, these rules do not implement a federal requirement. They are not 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.

Amendments to 4723-9-13(B) and (C), and to 4723-9-14(B)(3) and (C)(2), recognize recent changes in federal law that eliminated the federal “DATA waiver” program and removed the requirement for prescribers to obtain a federal “DATA waiver” in order to prescribe buprenorphine for opioid addiction treatment. Section 1262 of the “Consolidated Appropriations Act of 2023” (P.L. 117-328), signed into law on December 29, 2022.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A.

- 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 mission of the Board of Nursing is to actively safeguard the health of the public through the effective regulation of nursing care. In this effort, the Board regulates prelicensure nursing education programs, continuing education, licensure, scope and standards of care, and other aspects of nursing regulation through enforcement of Chapter 4723, ORC. The Board adopted the referenced rules and is proposing the tracked changes to effectuate that mission.

The public purpose of new rules 4723-23-03, 4723-26-04, and 4723-27-11, is to implement the requirements set forth in Section 4796, to establish certificate endorsement processes for applicants who hold out of state licenses or certificates, or government or private certification or employment experience in states that do not issue licenses or certificates.

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

Board staff interacts with stakeholders and others through public outreach functions, phone and email inquiries, Advisory Groups and Committees, and investigation of complaints filed with the Board. The Board will continue to engage in review of rules,

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seeking input from staff, stakeholders, and advisory group members, and review of the recommendations of the Advisory Group on 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.*

N/A.

### **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.*

At its May 2022 Meeting, the Board created its Advisory Group on Rules to review rules and stakeholder comments and to make recommendations to the Board to adopt, amend, or rescind a rule. The Group is comprised of three Board members and two public members. All five members of the Advisory Group are themselves Board licensees/stakeholders.

On March 2, 2023, the Board emailed all stakeholders, including all licensees and certificate holders (approximately 340,000 individuals), that the Board is conducting the required five-year review of 31 rules in Chapter 4, 6, 18, and 20; proposing to adopt new rule 4723-7-08; to amend Chapters 5, 9, and 14; and to rescind Chapter 17, while retaining some of Chapter 17's content by adopting or amending Rules 4723-4-01, and 4723-4-02. The email included a link to the tracked rules and requested comments by March 10, 2023. Fifteen stakeholders sent in comments. The stakeholder comments were provided, along with staff responses, and a summary, to the Advisory Group in advance of its March 25, 2023, meeting to review the rules. The comments were reviewed by the Advisory Group in advance of its recommendations to the Board.

On May 3, 2023, the Board emailed stakeholders, including all licensees and certificate holders (approximately 340,000 individuals), that the Board is proposing to adopt, amend, or rescind rules in Chapters 1, 6, 11, 23, 26, and 27. The email included a link to the tracked rules and requested comments by May 12, 2023. Thirteen stakeholders sent in comments. The stakeholder comments were provided, along with staff responses, and a summary, to the Board's Advisory Group in advance of its May 25, 2023, meeting to review the rules. The comments were reviewed by the Advisory Group in advance of its recommendations to the Board.

On March 2, 2023, and May 3, 2023, the same email notices were also sent to a list of 107 individuals and entities who have made a written request to receive a copy of any public notice issued by the Board of its intention to adopt, amend, or rescind a

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rule. The most recent list, as authorized by Rule 4723-1-05(D), is being provided along with this BIA.

The recommendations of the Advisory Group on Rules were reported to the Board at its July 26-27, 2023, meeting. At that time the Board adopted the recommendations of the Advisory Group on Rules as reflected in the attached tracked rules.

All stakeholder comments received, along with any responses and a staff summary, are being provided with this BIA, as are the March 2, 2023, and May 3, 2023, emails.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Stakeholder comments received were reviewed by the Advisory Group on Rules at its March 2023 and May 2023 meetings, in advance of its recommendations to the Board. In addition, all five members of the Advisory Group on Rules (3 Board members, 2 public members) are themselves licensee stakeholders. Specific examples of stakeholder input affecting the draft regulations include:

Chapter 6. One stakeholder suggested changes in language to conform terms to more current language and to clarify language in Chapter 6. Some of the suggested changes were incorporated into the current draft rule Rules including changing .

Rule 4723-7-08. The original draft required reporting of all felonies and all misdemeanors. Several stakeholders suggested narrowing the rule to not require reporting of every misdemeanor. The current draft rule limits reporting of misdemeanors to those described in 4723-7-08(A)(2)(3) and (4).

Rules 4723-14-01, 4723-14-12, and 4723-14-17. The changes in Chapter 14, are being made in response to stakeholder requests to be consistent with the extensive stakeholder-driven changes made last year to Chapter 4723-14 that became effective February 1, 2023.

**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?**

N/A. The rules and proposed changes are based on the operational experiences regulating and operating the Board for the public health and safety of Ohioans.

**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?**  
*Alternative regulations may include performance-based regulations, which define the*

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*required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The mission of the Board of Nursing is to actively safeguard the health of the public through the effective regulation of nursing and other care provided by its licensees and certificate holders. In this effort, the Board regulates prelicensure nursing education programs, continuing education, licensure and certification, and scope and standards of practice, among other aspects of nursing and other care provided by its licensees and certificate holders. The Board adopted the referenced rules and is proposing the tracked changes in support of that mission.

**13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The mission of the Board of Nursing is to actively safeguard the health of the public through the effective regulation of nursing care. The Board is the only agency that regulates the Ohio professional practice scope and standards of nursing care in Ohio and the only agency that regulates nursing licensure in Ohio. In reviewing the rules, consideration was given to whether any reviewed rule duplicates an existing Ohio regulation. For this reason proposed changes include:

- Deleting Rule 4723-1-03(H), because it is redundant of the underlying statute, 9.29, and does not amplify it.
- Amending Rule 4723-9-10(D) and entirely deleting 4723.481(E) and (F) as redundant of the underlying statute, 4723.481(C).
- Amending 4723-23-03, to eliminate text that is redundant of the underlying statute, Section 4723.75, ORC.

**14. 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.**

Board staff are trained on implementation of new rules as needed to ensure consistent and predictable regulation.

In addition, Board staff provide in person presentations across the state to nursing students, nursing education programs, licensees, and employers regarding new laws, rules, and processes that affect them. These presentations most recently addressed new licensure processes for nursing students and education programs; the Nurse Licensure Compact (NLC) for licensees and employers; and employer obligations under Section 4723.114/NLC, for employers. The Board publishes guidance on a variety of topics including licensure requirements, CE requirements, practice

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guidance, etc. This guidance is published on the Board website and in *Momentum*, the Board's quarterly magazine. It is also distributed to targeted groups via email. The Board also publishes a summary of rule changes in *Momentum*. It also hosts two free workshops each year for prelicensure nursing education program administrators and faculty which includes a full review of law and rule applicable to prelicensure nursing education programs.

### **Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

Rule 4723-11-02. Impacted business community: Employers of holders of non-Ohio issued multistate licenses (MSLs). Section 4723.11, requires the Board to implement the Nurse Licensure Compact. Section 4723.114, requires employers to (1) report to OBN the number of nurses they employed who held non-Ohio-issued MSLs; and (2) provide each nurse board-developed information concerning laws and rules specific to nursing practice in Ohio. Section 4723.114(D) authorizes the Board to adopt rules to implement this section.

Impact: Time for employer compliance. Employers are required to enter non-Ohio issued MSL-holder data into eNotification, a free service provided by the National Council of State Boards of Nursing (NCSBN) <https://www.nursys.com/EN/ENDefault.aspx>. No further action is required by the employer. The Board itself is able to collect the data and total number without any further action by the employer. Section 4723.114 and Rule 4723-11-03, also require employers to provide Board-prepared materials to non-Ohio MSL employees. Employers satisfy this requirement by directing the non-Ohio MSL employee to materials readily available on the Board website at: <https://nursing.ohio.gov/licensing-and-certification/multistate-licensure/employers-information/03-employers>. Board staff have been educating, and will continue to educate, employers around the state regarding eNotification and the ready availability of Board-prepared materials. In addition to Board staff speaking to employers in person at presentations around the

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state, information is published in the Board's quarterly magazine, *Momentum*, and posted on the Board website.

New rules 4723-23-03, 4723-26-04, and 4723-27-11. These rules implement requirements set forth in Section 4796, to establish certificate endorsement processes for applicants who hold out of state licenses or certificates, or government or private certification or employment experience in states that do not issue licenses or certificates. Impacted community: individuals seeking certification, and potential employers. Impact: Individuals seeking certification through the endorsement process will be impacted by requirements to comply with and meet application processes and standards, including an application fee (as authorized by 4796.03, ORC). Though individuals seeking certification through the endorsement process will be required meet application standards as authorized by Section 4796, these rules provide new paths to becoming a certificate holder that may lessen the previous regulatory impact on individuals. The availability of new paths to certification should not have an adverse impact on businesses but instead provide the business community/employers a greater pool of certificate holders.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Consistent with HB 509, LPNs are no longer required to obtain Board certification to demonstrate competence to administer medications or to engage in LPN IV therapy. Related rule changes are in 4723-4-01, 4723-4-02, 4723-7-06(C), 4723-7-07, (C), and Chapter 17. This lessens the regulatory burden on LPN applicants and licensees and potentially on LPN employers.

Chapter 1. Rule 4723-1-03(H) is being eliminated due to redundancy with the statute, simplifying the rules.

Chapter 4. N/A. HB 509 eliminated of the need for most of the rules in Chapter 4723-17. Chapter 17 is being rescinded and the remaining still-relevant content in 4723-17 is being moved to 4723-4. This consolidates rules regarding nursing scope and standards into fewer chapters. This simplifies the rules, making them more easily accessible to licensees and employers and easier to use.

Chapter 5. Deleting 4723-5-20(D) removes confusion, making the rules easier to understand and use.

Chapter 6. N/A. The changes provide clarity, modernize language, and provide flexibility to the program and participants, lessening impact on licensees and any involved employers.

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Chapter 9. In 4723.10(D)(E) and (F), deleting redundant language streamlines the rules, making them easier to use. In 4723-13 and 4723-14, removing the DATA waiver requirement lessens regulatory impact on APRNs and potentially on APRN employers, and should increase the number of APRNs qualified to provide care regulated by 4723-13 and 4723-14. In Rule 4723-9-11(B) and (C), allowing applicants to attest to completion of the required course in Ohio law, and to only supply documentation of completion if requested by the Board, streamlines and expedites the APRN application process. This lessens regulatory impact on APRN applicants and potentially their employers.

Chapter 14. Proposed changes to Rules 4723-14-12(A)(11) and 4723-14-17(A)(5)(g) lessen regulatory impact because they limit when certain disclosures are required.

Chapter 17. Rescinding Chapter 4723-17 and moving scope and standards of LPN IV therapy (currently 4723-17-03(A)(B)(C)) into Chapter 4723-4, Standards of Practice Relative to Registered Nurse or Licensed Practical Nurse. This consolidates rules regarding nursing scope and standards into fewer chapters which simplifies the rules.

Chapter 18. Changes in 4723-18-04 benefit participant licensees by removing the requirement for a written personal progress report and the requirement for in person meetings, providing flexibility to incorporate those on a case by case basis rather than in every case, reducing the cost and time required for compliance by the licensee. Changes in 4723-18-08, allowing use of a workplace monitor with less than five years experience provides additional flexibility and increases options for the participants (licensees) and for participating employers.

Chapters 23. Rules in this chapter are being amended to comply with HB 509, eliminating Dialysis Technician Intern (DTI) certifications by the Board. Removing the requirement to obtain Board certification to engage in care as a DTI, lessens the regulatory impact on DTIs and potentially on their employers.

Chapters 23, Chapter 26, and Chapter 27. Rules in this chapter are being amended to comply with SB 131/Section 4796. Though individuals seeking certification through the endorsement process will be impacted by requirements to comply with and meet application processes and standards as authorized by Section 4796, these rules provide new paths to becoming a certificate holder that may lessen the previous regulatory impact on individuals. It may also potentially lessen the regulatory impact on the business community/employers of certificate holders and create a greater pool of certificate holders to employ.

Rule 4723-27-06. The current impact of the rules on Mediation Aide certificate holders is lessened by amending (A) to exempt renewal applicants from CE requirements during the first renewal following certification, and by amending (G) to clarify that the renewal applicant may verify completion of required continuing education, consistent with 4723-27-06(B).

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**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The mission of the Board of Nursing is to actively safeguard the health of the public through the effective regulation of nursing and other care provided by the Board's licensees and certificate holders. The Board regulates nursing and other care to ensure public safety through enforcement of Chapter 4723, ORC, and enforcement of the rules it has adopted, Chapter 4723, OAC.

Rule 4723-11-02. Section 4723.11 requires the Board to implement the National Licensure Compact. Section 4723.114 requires employers to report the total number of non-Ohio MSL holders who were employed in the prior year and to provide Board-prepared materials to the MSL holders.

Chapter 14. The rules in Chapter 14 are in place to ensure quality CE is available to licensees to provide them the opportunity to maintain current knowledge of safe nursing care. The adverse impact to businesses, such as making certain disclosures, is justified by the Board's obligation to ensure that at minimum CE processes meet certain standards in order to ensure quality CE is available to licensees.

Chapter 18. Employers may choose to offer a PIIP participant the opportunity to practice at their location, and to be monitored by a workplace monitor, for a period of time as part of the PIIP process. Like the PIIP participant, the workplace monitor is an employee of the employer. This opportunity (to allow PIIP participants the opportunity to work at their location and be monitored by workplace monitor) is entirely voluntary on the part of the employer.

Chapters 23, Chapter 26, and Chapter 27. Rules in these chapters are being amended and proposed primarily to comply with legislation, SB 131/Section 4796, requiring establishment of endorsement processes for certifications offered by the Board.

**Regulatory Flexibility**

**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

There are not exemptions or alternative means of compliance for small businesses. The regulations apply across all settings. But see Item 19.

**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?**

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The rules in issue do not impose administrative fines or civil penalties for paperwork violations. Regarding licensure/certification specifically, licensure/certification applications remain open for sufficient time to allow applicants to correct deficiencies to avoid forfeiture of fees paid. In addition, and more generally, Chapter 4723, ORC, does not require the board to act on minor violations of Chapter 4723, ORC, or the rules adopted under it, if the violations are committed by individuals licensed under Chapter 4723, ORC, and the board determines that the public is adequately protected by issuing a notice or warning to the alleged offender. See Section 4723.061, ORC.

**20. What resources are available to assist small businesses with compliance of the regulation?**

Board staff are available to respond to questions about compliance with any Board regulation. Individuals may telephone the Customer Service Center to be routed to the appropriate staff, or, may directly email the appropriate unit from the Board home page ("Contact Us"). Also, in addition to the Advisory Group on Rules, the Board has an Advisory Group on Education, an Advisory Group Community Health Workers, an Advisory Group on Dialysis, and a Committee on Advanced Practice Registered Nursing. Each of these groups meets several times a year and can raise or entertain issues raised by others and can report recommendations to the Board. Typically, each group is also called upon to review and comment when rules relevant to their charge are up for five-year review. Recommendations and other information from the groups are routinely communicated to the Board through reports and shared minutes.

The Board publishes guidance on a variety of topics including, for example, requirements for licensure or certification, CE requirements, scope and standards of care, nursing education, etc. This guidance is distributed by publication on the Board website; in Momentum, the Board's quarterly magazine; and distributed to targeted groups via email as well. The Board also hosts two free workshops each year for prelicensure nursing education program administrators and faculty which includes a full review of applicable law and rule.