

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Occupational Therapy Physical Therapy, & Athletic Trainers Board

Regulation/Package Title: 2013 PT Changes

Rule Number(s): 4755-27-01; 4755-29-01

Date: October 15, 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☐ Rescinded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

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

Please include the key provisions of the regulation as well as any proposed amendments.

4755-27-01 – Physical therapy practice defined

This rule states that only individuals licensed by the Board can imply or claim to practice physical therapy. The rule also outlines the terms and initials that are protected under the

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Ohio Physical Therapy Practice Act. The rule also lists various definitions used in the Board's administrative rules. The proposed amendment to this rule add language defining "telehealth" and clarifies that if a physical therapist or physical therapist assistant is providing physical therapy via telehealth to a patient physically located in Ohio, the individual must hold an Ohio license.

4755-29-01 – Referrals

This rule establishes the referral requirements that a licensed physical therapist must follow prior to evaluating and treating a patient. The rule also outlines the exceptions to the referral requirements, commonly referred to as "direct access", outlined in the Ohio Physical Therapy Practice Act. The proposed amendment to the rule clarifies that the physician notification requirement outlined in section 4755.481 of the Revised Code do not apply if the physical therapist is seeing the patient under direct access for fitness, wellness, or prevention purposes.

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

ORC 4755.411

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.

The answer is no to both questions for the rules in this package.

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

Not applicable to the rules in this package.

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 mission of the Board is to ensure that consumers of physical therapy services receive safe, competent, and adequate services. With the advent of remote practice via telehealth, the Board has receives multiple questions from licensees asking for clarification on this emerging area of practice. As a result, the Board feels that it is appropriate to require that an individual providing physical therapy services to an individual physically located in Ohio needs to hold a current, valid Ohio license.

For the referral rule, many licensees notified the Board that the physician notification requirements for fitness and wellness was negatively impacting their ability to freely practice in this area of physical therapy. The Board felt that the potential negative impact on the consumer of physical therapy in these settings did not warrant the notification requirement.

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

Success will be measured by having the rules written in plain language for clarity and by licensees understanding the licensure and referral requirements for physical therapy practice in Ohio.

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.

The Board emailed stakeholders on August 28, 2012. Stakeholders were informed that comments were due to the Board by September 5. Stakeholders included licensees who are on the Board's listserv.

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

The Board received many, mostly supportive, emails regarding the proposed changes. Many licensees felt that the referral change would be a time and financial benefit to both the patient and the physical therapist. There were some that asked why the Board's rules do not allow for a physical therapist to accept a referral from a physician assistant. Those individuals were notified that Chapter 4755. of the Revised Code did not include physician assistants, therefore, the Board couldn't add them to the list via administrative 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?

This question does not apply to these proposed changes.

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 Board did not consider alternative regulations.

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.*

This question does not apply to these rules.

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

This question does not apply to these rules.

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.

This question does not really apply to these rules.

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;

Licensed physical therapists and physical therapist assistants.

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

There is no clear adverse impact to business from the proposed regulations.

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.

This question does not apply since there is no clear adverse impact to business from the proposed regulation.

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

Since the Board's mission is public protection, the Board proposed these regulations to ensure that consumers are receiving safe, adequate, and competent physical therapy services from Ohio licensed individuals.

Regulatory Flexibility

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

No. All rules in this package either govern requirements where there is only one way to comply or the public protection mission of the Board can only be met via the path specified in the rule.

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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?

This question does not apply to these rules.

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

The Board and its staff are dedicated to working with members of the regulated community and the public to ensure that the consumers of occupational therapy services in Ohio receive safe and effective services from the Board's licensees. As a result, the following resources are available:

Board's mailing address:

77 S. High Street, 16th Floor
Columbus, Ohio 43215-6108

Board's phone number: 614-466-3774

Board's fax number: 614-995-0816

Board's website: <http://otptat.ohio.gov>

Board's email: board@otptat.ohio.gov

To Join a Board listserv: <http://otptat.ohio.gov/consumers/boardlistservs.aspx>

Board's Facebook: <https://www.facebook.com/OhioOTPTATBoard>

Board's Twitter: <http://twitter.com/OhioOTPTATBd>