



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### 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 – Definitions

**Rule Number(s):** 4755-62-01, 62-02

**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Rescinded/      rules (FYR?     )

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.

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### **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	62	01	Definition of terms	Replaces 4779-3-01	Defines terms used throughout the orthotics, prosthetics, and pedorthics practice act.
4755	62	01	Device-related and scope of practice definitions	Replaces 4779-3-01	Defines specific terms used in the orthotics, prosthetics, and pedorthics practice act related to devices and practice.

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 4779.08

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- 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 further determine the terms used to define the practice in Ohio Revised Code 4779.

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

The Board will monitor questions and complaints submitted to the Board to determine compliance and on-going need for clarifications to the rules.

- 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.

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**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. These rules provide more detail to amplify Ohio Revised Code.

**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. These rules further clarify statute.

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

These rules further clarify 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 replicate current OPP rules on the same topic. The only change made was to swap out the name of the Board (OTPTAT for OPP), so there are already procedures in place. 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 impact all individuals licensed in Ohio to practice orthotics, prosthetics, and pedorthics.
  - b. These rules define licensure requirements, so the costs related to compliance include:
    - Cost of education (master's degree for new graduates, except for pedorthics requires a high school diploma)
    - Cost of residency program (\$1,800)
    - Cost of equipment (CAD software, molds, casting) needed to perform custom fitting and manufacturing (cost varies)
  - c. See above

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

These rules are consistent with the standard of practice for educating the OPP practitioners and the expectations for current scope of practice included in Chapter 4779 of the ORC.

**Regulatory Flexibility**

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

The Board has disciplinary guidelines that take into account first offenses when issuing discipline through enforcement.

**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 has disciplinary guidelines that take into account first offenses when issuing discipline through enforcement.

**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.