

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Respiratory Care Board

Regulation/Package Title: 119.032 review for HME rules on transferring ownership and providing contact information to clients

Rule Number(s): OAC 4761:1-15-03 and OAC 4761:1-15-04

Date: June 20, 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- Rescinded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 4761:1-15-03 establishes procedures for home medical equipment facilities. Paragraph (A) of OAC rule 4761:1-15-03 mirrors ORC 4752.05 (E), indicating that a license or certificate of registration is only valid for the facility named in the application. This rule

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requires a facility that moves to a new location to obtain a new license or certificate of registration. Paragraph (B) of OAC 4761:1-15-03 addresses change of ownership and facility name change procedures.

OAC rule 4761:1-15-04 requires licensees and certificate of registration holders to provide written notice to customers and clients of the Ohio Respiratory Care Board's contact information, in the event of an unresolved complaint. The primary purpose of regulating a specific profession or business is addressing substandard care or violations of professional or industry standards. This rule relies upon the licensee and/or certificate of registration holder to provide their customers with the Board's contact information.

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.

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.

No.

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

Not applicable.

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 serve different purposes, but each is written to protect public safety and welfare. OAC 4761:1-15-03 establishes the procedural requirement for home medical equipment facilities that move or sell their businesses. This is a very frequent event. If the Ohio Respiratory Care Board has not procedure or reporting requirement for these instances, the state of Ohio will quickly lose track of the whereabouts of these businesses, who owns them

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or what their legal name is. The result is chaotic regulation, which does not provide Ohio citizens with confidence in the Ohio Respiratory Care Board's ability to effectively regulate home medical equipment services.

With regard to OAC 4761:1-15-04, the home medical equipment industry provides services to thousands of Ohio citizens. Since it is impossible to know who receives these services, the Ohio Respiratory Care Board determined it is in the best interest of the public to require the Board's contact information be communicated to each customer of the licensed or registered entity.

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

The Ohio Respiratory Care Board will gauge the success of these regulations by monitoring the compliance with the standards. The Ohio Respiratory Care Board will track the amount of time after a home medical equipment facility moves or changes ownership or name and the timeliness of the new application and/or notification of new ownership/name change. Customer notification of Board contact information can be reviewed during inspections, but it is more difficult to verify for registered facilities.

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 this rule 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, this rule was 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?

Stakeholders were given an active seat at the table during the initial drafting of this rule. During the five-year review process, the Ohio Respiratory Care Board collected comments on the current rule. The Board, as part of the drafting process, reviewed recommendations and comments sent to the Board. Where practical and when not specifically required by the

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Ohio Revised Code, the Ohio Respiratory Care Board amended the rule to reflect the input of the stakeholders. No comments were provided on the rules contained in this filing.

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?

No scientific data used.

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?

No alternatives considered. The Ohio Respiratory Care Board considered the most expedient method to encourage provider compliance and/or distributing information to home medical equipment customers. In the interest of public safety and regulatory compliance, the Ohio Respiratory Care Board determined that the rules, as written or amended, are effective.

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.*

Performance based regulations were not deemed effective for purposes addressed in these rules.

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

The Ohio Respiratory Care Board is the only regulatory entity in the state of Ohio that is authorized to license home medical equipment providers. Accordingly, the Board deemed it very unlikely that other duplicate requirements exist in the state of Ohio.

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 amended rule will be communicated to each registered or licensed home medical equipment provider via email or through the Board's website. OAC rule 4761:1-15-03

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would only apply to facilities that have moved, changed ownership, or change name. The requirements of this rule are equally communicated to each license or certificate of accreditation holder.

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;

OAC rule 4761:1-15-03 will affect facilities that have moved, changed ownership, or change name.

OAC rule 4761:15-04 will affect all active licensed or registered home medical equipment providers.

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

OAC rule 4761:1-15-03 will require facilities that have moved to obtain a new license or certificate of registration. The amendment; however, would remove the re-inspection requirement for ownership changes.

OAC rule 4761:15-04 will affect all active licensed or registered home medical equipment providers by requiring each licensee or registered facility to provide written contact information to their customers.

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.

A new certificate of registration costs \$150.00. A new license costs \$300.00

The cost of printing or adding text to printed materials is variable. Every home medical equipment provider uses standards forms, such as customer acknowledgement forms, to communicate information. The Board’s contact information would need to be added to these internally produced or externally printed

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forms to be compliant with this standard. The Board has not conducted a cost impact review of the requirements contained in OAC 4761:1-15-04.

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

These rules serve different purposes, but each is written to protect public safety and welfare. OAC 4761:1-15-03 allows the Ohio Respiratory Care Board to effectively track of the whereabouts of home medical equipment businesses, who owns them or what their legal name is. This results in effective regulation and provides Ohio citizens with confidence in the Ohio Respiratory Care Board's ability to effectively regulate home medical equipment services.

With regard to OAC 4761:1-15-04, the Ohio Respiratory Care Board determined it is in the best interest of the public to require the Board's contact information be communicated to each customer of the licensed or registered entity.

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?

ORC 119.14 does not apply to OAC 4761:1-15-03. With regard to OAC 4761:1-15-04, deficiencies determined through an inspection process are communicated to the authorized representative of the licensed entity. The entity is given 90 days to develop and demonstrate compliance with the standard.

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

The Board communicates these requirements directly to all licensed and registered home medical equipment facilities, regardless of size.