

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Respiratory Care Board

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

Rule Number(s): OAC 4761-3-01(amended), 4761-4-01(amended), 4761-4-02(amended), 4761-5-04 (no change), 4761-5-07(no change), 4761-7-01(no change), 4761-8-01(no change), and 4761-10-01(amended)

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 Rescinded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.

This filing represents a variety of rules designed to regulate the practice of respiratory care. The following rules are included:

OAC 4761-3-01: This rule lists terms and definitions of those terms that appear in the Ohio Revised Code and Ohio Administrative Code.

OAC 4761-4-01: This rule states the qualifications that need to be met to qualify as a board-approved respiratory care educational program.

OAC 4761-4-02: This rule states that the Board will create an education committee that is responsible for monitoring and reporting the status of Ohio's respiratory care educational programs.

OAC 4761-5-04: This rule lists the application form requirements for a person seeking to apply for a license to practice respiratory care in the state.

OAC 4761-5-07: This rule states the procedure the Board will follow to comply with criminal background check requirements for license applicants under the Ohio Revised Code.

OAC 4761-7-01: This rule states what documentation shall be prepared for a person issued a license or limited permit to practice respiratory care, what documentation shall be considered official/valid documentation, when licenses/permits shall expire.

OAC 4761-8-01: This rule addresses the procedures for persons seeking to renew a license or limited permit or reinstate a license or limited permit in the state of Ohio.

OAC 4761-9-01 and 4761-9-05: These rules address the procedures and requirements for continuing education attainment for the purposes of renewing a license or limited permit.

OAC 4761-9-01 lists terms and definitions used in OAC Chapter 4761-9. OAC 4761-9-05 lists acceptable sources of continuing education for persons required to obtain continuing education hours for renewal.

OAC 4761-10-01: this rule states the code of professional conduct for the practice of respiratory care, in compliance with ORC 4761.09 (A)((7)).

***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.**

OAC 4761-3-01: authorized under ORC 4761.03

OAC 4761-4-01: authorized under ORC 4761.03(A)(3)

OAC 4761-4-02: authorized under ORC 4761.03

OAC 4761-5-04: authorized under ORC 4761.03

OAC 4761-5-07: authorized under ORC 4761.03(A)(11)

OAC 4761-7-01: authorized under ORC 4761.03

OAC 4761-8-01: authorized under ORC 4761.03

OAC 4761-9-01 and 4761-9-05: authorized under ORC 4761.03

OAC 4761-10-01: authorized under ORC 4761.03(A)(7)

**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.**

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)?**

These rules are required to provide for appropriate and effective regulation of the practice of respiratory care in the state of Ohio. The rules included each address important components of licensure under ORC 4761 and are required by the Revised Code to specifically address rules deemed necessary by the General Assembly or to amplify sections of ORC 4761 to clarify or define requirements.

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

These rules have regularly been reviewed to improve compliance, clarity, and effectiveness. The rules in this package are required to carry out the components of licensure for respiratory care as passed by the General Assembly. The Board would not consider these rules to be regulations that render empirical evidence of success. Instead, these rules are generally procedural. The success or failure of these rules becomes evident via the feedback provided by persons licensed by the Board. Success is measured by the clarity and ease of understanding of each rule. Over the many years these rules have been in place, the Board has continually updated the rules to address issues not previously considered, improve the language to address clarity concerns, or remove language that did not work in actual practice.

**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.

Proposed amended rules contained in this filing address needed amendment to comply with current requirements or new rules recently adopted.

**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.

Changes reflected in the proposed amended rules address needed amendment to comply with current requirements or new rules recently adopted.

**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 rules required under the ORC for each Chapter.

**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?**

Alternative approaches were considered in the original drafting of the rules contained in this package. Definition of terms did not consider alternative approaches, but rules relating to license application procedures, criminal background checks, and original license or permit certificates were written broadly to provide alternatives in choice, length of time a document would be recognized or alternative methods of communicating information. The Board tried to consider variations within the context of most of these rules to improve the process or licensee compliance.

**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.***

This package of rules did not consider performance-based regulation. The Board is required to adopt most of these rules and/or develop rules to amplify specific requirements of the Ohio Revised Code. The rules contained in this package are not amenable to performance-based regulations.

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

This rule is unique to the Ohio Respiratory Care Board.

**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.**

The rules are posted on the Board's website and are available by request for any person or entity requesting them. In addition, the Board will send all amended rules, by email, to licensed providers upon adoption. The Board will also list rules in its newsletter and discuss rule impact.

**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 will impact all actively licensed or limited permit holding respiratory care providers in the state of Ohio.

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

Some of these rules are strictly procedural or definition based rules. Rules following into this group would not have an impact. Other rules would have an adverse impact:

OAC 4761-3-01: no adverse impact

OAC 4761-4-01: educational programs would need to be accredited by COARC. This is a national standard for approved programs. Currently all educational programs in U.S. are 200-level schools. This rule should not have an adverse impact.

OAC 4761-4-02: this rule does authorize the Board's Education Committee to survey and investigate an Ohio educational program that may have accreditation compliance issues, but the rule requires reporting and does not create an adverse impact.

OAC 4761-5-04: time to complete application form.

OAC 4761-5-07: background checks are mandatory under Ohio law. This will require time and money to complete. Background checks more than one year old would require a repeat filing.

OAC 4761-7-01: no adverse impact

OAC 4761-8-01: no adverse impact

OAC 4761-9-01 and 4761-9-05: no adverse impact

OAC 4761-10-01: violation could result in disciplinary sanctions or revocation of license/limited permit.

**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.*

The time to complete certain requirements, such as application forms, criminal background checks, and submit background check fees are variable. The forms are standardized and should not take more than thirty minutes to complete; however,

criminal background check fees are competitive, but market driven. The cost is between 35-40 dollars for the BCI and FBI background checks, but could be less expensive or slightly more, depending upon the vendor selected.

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

These rules are required to provide for appropriate and effective regulation of the practice of respiratory care in the state of Ohio. The rules included each address important components of licensure under ORC 4761 and are required by the Revised Code to specifically address rules deemed necessary by the General Assembly or to amplify sections of ORC 4761 to clarify or define requirements.

**Regulatory Flexibility**

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

These rules impact individual clinicians.

**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?**

These rules do not address paperwork violations.

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

These rules impact individual clinicians.