CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Nursing Board Five Year Rule Review: OAC Chapters 4723-16, 4723-17, 4723-25 and 4723-26

Rule Number(s): 4723-16-01 through 4723-16-10, 4723-16-12, and 4723-16-13; 4723-17-01, 4723-17-03, 4723-17-05 through 4723-17-07; 4723-25-01 through 4723-25-18; and 4723-26-01, 4723-26-02, 4723-26-04 through 4723-26-14.

Date: August 28, 2014

Rule Types: Amended, No Change and 5-Year Rule Review

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.

   The Board proposes to amend or file no change rules following the five-year rule review for Ohio Administrative Code (OAC) Chapters 4723-16, Hearings; 4723-17, Intravenous Therapy Courses for Licensed Practical Nurses; 4723-25, Nurse Education Grant program; and 4723-26, Community Health Workers.

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

   Ohio Revised Code (ORC) Section 4723.07
   ORC Section 4723.063 (Chapter 4723-25, OAC)
   ORC Section 4723.88 (Chapter 4723-26, 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 as applied to all the rules in this package.

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 for the rule package is to provide public protection and promote safe nursing practice. The rules are being updated due to following the schedule for the Board's five-year rule review. Within that review, compliance and practice issues initiated the need for change or further clarity, as did recently enacted legislative amendments, or amendments are proposed for technical or non-substantive reasons.

   Regarding the Board's hearing process, the Board proposes amendment to Chapter 4723-16, OAC, rules for increased efficiency and to reflect current practices, giving licensees improved notice and opportunity to be heard at hearing.

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.

Regarding NEGP allocation of funding rules in Chapter 4723-25, the board keeps an accounting of all funds and reviews the success of this regulation at a public board meeting on annual basis. In addition, the Board includes a synopsis of their NEGP program review in its annual report.

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.

The Board discussed the rules package at its public board meetings in April, May and July 2014. Board meeting dates and agenda are posted on the Board's website and interested parties are sent notice by e-mail prior to the meeting.

The Board held an interested party's meeting with various stakeholders on May 22, 2014. Participants included representatives of the Ohio Nurses Association and the Ohio Association of Advanced Practice Nurses. Notice and invitation to the meeting was sent by e-mail on April 22, 2014 to approximately 60 persons representing various stakeholders to the board.

The Board Practice Committee met at the Board office in March 2014 and discussed the development of practice and standards related rules. Meetings are scheduled by e-mail and are open to the public.

The Advisory Group on Continuing Education met at the Board office on June 5, 2014 and reviewed the proposed rules. Meetings are scheduled by e-mail and are open to the public.

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

The Board Practice Committee met at the Board office in March 2014 to review possible changes to the structure of ORC Sections concerning IV practice of LPNs. Board staff discussed with them minor changes to OAC Chapter 4723-17, including Rule 4723-17-03 (B)(1): Add language to clarify that combinations of the listed solutions may be administered and to allow changing tubing on an intermittent infusion device, and Rule 4723-17-06: Delete obsolete language regarding rules in effect on January 1, 1999. In paragraph (A), deleting the reference to time allocated for laboratory and clinical practice was recommended. Following discussions, it was agreed to revisit more structural changes to OAC Chapter 17 following necessary statutory changes to clarify certain scope and training issues.

The Board also received an e-mail inquiry in April 2014 from a licensee education provider

concerning the need for clarifying language in OAC Rule 4723-17-06. In 2010, the Advisory Group on Continuing Education recommended that clinical experience in IV therapy, as referenced in Section 4723.19(B)(1), ORC [as recently renumbered], may be in the form of laboratory experience rather than field experience. This is reflected in Rule 4723-17-06(C), OAC. Thus, the Board agreed that language in Rule 4723-17-06(A), in retrospect, needed revision to be more internally consistent with paragraph 17-06(C).

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?**

   Through the Advisory Groups, the Board relied on the expertise of education providers, program administrators, nurses, and others based on their current practice experience and familiarity with current data in their areas of expertise.

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?**

    Regarding Rule 4723-25-05(A)(1), rather than reducing PN program funding to "0", the board restricted funding to PN programs that are part of a "1+ 1" program, as part of a policy to encourage seamless educational progression. NEGP funding authority had been recently extended in statute and increased NEGP is not an option through the rule-making process.

    The Board did not consider other regulatory alternatives in this rule package in part because the rule revisions are being updated due to statutory requirements or for technical or non-substantive reasons.

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.***

    The Board did not propose performance-based regulations in this rule-package due to considerations of setting established processes and standards to achieve its public protection mandate.

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

    Because the Board initiated the rule review process due to the five-year rule review requirement, staff reviewed the rules 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 any 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 and Board Advisory Groups help ensure that these rules are applied consistently and predictably for the regulated community. The Board plans to monitor the progress with respect to the rules and report back to these groups. In addition, the Board will implement the regulations while using its website, newsletter, and social media to update and inform licensees, continuing education providers, nursing education and training programs, 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;**

    Individuals licensed by ORC Chapter 4723, education and training programs and providers, community health care workers, health care employers and entities, licensees subject to discipline and their legal counsel

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

    Individuals are required to have a license and meet various conditions for licensure to obtain and renew their licenses.

    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.

    The cost of licensure and application is established by statute.

    To apply for NEGP grant money under OAC Chapter 4723-25, completion of application materials consistent with eligibility is required.

    There is a cost inherent in engaging in the business of being a board approved continuing education program or an accredited continuing education provider. That cost is variable and determined by the extent of continuing education to which the approver or provider participates. Separate costs to obtain accreditation or engage in

approving or providing education are not established by the board. There is no fee attached to board approval and the application process and forms are minimal.

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

    In order to establish baseline requirements needed to be a Board continuing education approver or accredited provider is necessary for the education to meet educational standards and ensure public safety.

    Regarding rule 4723-25-05(A)(1), rather than reducing PN program funding to "0", the board restricted funding to PN programs that are part of a "1+ 1" program, as part of a policy to encourage seamless educational progression in an effort to strengthen contemporary PN practice consistent with educational needs to meet current standards of practice and increase employment opportunities.

Regulatory Flexibility

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

    Public safety requirements relative to the rules reviewed in this package require consistency in their application to all licensees and are not amenable to exemptions or alternative means of compliance for small businesses.

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 Sections 119.14 and 4723.061, ORC, 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 notice or 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. The Board Advisory Groups also may respond to questions from small businesses. 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.