



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

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### Business Impact Analysis

Agency Name: Ohio Speech and Hearing Professionals Board \_\_\_\_\_

Regulation/Package Title: BIA-New Rules-SHP 2019 \_\_\_\_\_

Rule Number(s): 4744-1-01, 4744-1-02, 4744-1-03, 4744-1-04, 4747-1-22, 4747-1-23

Date: April 4, 2019 \_\_\_\_\_

**Rule Type:**

☒ New

☐ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. 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.*

**OAC Chapter 4744**

4744-1-01 - Procedure for adoption of rules

4744-1-02 - Method of determining time and place of meetings

4744-1-03 - Personal information systems

4744-1-04 - Duties of officers and staff

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## **OAC Chapter 4747**

4747-1-22 - Fees

4747-1-23 - Code of Ethics

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

The Board has the statutory authority to adopt rules pursuant to Ohio Revised Code section 4744.28.

### **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.*

No, the proposed rules do not implement a federal requirement or 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 to the business impact analysis.

### **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)?**

4744-1-01 - Procedure for adoption of rules

This rule specifies the procedures the Board can adopt, amend, or rescind administrative rules. The public purpose of this rule is to ensure the Board provides public notice and an opportunity for the public to be heard when rules are being considered.

4744-1-02 - Method of determining time and place of meetings

This rule specifies the procedures the Board can hold its board meetings. The public purpose of this rule is to ensure the public can determine the time, date, and location of board meetings so that the public can attend.

4744-1-03 - Personal information systems

This rule specifies the requirements for the Board collecting and maintaining personal information in its licensure database. The public purpose of this rule is to ensure that personal information being collected from individuals applying for licensure is appropriately maintained by the Board.

4744-1-04 - Duties of officers and staff

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This rule specifies the duties of the Board President, Board Secretary, and Executive Director. The public purpose of this rule is to ensure board officers and staff appropriately carry out their duties.

#### 4747-1-22 – Fees

This rule specifies the fees that the Board may assess for licensure applications. The public purpose of this rule is to ensure the Board collects revenue to be self-sustaining in order to fulfill its mission of consumer protection, and to inform the public of the requisite fees for licensure applications.

#### 4747-1-23 - Code of Ethics

This rule establishes a code of ethics governing the professional conduct of hearing aid dealers, hearing aid fitters, and trainee permit holders. The public purpose of this rule is to ensure consumer protection by establishing ethical standards that licensees must adhere to when providing professional services to consumers.

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

With regard to the proposed new rules 4744-1-01, 4744-1-02, 4744-1-03, and 4744-1-04 the Board's measurement of success will be from the outcomes derived from the Board's compliance with these administrative and procedural requirements.

With regard to the proposed new rules 4747-1-22 and 4747-1-23, the Board's measurement of success will be the revenue generated from licensure applications and licensees who adhere to the code of ethics.

### **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 notified all licensees and interested parties in late February 2019 that the proposed rules were posted to its website and would be accepting public comment until March 15, 2019. The Board's notification included national and state associations. The Board's notification also included the American Speech-Language Hearing Association (ASHA), the Ohio Speech and Hearing Governmental Affairs Coalition (GAC), and the Hearing Healthcare Alliance of Ohio (HHAO).

**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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The American Speech-Language-Hearing Association and the Hearing Healthcare Alliance of Ohio submitted input on proposed rule 4747-1-23 – Code of Ethics. Their input was taken into consideration and appropriate revisions were made to the proposed rule. The Board posted the revised proposed rules to its website and forwarded the updated proposed rules to the stakeholders.

**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?**

With regard to the proposed new rules 4744-1-01, 4744-1-02, 4744-1-03, and 4744-1-04, the Board used the Ohio Administrative Procedures Act and Ohio Open Meetings Act to develop provisions the Board would follow related to public meetings, adoption of rules, board officer duties, etc. With regard to the proposed new rule 4747-1-23, the Board's code of ethics is required pursuant to Ohio Revised Code section 4744.50. Rules governing the ethical practice of licensee's was modeled after other regulatory boards nationally. The Board also used data from the American Academy of Audiology, American Speech-Language-Hearing Association, and the International Hearing Society. All of the data that the Board utilized supports the adoption of a code of ethics for hearing aid dealers and fitters. With regard to the proposed new rule 4747-1-22 specifying fees for licensure, the Board used budget data and trends from the Office of Budget and Management to determine fees. The data supported the Board lowering licensure fees to be consistent with fees required under Chapter 4753.

**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 Board did not consider regulatory alternatives in this case since the proposed new rules are either being carried over from the former boards to OAC Chapter 4744, or in the case of the proposed code of ethics, the Board must adopt the provision under state law, e.g., R.C. section 4744.50, and shall define unprofessional conduct in the rule, which shall include engaging in a dual relationship with a client or former client, committing an act of sexual abuse, misconduct, or exploitation of a client or former client, and, except as permitted by law, violating client confidentiality.

**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 believes this question is not applicable in this situation.

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

The Board took into consideration whether the proposed rules are addressed in existing Ohio regulation and determined that the rules are unique and applicable to the licensed professions under the Board's jurisdiction.

**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.**

In order to implement the proposed rules consistently and predictably, the Board will notify licensees of the new requirements via the Board's eNewsletter, website, and social media. The Board also maintains a listserv which interested parties may join to receive these updates. In addition, all staff will receive orientation about the new requirements in order to respond to inquiries via telephone and e-mail. The Board will mail information to licensees about the new license renewal requirements during the license renewal period. The Board will also inform various stakeholder groups and provide information for inclusion in their communications. These communication efforts will ensure that all licensees and interested parties receive information about the new requirements.

**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 March 2019, the Board licenses just over 10,000 audiologists, hearing aid dealers and fitters, speech-language pathologists, conditional speech-language pathologists, aides, and trainee permits. These licensees practice in a diverse group of work settings, from schools, hospitals, rehabilitation centers, private practice, retail, 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**

With regard to the proposed new rules 4744-1-01, 4744-1-02, 4744-1-03, and 4744-1-04, the Board maintains there is no adverse impact to licensees, businesses, or stakeholders because these rules govern the Board's administrative and procedural compliance with open meetings, rule-making, and board officer duties.

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With regard to the proposed new rule 4747-1-22 specifying fees for licensure, the nature of the adverse impact will be the cost to individuals to apply for licensure, and cost to licensees to renew their license. Employers will also be adversely impacted who cover the licensure fees for these individuals. Employers are further adversely impacted by the time spent to verify that licensees have timely renewed their license.

With regard to the proposed new rule 4747-1-23, e.g., code of ethics, the Board anticipates the following adverse impact from implementation of this provision: cost and time to complete the ethics continuing education requirement and disciplinary action for non-compliance.

**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.*

With regard to the proposed new rules 4744-1-01, 4744-1-02, 4744-1-03, and 4744-1-04, the Board maintains there is no adverse impact from these regulations for the reason articulated in paragraph 14b above.

With regard to the proposed new rule 4747-1-22, e.g., licensure fees, the Board is not aware of any quantifiable adverse impact beyond in terms of dollars, time to comply, or other factors. The regulatory intent justifying the adverse impact from this rule will be explained in question 15 below.

With regard to the proposed new rule 4747-1-23, e.g., code of ethics, the expected adverse impact from this regulation is difficult to calculate because of the nature of the regulation and how licensees choose to complete their continuing education requirements. For instance, some licensees receive free continuing education programs through their employer, and are paid to attend them. Conversely, licensees who are independent practitioners must pay for their CE programs and spend time away from their practice. The regulatory intent justifying the adverse impact from this rule will be explained in question 15 below.

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

For the reasons articulated in 14 (b) and (c) above, this question is not applicable to the proposed new rules for 4744-1-01, 4744-1-02, 4744-1-03, and 4744-1-04.

With regard to the proposed new rule 4747-1-22, e.g., licensure fees, the Board believes the regulatory intent justifies the adverse impact the fees will have on the regulated business

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community because the fees are reasonable and necessary to offset the cost to the Board to process the licensure applications. The licensure renewal fees for a hearing aid dealer and hearing aid fitter are being reduced from \$157 each year to \$120 every two years.

With regard to the proposed new rule 4747-1-23, e.g., code of ethics, the Board believes the regulatory intent for this regulation justifies the adverse impact to the regulated business community because ultimately consumers will be protected by this provision, which addresses the licensee's ethical practice standards and defines unprofessional conduct.

### **Regulatory Flexibility**

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

The Board believes this question is not applicable to proposed new rules for 4744-1-01, 4744-1-02, 4744-1-03, and 4744-1-04 because the rules do not require compliance by licensees or the business community. The rules apply to the Board.

With regard to proposed new rules 4747-1-22, e.g., licensure fees and 4747-1-23, e.g., code of ethics, the rules do not provide any exemption or alternative means of compliance for small business. The licensure fees required under 4747-1-22 are necessary to cover the Board's costs associated with processing licensure applications. The code of ethics under rule 4747-1-23 is required by statute pursuant to R.C. section 4744.50.

#### **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?**

To the extent that Ohio Revised Code section 119.14 is applicable to the proposed new rules, the Board considers the special circumstances presented by first-time offenders and for paperwork violations on a case-by-case basis.

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

The Board's laws and rules governing audiologists, hearing aid dealers and fitters, and speech-language pathologists (Ohio Revised Code and Administrative Code Chapters 4744, 4747, and 4753) are available on our website. In addition, the Board provides updates regarding its laws and rules via the eNewsletter and social media, e.g., Facebook. The Board also responds to inquiries via telephone and e-mail.

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