



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: CSWMFT Board

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

COVID-19 Response Rule Changes

Rule Number(s): 4757-5-13

Date of Submission for CSI Review: 6/19/2020

Public Comment Period End Date: 6/29/2020

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR? 0)

Amended/ 1 rules (FYR? 0)

Rescinded/ 0 rules (FYR? 0)

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. ☐ **Imposes 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.

OAC Rule 4757-5-13 defines how licensees can use teletherapy, including training/competence expectations, appropriateness for the client, informed consent, and other related topics. This rule is critical to practice because it defines expectations for a growing means of providing services, but also one where privacy can be compromised. The following amendments are under proposed:

- Changes references of electronic service delivery to teletherapy, the more common term for services provided online or via phone;
- Clarify that training is recommended, but not required;
- Adds a section waiving face to face requirements and signed informed consent during the COVID-19 emergency declared by the Governor. Allows licensees to follow guidance issued by the U.S. Department of Health and Human Services related to HIPAA.

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.**

ORC 4757.10 authorizes the Board to write administrative rules to implement ORC 4757.

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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 federal requirements are imposed through these rule changes. However, licensees must, with some exceptions, use technology compliant with federal HIPAA standards.

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

Not applicable.

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)?**

Teletherapy is another means of delivering services to clients. There are significant risks to client confidentiality if such services are not provided appropriately. To ensure clients can receive services in the most secure manner possible, Rule 4757-5-13 is necessary.

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

No specific measurements of outputs or outcomes are proposed.

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.

Not applicable.

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.

Licensees were notified of an opportunity to comment on a substantially similar version of the Rule on May 6, 2020.

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 question asking if training in teletherapy would be required under the revised rule.

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10. 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.

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. As a means of service delivery that is emerging as critical to providing services in the current environment the Rule is warranted for public protection.

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. Generally, to ensure public protection, all licensees must be subject to the same specific regulations that provide clear direction regarding expectations and compliance.

11. 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.

12. 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 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 enough notice of the pending change to licensees for them to prepare any changes.

Adverse Impact to Business

13. 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

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

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

An adverse impact exists because the rules impose requirements for licensed persons. As licensed persons that must learn and comply with the rules. Failure to follow the rules can result in discipline, including license suspension or revocation. The rule changes proposed only results in a financial expenditure for those licensees who elect to provide teletherapy and do not have access to the appropriate technology. No licensee is mandated to provide teletherapy services.

- 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.

As noted, free and low-cost software solutions are available. The cost impact of Rule 4757-5-13 depends on the existing hardware and software capacity 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.

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

The adverse impact is justified because of the public protection focus of the Board’s rules. The rules establish a foundation for the ethical practice of the regulated professions. The rules do not create significant barriers that impede the ability of existing licensees to practice nor do the rules unduly create barriers to entry for new licensees.

Regulatory Flexibility

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

No alternative means of compliance are proposed given the nature of teletherapy. Many of the rules address behaviors of licensees that cannot be substituted by other activities.

- 16. 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.

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

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The Board staff is available to consult with licensees who are subject to the rules. When issuing the rules, a summary of the changes is included to better help licensees easily identify changes. From time to time the Board provides ethics trainings which provide an opportunity for licensees to ask questions. Guidance is also issued in the Board's newsletter. Further, Board staff often consult with providers of trainings to help them provide the most up to date trainings.

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