



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information:

Missy Anthony, missy.anthony@otptat.ohio.gov

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

Safe Haven program – impaired practitioners

Rule Number(s): 4755:2-1-01 (new), 4755-7-08, 4755-27-05, 4755-27-06, 4755-41-01, 4755-41-03, 4755-64-01

Date of Submission for CSI Review: 8/4/2022

Public Comment Period End Date: 8/19/2022

Rule Type/Number of Rules:

New/ X rules

No Change/ rules (FYR?)

Amended/ X rules (FYR? X)

Rescinded/ rules (FYR?)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.

| Rule Number | Title | Summary of Changes |
|-------------|---------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4755:2-1-01 | Impaired practitioner rules and safe haven program for license holders and applicants | This rule defines impaired practitioners and establishes a safe haven program for use by licensees of and applicants to the OTPTAT Board. The rule establishes the parameters of confidentiality in the safe haven program and details the kinds of assistance the program can provide. The rule also spells out the consequences for violating the participation agreement of the program. The program, which is run by an external organization, uses licensed professionals to evaluate |

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| | | and monitor the treatment of OTPTAT Board license holders who choose to participate. As long as license holders are compliant with the treatment plan, the Board will be unaware of their case. License holders are responsible for the cost of their own treatment. |
| 4755-7-08 | Code of ethical conduct (OT) | <p>This rule sets forth the code of ethical conduct for occupational therapy. Changes include:</p> <ul style="list-style-type: none"> ▪ Inclusion of reports of impairment issues to the safe haven program as fulfilling a practitioner's "duty to report" a fellow practitioner instead of making a report to the Board. ▪ Clarifies that the Board may take action against the license of an impaired practitioner unless they are a participant in the safe haven program. ▪ Includes an option to participate in the safe haven program in lieu of self-reporting impairment to the Board. ▪ Adds that a violation of the code of ethics may include a failure to protect and keep confidential personal health information and a failure to respect privacy rights of clients, other facility care recipients, employees, colleagues, and students. |
| 4755-27-05 | Code of ethical conduct for physical therapists and physical therapist assistants | <p>Changes include:</p> <ul style="list-style-type: none"> ▪ Inclusion of reports of impairment issues to the safe haven program as fulfilling a practitioner's "duty to report" a fellow practitioner instead of making a report to the Board. ▪ Clarifies that the Board may take action against the license of an impaired practitioner unless they are a participant in the safe haven program. ▪ States that for the purposes of the code of ethics, the patient-therapist relationship may extend beyond the established plan of care. |
| 4755-27-06 | Reporting requirements (PT) | This rule sets for the circumstances that a license holder must self-report to the Board within 30 days. It includes |

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| | | an option to participate in the safe haven program in lieu of self-reporting impairment to the Board. |
| 4755-41-01 | Code of ethical conduct (AT) | <p>This rule sets for the code of ethical conduct for athletic training. Changes include:</p> <ul style="list-style-type: none"> ▪ Inclusion of reports of impairment issues to the safe haven program as fulfilling a practitioner's "duty to report" a fellow practitioner instead of making a report to the Board. ▪ Clarifies that the Board may take action against the license of an impaired practitioner unless they are a participant in the safe haven program. ▪ States that athletic trainers shall not engage in harassment that creates a hostile work environment. ▪ States that conversations with patients should not be sexually demeaning. ▪ States that sexual activity includes sexual conduct and sexual contact as a prohibited activity with patients. ▪ Corrects statutory references that changed with the passage of HB 176, Athletic Training Practice Act. ▪ Establishes a new requirement that athletic trainers shall make a reasonable attempt to either offer a chaperon during an intimate examination or treatment or follow their employer's chaperone policy. |
| 4755-41-03 | Reporting requirements (AT) | This rule sets for the circumstances that a license holder must self-report to the Board within 30 days. It includes an option to participate in the safe haven program in lieu of self-reporting impairment to the Board. |
| 4755-64-01 | Ethical and professional conduct (OPP) | <p>This rule sets for the code of ethical conduct for orthotics, prosthetics, and pedorthics. Changes include:</p> <ul style="list-style-type: none"> ▪ Inclusion of reports of impairment issues to the safe haven program as fulfilling a practitioner's "duty to report" a fellow practitioner instead of making a report to the Board. |

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| | | <ul style="list-style-type: none"> ▪ Clarifies that the Board may take action against the license of an impaired practitioner unless they are a participant in the safe haven program. ▪ Includes an option to participate in the safe haven program in lieu of self-reporting impairment to the Board. |
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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.

Authorize: Ohio Revised Code 4755.06(H), 4755.411(H), 4755.61(A)(12), 4779.08(A)(8)

Amplifies: 4755.06, 4755.11, 4755.47, 4755.61, 4755.64, 4779.28, 4779.29, 4779.30, 4779.99

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.

No.

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)?

These rules establish a safe haven program which will better equip the OTPTAT Board to get licensees back to work once they are able to overcome mental health or addiction challenges rather than impose punitive measures which will stay on their license in perpetuity. The rules are necessary to spell out the parameters of the program.

The code of ethics rules are necessary to amplify the statute and spell out when a practitioner is acting outside of their boundaries and to protect the public. Some of the changes in the rule directly respond to trends the board is seeing in recent cases and trying to be as clear as possible when a practitioner's conduct breaks the bounds of ethical conduct. The chaperone requirement for athletic trainers is a direct response to the Strauss case at The Ohio State University.

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

The OTPTAT Board will receive regular reports from the Safe Haven program administrator with regard to participation (non-identifying information). The Board also monitors its complaint intake for changes to the kinds of violation the Board sees.

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.

Draft rules were sent out to license holders for early stakeholder review from June 29-July 13, 2022. Previous to this release, the Board initially began discussing the safe haven program at its January and March meetings before voting to move forward in May 2022. The Ohio Physician's Health Program, the organization which will be the safe haven program administrator, reached out to the professional associations to answer questions and ensure support. Ohio Occupational Therapy Association, Ohio Physical Therapy Association, and the Ohio Athletic Trainers Association.

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

Please see below:

| Contact | Comment | Board response |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Sharon Murri OTR/L | I agree with the terms as states | Thank you |
| Debbie George | TY for making this change. Happy to see that our profession supports those with mental health issues. | Thank you |
| Christina Watts, OT/L | This is good, wondering if you will be working with their employer to ensure they are not working impaired. Everyone one deserves a chance to make things right. | Thank you. If they are impaired, they will not be permitted to work and would be eligible for discipline by the Board. |

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| | Christina Watts, OT/L | |
| Scott D Van Bramer, PT | What a wonderful decision! My recommendation is that those stressed, suffering from burnout and mental health issues without substance abuse issue have a separate category. The stigma may prevent them from participating. | Thank you. The safe haven program provider will include professionals who are experts in both mental health and addiction, as needed. |
| Redacted PT | <p>I've read the rules on impairment for which you want input.</p> <p>IMO, it should be stipulated in all sets of rules what the criteria are for Impaired behavior and what proof is needed as far as reporting on another clinicians behavior.</p> <p>IMO, it should also be stipulated what will occur if the Board determines that the Impaired behavior never took place or was falsely reported with malintent.</p> <p>There is alot of room under these laws as stated, for these rules to be misused- for revenge, to fire, to damage reputation, for a manager or administration to "clean house"</p> <p>I've been a PT for nearly 40 years. My license is squeaky clean, as far as I'm aware. I've had some wonderful bosses, but also malicious bosses and toxic coworkers before, in my career.</p> <p>For instance, in the past , nearly a decade ago, I injured my back 1x working for an employer, with a patient. The employer 's attorney seemed corrupt to me, over a work comp claim. (I also wotnessed his behavior with other employees outside the courtroom) Even though I self-represented well and proved the lawyer to be lying to the Industrial Commission judge and no less than 4 physicians wrote on my behalf, I was still refused worker's</p> | Thank you for your comments. Please note that participation in the safe haven program is entirely voluntary. A practitioner may choose to go through the traditional disciplinary process instead, should there be a violation of laws and rules. In such a case, there would be a normal investigation, including interviews and the gathering of evidence. The Board would have to prove that a violation occurred based on the preponderance of the evidence. |

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| | <p>comp. I later opted for disability, which I received (which they bullied me into requesting, because the admin had to get their claim numbers down to avoid heavy fines). Upon my return to work just before the 3 mo deadline to terminate my job /position, which I resumed in great discomfort for some time, within days the 2 supervisors in question sent me for an immediate, "random" , and mandatory drug test. The lack of "randomness" wasn't lost on me, and I began preparing for my exit. These 2 supervisors at unnamed institution were looking for any excuse, and had done several things to me already that revealed their nature and character. The truth is that don't do any narcotic drugs because I'm allergic to all codeine and morphine and documented as such.</p> <p>My point is that in the absence of narcotic, street drug or alcohol usage, a person can still display impaired balance such as stagger reaction , arthritic buckling or decreased proprioception, occasional stuttering or word finding difficulty, and momentary lapses of memory, all without any substance abuse. It could easily be misinterpreted, misconstrued, and misreported. I don't see anything in your rules for protection of the alleged impaired clinician ; while the vast majority of reporting would likely be true, there is a significant possibility that some reporting will not be- by administrations, managers, supervisors, and toxic co-workers. It should be made crystal clear in the rules that action would be taken against a reporting person for knowingly bearing false witness for any and all reasons.</p> <p>Perhaps you feel such stipulation is unnecessary, but I do not. That's because I've seen much, in 40 years. I am grateful</p> | |
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| | not to work in such a place anymore, but that is unfortunately not the case for many clinicians. | |
| Redacted | As a recovering PT/MD I am in favor of these new rules. | Thank you |
| Don Ickler OTR/L, MHA | I agree with the propose rules. | Thank you |
| Cindy Hudson OTR/L, RAC-CT, CHC | <p>Hello and Thank you for your work on this essential support for our colleagues. I'd like to understand the Safe Haven Program a bit better to protect the public we serve. As I read the OT and PT Code of Ethics proposed changes and rule 4755:2-1-01 I have some questions/ comments:</p> <ol style="list-style-type: none"> 1. It seems to me that someone who puts themselves in the Program could be absolved of responsibility for their actions. As I read the Rule enacting the Program, I understand the Monitoring Organization will attempt to hold the individual accountable for their recovery or advise the board of non-compliance for further action as necessary. We know relapses can occur with chemical addiction recovery, so should there be a cap on the number of relapses in a select time frame to not have an impaired/ potentially impaired practitioner continue to risk client safety? 2. <i>In rule 4755:2-1-01, it states "(c) Whose impairment is not substantially alleviated through treatment;- HOW can the treatment program determine within 5 days if the impairment is alleviated?</i> <i>(d) Who in the opinion of the evaluators is unable to practice under their license with reasonable skill and</i> | <p>Thank you for your thoughtful questions.</p> <ol style="list-style-type: none"> 1. More details on the parameters of participation will be spelled out in policies and procedures in the agreement between the Board and the safe haven program. In such a case, continued relapses would indicate noncompliance with the program and the matter would be referred to the Board. 2. This requirement would be for the program to report within five days of a determination that impairment has not been substantially alleviated. Not for the determination to be made within five days of treatment starting. Licensed mental health and addiction treatment professionals make the determination. 3. The monitoring organization is the Ohio Physician's Health Program, an organization that has been partnering with other boards, primarily the State of Ohio Medical Board, for decades. https://www.ophp.org/ 4. A practitioner who is impaired, regardless of whether the drug is legally prescribed or recommended, or not, should be referred to the program. 5. If a practitioner is not in compliance with the Safe Haven program, the details of |

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| | <p><i>safety.”</i> WHO is doing these assessments and making this determination? Fellow OTs and PTs? Mental health professionals?</p> <p>3. Who is involved in the Monitoring Organization? Are they also PTs and OTs? Addiction Counselors? Mental Health Professionals? Additionally- a person with a mental illness may have different challenges from one who has addiction issues and certainly different challenges from one who has a physical illness such as MS or cancer that may inhibit their ability to practice safely. Are all issues addressed by the same Monitoring Organization? As I read the rule it appears the Safe Haven applies to all individuals who may be at risk. Please clarify.</p> <p>4. If a therapist has a prescription for Medical Marijuana, and is observed by colleagues to display questionable clinical judgment at times, should they be referred to this Program?</p> <p>5. Those who are not in compliance and receive disciplinary action by the board, will this information be posted as are current violators? https://otptat.ohio.gov/Portals/0/Discip/Discipline%20Summaries/Formal%20Board%20Actions%20for%20May%202022.pdf?ver=A9OxMH2cSYl100m7F6rrog%3d%3d Does this impact their right to privacy?</p> <p>6. Finally, how is the Monitoring Organization paid?</p> <p>I truly appreciate this opportunity for therapists to get the help they need without harsh repercussions and I am sorry to raise so many questions. Perhaps I have not understood the proposals, and I only seek to make the Program abundantly clear to everyone with appropriate compassion and consequences Thank you for your time and information!</p> | <p>disciplinary action outside of the safe haven program, will be subject to public disclosure. Privacy expectations would be the same as they are now. Public discipline will not display confidential treatment details.</p> <p>6. The monitoring organization is funded primarily through grants and donations. Treatment is at the cost of the practitioner.</p> |
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| Diane Ventura, OT | I am in agreement with the language presented in the safe-haven related rules. | Thank you. |
| Carol Young, COTA/L | Hi, I am an occupational therapy assistant working in the field of OT in the geriatric population mostly for 15 years, and I believe the 'safe haven program' is an excellent solution in helping practitioners not only find a healthy way in getting the necessary help needed to thrive in their field of practice, but, also, it is good accountability, to maintain a high standard of professionalism. | Thank you. |

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?

The safe haven program IS an alternative regulation, as it is a second path to rectifying behavior without being punitive.

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 safe haven program is performance based. Compliance with a personal action plan means avoidance of the traditional disciplinary path.

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

Review of Ohio laws and rules.

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.

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The Board will work closely with the monitoring organization through regular reports to ensure consistency and predictability. The monitoring organization, Ohio Physician's Health Program, has been working with the Medical Board for decades and is experienced.

With regard to the other components of the ethics rules, the board has developed disciplinary guidelines to ensure consistency in the application of discipline 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 license holders.

| LICENSE TYPE | NUMBER OF ACTIVE LICENSES AS OF 7/20/2022 |
|-----------------------------------|----------------------------------------------|
| Athletic Trainer | 3,303 |
| Occupational Therapist | 7,238 |
| Occupational Therapy Assistant | 4,576 |
| Physical Therapist | 10,994 |
| Physical Therapist Assistant | 8,933 |
| PT/PTA Compact | 119 |
| OPP | 387 |
| Total | 35,550 |

- b. Discipline for violations of the practice act are adverse impact and can include, warnings, fines, probation, remedial courses, suspension, and revocation.
- c. The adverse impact varies based on the violation.

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

Public protection is a core mission of the board. One way it is achieved is through expecting people to work according to minimal standards of practice as outlined in the profession's practice act.

Regulatory Flexibility

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

No. The Board regulates individuals, not businesses.

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 Board's disciplinary guidelines take first time offenses into account as a mitigating circumstance.

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

Board website, Board staff are available via phone, email, and in person.