



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Board of Nursing

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

Doula Certification, New Chapter 4723-24, and related amendment to 4723-3-02, OAC.

Rule Number(s): New Rules 4723-24-01, 4723-24-02, 4723-24-03, 4723-24-04, 4723-24-05, 4723-24-06, 4723-24-07. And Amended Rule 4723-3-02.

Date of Submission for CSI Review: June 11, 2024

Public Comment Period End Date: June 21, 2024

Rule Type/Number of Rules:

New/ 7 rules

No Change/ 0 rules (FYR? No)

Amended/ 1 rules (FYR? No)

Rescinded/ 0 rules (FYR? No)

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.

Sections 4723.89, ORC, *Doula certification*, and 4723.90, ORC, *Doula Advisory Group*, established doula certification by the Ohio Board of Nursing (OBN), and created the Doula Advisory Group which is charged with providing guidance about doula certification generally and with respect to certain matters specifically. Doulas who are certified by the Ohio Board of Nursing will be authorized to seek payment for doula services from the Ohio Department of Medicaid (ODM) through processes being developed by ODM. OBN is charged with adopting rules establishing standards and procedures for issuing certificates to doulas as needed. See Section 4723.89(D)(1)-(7), ORC. OBN rules for doula certification are to be in effect by October 3, 2023.

A). The draft new rules, Chapter 4723-24, OAC, *Doula Certification*, attached, consist of the following:

4723-24-01, Definition of terms. Defines terms used in the rules. These often track exactly the language found in Section 4723.89 and/or 4723.90, ORC, such as the definition of certified doula in proposed rule 4723-24-01(D), OAC.

4723-24-02, Doula certification. Sets forth the requirements for certification as a doula.

4723-24-03, Renewal of doula certificate. Sets forth requirements for renewal, reactivation or reinstatement of a doula certificate.

4723-24-04, Continuing education requirements. Sets forth continuing education requirements for applicants seeking to renew, reactivate or reinstate a certificate.

4723-24-05, Doula certification by endorsement. Sets forth requirements for certification by endorsement as required by Section 4796, ORC.

4723-24-06, Standards of doula practice. Sets forth standards of doula practice.

4723-24-07, Disciplinary actions against certified doulas; investigations. Sets forth bases for disciplinary actions against doula certificates; investigations; processes for issuance of notices and processes for hearings; and possible board actions.

B.) Proposed amended Rule 4723-3-02, OAC, Definition of mental or physical impairment, is attached. It defines physical and mental impairment for purposes of OBN compliance. It is proposed to be amended to include references to other OBN certificate holders, and to certified doulas due to language requested by the Doula Advisory Group in draft rules 4723-24-07(B)(11) and 4723-24-7(H).

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.**

Regarding new draft Chapter 24: Section 4723.89, ORC, Section 4723.90, ORC, and Section 4723.07, ORC. See 4723.89(D), ORC, in particular. It requires OBN to “adopt rules in accordance with Chapter 119. of the Revised Code establishing standards and procedures for issuing certificates to doulas under this section, [including specific topics and] ... (7) Any other standards or procedures the board considers necessary to implement this section.”

Regarding proposed amended Rule 4723-3-02: Sections 4723.89, 4723.88, 4723.79, 4723.69, and 4723.07, ORC.

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 regulations do not implement a federal requirement.

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

N/A.

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)?**

Regarding proposed new Chapter 4723-24: Section 4723.89, ORC, and Section 4723.90, ORC, require OBN to offer a certification for doulas and require OBN to “adopt rules in accordance with Chapter 119. of the Revised Code establishing standards and procedures for issuing certificates to doulas under this section,

[including specific topics and] ... (7) Any other standards or procedures the board considers necessary to implement this section.” Section 4723.89(D), ORC.”

Regarding proposed amended Rule 4723-3-02: the definition is relevant to the Board’s application of standards for licensees and certificate-holders.

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

Section 4723.90(J)(4), ORC, requires the Doula Advisory Group “[b]eginning two years after the effective date of this section and annually thereafter, [to] submit a report to the general assembly in accordance with section 101.68 of the Revised Code including the following information regarding the doula services provided pursuant to section 5164.071 of the Revised Code:

- (a) The number of pregnant women and infants served;
- (b) The number and types of doula services provided;
- (c) Outcome metrics, including maternal and infant health outcomes.”

In addition, OBN staff will interact with stakeholders and others through public outreach functions and social media; public inquiries; OBN Advisory Groups (comprised primarily of public members) including the Doula Advisory Group; and investigation of complaints filed with OBN. OBN will also continue to engage in ongoing review of rules, seeking input from staff, and from stakeholders including but not limited to all licensees and certificate-holders. Also, OBN’s Advisory Group on Rules will continue its review of proposed new rules, proposed amendments, and proposed rescission of rules as well as recommendations received from Advisory Groups and public comments. Regarding proposed new Chapter 4723-24, OAC, specifically, OBN staff will also continue to collaborate with Ohio Department of Medicaid (ODM) staff who are developing rules for reimbursement of doula services provided by those doulas who are certified by OBN.

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.

In summary: OBN staff, in consultation with the Doula Advisory Group, drafted draft new Chapter 4723-24, OAC. Draft rules were then published for public comment February 28, 2024 by email to targeted stakeholders (see description, next paragraph), and by posting a prominent notice on the OBN website home page, and through postings on OBN social media, all seeking public comments by March 14, 2024. On March 29, 2024 and April 3, 2024, public comments received were provided to the Doula Advisory Group for their review during their further consideration of the draft rules. On March 28, 2024, and on April 18, 2024, the OBN Advisory Group on Rules reviewed the draft rules, public comments received, and recommendations of the Doula Advisory Group. At its May 22-23, 2024 Meeting, the Board itself reviewed draft rules, public comments received (attached), recommendations from the Advisory Group on Rules (minutes attached), and additional recommendations from members of the Doula Advisory Group, contained in a May 1, 2024, letter to the Board (attached).

More specifically: On December 7, 2023, the then-newly appointed Doula Advisory Group members and others participated in an orientation meeting that included discussion of Section 4723.89, and Section 4723.90 (as in effect at that time, since amended); the Doula Advisory Group's charge; OBN overview; ODM overview; the Open Meetings Act; and business to be conducted in 2024 including OBN and ODM adoption of administrative rules to implement Sections 4723.89 and 4723.90, ORC. An overview of the administrative rule-making process was discussed. The Doula Advisory Group then met and reviewed versions of the draft rules on January 9, 2024, January 30, 2024, February 21, 2024, March 13, 2024 [no quorum/no decisions or recommendations], April 10, 2024, and May 1, 2024. Public guests were present at Doula Advisory Group meetings and also participated/commented upon being recognized by the chair.

In addition, over the course of the development and initial review of these rules, on February 28, 2024, a draft was sent to Interested Parties as described in OBN Rule 4723-1-05(D), OAC, and, to a targeted list of individuals and entities including: Doula Advisory Group members; Doula Advisory Group meeting attendees who provided contact information on the public sign in sheet; the list of stakeholders obtained from ODM who were participating in ODM's stakeholder meetings; and individuals who contacted OBN stating they wanted updates regarding development of these rules (in total approximately over three hundred individuals or entities). (There is some overlap between the groups listed. In addition, some individuals or entities requested to be added/were added to the list after February 28, 2024 so were not emailed before that date but could locate the draft rules on the OBN website and OBN social media.) Communications sent by email to the addresses provided and posted on the OBN website home page and posted on OBN social media included a link to the draft rules that were housed on the OBN website. These communications requested that public comments be provided to OBN by March 14, 2024.

Following the February 28, 2024 publication of draft rules, public comments* were received. Public comments were provided to the Doula Advisory Group on March 29, 2024 and on April 3, 2024, and to the Advisory Group on Rules in advance of its review of the draft rules at its March 28, 2024, and April 18, 2024 meetings. The comments received were also provided to the Board as a whole on May 10, 2024, in advance of its May 22-23, 2024 meeting at which the draft rules were considered.

Notification of this filing of the draft rules with CSI, as approved by the Board on May 22, 2024, will now be sent to all OBN licensees and certificate holders and will also be emailed to the list of individuals described above.

***NOTE:** Many public comments received raise issues that could not be addressed through administrative rule making because they are governed by statute. These include 1.) comments that the doula certification should not be under the Ohio Board of Nursing for a variety of reasons, and, 2.) objections to the title protection in 4723.89, ORC, with some comments proposing that the protected title be changed from “certified doula” to “state-certified doula,” or other options. See 4723.89(B), ORC.

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

On January 9, 2024, January 30, 2024, February 21, 2024, March 13, 2024 [no quorum/no decisions or recommendations], April 10, 2024, and May 1, 2024, the Doula Advisory Group reviewed draft rules and provided input on the rules. Public guests were present at Doula Advisory Group meetings and also participated/commented upon being recognized by the chair. In addition, after draft rules were published for comments on February 28, 2024, public comments received* were reviewed by staff and provided to the Doula Advisory Group on March 29, 2024, and April 3, 2024 for their review. Doula Advisory Group input was solicited and provided regarding draft rules generally, and draft rules were established and/or modified, in response to Doula Advisory Group input in particular regarding: “requirements for training on racial bias, health disparities, and cultural competency as a condition of initial certification and certificate renewal,” and “requirements and standards of practice for certified doulas,” consistent with Section 4723.89(D)(3) and (5), ORC, and Section 4723.90(J)(1), ORC. Some of the specific areas of input that resulted in modification of initial draft rules included: requirements for proof of certification from a doula certification organization for those applying for certification on that basis; requirements for initial certification including requirements for education and experience (for those not applying based on holding a certification from a doula certification organization) and what documentation of education and experience will be required; number of hours of CE to be required for renewal of a certificate and requirements for documentation of CE completion; requirements for obtaining or renewing a certificate including training on racial bias, health disparities, and cultural competency (number of hours, how documented); requirements for certification by endorsement; what will qualify as continuing education including what providers;

standards for documentation of practice; standards for use of universal precautions; boundaries/use of social media; display of certificate holder identification; deletion of aiding and abetting unauthorized practice of nursing from grounds for discipline; and, later, those bulleted items listed below.

On March 28, 2024, the Advisory Group on Rules engaged in its first review of the draft rules having considered Section 4723.89, ORC, Section 4723.90, ORC; Doula Advisory Group Meeting Minutes and Agendas; and public comments received in response to OBN's February 28, 2024 emails and social media postings seeking public comments on the draft rules. At its March 28, 2024 meeting, the Advisory Group on Rules considered and did not recommend any substantive changes including those requested by a public guest who appeared and spoke at the meeting. (March 28, 2024 Minutes, attached.)

On April 10, 2024, based on its review of the rules and its review of public comments received, the Doula Advisory Group recommended certain additional changes to the draft rules.

On April 18, 2024, the Advisory Group on Rules agreed that changes recommended by the Doula Advisory Group should be made to the draft rules, with the exception of the request regarding draft rule 4723-24-07(B) (to state that a doula subject-matter expert be included when the Board is considering disciplinary action against a doula certificate). (April 18, 2024 Minutes attached.) Changes made (to draft rules as they were then numbered) were:

- Delete draft rule 4723-24-06(F)(1) (display applicable title)
- Delete draft rule 4723-24-06(F)(2) (documentation)
- Delete draft rule 4723-24-06(H) (social media, texting, emailing, etc.)
- Delete draft rule 4723-07(B)(22) (assisting suicide)

On May 1, 2024, members of the Doula Advisory Group, based on further review of the draft rules and further review of public comments received, recommended additional changes to the draft rules. They included their recommendations in a May 1, 2024 letter (attached) provided directly to all Board members in advance of the OBN's May 22-23, 2024 meeting.

On May 22-23, 2024, the Board agreed changes below should be made to the draft rules. In advance of their May 22-23, 2024 meeting, the Board was provided with Section 4723.89, ORC, Section 4723.90, ORC; draft rules with changes as recommended by the Advisory Group on Rules on April 18, 2024; Minutes of the Advisory Group on Rules March and April meetings; public comments received in

response to publication of the rules, and the May 1, 2024 letter from Doula Advisory Group members.

Changes the Board directed to be made to the draft rules, in response to the May 1, 2024 Doula Advisory Group members' letter, were:

- In 4723-24-01(F), change "behavior" to "best practices."
- In 4723-24-07(B)(11), add "as defined in Rule 4723-3-02, OAC" after impairment.
- Change 4723-24-07(B)(12) to "...assaulting or causing harm to a client or depriving a client of their autonomy" instead of "...assaulting or causing harm to a client or depriving a client of the means to summon assistance"
- In 4723-24-07(B)(21), add "or partner" after spouse.
- In 4723-24-07(H), add "as defined in Rule 4723-3-02, OAC" after impairment.

In addition, due to the changes in 4723-24-07(B)(11), and 4723-24-07(H), above, the Board found that existing Rule 4723-3-02, OAC, should be amended as tracked.

The Board declined to make two additional requested changes. Specifically, the Board declined in draft rule 4723-24-01(D), to change "certified doula" to "state-certified doula." The term "certified doula" is consistent with Section 4723.89(A) and (B), ORC. In draft rule 4723-24-01(G), the Board declined to change "pregnant woman" to "pregnant individual." The phrase pregnant woman is consistent with Section 4723.89(A), ORC.

***NOTE:** Many public comments received raise issues that could not be addressed through administrative rule making because they are based in statute. These include 1.) comments that the doula certification should not be under the Ohio Board of Nursing for a variety of reasons, and, 2.) objections to the title protection in 4723.89, ORC, with some comments proposing that the protected title be changed from "certified doula" to "state-certified doula," or other options. See 4723.89(B), ORC.

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. The proposed rules are based on the operational experiences regulating licensees and certificate holders and operating the OBN for the public health and safety of the public. It is understood that research indicates that doulas positively impact several maternal and infant health outcomes.

The Doula Advisory Group has been made aware that, *looking forward*, Section 4723.90(J)(4), ORC, requires that the Doula Advisory Group "[b]eginning two years after the effective date of this section and annually thereafter, submit a report to the general assembly in accordance with section 101.68 of the Revised Code including

the following information regarding the doula services provided pursuant to section 5164.071 of the Revised Code:

- (a) The number of pregnant women and infants served;
- (b) The number and types of doula services provided;
- (c) Outcome metrics, including maternal and infant health outcomes.”

- 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?** *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The mission of the OBN is to actively safeguard the health and safety of the public including through effective regulation of its certificate holders and licensees, of prelicensure nursing education programs, and continuing education standards. The Board proposes the attached rules in support of that mission.

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

Section 4723.89, ORC, and Section 4723.90, ORC, place certification of doulas under the OBN and not under any other agency.

The Ohio Department of Medicaid (ODM) has its own role in the implementation of Sections 4723.89 and 4723.90, ORC, and OBN and ODM maintain communication about their respective roles and rulemaking progress. For example, OBN staff attend and participate in ODM stakeholder meetings, and ODM staff attend and participate in meetings held by the Doula Advisory Group.

- 14. 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.**

OBN publishes guidance on a variety of topics including for example, licensure/certification requirements including fees; CE requirements; relevant available waivers; and practice. This guidance is published on the OBN website, on OBN social media, and in OBN's quarterly magazine and is also distributed to targeted groups. OBN also publishes a summary of all new rules and rule changes in Momentum, a quarterly magazine available on the OBN website social media. In addition, OBN staff are trained on implementation of new rules as needed to ensure consistent and predictable regulation.

Adverse Impact to Business

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

- a. Obtaining doula certification from OBN will allow individuals to seek payment for doula services from Ohio Department of Medicaid (ODM), through processes being developed by ODM. Individuals impacted are those individuals who wish to seek payment from the ODM for doula services they provide. The amendment to Rule 4723-3-02 does not have an impacted business community as it applies to processes for individual licensees and certificate holders.
- b. Individuals who seek certification must successfully complete an online application and pay a fee of \$35 (consistent with Section 4723.89, ORC). See Rule 4723-24-02, OAC. The individual applicant must also gather and submit documentation as described in Rule 4723-24-02, OAC, though some requirements may be satisfied by attestation instead of by submission of supporting documentation. Requirements to renew the certificate include once every two years: completion of an online renewal application; payment of a \$35 renewal application fee (consistent with Section 4723.89, ORC); and completion of 10 hours of continuing education (CE) including 4 hours training directly related to racial bias, health disparities, and cultural competency. See draft rule 4723-24-03. It is difficult to estimate the cost of completion of 10 hours of CE over the course of two years, because CE may be offered by entities at any cost or at no cost, or may be satisfied by education the applicant is otherwise taking to satisfy other purposes (maintaining certification by a doula certifying organization, academic education, etc.) See draft rules 4723-24-04(H), 4723-24-04(I), 4723-24-01(F). Individual certificate holders may be disciplined as described in draft rule 4723-24-07 which could result in a fine, a restriction, a reprimand or a suspension or revocation of the certificate, etc. See draft rule 4723-24-07(B).

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

Obtaining doula certification from OBN will allow individuals to seek payment for doula services from ODM, through processes being developed by ODM. Draft Chapter 4723-24 rules are all new (not changes to existing rules) but efforts to reduce regulatory burden in these rules include:

Regulatory burden has been reduced by streamlining the online application process to include attestation where possible (see e.g., draft rule 4723-24-02, 4723-24-03); recognizing for continuing education purposes the training provided or accepted by doula certifying organizations (see draft rules, 4723-24-04(I), 4723-24-01(F)); allowing for carryover of up to 5 hours of excess continuing education credit to the following renewal period (see draft rule 4723-24-04(E)); not dictating required documentation formats or content but instead requiring documentation sufficient to meet the requirements of the doula's practice (see draft rule 4723-24-06(C)).

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

Section 4723.89, ORC, and Section 4723.90, ORC, place certification of doulas under OBN and not under any other agency, requiring the OBN to develop rules regarding certification; renewal, including continuing education; certification by endorsement (as required by Section 4796, ORC); standards; and disciplinary actions.

Regulatory Flexibility

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

Regarding doula certification and the rules in this packet, OBN regulates individual certificate holders and does not regulate businesses or other entities.

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?

The rules in issue do not impose administrative fines or civil penalties for paperwork violations. Regarding applications, the applications remain open for sufficient time to allow applicants to correct deficiencies to avoid forfeiture of application fees paid. In addition, and more generally, Chapter 4723, ORC, does not require OBN to act on minor violations of Chapter 4723, ORC or the rules adopted under it, if the violations are committed by individuals licensed/certified under Chapter 4723, ORC, and the Board determines that the public is adequately protected by issuing a notice or warning to the alleged offender. See Section 4723.061, ORC.

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

Regarding doula certification and the rules in this packet, OBN regulates individual certificate holders and does not regulate businesses or other entities.

OBN publishes guidance on a variety of topics including, for example, licensure/certification requirements including fees; CE requirements; relevant available waivers; and practice standards. This guidance is published on the OBN website, on OBN social media, and in OBN's quarterly magazine and is also

distributed to targeted groups. OBN also publishes a summary of all new rules and rule changes in Momentum, a quarterly magazine available on the OBN website and social media. In addition, OBN staff and customer service personnel are available to respond to inquiries.