

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Public Safety (DPS) – Division of Emergency Medical Services (EMS)

Regulation/Package Title: Certificate to Teach or Practice; Continuing Education and Ethical Standards of Conduct

Rule Number(s): OAC Rules 4765-8-01 through 4765-8-07; 4765-8-15 through 4765-8-19; and 4765-9-01 through 4765-9-02

Date: September 10, 2015

Rule Type:

☐ New

☒ Amended

☒ No Change

☒ 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☐ Rescinded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.

Proposed as No Change

Chapter 4765-8 of the Administrative Code (OAC) includes twelve rules that provide the qualifications and process required to obtain and maintain a certificate to practice as an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic, including how to renew and reinstate a certificate to practice and

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obtain a certificate to practice by reciprocity, and required examinations and fees. The rules include instructions to notify the Ohio State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) of changes to personal information, such as legal name and contact information and explain the process to request voluntary surrender of a certificate to practice.

The continuing education (CE) requirements to maintain a certification to practice as an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic are described throughout OAC 4765-8 and are related to CE requirements established by the National Registry of Emergency Medical Technicians (NREMT). Because the NREMT will launch its National Continued Competency Program (NCCP), a new recertification model, in September 2015, OAC Chapter 4765-8 rules are being filed as No Change rules and will be reopened in early 2016 so that revisions can be made that will incorporate the provisions of the NCCP.

Proposed to be Amended

The two rules included in OAC 4765-9 describe the professional standards of conduct required of individuals issued a certificate to practice as an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic or a certificate to teach through an EMS accredited institution or an EMS approved institution. The rules address exhibiting respect for the medical needs and personal values of patients and others encountered in the line of duty and maintaining confidentiality, and they prohibit discrimination. The rules address operating within the appropriate scope of practice and maintaining and demonstrating the appropriate level of knowledge and competency. The rules require certificate holders to cooperate with the Ohio State Board of EMFTS and to provide required information related to courses, continuing education records, changes in licensure and certification status, and criminal sentencing and address the use and acquisition of chemical and controlled substances. The rules require compliance with RC Chapter 4765. and OAC 4765 rules and requires holders of a certificate to teach to report any suspicion or knowledge of a violation.

Revisions to OAC 4765-9 have been made to update the language referring to discrimination, to clearly identify the rules within OAC 4765 related to emergency medicine and exclude the rules related to fire service, and to make the provisions less vague based on cases investigated while these rules have been in effect.

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

R.C. sections 4765.11, 4765.29, and 4765.30. [+ AMPLIFIES 4765.28 and 4765.23]

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?

Yes.

If yes, please briefly explain the source and substance of the federal requirement.

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Two Federal Emergency Management Agency (FEMA) courses are described in 4765-8-01 (a) and (b)—National Incident Management System Course IS-700.a and Incident Command System Course IS-100.b. Completion of the two courses is mandated by the U.S. Department of Homeland Security for all personnel directly involved in emergency management and response, including EMS personnel and approved by the Ohio State Board of EMFTS as being necessary for initial training.

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

Not applicable.

- 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)?**

Pursuant to R.C. section 4765.11, the Ohio State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) is directed to adopt rules that establish the qualifications, standards of performance, and procedures under which the Board may issue, renew, suspend, or revoke certificates to practice as an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic or certificates to teach as an EMS Instructor.

In addition, R.C. 4765.11 directs the Ohio State Board of EMFTS to adopt rules that establish the standards and procedures under which the Board may issue, renew, suspend, or revoke certificates of accreditation and certificates of approval to operate EMS training and continuing education training programs and set forth the conditions under which accredited and approved institutions may operate, including the curricula, number of hours of instruction and training, and instructional materials to be used.

Consistent, statewide EMS training helps to ensure well-trained EMS providers, efficient and effective delivery of pre-hospital patient care, improved response in emergencies, and increases safety while delivering services. In addition, the proposed regulations protect Ohio paramedic students by ensuring the students' education and eligibility for certification, through national standard testing, are not jeopardized.

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

The Division of EMS tracks and publishes the *Monthly Active Certification Report* at its Web site (http://ems.ohio.gov/ems_certification.stm) that includes year-to-date and total active certifications of emergency medicine practitioners and reports the information to the Ohio

State Board of EMFTS at its meetings. The Division of EMS conducts audits monthly of randomly selected certificate holders to verify that continuing education requirements have been met.

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.

Chapter 9

At its March 18, 2015 meeting, the Education Committee of the EMFTS Board received a copy of OAC 4765-9-02, *Professional standards of conduct for holders of certificate to teach*. Education Committee members reviewed OAC 4765-9-02 as part of the five-year rule review process and as stakeholders in the Common Sense Initiative (CSI) process. One comment was received on March 24, 2015. Department of EMS staff and ODPS legal staff reviewed the comment, and a response was emailed on August 6, 2015, along with a copy OAC 4765-9-02 with revisions made after the March 24, 2015 comment.

Chapter 8 and 9

On July 24, 2015, the EMS ListServ issued an email message to approximately 2,042 EMS general addresses and 539 EMS-Instructor addresses providing information about Chapters 4765-8 and 4765-9 being scheduled for review and providing an email address to comment on the rules.

Rules Scheduled for Review

Pursuant to section 119.032 of the Ohio Revised Code, the Division of Emergency Medical Services (EMS) is required to review each of its administrative rules every five years and decide if a rule should be rescinded, amended, or continued without change. During this process, EMS will determine if:

- *EMS has the statutory authority to promulgate the rule;*
- *The rule duplicates or conflicts with statutes found in the Revised Code or other rules found in the Administrative Code;*
- *The rule has a specific purpose and an outcome that can be articulated;*
- *The rule can be applied consistently across all sizes and sectors of business and would not impede economic development;*
- *The rule is easy to understand;*
- *The rule is reasonably balanced between regulatory need and Ohioans' burden to comply; and*
- *The outlined process in the rule is the most efficient and cost-effective method to achieving the specific outcome.*

Fourteen rules are being reviewed by the Division of EMS at this time and are listed at the following location: http://www.publicsafety.ohio.gov/ems_rules_review.stm

The two chapters under review are:

- *Chapter 4765-8 - Certificate to Teach or Practice; Continuing Education and*

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- Chapter 4765-9 - Ethical Standards of Conduct.

It is anticipated that the rules will be filed with the Joint Committee on Agency Rule Review (JCARR) on or before the scheduled review date (1/14/2016).

Information about the rule review process is available at the ODPS Emergency Medical Services - Small Business Regulatory Impact Web site: http://www.publicsafety.ohio.gov/ems_rules.stm

Direct questions or comments regarding these EMS rules to EMS.rules@dps.ohio.gov.

Interested parties may join any of the Division of EMS's eleven ListSers by responding to instructions posted under "Resources" at the main Web page of the Division of EMS (<http://www.ems.ohio.gov/>). Approximately 5% of emergency medical certificate holders in the state of Ohio are ListServ members.

Members of the Ohio State Board of EMFTS received copies of OAC 4765-8 proposed as No Change rules and copies of the amended OAC 4765-9 rules along with a copy of the draft Business Impact Analysis (BIA) for the rule package before the August 19, 2015 Board meeting. The EMFTS Board passed a motion to file OAC 4765 Chapter 8 and 9 rules and the BIA, subject to minor revisions, with the Common Sense Initiative.

The Ohio State Board of Emergency Medical, Fire, and Transportation Services is a twenty member board. The director of the Department of Public Safety designates a member of the Department of Public Safety as a member of the Board. Nineteen members who each have "background or experience in emergency medical services or trauma care" are appointed by the Governor with the advice and consent of the Ohio Senate. The Governor attempts "to include members representing urban and rural areas, various geographical regions of the state, and various schools of training" in making appointments to the Ohio State Board of EMFTS.

Members of the Ohio State Board of EMFTS include nurses, an air medical provider, a private service EMS owner/operator, a mobile intensive care unit provider, emergency medical providers, an EMS instructor, a hospital administrator, fire chiefs, the CEO of a not-for-profit regional EMS and medical transportation organization, an emergency room pediatrician, a trauma program manager, a trauma surgeon, and an emergency room physician representing the medical profession, emergency medical providers, and firefighters, and ambulance and medical transportation businesses and organizations.

The State Medical Director for the Ohio Department of Public Safety, who is a board certified emergency physician, and the executive director of the Division of EMS, attend the meetings of the State Board of EMFTS.

Comments received from stakeholders will be reviewed and considered for incorporation into the amendments after the draft rule package is filed with CSIO and posted to EMS Rules Website for a two-week public comment period. CSIO recommendations and other comments may be considered until approximately January 14, 2016, when the rules will be filed with JCARR.

The rules filed with JCARR will be posted at the EMS Rules Website, along with a public hearing notice. The Ohio State Board of EMFTS will be informed about the rules during meetings and by email.

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

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To date, one comment has been received regarding OAC 4765-9-02 (G) and (H). It came from a member of the Education Committee, who asked about immunity for certificate-to-teach holders required to report irregularities. The Division of EMS conferred with ODPS legal staff and responded, providing a link to ORC 4765.101(A) (<http://codes.ohio.gov/orc/4765.101>), which states:

“(A) The state board of emergency medical, fire, and transportation services shall investigate any allegation that a person has violated this chapter or a rule adopted under it.

Any person may submit to the board a written complaint regarding an alleged violation of this chapter or a rule adopted under it. In the absence of fraud or bad faith, no person submitting a complaint to the board or testifying in an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code with regard to such an alleged violation shall be liable to any person in damages in a civil action as a result of submitting the complaint or providing testimony.”

The response also provided the most recent revisions made to OAC 4765-9-02 and invited additional comments and questions.

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?

There was no scientific data to be considered.

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 Division of EMS reviewed rules from other states related to professional conduct for EMS providers and teachers (OAC 4765-9). No alternative regulations were found.

OAC Chapter 4765-8 rules are being filed as No Change rules and will be reopened in early 2016 so that revisions can be made that will incorporate the provisions of the NCCP, a new recertification model being launched by the National Registry of Emergency Medical Technicians (NREMT) in September 2015.

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.

No. OAC Chapter 4765-9 sets forth the professional standards of conduct for EMS providers and teachers. These regulations do not offer the flexibility for performance-based regulations.

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

The Division of Emergency Medical Services is the only authority for certifying emergency medical practitioners; therefore, a review of R.C. section 4765 and O.A.C. Chapter 4765 was completed.

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 Division of Emergency Medical Services will use the EMS Web site and EMS ListServ to distribute the O.A.C. Chapters 4765-8 and 4765-9 final rules and rule summaries to stakeholders. Notices to EMS organizations will be distributed through the Division newsletter, *The Siren*, which is located at <http://ems.ohio.gov>. Division of EMS staff will receive email notification of the rule changes and attend section briefings regarding implementation policy and procedures.

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;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- 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 scope of the impacted business community includes 2,229 first responders, 19,355 basic, 2,023 intermediate, and 17,703 paramedic certificate holders and 1,142 EMS instructors, 192 physician instructors, 194 assistant EMS instructors, and 2,316 CE instructors throughout Ohio. [Numbers reported as of May 2015.]

The scope of the impacted business community includes 2,231 first responders, 19,338 basic, 1,992 intermediate, and 17,701 paramedic certificate holders and 1,851 EMS instructors, 203 physician instructors, 187 assistant EMS instructors, and 2,332 CE instructors throughout Ohio. [Numbers reported as of July 2015.]

The Division of EMS does not charge a fee for certification or renewal. The estimated costs of compliance for stakeholders include the costs to successfully complete an EMS training program and initial certification exam. Continuing education requirements

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include current registration with the National Registry of Emergency Medical Technicians (NREMT). A certificate-holder becomes subject to disciplinary action, which, if invoked, may include fines and/or limitations on authority to practice up to and including revocation.

The Division of EMS does not charge a fee for certification. Sample ranges of the total cost to a student completing an EMS training program, including tuition, fees, books, uniforms, and personal equipment include \$205 to \$485 for emergency medical responder; \$805 to \$2,057.50 for emergency medical technician; \$850 to \$2,057.50 for advanced emergency medical technician; and \$5,460 to \$9,750 for paramedic. NIMS courses IS-700.a and IS-100.b may be completed at no charge on-line.

The on-line application fees for NREMT certification per attempt range from \$65 to \$110 based on the certification level and will increase to \$75 to \$125 on January 1, 2017.

Continuing education costs, which vary depending on the level of certificate sought, may include: zero to eighty-six hours of continuing education for practitioners; and zero to six hours of continuing education (methodology) and zero to 24 hours of instruction. A sample of costs of continuing education include \$2.00 to \$5.00 per CEU for on-line training and \$65.00 to \$195.00 per class. A Trauma Triage course is available on-line at no charge from the Ohio Public Safety Training Campus.

Some employers assist employees in obtaining CE credits by providing in-service training. The costs vary depending on the courses provided and instructor pay rates.

A certificate-holder subject to disciplinary action may incur fines up to \$1,000 and/or limitations on authority to practice up to and including revocation. There are a limited number of EMS providers and teachers that are in violation, and therefore, the impact is minimal.

The Division of EMS estimates that these rules will not result in any undue cost of compliance or adverse impact.

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

Pursuant to R.C. section 4765.11, the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) is directed to adopt rules that establish the qualifications, standards of performance, and procedures under which the Board may issue, renew, suspend,

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or revoke certificates to practice as an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic or certificates to teach as an EMS Instructor. Ensuring qualifications, a professional level of delivery of emergency medical services and patient care, and professional standards of conduct for EMS providers and EMS instructors justifies the minimal adverse impact to the business community.

Regulatory Flexibility

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

OAC 4765-8-15 describes the process for requesting certification to practice by reciprocity. Qualified applicants who hold an EMS certificate or license from another state, the District of Columbia, or any branch of the U.S. military may request a review for certification by reciprocity.

OAC 4765-18-07 describes the process to request an extension of time to comply with continuing education requirements to renew a certificate to teach. Complete or partial exemptions may be considered when an applicant or an applicant's spouse is serving on active duty in the military or an applicant can document a medical hardship or unusual circumstance that impacts the ability to comply with CE requirements.

OAC 4765-19-04 describes the process for requesting an exemption from compliance with the CE requirements for renewal of a certificate to practice. Complete or partial exemptions may be considered when an applicant is serving on active duty in the military.

OAC 4765-19-03 describes the process to request an extension of time to comply with continuing education requirements to renew a certificate to practice. An extension of no more than ninety days may be granted if the Ohio State Board of EMFTS determines there are extenuating circumstances affecting a certificate-holder's ability to comply with CE requirements within ninety days of the expiration date of the certificate. As described in OAC 4765-19-03, an applicant requesting an extension of time to comply with CE requirements because of military service will be approved in accordance with R.C. 5903.12.

OAC 4765-1-04 describes the process for expediting the complete applications received from veterans, members of the armed forces, spouses of a veteran or member of the armed forces, or the surviving spouse of a veteran or member of the armed forces, who can provide required information to the Division of EMS by electronic and other means.

No exemptions or alternative means of compliance are provided for chapter OAC 4765-9, Ethical Standards of Conduct.

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?

While the EMS board does regulate some small businesses, such as ambulance, ambulette and air medical services, and training programs, the rules contained in O.A.C chapters 4765-8 and 4765-09 only apply to individual certificate holders, not small businesses. While an individual certificate holder may be subject to discipline for a violation of these rules, a small business would not, therefore the waiver provision contained in R.C. section 119.14 would not be applicable to a violation of these rules.

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

The Division of EMS's Web site contains a "Small Business Regulatory Impact" section with links to RC 4765., OAC 4765, and JCARR. Rules scheduled for review, open for public comment, proposed, and recently adopted are posted at the Web site, along with public comment and public hearing information and email links for the ODPS Rules Administrator and Division of EMS rules personnel.

The EMS section of the Web site includes contact information for Division of EMS personnel and specific information about EMS certification, the EMS certificate to teach, EMS testing, EMS education and training facilities, CE requirements, and EMS scopes of practice.