Ohio | Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: _Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board_____

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

_OPP rules – public notice and CPI; rescission of all of OAC Chapter 4779 (Orthotics, Prosthetics, and Pedorthics)_____

Rule Number(s): _4755-61-01, 61-02, 61-03, 61-04, 61-05, 61-06, 61-07

Updated 6/12/20 to include rescission of: 4779-1-01, 1-02, 2-01, 2-02, 2-03, 3-01, 3-02, 4-01, 4-02, 5-01, 5-02, 5-03, 5-04, 5-05, 6-01, 7-01, 8-01, 9-01, 9-02, 9-03, 9-04, 10-01, 10-02, 12-01, 13-01, 13-02, 13-03, 13-04, 13-05,_____

Date of Submission for CSI Review: _6/2/2020_____

Public Comment Period End Date: _6/15/2020_____

Rule Type/Number of Rules:

New/_X__ rules **No Change/____ rules (FYR? ___)**

Amended/____ rules (FYR? ___) **Rescinded/__X__ rules (FYR? _Y__)**

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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 regulations that have an adverse impact on business 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.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

4755	61	1	Notice of meetings	Replaces 4779-1-02	Mirrors OTPTAT Board rules on the same topic. Eliminates references to the OPP Board. These rules supplement statute requiring a notice of meetings.

4755	61	2	Method of public notice in adopting, amending, or rescinding rules	Replaces 4779-1-01	Mirrors OTPTAT Board rules on the same topic. Eliminates references to the OPP Board. These rules supplement statute to talk about the rule making process.
4755	61	3	Definitions governing access to confidential personal information	Replaces 4779-13-01	These were pretty standard for all Boards. The new rules are adjusted to replace the OPP Board references with OTPTAT Board. These rules supplement the confidential personal information statute and detail how such information should be handled.
4755	61	4	Procedures for accessing confidential personal information	Replaces 4779-13-02	These were pretty standard for all Boards. The new rules are adjusted to replace the OPP Board references with OTPTAT Board. These rules supplement the confidential personal information statute and detail how such information should be handled.
4755	61	5	Valid reasons for accessing confidential personal information	Replaces 4779-13-03	These were pretty standard for all Boards. The new rules are adjusted to replace the OPP Board references with OTPTAT Board. These rules supplement the confidential personal information statute and detail how such information should be handled.

4755	61	6	Confidentiality statutes	Replaces 4779-13-04	These were pretty standard for all Boards. The new rules are adjusted to replace the OPP Board references with OTPTAT Board. These rules supplement the confidential personal information statute and detail how such information should be handled.
4755	61	7	Restricting and logging access to confidential personal information in computerized personal information systems	Replaces 4779-13-05	These were pretty standard for all Boards. The new rules are adjusted to replace the OPP Board references with OTPTAT Board. These rules supplement the confidential personal information statute and detail how such information should be handled.

All of the rules in Chapter 4779 are being rescinded due to the elimination of the Orthotics, Prosthetics, and Pedorthics Board and the consolidation of licensure with the OTPTAT Board.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   ORC 119.03, 1347.15, 4779.08

4. **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. Licensure is according to state law.
5. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   Not applicable.

6. **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)?**

   State law (ORC 4779) requires the OTPTAT to license orthotics, prosthetics, and pedorthics. These rules make it clear to the public how meetings will be called, rules promulgated, and how confidential personal information is handled.

   The Board has evaluated the rules in 4779 and is eliminating those which longer have a purpose (such as OPP Board governance) and replacing some of the rules with changes that better mirror OTPTAT Board operations and include policy changes previously made by the Board per statute.

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

   The Auditor's office biennial audit reviews agency compliance with open meetings, confidential personal information, and other similar requirements.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
   No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   Rules were posted to all license holders for orthotics, prosthetics, and pedorthics, as well as the Ohio O& P Association. Rules were reviewed by the Orthotics, Prosthetics, and Pedorthics Advisory Council.
10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

    No feedback was received on these rules.

11. **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?**

    None.

12. **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. State statute requires agencies to follow open meetings law and comply with confidential personal information.

13. **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. Much of the process is defined by statute.

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

The rules mirror Ohio statute.

15. 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.

These rules have already been implemented for other sections of the Board and replicate current OPP rules on the same topic, so there are already procedures in place. The Board is updating its policies and procedures to enhance application. The Board has also developed a matrix for standard discipline to help with consistency in enforcement.

Adverse Impact to Business

16. 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; and

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

c. Quantify the expected adverse impact from the regulation.

a. These rules primarily impact the way the Board does business and the way we communicate with license holders. The rules also impact licensees and the businesses for which the work – largely outpatient clinics.

b. The cost of compliance is relatively low, using electronic means to comply and computer systems already in place to provide tracking for confidential personal information access (eLicense Ohio). The Board could have an audit finding for lack of compliance.

Also, for the rescinded rules:

- Costs related to licensure, including the cost of application ($100), education (unknown amount, but currently for prosthetics and pedorthics a master's degree is required), testing and application fees for certification (https://www.abcop.org/individual-certification/Pages/OrthotistandProsthetist.aspx)
- Costs of continuing education (if an individual maintains certification, they can use the same certificate maintenance for Board CE)
- Costs of any fines/penalties for discipline

c. $0. Only staff time spent creating meeting notices and rule notices.

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

These rules are necessary to implement sections of the Ohio Revised Code.

The goal of these rules was to reduce regulation. Fees and continuing education requirements were reduced to align with the OTPTAT license holders more closely. Extensive outreach to the 350 or so OPP license holders happened when the Board was consolidated with OTPTAT in January 2018, including emailed and mailed communication, newsletters through the association, and speaking engagements. The Board works through the OPP Advisory Council to get input on changes. Since the consolidation, the Board has identified necessary rule improvements. There are several additions to the disciplinary/ethics section which could be perceived as adverse, such as a duty to report another practitioner who is violating the laws/rules and a requirement to report one's own certain violations to the Board, but these are common across all regulated professions. Outreach on these changes will continue as required throughout the rule process.

Regulatory Flexibility

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

The Board does not issue violations based on these rules.

19. 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 does not issue violations based on these rules.

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

The OTPTAT Board website and social media strive to make Board business accessible and transparent.