



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

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

Teletherapy and MFT Supervision Rules

Rule Number(s): 4757-5-13, 4757-29-01

Date of Submission for CSI Review: 2/11/2022

Public Comment Period End Date: 3/2/2022

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR?)

Amended/ 2 rules (FYR?)

Rescinded/ 0 rules (FYR?)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 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

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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.

Rule 4757-5-13 (Teletherapy) defines the requirements when providing services via teletherapy (also known as telehealth). The revisions to the rule establish in the permanent rule provisions adopted temporarily during the pandemic, to include waiving an initial face to face (video or in-person) license-client meeting and written consent. Additionally, the Rule is revised to mirror language included in HB 122 that directs licensees to follow state and federal privacy and confidentiality requirements. This change will ensure the rule can address the unique nature of providing services in a range of settings, including health care settings, and primary, secondary, and post-secondary education settings.

Rule 4757-29-01 (Marriage and family therapy supervision) defines how Marriage and Family Therapists must be supervised clinically and for training purposes. All MFTs must be supervised

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when diagnosing and treating mental and emotional disorders. Additionally, those MFTs who wish to practice independently, must work with an IMFT-S to earn hours of training supervision, which consists of group or individual sessions that develop the MFTs skills and abilities. The proposed change will allow up to 50 hours of supervised training hours earned under an LISW-S or LPCC-S to be applied toward the 200 hours of supervision required for licensure as an IMFT.

- 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.

The regulations do not implement a federal requirement.

- 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)?**

This rule defines how licensees of the Board may provide telehealth/teletherapy services to clients. Owing to the unique nature of such services, a specific rule is required to ensure the public is protected.

- 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.**

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Board has shared drafts of the rule revisions with stakeholders such as NASW Ohio Chapter, the Ohio Behavioral Health Council, Ohio Counseling Association, and the Ohio Association of Community Health Centers, among others. State agencies such as the Ohio Department of Medicaid and the Ohio Department of Mental Health and Addiction Services were asked to review the proposed teletherapy rule changes.

As noted in #10, licensees were provided an opportunity to comment on the proposed changes to Rule 4757-5-13.

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

In November 2021, licensees were notified of the Board's intent to revise rule 4757-5-13. The rule has been the subject of attention since March of 2020 owing to temporary changes to the Rule to address pandemic-related issues. For a period of approximately three years, the Board has had regular public discussions about how supervision is conducted. The MFT Professional Standards Committee is the only one of the three Professional Standards Committees to adopt a rule provision allowing cross-profession supervision. Based on these discussions, Rule 4757-29-01 has been under consideration for revision by the Board for a significant period.

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.

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?

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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 “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. Licensed persons who choose to provide teletherapy services may have to purchase software licenses or services to facilitate teletherapy. 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. Providing teletherapy is a business decision of the licensee and is not a requirement imposed by the Board.

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

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the rules constrain licensee behavior it is with respect to ethical behavior directly impacting clients and the public.

Changes to Rule 4757-29-01 should result in no costs or burdens for licensees. In fact, by allowing up to 50 hours of supervision to be earned from and LPCC-S or LISW-S, instead of only an IMFT-S, will result in cost savings for many MFTs as they are able to obtain this training supervision in their place of work rather than contracting with a supervisor outside of their workplace.

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.

The possible adverse impact cannot be quantified owing to the factors identified in 15.b.

Changes to Rule 4757-29-01 impose no costs.

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 because 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?

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The Board issues regular guidance regarding complying with the laws and rules regarding the practice of counseling, social work, and marriage and family therapy. Board staff are regularly available for consultation.

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