

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Psychology

Regulation/Package Title: Supervision Cap and Corrections

Rule Number(s): 4732-3-01, 4732-9-01, 4732-9-01.2, 4732-9-03, 4732-13-04

Date: August 16, 2016

Rule Type: Amended

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.

-Rule 4732-3-01 contains definitions of terms used in the Board's rules, and the proposed change is to clarify a definition by making changes so it is consistent with statute.

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-Rule 4732-9-01 specifies requirements for licensure as a psychologist under various sections of ORC 4732.10. The proposed changes are limited to correction of two incorrect citations to sections of the law.

-Rule 4732-9-01.2 contains the requirements for degrees earned from foreign countries. The change is required to reduce confusion by correctly referencing the paragraph in another rule specific to the training requirements for those persons with foreign degrees deemed equivalent to a doctorate from a U.S. institution. One correction to a citation is proposed.

-Rule 4732-9-03 outlines requirements and timelines for the completion of training experiences prior to being eligible for licensure as a psychologist or as a school psychologist. The proposed changes are only to correct two erroneous citations.

-Rule 4732-13-04 is a chapter containing requirements to be met when an unlicensed person is delivering psychological or school psychological services under the supervision of a license holder (either as an “extender” in psychological work supervision or as a trainee toward licensure in psychological training supervision). The proposed changes include corrections to citations and a proposed change to the number of weekly supervisee work hours allowed. The primary change is to eliminate the cap on weekly supervisee client hours (100) and replace it with a 240-hour cap on the total weekly hours worked (including direct client contact) among all supervisees.

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

4732.06

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?

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 Psychology Board is responsible for ensuring that safe and competent services of license holders and their supervisees are available to the public. Rule 4732-3-01 is necessary to clarify the meaning of terms used in the rules; 4732-9-01 clarifies statutory requirements for licensure, including the components of qualifying training to become a psychologist; 4732-9-01.2 contains the requirements for degrees earned from foreign countries to ensure that the

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education and training are consistent with that which is expected from the profession and the board; 4732-9-03 is required to clarify for applicants the requirements and timelines for the completion of training experiences prior to being eligible for licensure; and, 4732-13-04 is required to ensure that the services provided by unlicensed trainees and others are adequately supervised.

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

Outcomes are anticipated to include increased flexibility for and less burden on license holders in terms of supervisees' weekly work. In addition, outcomes will include fewer or no calls or emails to the Board office specific the confusion raised by the incorrect citations. Also, reaching consensus with members of the regulated community on the change to the weekly supervision cap in 4732-13-04 is judged to be a successful outcome on its own. The more realistic cap and flexibility afforded to supervisors should this rule be amended will lead to less calls and emails to the Board office regarding the undue burden on some license holders. Finally, the regulations will be deemed to have successful outcomes if they are clear to the reader and devoid of confusion from the erroneous citations.

Development of the Regulation

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

Mr. Michael Ranney, Executive Director, Ohio Psychological Association

Ms. Ann Brennan, Executive Director, Ohio School Psychologists Association

Dr. Brad Potts, Psychologist, ODRC

Dr. Megan Mericle, Psychologist, ODRC

Dr. Paul Goodwin, Psychologist, ODRC

Members of the graduate psychology training faculties in Ohio

Dr. Brad Hedges, Psychologist and board member

Dr. Ken Drude, Psychologist and Board President

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

The input focused on changing 4732-13-04 (B)(9) to ease up on the weekly supervision cap to afford more flexibility in certain settings, especially where group interventions can quickly

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result in dozens or hundreds of clients being seen on a weekly basis. Consensus was reached by the stakeholder group in the proposed change, which was unanimously approved by the Ohio Board of Psychology.

8. 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?

Anecdotal data were collected from psychologists in ODRC and community mental health indicating that responsible and safe services were being provided by supervisees seeing in excess of the current cap of 100 weekly clients. These data and strong consensus resulted in support of the proposed change to allow 240 total weekly hours worked vs. 100 weekly client hours.

9. 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?

Several alternatives were discussed by the stakeholder group, but each had too many problems to be recommended to the board as a rule change:

Retain current 100 weekly client limit and retain requirement of registration of supervisees:

- Significant recording keeping burden for psychologists who want to be compliant (tracking each week to make sure that their supervisees don't have more than 100 contacts)
- Poses some problems for organizations that do high volume, routine, and generally low risk contacts (i.e. prisons and others that do routine "screening" activities and/or many groups)
- Difficulty with enforceability (how do you prove more than 100 contacts)
- Ambiguity—Is it a hard 100 clients a week, or an average? Is it any psychological service (screening, consultation, therapy, assessment), or just some? What constitutes a client?
- Inconsistent with any other State's rules

Eliminate cap on weekly client numbers but retain requirement of registration of supervisees

- Eliminates/reduces board's ability to prevent "supervision mills"
- Forces use of "negligence" standard if someone does take on too many supervisees with no real definition of reasonableness
- Doesn't provide guidance for what is a reasonable number of supervisees
- Could lead organizations to force increased supervision requirements to unsafe levels on psychologists

Eliminate any cap and eliminate requirement of registration of supervisees

- Eliminates/reduces board's ability to prevent "supervision mills"
- Forces use of "negligence" standard if someone does take on too many supervisees with no real definition of reasonableness

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- Doesn't provide guidance for what is a reasonable number of supervisees
- Could lead organizations to force increased supervision requirements to unsafe levels on psychologists
- No ability to address if someone clearly has too many registrants
- Increases risk of supervisees not being adequately monitored but are not responsible to the board since they aren't licensed (increased risk to the community)
- Doesn't provide guidance for what is a reasonable number of supervisees
- Could lead organizations to force increased supervision requirements to unsafe levels on psychologists
- Reduces board's ability to manage practices by supervisees that are not being adequately monitored but are not responsible to the board since they aren't licensed (increased risk to the community)
- No way for the board or to know if someone has too many registrants

10. Did the Agency specifically consider a performance-based regulation? Please explain.

No. This is not a set of regulations amendable to measuring performance per se.

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

Chapter 4732 of the Administrative Code contains the only regulations in Ohio granting an agency authority to govern the practice of psychology and the practice of school psychology outside of school settings.

12. 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.

In this package, the primary implementation strategy would be to notify all license holders of the changes. This would be done via our email list serve, website, and through the Ohio Psychological Association and Ohio School Psychologists Association.

Adverse Impact to Business

13. 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

The impacted business community includes license holders and their supervisees.

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

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The proposed changes to law and rule citations do not have adverse impact. The added number of weekly supervisee hours in 4732-13-04 (B)(9) is intended to reduce adverse impact on supervisors who are feeling that the current cap of 100 weekly supervisee client hours is too strict. There is still a proposed cap, nonetheless, and the stakeholder group and the Board concurred that the regulated community desires and needs certain parameters as to what is reasonable in terms of many areas of professional practice, including supervisee caseloads.

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.

There are no financial burdens or time requirements other than time to provide supervision in the interest of client and patient welfare.

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

The proposed updates to the supervisee cap in 4732-13-04 is an important update that actually lessens adverse impact by fostering more flexibility and more supervisee work hours (including weekly client hours) under supervision. Members of the public are entitled to safe and competent services, and health care includes certain parameters to this end.

Regulatory Flexibility

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

No. The public looks to the Board to ensure that reasonable steps are taken to ensure that the education, training, experience, and conduct of supervisees and license holders are monitored. The supervision rule change is being proposed to foster flexibility and reduce burden.

16. 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 have fining authority and these rules do not involve waiver of paperwork violations.

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

The Executive Director and staff field daily phone calls from license holders and supervisees about supervision issues, and provide information about regulations and policy. The Board's website contains FAQ's and links to laws and rules.