



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Counselor, Social Worker, and Marriage and Family Therapist Board

Rule Contact Name and Contact Information: Brian Carnahan,
brian.carnahan@cswb.ohio.gov, 614.752.5161

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

Spring 2021 Rule Changes

Rule Number(s): 4757-1-04, 1-07, 3-01, 5-10, 7-01, 9-05, 9-06, 9-07, 11-01, 13-01, 13-04, 13-05, 13-09, 13-10 (New), 15-02, 17-01, 19-01, 19-03, 19-04, 19-05, 19-06, 21-02, 21-03, 25-03, 25-08

Date of Submission for CSI Review: 9/23/2021

Public Comment Period End Date: 10/23/2021

Rule Type/Number of Rules:

New/ 1 rules

No Change/ 0 rules (FYR?)

Amended/ 20 rules (FYR? 5)

Rescinded/ 0 rules (FYR?)

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

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.

4757-1-04 Applications of first licensure.

Highlights basic requirements for licensure such submission of transcripts and completed background checks.

- Removes references to good moral charact

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

4757-1-07 Discipline actions that may include fines.

Delineates fines that may be imposed by the Board.

- Adds a provision regarding violations of Revised Code 959.07 (animal abuse reporting)
 - For a first violation a confidential written warning may be issued.
 - For a second violation, a fine of one hundred dollars.
 - For a third or subsequent violation, a fine of five hundred dollars.

4757-3-01 Definitions.

Defines terms used in the rules. The rule facilitates understanding the other rules by consolidating the definition of terms.

- Adds trainees to the definition of applicant
- Generalizes wording in a reference to applications.
- Changes a grade level reference in the definition of undergraduate coursework to “passing grades”.
- Changes electronic service delivery to “teletherapy”.

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

The Rule delineates statutes under which Board licensees are mandated reporters.

- Add the requirement to report under ORC Section 959.07.

4757-7-01 Renewal of license or certificate of registration. (Subject to Five Year Rule Review)

Describes the requirements for appropriate renewal of a license, including renewing as prescribed by the Board, completion of continuing education, and payment of required fees. This rule is necessary given the importance placed on continuing education and license renewal.

- Removes specific references to “elicense”. Replaced by “online system”.
- Removes confusing language regarding license restoration.
- Clarifies that completed continuing education (CE) may be used to renew more than one license provided the CE is completed during the renewal period for both licenses.

4757-9-05 Approval of continuing professional education programs required for renewal of licenses and certificates of registration issued by the board.

Defines the process for seeking Board approval of individual programs of continuing education as well as the requirements for approval a provider of continuing education.

- Adds a definition for post-program approval.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

- Adds a provision that certain State of Ohio agencies as well as constitutional offices may provide CE without prior Board approval.
- Limits post-program approval to only programs taken in-person, out of state, as well as certain presentations, college courses, and publications.

4757-9-06 Sources of continuing professional education.

Describes the approved sources of continuing education programs.

- Adds a provision allowing licensees to claim for continuing education credit programs approved by a similar out of state board that licenses the same profession(s).

4757-9-07 Documentation of continuing professional education required for renewal of a license or certificate of registration.

Defines the documentation required for a continuing education program to be accepted for continuing education credit, including the type of data that must be on a certificate and/or uploaded to the Board's selected CE online system.

- Includes language to indicate that the same information required on a certificate of continuing education can be required by the Board for any uploads of data by providers and program sponsors into an online system the Board elects to use.

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. (Subject to Five Year Rule Review)

Defines when the Board may discipline a licensee or registrant, including but not limited to violations of ORC 4757, impairment, a felony conviction, misdemeanor conviction in the course of practice, and failing to provide appropriate supervision. The rule is necessary so that licensees are aware of the consequences of violations of ORC 4757/OAC 4757.

- Specifies the Board may take disciplinary on a supervision endorsement when a licensee holding an endorsement violates ORC/OAC 4757. The Board is finding that licensees with supervision designation are not properly supervising. This change would allow the Board to remove a supervision endorsement, eliminating the licensee's authority to supervise.
- Indicates that supervisors may be disciplined for failing to report to the Board violations committed by persons under their supervision. The Board has identified issues with supervision resulting from investigations of other issues.
- Added language specifying that independent licensees with a supervision endorsement can be disciplined for failing to submit required evaluations of supervisees as well as other violations of ORC/OAC 4757.
- Remove references to good moral character
- Add ORC 9.79 as a reason for licensure denial.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

4757-13-01 Education requirements for admission to the examination for licensed professional counselor

Defines the degree requirements and accreditation standards for licensure as a counselor. The rule includes reference to specific coursework topics and related requirements. The rule ensures persons with the appropriate education and qualifications are licensed to practice counseling.

- Eliminates a reference to specific hours related to internships. Directs that national accreditation standards should be followed.
- Includes a provision allowing the professional standards committee to approve, at its discretion, alternative means of completing internship hours.
- Standardizes accreditation requirements by removing dated references.

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 of the Administrative Code.

- Remove references to good moral character

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

Describes the requirement to apply to the board for approval to take the licensure exams. Outlines a process for approving applicants to take the exam if they have failed the exam more than three times. The Board relies upon this rule to ensure applicants can be approved to take the appropriate examination.

- Changes the length of the eligibility approval from six months to twelve months.

4757-13-09 Counselor trainee registration. (Subject to Five Year Rule Review)

Defines the requirements for the issuance of a trainee registration, including the education status and supervision requirements. The Counselor Trainee rule is important because of the dual purpose of the trainee role – educating the student and filling critical service gaps. Without the Trainee status, agencies and practices would find it difficult to bill insurers (including Medicaid) for services.

- Removed a section directing trainees to confirm receipt of trainee status by conducting an online verification. Trainee registrations can be confirmed in eLicense, however approved trainees now receive an automatically issued email from the Board now indicating the effective dates of their registration.
- Clarifies that trainee status is valid only between the issue and expiration dates. This is intended to reduce the number of requests for extensions.
- Added wording to indicate that trainee status cannot be extended beyond the original expiration date.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

- Removes a reference to “school approved” internship sites; students must be enrolled in an internship to register as a Trainee.
- Remove references to good moral character

4757-13-10 Requirements for a Temporary Counselor License (NEW)

This is a new rule. Defines the requirements for obtaining a temporary license as a Licensed Professional Counselor, which include completing a graduate degree in clinical mental health counseling and a background check. The professional standards committee is authorized to determine the qualification of a candidate for a temporary license. Temporary licensure can be a critical bridge between the end of the program of education and full licensure.

4757-15-02 Scope of practice for a licensed professional clinical counselor

Defines the scope of practice for Licensed Professional Clinical Counselors

- Clarifies that LPCCs can provide supervision to chemical dependency counselors and certified prevention specialist assistants. Eliminates prevention specialists.

4757-17-01 Counseling supervision.

Defines the requirements for supervision of Counselors in work settings as well as when earning hours toward an LPCC. Additionally, the rule outlines the requirements for obtaining a training supervision endorsement. Given the importance of supervision generally, but particularly as part of the requirements for earning a license as an LPCC, the rules must contain a rule regarding the expectations for supervision of Counselors.

- Increases to eight the number of supervisees who may participate in a single group during a group supervision session. Feedback from licensees indicated that six members was too limiting.
- Reinforces that all supervision evaluations for independent licensure must be completed within thirty days after a request by a supervisee. Receipt of evaluations in a timely manner allows the Board to more efficiently issue licenses.
- Eliminates a reference to face to face supervision for trainees.
- Clarifies that interns and trainees may be employed for compensation.

4757-19-01 Requirements for licensure as a social worker.

Outlines the education requirements for social workers. The rule relies upon accreditation standards established by the Council for Social Work Education (CSW). This rule ensures that applicants for social work licensure possess the appropriate education and qualifications.

- Eliminates references to specific hours of coursework.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

- Eliminates a reference to specific hours related to internships. Directs that national accreditation standards should be followed.
- Includes a provision allowing the professional standards committee to approve, at its discretion, alternative means of completing internship hours.

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

Defines the education requirements to register as a social work assistant. This rule provides clarity for applicants and educators regarding the education requirements for social work assistants.

- Changes a reference to letter grades to “passing grades”, allowing programs of education to determine graduation requirements.
- Added statistics as an example of related coursework.

4757-19-04 Social worker examination policy.

Outlines that person seeking a social worker license via examination must apply to the board for permission to take the appropriate examination.

- Expands eligibility for the examination from six months to twelve months.
- Eliminates an information reference regarding how exam scores are processed by the board.

4757-19-05 Social worker trainee applications. (Subject to Five Year Rule Review)

Defines the requirements for the issuance of a trainee registration, including the education status, background check, and supervision requirements. The Social Worker Trainee rule is important because of the dual purpose of the trainee role – educating the student and filling critical service gaps. Without the Trainee status, agencies and practices would find it difficult to bill insurers (including Medicaid) for services.

- Removed a section directing trainees to confirm receipt of trainee status by conducting an online verification. Trainee registrations can be confirmed in eLicense, however approved trainees now receive an automatically issued email from the Board now indicating the effective dates of their registration.
- Clarifies that trainee status is valid only between the issue and expiration dates. This is intended to reduce the number of requests for extensions.
- Added wording to indicate that trainee status cannot be extended beyond the original expiration date.
- Remove references to good moral character

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

4757-19-06 Requirements for social work applicants wishing to obtain a temporary social work license

Defines the requirements for issuance of a temporary license, including completion of a background check, completion of degree requirements, and a passing exam score.

- Authorizes the professional standards committee to determine whether an applicant is qualified for a temporary license.
- Clarifies the expiration date and issuance date.

4757-21-02 Scope of practice for a social worker

Defines the scope of practice for licensed social workers (LSW).

- Adds prevention to the scope of practice.

4757-21-03 Scope of practice for an independent social worker

Defines the scope of practice for an independent social worker.

- Adds wording to clarify that an independent social worker may provide all services defined in the social worker scope of practice.

4757-25-03 General requirements for licensure as a marriage and family therapist.

- Remove references to good moral character

4757-25-08 Marriage and family therapist trainee registration. (Subject to Five Year Rule Review)

Defines the requirements, such as proof of enrollment and a completed background check, necessary when registering as an MFT trainee. The MFT Trainee rule is important because of the dual purpose of the trainee role – educating the student and filling critical service gaps. Without the Trainee status, agencies and practices would find it difficult to bill insurers (including Medicaid) for services.

- Removed a section directing trainees to confirm receipt of trainee status by conducting an online verification. Trainee registrations can be confirmed in eLicense, however approved trainees now receive an automatically issued email from the Board now indicating the effective dates of their registration.
- Clarifies that trainee status is valid only between the issue and expiration dates. This is intended to reduce the number of requests for extensions.
- Added wording to indicate that trainee status cannot be extended beyond the original expiration date.

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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

- 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.

- 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)?**

The rules in this package cover the areas of ethics, continuing education, supervision, educational standards, scopes of practice, trainee registration, and reporting discipline. Each of these rules is necessary to ensure that persons served by Board licensees are protected from harm. The ethics related rules ensure licensees observe appropriate boundaries and that the Board can appropriately act when a licensee is impaired. The rules associated education standards ensure persons licensed are meet basic, nationally accepted standards for education in the profession.

None of the rules in this package could be significantly changed or eliminated without a loss of public protection. The Board, in making any changes to the rules, is mindful of balancing the need for persons to enter the field through fair and effective standards, licensed persons to practice with only the most necessary rules as they themselves must also abide by the rules they write and enforce.

- 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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

Approximately 39,000 licensees and stakeholders were invited in July 2021 to submit comments. Approximately 24 licensees submitted comments.

10. 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 draft rule changes and comment period (comments due 8/24/2021) on 7/22/2021. Approximately 24 persons commented. Few of the comments suggested specific changes to the rules. Many comments indicated receipt of the rules or asked clarifying questions, for example questions regarding concerns about eliminating the “good moral character” language.

In response to questions or feedback, the following changes were made:

- Following discussion with the OCDPB, removed prevention from the scope of practice for LPCs.
- Changed the OCDPB licensees who can be supervised by LPCCs from Prevention Specialists to Prevention Specialist Assistants.
- Added authority for the Board to both approve and deny other state agencies for blanket CE approval.
- Clarified the changes to the post-program approval process to make it clear that some sources of CE will remain eligible for CE via post-program approval.
- Removed a reference to failing the exam and the termination of the temp in the LPC and LSW temporary rules (passing the exam is a key factor for issuing the temporary license).

11. 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.

12. 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.

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

13. 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.

14. 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. 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

15. 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.

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 should result in no direct expenditure of financial resources, nor should the rules limit the ability of licensees to operate effectively as businesspersons. To the degree the rules constrain licensee behavior it is with respect to ethical behavior directly impacting clients and the public.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

“representative business.” Please include the source for your information/estimated impact.

The possible adverse impact cannot be quantified as the changes do not impose any expenditures or institute any fees or penalties.

16. 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

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

Because the Board has not identified any specific financial or time burdens placed upon small business as a result of the proposed rule revisions, no alternative means of compliance are proposed. Many of the rules address behaviors of licensees that cannot be substituted by other activities.

18. 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.

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

The Board issues regular guidance regarding complying with the laws and rules regarding the practice of counseling, social work, and marriage and family therapy.