

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: HB-232 Rules

Rule Number(s): 4757-1-05, 4757-3-01, 4757-3-02, 4757-5-12, 4757-7-01, 4757-7-03, and 4757-11-01

Date: July 8, 2014

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☐ Rescinded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.

These two new rules and five five-year review rules are being filed due to the passage of House Bill 232. The five-year review rules are also being filed to meet the requirement to review each rule of the Ohio Administrative Code every five years. These rules are part of five Chapters of Agency 4757 of the Administrative Code. The following rules have been

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reviewed by all of the Professional Standards Committees of the board. There is a note on each as to the proposed changes. The PSC column denotes if it applies to all licensees or only the Counselor (CPSC), Social Worker (SWPSC) or Marriage and Family Therapist (MFTPSC) Professional Standards Committee. The Board appreciates feedback on any and all rules.

Rule #	Title	Comments	PSC
4757-1-05	License Fees. 5 year review	Delineates fees associated with new inactive status– see rule 4757-7-03 and new fee for renewal with less than 30 CEUs– see paragraph (GG) of rule 4757-3-01 – Needs additional review by board for inactive fees.	All
4757-3-01	Definitions. 5 year review	Addition of “MFT trainee” and “social Functioning” definitions. Modifies title of supervision designation for LPC & LPCC & LISW & IMFT to be “ with training supervision designation. ” This clarifies that the designation is not for work supervision.	All
4757-3-02	Abbreviations and titles. 5 year review	Changed to add “Licensed” for all professional Counselor titles and removed all “periods” from all abbreviations ~ LPC, LPCC, LISW, LSW...	All
4757-5-12	Standards of ethical practice and professional conduct: prominent display of license for counselors, social workers and marriage and family therapists. New rule may not be needed as statute is clear.	Deleted requirement for professional disclosure statement (PDS) as of 7/10/2014. Statute section 4757.13 adds requirement to post license and requirement for private practitioners to post fees with this statement. <u>"This information is required by the Counselor, Social Worker, and Marriage and Family Therapist Board, which regulates the practices of professional counseling, social work, and marriage and family therapy in this state."</u> The question being what is an	All

		adequate fee schedule and do we need it in rule?	
4757-7-01	Renewal of license or certificate of registration. 5 year review	Changes language to reflect coming new licensing system.	All
4757-7-03	Inactive status of license; restoration. New rule	Implements new inactive status that allows an individual to maintain a license without CE with process to restore the license to active. Licensees may not work under this status and must renew this status to maintain the license, there are late renewal fees. This rule will not go into effect until the new licensing system is in place – now scheduled for mid-November.	All
4757-11-01	Denial and disciplinary action for licenses or certificates of registration issued by the counselor, social worker, and marriage and family therapist board. 5 year review	Adds “licensed” to PC & PCC references and adds MFT trainee. CE Program and CE Provider registrants included by statute change are included in current language.	All

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

Chapter 4757 of the Revised Code includes several Sections that provide rule making authorization including section 4757.31 for fees in rule 4757-1-05; section 4757.10 for rules 4757-3-01 & 4757-3-02; sections 4757.10 & 4757.33 for rule 4757-7-01; section 4757.321 for new rule 4757-7-03; section 4757.10 for rule 4757-11-01.

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?

No

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 are needed to carry out the Board's mission in an effective and efficient manner. The Board licenses professional counselors, social workers and marriage and family therapists who provide mental health and other services to residents of Ohio. The Board ensures applicants for licensure meet the requirements established in Chapter 4757 of the Revised Code. The Board ensures that applicants maintain qualifications by requiring continuing education for each license renewal. The Board also provides regulatory oversight and discipline for licensees that do not follow professional standards of conduct.

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

These rules establish the parameters for licensees' continuing education per Section 4757.33 of the Revised Code. Success in the case of rule 4757-1-05 will be measured by appropriate fees being paid and little to no misunderstanding of appropriate fees by licensees and applicants. Success in the case of rule 4757-3-01 & 4757-3-02 will be measured by having the rules written in plain language for clarity and definitions and abbreviations being clear and not ambiguous for licensees, their employers and the public. Success in the case of rules 4757-5-12 will be measured by complaints made against licensees not having licenses, wall certificates, posted in their place of business and private practice licensees providing fees schedules as required by the statute change. Success in the case of rules 4757-7-01 will be measured by having the rules written in plain language for clarity; and renewal of licenses and registrations working correctly in the new licensing system. Success in the case of rules 4757-7-03 will be measured by having the rules written in plain language for clarity and the new inactive status being clear to licensees, their employers and the public. Success in the case of rules 4757-11-01 will be measured by discipline cases being appropriately conducted and documented per the rule.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

Emails were sent via the Board's Listserv to all valid email addresses on 6/3/2012. Those emails had a link to the draft rules on the Board's web site. Separate emails were sent to all associations that have expressed interest in the last several years in any Board issues. Emails were sent to all counselor, social worker and marriage and family therapist education programs in Ohio colleges and universities with programs designed to lead to

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licensure under the Board's laws and rules. Another email was sent to continuing education providers and those who offer individual programs for which we have emails.

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

The majority of inputs were supportive of these rule changes. A few inputs were received to clarify issues, which resulted in minor changes to the rules for clarity.

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 applicable to these rules.

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 alternatives were suggested by input and the rules are needed to implement the changes in House Bill 232.

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.

The only processes dictated are for the new licensing system, which is designed primarily to use online processes for applications and renewals. We currently have online renewals used by 99% of licensees. There are still a few licensees that request paper renewal applications. We are hopeful that the other applications will likewise become online at such a high percentage.

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

This question does not apply to these rules.

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 rules once the filing process is complete are readily available on the Board's website and a Listserv email will be sent to all licensees with information on the changes. The consistency of the Board's processes is regularly reviewed and any non-standard situations are reviewed by the Board for resolution. As issues arise they are added to the Agenda for review and discussion by the applicable professional standards committee for review, discussion and resolution.

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;

For rules 4757-1-05, 4757-3-01, 4757-3-02, 4757-5-12, 4757-7-01, 4757-7-03, and 4757-11-01 the regulated community is licensed counselors, social workers and marriage and family therapist and registered social worker assistants and their employers. Rule 4757-1-05 sets fees for all items as allowed under section 4757.31 of the Revised Code, which now includes fees for “inactive” status added under HB-232 under section 4757.321. Rule 4757-3-01 promulgates definitions applicable in agency 4757 of the Administrative Code and rule and 4757-3-02 lists abbreviations used for licenses and registrations. Rule 4757-5-12 is a new ethics rule to define new licensure posting and fee schedules required under HB-232 in section 4757.13 of the Revised Code. Rule 4757-11-01 adds registrants to this discipline rule as HB-232 made counselor trainees, social worker trainees, marriage and family therapist trainees and individuals and companies providing continuing education that are registered with the board subject to discipline by the Board per section 4757.36 of the Revised Code.

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

Rule 4757-1-05 implements new license fees at a lesser cost for licensees not practicing, but wanting to maintain their license for future use under the new inactive status implemented by HB-232 in Section 4757.321 of the Revised Code. Many retiring licensees, who closely identify with their licensed status, may now maintain their license at a greatly reduced cost and minimal time effort (no CEUs) until they should want to apply to come back to active practice. The Fees are also added for licensees who renew without having all thirty of the required continuing education hours. These fees give the licensee one chance to make a mistake on renewal without having formal discipline that follows their license forever.

Rules 4757-3-01 and 4757-3-02 are definitions and initials used by licensees. There may be a small implementation cost to changing systems to reflect the “licensed” added to professional counselors and professional clinical counselors by changes in many sections of Chapter 4757 of the Revised Code. Guidance to questions asked to date has been to wait until some other changes are needed to systems and at that time update the programs to include the “licensed professional counselor” and “licensed professional clinical counselor” changes in statute.

Rule 4757-5-12 replaces a prior rule that required a professional disclosure statement that is no longer required. This removes a paperwork burden from large public

funded agencies, which now are required by section 4757.13 to “shall prominently display, in a conspicuous place in the office or place where a major portion of the individual's practice is conducted, and in such a manner as to be easily seen and read, the license granted to the individual by the state counselor, social worker, and marriage and family therapist board.” Private practitioners are required to also post fees with a clause from the statute, which is simpler than the prior professional disclosure statement.

Rule 4757-11-01 only has a burden for licensees and registrants who do not comply with the board’s statutes and rules and are investigated for that failure.

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.

Rule 4757-1-05 adverse impact is reflected in a fee added for licensees who renew without having all thirty of the required continuing education hours. These fees give the licensee one chance to make a mistake on renewal without having formal discipline that follows their license forever. The fees will depend on the number of hours of the deficiency and range from \$50 to \$125, which is significantly less than the cost of permanent discipline in hours of responses to investigations, potential need for an attorney and future job opportunities should they have had a discipline action. Rules 4757-3-01 and 4757-3-02 are definitions and initials used by licensees. There may be a small implementation cost to changing systems to reflect the “licensed” added to professional counselors and professional clinical counselors by changes in many sections of Chapter 4757 of the Revised Code. Guidance to questions asked to date has been to wait until some other changes are needed to systems and at that time update the programs to include the “licensed professional counselor” and “licensed professional clinical counselor” changes in statute in order to minimize costs. The cost to revise the eLicensing system for this change was a half hour of time changing the applicable tables for each license. Most newer systems have tables for information on major categories of subject matter where they are defined.

Rule 4757-5-12 adverse impact for public agency funded licensees is posting of the wall certificate, which is received from the board at time of licensure and most licensees and registrants already post their licenses. Private practitioners are required to also post fees with a clause from the statute, which is simpler than the prior professional disclosure statement. The costs are minimal to create a document in a word processing program and post in an appropriate place with the wall certificate.

Rule 4757-11-01 adverse impact from this rule is only for licensees or registrants who violate the board's laws and/or rules. If a licensee is investigated depending on the case facts, the costs could be minimal including providing a written response or more serious may involve hiring an attorney and having a hearing. In the minimal case, the cost is time to provide a thoughtful response and perhaps an interview with a Board investigator. In a serious case, attorney fees and potential sanctions on a license could lead to a major expense of \$3,000 to \$7,000. The vast majority of cases have small expenses due to the nature of the violations. Serious violations cost more and having discipline on your license may impact future employment. The costs are based on input from attorneys who have represented clients in discipline cases before the Board.

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

The requirements within each rule are authorized in Chapter 4757 of the Revised Code as referenced above. The rules are necessary to the good operation of the board and give licensees more choices to maintain their licenses as befits their situations.

Regulatory Flexibility

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

These rules offer the licensees and social worker assistant registrants meaningful options to maintain their licensees in active working status or inactive with the option to apply to become active again with lesser requirements than applying for a new license..

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 generally does not fine or penalize for minor paperwork in which case the licensee would receive a letter of caution. More serious paperwork violations can result in serious consequences. The Board has referenced section 119.14 of the Revised Code in this review of the Board's rule on fees 4757-1-05 and will do so for the rule on fines, 4757-1-07, in a separate filing in the very near future.

18. What resources are available to assist small businesses with compliance of the regulation? *The Board and its staff are dedicated to working with members of the regulated community and the public to ensure that the consumers of professional counseling, social work and marriage and family therapy services in Ohio receive safe and effective services from the Board's licensees. As a result, the following resources are available:*

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Board's mailing address:

50 West Broad Street, Suite 1075

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Board's phone number: 614-466-0912

Board's fax number: 614-728-7790

Board's website: <http://cswmft.ohio.gov>

Board's email: cswmft.info@cswb.state.oh.us

Board's Facebook: <http://www.facebook.com/pages/Ohio-Counselor-Social-Worker-Marriage-and-Family-Therapist-Board/349684261728174>

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