

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: Volunteer Continuing Education – Physical Therapy

Rule Number(s): 4755-23-08

Date: August 21, 2018

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☐ Rescinded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.

This rule details the continuing education requirements that must be met to be in compliance with license renewal requirements every two years. The changes implement House Bill 290 from the 131st General Assembly, which permits licensees to provide volunteer services to an indigent and uninsured person in certain settings in order to fulfill a portion of their continuing education requirement. Another change adopts a “jurisprudence” test to be taken every two years, initially as an optional component of license renewal, and then a

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

requirement. The jurisprudence activity tests a license holder's knowledge of current laws and rules. Another change allows specialty certifications to count toward continuing education.

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

4755.411; 4745.04

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.

The federal government does not license the OTPTAT professions.

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)?

This particular regulation is needed so that licensees know how to obtain continuing education that state statute mandates they receive in order to continue to be licensed by the state. The changes in this set of rules implement HB 290 from last General Assembly, which requires boards to accept certain volunteer time as credit for continuing education.

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

Success will be measured by the amount of volunteer time spent by volunteers and the speed with which this time is approved for continuing education by the board. Also, overall compliance with Ohio's rules and statute will be measured.

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 rules were considered at multiple PT Section meetings. These rules were also posted on the OTPTAT Board website from 4/4/2018-4/15/2018 and from 6/14/2018-6/26/2018 for comment. They were also sent out on the board list serv.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

See below for comments. No changes have been made to the rules at this time. Some concerns were offered about the addition of a jurisprudence component, but the PT section feels that the benefits outweigh the concerns. Corrections to terminology were made.

| | | | |
|--------|------------|-----|--|
| John | Myers | PT | Thank you for your email and request for comments and feedback. I noticed that in the description of rules changes below, the title “physical therapy assistants” is used a couple of times. While a minor error, as a PTA program director I am perhaps overly sensitive to correct terminology, physical therapist assistant. I very much applaud and support the rule changes 4755-23-01, 4755-27-01, and 4755-27-04, all of which relate to a minimum age of 18 for PT/PTA clinicals, supervision and licensure. I think these are necessary and important changes. Regarding 4755-23-08, specifically requiring an ethical component to the continuing education, I support the concept of including an ethical component. However I do not support a mandated, single provider model, as that can potentially place an undue burden on some licensees depending on the price point, as well as limit choice, usefulness and applicability. What might be a helpful ethical module for me as an educator would be less useful for a full-time clinician, and vice-versa. I have no issues with the Section/Board offering a renewal module, but I believe people ought to have other options as well. |
| Robert | Frampton | PT | I am in support of the proposed rule changes for 4755-29-01, 4755-23-01, 4755-27-01, 4755-27-04, and 4755-23-05 as written. I encourage the PT section of the OT, PT, AT Board to consider language that would permit licensees to take courses approved by the FSBPT ProCert process. The current rule states that the section may contract with the Ohio physical therapy association with performing of its continuing education duties. There is nothing in the current rule that suggests that it is an exclusive arrangement. The ProCert process is a valid assessment process that CCU/CEU vendors must go through. |
| Bryan | Miller | PTA | I do not agree with the new rule for jurisprudence module required for continuing education; therapists should have freedom to choose which courses they can take within reason to update licensure requirements. |
| Todd | Lewarchick | PT | I am all for the below rule changes. I recommend changing the practice act rules of requiring a Discharge Summary with ending a Plan of Care in outpatient settings. As being considered Doctors, no other Doctor in healthcare is required to Discharge a patient from outpatient services. Our patient should be consider a patient for life and therefore, never be discharged. LBP is considered episode and future re-occurring episodes can be expected. We may be charging insurances and potentially patients more money by requiring to bill an Evaluation when frequently a Re-evaluation is only needed. I propose that this rule and change of wording in our practice act be included now or in the near future to remove the Discharge requirement especially within the outpatient setting. |
| Jason | Ashby | PT | I agree with the proposed changes described below. |

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

| | | | |
|-------|------------|----|--|
| Diane | Shaw | PT | I'm all for the proposal to count volunteer hours toward the CE total of 24 needed hours. I am in favor of the other stated issues. |
| Renee | Loftspring | PT | I am opposed to 4755-23-08 taking a module re: ethics every 2 years is not necessary. Our licensure requires it., our worksites require it. if the topic is ethics related to electronic documentation, as an example, I can see that as a very valuable module for being sure PT/PTAs are up to date with technology-related situations and decision making. Otherwise, ethics conceptually doesn't really change |

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?

The Board has baseline information on the kinds of infractions that result in discipline. Many are related to documentation and basic ethical violations that can sometimes be traced back to ignorance of the rules. While one would not expect these violations to go away with the addition of a jurisprudence assessment, the hope is that they would reduce. Additionally, both the occupational therapy and athletic trainers have a board-developed jurisprudence module that is offered optionally for continuing education credit. While not required, the results of this test offer us a glimpse of the issues that are problematic for license holders and education efforts can be focused to help increase understanding.

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?

Continuing Education is a hot topic within regulation currently. There are many conversations about the best way to encourage and evaluate the continued competence of healthcare practitioners. For now, the use of continuing education is generally accepted. However, the value of this education must be enhanced. It is incumbent on the Board to proactively educate license holders on the basics of the laws and rules. Other regulatory alternatives to the jurisprudence piece were considered. The language in the rule is broad enough for the board to pursue several avenues of implementation, although the initial plan is to partner with the Federation of State Boards of Physical Therapy. The volunteer education changes and rule itself amplify current statute.

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.*

The nature of the volunteer CE requirement is performance-based. Additionally, it is largely up to a license holder what courses they choose to fulfill their continuing education credits. This rule change will require the jurisprudence assessment, however. An ethical

jurisprudence requirement is included in the occupational therapy and athletic trainers regulations already.

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

These rules implement a new statute change with regard to volunteer education. A laws and rules search was performed to look for other conflicts and duplication.

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 the volunteer CE changes and other CE adjustments, the Board will provide information via listserve, website, and social media. The Board is planning a multi-phase implementation to the jurisprudence assessment to educate license holders on the need, the cost, and the benefits. For the first two years, the jurisprudence model will be optional, but highly encouraged, for renewal. If all goes well with this first phase, the module will be required for the PT renewal in January 2022. The module is a “test” but not one you can fail. After answering a question, the correct answer is displayed, and the user can see citations and learn more about the correct answer. It helps a license holder assess their own strengths and weaknesses. The Board would work with professional organizations and do direct outreach to help people learn about the importance of this requirement.

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;

Continuing education requirements impact all physical therapists and physical therapist assistants. Secondarily impacted are their employers who sometimes help cover CE costs and time.

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

Most continuing education has a cost for the course. Costs vary. Continuing education providers vary greatly in their offerings. Volunteer CE should have no cost. The new jurisprudence module will have a cost, but it is also planned to count for two hours of continuing education, and the cost will be less than the average continuing education course.

c. Quantify the expected adverse impact from the regulation.

Continuing education probably costs most license holders several hundred dollars a year.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

Continuing education is required by statute and is an important tool to help license holders maintain competency and learn new skills.

Regulatory Flexibility

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

No. This rule does not apply to small businesses, but only to individual licensees.

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?

The board takes into account past history and severity of offense when considering whether discipline should be issued as a result of noncompliance with continuing education.

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

This rule does not apply to small businesses, but only to individual licensees.