

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: 2014 OT Licensure Changes

Rule Number(s): 4755-3-09, 4755-3-11, 4755-5-11, 4755-7-10

Date: September 26, 2013

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☐ Rescinded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.

4755-3-09 – Active Practice Defined

Various rules in Chapter 4755-3 of the Administrative Code establish additional application requirements for applicants who have not engaged in the practice of occupational therapy for

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more than five year. This rule defines what is considered as part of the practice of occupational therapy and specifies that not being engaged in the practice means practicing occupational therapy for fewer than 250 hours of the five year period prior to the date the applicant submits the application.

4755-3-11 – Temporary license for military spouse

This new rule establishes a temporary license for an individual whose spouse is on active military duty in this state. The rule establishes various criteria that the applicant must document to be eligible for the temporary license.

4755-5-11 – Fee for continuing education review

This rule establishes a \$25 fee for review and approval of a continuing education activity.

4755-7-10 – Required credential to indicate licensure or student status

This rule specifies the appropriate credentials for licensees and students to use to indicate licensure and/or student status.

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

ORC 4743.04 for 4755-3-11 and ORC 4755.06 for the other three rules in the package.

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 occupational therapy services receive safe, competent, and adequate services from licensed practitioners. When an individual has been out of practice for a significant period of time, the Board needs a mechanism to ensure that the individual can safely practice at current entry-level standards. It is also important that applicants clearly understand the criteria the Board uses when determining if someone will require the additional application requirements if they are determined to be out of practice for more than five years.

The rule establishing the temporary license will help ensure that the spouse of a member of the armed services that gets stationed in Ohio can quickly start practicing occupational therapy in Ohio while they complete the standard application process.

The General Assembly determined that all licensees must complete continuing education as part of the license renewal process. To ensure that individuals are completing quality activities, the Board established guidelines governing acceptable continuing education. This rule will allow for a fee to cover the costs associated with Board review of continuing education activities.

To ensure that consumers understand the licensure level of those providing services, the Board requires licensees to appropriately indicate their licensure status. This rule specifies the appropriate credentials that individuals must use.

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 applicants understanding that they will have additional requirements prior to submitting a reinstatement application. For military spouses, success will be measured by the timeframes in which the temporary license is issued. For continuing education review, success will be measured by a reduction in the number of activities that are automatically acceptable that are still sent to the Board for additional approval. For the use of credentials, success will be licensees using the appropriate designations to indicate licensure or student status.

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 16, 2013. A message seeking comment was also posted to the Board's Facebook and Twitter pages. Stakeholders were informed that comments were due to the Board by September 6. Stakeholders included licensees who are on the Board's listserv and individuals who follow the Board's Facebook and Twitter pages.

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

The Board only received comments regarding establishing a fee for review of continuing education (4755-5-11). The majority of the comments expressed concerns about implementing this new fee. Since there are other mechanisms that govern approval of

activities that do not require Board review, the Board felt that going forward with the rule was appropriate.

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?

For rule 4755-3-09, the Board held extensive discussion on what is the least amount of practice that must occur for the Board to have a comfort level that the applicant is still able to practice at current entry-level competence. The Board identified 250 hours in the five year period by using an example of a PRN therapist that might only work for a half day per month during the five year period (4 hours x 13 weeks x 5 years = 260).

The requirements for the temporary licensure were based on information required for other state's that issue temporary licenses for military spouses.

For the continuing education review fee, the Board looked at approval fees charged by other entities. For example, the Ohio Physical Therapy Association charges \$40 for an individual approval and between \$100 and \$225 for a sponsor approval. The Athletic Trainers Section of the Board currently charges \$25 per activity. The Occupational Therapy Section opted to match the \$25 fee that is currently charged for Board review of an athletic training continuing education activity.

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?

For the active practice requirement, the Board considered other amounts of practice required, but did not identify as appropriate any alternative regulations since the Board must ensure that an out of practice applicant is able to practice at current entry-level standards.

In addition, the Board must be sure that a military spouse meets certain minimum requirements to safely practice with the temporary license.

For the continuing education review fee, the Board's current regulations establish mechanisms for continuing education activities to be acceptable without going through formal board review. Under the current rule, any activity that is directly related to the clinical practice, management, or education of occupational therapy is automatically acceptable and does not need to be reviewed by the Board. In addition, any activity that is offered or approved by AOTA, OOTA, the Board, NBCOT, or an AOTA Approved Provider is automatically acceptable and does not need to be reviewed by the Board. The fee for review would only apply to activities that either did not clearly meet that standard or by a sponsor that still wants to have an approval number from the Board.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

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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.

For the out of practice requirement, the Board will post information on the website that outlines when an applicant is considered to be out of practice. We have also developed guidance documents that outline the potential additional requirements that must be completed by the applicant prior to the issuance of the license.

For military spouses, the Board will post the application on the website, which will list the various documents that must be received prior to the issuance of the temporary license.

The continuing education review fee will be posted on the Board's website. In addition, the instructions for the approval application will be updated to reflect the fee.

Whenever the Board interacts with licensees, we notify them of the appropriate way to use their credentials to ensure compliance with the 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;

Occupational therapy licensure applicants who have not engaged in the active practice of occupational therapy; other applicants for licensure as an occupational therapist or occupational therapy assistant; individuals/sponsors submitting requests for approval of continuing education activities; licensed occupational therapists and occupational therapy assistants.

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

Applicants who have not engaged in active practice must complete an AOTA developed continuing education activity that covers the current occupational therapy practice framework. The applicant will also be required to complete a period of supervised clinical practice pursuant to a limited license agreement. Under this

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agreement, a licensed OT/OTA must provide clinical supervision and submit an evaluation to the Board demonstrating whether the limited licensee is able to practice at current entry-level standards. Since these individuals hold a valid (but limited) license, they are able to fully practice and have their services receive reimbursement from third party payers.

For the military spouse, there will be the \$100 application fee. In addition, the required proof of marriage, licensure, and active duty station could take some time and have some cost to obtain.

For the entity submitting an activity for continuing education approval, there will be the \$25 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.

An applicant that must enter into the limited license agreement must complete the online AOTA continuing education course titled *Occupational Therapy in Action: Using the Lens of the Occupational Therapy Practice Framework: Domain and Process, 2nd Edition*. The cost of this activity is \$180 for members of AOTA and \$255 for non-members. These individuals must also either retake and pass the NBCOT certification exam or complete 320 hours of supervised clinical practice within 6 months. At least 8 hours of supervision per week must be direct.

The fee for the continuing education review is \$25 per activity.

For the military spouse, there will be the \$100 application fee. In addition, the required proof of marriage, licensure, and active duty station could take some time and have some cost to obtain. The application fee will be applied to the full license application, provided that the full license is issued before the expiration of the temporary license (6 months).

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

The mission of the Board is to ensure that the consumers of occupational therapy services receive competent services from the Board’s licensees. For individuals who have been out of practice, the Board needs a mechanism to determine that the individual is able to safely practice at current entry-level standards.

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Regarding the temporary license provisions, ensuring that a military spouse has met the minimal requirements to safely practice pending receipt of a full license also justified the adverse impact.

The nominal \$25 continuing education approval fee will help defray the cost incurred by the Board in the review and approval of continuing education activities.

Regulatory Flexibility

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

If an applicant can demonstrate to the Board that they were engaged in activities that were related to occupational therapy, the Board could waive the additional licensure requirements.

For continuing education review, as noted above, there are alternatives to having the Board review and approve the activity.

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 did not apply to the rules in this package.

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>

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