CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Orthotics, Prosthetics, and Pedorthics (OPP)

Regulation/Package Title: FYR - FY17 - Online Processing

Rule Number(s): 4779-5-03; 4779-6-01; 4779-8-01; 4779-12-01

Date: 06/20/2016

Rule Type:

- ☐ New
- X Amended
- X 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- ☐ Rescinded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.

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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.

   This is a supplemental, second round of rule revisions aimed primarily at updating administrative code language as it relates to license application processing with those procedures moving to an all-online system scheduled to be implemented during FY17.

   4779-5-03 – License Application Procedure -- TO AMEND -- the changes address aspects that were not effectively dealt with in the amendments processed earlier this year. Thus, language referring to "a form" on the website refers instead to "a method provided" on the website, and directs that the mail-in form should only be utilized by those "unable to utilize the online application method …". An additional change recognizes the expansion of Pedorthic Exam vendors to include another entity whose exam is approved by the National Commission on Orthotic and Prosthetic Education (NCOPE), aligning this language with the exam vendor provisions.

   4779-6-01 – Temporary Application Procedure – TO AMEND -- these are changes similar in nature and substance to those being advanced in 4779-5-03 as noted above.

   4779-8-01 – Renewal of License – TO AMEND -- The following process changes are addressed: (1) Establishes a clear requirement that the licensee is responsible to notify the Board of a change in contact information within 30 days of the change; (2) eliminates language requiring a late charge to be set at 50% of the payment due amount, which seems increasingly harsh as fees tend to rise, and instead leaves the matter to the fee schedule established in 4779-12-01; (3) reinforces the move away from production of paper documents to virtual and online-sourced data points; (4) specifies that a license status changes from Active to Inactive if the expiration date passes without a renewal payment being recorded, and sets a 30 day limit to the allowance for a practitioner to continue to practice with an expired license; (5) provides that the Board can require an update to Continuing Education for an applicant seeking to reinstate a lapsed or expired license.

   4779-12-01 – Fees – TO AMEND – these are changes to the parameters within which the Board must operate when assigning fees. One provides that the cost of a license to be issued or upgraded should not exceed the cost of a license to be renewed, and that the cost

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to renew a combined license type should not exceed the cost to renew same/similar professional credentials when held as separate licenses.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   RC 4779.08

3. **Does the regulation implement a federal requirement?**

   No.

   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.

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

   The rules referenced in this action are focused on internal administration for implementation of Chapter 4779 as a professional practice act for the regulated professions in the state of Ohio.

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)?**

   Chapter 4779, Ohio Revised Code, establishes the Board for the general purpose of protecting the public who are consumers of these specialized, customized medical devices. The statute as implemented through the rules seeks to establish minimum standards of education, training and care for the allied healthcare professionals who deliver the services.

   ORC Section 4779.08 requires ("shall adopt rules") the Board to develop and implement rule language to carry out the chapter's purposes, including all the subjects covered in this rule review.

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

These rules do not implement, modify or expand any programmatic initiative or benefit and thus the proposed changes will not result in any quantifiable outcome-oriented data.

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.

   - Published as Agenda item for April 2016 Board meeting in advance of meeting

   - Outlined process, presented basic information at O&P Association meeting 04.15.16

   - O&P Association Director attended 04.19.17 Board meeting

   - Proposed language initially mounted to Rules Review page on website 06.15.2016

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

   - No stakeholder input received on these rules as of 06.20.2016; this information may be updated after formal comment period published and completed

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?**

   N/A

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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?**

    Proposed language was carefully considered by the Board at its April 2016 meeting, together with considerations about budget planning and revenue generation required to meet expense obligations. Staff proposal had been focused on increased revenue generation; Board determination was to limit additional fee impacts at this time.

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.***

    N/A

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

    Information publication, stakeholder notification, review by OAG/HHS.

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.**

    These rules govern standard administrative processes and describe requirements that are applied consistently in relation to all of the agency's stakeholders. Integrating the rules requirements into the IT platform administering the licensing program helps to assure consistent application.

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Adverse Impact to Business

14. 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;

The impacted business community is identified as applicants for licensure, current constituent licensees, and their employers.

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

The rules addressing application requirements allow for additional licensing opportunities for persons credentialed in the pedorthic profession but who followed a pathway not previously recognized in Ohio. While this may result in an increase in license fee requirements for an employer's personnel, it simultaneously decreases enforcement/compliance conflicts and allows for more independent practice free from otherwise burdensome supervision requirements. The language changes anticipate applicants and licensees gaining more direct control over input of personal information and managing license status without being overly dependent on agency office staff, while still allowing constituents to partner with agency staff when necessary.

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.

Answer same as for (b) above.

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

The regulated community sought state licensure when the O&P leadership in the state advocated passage of the Practice Act in the 123rd General Assembly. These regulations do not impose any significant additional reporting or process requirements not already factored into the cost of doing business in this sector.

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Regulatory Flexibility

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

No. Chapter 4779 does not provide for licensing/regulation of the business entity itself per se; it only provides for licensing of individual practitioners. No distinction is or can be fairly drawn between individual practitioners based on the relative size of the business in which they are employed.

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?

The agency considers licensees' requests for relief from late payment or late filing penalties on a case by case basis, and as reflected in the Board's minutes, such requests are often granted on a one-time basis for good cause shown. In addition, the general orientation of the Board is to seek cooperative compliance. Other rule language establishes a mechanism to minimize the incidence of first-time paperwork violation and to provide for an informal remediation protocol. See OAC 4779-9-03 OPPCE accrual deficiency and remediation.

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

Board office staff offer assistance as needed upon contact and request.

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

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