Ohio | Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: 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):

Physical Therapy Compact

Rule Number(s): 4755-23-16, 4755-24-01

Date of Submission for CSI Review: 5/28/2021

Public Comment Period End Date: 6/9/2021

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 ___) **Rescinded/____ rules (FYR?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.

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.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   These rules implement Senate Bill 5, the Physical Therapy Licensure Compact, which will be effective on June 30, 2021. Senate Bill 5 will allow physical therapists (PTs) and physical therapist assistants (PTAs) who live in a state that is also a member of this interstate compact to apply for a privilege to practice in Ohio through the PT Compact – http://ptcompact.org. Ohio PTs and PTAs will also be able to apply for a privilege to practice in another compact state through this legislation. The intent is to ease access to the ability to practice across state lines without sacrificing licensure qualifications and standards or the regulatory board's ability to enforce state law.

   The Board has determined two rules are necessary to implement the compact:

   1. 4755-23-16 – Physical Therapy Compact privileges – This rule will require the PT Section of the board to comply with the laws and rules of the PT Compact Commission. The rule will also require any applicants for a PT Compact privilege to take the Ohio

Jurisprudence Assessment Module in order to familiarize them with Ohio's PT practice act which will govern their practice while they are working in the state of Ohio.

2. 4755-24-01 – Physical Therapy Compact Privilege fee – This rule will implement a state fee of $50 for obtaining a privilege to practice in the state of Ohio.

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.**

   Ohio Revised Code 4755.57

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?**
   If yes, please briefly explain the source and substance of the federal requirement.

   No.

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)?**

   To implement Senate Bill 5, which will ease the ability to practice physical therapy across state lines.

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

   The number of compact privileges obtained to work in the state of Ohio. The number of compact privileges obtained by Ohioans to work in other states.

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?**
   If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.
   No.

Development of the Regulation

9. **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.

Physical Therapy Compact Administrator, TJ Cantwell – 5/15/2021

Consideration of draft rules at the PT Section May meeting – 5/20/2021

Discussion of fee requirements at public PT Section meeting in March – 3/18/2021

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

    The PT Compact Commission made changes to verbiage around what can happen if a privilege holder does not take the jurisprudence module or pay the fee.

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. These rules implement legislation.

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.***

    Most of the process for these rules is dictated by the PT Compact Commission.

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

    Review of Senate Bill 5 and the PT practice act.

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 will participate in a data exchange with the PT Compact Commission to allow the compact to have the information on Ohio licensees which will enable consistent implementation of the compact between states.

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**

    Physical therapists and physical therapist assistants in Ohio and in other PT Compact member states.

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

There is a state level fee for obtaining a privilege to practice in Ohio and a fee to take the jurisprudence assessment module that is required.

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.

The state level fee is proposed to be $50. Individuals who apply for a privilege to practice in Ohio would otherwise be apply for licensure by endorsement and pay a $100 fee. The $50 fee would partially recoup this lost revenue and cover administrative costs of the board for the administration of the privilege.

The cost to take the jurisprudence assessment module is $48. This covers the creation of the content, upkeep, and administration of the module. The board feels strongly that the module is a way to help educate holders of a privilege to practice in Ohio about the Ohio PT practice act.

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

The fee helps recoup lost revenue and cover board administrative costs. The jurisprudence module helps educate privilege holders on the Ohio law and cover the costs of administering the module.

Regulatory Flexibility

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

No. These requirements apply to individuals who want a privilege to practice in Ohio.

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 takes into account first time violations when deciding whether to issue discipline.

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

The OTPTAT Board website will have instructions related to the PT Compact. Board staff are available during business hours by phone and email.