

**MEMORANDUM**

**TO:** Mindy Franks, Ohio State Dental Board

**FROM:** Emily Kaylor, Regulatory Policy Advocate

**DATE:** May 5, 2016

**RE:** CSI Review – 2015 Chapter 11 (OAC 4715-11-01, 4715-11-02, 4715-11-02.1, 4715-11-03, 4715-11-03.1, 4715-11-03.2, 4715-11-04, 4715-11-04.1, 4715-11-04.2, 4715-11-04.3, 4715-11-04.4, 4715-11-05, and 4715-11-06)

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

The proposed rule package consists of two no-change, eight amended, and three new rules submitted by the Ohio State Dental Board. The rule package was transmitted to the CSI Office, along with 18 other proposed Dental Board packages, on December 8, 2015 and the comment period was held open through January 4, 2016. One comment was received during this time. It was discovered that an inaccurate version of OAC 4715-11-04.4 had been released for comments. The proper draft of this new rule was released for comment on January 12, 2016 and held open through January 20, 2016, during which time no comments were received. Additionally, the new rule OAC 4715-11-05 was not submitted in the original package so it was released for comment on April 20, 2016 and closed on April 27, 2016 with no comments received.

The rules establish qualifications and functions of basic qualified personnel, certified dental assistants, and expanded function dental auxiliaries. The amendments were made to reflect gender neutralization, clarify some phrases to consider soft tissues, and require certain background qualifications and continuing education for expanded function dental auxiliaries. The new rules

add language regulating the practice of certified dental assistants and expanded function dental auxiliaries when the supervising dentist is not physically present at the location. These rules expand the scope of what dental professionals can do when a licensed dentist is not in the office, which is a requirement of House Bill 463 of the 130th General Assembly. Additionally, there is a new rule which lists the tasks and procedures that cannot be delegated by a licensed dentist to any other staff. The other new rule allows a licensed dentist to delegate tasks to non-dental Ohio-licensed healthcare providers as long as they are under the dentist's direct supervision.

The rules were reviewed and approved by the Board's Law and Rules Review Committee in addition to the Board's distribution list. One comment was received that questioned if the proposed rule was requiring 12 or 24 hours of continuing education for expanded function dental auxiliaries and whether the Board has the statutory authority to do so. Follow-up with the Dental Board confirmed that the amended rule 4715-11-04.1 makes the correct reference to require 12 hours of continuing education. For the second concern, the Board cited its statutory authority to adopt rules related to expanded function dental auxiliaries in ORC 4715.66.

According to the BIA, the adverse impact of these rules applies to all dental assistants and qualified dental personnel. There are specific certification and training requirements for these individuals in order to practice. They must apply to the Board for registration as a qualified dental personnel. This application takes time in addition to a fee of \$15 or \$20 depending on the registration they are seeking. There will be additional adverse impacts if the qualified dental professional is found to be performing duties without a dentist's supervision. A person found illegally performing tasks or procedures could be subject to additional continuing education or restriction, suspension, or revocation of their registration, all of which would mean lost time and income. The impacts are necessary to ensure qualified professionals are performing dental procedures and tasks on patients with a licensed dentist's supervision.

Therefore, after reviewing the proposed rule, the CSI Office has determined the purpose of the rules is justified.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio State Dental Board should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.