



## Common Sense Initiative

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

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: 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):

Physical Therapy – Requirements for foreign educated applicants

Rule Number(s): 4755-23-12

Date of Submission for CSI Review: 9/27/2022

Public Comment Period End Date: 10/14/2022

Rule Type/Number of Rules:

New/\_\_\_ rules

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

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

Rescinded/\_\_\_ rules (FYR?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

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### **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.*

This rule details the requirements to receive initial licensure as a PT or PTA in Ohio if you have been educated internationally. This rule change clarifies three things:

1. The PT Section may accept an evaluation completed for another state if the other state's requirements for licensure were substantially equivalent to Ohio's for the same time period.
2. Allows an option for individuals who are internationally educated to request a waiver of the TOEFL requirements if they are applying for licensure after already being licensed in another state and if they meet minimum practice requirements in the United States.
3. Changes the verbiage for defining a person educated in another country from foreign-educated to internationally-educated.

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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.**

Authorization: ORC 4755.411

Amplifies: 4755.42, 4755.43, 4755.44, 4755.45

- 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.

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

Not Applicable.

- 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)?**

Licensure is required by the Ohio Revised Code for physical therapists and physical therapist assistants. This rule prescribes the process to obtain licensure if a person has been educated in a country other than the United States.

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

Appropriate licensure of individuals educated in a country other than the United States.

- 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.*

This rule was discussed at both the July and September Physical Therapy Section Board meetings. It was also released to the physical therapy list serve for comment, which includes all licensed PTs/PTAs.

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

Comments below. The PT Section chose to adopt the comment urging use of the term internationally-educated.

Commenter	Comment
Amy D Goldstein PT,DPT	I support these changes
Ronald J. Kleinman, PT	<p>I am in agreement with number 1 of the new rules. If another State's requirements are equivalent to Ohio's Laws then I feel that consideration for licensure is acceptable. However, the waiver of TOEFL I feel is not acceptable. Ohio has been consistent with their stand on TOEFL rules. The ability of a licensed professional to communicate with their patient is vital in the ability to provide good quality care. As well, the professional's ability to understand their English speaking patient is also vital in providing good quality care. We cannot give in to ridiculous acts of "political correctness", or pressure from liberal groups to decrease the importance of our Country's official language. I have been proud of the Rules and Regulations of Ohio and feel that these rules give us the ability to provide a high standard of care and high quality of care.</p> <p>If a foreign trained Physical Therapist has an education that is equivalent to the Standards of this Country's Education system then by all means they should be considered for licensure. However, we should never reduce our standards for communication. An applicant should be able to "prove" their ability to understand the English language as well as express themselves using the English language to provide good quality care.</p> <p>I thank you for your time in this matter.</p>
Ally Talbott-Welch, PT	<p>I wanted to submit to the committee the following feedback. While the word "international" is used in the rule text, the word "foreign" is used in the rule title. I think it makes more sense to consistently use "internationally educated" throughout the rule's language</p>

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	because “foreign” has historically been used in a xenophobic sense.
Jason Nemunaitis	Stop changing rules. Focus on forming a union to stop the destruction of therapy careers. Productivity levels and stagnant salaries and burnout are killing the profession. Than you add a Doctorates degree. We are not doctors only a bachelors was needed to become a therapist. That just adds more debt.

**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?**

Review of past applications from international applicants.

**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?**

This rule change includes a change that provides an alternative to current regulation.

**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 TOEFL test is a generally accepted measure of English proficiency. Educational equivalence is required by law and must be measured by expert agencies.

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

Review of current 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.**

Continued measurement of applications from individuals who are internationally educated.

**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

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

- a. Individuals with a PT or PTA education in a different country and their potential employers in Ohio.
- b. The TOEFL test costs vary by location, average of \$195. Application fee is \$100 to the OTPTAT Board. An education evaluation cost varies. From the Foreign Credentialing Commission on Physical Therapy costs \$1,240.
- c. It costs approximately \$1,500 (at least) to gather materials related to licensure when a person has been educated in a different country. These costs are required to comply with the Ohio Revised Code, which requires educational equivalence.

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

Part of the duty of the OTPTAT Board is to verify that a practicing physical therapist or physical therapist assistant has been adequately educated to practice in Ohio. This ensures the protection of the public against unqualified practice of physical therapy.

**Regulatory Flexibility**

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

This rule puts in place a waiver that is an alternative means of compliance. The waiver will allow individuals who have practiced in the United States for a minimum amount of time to qualify to waive the TOEFL test, saving the cost of this licensure requirement.

**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?**

First time offenses are accounted for as a mitigating circumstance in board discipline.

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

Board staff is available by phone, email, and the Board’s website is a resource tool.

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