



## Common Sense Initiative

**Mike DeWine**, Governor  
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### Business Impact Analysis

Agency, Board, or Commission Name: Ohio State Dental Board

Rule Contact Name and Contact Information:

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

4715-11 Qualified Personnel

Rule Number(s): 4715-11-01, 4715-11-02, 4715-11-02.1, 4715-11-03, 4715-11-03.1, 4715-11-03.2, 4715-11-04, 4715-11-04.1, 4715-11-04.2, 4715-11-04.3, 4715-11-04.4, 4715-11-05, 4715-11-06

Date of Submission for CSI Review: 7/13/2021

Public Comment Period End Date: 7/27/2021

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/ X rules (FYR? X)

Amended/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR?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

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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.

### **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.

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

#### **No Change**

- **4715-11-01 Dentists may supervise dental auxiliaries, basic qualified personnel, certified assistants, expanded function dental auxiliary.** This rule sets forth the guidelines for categories of dental personnel and scope of duties permitted to them under the supervision of a licensed dentist.
- **4715-11-02 Basic qualified personnel; functions.** This rule sets forth the scope of practice of basic qualified personnel under the supervision of a licensed dentist.
- **4715-11-02.1 Monitoring nitrous oxide-oxygen (N2O-O2) minimal sedation; education, training and examination required.** This rule sets forth the minimum

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education, training, and examination requirements for the monitoring of nitrous oxide-oxygen by the dental assistant.

- **4715-11-03 Certified dental assistant; functions; education, training, and supervision requirements.** This rule sets forth the minimum certification requirements to be permitted to perform pit and fissure sealants and/or coronal polishing under the supervision of a licensed dentist.
- **4715-11-03.1 Coronal polishing certification.** This rule sets forth the certification, education, training and examination requirements for a dental assistant to become certified to perform coronal polishing under the direct supervision of a licensed dentist.
- **4715-11-03.2 Certified assistant; practice when the dentist is not physically present.** This rule sets forth the guidelines, certification, practice and course requirements and scope of practice for a certified dental assistant to practice when the dentist is not physically present.
- **4715-11-04 Expanded function dental auxiliaries; functions.** This rule sets forth the guidelines for supervision and scope of practice for expanded function dental auxiliaries under a licensed dentist.
- **4715-11-04.1 Application for registration as expanded function dental auxiliary; requirements; renewal; exemptions.** This rule sets forth the minimum background, certification, education, training, continuing education, fee, and/or course requirements needed to apply for registration and renewal as an expanded function dental auxiliary.
- **4715-11-04.2 Education or training necessary to register as an expanded function dental auxiliary.** This rule sets forth the minimum education, training and examination requirements to become registered as an expanded function dental auxiliary.
- **4715-11-04.3 Examination of applicants.** This rule sets forth the requirement for examination for applicants for expanded function dental auxiliaries.
- **4715-11-04.4 Expanded function dental auxiliary; practice when the dentist is not physically present.** This rule sets forth the guidelines, certification, registration, practice and course requirements and scope of practice for a expanded function dental auxiliary to practice when the dentist is not physically present at the location of services to be performed.

- **4715-11-05 Non-dental licensed healthcare provider; supervision.** This rule sets forth the supervision guidelines for non-dental licensed personnel in the delivery of dental care.
- **4715-11-06 Non-delegable dental tasks and/or procedure.** This rule sets forth the specific function in dentistry that are not to be delegated to any dental auxiliary by the licensed dentist

**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.**

**Authorizes by:**

O.R.C. 4715.03 Board organization- examinations.

O.R.C. 4715.39 Permitted duties.

O.R.C. 4715.62 Application to register as expanded function dental auxiliary.

O.R.C. 4715.66 Rules governing expanded function dental auxiliaries.

**Amplifies:**

O.R.C 4715.03 Board organization- examinations

O.R.C 4715.39 Permitted duties

O.R.C 4715.61 Registration as expanded function dental auxiliary required

O.R.C 4715.62 Application to register as expanded dental auxiliary

O.R.C 4715.63 Expiration and renewal of expanded function dental auxiliary registration

O.R.C 4715.64 Practice as expanded function dental auxiliary

O.R.C 4715.66 Rules governing expanded function dental auxiliary

**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.*

These regulations do not implement a federal requirement, nor were they implemented to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

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

This question is not applicable. The regulations do not implement a federal requirement.

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- 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)?**

The General Assembly determined that the profession of dentistry required regulation and established a Board to license individuals and enforce the law and rules governing the practice of dentistry in Ohio. These regulations allow the Board to carry out its statutory mission to ensure protection of the public by setting education, examination, and practice standards.

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

These rules are not quantitative regulations, nor do they impose a measurable (if any) quantitative burden on the licensee. The success of the regulations will be measured by the licensees understanding or legal objections to the rules.

- 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.*

Not applicable

### **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 Board and the Board's Law and Rules Committee holds open meetings throughout the rule review year. Additionally, the Board sends public notices and proposed Rule Review agendas to the Board mailing list, a listing of parties interested in all Board proceedings. The Board met to accept this no change filing on June 9, 2021.

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

Discussion by the Board resulted in the conclusion that there were no changes needed to this rule.

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**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?**

Scientific data was not used to develop the rules as these rules are not data driven.

**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?**

No alternative regulations were considered by the agency since it was determined that the rules worked as intended by legislature.

**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.***

The Board did not see an application for the rules in this package to be performance-based.

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

The five-year rule review process is conducted with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with interested parties help to ensure that these rules do not duplicate any existing Ohio regulation.

**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 continue to use its website to educate and update licensees on its rules. Board employees provide informational presentations to stakeholder organizations and groups of dental personnel to keep the dental profession apprised of current regulations. Stakeholder organizations also ensure that rules are provided to their members through communications and CE. Staff training is conducted for rule changes to ensure that regulations are applied consistently.

**Adverse Impact to Business**

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**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**

All categories of dental assistant personnel and the dental practices of their supervising dentist.

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

Dental assistants are required to have specific certification, education, training, and examination to perform functions under the supervision of the licensed dentist within their specific scope of practice. Violations of Chapter 4715-11, OAC, Qualified personnel, may result in disciplinary sanctions against the dental assistant and/or licensed supervising dentist.

**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.*

Regarding disciplinary action, the cost to the licensee to comply varies based on the extent of the violation. It could be as little as no cost with only a time commitment to attorney’s fees to challenge alleged violations or obtaining continuing education hours in a mandated subject.

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

The Board is solely responsible for ensuring that only competent and safe practitioners are permitted to practice dentistry in Ohio. O.R.C 4715.39,62,66 requires the Ohio State Dental Board to regulate education, examination, training, eligibility and application criteria for licensure and regulation of personnel

**Regulatory Flexibility**

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

These rules do not provide any exemption or alternative means of compliance for small businesses. All licensed dental personnel under ORC 4715 must have a license or certificate

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to provide services in Ohio. The law does not differentiate on the size of the business and therefore, these rules apply to all licensed, certified, or registered dental personnel and sponsors of continuing education.

**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?**

O.R.C. 4715 does not allow for the implementation of fines or penalties. Therefore, this is not applicable.

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

Resources available to assist small businesses/stakeholders with compliance are online access to the Ohio Revised and Administrative Codes. Additionally, Board staff regularly respond to inquiries from interested parties.