

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 4761:1-12-07, OAC 4761-11-06, and OAC 4761-11-15

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- Rescinded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 4761:1-12-07, 4761-11-06, and 4761-11-15 are procedural rules administrative hearing procedures. The rules provide for specific procedures that the Board will use to provide for open and fair process treatment of parties representing the Board and licensees before the Board.

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

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

Respiratory Care

4761-11-06: ORC 4761.03

4761-11-15: ORC 4761.03(A)(6)

HME

4761:1-12-07: ORC 4752.17(A) (11)

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

4761-11-06: No

4761-11-15: No

HME

4761:1-12-07: 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.

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)?

OAC 4761:1-12-07, 4761-11-06, and 4761-11-15 are procedural rules stipulating specific administrative hearing procedures. The rules provide for specific procedures that the Board

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will use to provide for open and fair process treatment of parties representing the Board or licensees before the Board.

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; however, the Board does monitor rule effectiveness and these rules have not posed any concern or raised questions regarding the clarity of the procedure.

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?

The Ohio Respiratory Care Board saw no procedural advantage in alternative regulations. These rules establish specific procedures for conduct of hearings before the Board.

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?

Administrative procedure rules are not required, but have been highly recommended by the Ohio Attorney General's office to provide for consistency and specificity in hearing procedures.

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:

a. Identify the scope of the impacted business community;

The rules establish specific procedures for of conduct and process for administrative hearings. The business community is required to follow the administrative procedures if an administrative hearing is held concerning their license to provide services in Ohio.

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

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Preparation of material or correspondence to comply would take time. A failure to comply may result in the exclusion of documents at hearing.

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.

Under OAC 4761-11-15 and 4761:1-12-07 the exclusion of documents for failure to comply would be detrimental to body of evidence presented at hearing for either party.

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

In any hearing process it is common to have specified procedures of conduct. These rules create specific procedures that must be followed by any party involved in a hearing process.

Regulatory Flexibility

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

No.

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 rules are posted on the Board’s website and are available by request for any person or entity requesting them.