

**MEMORANDUM**

TO: Missy Craddock, Occupational Therapy, Physical Therapy, and Athletic Trainers Board

FROM: Christopher Smyke, Lt. Governor's Office

DATE: April 20, 2018

RE: **CSI Review – Five-Year Rule Review (OAC 4755-1-01, 4755-1-02, 4755-1-03, 4755-3-11, 4755-24-03, 4755-24-04, 4755-24-05, 4755-24-06, 4755-24-07, 4755-24-08, 4755-24-09, 4755-48-01, and 4755-48-02)**

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

This Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (Board) rule package consists of four amended rules and nine no-change rules for their statutorily-required five-year review. This rule package was submitted to the CSI Office on March 5, 2018 and the public comment period was open through March 16, 2018. Eleven comments were received during that time. The Board provided their response to stakeholder comment to the CSI office on March 20, 2018.

The rules in this package address public notice requirements for Board meetings and rulemaking, as well as onsite inspections and temporary licenses for occupational therapists, licensing fee ceilings for physical therapists, and athletic trainer investigations, inspections, and disciplinary procedures. The amendments to the rules provide for use of the Ohio eLicense system physical therapy license re-issuance, as well as specifying that athletic trainer licensees that are ordered to undergo a mental or physical examination as a part of the disciplinary procedure shall be responsible for the cost of the exam.

The Board sought early stakeholder input by posting the rules on its website, sending the rules electronically to their stakeholder listserv, and reviewing the rules at public meetings in January, 2018. The only substantive comments from this period related to a perceived fee increase for physical therapist licensees; the Board clarified that the fees listed in the rules are actually fee ceilings and the actual fees charged to licensees will remain unchanged. The fee ceiling for license application, renewal and reinstatement is set in statute, whereas the fee ceilings for reissuance, verification, and mailing lists are set at the discretion of the Board under the authority delegated by ORC 4755.411.

Eleven comments were received during the CSI public comment period. The majority of the comments either expressed support for the proposed rules, or raised issues that are outside the scope of the current rulemaking. One commenter expressed concern that the proposed amendment to require athletic trainer licensees to pay for mental health examinations when ordered during a disciplinary procedure may violate the Americans with Disabilities Act. The Board consulted the Ohio Attorney General's office and verified that the proposed rule amendment did not violate federal law. Another commenter pointed out a grammatical error that occurred in Ohio Administrative Code 4755-1-01 and 4755-24-07; the Board ultimately elected to incorporate the suggested grammatical corrections.

The BIA identifies the impacted business community as all licensed occupational therapists, physical therapists, and athletic trainers, as well as their employers. The only adverse impact identified by the BIA is the change to require athletic trainer licensees to pay for a health exam as a part of the disciplinary process. Upon reviewing the proposed rules, CSI staff noted several additional adverse impacts. Occupational therapy licensees are subject to onsite inspections and military spouses wishing to obtain a temporary license must furnish documentation and a \$100 fee. The rules also stipulate fees related to physical therapy licensure, including fees for initial licensure, renewal, re-issuance, license verification, and license reinstatement. Additional impacts to licensed athletic trainers include investigations and inspections, as well as administrative discipline for non-compliance with Ohio law; sanctions may include denying, suspending, or revoking a license as well as written reprimand, monetary fines, or probation.

The BIA justifies the rules as a necessary way to inform the public on how the Board operates, how to attain and maintain licensure, and to protect public safety by licensing the specified professionals. In addition, the BIA notes that the substantive amendment for mental and physical examinations is in line with current Board practice. After reviewing the proposed rules, BIA, and response to comments the CSI Office has determined that the rule package satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rules justifies the adverse impact identified in the BIA.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

Conclusion

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

CC: Emily Kaylor, Lt. Governor's Office