

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Dental Board

Regulation/Package Title: 2015 – Chapter 12

Rule Number(s) 4715-12-01

Date: December 7, 2015

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☐ Rescinded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.

Amended

- **4715-12-01 Permissible practices of a dental assistant-radiographer x-ray machine operator; supervision required; certificate to be displayed.** This rule sets forth the supervision and permissible practices of a dental assistant radiographer under the supervision of a licensed dentist. Amendments to the rule allow for correction of the title of the certification and to implement changes made by the enactment of H.B. 463.

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

O.R.C. 4715.39 Permitted duties.

O.R.C. 4715.53 License qualifications.

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 regulation implements a federal requirement but is not being amended to enable the state to obtain or maintain approval to administer and enforce a federal. As part of Sec.979 of the Consumer-Patient Radiation Health and Safety Act of 1981, 42 CFR 75 mandates the promulgation of regulations for the minimum standards for the utilization of ionizing and non-ionizing radiation by dental assistant radiographers in the interest of public safety and to prevent the hazards of improper use of medical radiation.

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 the proposed amendments do not exceed a federal requirement.

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)?

In the interest of public safety and to prevent the hazards of improper use of medical radiations, Congress determined the need for standards for occupational groups utilizing ionizing and non-ionizing radiation (i.e. radiographer, dental hygienist, dental assistant, nuclear medicine technologist, and radiation therapy technologist). Additionally, The General Assembly determined that the profession of dentistry required regulation and established a Board to license individuals and enforce the law and rules governing the practice of dentistry in Ohio. These regulations allow the Board to carry out its' statutory mission to ensure protection of the public.

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

Success will be measured by having a clear rule written in plain language, by certificate holders compliance with the rule, and when the Board receives minimal questions from certificate holders regarding requirements of the rule.

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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's Law and Rules Review Committee (Committee), holds open meetings throughout the rule review year. The Committee is comprised of fourteen (14) members including representatives of the Board, the Ohio Dental Association and the Ohio Dental Hygienists' Association. Additionally, the Board sends public notices and proposed Rule Review agendas to the Board mailing list, a listing of parties interested in all Board proceedings. The Committee met with the opportunity to discuss these rules in March, May, June, July, September, and October 2015.

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

Discussion by the Committee and voted on by the full Board resulted in the decision that these rule was working as intended by the legislature and that the only amendments were to correct for title of the certification and incorporate requirements due to the enactment of H.B.463.

- 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?**

Scientific data was not used to develop the rules as these rules are not data driven.

- 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?**

No alternative regulations were considered by the agency since it was determined that the rule provides specific clarity required by ORC 4715.03 and 4715.13.

- 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 see an application for the rule to be performance-based.

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

The five-year rule review process is conducted with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with

interested parties help to ensure that these rules do not duplicate any existing Ohio regulation.

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** The Board will continue to use its website and social media links to educate and update licensees on its rules. Board employees provide informational presentations to stakeholder organizations and groups of dental personnel in an effort to keep the dental profession apprised of current regulations. Stakeholder organizations also ensure that rules, particularly amended rules are provided to their members through communications and CE opportunities. Staff training is conducted for rule changes to ensure that regulations are applied consistently.

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;**

OAC Chapter 4715-12 impacts individual dental assistant x-ray machine operators who hold certificates to be permitted to take x-rays and the dental practices in which they perform this function.

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

If a certificate holder is not in compliance with the continuing education law and rules and it comes to the attention of the Board, the certificate holder may, if the continuing education violation is not corrected, be subject to discipline by the Board. Violations of Chapter 4715-12, OAC, Dental Assistant Radiographer, may result in disciplinary sanctions against the dental assistant and/or licensed supervising dentist (where applicable), which may include continuing education, restriction, suspension, or revocation of the certificate for the dental assistant and licensure of the supervising dentist.

- 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 cost to the licensee to comply varies depending on the extent of the violation. It could be as little as no cost with only a time commitment to as much as obtaining continuing ethics education. Additional cost of adverse impact of the rules are in any disciplinary sanctions taken against the certificate holder and/or licensee due to substandard care. More specifically a result in lost time/earnings, suspension of

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certificate or license, cost/lost time for educational remediation, or loss of practice due to revocation of license to practice could occur.

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

The Board is solely responsible for ensuring that only competent and safe practitioners are permitted to practice dental radiography in Ohio. Therefore, continuing education of current certificate holders helps to ensure protection of the public.

Regulatory Flexibility

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

This rule does not provide any exemption or alternative means of compliance for small businesses. All licensed dental personnel under ORC 4715 must have a license or certificate to provide services in Ohio. The law does not differentiate on the size of the business and therefore, this rule applies to all licensed, certified, or registered providers.

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?

ORC 4715 does not allow for the implementation of fines or penalties. Therefore, this is not applicable.

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

Resources available to assist small businesses/stakeholders with compliance are online access to the Ohio Revised and Administrative Codes. Additionally, Board staff regularly respond to inquiries from interested parties.

DENTAL ASSISTANT RADIOGRAPHER

4715-12-01 PERMISSIBLE PRACTICES OF A DENTAL ASSISTANT-RADIOGRAPHER X-RAY MACHINE OPERATOR;
SUPERVISION REQUIRED; CERTIFICATE TO BE DISPLAYED.

- (A) A dental assistant-radiographer x-ray machine operator may perform standard, diagnostic, radiologic procedures for the purpose of contributing to the provision of dental care to a dental patient.
- (B) Except as provided in paragraph (C) of this rule, a dental assistant-radiographer x-ray machine operator may perform radiologic procedures only under the direct supervision of the supervising dentist.
- (B)(C) A dental x-ray machine operator may perform radiologic procedures for a patient when the supervising dentist is not physically present at the location where the radiologic procedures are performed if the supervising dentist examined the patient not more than one year prior to the date the dental x-ray machine operator performs the radiologic procedures and the supervising dentist has ordered the radiologic procedures.
- (C)(D) The original or copy of the certificate and/or renewal receipt card shall be displayed in a conspicuous place in the office wherein the dental assistant-radiographer x-ray machine operator is employed and be made immediately available upon the request of an agent of the board.