

# 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 4761-9-01(no change), OAC 4761-9-05 (no change) and OAC 4761:1-13-01(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- Rescinded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.

OAC 4761-9-01 and OAC 4761-9-05:

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These rules provide procedural direction and acceptance of continuing education taken for biennial license renewal or annual permit renewal. 4761-9-01 is a definition rule that list terms used in other rules contain in chapter 4761-9 of the Administrative Code. 4761-9-05 addresses approved sources of continuing education.

OAC 4761:1-13-01 is the rule on continuing education compliance for licensed HME facilities. This rule lists the minimum contact hours requirements and the approved sources of education, as well as, who must complete continuing education.

*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

4761-9-01: ORC 4761.03

4761-9-05: ORC 4761.03 and ORC 4761.06

HME

4761:1-13-01: ORC 4752.17(A) (6)

**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

4761-9-01: No

4761-9-05: No

HME

4761:1-13-01: 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 collectively provide clarity on the continuing education requirements for license/permit renewal. The rules cover definition of terms, sources of continuing education, minimum contact hour requirements and who must obtain contact hours of continuing education.

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

The success of these rules are reviewed retrospectively based upon audits performed by the Board. The Board considers ease of access to continuing education sources as one of its priorities. A focus on cost is also considered. The Board has attempted through these rules to open access to continuing education and provide a sufficient number of sources to allow licensees to be selective based upon subject matter and costs.

### **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?**

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The Board received no comment specific to rules 4761-9-01 and 4761-9-05. The Board did have a meeting with the Ohio Chiropractic Association concerning licensing requirements for HME providers and it was suggested that the Board consider a waiver of education requirements for businesses doing limited sales. This suggestion was considered in the review of this rule and changes were incorporated that may benefit small business.

**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?**

The Board is required under ORC 4761.01, 4761.06 and 4752.17(A)(6) to draft procedural rules on continuing education required to maintain active licensure. These rules, in conjunction with others, accomplish this requirement. When reasonable and fair, the Board has considered alternatives, such as waivers of these requirements.

**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.***

Most continuing education rules are performance-based. The Board establishes the minimum outcome requirements, but rarely specific courses. For example, the rules require a specified amount of continuing education hours from specific approved sources, but the content (within the scope of practice for the license held) is not dictated. The Board does require some specific education where the public is recognized as the beneficiary. For example, respiratory care providers must complete one contact hour of professional ethics and HME employees involved in cleaning equipment must complete one contact hour on infection control, cleaning agents, and equipment separation techniques.

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

These rules are written specifically for entities regulated by the Ohio Respiratory Care Board. The Board is aware of no other Ohio regulation that duplicates these requirements.

**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:**

**a. Identify the scope of the impacted business community;**

The rules establish specific procedures for the collection of continuing education. Continuing education is a requirement for the ongoing renewal of the license. These rules would impact any person holding a respiratory care license or work-based limited permit or licensed HME provider.

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

All continuing education completion will take time. Contact hours are defined as a 50-60 min hour of study. Depending upon the minimum requirement, licensees can expect an equal amount of personal time directed toward these activities, although some employers do incorporate activities during the workshift. Additionally, continuing education can cost. Some continuing education can be no-cost, but not all. Licensees should be prepared for costs associated with attaining these requirements, which are market driven. Spending some time searching for alternative , but approved sources could result in costs savings.

**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.*

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The cost of continuing is market dependent. Some continuing education is available, at no costs to members of professional organization, employees, or through proprietary sources. However, licensees should expect to pay for education and expend the time to obtain the continuing education. Quantification is difficult to identify due to the broad availability of educational opportunities and the multitude of recognized sources.

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

These rules are mandated by the ORC. The purpose of continuing education is to promote continuing competency of the licensee. Theoretically, licensees should be considering education that is remedial, advances skills or knowledge, or leads to new skills or knowledge in the realm of care or service provided.

**Regulatory Flexibility**

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

Yes, both the respiratory care rules and the HME rules (as proposed) will provide for some limited exemptions.

**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 Board does not fine for paperwork violations, but willful failure to comply with continuing education requirements or a failure to follow the requirements (e.g. using approved sources, obtaining the required contact hours, or taking non-relevant education) may result in a sanction.

**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. The rules will be sent, by email, to all active licensees and the Board will list them in their newsletter.