

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Counselor, Social Worker, & Marriage and Family Therapist Board

Regulation/Package Title: 2017 Rule Changes

Rule Number(s): 4757-1-04, 4757-1-05, 4757-1-08, 4757-1-09, 4757-3-01, 4757-5-02, 4757-5-11, 4757-5-13, 4757-7-03, 4757-9-01, 4757-9-03, 4757-9-04, 4757-9-05, 4757-9-06, 4757-9-07, 4757-13-01, 4757-13-02, 4757-13-03, 4757-13-08, 4757-15-02, 4757-19-01, 4757-19-02, 4757-19-08, 4757-21-03, 4757-25-01, 4757-25-03, 4757-25-07, 4757-27-02, 4757-29-01

Date: August 4, 2017

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☐ Rescinded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.

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The rule summaries in **bold** below indicate the rule is subject to five year review. In reviewing the rules for changes, a thorough review was conducted, ensuring any issue with each rule would be properly addressed through this rule filing. Where possible, the Board has sought to reduce the burden on applicants and licensees, while still protecting the public.

- 4757-1-04 Applications of first licensure
 - Removed reference to notarization of applications and employment references, reducing burden on licensees and supervisors. Adapts rule to eLicense.
 - Modified language regarding transcript submission to enable the Board to establish a policy for receipt of transcripts via e-mail. Enables the Board to explore allowing direct submission from the applicant.
- 4757-1-08 Military provisions related to licensure for counselors, social workers, and/or marriage and family therapists
 - Corrects title for Social Work Assistant
 - No other proposed changes
- 4757-1-09 Conditional permission to render services (New Rule)
 - New proposed rule to enable the Board to approve licensees from other jurisdictions to provide services in Ohio.
 - Serves client needs while ensuring the Board is aware of out of jurisdiction practitioners working in Ohio.
- 4757-3-01 Definitions
 - Removed references to notarization.
 - Defined a book for purposes of CE. Definition excludes self-published works.
 - Eliminated b minus grade standard; relies on graduate program degree qualification policies.
 - Defined “inactive-escrow” status.
- 4757-5-02 Standards of ethical practice and professional conduct: clients/consumers of services
 - Emphasizes licensee obligation to follow all court documents unless court documents conflict with ORC or OAC 4757. Removes a vague provision instructing licensees to seek court guidance.
 - Outlined requirement to provide on-going informed consent when working with custody/parenting issues; protects both licensees and clients.
- 4757-5-11 Standards of ethical practice and professional conduct: change of name and/or address
 - Adds a requirement to notify of name and mailing address changes within 90 days of a name or address change.
 - Adds a requirement to maintain an active e-mail address for the purpose of receiving communications through the eLicense system.
- **4757-5-13 Standards of practice and professional conduct: electronic service delivery (internet, email, teleconference, etc.)**
 - Adds a provision for client to waive encryption with proper notice and disclosure.
 - **Rationale for retaining the rule:** the rule covers requirements for a growing delivery method for mental health services. Costs imposed on licensees through the rule are those

costs associated with adopting electronic means of service delivery, which are not mandated by the Board. Licensees voluntarily provide electronic services.

- 4757-7-03 Inactive status of license; restoration.
 - Removed reference to paper applications.
 - Adds term “inactive-escrow” to match prevailing terminology.
 - Aligns the rule with requirements for the eLicense system.
- **4757-9-01 Continuing education requirements for renewal of a marriage and family therapist or independent marriage and family therapist license**
 - Reduced required supervision CE from five to three hours per renewal; aligns the supervision CE requirement with the LISW-S and LPCC-S requirements.
 - Reduces the CE burden for IMFT-S licensees.
 - **Rationale for retaining the rule:** the rule is necessary because by statute licensees must earn continuing education credits. The number of hours of CE (30 hours every two years) is established in statute and is thus not subject to change through a rule revision. In amending this rule, the Board is reducing required CE hours for supervisors (which can be modified in the rules) from five to three hours, reducing the cost burden of compliance. Reasonably priced CE is available online; it can also be free with certain association memberships, further reducing the costs of compliance.
- **4757-9-03 Continuing education requirement for renewal of a certificate of registration as a social work assistant or a license as a social worker or an independent social worker**
 - Corrected required CE to thirty hours, aligning the rule with the Revised Code, which requires thirty hours. The Board is seeking a sponsor for legislation to reduce the SWA CE hours to 15.
 - Removed a reference to renewal requirements for persons licensed with a related degree. Persons with a related degree who hold an LSW remain eligible to practice provided they continue to maintain their license in good standing. The rule provision is being removed because no *new* LSWs can be issued to persons with a related degree.
 - **Rationale for retaining the rule:** the rule is necessary because by statute licensees must earn continuing education credits. The number of hours of CE (30 hours every two years) is established in statute and is thus not subject to change through a rule revision. Social Workers are allowed to earn all CE hours online. Reasonably priced CE is available online; it can also be free with certain association memberships, further reducing the costs of compliance.
- 4757-9-04 Clock hours for continuing professional education
 - Removed restriction on the number of online CE hours Counselors and MFTs can earn. All 30 hours of CE may be earned online. This change reduces both the time and cost burden for licensees completing CE hours. The change acknowledges changing methods of instructional delivery.
 - Corrects the SWA reference to Social Work Assistant.
- 4757-9-05 Approval of continuing professional education programs required for renewal of licenses and certificates of registration issued by the board
 - Removed reference to using a letter to verify audited courses used for CE credit.

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- Added a provision to allow providers to buy and/or contract for the provision of programs; facilitates the expansion of CE programs offered by providers.
- Creates an association approval status for approval of continuing education programs and/or providers. All profession related-associations at the state or national level seeking to approve programs or providers of continuing education must apply to the Board for approval. The proposed amendment would remove blanket approval for two national organizations currently named in the rule (NASW national and ASWB), but will enable the Board to offer similar authority to other qualified associations. Both named entities are aware of the proposed change in the rule.
- **4757-9-06 Sources of continuing professional education**
 - Responds to the passage of HB 290. Added volunteer service as a source of continuing education credit. The language mirrors the Board of Psychology proposed rule, which is based on input from the Ohio Association of Free Clinics.
- **4757-9-07 Documentation of continuing professional education required for renewal of a license or certificate of registration**
 - Rule modified to require transcripts for non-credit/audited courses.
- **4757-13-01 Education requirements for admission to the examination for licensed professional counselor**
 - Reduces applicant paper work burden by removing a duplicative internship form submission requirement for applicants from CACREP programs. Retains the internship evaluation form for non-CACREP program graduates.
 - **Rationale for retaining the rule:** the Board must maintain a rule defining how one qualifies for the examination. To reduce compliance burdens with the rule, the Board has eliminated a form for many applicants that relates to documenting internship hours. Owing to the requirement to obtain a master's degree, the costs for complying with educational requirements cannot be significantly impacted by the Board.
- **4757-13-02 Requirements for licensure as a professional counselor**
 - Added seven year exam re-take standard for persons not actively licensed in Ohio or another jurisdiction. Aligns Board rule with practice analyses used to develop revised exams. Ensures persons previously licensed remain qualified to practice.
 - **Rationale for retaining the rule:** the rule is necessary because by it outlines qualifications for licensure as a Professional Counselor. The compliance burdens imposed on licensees reflect the requirements in the Statute, which include completion of a master's degree in clinical mental health counseling. No less costly degree type would provide the education necessary to work within the scope of practice. The current proposed change in the law adds a potential cost burden for persons not actively licensed for seven years by requiring reexamination. This additional cost is justified on the basis of changes that occur within the provision over a five to seven year period, as reflected in the exam review process undertaken by the exam owners/administrators. Setting this standard ensures public protection by verifying persons who have not been actively licensed for seven or more years are prepared to engage in the practice of Counseling. No other substitute for ensuring qualification exists.
- **4757-13-03 Requirements for licensure as a licensed professional clinical counselor**

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- Added seven year exam re-take standard for persons not actively licensed in Ohio or another jurisdiction. Aligns Board rule with practice analyses used to develop revised exams. Ensures persons previously licensed remain qualified to practice.
- **Rationale for retaining the rule:** the rule is necessary because by it outlines qualifications for licensure as a Professional Clinical Counselor. The compliance burdens imposed on licensees reflect the requirements in the Statute, which include completion of a master's degree in clinical mental health counseling. No less costly degree type would provide the education necessary to work within the scope of practice. The current proposed change in the law adds a potential cost burden for persons not actively licensed for seven years by requiring reexamination. This additional cost is justified on the basis of changes that occur within the provision over a five to seven year period, as reflected in the exam review process undertaken by the exam owners/administrators. Setting this standard ensures public protection by verifying persons who have not been actively licensed for seven or more years are prepared to engage in the practice of Counseling.
- **4757-13-08 Approval of applications for professional counselor licenses**
 - Modified language regarding transcript submission to enable the Board to establish a policy for receipt of transcripts.
 - **Rationale for retaining the rule:** the rule is necessary because by it outlines the process by which applications are reviewed. The Board has sought means of reducing the compliance burden for applicants by adopting online applications (in advance of the new eLicense system), eliminating paperwork, and with the proposed change in this rule, allowing for alternative means for submission of transcripts that may eliminate the cost of requesting transcripts from educational institutions.
- 4757-19-01 Requirements for licensure as a social worker
 - Modified language regarding transcript submission to enable the Board to establish a policy for receipt of transcripts.
- **4757-19-02 Requirements for licensure as an independent social worker**
 - Added seven year exam re-take standard for persons not actively licensed in Ohio or another jurisdiction. Aligns Board rule with practice analyses used to develop revised exams. Ensures persons previously licensed remain qualified to practice.
 - **Rationale for retaining the rule:** the rule outlines licensure requirements as outlined in statute. The current proposed change in the rule adds a potential cost burden for persons not actively licensed for seven years by requiring reexamination. This additional cost is justified on the basis of changes that occur within the profession over a five to seven year period, as reflected in the exam review process undertaken by the exam owners/administrators. Setting this standard ensures public protection by verifying persons who have not been actively licensed for seven or more years are prepared to engage in the practice of Social Work. No other substitute for ensuring qualification exists.
- 4757-19-08 Approval of applications for social worker licenses and registration
 - Modified language regarding transcript submission to enable the Board to establish a policy for receipt of transcripts.
- 4757-25-01 Education requirements for admission to the examination for marriage and family therapist

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- Removed reference to the internship form for COAMFTE programs. Reduces the duplicative paperwork burden for students from accredited programs.
- 4757-25-03 General requirements for licensure as a marriage and family therapist
 - Added seven year exam re-take standard for persons not actively licensed in Ohio or another jurisdiction. Aligns Board rule with practice analyses used to develop revised exams. Ensures persons previously licensed remain qualified to practice.
- 4757-25-07 Approval of applications for marriage and family therapist licenses
 - Modified language regarding transcript submission to enable the Board to establish a policy for receipt of transcripts.
- 4757-29-01 Marriage and family therapy supervision
 - Removed “grandparenting” provision for supervision designation. The time period for using the grandparenting language expired.
 - Reduced required supervision CE from five to three hours per renewal
- Social Work Assistant – the ORC references “Social Work Assistant”. Referenced as Social Worker Assistant in the following chapters of the OAC: 1-05, 1-08, 3-01, 9-04, 15-02(D) uses “assistant social workers”, 21-03, 27-02.

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

ORC 119.03

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.

Not applicable.

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)?

The regulations in question, except for Rule 4757-1-09, which creates a process to approve out of state licensees to work temporarily in Ohio, are not new regulations, but amendments to existing regulations. The regulations protect the public from persons unauthorized to practice counseling, social work, or marriage and family therapy.

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

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No specific measures are proposed for implementation. The rule amendments do not result in measurable outcomes as such. Many changes ease burdens for licensees, but not necessarily in quantifiable means. For example, it is proposed to expand to 30 hours from 15 the number of continuing education hours earned online. This will result in savings of time, and possibly money, for licensees. Neither can properly be measured by the CSWMFT Board.

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 proposed amendments and new rule have been discussed in public Professional Standards Committee meetings and the full Board meetings for several successive meetings. Licensees and stakeholders were provided an opportunity to comment on the changes prior to this filing. Many of the proposed rules have been the focus of discussions for nearly one year.

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

Licensees and stakeholders were notified of the planned changes via the Board's listserv and newsletter.

The Board received comments expressing support for provisions such as expanding the number of continuing education hours that can be earned online as well as removing the grade restriction for counseling coursework. Two commenters expressed concern about allowing all continuing education to be earned online. The change will align all three license types.

Several commenters expressed concern about removing the counseling grade restriction. This restriction is not in place for the other two license types.

Two commenters suggested editing rule 4757-5-02 with language regarding court orders and conflicts with ORC 4757 and OAC 4757.

No substantive comments were submitted that suggest any of the proposed rule changes will negatively impact licensees or affect the public protection mission of the Board.

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 were 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?

The Board did not seek alternative regulations as all but one rule are amendments to existing rules. The majority of the amendments can be viewed as increasing flexibility for licensees and stakeholders, while still maintaining public protection. The new proposed rule provides an opportunity for out of state licensees to assist persons moving to or living in Ohio on a short term basis.

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 considered. The practice of the professions regulated by the Board would not efficiently accommodate performance-based regulations.

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

The Board did not review other regulations as the regulations in question directly impact licensees of CSWMFT 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.

Any changes will be communicated to licensees via the Board newsletter and social media such as Facebook and Twitter. A notice will also be posted to the Board web site.

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.

All licensees and future licensees of the CSWMFT Board will be impacted by the proposed rule changes.

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The proposed rules impose no new fees or fines. The rule amendments impose no additional reporting or compliance burdens. Many of the changes, such as the elimination of certain forms, reduce the application burden for applicants.

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

Not applicable. The proposed rule changes should not create an adverse impact for the individual licensees or associated businesses. As noted above, many compliance burdens have been reduced while at the same time expanding some business opportunities through a change in how the Board approves associations to approve continuing education programs and providers.

Regulatory Flexibility

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

No exemption is provided for small businesses. The rule changes proposed some not require unique mitigations.

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?

119.14 is not applicable to these amended rules as few violations of these rules result in fines or discipline. Where possible, the Board exercises appropriate discretion.

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

No additional compliance requirements are imposed thus no additional assistance should be required.