

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Nursing Board rule updates and technical changes: OAC Chapters 4723-2, 4723-4, 4723-6, 4723-7, 4723-8, 4723-9, 4723-14, 4723-23 and 4723-27

Rule Number(s): 4723-2-01 through 4723-2-04; 4723-4-06; 4723-6-02; 4723-7-01 and 4723-7-09; 4723-8-08; 4723-9-07, 4723-9-12 and 4723-9-13; 4723-14-01 through 4723-14-06, 4723-14-15 and 4723-14-16; 4723-23-02, 4723-23-03, 4723-23-05, 4723-23-06 and 4723-23-08; 4723-27-05 and 4723-27-06.

Date: August 28, 2014

Rule Types: New, Amended, No Change and Rescinded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.

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## **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, rescind, file new rules or file no change rules for Ohio Administrative Code (OAC) Chapters 4723-2, Military; 4723-4, Standards of Practice Relative to Registered Nurse or Licensed Practical Nurse; 4723-6, Alternative Program for Chemically Dependent Nurses; 4723-7, Examination and Licensure; 4723-8, Advanced Practice Registered Nurse Certification and Practice; 4723-9, Prescriptive Authority; 4723-14, Continuing Nursing Education; 4723-23, Dialysis Technicians; and 4723-27, Medication Administration by Certified Medication Aide.

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

Ohio Revised Code (ORC) Section 4723.06

ORC Section 4723.07

ORC Section 5903.04 (effective 9/16/14), (Chapter 4723-2, OAC)

ORC Section 5903.10 (Chapter 4723-2, OAC)

ORC Section 5903.12 (Chapter 4723-2, OAC)

ORC Section 4723.35 (Chapter 4723-6, OAC)

ORC Section 4723.50 (Chapter 4723-9, OAC)

ORC Section 4723.69 (Chapter 4723-14 and 4723-27, OAC)

ORC Section 4723.79 (Chapter 4723-23, 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 following stakeholder suggestions in the course of review and development of these rules. Additional development resulted from legislative

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amendments enacted by HB 488 (130<sup>th</sup> General Assembly), to update form reference effective dates, and to correct errors or for other technical or non-substantive reasons.

On June 16, 2014, Governor Kasich signed HB 488 (Veterans Benefits). The creation of new OAC Chapter 4723-2 is intended to help military veterans and service members more easily enter the civilian workforce. The legislation requires boards and commissions to adopt rules to establish and implement certain licensing processes related to service members or veterans, or spouses of services member or veterans (Section 5903.03, ORC), and includes specific definitions (Section 5903.01, ORC). The legislation also includes modifications to language related to fee waivers and continuing education (Sections 5903.10, 5903.12, ORC) that the Board has previously addressed in its rules. In reviewing all the military-related requirements, it made sense to locate military information in one Chapter of 4723 OAC. Chapter 4723-2 had been rescinded in 2008; the new Chapter 4723-2 will include the new military-related rules.

**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.

Rule changes intended to help veterans, service members and their spouses more easily navigate the licensure process will be measured by improving Board licensure timelines for those individuals.

The Board will request that the CE providers report on the impact changes to terminology in Chapter 4723-14 rules that are intended to guide providers of continuing nursing education to focus on the importance of outcomes of CNE activities. The Board will request that outcomes be reported back through the Board's advisory group on continuing nursing education of which CE providers make up a portion of that group's constituency.

**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-

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mail on April 22, 2014 to approximately 60 persons representing various stakeholders to the board.

On June 13, 2014, the Board e-mailed the various stakeholders who were invited to the May 22, 2014 interested party's meeting and informed them that "On June 5, 2014, the Ohio Board of Nursing Advisory Group on Continuing Education met and recommended that rules in Chapter 4723-14, OAC, be revised to reflect the use of the word "outcome" in place of "objective" as it relates to continuing education. The rationale for this change is detailed in the attached summary that was distributed during the Advisory Group meeting. The proposed change will be discussed at the Board meeting on July 24-25, 2014." The e-mail invited them to send to the board written comments to the additional proposal to the rules package.

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 open to the public.

The Board Continuing Education Committee (CE Advisory Group) met at the Board office in June 2014 and discussed the draft continuing education rules. Meetings are scheduled by e-mail and 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's CE Advisory Group analyzed trends across healthcare professional education in academia (pre and post-licensure programs) and in practice-based continuing education settings. One trend across professions is a shift away from activity or program objectives to a focus on expected or desired outcomes as a result of participating in healthcare professional education. As a result, the CE Advisory Group provided the Board with rationale for changes to rules in OAC Chapter 4723-14 relative to using the term "outcomes" in place of "objectives."

Outcomes include changes in knowledge, competence (skills) and/or practices of healthcare providers as well as patient/client and system outcomes. In addition, there has been a shift from professional education focused on one type of provider group to inter-professional education and inter-professional collaborative practice as a strategy to achieve the Institute for Healthcare Improvement's Triple Aim: improved patient/family satisfaction, increased quality, and reduced cost. Organizations such as the American Association of Colleges of Nursing, Association of American Medical Colleges, Accreditation Council for Continuing Medical Education, Accreditation Council for Pharmacy Education and the American Nurses Credentialing Center support these approaches to designing healthcare education that is outcomes-focused and designed to address the needs of healthcare providers, patients and systems. To that end, the CE Advisory Group recommended and the Board accepted a proposal that changed references in 4723-14 from "objectives" to "outcomes", guiding providers of continuing nursing education to focus on the importance of outcomes of CNE

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activities.

**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 continuing education approvers, continuing education providers, nurses, dialysis providers and others based on their current practice experience and familiarity with current data in their areas of expertise.

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.

**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?**

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.

Chapter 4723-6 governs programs that are legislatively established "regulatory alternatives" to public discipline. 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.

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 process, 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;**

APRN, RN, LPN licensees; military veteran applicants and licensees and their spouses; board approved continuing nursing education approvers and accredited providers; certified dialysis technicians; dialysis technician training programs; certified medication aides and training programs; certified community health workers and training programs.

**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.

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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. Providers who are not regulated by or affiliated with the Board establish costs to licensees who participate in the Alternative Program. Costs associated with the program are not new but have existed since the diversion program was established by the legislature in 1995.

**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. The proposed rules establish and implement certain licensing processes related to service members or military veterans, or spouses of service members or veterans (ORC Section 5903.03), and includes specific definitions (ORC Section 5903.01).

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 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

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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.

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

Rule 4723-2-02 impacting the processing applications from service members, military veterans, or spouses of service members or veterans, incorporates processes the Board implemented in the past year to expedite applications submitted by military/spouses of military, and includes information required by HB 488. Arguably, any adverse business impact to license applicants is mitigated for veterans due to the changes in administrative process and rules. Executive Order 2013-05K also directs boards and commissions to review their administrative rules and licensing processes related to military personnel to assist veterans with the licensing process.

Continuing education is required by statute for Nursing Board licensees and certificate holders. Continuing education contributes to public safety. The Board's CE Advisory Group provided the Board with rationale for changes to rules in OAC Chapter 4723-14 relative to using the term "outcomes" in place of "objectives." Outcomes include changes in knowledge, competence (skills) and/or practices of healthcare providers as well as patient/client and system outcomes. In addition, there has been a shift from professional education focused on one type of provider group to inter-professional education and inter-professional collaborative practice as a strategy to achieve the Institute for Healthcare Improvement's Triple Aim: improved patient/family satisfaction, increased quality, and reduced cost. Organizations such as the American Association of Colleges of Nursing, Association of American Medical Colleges, Accreditation Council for Continuing Medical Education, Accreditation Council for Pharmacy Education and the American Nurses Credentialing Center support these approaches to designing healthcare education that is outcomes-focused and designed to address the needs of healthcare providers, patients and systems.

**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.