

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: 2015 OT Supervision

Rule Number(s): 4755-7-03, 4755-7-04

Date: 1/30/2015

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☐ Rescinded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.

Rule 4755-7-03 governs the delegation of components of the occupational therapy plan of care by the occupational therapist. The amendment fixes a typographical error.

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Rule 4755-7-04 outlines the supervision requirements for occupational therapy personnel. The current rule includes a provision stating that one occupational therapist (OT) can supervise no more than four occupational therapy assistants (OTA). The proposed amendment to the rule removes the supervision ratio. As a result, an OT would use their professional judgment and the unique circumstances impacting their practice to determine the appropriate number of OTAs that may be safely supervised. There are other provisions in the Board's rules that govern appropriate supervision and caseloads that should prevent employers requiring licensed OTs from supervising more OTAs than that which the OT feels is appropriate (see rule 4755-7-08 (B)(9)&(13) and (C)(1)).

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

4755.06

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.

No.

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 rule 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 occupational therapy services receive safe, competent, and adequate services from licensed practitioners. In the framework of the profession of occupational therapy, all occupational therapy assistants must legally be supervised by a licensed occupational therapist. The rule outlines the level of supervision required and the needed interaction between the supervising occupational therapist and the supervised OTA.

After a review of information from sources including the American Occupational Therapy Association, the Board determined that the public protection component associated with the supervision requirement was able to be met even with the elimination of the supervisory ratios contained in the current rule.

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 OTs not being placed in situations by employers where they are required to supervise a number of

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OTAs that they feel is too many in their professional judgment. Another success measure would be a lack of increase in complaints/investigations related to caseloads that are too large for the OT to appropriately manage.

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 November 14, 2014. The Board also emailed a 3 question survey on SurveyMonkey to the OT Listserv. As of December 12, over 1300 individuals responded to the survey. Over 60% of survey respondents indicated that the proposed change would either be good for their practice (10.39%) or have no impact on their practice (52.79%).

Stakeholders were informed that comments were due to the Board by December 5. 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?

Most of the comments received, either via email or through the open ended question on the survey, expressed concerns about eliminating the existing ratios. Some examples of these negative comments include "My concern is that if the ratio is eliminated, OTs will be spread too thin when supervising OTAs. There will be no regulation to present to facilities who are pushing therapists to have OTAs doing all of the treatments" and "Unscrupulous companies could force OTR's to be responsible for more than is reasonable."

On the positive side were comments including "The supervisory rules are too hard to understand. Is it per day, per week, is it every hour? I think that if I as a therapist am confident in the skills of my COTAs that should be good enough" and "I think the ratio should be more of a guide line and not a given amount, some OTA's may require more supervision than others."

In addition, comments received from the American Occupational Therapy Association (AOTA) indicates that the position of the national professional association is to NOT support the concept of defined numerical supervision ratios. AOTA feels that supervision is a cooperative process in which the OT and the OTA participate in a joint effort to establish, maintain, and/or elevate a level of competence and performance.

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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?

There is no evidence indicating that the existing supervisory ratio ensures adequate standards of care, competence, and performance. In addition, there is no evidence indicating that a lack of supervisory ratios would have a negative impact of public safety through improper utilization of the OTA and caseloads that are too large to appropriately manage. In other professions with a similar practice model (therapist and assistant) with no supervisory ratios, there have not been the violations reported similar to the concerns expressed by some of the survey respondents.

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?

The Board considered retaining or modifying the existing supervisory ratios. It ultimately felt that the complete elimination was the best and least burdensome regulatory option.

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.

Upon implementation of the amendment, the Board will notify all stakeholders of the elimination of the supervisory ratios. The educational campaign will also highlight to other rules that can be used by licensees to help explain to employers why the OT is unable to legally supervise a total number of OTAs that the OT feels is too many to appropriately handle.

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;**

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Occupational therapists and occupational therapy assistants. Facilities that employ OT and OTAs are also potentially impacted (schools, hospitals, nursing homes, etc.).

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

Individuals seeking to practice as an occupational therapist or occupational therapy assistant must obtain a license from the Board and follow the practice guidelines established in the laws and rules governing the practice of occupational therapy in Ohio. One of these practice standards deals with a requirement that the occupational therapy assistant have a supervising occupational therapist when providing OT services.

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 licensee who violated the laws and rules governing the practice could face potential disciplinary action, including monetary fines. Most fines levied by the Occupational Therapy Section range from \$100 to \$1,000.

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 occupational therapy services receive competent services from the Board’s licensees. Based on the education and training of occupational therapy assistants, the requirement that they be supervised by a licensed occupational therapist is appropriate.

Regulatory Flexibility

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

This question does not apply to this rule.

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?

This question does not apply to this rule.

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

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The Board and its staff are dedicated to working with members of the regulated community and the public to ensure that the consumers of occupational 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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