

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: 2018 Five Year Rule Review

Rule Number(s): 4757-1-01,4757-1-03, 44757-1-05, 4757-1-06*,4757-5-01*,4757-5-03,4757-5-04,4757-5-05*, 4757-5-06*,4757-5-07,4757-5-08*,4757-5-09,4757-5-13, 4757-9-02,4757 11-03,4757-11-04*,4757-13-04,4757-13-05, 4757-13-06, 4757 -13-07, 4757-15-01*, 4757-17-01,4757-19-03*,4757-19-04,4757-19-06, 4757-19-07, 4757-19-08,4757-21-01,4757-21-02, 4757-21-03, 4757-23-01,4757-25-02, 4757-25-06, 4757-25-07, 4757-99-01*

***- No change rules**

Date: 3/19/2018

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☐ Rescinded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.

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

Rules in this filing are existing rules subject to five year review. Changes proposed by the Board help to facilitate the use of the eLicense system wherever possible, for example by allowing for certain electronic transactions or changing “letter” to correspondence to clarify the use of email. With the exception of Rule 4757-5-13, the Board is choosing to make limited changes to the rules as the rules cover licensure and practice issues that have not substantially changed in five years; the Board regularly files rule changes to ensure the rules remain appropriate and up to date. The changes to 4757-5-13 reflect changes in the use of technology to deliver services. While 4757-5-13 provides outlines basic requirements, the requirements are too general. The changes proposed increase privacy and security for clients and provide more guidance for licensees. A summary of rules covered in the filing is attached.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** All regulations are adopted in accordance with ORC 119 and ORC 4757.
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. The rules under review do not relate to federal requirements.
4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** Not applicable. None of the Board’s rules relate to federal requirements.
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)?** All of the Board’s current rules relate to licensure and public protection. The rules ensure that persons practicing as Counselors, Social Workers, and Marriage and Family Therapists are qualified. The rules also impose practice related constraints necessary to ensure the protection of the public.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** There are no outputs as such that can be measured. The Board tracks statistics such as the number of complaints, applications submitted, licenses awarded, and related measures as a means of monitoring the basic performance of the 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.

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As these are existing rules, the rules were subject to multiple reviews in the past. The rules were discussed during two public meetings of the public. Licensees and stakeholders were notified of proposed changes and the invitation to comment current with the submission to CSI.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** This package is composed of rules subject to five year review. No new rules are proposed. The rules are currently subject to public comment with responses directed to both CSI and 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 or other data was used to review the rules in this filing. However, the Board did rely on several national organization model regulations in amending 4757-5-13. Changes made in the rules are principally in response to the implementation of the eLicense system.

- 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 consider regulatory alternatives; the rules remain appropriate for the protection of the public. Nonetheless, the rules in this package have been amended to facilitate online transactions

- 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 Board issues occupational licenses. Application of performance-based regulations would be complicated owing to the type of practice engaged in by the majority of licensees.

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

These rules are not new rules. The Board monitors legislation and rule filings to remain abreast of relevant change.

- 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 Board will continue to enforce the rules under review as the rules have been enforced to date. The Board strives to apply the rules fairly and consistently, recognizing the importance of consistency and predictability.

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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:** Those impacted include those who have a license issued by the Board or those who are seeking a license. The general public is impacted in that the rules implement restrictions as authorized by the ORC that limit who can practice the professions regulated by the Board and how the practice occurs.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance):** The adverse impact to licensees and applicants includes costs for licensure applications, transcript submission, exam fees, and background checks. The Board cannot directly affect most costs associated with licensure. However, it closely monitors the costs and acts when it is in the Board's power to do so.

Revised rule 4757-5-13 may impose additional costs on licensees who elect to provide services via electronic means. Use of technology such as videoconferencing requires the licensee to maintain equipment and software compliant with federal laws that can result in increased costs. Licensees adopting electronic service delivery may also incur costs as they modify client disclosures and agreements. The Board is not mandating that licensees engage in electronic service delivery, therefore any costs resulting from doing so are by choice of the licensee. However, to ensure public protection, the Board must require licensees to meet certain common standards.

- 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 cost impact of Rule 4757-5-13 depends on the existing hardware and software capability of the licensee. The Board cannot provide a reliable estimate as costs for Internet service, computer hardware, and software vary greatly. Additionally, some licensees who choose to provide services electronically may do so through an employer or agency, complicating a review of potential costs.

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

Electronic service delivery is growing in popularity. The Board must ensure that the privacy of clients is protected. Therefore, the Board must ask licensees to meet common information

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technology standards, as well as certain federal standards, to ensure public protection. The costs borne by licensees in implementing new technologies can be off-set by other reduced costs such as a reduction in staffing and office space.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. No specific exceptions or exemptions are provided to small businesses. The Board's laws and rules apply to individuals practicing counseling, social work, and marriage and family therapy.

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 currently impose fines.

18. What resources are available to assist small businesses with compliance of the regulation? The Board provides guidance via its web site. The Board also offers personal customer service assistance to businesses and individuals to help them complete the licensure process.

Summary of Proposed Rule Changes

4757-1-01 Adoption of rules and methods of public notice.

- Revised to electronic notice of meetings

4757-1-03 Minutes of board meetings.

- Removes a reference to maintaining minutes in a binder

4757-1-05 License fees.

- Adds a \$500 fee for applications for Association Approval Status. Approval from the Board will allow certain other organization to approve both programs and providers.

- Adds a \$50 fee for temporary permission to practice applications.

4757-1-06 Personal information systems.

- No changes proposed.

4757-5-01 Standards of ethical practice and professional conduct.

- No changes proposed.

4757-5-03 Standards of ethical practice and professional conduct: multiple relationships.

- Adds a reference to online communities as a source of possible multiple relationships

4757-5-04 Standards of ethical practice and professional conduct: sexual relationships.

- Clarifies that five years is a minimum timeframe after termination of a therapeutic relationship that a licensee may engage in a sexual relationship with a former client

4757-5-05 Standards of ethical practice and professional conduct: impaired practice.

- No changes proposed.

4757-5-06 Standards of ethical practice and professional conduct: assessment and testing instruments.

- No changes proposed.

4757-5-07 Standards of ethical practice and professional conduct: research and publication.

- Removes outdated terminology referencing "special populations"

- Clarifies that research rules apply to all licensees

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4757-5-08 Standards of ethical practice and professional conduct: payment for services.

- No change

4757-5-09 Standards of ethical practice and professional conduct: record keeping.

- Aligns the rule with ORC 3701.74
- Removes the requirement to biannually report a custodian of records to the Board

4757-5-10 Standards of ethical practice and professional conduct: reporting unethical actions

- Adds a clause exempting licensees from reporting other licensees who are also clients

4757-5-13 Standards of practice and professional conduct: electronic service delivery (internet, email, teleconference, etc.)

- Substantial revision to the rule to reflect the changing use of technology in the practice of Counseling, Social Work, and Marriage and Family Therapy
- Includes additional informed consent and security requirements
- Requires licensees to determine the appropriateness of electronic service delivery for the client

4757-9-02 Continuing education requirements for renewal of a licensed professional counselor or a licensed professional clinical counselor.

- Removes unnecessary course descriptions/suggestions

4757-11-03 Internal records management to maintain confidentiality.

- Removes reference to records stored in file cabinets

4757-11-04 Hearing procedures.

- No changes proposed.

4757-13-04 Licensure and education requirements for admission of applicants holding a doctoral degree in counselor education to the examination for professional counselor, who do not meet the education requirements in rule 4757-13-01.

- Reference seven year exam standard established in 4757-13-02

4757-13-05 Professional counselor and professional clinical counselor examination policy.

- Changes “letter” to “correspondence” throughout the rule
- Authorizes the Committee to delegate remediation plan approval to Board staff

4757-13-06 Endorsement of a professional counselor or professional clinical counselor license.

- Revised to allow for use of online verification in lieu of a hard copy verification

4757-13-07 Counselor program approval.

- Eliminates references to program approval for Ohio-based non-CACREP counseling programs in response to the January 1, 2018 requirement that all in-state counseling programs have CACREP accreditation

4757-15-01 Scope of practice for professional counselor.

- No changes proposed.

4757-17-01 Counseling supervision.

- Authorizes telephone-based supervision
- Adds IMFTs as qualified work/clinical supervisors for Counselors
- Establishes a more detailed descriptions of work/clinical supervision
- Requires Counselors in private practice with supervision to document on disclosure statements and similar documents the name of the LPCC supervising the LPC
- Removes a reference to clinical residents

4757-19-03 Requirements for a certificate of registration as a social work assistant.

- No changes proposed.

4757-19-04 Social worker examination policy.

- Allows the Committee to delegate remediation plan reviews and approvals to staff

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- Reduces exam pass attempts to three to align with the other license types
 - Changes references to letters to “correspondence”
- 4757-19-06 Requirements for social work applicants wishing to obtain a temporary social work license.
- Removes requirement to apply for both a temporary and permanent license at the same time
- 4757-19-07 Endorsement of a social work license.
- Revised to allow for use of online verification in lieu of a hard copy verification
- 4757-19-08 Approval of applications for social worker licenses and registration
- Removes required application audit requirement
 - Corrects license title of Social Work Assistant
- 4757-21-01 Scope of practice for a registered social work assistant.
- Revised to allow for use of online verification in lieu of a hard copy verification
 - Adds IMFTs as qualified supervisors of SWAs
- 4757-21-02 Scope of practice for a social worker.
- Adds IMFTs as qualified work/clinical supervisors
 - Corrects the license titles for LPCCs
- 4757-21-03 Scope of practice for an independent social worker. (Removed from 2017 rule filing)
- Corrects license title of Social Work Assistant
- 4757-23-01 Social work supervision.
- Adds IMFTs as qualified work/clinical supervisors
 - Allows for telephone-based supervision
- 4757-25-02 Marriage and family therapist examination policy.
- Establishes review process for reinstating expired licenses
 - Changes “letter” to “correspondence” to allow for electronic communications
- 4757-25-06 Endorsement of a marriage and family therapist license.
- Allows for use of online license verifications
- 4757-25-07 Approval of applications for marriage and family therapist licenses
- Removes mandatory file review requirement
 - Allows the Committee to authorize staff to review and approve license applications received 10 or fewer days before the next scheduled meeting
- 4757-99-01 Independent rules.
- No changes proposed.