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/Packaging Title (a general description of the rules’ substantive content):

Occupational Therapy FY 2020 five year review and continuing education

Rule Number(s): 4755-7-02, 4755-7-03, 4755-7-08, 4755-7-10, 4755-9-01

Date of Submission for CSI Review: 2/11/2020

Public Comment Period End Date: 2/24/2020

Rule Type/Number of Rules:

New/___ rules
Amended/__X__ rules (FYR? _X__)  No Change/__X__ rules (FYR? _X__)
Rescinded/____ rules (FYR?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.
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.

<table>
<thead>
<tr>
<th>Rule number</th>
<th>Title</th>
<th>Description of proposed change</th>
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<tbody>
<tr>
<td>4755-7-02</td>
<td>Roles and responsibilities</td>
<td>This rule defines the relationships between occupational therapists, occupational therapy assistants, student OTs and OTAs, and unlicensed personnel, including supervision requirements and expectations. Changes include:</td>
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<td>1. Provides more clarity by referring to the &quot;occupational therapy process&quot; for which the occupational therapist must have responsibility instead of &quot;activities&quot; in (A).</td>
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<tr>
<td>Code</td>
<td>Rule Description</td>
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<tr>
<td>4755-7-03</td>
<td>Delegation</td>
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<td>2. Replacement of words such a &quot;must&quot; instead of &quot;shall&quot; to conform with current rule drafti standards and provide consistency throughout all rules. The rule defines how and what an occupational therapist may delegate to an occupational therapy assistant, a student, and unlicensed personnel. The changes to this rule make clear that unlicensed personnel cannot act independently.</td>
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<tr>
<td>4755-7-08</td>
<td>Code of ethical conduct</td>
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<td>This rule meets the core mission and provides more detail on how an occupational therapist or occupational therapy assistant should conduct themselves. Changes include: 1. Specifies that eLicense records may not be forged. 2. Adds intervention in lieu of a felony as a circumstance that a license holder must report to the board within 30 days. 3. Adds the termination, revocation, suspension, or sanctioning of a professional license in the state of Ohio or another state as a circumstance that a license holder must report to the board within 30 days.</td>
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<td>4755-7-10</td>
<td>Required credential to indicate licensure or student status</td>
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<td>This rule details the credentials an occupational therapist or occupational therapy assistant license holder should use and how student status should be indicated. Reviewed for five-year rule review. No changes proposed.</td>
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<tr>
<td>4755-9-01</td>
<td>Continuing Education</td>
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<td>This rule defines what activities count toward continuing education for occupational therapists and occupational therapy assistants. The rule change adds two activities which can count as continuing education in the mentorship category. The rule change also eliminates conflicting language to make it clear that continuing education is not required for first renewals, as has been the practice. 1. Continuing education credit can be earned by mentoring a practitioner in the first year of practice or any practitioner entering a practice area or attempting to achieve certification in a practice area in which the mentee has no prior experience. One contact</td>
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hour may be earned for every eighty hours of mentorship completed, with a maximum of four contact hours per renewal cycle. Proof of mentorship will be a written contract which includes the signatures of the mentor and the practitioner who has agreed to be mentored. The contract must also include a time log documenting the mentor’s activities and the time spent completing those activities.

2. Continuing education credit can be earned by mentoring a practitioner of an AOTA Fellowship Program. The mentor must spend a minimum of 340 hours with the fellow while the fellow delivers occupational therapy services in the identified practice area. Four contact hours may be earned for each AOTA Fellowship Program mentorship with only one mentorship eligible for contact hours per renewal cycle. Proof of mentorship will be the written contract developed by the AOTA Fellowship Program and documentation of successful completion by this program.

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.

Statutory Authority: 4755.06
Amplifies: 4755.04, 4755.06, 4755.08, 4755.10, 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. Licensure is a state level requirement.

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)?

These rules provide guidance on how individuals practicing occupational therapy should conduct themselves. Standard guidelines for supervision and delegation of care that are unchanged across payers. More detail on options for how to complete continuing education requirements. The rules supplement the requirements in the statute.
7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Board answers questions about supervision and delegation frequently. The more clarity the Board can provide, the better advice that can be given to therapists. The Board will also monitor continuing education submissions to see if individuals are taking advantage of the new mentorship option in this rule.

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.

The rules were sent out to all license holders and professional organizations via a list serv.

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

No comments were received. The Board did receive input at a conference asking for the mentorship option to count for continuing education.

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?

None.

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?

None. Regulation is required by the Ohio Revised Code.

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.

The supervision and delegation rules are examples of this. They aren’t specific on how supervision and delegation take place and are documented. The rule sets up outside
parameters on basics that are required and each therapist, employer, and payer may set up additional requirements.

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

Review of existing law and statute.

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.

When the rules are effective, they will be sent out to license holders, published on the web, and included in presentations to educate license holders on the changes.

**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**
      Occupational Therapists and Occupational Therapy Assistants and their employers.

   b. **Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
      Fees, Fines, Discipline, continuing education, educational licensure requirements, exam fees.

   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.*

To be licensed as an OT or OTA, one must complete education (master’s for OT, associates for OTA), Take and pass the NBCOT exam ($515), complete background check ($47.25), and perhaps verify licensure in other states. The licensure fee is $100 plus a $3.50 eLicense fee. Continuing education is required to keep up the license – 20 hours every two years. Continuing education can be found for free or can be taken at a variable cost.

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

Licensure is required by the Ohio Revised Code.
**Regulatory Flexibility**

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

No. All licensees are held to the same standard.

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 prefers to work with first time offenders to educate and takes that into account in things such as disciplinary guidelines.

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

Anyone can call us, fax us, email us, visit us, and message us on facebook and receive a response during business hours and a reply by the next day.