

**MEMORANDUM**

TO: Jim Trakas, The Ohio State Board of Cosmetology

FROM: Paula Steele, Regulatory Policy Advocate

DATE: February 28, 2013

RE: **CSI Review – Continuing Education** (OAC 4713-21-01 through 4713-21-09)

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of nine amended rules related to continuing education (CE) for licensed cosmetologists administered by the Ohio State Board of Cosmetology. The rules were submitted to the CSI Office on November 27, 2012, and the comment period expired on December 01, 2012. There was one comment received during that time.

The proposed rules include definitions, CE requirements, licensure renewal, escrow or inactive procedures and CE extensions. The proposed rules also address application criteria and procedures for CE course approval and criteria for CE courses, course instructors, and eligible offering entities to be approved, denied, withdrawn, revoked or suspended.

The BIA describes a comprehensive early stakeholder outreach process which resulted in most of the amendments within the proposed rules. The BIA also identifies the amendments' adverse impacts as affecting all licensees and CE providers. The adverse impacts were specifically identified as various fees, costs of attending CE, time requirements to comply with the rules, barriers to renewing a license for non-compliant licensees, and penalties for violations of rules.

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In addition to those impacts addressed in the BIA by the Board, CSI specifically identified two rules with amendments creating adverse impacts. OAC 4713-21-03 Continuing Education Requirements, appears to require licensed independent contractors to obtain an additional four hours of CE in areas of business and tax law above the eight hours already required for a managing license (ORC 4713.39 requires independent contractor licensees to have a managing license). Moreover, Ohio statute (ORC 4713.09) requires the Board to establish CE requirements not to exceed eight hours in a biennial licensing period, as a condition of renewal for a practicing license, managing license, or instructor license. When asked, the Board indicated that the four hours were included, and not in addition to the 8 hour requirement, but this is not clear in the rule language. The proposed rule also disallows CE credit if taken as a corrective action. OAC 4713-21-08 Application Criteria and Procedures for Continuing Education Course Approval, imposes additional requirements and fees on CE providers offering CE courses online or via correspondence.

CSI's review of the BIA associated with the proposed rules prompted a request for additional information and BIA revisions concerning several answers regarding topics such as public purpose of the regulation, how the Board would measure the success of the regulation, and the discussion of adverse impacts to business. The Board's revised BIA and proposed rules create cause for concern regarding the Board's process and understanding of the CSI Office's requirements for justifying adverse impacts to business.

Recommendations

1. Revise OAC 4713-21-03 to clearly prescribe CE requirements of each practicing licensee, managing license, instructor license and independent contractor license.
2. Revise OAC 4713-21-03 to clarify the number of CE hours required of an independent contractor (Ohio law limits CE requirements to 8 hours) and justify any CE requirements that relate to anything other than the actual practice of cosmetology.
3. Revise the answer for question #6 in the BIA to outline metrics for success of the proposed rules.

Conclusion

The Board should address the recommendations above and submit a revised rule package and BIA to the CSI Office demonstrating that it has done so. Until then, it **should not** file this proposed rule package with Joint Committee on Agency Rule Review (JCARR).

cc: Mark Hamlin, Director of Regulatory Policy