



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Anita DiPasquale, Ohio Board of Nursing

FROM: Jacob Ritzenthaler, Business Advocate

DATE: September 19, 2023

RE: CSI Review – 2023 Rules (OAC 4723-1-03, 4723-4-01 through 4723-4-09, 4723-5-04, 4723-5-20, 4723-6-01 through 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, through 4723-17-07, 4723-18-01 through 4723-18-10, 4723-20-01 through 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, and 4723-27-11)

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This rule package consists of twenty-eight amended rules, twenty-two no change rules, six new rules, and six rescinded rules proposed by the Ohio Board of Nursing (Board) as part of the statutorily required five-year review process. This rule package was submitted to the CSI Office on August 10, 2023, and the public comment period was held open through August 24, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 10, 2023.

OAC 4723-1-03 concerns records, documents, and incorporated materials maintained by the Board and is amended to remove materials related to limited intravenous therapy, as the Board no longer certifies dialysis technician interns, and redundant language. OAC Chapter 4723-4 establishes standards of practice for registered nurses and licensed practical nurses. OAC 4723-4-01 contains general information related to standards of practice, including relevant definitions for the chapter,

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and is amended to include definitions related to licensed practical nurse (LPN) intravenous (IV) therapy. OAC 4723-4-02 is a new rule that establishes procedures for LPN IV therapy, with the rule content being transferred from the rescinded OAC Chapter 4723-17. OAC 4723-4-03 through 4723-4-09 establish standards for competent practice for registered nurses, LPNs, certified nurse-midwives, certified nurse practitioners, certified registered nurse anesthetists, and clinical nurse specialists, as well as standards for promoting patient safety, applying the nursing process, and denoting specialty certification. These rules are proposed without changes. OAC 4723-5-04 establishes the procedure for the Board to determine a nursing education program's status and is amended to update references to curriculum requirements. OAC 4723-5-20 lists the responsibilities of faculty, teaching assistants, and preceptors in clinical settings and is amended to remove language that allows faculty members and teaching assistants to assign observational experiences, as these requirements are located elsewhere. OAC Chapter 4723-6 sets forth requirements for the alternative program for substance use disorder monitoring (Program). OAC 4723-6-01 lists relevant definitions and is amended to update terms to "alcohol or substance use disorder program." OAC 4723-6-02 contains eligibility requirements for program participation and is amended to update the qualifications of a substance use disorder assessment and modify participation requirements to require that an individual has been issued a license to practice in Ohio. OAC 4723-6-03 lists the terms and conditions for program completion and is amended to allow for the provision of documents for current participation in a treatment program, remove reference to dialysis technician intern certificates, remove requirements to submit written personal reports, and allow for additional types of meetings with program representatives other than in-person meetings. OAC 4723-6-04, 4723-6-05, and 4723-6-06 set forth requirements for successful completion of the program, causes for termination, and confidentiality. These rules are amended to reflect updates of the program title.

OAC 4723-7-06 and 4723-7-07 establish requirements for licensure by endorsement and the issuance of original certificates and licenses. The rules are amended to remove requirements related to LPN medication administration and IV therapy, as the Board no longer certifies these activities. OAC 4723-7-08 is a new rule that requires licensees and certificate holders to report misdemeanors, felonies, drug law violations, or DUI/OVI violations. OAC Chapter 4723-9 sets forth scope and standards for advanced practice registered nurse (APRN) prescriptive authority, including furnishing drugs and therapeutic devices, prescribing, courses in Ohio law governing drugs and prescriptive authority, medication-assisted treatment, and withdrawal management. The rules include amendments that update definitions concerning overdose reversal drugs, remove requirements for APRNs to obtain a federal DATA waiver to prescribe buprenorphine for opioid addiction treatment, and streamline rule language. OAC 4723-11-03 is a new rule that establishes the obligations of employers to report the number of nurses with multistate licenses that they employ or contract, as well as requiring that employers provide these nurses with Board-developed information on relevant Ohio laws and rules. OAC 4723-14-01 lists definitions relevant to continuing nursing education and is amended to include a definition of "clinical content." OAC 4723-14-12 and 4723-14-17 establish

requirements for Board approver processes and approval of the continuing education system of a provider unit and include clarification regarding clinical content in relation to financial relationships with an ineligible company. The rules within OAC Chapter 4723-17 establish the course requirements for IV therapy courses for LPNs and are proposed for rescission, as Board certification of LPN IV therapy has been eliminated. OAC Chapter 4723-18 concerns the Practice Intervention and Improvement Program (PIIP), which provides alternatives to discipline in certain instances, and is largely proposed without changes. OAC 4723-18-04 sets forth provisions for PIIP participatory agreement and is amended to remove written personal progress reports as a condition for participation. OAC 4723-18-08 concerns workplace monitoring and is amended to allow a workplace monitor to have fewer than five years of experience upon approval.

OAC Chapter 4723-20 establishes standards of care for the prevention of disease transmission, including practices that minimize disease exposure, hand hygiene, disinfection and sterilization, equipment, and more. These rules are proposed without changes. OAC Chapter 4723-23 establishes requirements related to dialysis technicians. OAC 4723-23-01 lists relevant definitions and is amended to revise definitions related to dialysis technician interns. OAC 4723-23-02 is proposed for rescission, as the Board no longer certifies dialysis technician interns. OAC 4723-23-03 concerns the dialysis technician certification and is amended to eliminate redundant language. OAC 4723-23-04 is a new rule that establishes the process to grant a dialysis technician certificate by endorsement when an applicant demonstrates similar registration in another jurisdiction. OAC 4723-23-09 sets forth the information required to attest to the competence for a dialysis technician certificate and is amended to remove references to dialysis technician interns. OAC 4723-26-03 is a new rule that establishes the process for granting a community health worker certificate by endorsement when an applicant demonstrates similar registration in another jurisdiction. OAC 4723-27-04 establishes the requirements for medication aide certification and is amended to remove language that prohibits certification by endorsement. OAC 4723-27-05 lists continuing education requirements for renewing a medication aide certificate and includes amendments that exempt certificate holders from continuing education requirements during the first renewal after initial certification. OAC 4723-27-11 is a new rule that establishes the process to grant a medication aide certificate by endorsement when an applicant demonstrates similar registration in another jurisdiction.

During early stakeholder outreach, the Board sent the rules to all 340,000 licensees and registrants for feedback. The rules were also discussed during meetings of the Board's Advisory Group on Rules. The Board states that, in response to stakeholder feedback gathered during that time, amendments were included to update misdemeanor reporting requirements, clarify requirements for continuing nursing education by including the term "clinical content" where appropriate, and clarify rule language. During the CSI public comment period, the Board received comments from six stakeholders. One stakeholder suggested clarifying language in response to the removal of observational experiences requirements in OAC 4723-17-03, to which the Board explained its

reasoning and stated that the removal of the language in question would reduce confusion without removing observational experiences. Another stakeholder suggested adding clarification regarding requirements for employers to report the number of employees with multistate licenses to the Board. The Board responded that Ohio employers will register each employed nurse who holds a non-Ohio-issued license in the e-Notify system, which will satisfy the reporting requirements. The Board did not make changes regarding suggested clarifications to rule language concerning demonstration of knowledge in IV therapy, stating that the rules as proposed are consistent with mainstreaming of IV therapy within the LPN scope of practice. Other comments did not pertain to the proposed rules.

The business community impacted by the rules includes license and certificate holders, employers, and potential applicants. The adverse impacts created by the rules include completion of the application process and fulfillment of continuing education requirements, fees, compliance with standards of practice, and reporting requirements. Application fees for licensees are established within ORC 4723.08. Applicants seeking licensure by endorsement must demonstrate completion of certain necessary steps, including education, maintenance of valid licensure or certification in their jurisdiction, criminal records checks, and submission of relevant application forms and fees. The Board notes instances in which amendments to the rules have resulted in decreased adverse impacts on the regulated community, including removing requirements for practitioners to hold a DATA waiver to prescribe certain withdrawal management drugs, removing unnecessary in-person interactions, and removing requirements for dialysis technician interns to apply for certification with the Board. Additionally, the Board states that new licensure by endorsement requirements will allow more potential applicants to start working in Ohio with reduced burden.

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.