

**MEMORANDUM**

**TO:** Brian Carnahan, Counselor, Social Worker & Marriage and Family Therapist Board

**FROM:** Christopher Smyke, Regulatory Policy Advocate

**DATE:** May 15, 2018

**RE:** **CSI Review – 2018 Five Year Rule Review (OAC 4757-1-01, 4757-1-03, 4757-1-05, 4757-1-06, 4757-5-01, 4757-5-03 to 4757-5-09, 4757-5-13, 4757-9-02, 4757-11-03, 4757-11-04, 4757-13-04 to 4757-13-07, 4757-15-01, 4757-17-01, 4757-19-03, 4757-19-04, 4757-19-06 to 4757-19-08, 4757-21-01 to 4757-21-03, 4757-23-01, 4757-25-02, 4757-25-06, 4757-25-07, 4757-99-01)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of twenty-seven amended rules and eight no-change rules proposed by the Counselor, Social Worker & Marriage and Family Therapist Board (Board) for their statutorily-required five-year review. The rule package was submitted to the CSI Office on March 19, 2018 and comments were accepted through April 23, 2018. Four comments were received during the CSI review period.

The rule package contains rules governing all three professions licensed by the Board, including administrative provisions, code of ethics, continuing education, and administrative disciplinary actions for non-compliance. The rules also address requirements regarding licensing, scope of practice, and supervision for licensed counselors and social workers, as well as licensing of marriage and family therapists. On May 2, 2018 the Board contacted CSI staff and alerted them of several corrections to the draft rules, adding a fee for temporary permission to practice in Ohio Administrative Code (OAC) 4757-1-05 and stipulating that OAC 4757-5-06 is amended with

minor editorial changes. Both amendments were described in the BIA but inadvertently left out of the original draft rules.

Substantive changes to the amended rules include numerous revisions to address technology, including electronic notice of meetings, electronic service delivery, records storage, online verification of license endorsement, new informed consent requirements for electronic service delivery, and changing references of “letters” to “correspondence”. Amendments also address supervision requirements, allowing telephone-based supervision, adding independent marriage and family therapists as qualified supervisors for counselors and social workers, and require counselors under supervision to document the name of the supervisor. The rules also include minor changes to terminology, language clarification, statutory references, rescind unnecessary language, update references, and correct professional titles. Additions to the rules include authorizing Board staff to approve remediation plans and license applications, as well as the addition of fees for association approval status and temporary licenses. This package includes several rescissions, removing the requirement to biennially report the custodian of records, to apply for a temporary and permanent license simultaneously, the application audit, and the mandatory file review requirement.

Prior to filing with CSI, the Board presented the rules at two of its public meetings. No substantial stakeholder feedback was received during these meetings. Four comments were received during the CSI public comment period. Two commenters requested clarification of the new provision to exempt licensees from reporting unethical conduct by another licensee who is their client; the Board followed up with both commenters and answered their questions. The Board also received comment regarding the fee for association approval status and the timeline between the termination of a therapeutic relationship and engaging in a sexual relationship between a licensee and former client. The Board followed up with both commenters and addressed their concerns to their satisfaction.

The BIA identifies the impacted business community as individuals who hold a license issued by the Board, as well as individuals seeking licensure. The impacts on these individuals include administrative costs for licensure applications and transcript submission, as well as exam fees and background checks. The BIA notes that these requirements are written into statute, so the Board cannot directly affect most of these costs. Additionally, OAC 4757-5-13 may impose costs on licensees with regard to electronic service delivery. Although electronic service delivery is not mandatory, licensees who choose to offer the service must comply with federal standards with the appropriate equipment and software.

The BIA justifies the rules with the need to protect the public by ensuring that only authorized professionals practice counseling, social work, or marriage and family therapy. The Board notes that electronic service delivery is increasingly popular, and the service must be conducted safely in accordance with federal and information technology standards.

After reviewing the proposed rules, accompanying BIA, and the Board's response to comments, the CSI Office has determined that purpose of the rules is justified.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Board should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

CC: Emily Kaylor, Lt. Governor's Office