



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: State Board of Psychology

Rule Contact Name and Contact Information:

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

Impaired Practitioner Rules-Safe Haven Program

Rule Number(s): 4732-17-04 (New), 4732-17-01 (Amend)

Date of Submission for CSI Review: ??

Public Comment Period End Date: ??

Rule Type/Number of Rules:

New/ 1 rule

No Change/ 0 rules (FYR? N/A)

Amended/ 4 rules (FYR? No)

Rescinded/ 0 rules (FYR? N/A)

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.**

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

Proposed New Rule

4732-17-04 is proposed to serve as the Board's safe haven rule. This rule would establish a monitoring organization for the Board to use in disciplinary matters and a safe haven program as an option for the delivery of confidential services for license holders and applicants with impairments or suspected impairments interfering with the safe and competent delivery of psychological and school psychological services. This rule would result in the Board naming the Ohio Professionals Health Program as its monitoring organization and safe haven program and is consistent with rules promulgated by several other Ohio healthcare regulator boards, including the Medical Board.

Proposed Amendments

4732-17-01 Rules of Professional Conduct

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This lengthy set of rules contains the standards against which license holders' and applicants' professional conduct is measured. The two (2) proposed amendments would serve to clarify processes for license holders to refer others for evaluation of suspected impairment and for referred persons to continue or resume practice if in a contract with the Board's monitoring organization/safe haven program. Specifically, the proposed amendment to 4732-17-01 (C)(13) allows continued practice by individuals determined by the monitoring organization to be fit to practice. The proposed amendment to 4732-17-01 (J)(4) provides additional flexibility by allowing license holders to refer others to the Board's safe haven program for evaluation in lieu of a referral directly the Board for investigation.

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.

ORC 4732.06 and 4732.173

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.

There are no federal requirements to exceed.

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 are integral to the State Board of Psychology's statutory mission to regulate the practice of psychology, including rules governing processes for the receipt of confidential services and the Board's need for a program to assist license holders with impairments that impact the public's right to safe and competent services. License holders and applicants can develop impairments and need reassurance of the availability of confidential services for prevention and amelioration. The Board requires a program that can conduct evaluations and treatment planning for individuals who have been reported to the Board because of impairments or suspected impairments.

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

These regulations will be deemed to have successful outcomes if they are clear to the reader and additional significant resources are not required. To assist in this, the rules were

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reviewed and recommended to the full Board after receipt of correspondence from license holders involved in the pre-licensure training supervision of psychologists.

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.

Dr. Howard Fradkin, Chair, Ohio Psychological Association (OPA) Prevention and Wellness Committee; Daniel Zinsmaster, legal counsel to the Ohio Physicians Health Program (OPHP); Staff of the OPHP, including Program Manager, Katie Trausch and Policy Director, Jennifer Hayhurst.

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

The Board worked closely with a representative of the Ohio Psychological Association's (OPA) Prevention and Wellness Committee (Chaired by Dr. Howard Fradkin) and staff and legal counsel to the Ohio Physicians Health Program (OPHP). The template of the proposed new rule OAC 4732-17-04 has been used by many other Ohio healthcare regulatory boards and was customized to the Psychology Board during a meeting with Mr. Zinsmaster on July 26, 2022 and via subsequent emails. The perspective of OPA was incorporated through editing of the draft rule following meetings with Dr. Fradkin beginning in April 2022 and September 2022.

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?

N/A. There are anecdotal data that an increased number of license holders are struggling with impairments since the onset of COVID. Support for rule amendments is not empirical/measurable in this instance, although the proposed rules reflect strong consensus between the regulated community (through OPA) and the Board.

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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?

This is the Board's first proposal to establish a safe haven program to assist impaired individuals through a structured and organized program and confidential services under specific circumstances. Historically, the Board has arranged for license holders' evaluations and intervention in a piecemeal, case-by-case fashion, which takes up significant resources and can result in uneven and inconsistent processes. This new rule will take advantage of the OPHP's track record and colleague assistance infrastructure to partner in the interest of its license holders and the public.

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 consider any performance-based regulations in this package because either the rules are not conducive to a performance-based approach to regulation.

14. 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 authority to govern the practice of psychology and the practice of school psychology outside of school settings.

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.

In this package, the primary implementation strategy will be to notify all license holders of the changes via our email list serve, website, and through the Ohio Psychological Association and Ohio School Psychologists Association. Changes to the rules of professional conduct will be highlighted to assist license holders and the Board to appreciate how to apply the changes to day-to-day practice.

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

Licensed psychologists and school psychologists license applicants (approximately 3,800 total).

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

Time & Effort: Like any healthcare regulatory board, these rules exist for the purpose of public safety and to provide license holders with options for confidential evaluation and intervention. These rules do not impose requirements on individuals except when there is suspected or known impairment. Referral for evaluation/intervention because the public is at risk from an impaired practitioner will certainly require individuals to expend time and effort to the evaluation/rehabilitation process.

Financial: Initial intake services by the OPHP are cost-free, although the proposed new rule 4732-17-04 would require the expenditure of money by the license holder or applicant when intensive evaluation/intervention is recommended by OPHP and/or the Board.

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.

Fees for evaluation and interventions can vary widely, depending on the organization, inpatient treatment vs. outpatient treatment, etc.

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

Ohio needs psychologists and school psychologists working under regulations that are clear and as flexible as possible while maintaining health and safety of the public. These rules emphasize that license holders can and should seek confidential services for the prevention and amelioration of substance abuse and emotional and other health conditions before they impact professional functioning. The rules also provide specific processes when the Board needs evaluation services in cases in which patients’ rights are violated secondary to the impairment of a regulated professional.

Regulatory Flexibility

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

License holders have the same right to confidential healthcare services as any other Ohioan, and this rule would provide an option to use a new safe haven program to be implemented by the OPHP. The public looks to the Board to ensure that reasonable steps are taken to foster

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safe and effective practice, and this package outlines new options for use by license holders and applicants, and by the Board.

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?

These rules do not involve waiver of paperwork violations.

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

The Board's website contains information about each of the rules at issue. The Board staff is comprised of 5 individuals available during business hours by phone and email. The Board has earned a reputation for being responsive and available, and the Executive Director's direct dial telephone number and email address are published on the Board's website.