

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Respiratory Care Board

Regulation/Package Title: Ohio Respiratory Care Board 2012 Rules

Rule Number(s): 4761-5-01, 4761-5-04, 4761-8-01

Date: 04/19/2012

Rule Type:

✓ New

✓ Amended

☐ 5-Year Review

✓ Rescinded

The office of Common Sense Initiative was established by Executive Order 2011-01K and is placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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

This filing consists of several related rules. One regulation proposes to rescind existing rule 4761-5-01, which identifies the examinations currently recognized by the Board as meeting the requirements of ORC 4761.04 (A)(3) for the purpose of obtaining a respiratory care professional license in the state of Ohio. The Board is proposing a new rule, re-titled 4761-5-01 “Waiver of licensing requirements pursuant to division (B) of section 4761.04 of the Revised Code”. Rules 4761-5-04 and 4761-8-01 are collaterally affected by the proposed new rule 4761-5-01 so also must be amended. In addition, rule 4761-8-01 contains new language permitting the board to abandon a renewal application that has not been acted upon within stated term.

The current rule recognizes either the certified respiratory therapist examination (CRT) or the registered respiratory therapist examination (RRT) offered by the National Board for Respiratory Care, Inc. (NBRC) as meeting the requirements of Section 4761.04 (A)(3) of the Revised Code. The examination results are recognized for a period of three years following the successful passage of the examination. The applicant may waive this three-year period under certain conditions.

The newly proposed rule addresses two provisions of law that establish the requirements for respiratory care licensure. These provisions are found in Paragraph (B) of section 4761.04 of the Revised Code. Those provisions allow the Board to waive all or part of paragraph (A) of section 4761.04 of the Revised Code, regarding an application to obtain a license to practice respiratory care in the state of Ohio. The first provision permits the waiver of paragraph (A) of section 4761.04 of the Revised Code in its entirety when the prospective licensee is already licensed in another state. The second provision permits the waiver of subsections (2) and (3) of paragraph (A) of section 4761.04 of the Revised Code.

The proposed rules remove the CRT examination as an examination recognized by the Board after December 31, 2014. After that date, the new rules will recognize only the RRT examination offered by the NBRC as meeting the requirements for licensure in Ohio. The rule provides for the waiver of all or part of section 4761.04 (A) for:

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1. Persons that are licensed by another state based on passing either the CRT or RRT examination prior to January 1, 2015 (these persons will be recognized as meeting the requirements of division (A) of section 4761.04 of the Revised Code).
2. Persons that take and pass the examination(s) to obtain an RRT credential after January 1, 2015 (these persons will be recognized as meeting the requirements of subsection (2) and (3) of division (A) of section 4761.04 of the Revised Code).

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 4761.03 (A) (5) of the Revised Code and Section 4761.04 of the Revised Code.

3. 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.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The Ohio Respiratory Care Board has the authority and obligation to recognize an examination for the purpose of issuing respiratory care professional licenses under ORC 4761.04 (B), which protects the safety of Ohio citizens.

5. 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 regulation is necessary to meet the Board's obligation to apply the provisions of paragraph (B) of Section 4761.04 of the Revised Code.

Beginning in 1990, the Board recognized the Certified Respiratory Therapy Technician (CRTT) examination offered by the NBRC as meeting the minimum entry-level examination component for licensure. In 1999, the NBRC changed the CRTT examination to the CRT examination. The Board's rules were amended to recognize the CRT examination as the minimum qualification for licensure. In 1990, Respiratory care education throughout the United States (U.S.) included both entry-level and advanced level programs, called 100 level and 200 level programs respectively. Today, only seven entry-level programs exist in the U.S. and these are scheduled to become 200 level programs by the end of 2012. All others are 200 level programs (approximately 500 programs nationwide). Two-hundred level programs are designed to prepare students for respiratory care as an RRT. All of Ohio's respiratory care programs and those of the surrounding states are 200 level.

The Board believes that since all respiratory care educational program are or will soon be 200-level RRT preparatory programs, the licensing examination should no longer be the CRT examination. Instead, the RRT examination should be the required licensing examination, because the educational program is designed to prepare graduates to practice as an RRT. This belief is further supported by the findings of a 2011 statewide survey conducted when a stakeholder group convened to review the Board's proposal. In addition, the findings of a recent national survey supported the RRT examination as the minimum competency expectation for future graduates. Accordingly, the Board believes the regulations should be changed to require successful completion of the RRT examination to meet the waiver requirements of paragraph (B) of Section 4761.04 of the Revised Code. This change would not have any effect on existing Ohio licensees or licensees licensed by another state prior to January 1, 2015.

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

The Board will measure the rate of implementation of respiratory care driven protocols attributable to RRT practice that demonstrate projected decreased costs and decreased patient length of stay.

Development of the Regulation

7. 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.

On August 13, 2010, the Board invited respiratory care education program directors from all Ohio respiratory care educational programs to a meeting in Cleveland, Ohio to discuss the possibility of amending OAC rule 4761-5-01. Ten directors attended this meeting. Of the ten present, seven expressed firm support to pursue an amendment. The Board began a workgroup process in 2011 to evaluate the Board's proposal to amend rule 4761-5-01 of the Administrative Code to recognize only the RRT examination for licensure in the state of Ohio. Participation in this process was open and not limited to any specific groups, although some organizations, such as the Ohio Hospital Association (OHA), recommended the inclusion of many of the participants to achieve broad representation. The Workgroup consisted of 21 representatives from respiratory care and human resource departments within acute care health organizations, individual respiratory therapists, educators, the Ohio Society for Respiratory Care (OSRC), the NBRC, and the OHA.

Workgroup meetings were held on April 8, 2011, May 13, 2011, and September 2, 2011. A final Workgroup report and recommendation was completed and sent to the Board in October 2011.

Additionally, the American Association for Respiratory Care (AARC) and the NBRC were invited to present their positions during an open meeting of the Board. Both organizations presented testimony before the Board.

Following approval of the Workgroup's report and recommendation in December 2011, the Board directed the administrative staff to form a stakeholder's group to begin drafting rules needed to implement the agency's proposal. Invitations to participate were sent by email to 37 persons representing the aforementioned organizations. A stakeholder's group was formed consisting of representatives from the NBRC, the AARC, the Ohio Society for

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Respiratory Care (OSRC), two Ohio respiratory care program directors representing the educational perspective, the OHA, and individuals representing 11 Ohio health organizations. The Workgroup met three times on January 13, 2012, February 24, 2012, and March 23, 2012. While not all persons attended the physical meetings, all work products were sent out to each person for comment and input. Comments were evaluated and incorporated into the draft rule, unless a specific reason was determined for not including a specific recommendation, such as limitations in statutory authority or requirements beyond the scope of the group's work.

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

Input from Stakeholders:

Prior to the drafting of the proposed rules, stakeholders were encouraged to provide written and verbal testimony on the Board's proposal. Stakeholders that participated in the study and evaluation of the Board's proposal overwhelmingly supported amendment of the existing rules. The OHA and one individual were neutral on the proposal, the NBRC opposed the proposal and provided a minority report, and a Past President of the AARC opposed the proposal. The AARC also provided verbal and written testimony to the Board expressing concern over the pace of implementation ahead of their independent 2015 initiative. The OSRC gave testimony supporting the proposal.

How did input affect the draft?

The Board considered all testimony provided prior to moving forward with rule drafting. Most testimony and comments provided to the Board throughout the initial review and evaluation were supportive of the Board's proposal, including support from the state's professional organization, the OSRC. The NBRC was the primary opponent to the Board's proposal. After hearing the testimony provided, the Board moved forward with drafting rules. Stakeholder input affected the drafting of the rule as follows:

1. The Board considered the role of education in establishing the competency of the individual. It was noted that the Committee on Accreditation for Respiratory Care (CoARC) accredits educational programs. Programs are accredited as 200-level.

Advanced practice standards developed by CoARC state that a “program must prepare students to meet the recognized competencies for [RRTs] identified in these standards.” A key component of CoARC’s accreditation standards for respiratory care programs is to have a goal defining minimum programs expectations as follows: “To prepare graduates with demonstrated competence in the cognitive, psychomotor, and affective learning domains of respiratory care practice as performed by an RRT.” Prior to 2010, CoARC included successful completion of the RRT examination as an outcome measure for accredited programs. This standard was dropped in 2010, leaving the CRT examination as one of the outcome measures for accreditation.

The Board believes that graduates of a CoARC accredited program, which is designed to prepare graduates for RRT level practice, should be able to successfully pass the RRT examination.

2. A survey conducted by the Board’s Workgroup conducted a survey finding that approximately 73% of the workforce already possesses the RRT credential in Ohio. The Board believes this finding affirms the proposal to use the RRT examination as the requirement for licensure in Ohio. In addition, a recent national survey indicated a preference for the RRT credential as the entry requirement.

During the drafting of the rule, the AARC and the NBRC made additional suggestions.

The AARC stated concern that the originally proposed implementation date was unrealistic. The date has been moved back two years to 2015. The AARC also recommended that the Board should not require equivalent continuing education requirements for non-residents seeking licensure in Ohio, but that the Board should give non-resident licensees one year to make up any continuing education requirements. The Board took note that the current rules already require continuing education make-up and that no problems had been noted. Further, the Board noted that Ohio requires 20 contact hours every two years, which is the mean for the nation. Lastly, AARC recommended a four-year grace period for all licensees, so that they could obtain their RRT credential. The Board noted that a four-year grace period would have negligible impact on a non-resident provider, because they would not be following Ohio requirements and the proposed rule already contains a sufficient lead-time before implementation.

The NBRC recommended changing the title of proposed rule 4761-5-01 to “Requirements for initial licensure”. The Board rejected this change, because the proposed rule did not address requirements for initial licensure, but rather recognized examination(s) for granting waivers under paragraph (B) of Section 4761.04 of the Revised Code. The title was amended, however, to reflect the purpose of the rule. The NBRC recommended that the

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Board remove language referring to a successor organization. This recommendation was rejected, because the Board would need to amend the rule if the NBRC ever changed its corporate name. The NBRC recommended that the Board change paragraph (A) (1) (a) (i) to include achieving the CRT or successful completion of the CRT examination. After clarifying the recommendation, the Board believes the NBRC was addressing examinations administered or contracted for use for persons that meet education waivers. The Board did not incorporate the recommendation, because paragraph (C) addresses the recommendation. The NBRC recommended not listing the examination, but rather the credential achieved. The Board determined that this recommendation exceeded the Board's authority, which is to recognize an examination or equivalent out-of-state license when waiver all or parts of paragraph (A) of Section 4761.04 of the Revised Code. Finally, the NBRC recommended removing references to scaled scoring in paragraph (C) of the proposed rule. This recommendation was accepted.

9. 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?

According to CoARC, by the end of 2012, all respiratory care education programs throughout the U.S. will be 200-level or advanced RRT level programs. Two-hundred level or advanced level practice programs are designed to prepare graduates for RRT practice (CoARC accreditation standards 3.01 & 4.01).

The first Workgroup surveyed 379 potential respiratory care employers throughout Ohio (The Need for and Impact of Requiring RRT for a License as a Respiratory Care Professional in Ohio, S. Varekojis, PhD, RRT, RCP and F. Herbert Douce, MS, RRT-NPS, RPFT, RCP, FAACR, August 2011). Of the 379 surveyed, 220 complete surveys were returned. These respondents show that although 55% do not currently require the RRT credential for initial employment, 73% of Ohio's therapists are RRTs. Further, the survey found that 46% of the respondents require RRT credentials as either a minimum hiring standard or a required standard within a period after hiring. Additionally, the survey found that 59% of those employers that do not require RRT credentialing for employment (114) foresee requiring the RRT credential for initial employment within the next three years. A recent survey published in May 2012 in the Journal of Respiratory Care [Survey of Directors of Respiratory Therapy Departments Regarding the Future Education and Credentialing of Respiratory Care Students and Staff, Respiratory Care, May 2012, Vol. 57 No. 5, pages 710-720] reports similar trending toward a the RRT examination as the expected requirement for program graduates.

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The Board believes that these data support the Board's proposal to change the licensure examination requirement from the CRT examination to the RRT examination. This rule is proposing a change for future licensing candidates by recognizing an appropriate examination for the purpose of waiving all or parts of paragraph (A) of Section 4761.04 of the Revised Code, which is within the legislated authority of the Board. The Board notes that all graduates from 200 level programs (which all programs in and around Ohio are 200 – level) are prepared and eligible to take the RRT examination.

10. 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?

The alternative to requiring a specific examination for licensure is requiring a specific examination outcome measure for 200-level program recognition. For example, the Board could propose a rule that only recognizes respiratory care educational programs with an annual RRT pass rate of some percent. However, monitoring this requirement for nearly 500 educational programs nationwide would be beyond the resources of the Board. Moreover, there is a question as to whether the Board would have jurisdiction to monitor schools outside the state of Ohio, which could lead to inconsistent results for those students who attend in-state schools and those from other jurisdictions. Section 4761.04 (B) of the Revised Code provides the Board with the authority to implement this change. Referring to division (A) of section 4761.04 of the Revised Code, division (B) states:

The board may waive the requirements of division (A) of this section with respect to any applicant who presents proof of current licensure in another state whose standards for licensure are at least equal to those in effect in this state on the date of application. The board may waive the requirements of divisions (A)(2) and (3) of this section with respect to any applicant who presents proof of having successfully completed any examination recognized by the board as meeting the requirements of division (A)(3) of this section. (Emphasis added)

The Board accepts the Ohio General Assembly's expectation of the role of the Board and believes that requiring 200 level program graduates to pass the examination for which the educational programs purport to prepare the student to pass is a reasonable competency expectation for licensure candidates.

11. 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.

Yes, it was suggested that the Board consider a performance-based measure for educational programs, but this was rejected as being beyond the reasonable resources of the Board.

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

This measure is specifically related to section 4761.04 of the Revised Code. No other agency has the authority to recognize examinations as meeting the requirements to waive all or part of paragraph (A) of section 4761.04 of the Revised Code.

13. 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 proposed rule is designed to give ample time to provide notification that the Ohio Board has changed the minimum examination standards so as to prepare graduates and out-of-state applicants to take the RRT examination. Further, the proposed rule is designed to have no impact on persons licensed in Ohio or any other state prior to January 1, 2015.

The proposed rule is straightforward and licensure candidates will be able to understand these requirements. Application forms will be updated to reflect the new standards, websites will be changed and notification will be sent to all educational programs throughout the U.S.

Adverse Impact to Business

14. 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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

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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. The proposed rule should have minimal impact on the business community. All persons licensed prior to the effective date of the proposed rule amendment are not impacted and the costs to hire them will not change based on the new rule.
- B. Higher costs of hiring. A marginal difference in higher hiring costs may occur at certain institutions. In addition, the Board notes that the Workforce survey indicates that 73% of the workforce in Ohio may already be RRTs.
- C. The costs to individuals to become eligible for initial licensure could rise, because the Board is proposing to change the examination requirement to the RRT examination. In 2015, the NBRC is proposing changes to the examination process, which would combine the CRT and RRT written examinations. The NBRC currently charges \$190 for the CRT examination and \$390 for the RRT examination. This change may have an impact on the costs, but the NBRC has not revealed their intended charges for the 2015 examination. If the NBRC does combine the written parts of the examination, it is proposed that the changes would be implemented around the same time the Board’s rule would take effect.
- D. Changes to rule 4761-8-01 include a provision to abandon license and limited permit renewal/reinstatement application after a period of non-response to incomplete application notice. Abandonment would require, if the applicant requests, reapplication, including reapplication fee. The abandonment language requires the Board to mail notices to the applicant over a period of time, advising the applicant of the incompleteness.

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

- A. Potential adverse impact: fewer available therapists. Response: The Board does not believe there will be a decrease in available therapists. We do not anticipate this for two reasons: (1) the natural trend in healthcare indicates that RRT credentialing is becoming an employment minimum, and (2) currently, there is an overabundance of therapists in comparison to available positions. This effect is partially due to the economy, but also due to more graduates than market absorption ability.
- B. Potential adverse impact: high costs of hiring. Response: This change may have a small effect on the initial cost of employment. However, the Board believes that this would be minimal for several reasons:
- a. As of 2012, all graduates are RRT eligible and can take and pass this examination at any time.
 - b. The Board is not dictating the hiring standards for employers. The Board only enforces state law, which states that individuals must be licensed to practice respiratory care. Since this change has no impact on persons currently licensed here or in any other state prior to the effective period, the pool of licensed candidates for employment is very large. The Board also notes that employers are already trending toward an RRT minimum requirement without Board involvement.
 - c. In addition, the Board found from its survey of employers that higher hiring costs were the dominant negative concern among respondents. However, the survey showed that this concern represented a minimal impact by those that require new employees to be RRT.
- C. Potential adverse impact: higher costs to individuals to meet the minimum standard for licensure. Response: Over the past two years, the Board issued 828 licenses. Of these, 165 were issued to non-residents of the state. The Board logically assumes that future candidates seeking licensure in Ohio would predominantly be persons already licensed in other states prior to the effective date of the proposed rule or persons that are RRT. License candidates currently take the CRT examination for licensure and then voluntarily choose to take the RRT examination. Under the new rule, both examinations would need to be passed for license eligibility. The new rule; however, is not the only factor driving the RRT requirement. Forty-eight percent of the 220 respondents to the Board's survey require RRT as an employment condition or require RRT within a specified time after employment. In addition, 59% of the remaining respondents predict a move toward an

RRT only requirement within the next three years. It should also be noted that the Board found that 220 survey respondents reported that 73% of their staff already hold the RRT credential.

Regulatory Flexibility

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

The rules are based on specific statutory language under Section 4761.04 of the Revised Code. The Board has no authority in existing law to consider other means of compliance for small businesses.

17. 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?

Not applicable.

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

The rules do not regulate small businesses. The rules are directed toward individuals who are potential respiratory care licensees.