

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Occupational Therapy, Physical Therapy, and Athletic Trainers Board

Regulation/Package Title: PT Referral rule

Rule Number(s): 4755-29-01

Date: August 21, 2018

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☐ Rescinded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.

Rule 4755-29-01 (Referrals) expands upon section 4755.48 and .481 to describe the referral relationship with other practitioners and the circumstances under which direct access by a patient may happen.

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

ORC 4755.48 and 4755.481

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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?**

No.

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)?**

The purpose of this regulation is to ensure the proper checks and balances within the physical therapy scope of practice. The rule further expounds upon statute regarding the relationship between physical therapists and other practitioners. More detail is necessary to contemplate evolving practice than the statute may recognize.

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

Regulatory success may be indicated by making sure PTs know the proper arrangements for referrals and a lack of enforcement actions or complaints about referrals.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

The Physical Therapy Section of the Board was consulted, and the rules were sent out to all license holders via the Board list serve.

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

Comments are below. No changes were made to the rule. Comments were considered by the PT section of the Board. Some of the suggested changes would actually require statutory adjustments.

Robert	Frampton	PT	I am in support of the proposed rule changes for 4755-29-01, 4755-23-01, 4755-27-01, 4755-27-04, and 4755-23-05 as written. I encourage the PT section of the OT, PT, AT Board to consider language that would permit licensees to take courses approved by the FSBPT ProCert process. The current rule states that the section may
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			contract with the Ohio physical therapy association with performing of its continuing education duties. There is nothing in the current rule that suggests that it is an exclusive arrangement. The ProCert process is a valid assessment process that CCU/CEU vendors must go through.
Jason	Ashby	PT	I agree with the proposed changes described below.
Diane	Shaw	PT	I'm all for the proposal to count volunteer hours toward the CE total of 24 needed hours. I am in favor of the other stated issues.
Rick	Wickstrom	PT	<p>Thank you for requesting my feedback on the proposed rules.</p> <p>With respect to the proposed changes to 4755-29-01, I agree with the proposed revisions to (E); however, I believe that this rule would benefit from further edits to modify Paragraph (A) and (D):</p> <ul style="list-style-type: none"> • Paragraph (A) should be deleted entirely to eliminate any potential confusion on the part of patients, their family members, their friends, their employers, healthcare providers and other stakeholders about how to access physical therapy services. • I searched for the word "Referral" The 6th Edition Model Practice Act and found no recommended language that stipulates who may refer a patient for physical therapy. http://otptat.ohio.gov/Portals/0/Rules/4755%240-29-01-Rule-AM.pdf • Paragraph (D) should be modified as follows: A physical therapist meeting the requirements established in sections 4755.48 and 4755.481 of the Revised Code may evaluate and treat without the prescription of, or the referral of a patient by another healthcare practitioner person who is licensed in this or another state to practice medicine and surgery, chiropractic, dentistry, osteopathic medicine and surgery, podiatric medicine and surgery, to practice as a physician assistant, or to practice nursing as a certified nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner. • These changes would better clarify for patients and other stakeholders how referrals must be managed in a manner that eliminates any possible confusion to the patient or others that refer patients for physical therapy services.

			<ul style="list-style-type: none"> • I don't see the "common sense" of including statements in our physical therapy practice act that seem to impose regulation on the referral practices by other healthcare practitioners by statements in physical therapy practice act such as the clauses in paragraph (H)(1) that states "The individual making the referral must be licensed in good standing with the relevant licensing board; and" and in paragraph (H)(2) that states "The individual making the referral must act only within the individual's scope of practice." There are no similar statements to this effect contained in the Model Practice Act that was created for consumer protection.
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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?

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?

None. The rule is statute-driven and implements the referral relationships required by law.

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 performance-based regulation was considered. This regulation needs to stay broad enough to incorporate various medical records and billing systems.

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

A review of the statute was performed to ensure that this does not conflict with any other regulations.

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 is not a new regulation. This rule is monitored by enforcement of complaints received. Review of this rule will result in better educating license holders. For consistency's sake, the Board has a set of disciplinary guidelines to ensure that penalties for violations do not change over time.

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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;

Physical Therapists, Physical Therapy Assistants, Following license types: medicine and surgery, chiropractic, dentistry, osteopathic medicine and surgery, podiatric medicine and surgery, to practice as a physician assistant, or to practice nursing as a certified nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner

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

Time and effort is required to properly document a referral in a patient's record. However, it is statutorily required for continuity of care.

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.

Unknow.

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

It is statutorily required.

Regulatory Flexibility

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

No. This is a statutorily required mandate.

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 Board's disciplinary guidelines take into account frequency and severity of infractions for first time offenders.

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

The Board does not offer resources to assist with this regulation except for making available the statutory requirements on our website.

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