



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

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

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Minimum age requirement for occupational therapy and occupational therapy assistant students

Rule Number(s): 4755-3-01, 4755-7-01, 4755-7-04

Date of Submission for CSI Review: 12/13/2019

Public Comment Period End Date: 1/8/2020

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/\_\_\_Y\_\_\_ rules (FYR? \_Y\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

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

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

4755-3-01 – Applications for initial licensure: Describes the process for initial licensure, including required documentation. Change acknowledge the eLicense system and set a minimum age requirement of eighteen in order to receive a license.

4755-7-01 – Occupational therapy practice defined: Defines frequently used terminology within the Ohio occupational therapy practice act. Changes require a student occupational therapist to be eighteen by October 1 of the first year of their program. The delayed effective date of January 1, 2021 gives schools times to adjust admissions policies.

4755-7-04 – Supervision: Describes the circumstances and requirements of supervision within occupational therapy. Changes require a student occupational therapist or student occupational therapy assistant to be eighteen in order to do Level I or Level II fieldwork.

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- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

4755.06

Amplifies: 4755.04, 4755.06, 4755.07, 4755.08, 4755.11

- 4. 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. Occupational licensure is up to the states.

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

State law requires licensure of occupational therapists and occupational therapy assistants.

- 6. 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 rule gives more detail and transparency for agency operations for license applicants and the public.

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

Licenses granted, questions answered from license holders and the public.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

- 9. 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.*

These rules were posted for public comment on the Board website and sent out to our listserve, including all occupational therapy license holders from July 5-July 15, 2019.

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

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See attached comments. The Occupational Therapy Section discussed all comments at its meetings in July, August, and September. There are several requests for clarifications as to the intent of the rules, and changes were made to try and be clearer as to when the minimum age will apply.

**11. 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?**

No.

**12. 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?**

Licensure is required by Ohio statute.

**13. 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.***

No. The rules reflect the licensure process required by law and the overall definitions and supervision requirements that are generally accepted nationally and taught in accredited schools.

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

Review of Ohio laws and rules.

**15. 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.**

The implementation will be reflected in the eLicense system for licensure applications. This is the only way applications are accepted.

**Adverse Impact to Business**

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

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***“representative business.” Please include the source for your information/estimated impact.***

- a. All occupational therapists, occupational therapy assistants, students in the field, accredited schools at colleges and universities, and prospective students.
- b. Potential students will have to wait until age eighteen to begin a program. OT and OTA programs may have to revise the admission requirements and program structures. The cost of applications - \$100 plus a \$3.50 license fee, passage of national exam - \$500, cost of an accredited programs – varies.
- c. Varies. At least \$600 plus thousands of dollars in education costs.

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

For all of the application requirements, they are required by law and the cost is justifiable because of the expense required to educate a student and have a verifiable exam, as well as staff time to review applications and pay for eLicense technology. Regarding the change to the rule that sets a required minimum age, the Board is very concerned about the liability of having a minor student involved in fieldwork and active within the health care area and helping treat patients when they are not concerned legally responsible for themselves. The Board made a similar change earlier this year for physical therapist and physical therapist assistant students. We have heard from programs that they would welcome the clarity that a minimum age requirement brings, as they are receiving requests from high school students who are enrolled in post-secondary options, yet they are not always mature enough to handle the coursework. The Board has also handled complaints related to minor student involvement in a health care setting.

**Regulatory Flexibility**

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

No. These rules apply to individuals.

**19. 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 has disciplinary guidelines that take first time offenses into account. We do our best to work with people to help with their paperwork.

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

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The Board can be contacted during business hours via email, phone, fax, or walking in. Our website provides information to assist as well. We can also be contacted through facebook and twitter.

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Early Stakeholder Release Comments on OT minimum age:

1. I am writing to provide feedback on the below rules currently under consideration for possible rulemaking. I appreciate the opportunity to provide informal feedback before a rule amendment is submitted through the rulemaking process.

Based on initial conversations with my colleagues at the American Occupational Therapy Association (AOTA), we request clarification on the Board's intent with regard to the proposed amendment to rule number 4755-7-01 and rule number 4755-7-04.

With regard to rule number 4755-7-01, is it the intent of the proposed language to require that an OT or OTA student be 18 when STARTING their academic program, at some point while enrolled in the academic program, or when they graduate? There are many students who graduate high school and begin pursuing their bachelor's or associate's degree before turning 18 and our concern would be that this requirement could keep such students from beginning their studies in an OT or OTA program, if the Board wants to require students to be 18 when they START the OT program. Additionally, this could prevent students in Ohio who are in high school from taking courses that concurrently earn them college credits. We respectfully request that the language be amended to clarify the Board's exact intent.

With regards to the rule amendment to rule number 4755-7-04, we also request clarification as to whether the intent of this new requirement is to require that students completing Level II fieldwork be at least 18 years old. If this is the intent, we do not have an issue with the requirement because Level II fieldwork, as you know, would be when OT students would be interacting directly with patients. Thus, we would consider this provision to be in the interest of public protection. However, the language as written does not make clear whether this is the Board's intent. Again, we respectfully request that the language be amended to clarify the Board's exact intent.

Thank you again for the opportunity to provide feedback at this stage of the rules' development. Please contact me if the Board has any questions regarding the points above.

2. I wish to make a comment on rule 4755-7-04. There may be circumstances in which a student OT or OTA who is under the age of 18 is participating in a clinical learning activity but is under the supervision of a faculty member of a college or university. Additionally, Level I fieldwork students generally receive an extremely high level of supervision from fieldwork educators or faculty when interacting with clients. I feel that this rule should be clarified to state that an OT or OTA student must be 18 in order to be supervised by an OT or OTA for Level II fieldwork.
3. Jacquelyn Chamberlin, , Lic# OT.0001334  
I brought the rules to the OOTA Board meeting yesterday. There was concern from some of the educators on the board that there may be some situations in which a student who is not yet 18 may accompany an instructor into a clinic situation. I suggested that these individuals write directly to the Section to explain their concerns. I do believe that there may be some need for

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education of clinical supervisors because students not yet enrolled in an OT program, who are interested in applying for admission (both professional level and technical level) are required to do observation hours in an OT clinic. I don't think it needs to be in rule but once this rule is enacted, it may be useful to explain this exception. It is sometimes difficult for students seeking observational hours to get OT's to agree and misinformation and/or misunderstanding of this rule will increase this reluctance, I believe.

4. I am the program director of the Occupational Therapy Assistant Program at Owens State Community College and a licensed Occupational Therapy Assistant in Ohio.

I am in agreement with proposed rule 4755-3-01, Applications for initial licensure.

My first question is related to the proposed change to Rule Number 4755-7-01: Student occupational therapists and occupational therapy assistants must be at least eighteen, effective January 1, 2021.

Is the intent that students must be 18 to graduate and does it matter if a student is less than 18 years old when they first enroll in the program if they are 18 at graduation? This will impact our pool of high school graduate applicants if it applies to enrollment vs. graduation. The proposal needs clarification about age to enter the programs.

Secondly, related to Rule Number 4755-7-04., a student must be eighteen in order to be supervised by an OT or OTA, effective January 1, 2021. Is the intent that a student on FW level II needs to be at least 18? While I certainly agree with this, I would like to see this clarified and stated specifically if related to Level II FW. This would give us the ability to set a birthdate cut off for our applicants, while still capturing some of those who could enter at 17 and turn 18 before Level II FW.

5. With students taking college classes in high school so early now I can see how someone under 18 years old could be a OT/COTA student.  
I think people mature at different ages. I am not sure age should automatically prevent someone from being accepted into the program (both being too young or too old). I think if they have the grades and maturity they should be interviewed and considered.
6. The proposed changes to rules that would require that individuals covered by Ohio OT license be 18 years old provide additional detail that might be beneficial, however are in opposition to the direction that State education initiatives are going. My preference would be that those who receive a license be 18 years old, but to be engaged in a program be 16 or older. If academic programs and fieldwork sites are doing their job (which up to now they have been) then their screening processes and fieldwork expectations would filter out those who are not mature or responsible enough to be part of the OT profession.

These rules would limit academic programs from participating in college credit plus opportunities and would give an advantage to other professions.

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7. I believe this rule should clarify that a student OT or OTA must be 18yo. A high school student, under 18 yo, learning about OT OTA should NOT be eliminated from being supervised in an OT setting.
8. I believe that with all the course, testing and degree requirements to become an OT or COTA it would be a rare person to achieve the prerequisites before age 18. I do not think it would benefit the profession to put age limits on exceptional people. I am against this new rule proposal. Thank you for accepting my input.
9. I approve/agree of the proposed rule changes, of changing the age to 18.
10. I think the proposed rule changes are reasonable.
11. I support the following rule changes, 4755-3-01, 4755-7-01, and 4755-7-04.
12. I approve of the new proposed changes to be 18 years of age before being eligible to receive a license.
13. I agree with all 3 proposals age 18 for all 3 situations.
14. Age should hold no bearing on whether a person should be licensed as an OT or COTA.