



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information: Anita DiPasquale, adipasquale@nursing.ohio.gov

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

5-year review packet: Chapter 4723-2, Public Notice (Military Extensions and Waivers); Chapter 4723-16, Hearings; Chapter 4723-25, Nurse Education Grant Program; 4723-26, Community Health Workers. And New Rule 4723-11-04, MSL Application forfeiture.

Rule Number(s): 4723-2-01, 4723-2-02, 4723-2-03, 4723-2-04, 4723-2-05; 4723-16-01, 4723-16-02, 4723-16-03, 4723-16-04, 4723-16-05, 4723-16-06, 4723-16-07, 4723-16-08, 4723-16-09, 4723-16-10, 4723-16-12, 4723-16-13; 4723-25-01, 4723-25-02, 4723-25-03, 4723-25-04, 4723-25-05, 4723-25-06, 4723-25-07, 4723-25-08, 4723-25-09, 4723-25-10, 4723-25-11, 4723-25-12, 4723-25-13, 4723-25-14, 4723-25-15, 4723-25-16, 4723-25-17, 4723-25-18; 4723-26-01, 4723-26-02, 4723-26-03, 4723-26-04, 4723-26-05, 4723-26-06, 4723-26-07, 4723-26-08, 4723-26-09, 4723-26-10, 4723-26-11, 4723-26-12, 4723-26-13, 4723-26-14, and 4723-11-04

Date of Submission for CSI Review: 8/27/24

Public Comment Period End Date: 9/11/24

Rule Type/Number of Rules:

New/ 1 rules

No Change/ 35 rules (FYR? 35)

Amended/ 14 rules (FYR? 14)

Rescinded/ 0 rules (FYR? n/a)

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

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.

Chapter 4723-2, Public Notice (Military Extensions and Waivers), is scheduled for five-year review by the Board. This chapter provides certain fee waivers based on military status of an applicant or applicant's spouse. Changes are proposed in Rules 4723-2-01, 4723-2-03, and 4723-2-04. In 4723-2-01(A)(3)(b), "dialysis technician intern" is deleted because OBN certification of DTIs was eliminated in HB 509 (134th GA). Doula is added as 4723-2-01(A)(3)(f), because 4723.89, ORC (135th GA), added doula certification to the certifications issued by OBN. In 4723-2-03, technical corrections were made to align the rule to correct references to the ORC. And paragraphs (K) and (L) were added to include doula certification applicants in the waivers available under Chapter 4723-2. Rule 4723-2-04 is amended to add doula certification applicants as those to whom Chapter 4723-2 waivers are available. No Change is recommended in the remainder of the rules in Chapter 4723-2.

- **Chapter 4723-16, Hearings**, is scheduled for five-year review by the Board. Changes are proposed in Rule 4723-16-10(D) and Rule 4723-16-13(F) to correct typographical errors. No change is recommended to the remaining rules in Chapter 4723-16.
- **Chapter 4723-25, Nurse Education Grant Program**, is scheduled for five-year review by the Board. Changes are proposed in 4723-25-05. 4723-25-05(A) is proposed to be amended to change the target percentages to be allocated to different types of nursing education programs (RN, LPN, graduate) as authorized by Section 4723.063(C)(6), ORC. And 4723-25-05(F) is proposed to be amended to reflect the relevant time period during which the grants may be awarded. No change is recommended to the remaining rules in Chapter 4723-25.
- **Chapter 4723-26, Community Health Workers (CHW)**, is scheduled for five-year review by the Board. Changes are proposed in the following rules in this chapter: 4723-26-01, is proposed to be amended in (J) to reflect the current process to place a certificate on inactive status and in (P) to align program survey terms and processes with those used for nursing education programs (in Chapter 4723-5); 4723-26-03 is proposed to be amended to correct a type; 4723-26-04 is proposed to be amended to reflect the current process to place a certificate on inactive status; 4723-26-05 is amended to reflect the current process to place a certificate on inactive status; 4723-26-11 is proposed to be amended to correct a typo; 4723-26-12 is proposed to be amended to clarify the rules as in (B)(3) and (E), including by re-ordering some of the content as in (C); 4723-26-13 is proposed to be amended to add topics to be included in the training program curriculum in (C), to clarify a term in (E), and to add a requirement in (F) that a program has a written agreement in place with any cooperating clinical entity (similar to the requirement for nursing education programs in Chapter 4723-5); and 4723-26-14 is proposed to be amended to align survey processes with those used for nursing education programs (in Chapter 4723-5). No change is recommended for the remainder of the rules in Chapter 4723-26.
- **Chapter 4723-11, Nurse Licensure Compact. New Rule 4723-11-04, Application forfeiture.** Consistent with processes for other licenses and certificates issued by the Board, this proposed new rule provides that if an applicant for a multistate license fails to meet the requirements for licensure within one year of the date of the application, or the application remains incomplete for one year, the application will be considered void and the fee forfeited.

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.**

As to Chapter 4723-2: 4723.07, and 5903.04.

As to Chapter 16: 4723.07.

As to Chapter 4723-25: 4723.06, 4723.07, 4723.063, and 4723.063(C)(6).

As to Chapter 27, 4723.07, 4723.88.

As to Rule 4723-11-04, Section 4723.07, 4723.11.

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)?**

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.

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

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); 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.

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.

On January 24, 2024, and on May 23, 2024, the Advisory Group on Community Health Workers reviewed current and draft rules and provided input on the rules (Chapter 4723-26). In addition to members of the Advisory Group on Community Health Workers, public guests were also present at Advisory Group on Community Health Workers meetings. In addition, the all of the draft rules were published for comments by email to all licensees and certificate holders (approximately 300,000 individuals), and to an interested parties list and others. The draft rules were also posted prominently on the Board's homepage for review and comment. (April 29, 2024, communication attached). The comment period was left open until May 14, 2024. Comments received are attached.

On May 23, 2024, the Board's Advisory Group on Rules (comprised of 3 Board members and 2 public members, all are Board licensees) engaged in its review of the draft rules having considered the draft rules and the public/stakeholder comments received.

In advance of their July 24-25, 2024, meeting, the Board was provided with the draft rules with changes as recommended on May 23, 2024, by the Advisory Group on Rules and Minutes of the Advisory Group on Rules May meeting (attached). The Board reviewed the draft rules and directed staff to proceed with the rules.

[Note: There are references to proposed changes to Chapter 4723-5, OAC, in the request for comments and the minutes because this rule package originally included draft changes to Chapter 4723-5, OAC. Changes to Chapter 4723-5, OAC, are no longer included in this packet.]

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

Stakeholder comments received are attached as are minutes of the Advisory Group on Community Health Workers. Several recommendations of from the Advisory Group on Community Health Workers were incorporated into the draft rules, particularly around topics that should be included in CHW training programs' curriculum.

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 approving training programs (Chapter 27), and operating the OBN for the health and safety of the public.

- 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.

N/A. The proposed rules are based on the operational experiences regulating licensees and certificate holders, and approving training programs (Chapter 27), and operating the OBN for the health and safety of the public.

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

Sections 4723.06, 4723.07, 4723.88, 4723.11, 4723.063, and 5903.04, ORC, place regulation of the subjects covered in these chapters, Chapter 4723-2, Public Notice (Military Extensions and Waivers); Chapter 4723-16, Hearings; Chapter 4723-25, Nurse Education Grant Program; Chapter 4723-26, Community Health Workers; and Chapter 4723-11, Nurse Licensure Compact, under the OBN and not under any other agency.

- 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:**
- Identify the scope of the impacted business community, and**
 - 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.) Impacted business communities would be all individuals who seek a license or certification issued by the board (Chapter 4723-2/Waivers), CHW applicants and certificate holders in particular, and those seeking to obtain or maintain approval of a CHW training program (Chapter 4723-26). Also impacted are those nursing education programs that choose to apply for NEGP grants (Chapter 25).

b.) The rules require individual applicants for certification or licensure, and applicants for renewal of certification or licensure, to complete applications online and to submit fees in order to obtain and renew the certificate or license. They are also required to attest to or provide proof of completion of continuing education for renewal of the certificate or license. Regarding CHW training programs, Chapter 4723-26, requires CHW training program applicants to complete an application and submit a fee for training program approval and to provide any additional information required by the board. Chapter 25, requires those nursing education programs that wish to voluntarily apply for an NEGP grant to submit a proposal in the prescribed format. Those nursing education programs that seek and are awarded a grant are also required to submit periodic reports regarding their use of the grant money.

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*).

Chapter 4723-2, Public Notice (Military Extensions and Waivers), provides certain fee waivers based on military status of an applicant or applicant's spouse. Changes proposed add doula certification applicants as those to whom Chapter 4723-2 waivers are available.

Chapter 4723-25, Nurse Education Grant Program. Through the legislatively created NEGP program, the Board awards NEGP funding to nurse education program applicants that partner with health care facilities, community health agencies or patient centered medical homes to increase the nurse education programs' nursing student enrollment capacity. On its website, the Board provides detailed information and resources for those seeking and receiving grants. Only those entities that voluntarily seek an NEGP grant are required to submit applications and to comply with reporting requirements as to expenditure of funds that were awarded.

Chapter 4723-26, Community Health Workers (CHW). Rule 4723-26-14 is amended to align survey processes with those used for nursing education programs (in Chapter

4723-5) which may ease compliance for those entities that run both nursing education programs and CHW training programs.

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

Sections 4723.06, 4723.07 and 4723.88, (and Section 4796, ORC as to reciprocity); 4723.063, 4723.063(C)(6), and 4723.11, and 5903.04, ORC, place regulation of the subjects covered in these chapters, Chapter 4723-2, Public Notice (Military Extensions and Waivers); Chapter 4723-16, Hearings; Chapter 4723-25, Nurse Education Grant Program (NEGP); Chapter 4723-26, Community Health Workers; and Chapter 4723-11, Nurse Licensure Compact, under the OBN. The proposed rules are based on the operational experiences regulating licensees and certificate holders, and approving training programs (Chapter 26, Chapter 4723-11, Chapter 4723-2); administering the NEGP grant program (Chapter 25); hearings (Chapter 4723-16); and operating the OBN for the public health and safety of the public.

Regulatory Flexibility

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

OBN primarily regulates individual certificate holders and licensees rather than businesses entities but does regulate training programs (CHW/Chapter 26) and administers the NEGP grant program available to nursing education programs. While there are not alternative means to comply (such as alternate means of application for approval of a program or for a grant or for reporting use of grant monies) OBN staff and customer service personnel are available to respond to inquiries. OBN also publishes guidance on its website, on social media, in OBN's quarterly magazine, and to targeted groups. OBN also has an Advisory Group on Community Health workers and an Advisory Group on Nursing Education, which can serve as resources to share information about board requirements.

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?

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.