



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Veterinary Medical Licensing Board

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Safe haven rule

Rule Number(s): 4741-1-25 OAC

Date of Submission for CSI Review: 1/11/2023

Public Comment Period End Date: 1/31/23

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? No)

Rescinded/___ rules (FYR?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.**

4741-1-25 OAC: The rule impacts impaired practitioners and establishes a safe haven program for licensees who have addiction concerns or mental health/wellness issues. The rule will permit a licensee to enter an assistance program without notification or discipline by the Ohio Veterinary Medical Licensing Board (hereinafter referred to as the Board). The rule sets the requirements for confidentiality as well as reporting requirements should the licensee violate the terms of the agreement with the assistance program.

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.** *Section 4741.03(C)(9) ORC authorizes the Board to adopt rules, in accordance with Chapter 119 of the Revised Code, which are necessary for its government and for the administration and enforcement of Chapter 4741. Section 4741.31 ORC states that the Board shall adopt rules establishing standards for approving and designating physicians and facilities as treatment providers for veterinarians with substance abuse problems and shall approve and designate treatment providers in accordance with the rules.*
4. **Does the regulation implement a federal requirement?** *No* **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*

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5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** *N/A*
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)?** *The public purpose of this regulation is to assure the public that licensed veterinarians and registered veterinary technicians (RVTs) are professional, trustworthy, and competent practitioners. The amended rule provides a safe haven for the practitioner who is suffering from addictions or mental health issues in a confidential program that is individualized for their needs, thus enabling the practitioner to return to practice safely.*
7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** *Currently, the Board receives quarterly reports. If there is a violation of the agreement, the Board will receive notification and work with the assistance program to ensure that the individual complies or receives additional care.*
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*
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** *The Board met with the Ohio Physicians' Health Plan Executive Director regarding their efforts in establishing the safe haven program for all medical provider licensing boards at their May 11, 2022 meeting. The Board considered the requested revision to the rule. The Board currently utilizes the Ohio Physician's Health Plan for those practitioners under settlement agreements. However, the safe haven program required revising the rule. The draft rule was brought to the November board meeting and provided to the Ohio Veterinary Medical Association as well as the OhioPHP representatives. Recommendations for revisions were proposed by OVMA and OhioPHP which were accepted by the Board at their December board meeting. The Board moved to progress with the rule modifications.*
10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** *The OVMA recommended removing language related to their past program as it is no longer in existence. The Ohio Physicians' Health Plan recommended program approval by the Board. Representatives from both agencies were at the Board meetings for any discussion. The topics were also described in the Board minutes posted on the Board web site.*
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?** *There was no scientific data utilized to develop or review this rule.*
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?** *This rule*

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is basically an alternative rule. It permits the licensee to seek treatment rather than to be penalized under the Veterinary Medical Practice Act. The Board did not consider a performance-based regulation. The purpose of the rule is to provide guidance to the licensee so that they will voluntarily seek assistance.

- 13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** *This rule relates to the practice of Veterinary medicine. There is no other agency that has the authority to regulate the licensure of veterinary medicine.*
- 14. 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 an established plan to work with the monitoring organization (OhioPHP) already in place but will work to promote the "safe haven" program through newsletters, educational opportunities, email listserves, etc.*

Adverse Impact to Business

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**
- a. Identify the scope of the impacted business community:** *This rule applies to veterinarians and registered veterinary technicians and*
 - b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).** *Adverse impact of the rule would be that if the individual did not comply with the terms set forth by the assistance program, the licensee could be subject to automatic suspension or other disciplinary action of their license.*
- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify.** *The rule already permitted an individual to enter the assistance program without notification to the Board. However, the rule now includes mental health as a confidential, non-disciplinary option.*
- 17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** *The mission of the Board is to protect the public by ensuring competent practitioners. This rule enables a practitioner suffering from mental health issues or addiction issues to enter into the confidential non-disciplinary program without the stigma of Board interference or discipline.*

Regulatory Flexibility

- 18. Does the regulation provide any exemptions or alternative means of compliance for small businesses?** *No. The rule impacts veterinarians and registered veterinary technicians, but could be helpful to small business by streamlining a process for a veterinary facility to seek help for its impaired practitioner.*
- 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 does not fine licensees or impose penalties for first-time paperwork violations.*

20. What resources are available to assist small businesses with compliance of the regulation? *The Board has a healthy working relationship with the associations representing veterinarians and registered veterinary technicians. There is time placed on each monthly Board agenda for the representatives of these associations to speak regarding issues of concern or awareness. The Board has a web site that is updated frequently with important issues and resources, in addition to having a newsletter distributed twice a year to all licensees and posted on the Board website.*

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Impairment and Safe Haven Program.

- (A) The board may establish a confidential, non-disciplinary program for the evaluation and treatment of eligible persons who need assistance with a potential or existing impairment due to a mental health and/or substance use disorder. This program shall be known as the board's safe haven program.
- (B) The board may refer any veterinarian or registered veterinary technician to the Ohio professionals health program or a comparable organization approved by the board, for support and assistance with coordination of the treatment of that veterinarian or registered veterinary technician. The board approved organization shall serve as the monitoring organization of the safe haven program and shall determine the eligibility for participation in the safe haven program and provide associated services to eligible persons.
- (C) Eligible persons shall include individuals licensed as a veterinarian or registered as a veterinary technician as well as applicants who have applied for a license or registration from the board.
- (D) Services provided by the monitoring organization include but are not limited to the following:
- (1) Screening and/or evaluation for potential or existing impairment due to a mental health and/or substance use disorder.
 - (2) Referral to treatment providers approved by the monitoring organization for the purpose of evaluating and/or treating potential or existing impairment due to a mental health and/or substance use disorder, including inpatient or outpatient treatment.
 - (3) Establishment of individualized monitoring criteria or a duration determined by the monitoring organization to ensure the continuing care and recovery from a potential or existing impairment due to a mental health and/or substance use disorder.
 - (4) Case management.
- (E) The monitoring organization that works with the board to conduct the safe haven program may receive referrals from any of the following:
- (1) Applicants, licensed veterinarians, and registered veterinary technicians.
 - (2) Other individuals.
 - (3) Employers.
 - (4) Professional societies and associations.

- (5) Health care personnel and treatment providers.
 - (6) Other entities and organizations.
 - (7) The board.
- (F) To participate in the safe haven program, an eligible person must enter into an agreement with the monitoring organization to seek assistance for a potential or existing impairment due to a mental health and/or substance use disorder. The agreement may specify but is not limited to the following:
- (1) Treatment and therapy plan.
 - (2) Support group participation.
 - (3) Case management.
 - (4) Duration of monitoring. Relapses, which may be reported to the board, and other failures to comply with the terms of the agreement may result in a longer period of monitoring. As appropriate, an addendum to the agreement may be initiated by the monitoring organization.
 - (5) Approved work activities, including but not limited to abstaining from work while receiving evaluation and/or treatment as well as ongoing monitoring of compliance with any restrictions or limitations specified by the monitoring organization or the board.
 - (6) Random toxicology testing.
 - (7) Releases for seeking information or records related to the person's impairment, including but not limited to family, peers, health care personnel, employers, and treatment providers.
 - (8) Grounds for dismissal from participation in the safe haven program for failure to comply with program requirements.
 - (9) Any required fees associated with participation in the safe haven program, including but not limited to fees for toxicology testing.
- (G) The board shall not institute disciplinary action based on a safe haven program participant so long as the participant enters into an agreement with the monitoring organization and complies with the same. The presence of potential or existing impairment due to a mental health and/or substance use disorder shall not excuse acts or preclude investigation or disciplinary action against a participant for other violations of this Chapter.

- (H) The monitoring organization shall report to the board for further investigation and/or action any participant who is unwilling or unable to complete or comply with any part of the safe haven program, including evaluation, treatment, or monitoring.
- (I) All information received and maintained by the monitoring organization shall be held in confidence subject to Section 4741.31 of the Revised Code and in accordance with federal law. However, any veterinarian or registered veterinary technician who enters into treatment by an approved treatment provider shall be deemed to have waived any confidentiality requirements that would otherwise prevent the treatment provider from making reports required under this section.

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Impairment.

(A) A licensee may be subject to this rule when a finding has been made that he or she had practiced while impaired by alcohol or other drugs or when the licensee contacts the board and requests to participate in the program.

(B) Referral to and eligibility for the program

(1) All complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to section 4741.31 of the Revised Code.

(2) Eligibility for the program shall be determined by the board who shall review all relevant materials. Eligibility shall be determined upon criteria which shall include at a minimum the licensee's past or pending criminal, disciplinary or malpractice record, the circumstances of the licensee's referral to the board, or any other alleged violation. The decision on eligibility shall be consistent with the purpose of this program as described.

(C) Requirement for participation

(1) A licensee who participates in the program shall:

(a) Sign an agreement for participation under this rule;

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose;

(c) Timely enroll and participate in a program approved by the board for chemical dependency;

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board;

(e) Submit random witnessed screens for alcohol or controlled substances as required by the program;

(f) Execute releases valid under state and federal law to allow the board access to the licensee's counseling, treatment and monitoring records;

(g) Have the licensee's supervising therapist file quarterly reports with the board;

- (h) Notify the board of any changes in the licensee's employer or place of employment within five days.

(D) Agreement for participation

- (1) The agreement for participation in the program shall at a minimum include:
 - (a) An acknowledgement by the licensee of the need for treatment for chemical dependency;
 - (b) An agreement to participate at the licensee's expense in an approved treatment program;
 - (c) An agreement to submit to random, witnessed drug screens at the licensee's expense, if deemed necessary;
 - (d) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board;
 - (e) An agreement to furnish the board with signed consents for release of information from treatment providers and employers to the board for the purpose of monitoring the licensee's participation in the program;
 - (f) An agreement to participate in treatment for a period of time as established by the program approved by policy of the board.
- (2) The board may include additional requirements for an individual licensee, if the circumstances of the complaint of the licensee's condition warrant additional safeguards.
- (3) The board shall approve a treatment facility for the purpose of participation in the procedure if:
 - (a) The facility or treatment program is certified by the appropriate national or state certification agencies, where applicable;
 - (b) Facility treatment plans and protocols are available to the board;
 - (c) The facility has a random witnessed monitoring program of blood or urine as part of its treatment;

- (d) The facility, the the licensee's supervising therapist, agrees to file reports as required by the board including quarterly progress reports and immediate reports if a licensee withdraws from therapy, submits a positive blood or urine screen, relapses or is believed to be in an unsafe condition to practice.

(E) Records

- (1) Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, alcoholism, or drug dependence which are maintained by the board are confidential and shall not be made available to the public.
- (2) Patient health care records are confidential and shall not be made available to the public.