

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Psychology

Regulation/Package Title: OAC 4783-Implementing ORC 4783

Rule Number(s): 4783-01; 4782-02; 4783-03; 4783-04; 4783-05; 4783-06; 4783-07; 4783-08; 4783-09; 4783-10

Date: October 2, 2013

Rule Type:

✓ New

The Common Sense Initiative was established by Executive Order 2011-01K and 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.

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.

The regulation describes requirements for certification as a Certified Ohio Behavior Analyst, scope of practice for applied behavior analysts, the handling and logging of confidential personal information, individuals exempt from certification, continuing education

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requirements for Certified Ohio Behavior Analysts, rules of professional conduct, supervisory responsibilities, and the disciplinary process.

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

4783.03 (A)

3. 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.

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

There are no federal requirements to exceed.

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)?

The purpose of this package of regulations is consumer protection, and rules must be written to implement a new law pursuant to ORC 4783.03 (A). Applied behavior analysis is most commonly practiced with children or vulnerable adults diagnosed with autism or other pervasive developmental disorders. These regulations provide the Psychology Board, the public, applicants, and certificate holders with standards for evaluating safety and competence of the professional providing the service. The regulations provide the consumer with an opportunity to file a complaint in the case of alleged misconduct. The regulations provide the state with a means of correcting, disciplining, or terminating the practice of an individual who has engaged in misconduct. The Board began study on this issue in 2009 as a result of increasing concerns expressed by stakeholders. While ABA is delivered in a wide range of settings and has long been considered an evidence-based intervention within psychology, the use of this technique has grown exponentially due to its effectiveness with Autistic Spectrum Disorders (ASD). Early intervention with ASD's involves time intensive, highly structured positive reinforcement techniques by a trained professional competent in behavior analysis. These services may be provided at family expense, and through a variety of funding streams, including Ohio's Autism Scholarship, through the County Board of Developmental Disabilities, or through third party payers. Behavior analysis and the development of treatment plans to address symptoms of ASD are also paid for under CPST or community psychiatric support and treatment. The Nationwide Children's Hospital Autism Center and Step By Step Academy are two examples of community mental health centers in Franklin County who use CPST services certified through the Department of

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Mental Health and Addiction Services. Delivered effectively, ABA can make an enormous difference in the life of a consumer and family members.

However, behavior therapy is appropriately listed in the State Board of Psychology's definition of "psychological procedures" and in rule 4732-5-01 as a psychological procedure which may create a serious hazard to mental health, due to its efficacy, potential risks, and use with vulnerable consumers. Not only has the Board heard concerns from consumers regarding the difficulty assessing provider competency, third party payers have expressed the same concerns. For example, CareSource, an Ohio Medicaid provider, issued a medical policy statement on 7/20/2012 expressing the following concern: "There is a wide variation in ABA practices from philosophy, approach, interventions and methodology, and outcome reporting. There is lack of definition and guidelines around characteristics of children who would benefit from treatment, lack of evidence-based guidelines for training and credentialing, program content, measurement of success, intensity, duration and clinical criteria." Ohio is not alone in addressing the safe delivery of ABA services. On a national level, both the American Psychological Association (APA) and the Association of State and Provincial Psychology Board (ASPPB) have established workgroups and are partnering on a joint taskforce. The issue has been addressed by the state legislatures of thirty-five states, largely relative to insurance reform.

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

First, this package of rules was written and edited by Board representatives and a wide-ranging group of stakeholders, which reached consensus on each rule, including fees. The group included professionals who will apply for the Certified Ohio Behavior Analyst certificate, Autism Speaks, the Ohio Autism Society, and numerous other representatives. Reaching consensus on a package of rules serving to regulate a new profession is seems, in and of itself, as a successful outcome.

Second, the regulations will be deemed to have successful outcomes if they are clear to the reader, most notably in the areas of certification requirements and professional conduct rules.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Given the concerns outlined in (4) and an opinion by the Ohio Attorney General's Office that the State Board of Psychology is responsible for the regulation of the practice of applied behavior analysis, the Board voted on September 21, 2011 to authorize the formation of a task force to examine issues relevant to the certification of professionals working in the field of applied behavioral analysis. Stakeholder meetings in this area date to 2009, when progress on this issue lagged due to other priorities. The ABA Workgroup group met four times

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between February and July 2012. The input of the stakeholders was incorporated in a draft white paper that was presented to the Board of Psychology. During that period, Governor Kasich issued an Executive Order identifying applied behavior analysis as an “essential health benefit” and the Ohio House and Senate passed, through an amendment to the Budget, the new law (ORC 4783) that this set of regulations proposes to implement. The following stakeholders were invited to a series of work group meetings in 2012 and later in 2013 to discuss the issues involved in certification of professionals who provide applied behavior analysis in Ohio. Each person was provided with every draft rule throughout the process, although not all of them showed up for each rule-writing meeting:

- *Suzanne LeSure, Board President
- *Ronald Ross, Executive Director
- Angela Denney, Autism Society of Central Ohio
- *Jim Carr, Behavior Analyst Certification Board (BACB)
- *Mike Wasmer, Autism Speaks
- *Jacqui Wynn, Psychologist, Nationwide Children’s Hospital
- *Sandi Regula, Parent/advocate
- *Morten Haugland, President, OH-ABA
- *Marla Root, Autism Society of Ohio
- *Ann Brennan, Ohio School Psychologists Association
- *Jody Fisher, Ohio Department of Developmental Disabilities
- *Zach Haugawout, ODDD/Governor’s Office
- Wendy Stoica, Ohio Department of Education (ODE)
- Carolyn Knight, Ohio Developmental Disabilities Counsel
- *Kevin Aldridge, Ohio Center for Autism and Low Incidence (OCALI)
- Luc LeCavalier, Psychologist, Ohio State Nisonger Center
- Melissa Bacon, Office of the Governor then DOH
- *Michael Ranney, Ohio Psychological Association
- *Yolanda Tally-Cudney, Ohio Department of Jobs and Family Services
- Jessica Foster, Ohio Department of Health
- Lori Peacock, Parent/Advocate
- Margaret Burley, Ohio Coalition for the Education of Children with Disabilities

***Particularly active in the rule-writing process**

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

The second round of stakeholder meetings were convened after ORC 4783 was enacted on July 1, 2013. There were work group meetings of stakeholders to raise questions and

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concerns and to collaborate to write and edit this rule package on: July 19, 2013; July 26, 2013; and, July 30, 2013. During these meeting, discussion was very active and spirited as various perspectives were heard and incorporated into the rule drafts. Members of the work group actively drafted certain sections with representatives of the Board, including definitions, scope of practice, and the supervision rules. There were a total of approximately ten drafts of the rules, with Autism Speaks, the Association of Behavior Analysts-Ohio chapter, and parent advocates being the most active participants.

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?

First, ABA is an empirically supported intervention, unlike many health care interventions, especially in behavioral health. The data used to develop the rules were a review of current scientifically supported standards for the delivery of applied behavior analysis, including national standards developed by the Behavior Analysis Certification Board and state laws and rules from states in which certification or licensure has been implemented. This review is documented in the attached Board Position Statement on ABA dated September 25, 2012.

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?

One alternative considered was setting the biennial certification renewal fee at the same level as that set for psychologists (\$350). It was determined by consensus of the stakeholders and Board that this fee was not appropriate because of income disparity and the agreed renewal fee was set by consensus at \$150. This offsets staff resources during renewal and the credit card fees we are assessed. We also considered requiring that the certificate holders submit registration forms for the persons working under their certificates, but agreed that it was an unnecessary regulatory burden and too much of a stress on our limited staff resources.

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.*

No. In order to implement ORC 4783, these regulations are fairly traditional because of the need to set standards for certification, scope of practice, bases for disciplinary action, etc.

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

Because there are existing regulations that address the use of applied behavior analysis within the Ohio Department of Developmental Disabilities and within the Ohio Department of Education, persons performing ABA in those settings were exempted from this rule.

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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.

- Summary of status on the Board's website
- Dissemination of application information and rules on our website
- Dissemination of application information and rules through stakeholder groups, including the Association of Behavior Analysts-Ohio Chapter, and the Behavior Analyst Certification Board and others with list serves.

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;

There are currently approximately 135 Behavior Analyst Certification Board certified practitioners of applied behavior analysis in Ohio and an unknown number of non-certified practitioners. They constitute the primary business community.

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

In order to have a minimum impact on this business community and to avoid disruption of any service plans currently in place in Ohio families, there is a grandfather period in this regulation. Any BCBA in current practice in Ohio will be granted certification if application is made within one year after these rules become effective, **without cost and without being required to demonstrate compliance with the certification standards in the law or rules.** Following the grandfather period, there will be an application fee of \$125, which was a unanimous fee agreed to by the stakeholder group, inclusive of prospective Board Certified Behavior Analyst on the workgroup, Autism Speaks, and the Board.

Certificate holders are required under the law and the rules to renew the certificate biannually at a cost of \$150. There were no objections to this biennial renewal fee from the rule-writing workgroup, including those who will be applying for the certificate. In addition, this cost is not an undue burden because of the resources required to renew the certificates biannually. Specifically, resources will need to be put into a new online application form for the Certified Ohio Behavior Analysts

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(including paying OIT for online application development at \$160/hour), the payroll charges associated with reviewing certificate renewal applications, and the charges incurred by the Psychology Board for credit card charges.

It is estimated that between eighty and one-hundred applicants will be certified free of cost during the one-year grandfather period, during which time there will be no revenues collected by the Board. Following this, it is estimated that we will receive 8-10 applications annually.

Compliance with the statutory continuing education requirements also could have an adverse impact. The certificate holder shall evidence no fewer than 23 hours of approved continuing education biannually in conjunction with license renewal.

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.

These regulations impact the regulated community in terms of dollars, effort, and time. A review of the draft application for certification indicates that it will take approximately 20 minutes or less to complete. Board staff will verify the required BCBA credential on the website of the Behavior Analyst Certification Board, thereby eliminating a burden on the applicant to spend time getting the Board to receive verification by mail or email. Following the grandparent period, there will be additional time required to have supervised experience documented by supervisors, the applicant paying the academic institution for a transcript to be mailed to the Board office, and collecting sufficient hours of continuing education (please note: BCBA’s are already required to complete CE and can use those same hours toward the CE required for biennial certificate renewal). The \$125 application fee following the cost-free grandfather period of certification, again, was reached by consensus and can be justified in the amount of payroll time put into each application by a total of three (3) employees, including hourly pay and Board-paid fringe benefits: Executive Director is \$61/hour; Admin Professional 2 is \$30/hour; and, Program Admin 1 is \$39/hour.

Relative to continuing education, the time required therefore is a minimum of 23 hours (unless prorated lower because of timing of certification relative to the next renewal period) , and it is estimated that the cost of this will vary depending on self-pay vs. agency pay. In general, the cost is presumed to be less than \$300. In addition, because our research indicates that essentially all certificate holders will maintain the

BCBA certification, the continuing education completed to maintain that certificate can also be used toward the psychology board continuing education requirements.

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

There is minimal adverse impact, and the business community, defined as current practitioners of applied behavior analysis, who are unanimously in support of the rules. This package of rules is proposed in order to implement a new law, and therefore the impact is justified based upon the normal course of establishing a new certificate and profession.

Regulatory Flexibility

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

There are numerous exemptions from requirements to hold the Certified Ohio Behavior Analyst Certificate:

4783-5-01 Exemptions from certification requirements.

(A) Exemptions from certification requirements include:

- (1) An individual licensed under Chapter 4732. of the Revised Code to practice psychology, if the practice of applied behavior analysis engaged in by the licensed psychologist is within the licensed psychologist's education, training and experience;
- (2) An individual licensed under Chapter 4757. of the Revised Code to practice counseling, social work, or marriage and family therapy, if the practice of applied behavior analysis engaged in by the licensed professional counselor, professional clinical counselor, licensed social worker, independent social worker, or licensed marriage and family therapist is within the license holder's education, training and experience;
- (3) An individual acting under the authority and direction of an individual described in paragraph (1) or (2) of this rule;
- (4) An individual practicing applied behavior who is supervised by a certified Ohio behavior analyst and acting under the authority and direction of that certified Ohio behavior analyst;
- (5) The delivery of interventions by a direct care provider or family member to implement components of an applied behavior analysis treatment plan;
- (6) A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including applied animal behaviorists and practitioners of organizational behavior management;
- (7) A licensed professional authorized to practice in this state who, in the offering or rendering of services, does not represent oneself in any printed materials or verbally by incorporating the term "applied behavior analyst" if the services of the licensed

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professional are within the scope of practice of the licensing law governing the licensed professional and the services performed are commensurate with the licensed professional's education, training and experience;

- (8) A matriculated graduate student or postdoctoral trainee whose activities are part of a defined program of study or professional training;
- (9) An individual employed by the department of developmental disabilities, a county board of developmental disabilities, or a council of government consisting of county boards of developmental disabilities, when the individual is acting in the scope of that employment;
- (10) A professional employed in a school or other setting that falls under the regulation of the state board of education when the professional is acting within the scope of that employment.

There is also an “equivalent” pathway to certification for those who do not hold the required credential from the Behavior Analyst Certification Board, found in 4783-4-01 (B)(1)(a).

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?

The Board of Psychology does not have the authority to levy fines, and paperwork “violations” are handled through education, not discipline, so long as client or patient welfare was not adversely affected.

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

The Psychology Board website

Professional association list serves

The Behavior Analyst Certification Board Website and mailings

Autism Speaks and other organization communiques

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