

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Speech-Language Pathology and Audiology_____

Regulation/Package Title: Five Year Rule Review-2012_____

Rule Number(s): 4753-8-01, 4753-8-03, 4753-8-05, 4753-9-01, 4753-10-01, 4753-10-02, 4753-10-04, 4753-10-05, 4753-10-06

Date: October 2, 2012

Rule Type:

New

Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

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1. Please briefly describe the draft regulation in plain language.

Nine rules are being submitted to the Common Sense Initiative Office as one package. These rules are scheduled for five year rule review. The Board proposes to file these rules with JCARR as “no-change” rules. The rules pertain to hearing aid sales and advertisement, hearing aid test procedures, code of ethics, and student permit requirements. A brief description of each rule under this package follows.

4753-8-01 – Hearing Aid Sales and Advertising – Definitions

This rule delineates the terms for hearing aid sales and advertising.

4753-8-03 – Rules on appropriate hearing aid test procedures

This rule specifies the appropriate hearing aid test procedures an audiologist is responsible for completing before recommending, fitting, or dispensing of a hearing aid to a patient.

4753-8-04 – Fraud or misrepresentation; hearing aid, assistive listening device; disciplinary action

This rule specifies what constitutes fraudulent or misrepresentation before, during or after the sale of a hearing aide or assistive listening device.

4753-9-01 – Code of Ethics

This rule specifies the ethical standards, principles, and code of conduct governing the practice of speech-language pathology and audiology.

4753-10-01 – Educational requirements for student permit

This rule specifies the educational requirements to be eligible for a student permit.

4753-10-02 – Ohio speech-language pathology graduate program requirements

This rule specifies the program requirements for an individual to be eligible for a student permit.

4753-10-04 – Application for speech-language pathology student permit

This rule specifies the application requirements for a speech-language pathology student permit.

4753-10-05 – Speech-language pathology student permit holder case load

This rule specifies the maximum case load for a speech-language pathology student permit.

4753-10-06 – Identification of speech-language pathology student permit holder

This rule specifies the requirements governing the identification, display of credentials, and signature on documentation by a speech-language pathology student permit.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code sections 4753.05, 4753.07, 4753.08, and 4753.11 constitute the basis for the Board's statutory authority to adopt and/or amend these rules.

3. 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.

These are no-change rules being submitted as part of the Board's five-year rule review process. Accordingly, these rules do not implement a federal requirement or being amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

This question is non-applicable since these rules do not implement a federal requirement.

5. 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 public purpose for the above-referenced rules under Ohio Administrative Code (OAC) Chapter 4753-8 is to ensure that there are appropriate and reasonable regulations governing the advertising, sale, dispensing, and testing for hearing aids offered to consumers by licensed audiologists. The public purpose for OAC 4753-9-01 is to ensure all individuals licensed under Chapter 4753 adhere to the highest ethical standards in the delivery of professional services to consumers. The public purpose for the above-referenced rules under OAC Chapter 4753-10 is to ensure individuals who apply for the speech-language pathology student permit are qualified and receive appropriate supervision when providing professional services to the consumer. All of these rules fulfill the Board's mission, which is to regulate the practice of speech-language pathology and audiology by establishing, promoting, and enforcing practice standards and professional competency among licensees pursuant to Chapter 4753 of the Ohio Revised Code and Ohio Administrative Code.

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

The Board's measurement of success of these rules will be through its education and enforcement programs. For example, the rules are written in plain language and easy to understand. The Board has not received any complaints or concerns from stakeholders, licensees, or the public about these rules. The Board believes that the outcome of clearly written rules and regulations is compliance, which ultimately protects consumers. The Board will also measure the success of these regulations by the number of complaints received and disciplinary action taken against licensees for violation of the rules. A successful outcome would be to continue seeing compliance of the regulations. The Board facilitates these successful outcomes by distributing an eNewsletter that contains information about the rules and regulations. The Board's outcomes are also assessed annually during its strategic planning meeting. During the past two strategic planning meetings (2011 & 2012), there were no significant concerns identified related to the rules that are subject to this five year review.

Development of the Regulation

7. 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.

Stakeholders include the Ohio Speech and Hearing Governmental Affairs Coalition (GAC). GAC was founded in 1982 and is a coalition of speech and hearing professionals in Ohio. GAC consists of four member organizations, whose total membership represents nearly 50% of the total number of licensees regulated by the Board. Each year, the Board's Executive Director informs GAC of the rules that are up for five year review, and invites their input. In addition, the Board considers all licensees as individual stakeholders. In the fall 2012 eNewsletter, the Board will inform licensees about the rules that are subject to five year review and direct them to the link to submit comments.

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

At least annually, the Board's Executive Director meets with GAC to review issues of mutual interest. One of the topics covered during this meeting is proposed rules the Board is considering, which includes the rules subject to 5-year review for the upcoming year. GAC was given an opportunity to provide input regarding these rules. In addition, the Board has not received any complaints or concerns from stakeholders or interested parties about these rules.

9. 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?

Since these rules are being submitted as no-change, for five-year review, the Board maintains that scientific data to support the applicable regulations is not applicable.

10. 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?

The rules included in this package for 5-year review were modeled after other regulatory boards nationally, and include provisions that are considered to be a national standard. For example, the American Speech-Language-Hearing Association (ASHA) and the American Academy of Audiology (AAA) are national associations which establish guidelines for hearing aid advertisement, hearing test procedures, ethical standards in practice, and supervision. The National Council for State Boards of Examiners for Speech-Language Pathology and Audiology (NCSB) is another national association, whose members consist solely of regulatory boards. The Ohio Board of Speech-Language Pathology and Audiology is a charter member of NCSB. The Board utilized data from NCSB's position statements and model legislation as well.

11. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The Board did not specifically consider a performance-based regulation for these rules that are subject to five-year review since the rules are being submitted as no-change. The Board concedes that these rules are not performance-based because the rules dictate the process the regulated stakeholder must use to achieve compliance. For example, under the rules for hearing aid advertisement, hearing aid sales, and hearing aid testing procedures, the rules specify what licensees must follow to achieve compliance. Under the rules for ethics, the provisions define what must be done to be in compliance with the ethical standards. And finally, under the rules

for the student permit, the provisions define the required outcome, which determines how one is eligible for a permit, and the supervision requirements. The Board believes these regulations are inherently part of fulfilling its mission and do not create a negative impact on business.

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

As part of its five year review, the Board considered whether these rules are necessary or obsolete. These rules were assigned to the Board's Rules Committee. The committee determined that these rules did not duplicate an existing Ohio regulation and should be submitted as no-change. While there may be similar Ohio regulations for hearing aid sales under the Ohio Consumer Sales Practice Act and regulations under the Board of Hearing Aid Dealers and Fitters Licensure Board, the Board does not have jurisdiction to investigate or enforce those provisions. The rules under this package pertain to the practice of speech-language pathology and audiology which the Board has the sole authority to enforce.

13. 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.

The Board's plan for implementation will be to continue utilizing its education, licensure, and enforcement programs to ensure the regulations are applied consistently. For example, the Board has a full-time investigator to investigate complaints involving alleged violations of the hearing aid provisions under OAC Chapter 4753-8 or violations of the Code of Ethics, under OAC Chapter 4753-9. The Board's licensure program will continue to process and evaluate permit applications to ensure that individuals meet the permit requirements. The Board maintains a listserv which interested parties may join to receive updates about regulations. In order to implement these regulations, the Board will notify licensees via the Board's eNewsletters and on the Board's website. The Board distributes an eNewsletter 3 to 4 times per year. In addition, all staff will receive orientation about these regulations in order to respond to inquiries via telephone and e-mail. The Board will also update stakeholder groups and provide information for inclusion in their newsletters. These communication efforts will ensure that all licensees receive information about these requirements.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**

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As of October 1, 2012, there were 994 licensed audiologists, 6,681 licensed speech-language pathologists and 42 speech-language pathology permit holders. Speech-language pathology permit holders practice in a school setting. Audiologists and speech-language pathologists practice in a wide-ranging group of work settings, from schools, hospitals, rehabilitation centers, private practice, skilled nursing facilities, community-based clinics, to name just a few.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The adverse impact to business that applies to all of the rules under the five-year review package is the time to comply, which essentially involves educating and training of licensees and permit holders. However, other adverse impacts result, which are unique to the rules. For example, in OAC 4753-8-05, the rule defines fraud or misrepresentation and allows for disciplinary action if the licensee has engaged in deceptive practices. The disciplinary action may include reprimand, probation, suspension, revocation, or refusal to issue or renew the license if the licensee engages in a deceptive trade practice. Also, in OAC 4753-9-01, *Code of Ethics*, the rule requires a certain level of record keeping and subjects the licensee to disciplinary action for non-compliance, and in OAC 4753-10-04, *Application for speech-language pathology student permit*, requires an application, passport photo and a \$50 nonrefundable fee.

c. Quantify the expected adverse impact from the regulation.

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.

The most significant adverse impact will relate to the cost and time for compliance. However, the Board believes that the adverse impact these rules would have on the regulated professions and affected business community would be difficult to quantify because of the nature of the regulations. The exception would be OAC 4753-10-04 with regard to the nonrefundable application fee for student permits. The Board processes approximately 35 student permit applications each year; however, this number will decrease significantly after 2013 because the program that sponsors students applying for permits will be phased out.

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

The Board determined that the regulatory intent justifies the adverse impact to the regulated business community because the no-change rules ensure that consumers are protected. Most of

the impact to the business community relates to the time necessary to train and educate licensees about the requirements. Education and training is an investment and ultimately saves time and money to businesses in the long run because the licensees who are providing services, under the rules subject to this business impact analysis, are practicing in compliance with the rules. Therefore, these licensees are not subject to disciplinary action for non-compliance, and may continue to provide services the regulated business community provides to consumers.

Regulatory Flexibility

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

The proposed no-change rules do not provide for any exemptions or alternative means of compliance for small businesses.

17. 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 five-year rules for OAC Chapters 4753-8 and 4753-9 will not impact Ohio Revised Code section 119.14 since any alleged violations of these provisions are more serious and do not typically involve paperwork violations. However, the Board's Investigative Review Group always considers the special circumstances presented by first-time offenders. In regards to OAC Chapter 4753-10, the Board's Investigative Review Group considers waiver of penalties for paperwork violations and first-time offenders on a case-by-case basis.

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

The Board's laws and rules governing the practice of speech-language pathology and audiology (Ohio Revised Code and Administrative Code Chapters 4753) are available on our website. In addition, the Board provides updates regarding its laws and rules via the eNewsletter.