



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio State Chiropractic Board

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Advertising and Solicitation Rule

Rule Number(s): 4734-9-02

Date of Submission for CSI Review: 9/25/19

Public Comment Period End Date: 10/9/19

Rule Type/Number of Rules:

- | | |
|---|---|
| <input checked="" type="checkbox"/> New/ <u>1</u> rules | <input type="checkbox"/> No Change/ <u> </u> rules (FYR? <u> </u>) |
| <input type="checkbox"/> Amended/ <u> </u> rules (FYR? <u> </u>) | <input checked="" type="checkbox"/> Rescinded/ <u>1</u> rules (FYR? <u>No</u>) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Impose a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

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

The Board reviewed this rule earlier this year due to the five-year rule review requirement. However, Am. Sub. H.B. 166 enacted ORC Section 1349.05 prohibiting direct contact of motor vehicle accident and crime victims until thirty days after the accident or crime. The Board must proceed with changing its advertising and solicitation rule to align with the new law. The Board also proposes making additional non-substantive changes to clean up and clarify the rule for ease of compliance.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

4734.10 and 1349.05

4. 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.

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

N/A

- 6. 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)?**

Clear and consistent advertising and solicitation requirements create fair treatment and consistent standards for the public.

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

Clear and concise language will provide consistent processes and guidance for those affected.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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.

On August 22, 2019, notification seeking stakeholder input was posted on the front page of the Board's website and an electronic notification was sent to all licensees, all Board-approved chiropractic colleges and the Ohio State Chiropractic Association.

- 10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Seven commenters were in support of, and eight commenters expressed opposition to, the contact prohibitions enacted in ORC 1349.05 of Am. Sub. H.B. 166. The Board is not proposing this prohibition, the prohibition has already been enacted by the legislature. The proposed rule is to align with the language in ORC 1349.05 as enacted by Am. Sub. H.B. 166 and to make additional non-substantive changes to clean up and clarify the rule for ease of compliance.

- 11. 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 used to develop the rules as the rules are not data driven.

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12. 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 alternative provisions were considered because this rule is proposed to enact the requirements and prohibitions contained in Am. Sub. H.B. 166. Other non-substantive changes not related to Am. Sub. H.B. are to clean up the rule and provide clarity for ease of compliance.

13. 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 outcomes don't apply to the rules in this package.

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

There is no other agency that regulates the practice of chiropractic in Ohio.

15. 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 Board will use its website and a newsletter to educate and update stakeholders on the rule. Stakeholder organizations also ensure that new rules and rules changes are provided to their members through communications and CE opportunities.

Staff training is conducted for all rules changes to ensure regulations are applied consistently and predictably.

Adverse Impact to Business

16. 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; and

This proposed rule impacts chiropractic physicians and those that conduct advertising and solicitation on their behalf.

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

Noncompliance with the rule could result in disciplinary action/fines. The adverse impact of the contact prohibitions in the proposed rule is a direct result of the language contained in ORC Section 1349.05 of Sub. Am. H.B. 166 and have severe economic impact on licensees who solicit patients via telemarketing.

c. Quantify the expected adverse impact from the regulation.

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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.

Licensees are not required to advertise or solicit. Those that do and violate the rule are subject to discipline ranging from reprimand to revocation and/or a fine up to and including \$5,000 (depending on if the offense is a 1st, 2nd, or 3rd or subsequent offense). Source: ORC 4734.31 and OAC 4734-9-01.

(Per ORC 1349.05, the Attorney General can impose a \$5,000 fine against licensees who violate 1349.05 and subsequent violations are subject to a \$25,000 fine. Licensees that violate on three separate occasions are subject to automatic suspension by the Board.)

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

The Board must align this rule with the requirements enacted in Am. Sub. H.B. 166 (ORC 1349.05).

Regulatory Flexibility

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

Licensees may contact motor vehicle accident and crime victims via the U.S. Postal Service within the first thirty days of the accident or crime.

19. 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?

Paperwork violations are not applicable to this rules package.

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

The Board’s website provides comprehensive information and newsletters are published to provide information and updates. Staff of the Board personally answer and respond to each phone call, email, correspondence, etc.

Contact Information:

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