



## Common Sense Initiative

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### Business Impact Analysis

Agency Name: CSWMFT Board

Regulation/Package Title: 2019 Rule Changes

Rule Number(s): 4757-1-05, 3-01, 5-03, 5-10, 5-13, 9-01, 13-01, 13-07, 17-01, 25-01, 25-02, 29-01

Date: 4-4-2019

**Rule Type:**

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

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 all regulations 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.

### **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.*

Rule 4757-1-05 describes the fees the Board may charge as well as how the fees may be paid. The Board is proposing to eliminate references to checks and money orders as the Board no longer processes paper applications. All transactions are completed online.

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Rule 4757-3-01 is the definitions chapter of the OAC 4757. The Board is proposing to redefine “electronic service delivery” so that the focus is on technology-assisted therapy. While these appear to be wording changes only, the change does bring the rule into better alignment with prevailing concepts.

Rule 4757-5-03 describes the concept of multiple relationships. A multiple relationship exists when a licensee has a relationship with a client other than a client-therapist relationship, for example, a client is also a neighbor. The rule describes for licensees what types of relationships they can and cannot maintain with clients; the rule discusses how multiple relationships should be addressed by licensees. The proposed change includes language to indicate that licensees should refer to Rule 4757-5-13 for information on internet searches for client information. This change is included in this rule because of references to social media relationships.

Rule 4757-5-10 describes for licensees their mandated reporting responsibilities. The rule references certain other chapters of the Revised Code related to reporting abuse of certain persons. The proposed change clarifies for licensees that when their client is a licensee of the CSWMFT Board, violations of ORC/OAC 4757 disclosed by the client are not subject to mandated reporting. This change ensures that persons licensed by the Board can access mental health services.

Rule 4757-5-13 outlines expectations for licensees who choose to provide services using technology such as video, voice, or text. The stipulates security and system requirements as well as notifications to clients. When revised in 2018 based on model rules published by national regulatory associations, a prohibition on searching for client information via the internet or social media was included. After reflection, the Board realized this prohibition was too stringent and that it should be revised to allow such search in to accommodate safety considerations. For example, a licensee who makes home visits as part of her work may wish to search a client name/address to better understand who lives in a home as well as familiarizing her self with the neighborhood. The rule was also modified to include more references to technology-assisted therapy.

Rule 4757-9-01 outlines the continuing education requirements for renewal of Marriage and Family Therapy license. Because many licensees obtain a supervision endorsement, the Board is proposing revising this rule to ensure that the specific endorsement renewal requirements are included in the license renewal rule.

Rule 4757-13-01 defines the coursework and degree requirements for those seeking a Counselor license. The Board is proposing to eliminate the requirement to complete five separate clinical courses, replacing the completion of five required courses with a requirement to demonstrate, through coursework, that four areas of clinical knowledge and competency have been met through coursework. The reason for this change is that accredited programs can create classes that do not conform to the Board’s rules and still maintain accreditation. The

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Board's change is recognizing this fact. The change should help some applicants who could not demonstrate completing five separate courses but could demonstrate having completed coursework that covered the required information. The end result is that applications for certain applicants can be processed more effectively.

Rule 4757-13-07 restates the statutory requirement that all Ohio-based counselor education programs be accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP). A change is proposed in response to HB491 that passed in the last General Assembly. The statutory change provides the Board with the ability to offer temporary approval to counselor education programs seeking accreditation. Without the statutory change, no new programs could be approved as students would not take the risk of enrolling in a program if their degree could not be recognized for licensure. The proposed rule change outlines a process for new programs to follow in seeking Board approval. The information requested can be used by the new program as part of its accreditation preparation.

Rule 4757-17-01 discusses the concept of supervision for Counselors. Supervision is required of dependent licensees (e.g. Licensed Professional Counselors) in the workplace or when the LPC is working in private practice but is not yet independently licensed. The rule also defines the requirements for providing training supervision to LPCs who will be seeking an independent license (Licensed Professional Clinical Counselor) as well as requirement for interns/trainees. The proposed changes correct some mistakes from the prior rule filing. A limit on the number of supervisees in a group setting is re-established; a requirement that trainee supervision occur face to face was also re-inserted. Proposed change also includes a requirement that all LPCs working in private practice but doing so under supervision disclose on printed and electronic materials (including web sites) the name of the LPCC providing supervision. This ensures the public is aware of the fact that the LPC is not independently licensed and is under supervision. The Board receives complaints that relate to these supervision situations being difficult to manage, resulting in disruptions in client care.

4757-25-01 describes the education requirements for persons seeking a Marriage and Family Therapist license. The only change proposed is to correct an incorrect reference in the rule that points to another subsection of the rule.

4757-25-02 explains to licensees the requirements for applying to sit for the exam. The current rule relies upon the fact that many applicants are from accredited programs. This means those applicants can apply in their last term of study. The proposed change established requirements for students at non-accredited schools to take the exam in their last term, provided they demonstrate their degree is similar to a degree from an accredited institution. Without this change, persons from non-accredited schools must wait until they graduate before taking the exam. This slows down the licensure process, creating delays for new graduates who are seeking jobs.

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Rule 4757-29-01 defines the requirements for providing supervision (see the discussion regarding Rule 4757-17-01) for Marriage and Family Therapists. The rule also defines the requirements for obtaining a supervision endorsement, i.e. the authority to provide training supervision toward independent licensure. The rule change requires persons previously “grandparented” as a supervisor to obtain specific continuing education similar to what is required now for new applicants in order to maintain the supervision endorsement.

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

<u>Rule</u>	<u>Statutory Authority</u>	<u>Statute(s) Amplified</u>
4757-1-05	4757.10, .31, .321	4757.31, .321 4757.10, .22, .23, .27, .28, .29,
3-01	4757.10	.30
5-03	4757.11	4757.11
5-10	4757.10	4757.10
5-13	4757.11	4757.11
9-01	4757.10	4757.32, .33
13-01	4757.10, .23	4757.23
13-07	4757.10, .22, .23	4757.22
17-01	4757.10, .22, .23	4757.22, .23
25-01	4757.10, .30	4757.30
25-02	4757.10	4757.30
29-01	4757.10, .30	4757.30

**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 federal requirements are imposed through these rule changes.

**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 rules in this package cover the areas of ethics, use of technology, supervision, education, and continuing education. Each of these rules is necessary to ensure that persons served by

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Board licensees are protected from harm. The ethics related rules ensure licensees observe appropriate boundaries. The rules associated with technology use are in place to protect the privacy of clients who may be sharing sensitive personal information with licensees. The proposed rules are necessary to ensure qualified persons are practicing the professions regulated by the Board. None of the rules in this package could be significantly changed or eliminated without a loss of public protection.

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

No specific measurements are proposed. However, the Board can expect some additional applicants because of new programs and changes in how exam approvals are processed. The Board should additionally observe a reduction in the processing time of some Counselor applications as coursework requirements change.

**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.*

Licensees and stakeholders were e-mailed on February 5, 2019 to notify them of the proposed rule changes. The e-mail directed them to page on the CSWMFT website. That same day notice information about the proposed changes and an opportunity to comment was shared via social media. Two universities planning to establish new counselor education programs were specifically requested to comment. This process followed the Board's standard procedure for rule-making.

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

The Board receives a limited number of comments when it seeks to revise its rules. Several persons did comment on this package of rule changes. One commenter asked about applying the Board requirements for "electronic service delivery" to all technology assisted interactions between a licensee and client. Rule 4757-5-13 was revised to include this suggestion. Another commenter expressed concern about revisions to 4757-5-10 that clarify that licensees are not mandated reporter of ORC/OAC 4757 violations when the client is a Board licensee. The commenter presented a couple of scenarios when she suggested a licensee should be reported and suggested there are different ways the rule could be written. However, the commenter was not able at this time to suggest alternatives. The Board understands the concern, however the privacy of licensees seeking services from a Board licensee was considered important and the change remained in the rules approved by the Board on March 22. Another commenter was

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concerned about the removal of a reference to independent practice in Rule 4757-17-01. However, the statement was duplicative as the body of the rule makes it clear that licensees not diagnosing and treating do not required supervision. Most comments received were questions seeking understand to the proposed changes and not correspondence opposing the change or offering an alternative.

**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 was employed in developing the proposed rule changes. In adjusting certain rules, such as 4757-17-01, the Board relied upon prevailing standards nationally.

**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 specific alternatives to the proposed rules were considered. Currently the Board is seeking only to make minor adjustments. However, the Board is exploring alternatives to some of the rules, for example Rules 4757-17-01 and 4757-29-01 may be modified and combined in the future after the Board completes an ongoing review of supervision as part of its strategic planning effort.

**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 specific performance-based regulations were considered. However, the change to 4757-13-01 could be consider a performance-based regulation in that it does not prescribe that certain clinical courses be completed, but rather that certain knowledge and competencies be covered in the courses completed. Generally, to ensure public protection, all licensees must be subject to the same specific regulations.

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

The Ohio CSWMFT Board is the sole regulatory authority for the practice of Social Work, Counseling, and Marriage and Family Therapy. The rules proposed pertain only to the three professions regulated by the 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.**

Once approved and effective, licensees will be notified via e-mail and the Board's social media accounts. The revised "laws and rules" PDF maintained by the Board will be revised and reposted

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to the Board web site. Board staff will be available to answer any questions licensees and stakeholders may have about the rule changes once in effect. The Board provides sufficient notice of the pending change to licensees for them to prepare any changes. Most of the rule changes do not require specific action on the part of licensees once the rules are in effect.

### **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;**

The impacted community includes licensees, students, educators, education programs, and those agencies and practices that employ Board licensees.

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

The changes proposed will result in the expenditure of both time and money to comply. Licensees who must adjust paper and web forms will have to invest time to make the change or pay to have someone make the change. Faculty responsible for new counselor education programs will have to expend work time preparing the application for temporary approval. Those licensees not using technology not meeting the Board's proposed requirements may have to purchase new software or equipment. Installing and maintaining the equipment will result in a loss of time and may result in fees paid for support and maintenance.

**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.*

Counselor education programs will incur costs in preparing certain submissions to the Board. The average Ohio college/university faculty member/lecturer makes around \$34 (Chronicle of Higher Education). It is estimated it will take approximately forty hours to prepare the documentation necessary for temporary program approval, resulting in a cost of approximately \$1360 per application. However, these submissions will be necessary for subsequent accreditation requirements. Some LPCs will incur modest costs for modifying disclosure statements and web sites in conformance with 4757-17-01. It is estimated that to change printed forms and web sites to include the supervisors name will take approximately one hour. The average hourly wage for an LPC is approximately \$22 per hour (www.glassdoor.com). While the complexity of the web

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design and maintenance work will impact the cost, the average web designer makes approximately \$29 per hour (www.glassdoor.com). The Board expects that the financial impact from the revision to 4757-17-01 to include the supervisors name and license number will cost approximately \$50 to implement. Licensees who must make changes to comply with the changes proposed to 4757-5-13 could incur costs related to IT systems charges if they are required to acquire HIPAA compliant technology. Because the Board's licensees can be in solo private practice or an agency or hospital setting with dozens of professionals, the cost impact is difficult to determine. However, providing technology-assisted services is not a Board requirement. Licensees agree to offer the services as part of a business decision made by the professional or practice. Nonetheless, depending on the extent of services provided using technology, a licensee might pay between \$20-\$60 per month per professional for appropriate software. An agency might incur costs of up to \$2000 per month depending upon the number of user (Source: web review of software pricing).

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

The costs imposed through the rule changes, for example the costs incurred to revise certain forms, acquire appropriate technology, and to apply for temporary program approval are justified owing to the impact on public protection. As noted above, clients should have information regarding the licensure status of those persons serving them. That can only be achieved through a disclosure of information included on printed and electronic material. Clients should also be assured that when the licensee providing services to them is using technology, for example video conferencing or e-mail, that their use of the technology and any information generate through its use (e.g. e-mails or transcripts) are securely stored so that no one with legal authority can view the information. Lastly, the costs imposed on new programs are appropriate because the General Assembly, through a 2014 change to ORC 4757 determined that counselor education programs should meet certain accreditation standards. New program cannot be accredited until students are enrolled. Students will not enroll until they are assured the Board will recognize their degrees. There are few alternatives to offering such assurance than submitting plans for accreditation to the Board for review.

**Regulatory Flexibility**

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

Because the costs relate to public protection, no exceptions are proposed. However, small business owners, for example, solo practitioners, can mitigate the costs through making form and web changes on their own and through careful selection of technology resources.

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**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 rules in question do not currently result in any fees or penalties that require a waiver.

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

The Board staff is available to consult with licensees who are subject to the rules.