

**MEMORANDUM**

**TO:** Sallie Debolt, State Medical Board of Ohio

**FROM:** Christopher Smyke, Regulatory Policy Advocate

**DATE:** October 31, 2018

**RE:** **CSI Review – Respiratory Care (OAC 4761-1, 4761-2, 4761-3, 4761-4, 4761-5-05, 4761-5-07, 4761-6, 4761-7, 4761-8-02, 4761-9-01, 4761-9-03, 4761-9-04, 4761-9-05, 4761-10-01, 4761-10-02, 4761-11, 4761-12-02, 4761-12-03, 4761-13, 4761-14, and 4761-15)**

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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This rule package contains one new rule, 7 amended rules, 9 no-change rules, and 35 rescinded rules proposed by the State Medical Board of Ohio (Board) for their statutorily-required five-year review. The rule package was submitted to the CSI Office on September 25, 2018 and the public comment period was held open through October 12, 2018. No comments were received during this time.

The Ohio Respiratory Care Board was consolidated into the Board with the passage of House Bill 49, and the merger was further refined by House Bill 145 of the 132nd General Assembly. Thirty rules are proposed to be rescinded because they relate to duplicative administrative and disciplinary processes, while the other five rescinded rules are due to statutory changes regarding fees, short-term licensure exemption, inactive status, and storing hyperbaric technologist certifications. Ohio Administrative Code (OAC) 4761-15-01 is a newly proposed rule that

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incorporates respiratory care licensees into the Board for criminal records checks, personal information systems, hearings, reporting requirements, impaired practitioners, exposure-prone invasive procedure precautions, sexual misconduct and impropriety, and mental or physical impairment. The proposed rules also include amendments for editorial corrections, removing statutorily-eliminated definitions, assigning additional advisory duties to the Respiratory Care Advisory Council (Advisory Council), aligning the limited permit application procedure and license display to Board requirements for other licensees, and amending the ethical and professional conduct rule for consistency.

Prior to filing with CSI, the initial draft rules were reviewed and approved by the Board Policy Committee for circulation; the rules were then posted to the Board website and sent to organizations and individuals who have requested Board rule notifications, as well as all Board licensees, including respiratory care licensees. During this process, the Board received a comment from the Ohio Society for Respiratory Care (OSRC), objecting to the removal of paragraph (I)(1) of OAC 4761-10-01, which lists source material the Board may consider when determining a respiratory professional's adherence to minimal standard of care. The Board considered the comment, but concluded that the Advisory Council is already empowered to make recommendations in this area, and ultimately declined to incorporate the suggestion. OSRC also suggested amending OAC 4761-4-02 to make the Advisory Council's role in advising the Board on respiratory care educational programs mandatory; the Board declined to make the suggested change, as it would have conflicted with statute. The Ohio Association of Physician Assistants (OAPA) requested that Physician Assistants to be added to the list of professionals that may provide direction to respiratory care professionals and requested that it be included in the list of approved sources of respiratory care continuing education. The Board incorporated both requested changes by the OAPA. No comments were received during the CSI public comment period.

The business communities impacted by these rules include respiratory care professionals licensed in Ohio, as well as students and others who seek licensure in Ohio. Licensees are impacted by initial and renewal license fees; both fees are \$75. In addition, licensees are required to complete 20 hours of continuing education every 2 years. Non-compliance with the rules may result in administrative discipline and/or monetary fines. The BIA justifies the rules as necessary to implement statutory changes and to remove duplicative rules as a result of the merger. The BIA adds that the rules ensure the safe and competent practice of respiratory care in Ohio.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

**Recommendations**

For the reasons described above, the CSI Office has no recommendations on this rule package.

**Conclusion**

Based on its review of the proposed rule package, the CSI Office recommends the State Medical Board of Ohio should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.

CC: Emily Kaylor, Lt. Governor's Office