

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Cosmetology and Barber Board

Regulation/Package Title: Chapter 4713-1 COS/BRB Five Year Review

Rule Number(s): 4713-1-06 – Rescind, 4713-1-06 New

Date: _____

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Rescinded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.

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

4713-1-06 Cosmetologist must be licensed in Ohio. (Rescind)

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This rule addresses who may provide cosmetology and tanning services in the state of Ohio. The rule reiterates the provisions of law that require persons engaging in cosmetology and tanning services in Ohio to have a license. The rule also works hand-in-hand with the medical exemption in R.C. 4713.17(A) and explains that a medical facility that provides esthetic services does not need to hold a salon license if the person receiving services first sees a physician and the service is prescribed by the physician.

The current rule is confusing. The first paragraph simply restates statutory requirements and therefore unnecessary. The second paragraph addresses esthetic services being performed in medical offices, however, this subject is not reflected in the rule title, which makes it difficult for the public to find the rule. Additionally, the rule does not address other types of cosmetology services that may also be performed in a medical facility.

Due to amount of added and deleted language, the rule must be rescinded and then introduced as a new rule.

4713-1-06 Medical facilities offering cosmetology services. (Rescind)

This rule will replace rule the current version of 4713-1-06. This rule does not include any language addressing licensure requirements that are already found in Chapter 4713 of the Ohio Revised Code; rather the new rule and rule title focuses on the salon licensure requirements when cosmetology services are being offered at a medical facility under the prescriptive, delegated, or direct care of a medical professional practicing within their scope of practice.

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

4713-1-06 Cosmetologist must be licensed in Ohio. Sections 4713.08(A)(1) and 4713.08(A)(20) of the Revised Code.

4713-1-06 Medical facilities offering cosmetology services. Sections 4713.08(A)(1) and 4713.08(A)(20) of the Revised Code.

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.

N/A.

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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)?

The rule is necessary to protect the public and ensure that cosmetology services in a medical facility are provided in a safe and sanitary manner. If the services are being provided under the care or delegation of a medical professional, safety and sanitation will be monitored under the standards of the medical professional's licensing board. If, however, the cosmetology professional is operating independently of the medical professional, this outside oversight would not apply, and it is necessary for the Ohio State Cosmetology and Barber Board to monitor and provide oversight of the safety and infection control requirements through its inspection authority.

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

Changing the title of the rule based upon the subject matter addressed in the rule will have an automatic benefit for persons seeking this information. The Board believes the success of this change will reduce the number of calls received by the Board requesting clarification on this issue.

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 Board placed these rules on its website, requesting input and comments from all interested parties. Additionally, notification of these proposed rule changes were emailed to all entities and person currently on our interested parties list, along with a response email address.

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 one comment on this rule. This comment misunderstood the nature of the rule's name and content change and thought that by changing the name and content of the rule, the Board was eliminating licensing of cosmetologists. The Board

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responded and explained that the licensing requirement is contained in statute and is not impacted by this proposed rule change.

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?

The Board did not employ scientific data to develop these rules. The proposed rescinded and new rules are meant to streamline the regulation in an effort to reduce unnecessary, redundant, or unclear provisions of the rule.

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 new rule proposed is the considered alternative. When considering the provisions of the rule, the Board noted that the titled subject did not clearly indicate the content of the rule. Further, the Board recognized that the first paragraph of the current rule simply reiterated a statutory licensure requirement and was, therefore, unnecessary. The remaining language only addressed esthetic services provided in medical facilities, but not other branch of cosmetology services. The Board is proposing to broaden this language in the new rule to address the salon licensure requirements for any potential service within the branches of cosmetology that may be administered in a medical facility under the the prescriptive, delegated, or direct care of a medical professional practicing within their scope of practice.

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.

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

The Board is the sole entity tasked with the regulation of cosmetology and branches of cosmetology. In addition, a search of the Revised Code and Administrative Code was conducted to ensure there was no duplication of regulation.

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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 will be posted on the Board’s website and notification, with detail, will be sent to all regulated persons and businesses that may be impacted.

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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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 proposed new rule is informative for owners/operators of medical facilities and persons providing services in medical facilities. Under this rule, some medical facilities may be required to obtain salon licenses, if they are permitting cosmetology services to be performed in the facility separate from the medical services. The cost of a salon license is \$75.00 for an initial license, and \$60.00 for the renewal of the license. These licenses are renewed every odd-numbered year.

In addition to potential licensure costs, violations of this rule could occur if a medical facility is permitting cosmetology services to be performed separate and apart from medical services, and the facility does not hold an appropriate salon license. This could result in fines or other legal action.

In either case, the cost is dependent upon the number of medical facilities that allow cosmetology professionals to practice within a medical facility outside of the authority of a medical professional. The Board anticipates these numbers to be very small.

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

The proposed new rule clarifies the salon licensing requirements for healthcare facilities and should lead to a better understanding of the legal scope of practice for persons administering services. It also protects the public by ensuring that all cosmetology services performed in medical facilities are receiving appropriate oversight regarding safety and infection control.

Regulatory Flexibility

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

No, the rule does not differentiate among businesses.

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?

A violation of this rule is not a paperwork violation. However, under the Board's Violation Guidance Matrix, the first violation of this rule results in a warning.

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

There are no special resources required to comply with this rule.