

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Occupational Therapy Physical Therapy, & Athletic Trainers Board

Regulation/Package Title: 2014 PT Licensure Changes

Rule Number(s): 4755-23-12; 4755-23-16

Date: September 18, 2013

Rule Type:

- ☒ New
☒ Amended

- ☐ 5-Year Review
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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

4755-23-12 – Requirements for foreign educated applicants

This rule establishes the additional requirements that a foreign educated applicant for licensure as a physical therapist must meet. The Board is proposing two amendments to the rule. The first change corrects an error in the passing scores for the TOEFL iBT exam. The second change clarifies that a foreign educated applicant must obtain the passing standard on

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the TOEFL iBT exam prior to the Board making the applicant eligible to sit for the National Physical Therapy Exam (NPTE) and/or the Ohio Jurisprudence Exam.

4755-23-16 – Temporary license for military spouse

This new rule establishes a temporary license for an individual whose spouse is on active military duty in this state. The rule establishes various criteria that the applicant must document to be eligible for the temporary license.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC 4755.411 for 4755-23-12 and ORC 4743.04 for 4755-23-16

3. 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.

The answer is no to for the rules in this package.

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

Not applicable to the rules in this package.

5. 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 mission of the board is to ensure that consumers of physical therapy services receive safe, competent, and adequate services from licensed practitioners. For applicants who did not graduate from an accredited PT school in the United States, the Board needs to ensure that the applicant's foreign education is reasonably equivalent to the requirements of a U.S. PT program. In addition, the ability to communicate with a patient in English is an important requirement for all of the Board's licensees. Requiring an applicant to demonstrate the working knowledge of English helps ensure that consumers of physical therapy services will be able to communicate with their physical therapist.

The rule establishing the temporary license will help ensure that the spouse of a member of the armed services that gets stationed in Ohio can quickly start practicing physical therapy in Ohio while they complete the standard application process.

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

Success will be measured by having the rules written in plain language for clarity and by foreign educated applicants passing the TOEFL exam and ultimately the NPTE. For military

spouses, success will be measured by the timeframes in which the temporary license is issued.

Development of the Regulation

7. 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 emailed stakeholders on August 16, 2013. A message seeking comment was also posted to the Board's Facebook and Twitter pages. Stakeholders were informed that comments were due to the Board by September 6. Stakeholders included licensees who are on the Board's listserv and individuals who follow the Board's Facebook and Twitter pages.

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

The Board did not receive any comments regarding the foreign educated applicant rule. There were two comments received regarding the temporary license rule. Both comments were generally supportive of the concept but wanted to ensure that standards were not lowered for the military spouses on temporary licenses. The Board believes that the requirements contained in the draft rule will ensure that practice standards for the temporary licenses will not be lower than the standards required for full licenses.

9. 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?

For the foreign educated applicant rule, the standards for the TOEFL exam were recommended following a TOEFL iBT Standard Setting Workshop in 2005. The Educational Testing Service (ETS) conducted the standard setting workshop for healthcare professions when it introduced the new TOEFL iBT exam. The professions represented at this workshop included physical therapy, occupational therapy, nursing, pharmacy, and veterinary medicine.

The requirements for the temporary licensure were based on information required for other state's that issue temporary licenses for military spouses.

10. 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?

There were no alternative regulations that the agency considered since the Board must determine that a foreign educated applicant meets the educational requirements contained in

state law. In addition, the Board must be sure that a military spouse meets certain minimum requirements to safely practice with the temporary license.

- 11. 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.

This question does not apply to these rules.

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

This question does not apply to these rules.

- 13. 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.**

For foreign educated applicants, the Board has resource documents posted on the website to explain the additional requirements that must be followed by these individuals. When the Board receives the application from the foreign educated applicant, Board staff ensures that the requirements contained in rule 4755-23-12 are met prior to the issuance of the license. In cases where an applicant requests a waiver of one of these requirements, that waiver request is presented to the members of the Board to make a determination. In some situations, following a phone interview of an applicant, the Board might waive the TOEFL requirements if the applicant is able to demonstrate the working knowledge of English.

For military spouses, the Board will post the application on the website, which will list the various documents that must be received prior to the issuance of the temporary license.

Adverse Impact to Business

- 14. 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;**

Applicants for licensure as a physical therapist or physical therapist assistant.

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

The foreign educated applicant must pay to have the credential evaluation completed and pay for the TOEFL exam. These costs are in addition to the other costs that all applicants for licensure will incur. There is also often a delay in the processing of the application for a foreign educated applicant due to a delay in the Board receiving the

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credential evaluation and/or other materials from a primary source that is located overseas.

For the military spouse, there will be the \$100 application fee. In addition, the required proof of marriage, licensure, and active duty station could take some time and have some cost to obtain.

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.

The foreign educated applicant must pay to have the credential evaluation completed and pay for the TOEFL exam. FCCPT, one of the leading physical therapy credentialing organizations, charges \$490 for the credential evaluation. It can take FCCPT 8-10 weeks to complete a review of the education. The registration fee for the TOEFL iBT varies based on where the individual takes the test. The Philippines and India are the two main countries where foreign educated applicants to the Board reside. In the Philippines, the registration fee is \$195. In India, the fee is \$165. In the U.S., the fee is \$180. The exam is offered multiple times each month.

For the military spouse, there will be the \$100 application fee. In addition, the required proof of marriage, licensure, and active duty station could take some time and have some cost to obtain. The application fee will be applied to the full license application, provided that the full license is issued before the expiration of the temporary license (6 months).

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

The mission of the Board is to ensure that the consumers of physical therapy services receive competent services from the Board’s licensees. Ensuring that a foreign educated applicant has the appropriate education and English language skills to provide competent services to the consumers of physical therapy in Ohio justified any adverse impact. Additionally, ensuring that a military spouse has met the minimal requirements to safely practice pending receipt of a full license also justified the adverse impact.

Regulatory Flexibility

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

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A foreign educated applicant is permitted to make a formal request to waive some or all of the requirements contained in rule 4755-23-12. Although the Board would not waive the requirement to submit a credential evaluation, after a review of the applicant's work/licensure history and the actual evaluation, the Board might determine that the applicant's education is acceptable, even if a few deficiencies are identified. As noted above, the requirement that the applicant demonstrate a working knowledge of English can also be waived upon request. These waivers are approved by the full Board, not by staff of the Board.

17. 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?

Since all components of the application must be received (or officially waived by the Board), this question did not apply to the rules in this package.

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

The Board and its staff are dedicated to working with members of the regulated community and the public to ensure that the consumers of physical therapy services in Ohio receive safe and effective services from the Board's licensees. As a result, the following resources are available:

Board's mailing address:

77 S. High Street, 16th Floor
Columbus, Ohio 43215-6108

Board's phone number: 614-466-3774

Board's fax number: 614-995-0816

Board's website: <http://otptat.ohio.gov>

Board's email: board@otptat.ohio.gov

To Join a Board listserv: <http://otptat.ohio.gov/consumers/boardlistservs.aspx>

Board's Facebook: <https://www.facebook.com/OhioOTPTATBoard>

Board's Twitter: <http://twitter.com/OhioOTPTATBd>

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