



# Common Sense Initiative

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## Business Impact Analysis

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

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Regulation/Package Title (a general description of the rules' substantive content): Art and Music Therapy, Supervision, and Five Year Rules

Rule Number(s): 4757-18-01, 4757-18-02, 4757-18-03, 4757-18-04, 4757-24-01, 4757-24-02, 4757-24-03, 4757-24-04, 4757-1-05, 4757-3-01, 4757-3-02, 4757-5-01, 4757-5-02, 4757-5-03, 4757-5-04, 4757-5-05, 4757-5-06, 4757-5-07, 4757-5-08, 4757-5-09, 4757-5-10, 4757-5-11, 4757-5-13, 4757-13-05, 4757-19-04, 4757-17-01, 4757-21-01, 4757-23-01, 4757-29-01, 4757-1-06, 4757-11-03, 4757-11-04, 4757-15-01, 4757-19-03

Date of Submission for CSI Review: 2/20/2024

Public Comment Period End Date: 3/1/2024

**Rule Type/Number of Rules:**

New/ 8 rules

No Change/ 4 rules (FYR? 4)

Amended/ 22 rules (FYR? 1)

Rescinded/ 0 rules (FYR? 0)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.*

#### **New Rules – Art and Music Therapy**

The following eight rules are necessary to establish the scopes of practice and the process for applying for and issuing a license. These are like the rules in place for counselors, social workers, and MFTs.

4757-18-01 Qualifications for a license as a licensed professional art therapist

- Establishes the basic requirements for the issuance of an art therapy license.

4757-18-02 Approval of applications for licensure as an art therapist

- Describes application approval process.

4757-18-03 Applications for a reciprocal art therapy license

- Outlines the requirements for issuing a reciprocal license as established in SB 131.

4757-18-04 Scope of Practice for an art therapist

- Establishes the scope of practice.

- *Added the licensure exemption as noted in the amendments to ORC 4757 – “This rule does not apply to members of other professions licensed, certified, or registered by this state while performing services within the recognized scope, standards, and ethics of their respective professions.”*

#### 4757-24-01 Qualifications for a license as a licensed professional music therapist

- Establishes the basic requirements for the issuance of a music therapy license.

#### 4757-24-02 Approval of applications for licensure as a music therapist

- Describes application approval process.

#### 4757-24-03 Applications for a reciprocal music therapy license

- Outlines the requirements for issuing a reciprocal license as established in SB 131.

#### 4757-24-04 Scope of practice for a music therapist

- Establishes the scope of practice.
- *Added the licensure exemption as noted in the amendments to ORC 4757 – “This rule does not apply to members of other professions licensed, certified, or registered by this state while performing services within the recognized scope, standards, and ethics of their respective professions.”*

### **Revisions to Existing Rules**

Most of the rules noted below are being amended to reflect changes necessary in response to the introduction of the art and music therapy licenses.

#### 4757-1-05 License fees.

- \$100 application and renewal fee for both the LPAT and the LPMT

#### 4757-3-01 Definitions.

- Added definitions for art and music therapy as reflected in the ORC.

#### 4757-3-02 Abbreviations and titles.

- Added title abbreviations.

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

- Amended to include the terms “licensees and registrants.”

- Adds the following codes of ethics published by these organizations as references for the Board: American Music Therapy Association; Certification Board for Music Therapists; American Art Therapy Association; and Art Therapy Credentials Board.

4757-5-02 Standards of ethical practice and professional conduct: clients/consumers of services.

- Amended rule to include the terms “licensees and registrants.”
- Revised to include a clarification regarding duplication of services.
- Includes a disclosure and consent requirement when services are provided in a non-private setting.
- Outlines requirements for using images of clients and the products resulting from services in social media or other promotional materials.
- Indicates that touching shall occur only with consent and based on accepted practice standards.
- Clarifies that licensees who agree to provide supervision or are assigned by an employer to do, may be disciplined by the Board for failing to fulfill supervisory responsibilities.
- Addresses how abandoned art materials must be handled.
- Provides that all music or art product created during sessions are the property of the client(s).
- Includes provisions regarding safe use of art materials.

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

- Amended to include the terms “licensees and registrants.”
- Added “Business” to the financial multiple relationship.
- Clarified the prohibition on receipt of gifts. This was not clearly stated in the rules. *Revised in this version to include guidance regarding instances when gifts of nominal value are accepted.*

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

- Amended rule to include the terms “licensees and registrants.”

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

- Amended rule to include the terms “licensees and registrants.”

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

- Amended rule to include the terms “licensees and registrants.”

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

- Amended rule to include the terms “licensees and registrants.”

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

- Amended rule to include the terms “licensees and registrants.”

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

- Includes provisions regarding how art and music therapists should retain records of sessions when art and music products are created. *Revised in this version to clarify that retention of art or treatment related products applies to all Board licensees and registrants.*

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

- Amended rule to include the terms “licensees and registrants.”

4757-5-11 Standards of ethical practice and professional conduct: change of name and/or address.

- Reduced the reporting timeframes for name and address changes to the Board from 90 days to 45.

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

- Amended rule to include the terms “licensees and registrants.”

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

- Removes limits on the number of exam attempts.
- Eliminates the requirement for a remediation plan.
- Directs that examinees must follow the exam re-take policy of the exam owner; eliminates the reference to waiting 90 days to re-test.

4757-19-04 Social worker examination policy.

- Removes limits on the number of exam attempts.
- Eliminates the requirement for a remediation plan.
- Directs that examinees must follow the exam re-take policy of the exam owner; eliminates the reference to waiting 90 days to re-test.

### **Supervision Rules**

For over a year, the Board has been considering possible changes to the supervision rules for counselors, social workers, and MFTS. The changes below reflect changes to clarify some supervision terms and expectations as well as process changes to ensure the Board can process submissions of supervision hours while not placing undue limits on the ability of supervisees to earn hours.

4757-17-01 Counseling supervision.

- Reorganizes rule to reflect the importance of work/clinical supervision.

- Clarifies the responsibilities of supervisors and supervisees.
- Removes reference to the LPCC-S being responsible for work/clinical supervision if both the LPC and LPCC-S are employed by the same agency or practice.
- Clarifies the requirements for supervision for LPCs in solo private practice.
- Establishes a provision requiring that supervision be submitted at the completion of supervision by the supervisor in place when the requirements are met. Supervision hours will not be submitted by each supervisor individually.
- Added language clarifying supervision of OCPDB licensees and supervision of CSWMFT licensees by OCPDB LICDCs.
- *Revisions in this version include a clarification of individual and group supervision. The revision is included in all three supervision rules.*

#### 4757-23-01 Social work supervision.

- Reorganizes rule to reflect the importance of work/clinical supervision.
- Clarifies the responsibilities of supervisors and supervisees.
- Establishes a provision requiring that supervision be submitted at the completion of supervision by the supervisor in place when the requirements are met. Supervision hours will not be submitted by each supervisor individually.
- Clarifies that LSWs cannot be in solo private practice.
- Increases the size of groups for training supervision to 8 from 6 LSWs.
- Clarifies the type of nurse (certain APRNs) who may provide supervision to an LSW.
- Added language clarifying supervision of OCPDB licensees and supervision of CSWMFT licensees by OCPDB LICDCs.
- *Revisions in this version include a clarification of individual and group supervision. The revision is included in all three supervision rules.*

#### 4757-29-01 Marriage and family therapy supervision.

- Reorganizes rule to reflect the importance of work/clinical supervision.
- Clarifies the responsibilities of supervisors and supervisees.
- Clarifies the requirements for supervision for MFTs in solo private practice.
- Establishes a provision requiring that supervision be submitted at the completion of supervision by the supervisor in place when the requirements are met. Supervision hours will not be submitted by each supervisor individually.
- Added language clarifying supervision of OCPDB licensees and supervision of CSWMFT licensees by OCPDB LICDCs.
- *Revisions in this version include a clarification of individual and group supervision. The revision is included in all three supervision rules.*

### **Five Rule Review**

#### 4757-1-06 Personal information systems.

- No changes proposed.

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

- Removes a reference to he/she.
- Establishes that the Board's executive director may designate a staff member to approve records access.
- Changes the records access permission from "board member" to board chairperson or board vice chairperson.

4757-11-04 Hearing procedures.

- No changes proposed.

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

- No changes proposed.

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

- No changes proposed.

4757-21-01 Scope of practice for a registered social work assistant.

- Clarifies the type of nurse (certain APRNs) who may provide supervision to an SWA.

**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.

**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. None of the proposed or amended rules implement a federal requirement.

**5. If the regulation implements a federal requirement, but 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)?**

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. The rules in this package are necessary to ensure the public is protected when receiving services and assistance from licensees of the Board.

Broadly speaking, the proposed rules implement regulatory changes necessary to implement the new art and music therapy licenses. Other changes reflect refinements and updates to the rules that reflect changes and trends emerging in the regulated professions. Where possible, such as in changes to exam requirements and submission of supervision hours, the Board has sought to create efficiencies for licensees.

**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. However, the Board does expect to gain efficiencies in its review of training supervision hour submissions by requiring that the last supervisor who provides training supervision hours to submit the hours of training supervision. This will eliminate incorrect and duplicate entries, allowing staff to focus on application processing instead of reviewing and correcting supervision submissions.

**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? Not applicable.**

*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.*

Over 42,000 licensees and stakeholders were invited in on February 1, 2024, to submit comment. The Board conducted specific outreach to the NASW Ohio Chapter, the Ohio Counseling Association, The Ohio Council of Behavioral Health & Family Services Providers, the Buckeye Art Therapy Association, and the Association of Ohio Music Therapists.

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

Several commenters asked clarifying questions regarding the proposed regulations of art and music therapy. Questions centered on understanding the grandparenting provision for art therapist, questions about license titles, and comments regarding the scope of practice. Some commenters expressed concerns about clarified language regarding the receipt of gifts of nominal value. In response, the Board added language clarifying when and how such gifts could be accepted based on clinical considerations about client care. A couple of comments were received regarding the Board's proposal to eliminate limits on exam attempts and the elimination of remediation plans. Both changes were proposed based on reviewing requirements in other states and in consideration of eliminating a requirement that did not



appear to result in higher pass rates (remediation plans). Other comments were submitted regarding the proposed change to reporting supervision hours. Overall, most comments were resolved by explaining how the statutory change creating the art and music therapy licenses directs what the Board can incorporate in the rules.

**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 specific data was used in the developing the regulations. With respect to the new proposed rules regarding the art and music therapy licenses, the Board referred to existing rules in other states as well as the codes promulgated by relevant national associations.

**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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

No specific alternatives to the proposed rules were considered. 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, Marriage and Family Therapy, Art Therapy, and Music Therapy. The rules proposed pertain only to the five 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(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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

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

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Changes to the reporting of supervision hours will eliminate the requirement for multiple supervisors to submit supervision hours for dependent licensees seeking an independent license. This should result in a time savings for persons who provide training supervision. Additionally, the Board has eliminated a requirement to prepare a remediation plan. Eliminating this requirement will simplify the application process persons seeking a license by eliminating a requirement with limited utility.

- 17. 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 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**

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

No. These rules apply to individual licensees. Every attempt has been made to ensure the rules can be understood and targeted to specific public protection issues.

- 19. 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.

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

The rules apply to practice of the professions by individuals. The Board is available to consult with persons who must comply with the rules. Guidance and clarifications about the rules are issued by the Board to ensure that licensees or agencies/practices that employ licensees who must comply with the rules.