

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Psychology

Regulation/Package Title: OAC 4783-COBA (Certified Ohio Behavior Analysts)

Rule Number(s): 4783-1-01; 4783-1-02; 4783-1-03; 4783-1-04; 4783-1-05; 4783-1-06;
4783-1-07; 4783-1-08; 4783-1-09; 4783-2-01; 4783-2-02; 4783-3-01; 4783-4-01; 4783-4-02;
4783-4-03; 4783-5-01; 4783-6-01; 4783-6-02; 4783-7-01; 4783-7-02; 4783-7-03; 4783-8-01;
4783-8-02; 4783-9-01; and, 4783-10-01

Date: February 5, 2019

Rule Type:

✓ 5-Year Review

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.

This is being proposed as a “no change” package to comply with 5-year filing requirements. These regulations describe requirements for certification as a Certified Ohio Behavior

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Analyst (COBA), scope of practice for applied behavior analysts, the handling and logging of confidential personal information, individuals exempt from certification, continuing education 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 these regulations is consumer protection. Applied behavior analysis (ABA) is most commonly practiced with children or vulnerable adults diagnosed with Autism Spectrum Disorders (ASD). 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. 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 ASD. Early intervention with ASD's involves time intensive, highly structured positive reinforcement techniques by a trained professional competent in ABA. These services may be provided at family expense, and through a variety of funding streams, including state scholarship programs, through the County Boards of Developmental Disabilities, or through third party payers. 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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

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

This is a No change package of rules initially promulgated in 2014, having been written and edited by Board representatives and a wide-ranging group of stakeholders, which reached consensus on each rule, including fees. The group included psychologists and behavior analyst professionals, 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, was 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.

Initial development, 2011-2014: 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 in September 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. The ABA Workgroup group met four times in 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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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, Psychology Board
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, 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
Michael Ranney, Ohio Psychological Association
Yolanda Tally-Cudney, Ohio Department of Jobs and Family Services
Jessica Foster, Ohio Department of Health

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 concerns and to collaborate to write and edit this rule package on four dates in 2013. Members of the work group actively drafted certain sections with representatives of the Board, including definitions, scope of practice, and the supervision rules. There was 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.

Current package: At its January 31, 2019 meeting, the Psychology Board voted unanimously to file the COBA rules "No Change" during this FYR process.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

These regulations have been in effect since April 2014. The Board has been regulating the practice of ABA since that time, and there have been no concerns expressed or requests received from the public, COBA's or other members of the public specific to amending rules.

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?

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.

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. We also considered requiring that the certificate holders submit registration forms for the persons working under their supervision, but it was 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. To implement ORC 4783, these regulations are 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 are exempted from these rules.

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 rule-writing status on the Board's website

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- Continued access to OAC 4783 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;

As of February 5, 2019 there are over 450 active Certified Ohio Behavior Analysts (COBA). They constitute the primary business community. In addition, there are numerous organizations that employ COBA's and deliver ABA services.

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

The application, examination, and initial license fee is \$125. Applicants are required by rule to pass an examination on the laws and rules governing COBA's, following attendance at an in-person workshop presented by the Board, offered quarterly though 2018 and offered 7-8 times annually beginning in 2019.

By law (sections 4776.01 to 4776.04 of the ORC) there is a requirement to complete a criminal background check prior to the issuance of a license.

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 2012-2013 rule-writing workgroup, and no complaints heard in the first 5 years of our regulation of the profession.

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. The application for certification takes approximately 15 minutes or less to complete. Board staff 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. The \$125 application fee was reached by consensus of stakeholders in 202-13 and can be justified in the amount of payroll time put into each application by a total of three (3) employees.

Rule amendments in 2017 were completed to reduced adverse impact. Amendments to 4783-1-01; 4783-1-03; 4783-2-01; 4783-2-02 eliminated the requirement to expend time and money on notarizing the initial application and eliminated the requirements to provide the Board with an academic transcript and with notarized statements verifying supervised experience, which are already vetted based on the statutory certification requirement to hold a Board Certified Behavior Analyst (BCBA) credential. Amendments also eliminated the requirement to have the Behavior Analyst Certification Board report biennial CE compliance to the Psychology Board. Because COBA's must complete 32 hours of biennial CE for recertification with the Behavior Analyst Certification Board, it was common sense to accept the active BCBA as proof of having completed the Psychology Board's requirement for only 23 hours biannually. This amendment reduced adverse impact related to time and expenditures.

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 was initially proposed in 2014 to implement a new law, and therefore the impact is justified based upon the normal course of establishing a new certificate and profession and regulating licensure and service delivery.

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 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.

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?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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?

Psychology Board website

Psychology Board staff

Professional association list serves

The Behavior Analyst Certification Board Website and mailings