



## Common Sense Initiative

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

**Sean McCullough**, Director

### 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 – Continuing Education 2022 revisions

Rule Number(s): 4755-23-08

Date of Submission for CSI Review: February 10, 2022

Public Comment Period End Date: February 21, 2022

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/\_X\_ 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Rescinded/\_\_\_ rules (FYR?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 details the continuing education requirements that must be met to be in compliance with license renewal requirements every two years Changes to this rule include:

1. A restatement of the statutory exemption from continuing education requirements for first time renewals. (ORC 4755.51 and 4755.511)
2. Continuing education requirements for a license reinstated for twelve months or less are reduced by half. Reinstatements must show full compliance with continuing education in order to make the license active again. Requiring an additional full continuing education requirement with less than a year left before renewal is burdensome. This change is intended to reduce that burden.
3. Restates the statutory allowance for ten hours of continuing education for a published article or book, per renewal period.

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4. Allows for six hours of continuing education for Hand Therapy Certification Commission recertification in the year that it occurs.

- 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.**

4755.411, 4755.51, 4755.511, 4755.52, 4755.53

- 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.**

The federal government does not issue occupational licenses.

- 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 particular regulation is needed so that licensees know how to obtain continuing education that state statute mandates they receive in order to continue to be licensed by the state. The rule gives details on how the continuing education may be achieved.

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

8. Also, overall compliance with Ohio's rules and statute will be measured through continuing education audits after each renewal period. A small number of license holders are selected to submit their continuing education for review.

- 9. 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.*

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The rules were discussed at the November 2021 and January 2022 meetings of the Physical Therapy Section of the OTPTAT Board. Rules were released to license holders and other stakeholders for comment December 9-December 24, 2021.

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

Comments received were supportive of the changes to reinstatement requirements and the first time renewal. The HTCC and publications changes are being added as a result of additional feedback.

**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?**

No.

**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 required by the 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. The nature of this rule is to allow many choices in continuing education in order to achieve compliance.

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

Review of ORC and OAC. This rule does restate portions of the ORC so that all CE requirements can be found in one place.

**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 uses guidelines to govern the process of auditing for CE and disciplining for violations to keep it consistent 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.*

- a. Continuing education requirements impact all physical therapists and physical therapist assistants. Secondarily impacted are their employers who sometimes help cover CE costs and time.
- b. Most continuing education has a cost for the course. Costs vary. Continuing education providers vary greatly in their offerings.
- c. Continuing education probably costs most license holders several hundred dollars a year.

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

Continuing education is required by statute and is an important tool to help license holders maintain competency and learn new skills.

### **Regulatory Flexibility**

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

No. This rule does not apply to small businesses, but only to individual licensees.

**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 past history and severity of offense when considering whether discipline should be issued as a result of noncompliance with continuing education.

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

The Board website, Staff can be reached during business hours via email or phone.

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