MEMORANDUM

TO: Jeffrey M. Rosa, Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

FROM: Meredith Rockwell, Regulatory Policy Advocate

DATE: January 28, 2013

RE: **CSI Review – 2013 Physical Therapists Changes (OAC 4755-27-01; 4755-29-01)**

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

This rule package consists of two amended proposed rules. The first rule requires any person practicing physical therapy to be licensed by the Board. The proposed amendment to the rule clarifies that individuals must be licensed in Ohio if they are providing physical therapy via telehealth to a patient who is physically located in Ohio. The second rule establishes referral requirements that a licensed physical therapist must follow prior to evaluating and treating a patient. The rule also outlines exceptions to the referral requirements. The amendment to this rule clarifies that a physician notification is not required if the physical therapist is seeing the patient under direct access for fitness, wellness, or prevention purposes.

The Board received supportive comments during the early stakeholder outreach. The only suggested change received by the Board could not be addressed via rule, as the requirement was

statutory. The CSI Office received two comments during the comment period – one asked a clarifying question and the other offered support for the amendments.

The CSI Office had concerns about the telehealth amendment, because it initially appeared that the amendment was expanding the licensure requirement to out-of-state practitioners offering telehealth services in Ohio. In a conversation with the Board staff the CSI Office learned that these out-of-state practitioners were already required to obtain licensure in Ohio, and the amendment was drafted simply to notify out-of-state practitioners of the requirement. Prior to the amendment, the only way out-of-state practitioners would be aware of the requirement was if they contacted the Board directly or reviewed the "Frequently Asked Questions" on the Board website. For the purpose of educating the practitioners of the telehealth requirement, the Board will continue to offer guidance via direct contact and the Board website.

The Board failed to accurately identify the adverse impact in the BIA, but elaborated in a follow-up conversation with this office. The rules require licensure and referral practices. This is clearly an adverse impact, and the Board staff agrees. The primary reason this was left out of the BIA, according to the Board staff, was that the requirements were mandated by statute, and the rule merely reiterated those requirements. While the CSI Office agrees that the requirements are statutory, the office explained that in future BIAs with a similar adverse impact, the Board should identify the adverse impact (licensure requirement, in this case) and then state that the statute is the *justification* for that impact.

Recommendations

For the reasons explained above this office does not have any recommendations regarding this rule package.

Conclusion

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

cc: Mark Hamlin, Lt. Governor's Office