

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-2014_____

Rule Number(s): 4753-1-04, 4753-3-01, 4753-3-08, 4753-8-04_____

Date: August 22, 2014_____

Rule Type:

New

Amended

X 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Rescinded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.

Four administrative rules are being submitted to the Common Sense Initiative Office as one package. These rules are scheduled for five year rule review in 2014. The Board proposes to file these rules with JCARR as “no-change” rules. The rules pertain to personal information systems (4753-1-04), application for license (4753-3-01), denial, suspension or revocation of

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license (4753-3-08), and sales receipts for hearing aids (4753-8-04). A brief description of each rule under this package follows:

4753-1-04 – Personal Information Systems – this rule was initially adopted on 5/5/86 and reviewed numerous times, most recently in 2009. The rule specifies the manner in which the Board should maintain licensure information in its systems.

4753-3-01 – Application for License – this rule was initially adopted on 4/22/76 and reviewed numerous times, most recently in 2009. The rule specifies the requirements for submitting an application for license.

4753-3-08 – Denial, Suspension, or Revocation of License – this rule was initially adopted on 4/22/76 and reviewed numerous times, most recently in 2009. The rule specifies the grounds under which the Board may pursue disciplinary action and impose sanctions for violations of Ohio Revised and Administrative Code Chapters 4753.

4753-8-04 – Sales Receipt – this rule was initially adopted on 11/16/92 and reviewed numerous times, most recently in 2009. The rule requires an audiologist to furnish each person supplied with a hearing aid receipt, along with verbiage allowing for a thirty day right to return, etc.

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 Board's statutory authority to adopt 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 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 not applicable since these rules do not implement a federal requirement.

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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 these rules is listed below:

4753-1-04 – Personal Information Systems –this rule ensures that the Board appropriately maintains personal information.

4753-3-01 – Application for License – this rule ensures that the Board can adequately determine whether an individual is qualified and eligible for licensure.

4753-3-08 – Denial, Suspension, or Revocation of License – this rule ensures that the Board can take disciplinary action for violations of the Ohio Revised and Administrative Code Chapters 4753, and impose appropriate sanctions.

4753-8-04 – Sales Receipt – this rule ensures that consumers are adequately protected during hearing aid transactions.

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. 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 (2014 & 2013), 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.

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GAC consists of four member organizations, whose total membership represents over 50% of the total number of licensees regulated by the Board. We also informed all licensees about the proposed rules and invited public comment. Since January 2014, the rules have been posted to the Board's website for public comment and featured in the Board's eNewsletter, which is distributed to all licensees, and over 3,000 individuals and entities who signed up to review our communications.

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 no opposition for stakeholder groups or licensees regarding 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 related to the practice of speech-language pathology and audiology. 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 utilizes 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

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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 rule for application of license (4753-3-01), specific documents, procedures, and requirements must be submitted to be eligible for licensure. Rule 4753-3-08 details specific violations that would subject a licensee to disciplinary action by the Board. Rule 4753-8-04 includes specific requirements licensed audiologists must meet when dispensing hearing aids to a consumer to ensure adequate consumer protection. Finally, rule 4753-1-04 requires the Board to adequately maintain personal information. This rule does not require any action of the licensee.

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 sales receipts for hearing aids 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 Chapter 4753. The Board's licensure program will continue to process and evaluate licensure applications to ensure that individuals meet the 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.

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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;

As of June 24, 2014, there were 995 licensed audiologists and 6,829 licensed speech-language pathologists, 317 conditional speech-language pathologists, and 76 aides. Licensees practice in a wide-range of work settings, such as 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

4753-1-04 – Personal Information Systems: there is no adverse impact since no requirements are imposed on licensees; as previously stated, this rule requires the Board to adequately maintain personal information.

4753-3-01 – Application for License – this rule would have an adverse impact in terms of time to complete the application requirements, and costs associated with the application fee.

4753-3-08 – Denial, Suspension, or Revocation of License – this rule would have an adverse impact to licensees who are disciplined by the Board for violations of Chapter 4753. This rule could potentially impact a business that employs a licensee who is disciplined by the Board. The individual may have their license suspended or revoked. In this situation, the business would have to find another licensee.

4753-8-04 – Sales Receipt – this rule would have an adverse impact on businesses in terms of time and costs associated with complying with the requirements. Specifically, the sales receipt must contain specific verbiage in accordance with the rule, informing consumers of certain rights as a result of the hearing aid sales transaction.

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 Board believes that these no-change rules would have minimal adverse impact on the regulated professions and affected business community. The most significant impact these rules have relates to the time that must be spent to ensure compliance.

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 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.

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.