



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Sallie Debolt, State Medical Board of Ohio

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: March 18, 2019

RE: CSI Review – Dietetics (OAC 4759-1-01, 4759-1-02, 4759-1-03, 4759-2-01, 4759-3-01, 4759-3-02, 4759-3-03, 4759-3-04, 4759-3-05, 4759-3-06, 4759-3-07, 4759-4-01, 4759-4-02, 4759-4-03, 4759-4-04, 4759-4-05, 4759-4-06, 4759-4-07, 4759-4-08, 4759-4-09, 4759-4-10, 4759-4-11, 4759-4-12, 4759-4-13, 4759-5-01, 4759-5-02, 4759-5-03, 4759-5-04, 4759-5-05, 4759-5-06, 4759-6-01, 4759-6-02, 4759-6-03, 4759-7-01, 4759-8-01, 4759-8-02, 4759-8-03, 4759-8-04, 4759-8-05, 4759-8-06, 4759-8-07, 4759-8-08, 4759-8-09, 4759-8-10, 4759-8-11, 4759-8-12, 4759-8-13, 4759-8-14, 4759-8-15, 4759-8-16, 4759-8-17, 4759-8-18, 4759-8-19, 4759-8-20, 4759-8-21, 4759-8-22, 4759-8-23, 4759-8-24, 4759-8-25, 4759-8-26, 4759-8-27, 4759-8-28, 4759-8-29, 4759-9-01, 4759-10-01, 4759-10-02, 4759-10-03, 4759-10-04, 4759-10-05, and 4759-11-01)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package contains fifty rescinded rules, one new rule, nine amended rules, and ten no-change rules proposed by the State Medical Board of Ohio (Medical Board) as part of the statutorily required five-year review. The rule package was submitted to the CSI Office on September 25, 2018 and the public comment period was held open through October 12, 2018. One comment was received during this time. The Board provided its response on November 1, 2018.

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Statutory consolidation of the Ohio Board of Dietetics into the State Medical Board required changes to the rules for dietetics in Chapter 4759 of the Ohio Administrative Code (OAC). This rule package aligns the dietetics rules with the statutory changes to Ohio Revised Code Chapter 4759, and the Medical Board rules and processes in areas such as the disciplinary administrative hearing process, personal information systems, criminal record checks, rulemaking, and board operations.

Several rules are being rescinded because they duplicate, or are different than existing Medical Board rules and processes. Other rules are being rescinded due to statutory changes regarding reinstatement and restoration procedures for expired licenses, the elimination of licensure by reciprocity, inactive status of licenses, and pro-rated initial license fees. The new rule, OAC 4759-11-01, incorporates dietetics licenses into the Medical Board rules for criminal record checks, personal information systems, hearings, reporting requirements, impaired practitioners, sexual misconduct and impropriety, and mental or physical impairment. The amended rules reflect minor grammatical changes, substitution of “State Medical Board of Ohio” for “Ohio Board of Dietetics,” and changes for consistency with Medical Board licensure processes such as electronic processing of licenses, frequency of granting licenses, and reporting of continuing education.

The Medical Board worked closely with the Dietetics Advisory Council to draft the rules. It also solicited feedback from interested parties including medical associations, governmental affairs representatives, attorneys who appear before the Medical Board, and organizations and individuals who have a standing request to receive notice of Medical Board rule activity. The Medical Board received two comments specifically requesting changes to the proposed rules.

First the Ohio Academy of Nutrition and Dietetics expressed antitrust concerns over the rescinding of OAC 4759-4-05, regarding licensure by reciprocity, and financial concerns for licensees over the rescinding of OAC 4759-4-10, regarding prorated initial license fees. The Medical Board noted that it is rescinding these subsections due to statutory changes that require their deletion. The group also took issue with amendments to OAC 4759-4-12, which governs military experience and training, and requested that OAC 4759-4-13, governing temporary licenses for military spouses, be rescinded. The Medical Board again noted that it could not make the requested changes due to statutory requirements, and the need to maintain consistency with its licensing rules for other professions licensed by the Medical Board.

The Board for Certification of Nutrition Specialists also submitted written comments seeking changes to the proposed rules to create licensure in Ohio for nutritionists. However, because there is no statutory authorization for licensure, nutritionists cannot obtain licensure in Ohio without a statutory change. Therefore, the Medical Board did not make the group’s suggested changes to the

proposed rules.

The Medical Board did make one change during early outreach. It decided to rescind OAC 4759-3-04, on cooperation and communication with professional organizations. This rule initially remained largely unchanged, except for substituting the Dietetics Advisory Council for the Ohio Board of Dietetics in part of the rule. The rule required the Medical Board to recognize the Ohio Academy of Nutrition and Dietetics and allow it to name an official liaison to the board. Further, the rule required the liaison to be permitted to participate in the discussions of the Dietetics Advisory Council.

Subsequent implementation of the statutorily created advisory councils for dietetics and respiratory care revealed that consistency within the operations of all Medical Board committees and advisory councils is necessary for the efficient functioning of the Medical Board's governing processes. The professional groups for licensees regulated by the Medical Board have not previously been designated as an official liaison in the Ohio Administrative Code, nor have these groups been given an official speaking role in Medical Board committees and councils. Accordingly, for consistency, fairness among licensee groups, and efficiency in the Medical Board's committee and advisory council meetings and processes, the proposed rules were changed to rescind rule 4759-3-04.

One comment was received during the CSI public comment period. The Ohio Academy of Nutrition and Dietetics opposed the rescission of rule 4759-3-04. It asserted that the rule is necessary to support the transition of dietitian licensure to the Medical Board.. It pointed out inconsistencies in the policies and procedures governing the Medical Board's existing committees, and noted that having a defined liaison from professional associations would improve efficiency and effectiveness when issues arise. As discussed above, the Board responded that giving preferential treatment to one licensee group only in the Administrative Code would be unfair to other professional groups.

The rules impact dietitians who are licensed in Ohio, and dietetics students or other individuals who will be seeking licensure in Ohio. Licensees must pay an initial two-year license fee of \$225. The two-year license renewal fee is \$180. Licensees must also complete seventy-five hours of continuing education within a five-year period. The Medical Board notes that time spent applying for licenses should be minimal, as the process is entirely electronic. Administrative licensure action may lead to discipline and in some cases fines. The Medical Board asserts that any adverse impact is justified because the rules ensure public safety by implementing uniform practices to ensure the competent and safe practice of dietetics.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the State Medical Board of Ohio should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.