



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. 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):

Unique and Exceptional qualifications

Rule Number(s): 4755-63-15

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Rescinded/ rules (FYR?)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.

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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.**

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

This rule requires a person who does not have a residency from NCOPE in the area of orthotics and prosthetics to meet an alternative standard for licensure that requires 15 years of orthotic or prosthetic experience plus either 50 or 70 hours of continuing education within the past five years, depending on the license for which they are applying.

OR

They may submit proof of two years of the last five experience within orthotics and prosthetics under supervision of a licensed orthotist or prosthetist.

An applicant must also submit letters of recommendation and proof of unrestricted certification.

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.**

4779.08 (A)(17)

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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?**

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)?**

This rule implements Senate Bill 68, which allows the Board to establish unique and exceptional qualifications for licensure for orthotics and prosthetics. This is an effort to allow licensure for individuals who have been practicing in another state for many years but do not qualify under Ohio's licensure law because they do not and cannot meet the residency requirement. In this case, years of experience and reference documents may be taken into account. These rules are modeled from similar efforts in other states, including Texas in particular.

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

Applications for licensure based on unique and exceptional circumstances.

- 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.

The rules were released via listserv to all orthotics and prosthetics license holders in Ohio. They were also sent to the Board of Certification/Accreditation and the American Board for Certification in Orthotics and Prosthetics. Finally, the rules were considered by the Orthotics, Prosthetics, and Pedorthics Advisory Council in March and May and by the Joint OTPTAT Board on May 20, 2021.

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

Comments on the rules were as follows. These comments reinforced that the rule is fair compromise for a long standing issue.

Commenter	Comment
Don Weldon, LCO	I feel as though this is an appropriate rule for the profession. There are many of us that have traveled different routes to be certified and have many years of experience and should have the opportunity based on that to become State Licensed.
Mark Martien CO.	<p>To whom it may concern. I hope I'm reading and understanding this correctly. I been in the O&P field since 1992 where I received my Associates degree in Applied Science Specialized in O&P. I worked as a Technician for 2 years and since 1994 I worked alongside a CPO providing patient care. I became BOCOcertified in 1999 and grandfathered into ABC,CO in 2004. I just missed the Ohio Licensure grandfather clause when it was first passed. I did get my Kentucky License in Orthotics in 2013 when they passed their licensure.. I hope that if this rule passes that I will be able to finally get an Ohio License.</p> <p>I hope with the information that I provided can give you the information to let me know that this is in fact a pathway that will work for me and others that are in the same situation.</p>
Ivan E Kruger	<p>Furthermore to comments relating to this proposed bill.</p> <p>I immigrated to the US in Aug 2015, from South Africa, where I had been practicing as a Registered Orthotist and Prosthetist since 2003.</p> <p>I have struggled to get certification for Prosthetic and Orthotics.</p> <p>I have appealed on 2 occasions – 2015 & 2018.</p> <p>NCOPE have denied both appeals due to insufficient tertiary education.</p> <p>This was despite numerous attempts to get additional credits internationally and locally to satisfy their requirements.</p> <p>I am now certified as a Certified Orthotic and Prosthetic Assistant, as well as a Certified Orthotic Fitter.</p> <p>I believe my experience and achievements in this field, since starting in 1999, should suffice to be licensed as a Certified Orthotist and Prosthetist in Ohio.</p> <p>I have attached my Resume, patient and colleague testimonials and the 2018 & 2018 appeal letters to NCOPE.</p> <p>There a lot of documents, but I believe they provide substance for my request.</p> <p>Please be so kind as to review these documents and assist me in enforcing this rule.</p>

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Douglas VanAtta, LPO	Good. Fair. I don't feel you should back off on other requirements, but this is fair.
Matthew De Lay	I have been working in the O&P industry for my entire adult life. I began my career working as a technician and soon after incorporated patient care in my daily tasks as a BOC certified Orthotist ABC certified Pedorthist and prosthetic assistant. I have been involved in every area of the industry including training others and overseeing clinical care of orthotic and prosthetic patients. I have a passion for patient centered care and would sincerely like to be close to my wife's family that live in Ohio. The current licensure laws in Ohio prevent me from making a living in the state even though I have dedicated over 21 years of my life to the industry. Orthotics and Prosthetics is a unique healthcare industry in the most healthcare workers provide a service but we provide a product that enables life to resume. It is still very much a hands on industry where hand and people skills are very much needed. There is nothing wrong with education but I believe the current programs lack the bedrock of what this field was founded upon. I would hope that common sense would prevail and I will one day soon be able to pursue my career in Ohio. Thank You for your Time
Thomas M Gore CPO	I don't know if this could be expanded to other countries as well? I've been practicing for about 10 years and have come across several practitioners with loads more experience but they are not able to be certified or licensed. This is mainly due to the fact that they don't want to have to go through 2 more years of school to learn what they already know.
Sarah Z. Frankel C.Ped.	<p>Yes, licensure should be reciprocal and allowed for those visiting from other states. However, Ohio has rules for Pedorthists that are unlike any other states. All other states follow ABC scope of practice for pedorthists and they are permitted to provide short leg AFOs, SMOs, and SCFOs to patients needing these.</p> <p>From ABC Scope of Practice:</p> <p>Pedorthic devices means therapeutic shoes, shoe modifications made for therapeutic purposes, partial foot prostheses for transmetatarsal and more distal amputations and foot orthoses. It also includes subtalar-control foot orthoses (SCFO) designed to manage the function of the anatomy by primarily controlling the range of motion of the subtalar joint. Excluding footwear, the proximal height of a custom pedorthic device does not extend beyond the junction of the gastrocnemius and the Achilles tendon.</p>

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	<p>Until Ohio makes changes to its Pedorthic Scope of Practice I cannot approve of the Rule up for debate, number 4755-63-15</p>
<p>John N. Billock, CPO/L, Clinical Director</p>	<p>I certainly would agree with the proposed rule that has been released for early stakeholder feedback, as it has been drafted and presented in this e-mail.</p> <p>Thank You for the opportunity to respond!</p>
<p>Zack Chait Regulatory and Legislative Analyst BOC</p>	<p>Thank you for asking for our input. I reviewed the rule in coordination with our senior leaders and am pleased to provide enthusiastic support on behalf of the Board of Certification/Accreditation (BOC.) We believe it addresses an issue that has hampered the ability of many highly-qualified practitioners in the field of orthotics and prosthetics (O&P) to come to Ohio and serve patients residing there. We appreciate the effort of the State to address this issue and ensure that the population relying on O&P care to maintain their quality of life has ample access.</p> <p>We would like to note that the suggested 15 years of experience meets our standards in establishing expertise, but we recommend that ten years would achieve similarly adequate assurance, and could open the candidate pool even further.</p> <p>Please let me know if there is any additional assistance we can provide. I appreciate the opportunity to offer perspective and support on behalf of BOC.</p>
<p>Stephen Fletcher, CPO, LPO Director, Professional Credentialing, ABC</p>	<p>I apologize for the late email and comments on Rule 4755-63-15. I realize that Sunday April 4th as the last day for sending in comments but thought I would submit our comments early today anyway.</p> <p>It appears that this rule appears to be addressing single discipline orthotists and prosthetists and dual discipline prosthetist/orthotist (LPO). Since there is no reference to the licensure types in the title, it is not obvious.</p> <p>This rule does not appear to apply to pedorthists. However, rule sections 4779-17 and 4779-18 both are referenced in the rule and both have subsections referring to pedorthics.</p> <p>The continuing education requirements in (C) (1) (a) and (b) make sense based on the requirements set forth in 4779.20.</p> <p>General Comments. This is somewhat surprising to see the Ohio board contemplating an experiential pathway to licensure. The O&P profession has definitively moved away from this type of pathway. ABC eliminated any experience only pathway in 2008. The BOC eliminated this type of pathway in 2013. It is unclear what need this is attempting to address.</p>

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	<p>Sections 4779.10, 4779.11, 4779.12, 4779.25 and 4779.26 of the O,P and P laws and rules all reference a bachelors degree in O&P or a certificate program. Both of these elements no longer exist. The only CAAHEP accredited educational programs in orthotics and prosthetics are at the Masters level. ABC only accepts a Masters degree in orthotics and prosthetics to qualify for licensure. The BOC sunsetted their orthotist, prosthetist and pedorthist certification programs in 2015. There is no longer any educational programs that offer a bachelors degree or a post-bacaulaurette certificate. The board may want to consider updating these sections of the rules to reflect the current accepted level of education in order to enter the O&P profession as a prosthetist/orthotist.</p>
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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?

By its nature, this rule is an alternative regulation to the standard pathway to licensure.

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.*

This rule is very performance based due to its experiential requirements.

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

Review of existing laws and rules.

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 review and track the alternative pathways to be sure they are approved consistently over 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

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- 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.**
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 fee for an initial license is \$100, plus the cost of any continuing education required by the rule. If an employer chooses to assist with these costs to an individual licensee, it could be an adverse impact.

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

This rule will open up licensure to additional practitioners, increasing the workforce pool for employers.

Regulatory Flexibility

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

No.

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 accounts for first time offenses in its disciplinary process.

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

The Board website will have instructions for implementation of this component. Board staff is available by phone or email during all business hours.