



Ohio Board of Nursing

Mike DeWine, Governor
Jon Husted, Lt. Governor

Marlene Anielski, Executive Director

JCARR
77 S High Street
Columbus, Ohio 43215

November 16, 2023

Dear Committee Members:

RE: Rule 4723-27-11, Medication Aide Certification by Endorsement, pursuant to Section 4796, ORC, and Section 4723.651, ORC (effective 12/29/23)

On behalf of Director Marlene Anielski, thank you for the opportunity to present written information about proposed Rule 4723-27-11, OAC, which is proposed to implement Section 4796, ORC, and Section 4723.651, ORC (effective 12/29/23) which were enacted pursuant to SB 131 (134th General Assembly).

- Proposed Rule 4723-27-11, OAC, implements Section 4796, ORC, and Section 4723.651, ORC (effective 12/29/23) enacted pursuant to SB 131 (134th General Assembly) requiring almost all boards and agencies that offer certifications to create processes for certification by reciprocity.
- If proposed rule 4723-27-11, OAC, did not exist, the Board would still be required, pursuant to Section 4796, ORC, and Section 4723.651, ORC (effective 12/29/23), to issue MA-C certification by reciprocity to those who meet the requirements set forth in those Sections.
- All licensees and certificate holders who practice in Ohio are accountable to know and practice in compliance with Ohio Law and Rule governing their practice in Ohio. This includes all MA-Cs, regardless how they obtain their certification (whether by reciprocity or otherwise). Similarly, Nurses practicing in Ohio, who delegate tasks to MA-Cs, are accountable to practice consistent with Ohio law and rules.
- In addition, and significantly, MA-C administration of medication is limited by law and rule in terms of what medications may be administered, where it may be administered (specified facilities), and occurs through delegation to the MA-C by a

Registered Nurse (or a Licensed Practical Nurse at the direction of a Registered Nurse). The Registered Nurse's delegation is governed by Section 4723.67, ORC, "*Administration of medication by aides – delegation by nurse required*," and by detailed delegation standards set forth by the Board in Chapter 4723-13, OAC, *Delegation of Nursing Tasks*. All Registered Nurses practicing in Ohio are accountable to practice consistent with law and rules.

- Nursing delegation of nursing tasks (such as medication administration by an MA-C) is a topic already required to be included in nursing education curriculum. See Rule 4723-5-13(I)(2)(a), OAC.
- **PROCESS:** Comments by the witness and similar comments submitted by an employee were received in May 2023, in response to the Board's request for stakeholder feedback.
- The comments received were provided to Board's Advisory Group on Rules in advance of its May 25, 2023 meeting. The Board's Advisory Group on Rules, constituted by the Board, is comprised of 3 Board members, and 2 public members. All members of the Board's Advisory Group on Rules are themselves nurses.
- Having reviewed the proposed rule *and all stakeholder comments*, the Board's Advisory Group on Rules recommended that the Board proceed with adoption of the rule. At its July 2023 meeting, the Board proposed to adopt the rule. The rule was submitted to the Common Sense Initiative (CSI) on August 9, 2023.
- *All stakeholder comments received, including those submitted by the witness and her employee in May 2023, were submitted to CSI at that time for CSI's review and consideration.*
- On September 19, 2023, CSI recommended that the Board proceed with filing of the rules.

Thank you for your time and consideration,

Sincerely,



Anita A. DiPasquale, JD

Advisory Attorney

Education, Practice, & Licensure

OHIO BOARD OF NURSING

17 S. High Street, Suite 660

Columbus, Ohio 43215



Joint Committee on Agency Rule Review

Ohio Department of Higher Education

Nick Derksen, Director, Legislative & External Affairs

November 16, 2023

Good afternoon, Chairman Callender, Vice-Chair Gavarone, and members of the Joint Committee on Agency Rule Review. Thank you for the opportunity to allow the Ohio Department of Higher Education (ODHE) to present their process and explanation on the September 15th rules inventory filing in compliance with Senate Bill 9 (*134th General Assembly*).

On behalf of ODHE, I want to assure the committee that our agency is absolutely committed to achieving compliance with the process and requirements set forth under Senate Bill 9.

As submitted in our agency's September 15th report, our overall rule reduction was calculated at 6.59 percent, below the 10 percent requirement. In response to this information, ODHE promptly assembled and filed a package of rules near the end of September that we fully believe will allow us to exceed the 10 percent reduction threshold when final filed. In addition, ODHE prioritized and recently completed our internal rule review process and we have another comprehensive rule package under JCARR jurisdiction that we are preparing for submission. Once final filed by the end of the calendar year, we believe that ODHE will exceed the 20 percent reduction threshold, reaching ahead of schedule the requirement that is necessary to achieve by June 30, 2024.

Further, ODHE has developed a plan to reduce regulatory restrictions on a recurring, going forward basis. In the fall of each year, ODHE will prioritize a comprehensive review of our rules and ensure that we reach the required percentage in accordance with the important parameters of Senate Bill 9.

I would like to thank JCARR and legislative staff for their support over the past several weeks in assisting our agency in understanding the mechanics of how the regulatory reduction process is intended to work. It has been truly invaluable for our staff.



**Department of
Higher Education**

HigherEd.Ohio.Gov

Mike DeWine, Governor **Jon Husted**, Lt. Governor **Randy Gardner**, Chancellor

Again, thank you Chairman Callender, Vice-Chair Gavarone, and members of JCARR for this opportunity and I am happy to answer any questions you may have.



Ohio Department of Natural Resources

MIKE DeWINE, GOVERNOR

MARY MERTZ, DIRECTOR

**Joint Committee on Agency Rule Review
Testimony Regarding ODNR Compliance of Senate Bill 9 Regulatory Reduction
Requirements
Provided by ODNR Chief Legal Counsel Damian Sikora
November 16, 2023**

Good afternoon Executive Director Dollenmayer, Co-Chairs Callender and Gavarone, and members of the Joint Committee on Agency Rule Review. My name is Damian Sikora, and I am the Chief Legal Counsel for the Ohio Department of Natural Resources (ODNR). I appreciate the opportunity to be here today, and to provide comments to the Joint Committee regarding our agency's progress toward reducing regulatory restrictions in line with the requirements of Senate Bill 9 (S.B. 9) of the 134th General Assembly.

As you can see from our progress report submitted in September, ODNR's initial inventory of regulatory restrictions was 8,487. During FY '23, our various divisions worked diligently to eliminate 796 regulations, or 9.37%. While we did fall just shy of our 10% reduction goal during the fiscal year, we were able to eliminate an additional 167 regulations during the 120-day curative period set forth in the statute, bringing our total regulatory reductions thus far to **963**, or **11.34%**.

As you know, Ohio Revised Code 121.952 allows for state agencies who do not meet their reduction goal within the fiscal year or the curative period to show the Joint Committee cause as to why the agency's goal should be lessened. Because we were able to exceed our 10% reduction target within the curative period provided, ODNR does not need to ask for a decrease of our reduction goal at this time.

In addition to the progress mentioned above, our department is already hard at work to ensure we meet our 20% regulatory reduction goal by the end of the current fiscal year. We currently have 2 rule packages filed with JCARR which, if approved, would eliminate a combined 189 regulations. That would put the Department nearly 1/3 of the way

toward our FY' 24 reduction target. Moreover, the Department anticipates moving an additional 8-10 rule packages through the JCARR process prior to the end of this fiscal year, and we are confident that this will allow us to meet the regulatory reduction goal set forth by the General Assembly and the Joint Committee.

Executive Director Dollenmayer, Co-Chairs Callender and Gavarone, and members of the Joint Committee on Agency Rule Review, thank you again for affording me the opportunity to provide comments on this issue. The first year of this process has been a learning experience for all, and although ODNR fell just shy of the first deadline, I do hope it is clear to you that we take our statutory responsibilities under S.B. 9 very seriously. We will continue working diligently to reach our reduction goals and will be sure to keep the Joint Committee and its members apprised of our progress along the way. I would be happy to answer any questions you may have.



Good afternoon Chair Callender and members of the JCARR committee. My name is Joe Gruber, I am the Chief Legislative Officer from the Ohio Department of Rehabilitation and Correction. I am joined by my colleague, Meggan Moore, the Assistant Chief Counsel of ODRC. We are here to present the facts of ODRC's continuing efforts to reduce regulatory restrictions while still protecting public safety and the interests of our incarcerated and previously incarcerated populations.

As we previously reported, ODRC had a base inventory of 2644 regulatory restrictions in 217 total administrative rules. Importantly, only 16 rules impact Ohioans doing business with ODRC. The other 201 administrative rules impact prison and supervision operations throughout the state.

On September 15, 2023, ODRC reported that we reduced our total regulatory restrictions by 108, or about 4%. Since that date, we have continued to reduce our regulatory restrictions by taking the following action:

- On October 24, 2023, we filed changes to one rule, 5120-2-15, and rescinded one rule, 5120:2-1-01, resulting in the removal of 24 additional regulatory restrictions and increasing our total reduction to 4.9%.
- On October 30, 2023, we filed changes to six rules, 5120-2-03, 5120-2-03.1, 5120-2-03.2, 5120-2-04, 5120-2-05, and 5120-2-07, resulting in the removal of 73 additional regulatory restrictions and increasing our total reduction to 7.7%.
- On November 8, 2023, we filed changes to four rules, 5120-2-10, 5120-2-12, 5120-2-14, and 5120-2-17, resulting in the removal of 17 additional regulatory restrictions and increasing our total reduction to 8.4%.
- We have identified thirteen rules, 5120:1-10-04, 5120:1-10-05, 5120:1-12-01, 5120:1-12-03, 5120:1-12-04, 5120:1-12-05, 5120:1-12-07, 5120:1-12-09, 5120:1-12-10, 5120:1-12-12, 5120:1-12-16, 5120:1-12-17, and 5120:1-12-18, in which we will file changes to remove 125 regulatory restrictions by November 30, 2023. This will increase our total reduction to 13.1%.
- Additionally, we have identified approximately 81 more regulatory restrictions that can be removed from the following rules that are scheduled for Five Year Review (FYR) in January 2024: 5120:1-7-01, 5120:1-7-02, 5120:1-8-01, 5120:1-8-02, 5120:1-8-07, 5120:1-8-11, 5120:1-8-12, 5120:1-8-15, 5120:1-8-16, and 5120:1-8-17. This will increase our total reduction to 16.1%.

Thus, by the end of this month ODRC will meet the 2023 goal and by the end of January 2024 ODRC will be more than halfway to the goal for 2024. Moreover, we will continue to review and update our administrative rules in an effort to continue to reduce our inventory of regulatory restrictions to comply with the SB 9 guidance and meet the goals set for 2024 and 2025.

Thank you for your time this afternoon, we can field questions that you may have.



Ohio State Racing Commission

77 South High Street • 18th Floor
Columbus, OH 43215-6108
(614) 466-2757 / Fax (614) 466-1900
www.racingohio.net

Mike DeWine
Governor

Scott Borgemenke
Chairman

November 9, 2023

To: JCARR Committee

Re: SB9 Compliance

From: Christopher Dragone, Executive Director

Hello, my name is Christopher Dragone, I am the Executive Director of the Ohio State Racing Commission.

I am standing before you regarding our lack of compliance with SB9.

The Racing Commission currently has a staff of 5 office personnel. 4 of the staff, as well as myself, are relatively new. A failure to fully understand the process along with a personnel transition involving a hand-off in responsibilities factored in.

On June 23rd, the Commission original filed (1) rescinded chapter 1; (2) rescinded chapter 11 and (3) new chapter 1. The filing would have been effective on September 7, 2023. I fully believed we would be compliant at this point.

On August 10th after receiving some industry concern regarding the suggested changes, I put the rules in a "to be refiled" status, trying to allow for complete transparency and hopefully consensus. I falsely believed we had the time to review them further and we did not.

On October 5th the Commission refiled (1) rescinded chapter 1; (2) rescinded chapter 11; and (3) new chapter 1, with all industry participants in agreement.

On October 10th the Commission sent the chapter 13 rescission to CSI.

On October 12th the Commission sent to CSI the amended chapter 3 rules.

On October 25th the resolution to file these rules was approved by the Commission.



Ohio State Racing Commission

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On November 7th the commission "final filed" the rescissions of chapter 1 and 11, along with the new chapter 1. The effective dates for the new chapter 1 and rescission of chapters 1 and 11 are November 17, 2023.

On November 8th, The Commission received the recommendation from CSI to proceed with filing. The Commission immediately "original filed" the (1) rescission of chapter 13 rules, and (2) amended chapter 3 rules. January 26, 2024, will be the effective date of the chapter 13 rescission, and the amended chapter 3.

We have removed a total of 1,019 restrictions and 131 rules. This will put us over 10% and we will be compliant.

I understand that is late and it is my responsibility to keep the Racing Commission compliant. We are currently working on next year and anticipate removing over 295 restrictions as well as 43 rules, which will have us compliant for June 30, 2024.

Today I can only offer you my sincerest apology and the guarantee that this will not happen again. We understand that we need to be diligent with our timing and communication with not only our industry participants, but also our Commissioners and Members of the House and Senate.

Name: Sherri Gunasekera. Education: Licensed Nursing Home Administrator, MSN, MHA, RN, Board Certified in Gerontological Nursing. Legal Nurse Consultant. Over 35 years of LTC experience, started the first Medication Aide Certification program in Southwest Ohio in 2015. I train RNs across Ohio to start Medication Aide programs in their facilities and community colleges. I speak at conferences and on webinars to directors of LTC facilities about medication aides. Purpose: keep experienced nurses at the bedside, advance nurse aides and improve care by educating highly trained medication aides.

I oppose/**do not support** Chapter 4723-27-11 NEW certified medication aide certification by endorsement for individuals applying for certification under SB 131/Chapter 4796, ORC, and Section 4723.651, ORC (effective 12/29/23) due to resident, nurse, and facility safety concerns. Endorsement will allow individuals that have not passed an Ohio state test, are not knowledgeable on Ohio medication aide scope of practice or even on medications to become certified based solely on 'similar work experience' in states that do not issue licenses/certificates.

This endorsement **violates Constitutional rights and Federal Law 483.10 Residents Right section b: Exercise of rights as a resident of the facility and as a citizen or resident of the United States.** They have a right to a dignified existence and self-determination. The right to be free from chemical restraints. The right to informed consent. The right to participate in his or her treatment. The right to be informed, in advance, of the care to be furnished and the type of care given or professional that will furnish care. Untrained endorsed medication aides **will not safely administer medications.** They will not be able to tell the resident what the medication is for and why they are administering it. They will not know normal dosages, times due, what to consider before preparing medications, such as blood pressure or blood glucose.

OH SB 131 requires bills to pass **UNDER CERTAIN CIRCUMSTANCES.**

Business Impact:

Data or measurable outcomes:

Ohio Medication Aides are trained to safely administer medications and receive an equivalent amount of pharmacology as LPNs (MA-C 52 hours vs LPN 45 hours). A study of 11 facilities involving 301 residents (4,957 pills prepared) by LPNs, Medication Aides and untrained staff giving meds revealed the same rate of errors with LPN/Medication aides but a 95% higher rate with the untrained staff. Nursing Homes are limited to a less than 5% medication error rate.

The Ohio Assisted Living Association developed a group in 2022 to propose reduced hours of training and limitations in scope of practice for medication aides. Since then, the medication aide program can be delivered online with clinicals possibly in the employees own place of employment. Limitations are valid: no injectable insulin, no schedule 2 narcotics (they can give schedule 3, 4 and 5). Results: **more Ohio medication aides are available.** Many facility DONs

and Administrators are concerned about liability and not using them. I spoke at an OALA conference two weeks ago with around 200 representatives from Ohio facilities, only two facilities use medication aides the others had questions and serious concerns. **With passage of this rule, I have serious concerns as Licensed Nursing Home administrator and will no longer use medication aides.**

Alternate regulations to consider: Mandate OBN to require: #1: State testing for out of state medication aides to cover scope of practice #2: Mandatory CEU for nurses on Delegation to medication aides. #3: Consider the development of a national exam (such as the NCLEX for nurses) for medication aides.

Business Impact (Chapters 23, 26, 27): New paths to certification will have an adverse impact on business and **WILL NOT** reduce the regulatory impact LTC facilities will experience. #1: Facilities will experience increased medication errors and deaths. The ODH requires less than 5% medication error, this will cause increased citations. #2: Nurses will leave Long Term Care further decreasing the quality-of-care residents receive. #3: Medication Aide **programs will close in Ohio** due to no mandatory standards of education or training from out of state medication aides.

Simplified and easier to understand rules: Nurses do not understand Ohio medication aides scope of practice. When medication aides, from Iowa or Main for example, tell the nurse they give injectable insulin the nurse may inappropriately delegate the task putting them at risk for litigation.

Nurses are licensed by endorsement after passing an approved nursing program and a national licensure exam (NCLEX). They enter our state with the same standard of education. Medication aides from Kentucky, Nebraska, Maryland for example receive 40 or less hours of training and several do not require any training.

Recommendation: At the minimum, mandatory state testing. The development of a national medication aide certification exam needs to be researched. Please consider these comments and delay the endorsement of medication aides until nurses and LTC facilities receive more training on Ohio medication aides and endorsement of them from other states.

I appreciate your consideration.

Sherri Gunasekera
937-776-2344
Nursing Training Center, LLC