



## 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 – continuing education

**Rule Number(s):** 4755-65-01, 65-02

**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Rescinded/      rules (FYR?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 | 65 | 01 | Continuing education requirements and reporting | Replaces 4779-9-01 and 9-02 | This rule gives more detail on the continuing education requirements for OPP license holders. The reporting process for CE changed when moving over to the OTPTAT Board so that license holders are not required to submit CE on renewal, but are instead 20% will be audited after renewal (same as for other OTPTAT licensees. The CE requirements were changed to be closer to |
|------|----|----|---|-----------------------------|---|

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|      |    |    |                                  |                    |   |
|------|----|----|----------------------------------|--------------------|---|
|      |    |    |                                  |                    | the requirements for OTPTAT licensees. See below.   |
| 4755 | 65 | 02 | Waivers for continuing education | Replaces 4779-9-03 | This rule gives information on how someone can request a waiver of continuing education requirements. This aligns with other OTPTAT processes. Waivers may be requested for specific hardship reasons and can be requested through eLicense Ohio. |

Continuing education changes for OPP by the OTPTAT Board:

- Your continuing education (CE) requirements have changed. Instead of the three-year reporting groups that were structured under the former OPP Board, you will now report the number of CE hours that you took over the prior two years every time you renew, but you will not be expected to upload your continuing education statement. You will only turn in your statement if you are subject to a continuing education audit. Please retain your statements for more than one reporting period in the case that you are subject to an audit. The first audit will occur after the first biennial renewal through the OTPTAT Board – in early 2021. This applies only to CE required by the Board. All required education for maintenance of certification is unchanged.
- After consulting with the Orthotics, Prosthetics, and Pedorthics Advisory Council, the number of hours that are required have been reduced to put the professions more in line with other license types. The following chart demonstrates the number of hours that were previously expected and what will now be required to maintain your license.

| <u>License Type</u> | <u>Former OPP Board</u>   | <u>OTPTAT requirement</u> |
|---------------------|---------------------------|---------------------------|
| LO                  | 45 hours over three years | 25 hours over two years   |
| LP                  | 45 hours over three years | 25 hours over two years   |
| LPO                 | 75 hours over three years | 35 hours over two years   |
| LPED                | 33 hours over three years | 18 hours over two years   |

These changes also make it less confusing to maintain compliance with the continuing education requirements of the certification body by bringing them more in line.

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- 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, 4779.20, 4745.07

- 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 give necessary details on how to comply with continuing education requirements.

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

Compliance with continuing education requirements. This is measured by auditing 20% of the license holders after a renewal period and asking them to show proof of continuing education completion.

- 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?**

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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. Continuing education is the standard for how continued competence is measured in regulation.

- 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.**

The Board has standard discipline that includes compliance with CE audits that will be used during audit time.

### **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 and the business for which they work.
  - b. Continuing education can be found at varying levels of cost, from free courses to hundreds of dollars for conferences over multiple days. Fines can be a result of an audit finding for lack of compliance. Employers often give time away from the office to employees needing to take continuing education courses.
  - c. See above

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

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These rules amplify the continuing education requirements in chapter 4779. Continuing education encourages licensees to continue learning new techniques and better ways to treat patients.

### **Regulatory Flexibility**

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

No. The continuing education requirements are on the individual license holder. A business can choose the degree to which they accommodate compliance for the staff.

**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 for CE audit findings. The Board traditionally gives the licensee the option to make on their hours and issues a warning letter rather than formal discipline.

**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. Anyone may reach the Board for assistance at any time via mail, email, phone, website, and social media. The Board has sent out several reminders via mail, email, and via the association to remind license holders of these new requirements.