

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Dental Board

Regulation/Package Title: 2015 – Chapter 21

Rule Number(s) 4715-21-01

Date: December 7, 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Rescinded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.

Amend

- **Ohio Admin Code 4715-21-01 Requirements for approval of treatment providers and treatment centers.:** This rule sets forth the guidelines and procedures for approval of inpatient, outpatient, and aftercare treatment providers and treatment centers. Amendments to the rule were made to correct statutory references and spelling errors.
2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

O.R.C. 4715.301 Standards for approving and designating physicians and facilities as treatment providers for dentist or dental hygienists with substance abuse problems.

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

CSIOhio@governor.ohio.gov

- 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.

These regulations do not implement a federal requirement nor were they implemented to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

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

This question is not applicable since the regulations do not implement a federal requirement.

- 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 General Assembly determined that the profession of dentistry required regulation and established a Board to license individuals and enforce the law and rules governing the practice of dentistry and dental hygiene in Ohio. These regulations allow the Board to carry out its statutory mission of ensuring public protection by setting forth minimum standards for the treatment of substance abuse by impaired practitioners.

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

This regulation will ensure that there are approved treatment centers and treatment facilities that the Board can rely upon to refer licensees suffering from impairment and substance abuse. The regulation will be successful when the Board has utilized it to approve a sufficient number of treatment centers and facilities so that licensees have options of treatment locations and can secure treatment if they so chose.

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's Law and Rules Review Committee (Committee), holds open meetings throughout the rule review year. The Committee is comprised of eleven (11) members including representatives of the Board, the Ohio Dental Association and the Ohio Dental Hygienists' Association. Additionally, the Board sends public notices and proposed Rule Review agendas to the Board mailing list; a listing of parties interested in all Board proceedings. The Committee met to discuss these rules in April, September, and December 2013.

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

Discussion by the Committee and approval by the full Board resulted in the decision that these rules are working as intended by the legislature.

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?

Scientific data was not used to develop this rule as the rule is not data driven.

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?

No alternative regulations were considered by the agency since it was determined that the rule works as intended by legislature.

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 Board did not see an application for the rule in this package to be performance-based.

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

The five-year rule review process is conducted with the focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with interested parties help to ensure that these rules do not duplicate any existing Ohio regulation.

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.

The Board will continue to use its website and social media links to educate and update licensees on its rules. Board employees provide informational presentations to stakeholder organizations and groups of dental personnel in an effort to keep the dental profession apprised of current regulations. Stakeholder organizations also ensure that rules, particularly amended rules are provided to their members through communications and CE opportunities. Staff training is conducted for rule changes to ensure that regulations are applied consistently.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

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a. Identify the scope of the impacted business community;

Any dentists or dental hygienists with possible substance abuse problems, treatment providers and/or centers, and the general public.

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

Adverse impact of the rule for the licensed individual would be in time and cost.

Adverse impact of the rule for the treatment provider and/or treatment center would be in time and effort.

Adverse impact to the general public would be due to immediate and indefinite suspension of licensure to practice

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.

Adverse impact of the rule for the licensed individual would be in time and cost for initial evaluation for substance abuse and subsequent inpatient treatment and aftercare. Additionally, an adverse impact would be a loss of income due to immediate and indefinite suspension of licensure to practice.

Adverse impact of the rule for the treatment provider and/or treatment center would be in time and effort to apply for Board approval and subsequent reporting to the Board on the status of impaired licensees obtaining treatment.

Adverse impact to the public would be in possible loss of access to appropriate dental care due to the immediate and indefinite suspension of the license to practice.

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

O.R.C. Chapter 4715. requires the Ohio State Dental Board to regulate the standard of care provided by dentists and dental hygienists in order to fulfill its statutory mission of protection of the public.

Regulatory Flexibility

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

This rule does not provide any exemption or alternative means of compliance for small businesses. All licensed dental personnel under O.R.C 4715 must have a license or certificate to provide services in Ohio. The law does not differentiate on the size of the business and therefore, this rule applies to all licensed providers.

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?

O.R.C. 4715 does not allow for the implementation of fines or penalties. Therefore, this is not applicable.

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

Resources available to assist small businesses/stakeholders with compliance are online access to the Ohio Revised and Administrative Codes. Additionally, Board staff regularly respond to inquiries from interested parties.

APPROVAL OF TREATMENT PROVIDERS AND CENTERS

4715-21-01 REQUIREMENTS FOR APPROVAL OF TREATMENT PROVIDERS AND TREATMENT CENTERS.

- (A) The Ohio state dental board shall approve and designate qualified licensed practitioners as treatment providers and facilities as treatment centers for board licensees and/or permit holders with substance abuse problems.
- (B) Any qualified licensed practitioner desiring to be approved as a treatment provider or facility desiring to be approved as a treatment center shall apply to the Ohio state dental board on an application provided by the board.
- (C) The Ohio state dental board shall approve outpatient and inpatient facilities and subsequent post treatment services which meet the following criteria, unless the board determines that the facility is not providing substance abuse services acceptable to the board:
 - (1) The facility has provided adequate evidence that it is capable of making an initial inpatient examination to determine the type of treatment required for board licensees and/or permit holders with substance abuse problems; and,
 - (2) The facility is fully accredited by the "Joint Commission on accreditation of healthcare Organizations" (JCAHO), or the "American Osteopathic Association" (AOA), in the area of substance abuse services.
- (D) The Ohio state dental board shall approve qualified licensed practitioners as treatment providers who hold clinical privileges in the area of substance abuse services at a facility which meets the criteria specified in paragraphs (C)(1) and (C)(2) of this rule. The qualified licensed practitioner shall provide evidence acceptable to the Ohio state dental board that any staff utilized in treatment shall be under the supervision of the qualified licensed practitioner.
- (E) An approved treatment provider shall:
 - (1) Report to the Ohio state dental board the name of any board licensee and/or permit holder suffering or showing evidence of suffering inability to practice under accepted standards as described in division (A)(8)(A)(10) of section 4715.30 of the Revised Code who fails to comply within one week with a referral for examination;
 - (2) Report to the board the name of any impaired board licensee and/or permit holder who fails to enter treatment within forty-eight hours following the provider's determination that treatment is needed;
 - (3) Require every board licensee and/or permit holder who enters treatment to agree to a treatment contract establishing the terms of treatment and aftercare, including any required supervision or restrictions of practice during treatment or aftercare;
 - (4) Require a board licensee and/or permit holder to suspend practice on entering any required inpatient treatment;
 - (5) Report to the board any failure by an impaired board licensee and/or permit holder to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare;
 - (6) Report to the board the resumption of practice of any impaired board licensee and/or permit holder before the treatment provider has made a clear determination that the individual is capable of practicing according to accepted standards of the profession;
 - (7) Require a board licensee and/or permit holder who resumes practice after completion of treatment to comply with an aftercare contract that meets the requirements of rules adopted by the board for approval of treatment providers; and,
 - (8) Report to the board any board licensee and/or permit holder who suffers a relapse at any time during or following aftercare.
- (F) "Relapse" means a return to the pattern of impairment activities which affect the practitioner
- (G) The Ohio state dental board may withdraw the approval of any qualified licensed practitioner as a treatment provider or facility as a treatment center, if the board determines that the qualified licensed ~~practitioner~~ practitioner or facility does not meet the requirements of either paragraph (C)(1) or (C)(2) of this rule, or is not providing substance abuse services acceptable to the board.
- (H) Each approved treatment provider or center shall immediately notify the Ohio state dental board of any of the following:
 - (1) Change in ownership of the facility;
 - (2) Loss of accreditation by the JCAHO or AOA, or any probationary status of such accreditation; or,
 - (3) Change in location of the facility.

Each approved qualified licensed practitioner shall immediately notify the Ohio state dental board of any reduction or termination or suspension of the clinical privileges specified in paragraph (D) of this rule, or if such privileges are negatively affected in any manner.

Failure to notify the Ohio state dental board as provided in this rule shall be cause of immediate withdrawal of approval as a treatment provider or center.