

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Five-Year Review OAC Chapters 4723-4, 4723-6, 4723-18, and 4723-20

Rule Number(s): 4723-4-01, and 4723-4-03 through 4723-4-09; 4723-6-01 through 4723-6-06; 4723-18-01 through 4723-18-10; and 4723-20-01 through 4723-20-07

Date: August 23, 2013

Rule Type: all (listed below)

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

As part of the five-year review process, the Board reviewed and proposes to amend, rescind or adopt new rules in Ohio Administrative Code (OAC) Chapters 4723-4, Standards of Practice Relative to Registered Nurse or Licensed Practical Nurse; 4723-6, Alternative Program for Chemically Dependent Nurses; 4723-18, Practice Intervention and Improvement Program; and 4723-20, Prevention of Disease Transmission.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code (ORC) Section 4723.07

ORC Section 4723.35 (Chapter 4723-6, OAC)

ORC Section 4723.282 (Chapter 4723-18, OAC)

ORC Section 4723.07(K) (Chapter 4723-20, OAC)

3. 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.

The answer is no to both questions for Chapters 4723-4, 4723-6, 4723-18, and 4723-20, OAC.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The question is not applicable to this rule package.

5. 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 public purpose of Chapters 4723-4, 4723-6, 4723-18, and 4723-20, OAC, is to promote safe nursing practice and public protection.

- Chapter 4723-4, OAC, establishes minimum acceptable standards that licensed nurses must meet in order to provide safe and effective nursing care to patients.
- Chapter 4723-6, OAC, establishes a confidential diversion or alternative to discipline program for eligible nurses with substance use disorders, who, if successful in maintaining an active recovery after treatment and monitoring, may return to nursing practice.
- Chapter 4723-18, OAC, establishes a confidential alternative to discipline program for eligible nurses with practice deficiencies, who, if successful after participating in clinically monitored practice remediation, may be retained in the nursing workforce.

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- Chapter 4723-20, OAC, establishes requirements for universal and standard precautions for hand washing, disinfection and sterilization of equipment, handling and disposal of needles and other sharp instruments, and wearing and disposal of protective garments and devices.

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

Success will be measured by having clear rules written in plain language, by licensee compliance with the rules, and minimal questions from licensees and the public regarding the requirements of the rules.

Development of the Regulation

7. 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.

On April 14, 2013, a registered nurse continuing education provider, who is a member of the Board Advisory Group on Continuing Education, emailed the Board to provide suggested amendments to several rules in Chapter 4723-4.

On May 22, 2013, the Board provided interested parties, including the Ohio Nurses Association, the Ohio Association of Advanced Practice Nurses, the Council for Ohio Health Care Advocacy, and representatives of Ohio healthcare systems and education programs, and other interested individuals with draft rule language and requested comments.

On May 28, 2013, the Board held an interested party meeting to review the proposed rules. Representatives from the Ohio Association of Advanced Practice Nurses, the Ohio Nurses Association, the Council for Ohio Health Care Advocacy and other individual licensees attended to review and comment on the rules.

Stakeholders commented on Chapter 4723-4, standards of practice for nurses, and Rule 4723-18-06. There were no comments regarding Chapters 4723-6 or 4723-20.

On June 12, 2013, a registered nurse and a registered nurse education provider, who is a member of the Board Advisory Group on Continuing Education, provided new suggested professional boundaries language for Chapter 4723-4.

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

The comments received on April 14, 2013 for Chapter 4723-4 were (1) provided to the Board for discussion at the May 16-17, 2013 Board meeting, (2) discussed at the May 28, 2013 interested

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party meeting, and (3) further discussed at the July 25-26, 2013 Board meeting. At the July 2013 Board meeting, the Board also discussed the comments received on June 12, 2013 related to professional boundaries.

Staff incorporated the comments and suggestions from the interested party meeting in the draft rules discussed by the Board at the July Board meeting. The following comments were considered:

- Two stakeholders suggested deleting the definition in Rule 4723-4-01, OAC, for “nursing diagnosis” because electronic medical records generally do not have a field for nursing diagnosis, and the concept is incorporated into other areas of the nurse’s assessment, plan of care, and interventions. In 2008 the Board considered deleting the definition of nursing diagnosis, however, upon the recommendation of the Board Committee on Practice, the Board kept the definition of nursing diagnosis. At this time, the Board believes nursing diagnosis continues to be an integral part of nursing practice and will retain the definition.
- Several stakeholders suggested that the Board add a definition of “professional boundaries” and submitted versions of language for consideration. At the July Board meeting the Board reviewed all of the language submitted, as well as a definition used by the National Council of State Boards of Nursing. During the discussion, the Board reviewed current rules that describe the behaviors and actions that violate professional boundaries. For example, Rule 4723-4-06, OAC, specifies standards of nursing practice to promote patient safety and the rule states, among other things, that nurses shall not engage in behavior toward a patient that may be interpreted as physical, verbal, mental or emotional abuse, misappropriation of a patient’s property, seek or obtain personal gain at the patient’s expense, engage in behavior that constitutes inappropriate involvement in the patient’s personal relationships or financial matters, or engage in sexual conduct with a patient. The Board believes this rule language specifies conduct that violates professional boundaries and the Board does not believe adding a definition would further describe the conduct, but could create confusion for licensees.
- The registered nurse continuing education provider initially requested that a definition of critical thinking be added to Rule 4723-4-01, OAC. After reviewing the Board’s proposed definition of “clinical judgment” that encompassed the application of “reasoning” within the clinical environment, the commenter agreed this addressed her suggestion.
- The registered nurse continuing education provider requested that language be added to Rule 4723-4-06(O)(4)(b) regarding supervision and evaluation to address supervision in settings where a nurse works without other nursing staff (e.g., schools). At the interested party meeting, one commenter noted that registered nurses have an independent scope of practice, and therefore, are not “supervised” and requested the language be removed. The Board considered whether to delete the language. After discussion, the Board retained the

proposed supervision language stating that the language refers to employment situations where employers establish supervision requirements for staff and does not refer to the nurse's scope of practice. The Board acknowledged the independent scope of practice for registered nurses stating they do not believe the proposed language impacts the scope of practice.

- The registered nurse continuing education provider suggested that language be added to Rule 4723-4-06, OAC, given the widespread use of electronic medical records and social media, regarding maintaining confidentiality of patient information and professional boundaries. At the interested party meeting, one commenter noted that adding a prohibition on using social media to communicate with a patient, or about a patient, for non-healthcare purposes, was too restrictive in that some nurses have a dual relationship with patients who are also friends/neighbors. It was clarified that the proposed language is for purposes of paragraphs (I), (J), (K), (L), and (M) of Rule 4723-4-06, OAC. In other words, social media, like any other form of communication, should not be used in situations to accomplish or further boundaries violations. It was explained that even if the proposed language is not added, if social media is used to engage in a boundaries violation discussed in paragraphs (I), (J), (K), (L) or (M) of Rule 4723-4-06, OAC, the Board would take action on the boundaries violation. The purpose of the additional reference to "social media" is to promote increased awareness among nurses that these methods of communication may accompany boundaries violations. The Board retained the added language referencing social media to increase nurses' awareness and due to an increased number of licensees being reported for using social media inappropriately. The Board also revised language in Rules 4723-4-03 and 4723-4-04 to specifically prohibit disseminating patient information through social media, texting or other communication for non-healthcare purposes.

9. 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?

Chapter 4723-4, OAC, standards for competent practice: These rules are based on the body of nursing research and literature. The Board also convenes Board Committees on Practice to solicit information from experts in the community on new procedures and practice. This information is taken into consideration for rules and Interpretive Guideline development.

Chapter 4723-6, OAC, rules for the confidential alternative to discipline program for chemical dependency: The Board conducted an in-depth review of the Board's regulatory requirements with recommendations adopted by the National Council of State Boards of Nursing, "Substance Use Disorder in Nursing, a Resource Manual & Guidelines for Alternative and Disciplinary Monitoring Programs." The National Council recommendations were established based on best

practices for diversion programs identified in literature, research studies, and by state boards of nursing across the country.

Chapter 4723-18, OAC, rules for the confidential alternative to discipline program for nurses with practice deficiencies: These rules are based on various types of practice remediation programs for health care professionals. The National Council of State Boards of Nursing uses the Board rules as a regulatory model for other nursing boards. The Board collects information on nursing practice breakdown and reports the data to a national database that collects practice breakdown data from boards of nursing across the country in order to identify the root causes of nursing practice breakdown examining both system issues and the nurse's involvement.

Chapter 4723-20, OAC, rules for universal and standard precautions: These rules are consistent with federal guidelines for infection control and disease transmission prevention.

10. 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?

Chapters 4723-6 and 4723-18, OAC, govern programs that are legislatively established "regulatory alternatives" to public discipline. Over the last two years, the Board reviewed both the chemical dependency and practice deficiency programs, and re-affirmed its commitment to provide both alternative programs. The Board is committed to offer these programs so nurses can be retained in the workforce if they successfully resolve substance use disorders and remediate practice deficiency issues.

No alternatives for Chapter 4723-4, OAC, were considered because minimum nursing standards are the essential foundation for competent nursing care, patient safety, and public protection, and these standards are consistent with prevailing nursing practice and evidence-based nursing research.

No alternatives for Chapter 4723-20, OAC, were considered because these infection control procedures are consistent with federal guidelines and prevailing practices throughout the health care system.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Chapters 4723-6 and 4723-18, OAC, govern alternative to public discipline programs that require standardized rules to clearly set forth eligibility criteria that must be met and maintained for continued participation and successful completion.

Chapter 4723-20, OAC, sets forth specific guidelines and procedures that must be followed to effectively prevent disease transmission and control infection for the safety of patients, nurses and other health care workers.

Chapter 4723-4, OAC, defines minimum standards of nursing care that are performance-based and worded generally to the extent practicable to require that nurses achieve the end goal of maintaining a safe environment for their patients. These standards relate to competent and accountable practice. The standards provide a minimal level of detail to outline parameters, processes and boundaries as a necessary foundation for competency to achieve the Board's mission of ensuring public safety.

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

The Board initiated the rule review process to update rules due to recent legislative changes, and the review was also conducted with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with interested parties and Board Advisory Groups helped ensure that these rules do not duplicate existing Ohio regulation.

13. 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.

Meetings with interested parties, Board Advisory Groups, and Board Committees help ensure that these rules are applied consistently and predictably for the regulated community because leaders in this community will meet periodically during the implementation period of the rules and beyond. The Board plans to monitor the progress with respect to the rules and report back to these groups. In addition, the Board will continue to use its website, newsletter, and social media to update affected licensees, continuing education providers, other stakeholders, and the public in general.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Chapters 4723-4, 4723-6, 4723-18 and 4723-20, OAC, will impact licensees and nursing employers.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

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CSIOhio@governor.ohio.gov

Violations of Chapter 4723-4, OAC, Standards of Practice, may result in disciplinary sanctions, which may include fines, continuing education, or restriction, suspension or revocation of the nurse's license; or referral to the alternative program for practice, dependent on the facts and circumstances of the violation. There may be associated costs for licensees to comply with the terms and conditions of the sanction and demonstrate compliance and the ability to provide safe nursing care. These are not new costs as Chapter 4723-4, OAC, has established minimum standards of safe nursing care for many years with the potential for disciplinary action based on violations.

To participate in the Alternative Program for Chemical Dependency as set forth in Chapter 4723-6, OAC, licensees will incur the costs of drug/alcohol screening, drug or alcohol evaluations, treatment and recovery programs. Employers may incur minimal costs associated with workplace monitoring and reporting as part of the licensee's employment. Licensee costs associated with the Alternative Program are established by providers who are not regulated by or affiliated with the Board. Costs associated with the program are not new but have existed since the diversion program was established by the legislature in 1995.

To participate in the Practice Intervention and Improvement Program, as set forth in Chapter 4723-18, OAC, licensees may incur costs for remedial education, or if the employer provides it, there would not be a cost. The employer may incur the cost of offering remedial education and practice monitoring although usually the employer offers remediation and monitoring as part of the nurse's employment. Licensee costs associated with the program are established by providers who are not regulated by or affiliated with the Board. Costs associated with the program are not new but have existed since the program was established by the legislature in 2001.

Chapter 4723-20, OAC, Prevention of Disease Transmission, may have costs associated with equipment needed to prevent the transmission of disease and prevent infection, such as hand sanitizer, soap, gloves, disinfectants, etc., but these are not new costs. Employers have incurred these expenses for many years as part of their operational costs.

c. Quantify the expected adverse impact from the regulation.

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.

Chapter 4723-4, OAC, Standards of Practice: Violations of this chapter may result in disciplinary sanctions, which may include fines, required continuing education, or the license being restricted, placed on probation, suspended or revoked dependent on the violation. Disciplinary

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sanction fines are established in Section 4723.28, ORC, at not more than \$500 per violation; and continuing education may be free, or may have a cost, generally ranging between \$10-\$200, depending on the continuing education the licensee chooses to access. For example, one company offers unlimited continuing education for \$44.95 a year.

Chapter 4723-6, OAC, Alternative Program for Chemical Dependency: In order to participate in this diversion program, licensees will incur the costs of drug and/or alcohol screening, drug and/or alcohol evaluations, and treatment and recovery programs. Insurance may offset part of the costs. Drug screening generally costs about \$40 per screen and approximately 12-15 random screens per year are required. Evaluations may range from \$400-600. Employer costs would be the time associated with workplace monitoring and reporting to the Board about work performance and compliance with the program requirements.

Chapter 4723-18, OAC, Practice Intervention and Improvement Program: Licensees may incur costs for remedial education, if the employer does not offer the education. The employer may incur the cost of offering remedial education and practice monitoring although most often the employer offers remediation and monitoring as part of the nurse's employment.

Chapter 4723-20, OAC, Prevention of Disease Transmission: The cost of hand sanitizer, soap, gloves, disinfectants, etc., depends on the type and size of the institution or company. Employers have incurred these types of expenses for many years as part of their operational costs.

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

The standard of care rules in Chapter 4723-4, OAC, are essential for public protection and safe nursing practice and are designed to reduce health care errors, harm to patients, substandard practice, theft, patient abuse, and fraud.

The alternative programs for certain licensees with substance use disorders or practice deficiencies in Chapters 4723-6 and 4723-18, OAC, respectively, are legislatively mandated and are designed to provide a diversion-based model enabling nurses to return to practice after demonstrating the ability to provide safe nursing care. This decreases the costs associated with employee turnover; costs of nursing education programs to educate additional nurses; and orientation costs of the employer for new employees.

The rules establishing universal and standard precautions in Chapter 4723-20, OAC, are legislatively mandated, and are designed to prevent disease transmission and prevent infection, which saves significant costs associated with health care worker illnesses, patient harm, employer liability, and public health epidemics.

Regulatory Flexibility

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

The rules, designed for public protection and safe nursing care, must be consistently applied, so the regulations do not provide exemptions or alternative means of compliance.

17. 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?

Waivers of fines and penalties for paperwork violations and first time offenders may be considered consistent with ORC Sections 119.14 and 4723.061 which do not require the Board to act on minor violations of the Nurse Practice Act or the rules adopted under it, if applicants or individuals licensed under Chapter 4723 of the Revised Code commit violations and following review the Board determines that issuing a warning to the alleged offender adequately protects the public.

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

The Board employs staff dedicated to assist the public and small businesses by responding to any questions or concerns about the implementation of the rules. Board Advisory Groups, composed of continuing education approvers, providers, educators, practitioners, and licensees also may respond to questions from small businesses. The Board provides Interpretive Guidelines related to specific practice standards in order to assist the practitioner and employer. The Board continues to use its website, newsletter and social media to regularly update the public and licensees, including small businesses, to changes in requirements and to provide frequently asked questions.