

**MEMORANDUM**

TO: Tom Dilling, Ohio Board of Nursing

FROM: Paula Steele, Regulatory Policy Advocate

DATE: September 20, 2013

RE: **CSI Review – Five-Year Review** (OAC 4723-4-01; 4723-4-03 through 4723-4-09; 4723-6-01 through 4723-6-06; 4723-18-01 through 4723-18-10; and 4723-20-01 through 4723-20-07)

On behalf of Lt. Governor Mary Taylor, 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

The Ohio Board of Nursing's rule package consists of thirty-one proposed rules – five no-change and twenty-six amended rules – and is being reviewed under the five-year review requirement of ORC 119.032. The proposed rules address minimum acceptable standards, alternatives to discipline programs for nurses with substance abuse disorders or practice deficiencies, and rules for universal and standard precautions to prevent infection and disease for the various professions of registered nurses and licensed practical nurses. The draft rules were filed with the CSI Office on August 23, 2013 with a public comment period ending on September 17, 2013. During that period, one public comment was submitted.

According to the BIA, the Board conducted a comprehensive stakeholder outreach process that stimulated stakeholder comments and suggestions which primarily concerned definitions and did not appear to create or change any impacts to business. However, the public comment articulated concern that Chapter 4723-4 rules were more restrictive than the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Privacy Rules in regard to a nurse's access to patient

information which the rules limit for the purposes of “patient care” only. Nurse access to patient information for the purposes of billing and quality improvement are not explicitly expressed in the rules. However, upon CSI follow-up, the Board agreed it was appropriate to change the rule in order to clarify access to patient information and the scope for which a nurse can use the information.

The CSI Office followed up with the Board to address some additional questions and to request a revised BIA to address the rule revisions. Upon receipt of the revised rules and revised BIA, it was determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules justifies the adverse impact identified by the Board.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Board of Nursing should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.