



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

Rule Contact Name and Contact Information:

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

PT License by Endorsement

Rule Number(s): 4755-23-04

Date of Submission for CSI Review: 6/30/2020

Public Comment Period End Date: 7/14/2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ X rules (FYR? N)

Rescinded/___ rules (FYR?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.**

This rule details how a person can apply for and be granted a license by endorsement for a physical therapist or physical therapist assistant in Ohio. It describes the qualifications and documentation needed. It describes special circumstances for individuals with a foreign education. It also describes what it means to have been out of practice for five years and the remediation steps that are needed to get back up to speed on the practice. The rule change removes reference to a general practice review tool, which is no longer in existence and replaces it with a plan as approved by the PT Section.

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.**

4755.411, 4755.45, 4755.451

4. **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.

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No. Licensure is performed by states.

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

Not applicable.

- 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)?**

A license is required by Ohio law to practice physical therapy in the state of Ohio. Licensure ensures that a person has met minimal training requirements in order to be qualified as a physical therapist or physical therapist assistant and, in doing so, aims to protect the public.

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

Successful licensure by endorsement.

- 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?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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.

The rules were distributed to the full listserve for physical therapy, including all licensees and anyone who has signed up for the updates, including the Ohio Physical Therapy Association.

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

The Board received the comments listed below. There seemed to be some misunderstanding from a few of the commenters. The National Physical Therapy Exam (NPTE) is required for all individuals seeking licensure in Ohio, as well as an exam regarding Ohio's laws and rules. The Board did not make any changes to the rule as a result of the comments.

1. No leave the rule as it was someone coming to the state of ohio needs to take our board test and review our laws when we took the ohio board and laws.

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2. In regards to the proposed rule change for License by endorsement, would a contact be appropriate for convenience of participant seeking re-application or inquiring regarding an action plan from the physical therapy section?

3. I would like to submit that I am in favor so far with the ruling of a therapist being out of practice for five or more years must be approved by the board.

In addition, the action plan identified by board I think should be clarified or detailed so that the applicant could accurately target the requirements stated.

4. I would recommend adding the requirement of taking and passing the NPTE for all Ohio license by endorsement applicants.

Evidence of taking and passing the NPTE should be required for all Ohio licensees.

Reason for my suggestion: there are licensees practicing in other states who not taken or passed the NPTE and they may apply for a license in Ohio. What will be required of an applicant who has not taken nor passed the NPTE?

A) through C) is not clear that taking and passing the NPTE is a requirement for licensure and practice in the state of Ohio.

As written per this review, it is inferred that competency and current practice knowledge are important for PT PTA licensure in the state of Ohio. However it is not clear that all applicants need to demonstrate both competency through passing the NPTE.

Thank you for your consideration and maintaining the integrity of licensure requirements in the state of Ohio.

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?

None.

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?

None. Licensure is required by Ohio law.

13. 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.*

In some ways, this is a performance-based regulation. This will allow a plan of action to be tailored to the applicant's needs and specific work to be done that is pertinent to their chosen area of practice.

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

Review of existing laws and rules.

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15. 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 will keep record of agreements that result from this rule and ensure that they are consistent over time.

Adverse Impact to Business

16. 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; and**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
- 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. All physical therapists and physical therapist assistants applicants for Ohio license who are licensed in another state by who may have been out of practice for more than five years.
- b. The applicant must pay a \$100 endorsement fee, plus a \$3.50 eLicense fee, any fees needed to complete required continuing education, plus any potential cost to verify a clean license in other states. If out of practice more than five years, the applicant may choose to take the National Physical Therapy Exam to show continued competence in the field, which costs \$485. An endorsement candidate is currently required to take a Laws and Rules exam for \$75.

The action plan is meant to be a path to licensure that is less burdensome than retaking the NPTE. After interviewing someone, the Board may determine that the exam is unnecessary and that there are other ways to fill in a few knowledge gaps. An action plan can vary depending on the individual situation. The Board may ask the applicant to work under supervision of another PT for a limited amount of time as a condition of granting licensure. Or the Board may ask that the applicant complete certain kinds of continuing education courses that relate to the specific kind of PT the person wants to practice. Or the Board may advise that the applicant have a mentor for a period of time, which is a less formal relationship, but it allows this person to have regular meetings with someone who will guide their path back into practice.

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- c. \$178.50 plus variable licensure verification costs and unknown costs to comply with continuing education. Potential additional \$485 for the national physical therapy exam, if out of practice for more than five years.

The action plan may have an associated cost of taking additional continuing education, which can vary, but should be much less than \$485 for the exam. If the Board were to require supervised practice, it could place a burden on an employer, as it would limit what that PT could do.

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

A license is required by the state of Ohio to practice physical therapy. The Board must ensure minimal requirements are met and we do so through primary sourced documents.

Regulatory Flexibility

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

No. This regulation applies to individuals who are required by law to have a license.

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 agency has guidelines which take into account lesser fees/fines for first time offenses.

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

Any individual may contact the Board via email, phone, mail, fax, etc. to receive personal assistance with an application.