



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: BELTSS

Rule Contact Name and Contact Information:

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

Definitions, Board meetings, AIT program, pre-examination requirements, core of knowledge in nursing home administration, AIT program, temporary license, recognition of out-of-state license, relicensure, subjects for examination, fees

Rule Number(s): 4751-1-02, 4751-1-04, 4751-1-05, 4751-1-05.1, 4751-1-06, 4751-1-09, 4751-1-11, 4751-1-14, 4751-1-15, 4751-1-16

Date of Submission for CSI Review: 9-23-21

Public Comment Period End Date: 10-12-21

Rule Type/Number of Rules:

New/ 0 rules

No Change/ rules (FYR?)

Amended/ 10 rules (FYR? Y)

Rescinded/ rules (FYR?)

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.

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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.

4751-1-02: Rule being changed to add a definition of “supervision of an administrator-in-training”.

4751-1-04: Rule change to correct a misspelling.

4751-1-05: Rule being changed to reflect the Board’s change of authority over the Core of Knowledge program. Rule changed to reflect changes made in the law by HB 263, namely, removing “of good moral character”, and adding provisions that the Board would comply with Section 9.79 of the Ohio Revised Code.

4751-1-05.1: Rule being changed to remove the need for the Core of Knowledge providers to have an approval number granted by the Board’s Continuing Education Committee.

4751-1-06: Rule changed to reflect the National Association of Long-Term Care Administrator Board’s terminology change from “Domains of Practice” to “Exam Content Outline”

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4751-1-09 Rule changed to reflect changes made in the law by HB 263, namely, removing “of good moral character”, and adding provisions that the Board would comply with Section 9.79 of the Ohio Revised Code.

4751-1-11 Rule changed to reflect changes made in the law by HB 263, namely, removing “of good moral character”, and adding provisions that the Board would comply with Section 9.79 of the Ohio Revised Code.

4751-1-14 Rule changed to reflect changes made in the law by HB 263, namely, removing “of good moral character”, and adding provisions that the Board would comply with Section 9.79 of the Ohio Revised Code.

4751-1-15 Rule changed to reflect changes made in the law by HB 263, namely, removing “of good moral character”, and adding provisions that the Board would comply with Section 9.79 of the Ohio Revised Code.

4751-1-16 Rule being changed to reflect changes to 9.78 of the Revised Code, namely, the charging of a nominal fee for a criminal conviction determination made by the Board.

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.

4751.03, 4751.04, 4751.38, 4751.45, 9.78, 9.79

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. The Board strongly believes that the CORE of Knowledge course is an integral part of the licensure process and needs to be regulated in order to produce consistent outcomes and success on the examinations and as future licensees. In order to successfully pass the examinations, applicants must also be made aware of what subject matter will be covered.

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

State statute, and it is also helpful for prospective providers to know about the requirements that must be met in order to be approved to offer the CORE of Knowledge course.

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)?

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State statute, and it is helpful for prospective Core providers to know about the requirements that must be met in order to be approved to offer the Core of Knowledge class and for students to know what subject matter they will be tested on. It is also helpful for AITs and preceptors to have a definition of supervision which meets the Board's approval.

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

Prospective licensees will be better prepared for their National examinations and have a better understanding of the CORE of Knowledge Course requirements, and providers will understand what they must do to be approved to provide the CORE of Knowledge Course. Applicants will have the most current information about the Exam Content Outline that they will be tested on.

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.

No

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.

The Ohio Council for Home Care and Hospice was notified per their request on 9-8-21 via email.

Laurie Loughney of Longtree and Associates was notified per her request on 9-9-21 via email.

Virginia Scheurger-Davidson was notified per her request on 9-7-21 via email.

The Board posted draft copies of the rules on the Board's website from 9-7-21/9-22-21 for an early stakeholder outreach period. The initial public comment period is set to run from 9-23-21/10-12-21. All three of the primary provider associations (LeadingAge Ohio, The Ohio Health Care Association, and the Academy of Senior Health Services) placed a notice in their newsletters (emailed to all members) including a link to the draft rules on the Board's website, and an eblast was sent to all licensees.

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

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One stakeholder suggested adding a link to the ORC sections mentioned in the rules and that suggestion was accepted. She also had questions about the definition of “Supervision of a Nursing Home” in 4751-1-02, and that suggestion was addressed by adding “for the purposes of the Administrator-In-Training Program”. Finally, she made a suggestion involving the Ohio state exam language in 4751-1-06, and that suggestion was addressed by adding the language “Successful completion of” the Ohio state exam....

No other comments were received during this period.

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

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?

There were no alternative regulations considered as the rules are driven by statute.

13. 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.*

No

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

The JCARR standard for invalidation has been an ongoing deterrent to duplication. Legal staff, the Board, and Board Committees (where appropriate) have reviewed rules to assure there is no duplication of an existing Ohio regulation.

15. 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.

BELTSS will once again seek the assistance of the three primary provider associations (as described in question number 7) to help distribute the updated rules to its members and drive traffic to the website where the updated rules will be posted. An email blast will also be sent to licensees and interested parties to inform them of the changes.

Adverse Impact to Business

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16. 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; and

Those organizations wishing to provide the Core of Knowledge class and licensed nursing home administrators, as well as Administrators-in-Training. Those individuals with prior convictions that may or may not make them ineligible for a license. AITs and preceptors who must adhere to the new definition of supervision of an AIT. Prospective AITs who want a determination within 30 days of whether a criminal conviction will disqualify them from the AIT program (waiting for the Board meeting for a determination is still free).

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

Organizations wishing to provide the core of knowledge class must apply through the continuing education provider process and follow its rules. Applicants with a conviction must follow the Board's process for disclosing that conviction and complying with Sections 9.78 and 9.79 of the Ohio Revised Code. Preceptors must now be certain to spend at least 35 hours per week in their building when they are supervising an AIT (this is not a new requirement). A \$25 fee for those who want a determination within 30 days of whether a criminal conviction will disqualify them from the AIT program (waiting for the Board meeting for a determination is still free).

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.

Organizations wishing to provide the core of knowledge class will have to pay a fee that is determined by the provider status to which they are assigned based on criteria set forth in rule 4751-1-08. It will also take them about 15 minutes to complete the online course application to provide the Core of Knowledge class. The source is BELTSS documentation, laws, rules, and statute. Individuals with convictions will have to spend time collecting information about that conviction to present to the Board in order to get a determination of whether the conviction disqualifies them from licensure. The time involved could range from 15 minutes to fill out the form and gather documentation if they have it, or a few hours if they must go to the clerk of courts office or have their attorney (if they had one) collect the documentation. AITs and preceptors were already expected to adhere to the 35-hour requirement, but some preceptors may have to spend more time in the building/with the AIT. A \$25 fee if a criminal conviction determination is desired within 30 days of request.

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

The Board also feels very strongly that an all-online course would be detrimental to the attendees as not all of the course content translates well to online learning, and that attendees benefit tremendously from the interaction with peers, instructors, and government officials that they receive at an in-person session. The Board also feels that prospective licensees need to know the material on which they will be tested. The Board feels these regulations produce more highly-qualified and educated licensed nursing home administrators, which is a benefit to and protection for the public. The Board has a duty to protect the public and must ensure as best it can that past convictions do not pose a current threat to resident/family/staff safety and welfare, and that the applicant is able to perform the job despite the conviction. The Board also strongly believes that AITs need the supervision of the LNHA and should not be left on their own to run a building while they are supposed to be learning. The Board will have to dedicate extra time and staff resources to completing a criminal determination within 30 days and not waiting for the next Board/committee meeting to make the determination.

Regulatory Flexibility

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

No, all prospective licensees must attend the CORE of knowledge unless they are in the Direct College path to licensure, which involves obtaining a degree from a NAB accredited college or university. All potential providers who wish to provide the CORE of Knowledge must meet the criteria set forth by the Board. All potential licensees with a conviction must comply with Sections 9.78 and 9.79 of the Ohio Revised Code in order to have their conviction evaluated by the Board. All AITs and preceptors must comply in order to have a valid internship.

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?

There are no fines or penalties for paperwork violations and first-time offenders in these rules except for the licensed nursing home administrator and health services executive licensee late renewal fees, but these are not new. AITs may have all or some of their internship invalidated if they do not follow the rule, and preceptors may be banned from precepting again for failure to follow the rule. Again, this is not a new penalty.

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

The Board staff is available during normal business hours (and after hours by appointment), email, and telephone to answer any questions that individuals may have.