



## Common Sense Initiative

**Mike DeWine**, 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): 4747-1-11, 4747-1-12, 4747-1-13, 4747-1-15, 4747-1-17, 4753-2-01, 4753-3-01, 4753-3-03, 4753-3-10, 4753-5-01, 4753-9-01

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☐ Rescinded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.*

**Ohio Administrative Code Chapter 4747**

4747-1-11 - Renewal Procedures

4747-1-12 - Duplicate certificates

4747-1-13 - Sales receipt

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4747-1-15 - Fraud and/or misrepresentation, suspension, revocation or refusal of issuance of licenses and trainee permits  
4747-1-17 - Licensee responsibilities

**Ohio Administrative Code Chapter 4753**

4753-2-01 - Telehealth communications  
4753-3-01 - Application for license  
4753-3-03 - Notice of change of address  
4753-3-10 - Exempt practice; renewal  
4753-5-01 - Fees  
4753-9-01 - 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)?**

4747-1-11 - Renewal Procedures

This rule specifies the licensure renewal and continuing education requirements for hearing aid dealers and fitters. The public purpose of this rule is to ensure licensees renew their license in a timely manner and maintain and develop their competency by completing continuing education for consumer protection. The rule is being amended due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, the continuing education requirements for hearing aid fitters are being aligned to their two year license renewal period, pursuant to Sub. H.B. 420 (132<sup>nd</sup> G.A.).

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#### 4747-1-12 - Duplicate certificates

This rule specifies the requirements for requesting a duplicate wall certificate. The public purpose of this rule is to ensure that licensees are displaying their wall certificate in a conspicuous place where the licensee provides services to consumers.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name, e.g., Ohio Speech and Hearing Professionals Board and for other rule clean-up due to the passage of Sub. H.B. 420 (132<sup>nd</sup> G.A.), effective April 5, 2019. Sub. H.B. 420 made additional statutory clean-ups to streamline board operations. For instance, the hearing aid dealers and fitters license renewal period was change from an annual renewal to a two-year renewal period. The continuing education requirements for hearing aid fitters was changed from ten hours every year to twenty hours every two years. The application and renewal fees for hearing aid dealers and fitters were removed from statute and will be determined by administrative rule. The grounds for disciplinary action for hearing aid dealers and fitters were changed to align with the Ohio Administrative Procedures Act under Ohio Revised Code Chapter 119.

#### 4747-1-13 - Sales receipt

This rule specifies the requirements for information that licensees must provide to consumers on the sales receipt for a hearing aid. The public purpose of this rule is consumer protection by ensuring consumers are informed about return periods, warranties, model and serial number of hearing aids being purchased, name and contact information of the licensee who sold the hearing aid, disclosure of whether the hearing aid being purchased is new, used, or refurbished, etc.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name, e.g., Ohio Speech and Hearing Professionals Board and for other rule clean-up due to the passage of Sub. H.B. 420 (132<sup>nd</sup> G.A.), effective April 5, 2019. Sub. H.B. 420 made additional statutory clean-ups to streamline board operations. For instance, the requirement for sales receipts was deleted from statute under R.C. section 4747.09, and will be covered under administrative rule. Additionally, the hearing aid dealers and fitters license renewal period was change from an annual renewal to a two-year renewal period. The continuing education requirements for hearing aid fitters was changed from ten hours every year to twenty hours every two years. The application and renewal fees for hearing aid dealers and fitters were removed from statute and will be determined by administrative rule. The grounds for disciplinary action for hearing aid dealers and fitters were changed to align with the Ohio Administrative Procedures Act under Ohio Revised Code Chapter 119.

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4747-1-15 - Fraud and/or misrepresentation, suspension, revocation or refusal of issuance of licenses and trainee permits

This rule specifies the grounds the Board may discipline licensees for a violation of laws or rules under the practice act. The public purpose of this rule is consumer protection by ensuring licensees are disciplined for unprofessional conduct.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name, e.g., Ohio Speech and Hearing Professionals Board and for other rule clean-up due to the passage of Sub. H.B. 420 (132<sup>nd</sup> G.A.), effective April 5, 2019. Sub. H.B. 420 made additional statutory clean-ups to streamline board operations. For instance, the grounds for disciplinary action for hearing aid dealers and fitters under R.C. section 4747.12 were changed to align with the Ohio Administrative Procedures Act under Ohio Revised Code Chapter 119; this rule is being amended to align with those statutory changes.

4747-1-17 - Licensee responsibilities

This rule requires licensees to utilize appropriate hearing test procedures and maintain them on file for two years. The rule also requires licensees to notify the Board of any change to their contact information. The public purpose of this rule is consumer protection by ensuring licensees utilize appropriate test procedure on consumers to whom the licensed dealer or fitter sells or fits a hearing aid for, and to ensure the Board can communicate with licensees.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name, e.g., Ohio Speech and Hearing Professionals Board and for other rule clean-up due to the passage of Sub. H.B. 420 (132<sup>nd</sup> G.A.), effective April 5, 2019. Sub. H.B. 420 made additional statutory clean-ups to streamline board operations. For instance, the requirement that licensees notify the Board of a change in address was deleted from statute under R.C. 4747.11 and will be covered under this rule.

4753-2-01 - Telehealth communications

This rule specifies the requirements for the delivery of services by speech-language pathologists and audiologists via telehealth. The public purpose of this rule is consumer protection by ensuring service delivery via telehealth is equivalent to face-to-face delivery services.

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The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name which is referenced in the rule, e.g., Ohio Speech and Hearing Professionals Board.

#### 4753-3-01 - Application for license

This rule specifies the requirements for application for license for speech-language pathologists, audiologists, and aides. The public purpose of this rule is consumer protection by ensuring that individuals are qualified for a license.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name which is referenced in the rule, e.g., Ohio Speech and Hearing Professionals Board.

#### 4753-3-03 - Notice of change of address

This rule requires licensee to notify the Board of any change to their contact information. The public purpose of this rule is consumer protection by ensuring that the Board can communicate with licensees.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name which is referenced in the rule, e.g., Ohio Speech and Hearing Professionals Board.

#### 4753-3-10 - Exempt practice; renewal

This rule specifies the requirements for renewing a license and renewing a license after the license expires. The public purpose of this rule is consumer protection by ensuring that consumers are not being served by unlicensed individuals.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.). Specifically, this rule is being amended to update the Board's new name which is referenced in the rule, e.g., Ohio Speech and Hearing Professionals Board. The rule is also being amended to reduce the late renewal period from one year to ninety days.

#### 4753-5-01 – 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.

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The rule is being amended to reduce the late renewal fee from \$150 to \$120.

#### 4753-9-01 - Code of Ethics

This rule establishes a code of ethics governing the professional conduct of audiologists, speech-language pathologists, conditional speech-language pathologists and aides. 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.

The rule is being amended primarily due to the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.), which requires that the Board define specific professional conduct under a code of ethics pursuant to R.C. 4744.50. The Board is also amending this rule to update the code of ethics under Chapter 4753.

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

The Board utilizes the Ohio eLicense license management system to track outputs and/or outcomes associated with these rules. Individuals will utilize the license management system to submit applications, renew their license, file complaints, request duplicate wall certificates, and update their contact information. The Board also solicits feedback from licensees through surveys, newsletter communications, customer satisfaction surveys, etc. about professional issues. The Board conducts an annual strategic planning meeting to address and prioritize issues related to its rules.

All of these rules are being amended as a result of the board consolidation pursuant to Am. Sub. H.B. 49 (132<sup>nd</sup> G.A.) to streamline operations and maximize efficiencies related to licensure under Ohio Revised and Administrative Code Chapters 4744, 4747, and 4753.

#### **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).

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

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 these amended rules, the Board used following resources to develop and measure outcome associated with the rules: the Ohio Administrative Procedures Act, Office of Budget and Management, other state regulatory boards, American Academy of Audiology, American Speech-Language-Hearing Association, and the International Hearing Society. All of the data that the Board utilized supports the proposed amendments.

**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 amendments are either clean-up in nature due to the board consolidation under Am. Sub. H.B. 49 and Sub. H.B. 420 by the 132<sup>nd</sup> General Assembly, or required under statute, such as the code of ethics, pursuant to R.C. section 4744.50, requiring the Board to define unprofessional conduct in the rule for 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 amendments are addressed in existing Ohio regulation and determined that the rules are unique and applicable to the licensed professions under the Board's jurisdiction.

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**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 amendments consistently and predictably, the Board will notify licensees of any changes and 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 amended rules in order to respond to inquiries via telephone and e-mail. The Board will mail information to licensees about the amended 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 changes.

**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**

**4747-1-11 - Renewal Procedures**

The nature of the adverse impact from this rule will be the cost to licensees who renew their license and complete the continuing education hours necessary to renew their license. Employers will also be adversely impacted who cover the license renewal fee and costs for the licensee's professional development. Employers are further adversely impacted by the time spent to verify that licensees have timely renewed their license.

**4747-1-12 - Duplicate certificates**

The Board is discontinuing the \$16 fee that the former Hearing Aid Dealers and Fitters Board was charging hearing aid dealers, fitters, and permit holders for a wall certificate. Consequently,

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the nature of the adverse impact from this rule will be the time licensees will spend for compliance due to requesting an additional wall certificate to display where they practice.

#### 4747-1-13 - Sales receipt

The nature of the adverse impact from this rule will be the time and costs to licensees and employers associated with compliance. The Board cannot calculate the actual costs to ensure that the sales receipt contains the required information such as warranty information, return period, model and serial number of the hearing aid, name and contact information of the licensee, etc., however; the Board has not received any comments from licensees or businesses that this requirement would be burdensome. Most sales receipts are computer generated and configurable based on the business's existing sales practices for providing consumers with documentation of the sale of a hearing aid.

#### 4747-1-15 - Fraud and/or misrepresentation, suspension, revocation or refusal of issuance of licenses and trainee permits

The nature of the adverse impact from this rule will be the time to licensees and employers associated with compliance of the laws and rules governing the fitting, dispensing and sale of hearing aids to consumers.

#### 4747-1-17 - Licensee responsibilities

The nature of the adverse impact from this rule will be the time and costs to licensees and employers associated with providing appropriate hearing tests to consumers and maintaining those records for two years. The adverse impact also includes the time for licensees to comply with the requirement to inform the Board of a change to their contact information within thirty days.

#### 4753-2-01 - Telehealth communications

The nature of the adverse impact from this rule will be the time and costs to licensees and businesses for compliance with the requirements for the delivery of services via telehealth communications. The Board cannot calculate the actual costs for equipment and training necessary to meet the requirements; however, the rule does not require additional compliance above and beyond what businesses and licensees already have to meet when providing telehealth services to consumers. For example, telehealth services must be encrypted to protect the patient's confidentiality. Employers and licensees are already required to protect and maintain the confidentiality of patient information under federal law, e.g., the Health Insurance Portability and Accountability Act (HIPAA).

#### 4753-3-01 - Application for license

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The nature of the adverse impact from this rule will be the cost and time to individuals applying for licensure. Applicants must meet the educational requirements for licensure as an audiologists, e.g., doctoral degree in audiology, or speech-language pathologists, e.g., master's degree or higher in communication science disorders, etc.

4753-3-03 - Notice of change of address

The nature of the adverse impact from this rule will be the time for licensees to comply by informing the Board of any change of address within thirty days.

4753-3-10 - Exempt practice; renewal

The nature of the adverse impact from this rule will be the time and cost for licensees to renew their license or renew their license after it expires.

4753-5-01 – Fees

The nature of the adverse impact from this rule will be the costs to licensees and businesses to obtain licensure and renew their license with the Board. The only proposed fee change under this amendment is to reduce the late fee from \$150 to \$120.

4753-9-01 - Code of Ethics

The nature of the adverse impact from this rule will be the time and costs to licensees and businesses to comply with the code of ethics and complete the ethics continuing education requirement.

**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 amended rules covered under this business impact analysis, the Board is not aware of any quantifiable adverse impact beyond in terms of dollars and time to comply, which were detailed above in 14(b).

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

With regard to the proposed amended rules, the Board believes the regulatory intent justifies the adverse impact on the regulated business community for consumer protection.

4747-1-11 - Renewal Procedures

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The regulatory intent of this rule justifies the adverse impact to the regulated business community because licensees renew their license and complete continuing education to maintain competency in the delivery of services to consumers. Licensees are serving consumers with communication disorders, e.g., hearing loss, speech and language disorders, etc. Licensure in these health-related professions is necessary to ensure consumers are receiving appropriate services from qualified and competent individuals.

#### 4747-1-12 - Duplicate certificates

The regulatory intent of this rule justifies the adverse impact to the regulated business community because the display of the wall certificate ensures consumer protection. Consumers receiving services from licensees are able to verify the individual's name, license number, and licensure board from the wall certificate that is required to be displayed in a conspicuous location at the licensee's primary practice.

#### 4747-1-13 - Sales receipt

The regulatory intent of this rule justifies the adverse impact to the regulated business community because the information that licensees must provide on the sales receipt ensure consumer protection. The information includes the warranty period of the hearing aid, return period, model and serial number, indication if the hearing aid is used or refurbished, name and contact information of the person who sold the hearing aid, etc.

#### 4747-1-15 - Fraud and/or misrepresentation, suspension, revocation or refusal of issuance of licenses and trainee permits

The regulatory intent of this rule justifies the adverse impact to the regulated business community for consumer protection. The rule specifies the grounds in which the Board may take disciplinary action against a licensee for unprofessional conduct, committing harm to a consumer, or violating the Board's statutes and rules.

#### 4747-1-17 - Licensee responsibilities

The regulatory intent of this rule justifies the adverse impact to the regulated business community for consumer protection. The rule requires licensees to perform appropriate hearing tests when fitting or selling hearing aids to consumers and maintain those records for two years. Hearing tests are necessary to ensure that consumers receive the most appropriate hearing aids to address their hearing loss.

#### 4753-2-01 - Telehealth communications

The regulatory intent of this rule justifies the adverse impact to the regulated business community for consumer protection. The rule requires that telehealth services be equivalent to

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face-to-face services, ensure patient confidentiality and the patient's right to refuse telehealth services, and that telehealth services be provided by appropriately licensed individuals.

#### 4753-3-01 - Application for license

The regulatory intent of this rule justifies the adverse impact to the regulated business community for consumer protection by requiring individuals meet educational and other requirements for licensure.

#### 4753-3-03 - Notice of change of address

The regulatory intent of this rule justifies the adverse impact to the regulated business community for consumer protection. The rule requires licensees to inform the Board of any change of address within thirty days.

#### 4753-3-10 - Exempt practice; renewal

The regulatory intent of this rule justifies the adverse impact to the regulated business community for consumer protection. The rule requires licenses be renewed in a timely manner to provide services to consumers, ensures individuals with an expired license more than ninety days from the date of their license expired are able to seek relicensure through continuing education, and demonstrate competency determined by the Board if their license has been expired for more than five years.

#### 4753-5-01 - Fees

The regulatory intent of this rule justifies the adverse impact to the regulated business community to ensure the Board receives appropriate revenue to fulfill its mission of consumer protection. The fees are reasonable and necessary to offset the cost to the Board to process the licensure applications. The Board is proposing to amend only one fee under this rule by reducing the late fee from \$150 to \$120.

#### 4753-9-01 - Code of Ethics

The regulatory intent of this rule justifies the adverse impact to the regulated business community for consumer protection. The provisions under this rule address 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.**

With regard to proposed amended rules, the regulations do not provide any exemption or alternative means of compliance for small business. For example, the licensure fees are

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necessary to cover the Board's costs associated with processing licensure applications. The code of ethics under amended rule 4753-9 must define unprofessional conduct pursuant to R.C. section 4744.50. The other proposed amendments are necessary as a result of the board consolidation per Am. Sub. H.B. 49 and a statute clean-up per Sub. H.B. 420 by the 132<sup>nd</sup> General Assembly.

**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.