

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Respiratory Care Board

Regulation/Package Title: 119.032 review for HME and RC Rules 8-2013

Rule Number(s): OAC 4761-1-01, OAC 4761-1-02, OAC 4761-2-03, OAC 4761-2-05, OAC 4761:1-1-02, OAC 4761:1-2-03, and OAC 4761:1-2-05

Date: August 15, 2013

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- Rescinded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.

OAC 4761-1-01 is a procedural rule describing the process of notice to adopt a new/amended or rescinded rule.

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OAC 4761-1-02 and 4761:1-1-02 are procedural rules. These rules lists the public notice process the Board will use to comply with notice requirements under Ohio Sunshine statutes.

OAC 4761-2-03 and OAC4761:1-2-03 are procedural rules. These rules identify the components included in an electronic register or paper/imaged record of the license/certificate of registration holder.

OAC 4761-2-05 and OAC 4761:1-2-05 are required procedural rules. These rules comply with the requirements of ORC 1347.05 and 1347.06, which require agencies to:

1. Adopt and implement rules that provide for the operation of the system in accordance with the provisions of this chapter that, in the case of state agencies, apply to state agencies or, in the case of local agencies, apply to local agencies;
2. Inform each of its employees who has any responsibility for the operation or maintenance of the system, or for the use of personal information maintained in the system, of the applicable provisions of this chapter and of all rules adopted in accordance with this section;
3. Specify disciplinary measures to be applied to any employee who initiates or otherwise contributes to any disciplinary or other punitive action against any individual who brings to the attention of appropriate authorities, the press, or any member of the public, evidence of unauthorized use of information contained in the system;
4. Inform a person who is asked to supply personal information for a system whether the person is legally required to, or may refuse to, supply the information;
5. Develop procedures for purposes of monitoring the accuracy, relevance, timeliness, and completeness of the personal information in this system, and, in accordance with the procedures, maintain the personal information in the system with the accuracy, relevance, timeliness, and completeness that is necessary to assure fairness in any determination made with respect to a person on the basis of the information;
6. Take reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure, and
7. Collect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions.

Please include the key provisions of the regulation as well as any proposed amendments.

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

Respiratory Care

4761-1-01: ORC 4761.03

4761-1-02: ORC 4761.03

4761-2-03: ORC 4761.03

4761-2-05: ORC 4761.03, ORC 1347.05 and 1347.06

HME

4761:1-1-02: ORC 4752.17(A) (11)

4761:1-2-03: ORC 4752.17(A) (11)

4761:1-2-05: ORC 4752.17(A) (11), ORC 1347.05 and 1347.06

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.

Respiratory Care

4761-1-01: No

4761-1-02: No

4761-2-03: No

4761-2-05: No

HME

4761:1-1-02: No

4761:1-2-03: No

4761:1-2-05: No

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

The federal government has no specific requirements in this regard.

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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)?

4761-1-01: This rule provides for a standard method of notice to propose a new, amended, or rescinded rule.

4761-1-02 and 4761:1-1-02: Section 121.22 of the Revised Code requires all official action and deliberations of a public agency to occur only during a public meeting. These rules establish the procedures employed by the Board to notify the public of the date, place and time of a meeting and the general purpose of a public meeting.

4761-2-03 and 4761:1-2-03: The Board's rules are needed to publicly state what data requirements will be maintained in an electronic register or paper/imaged record.

4761-2-05 and 4761:1-2-05: These rules identify what constitutes an information system, how the information will be maintained, secured, made available for public inspection, and discipline measures for unacceptable access or use of information is a requirement of ORC 1347.

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

These are procedural rules and not subject to specific metrics.

4761-1-01: Compliance with this rule is subject to audit from the Auditor, State of Ohio's office.

4761-1-02 and 4761:1-1-02: The Boards meeting notices are posted on our website, on the Board office door and mailed to any person or organizations that request a copy. Compliance with this rule is subject to audit from the Auditor, State of Ohio's office.

4761-2-03 and 4761:1-2-03: Information contained on respiratory care and HME applications is recorded in an electronic format. The Board runs reports to verify data requirements in the electronic system, as the system has capability to retain the information. Paper HME records have not been converted to electronic images, but when they are, the Board will implement a two-person review process.

4761-2-05 and 4761:1-2-05: The Board requires each employee to complete information access logs on a monthly basis for routine work and a as needed basis for specific access. These forms are maintained by management and are available to auditors.

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 Ohio Respiratory Care Board mailed the respiratory care rules to 7500 licensed respiratory care professionals and the Respiratory Care professional organization. The Ohio Respiratory Care Board mailed the HME rules to 497 licensed/certificate of registration holding home medical equipment providers representing over 900 licensed or registered home medical equipment facilities providing services to Ohio citizens. In addition, these rules were sent to the Ohio Association of Medical Equipment Service providers (OAMES).

8. 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 comment specific to these rules.

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 applicable to the drafting of these rules, as they are procedural rules.

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?

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The Ohio Respiratory Care Board saw no procedural advantage in alternative regulations.

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.

No, the Ohio Respiratory Care Board did not consider a performance-based regulation, since the regulations are procedural rules.

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

4761-1-01, 4761-1-02 and 4761:1-1-02: The Ohio Respiratory Care Board is required to conduct business in public. Development of a rule to notify persons of the process of notification used by the Board or process by which a person can obtain notification is prudent and necessary to conduct official business. The Board is not aware of any duplicative regulations, but if there were; this rule would still be valid.

4761-2-03 and 4761:1-2-03: These rules are unique to the Ohio Respiratory Care Board as the only entity that licenses respiratory care professionals and home medical equipment facilities in the state of Ohio.

4761-2-05 and 4761:1-2-05: These rules are a requirement of ORC 1347.

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 are being filed as a no change rules. The rules, as primarily procedural rules, have worked well. The rules are posted on the Board's website and are available by request for any person or entity requesting them.

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;

These rules are primarily internal procedural rules. Some aspects of the rules, such as how to request notice of a board meeting under OAC 4761:1-1-02, do have some effect on entities seeking to rent or sell home medical equipment to Ohio citizens or person with an interest in the Board's official activity.

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

There are no identified adverse impacts.

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.

There are no identified adverse impacts.

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

There are no identified adverse impacts.

Regulatory Flexibility

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

4761-1-02 and 4761:1-1-02: These rules are applied equally to all licensees and businesses regardless of the size of the business. These rules require all persons and businesses to make a written request or call the office to determine the date, place and time of a board meeting.

4761-2-03 and 4761:1-2-03: These are procedural rules intended to identify the information maintained in "Board records." The rules qualify information as "if applicable." This could apply to small business entities that cannot provide information on all components of the rule.

4761-2-05 and 4761:1-2-05: These rules are required by ORC 1347.

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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 Ohio Respiratory Care Board does not impose paperwork violations as it relates to these rules.

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

The Board will accept any telephone call, written (email or regular mail) inquiry to determine the date, place and time of a meeting. All agendas are published and staff will mail agendas at no cost. The rules are posted on the Board's website and are available by request for any person or entity requesting them.