Ohio | Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Speech and Hearing Professionals Board

Rule Contact Name and Contact Information:

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

Amended Rules Package-2023

Rule Number(s): 4747-1-02, 4747-1-19, 4753-3-05, 4753-8-01, 4753-8-03

Date of Submission for CSI Review: 8/15/2023

Public Comment Period End Date: 8/31/2023

Rule Type/Number of Rules:

New/___ rules

Amended/_X___ rules (FYR? ___)

No Change/___ 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Rescinded/____ rules (FYR?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.

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.

   4747-1-02: Definitions and interpretations; amending definitions to align with FDA's regulations for over-the-counter hearing aids and prescription hearing aids
   4747-1-19: Rules on appropriate test procedures; amending hearing test procedures to align with FDA's regulations for over-the-counter hearing aids and prescription hearing aids
   4753-3-05: Student Clinical Experience Requirements
   4753-8-01: Definitions; amending definitions to align with FDA's regulations for over-the-counter hearing aids and prescription hearing aids
   4753-8-03: Rules on appropriate hearing aid test procedures; amending hearing test procedures to align with FDA's regulations for over-the-counter hearing aids and prescription hearing aids

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: 4744.28, 4747.04, 4753.05
   Amplification: 4747.04, 4747.12, 4753.01(G), 4753.05, 4753.10

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 implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**
   N/A

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)?**

   4747-1-02: Definitions and interpretations; this rule sets forth the definitions for hearing aid dealing and fitting. The Board is amending the definitions to align with the FDA's regulations for over-the-counter hearing aids and prescription hearing aids.

   4747-1-19: this rule sets for the requirements for appropriate hearing test procedures for hearing aid fitters. The Board is amending this rule to align with the FDA's regulations for over-the-counter hearing aids and prescription hearing aids.

   4753-3-05: this rule specifies the requirements for individuals completing the student clinical experience requirements
   4753-8-01: Definitions; amending definitions to align with FDA's regulations for over-the-counter hearing aids and prescription hearing aids
   4753-8-03: Rules on appropriate hearing aid test procedures; amending hearing test procedures to align with FDA's regulations for over-the-counter hearing aids and prescription hearing aids

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

   The Board utilizes the Ohio eLicense license management system to track outputs and/or outcomes associated with these rules. Individuals will utilize the license management system to submit applications, renew their license, file complaints, etc. The Board also solicits feedback from licensees through surveys, newsletter communications, customer satisfaction surveys, and presentations about professional issues. The Board conducts an annual strategic planning meeting to address and prioritize issues related to its rules.

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.
   N/A

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 Board notified all licensees and interested parties in late fall of 2022 via its newsletter and website that public comment would be accepted on the five-year rules scheduled for 2023, and that the rules would be submitted as no-change rules. The Board's notification also included state and national professional associations. The Board's notification included the American Speech-Language Hearing Association (ASHA), the American Academy of Audiology (AAA), the Ohio Speech and Hearing Governmental Affairs Coalition (GAC), and the Hearing Healthcare Alliance of Ohio (HHAO).

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

The Board received no issues or concerns regarding this rules package.

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?

The Board used the following resources to develop and measure the outcome associated with the rules: the Ohio Administrative Procedures Act, Office of Budget and Management, other state regulatory boards, American Academy of Audiology, American Speech-Language-Hearing Association, and the International Hearing Society. All of the data that the Board utilized supports the rules.

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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.
There are no alternative regulations applicable to these rules. These rules are unique to the professions regulated by the Board and necessary for consumer protection.

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

The Board took into consideration whether the five-year rules are addressed in existing Ohio regulation and determined that the rules are unique and applicable to the licensed professions under the Board's jurisdiction.

14. 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.

In order to implement the rules consistently and predictably, the Board will continue to notify licensees about the requirements via the Board's eNewsletter and website. The Board also maintains a listserv which interested parties may join to receive these updates. In addition, the Board will continue to respond to inquiries via telephone and e-mail about licensure requirements.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The Board licenses just over 11,000 audiologists, hearing aid dealers and fitters, speech-language pathologists, conditional speech-language pathologists, aides, and trainee permits. These licensees practice in a diverse group of work settings, from schools, hospitals, rehabilitation centers, private practice, retail, skilled nursing facilities, community-based clinics, to name just a few.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).
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.

4747-1-02: Definitions and interpretations
The nature of the adverse impact from this rule will be minimal because these rules merely define terms for greater clarity to the rules under which the terms are referenced.

4747-1-19: Appropriate hearing test procedures for hearing aid fitters
The nature of the adverse impact from this rule will be the time and cost to licensees and businesses for compliance with the requirements for appropriate hearing test procedures. The Board is amending this rule to align with the FDA's regulations for over-the-counter hearing aids and prescription hearing aids. The rule clarifies that appropriate hearing test procedures do not apply to over-the-counter hearing aids since these products are intended for direct purchase by consumers with perceived mild to moderate hearing loss. The rule also rescinds the medical clearance and medical waiver requirement for prescription hearing aids which will ultimately diminish the adverse impact to the regulated profession.

4753-3-05: Student Clinical Experience
The nature of the adverse impact from this rule will be the time and cost to complete the student clinical experience required for graduation and licensure as a speech-language pathologist or audiologist. This rule rescinds the requirement that the university verification letter be notarized; thus, minimizing the adverse impact to universities who prepare the verification letters.

4753-8-01: Definitions
The nature of the adverse impact from this rule will be minimal because these rules merely define terms for greater clarity to the rules under which the terms are referenced.

4753-8-03: Appropriate hearing aid test procedures for audiologists
The nature of the adverse impact from this rule will be the time and cost to licensees and businesses for compliance with the requirements for appropriate hearing test procedures. The Board is amending this rule to align with the FDA's regulations for over-the-counter hearing aids and prescription hearing aids. The rule clarifies that appropriate hearing test procedures do not apply to over-the-counter hearing aids since these products are intended for direct purchase by consumers with perceived mild to moderate hearing loss. The rule also rescinds the medical clearance and medical waiver requirement for prescription hearing aids which will ultimately diminish the adverse impact to the regulated profession.

16. Are there any proposed changes to the rules that will <u>reduce</u> a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*
No

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

With regard to these rules, the Board believes the regulatory intent justifies the adverse impact on the regulated business community for consumer protection and reasons mentioned under questions 6 and 15(b) above.

Regulatory Flexibility

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

No

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?

To the extent that Ohio Revised Code section 119.14 is applicable to these rules, the Board considers the special circumstances presented by first-time offenders and for paperwork violations on a case-by-case basis.

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

The Board's laws and rules governing audiologists, hearing aid dealers and fitters, and speech-language pathologists (Ohio Revised Code and Administrative Code Chapters 4744, 4747, and 4753) are available on our website. In addition, the Board provides updates regarding its laws and rules via the eNewsletter. The Board also responds to inquiries via telephone and e-mail.