



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: CSWMFT Board

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

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

2020 Five Year Rule Review

Rule Number(s): 4757-1-02, 4757-1-07, 4757-1-08, 4757-3-02, 4757-5-02, 4757-5-10, 4757-6-01, 4757-6-02, 4757-7-02, 4757-11-02, 4757-13-03, 4757-25-01, 4757-25-04, 4757-25-05, 4757-27-01, 4757-29-01, 4757-31-01, 4757-31-02, 4757-31-03, 4757-31-04, 4757-31-05, 4757-99-01

Date of Submission for CSI Review: 3-10-2020

Public Comment Period End Date: 3-31-2020

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 11 rules (FYR? 11)

Amended/ 11 rules (FYR? 5)

Rescinded/ 0 rules (FYR? 0)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.

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

CSIPublicComments@governor.ohio.gov

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.

Below are summaries of the rules as well as a description of the proposed changes. Please note that in the interests of organizing the overall filing some rules are included below that may not require review.

4757-1-02 Notice of board meetings.

Defines the process for notifying members of the public and media about board meeting dates and times, including emergency meetings.

- Removes specific references to the postal mailing of notifications, replacing those references with general references to providing appropriate notice; focuses use of email as the primary means of contact and notice. This change acknowledges that most correspondence occurs via e-mail which matches how the Board manages communications with licensees.

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

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

CSIPublicComments@governor.ohio.gov

Describes when the Board may use a fine, and the amount of the fine, as part of disciplinary action. Examples include but are not limited to practicing without a valid license, failing to complete required continuing education units or respond to audit requests, or other instances where the professional standards committee thinks a fine will assist in resolving an issue.

- Revises wording to clarify with more permissive language that fines are among a range of options the Board may use when issuing discipline, but not a requirement when licenses commit certain offenses. This change aligns with how the Board has historically elected to use fines.

4757-1-08 Military provisions related to licensure for counselors, social workers and/or marriage and family therapists.

Defines the circumstances under which a license may be issued to a person on active duty or their spouse. The rule identifies comparable military job duties for the purposes of determining the appropriate license to issue.

- Revises the current rule to add requirements for the issuance of a temporary license as established in SB 7. The rule follows the outlines of the legislation. The Board is opting to issue the license for not more than six years. In addition to provisions in the legislation indicating when a temporary military license is no longer valid the rule further clarifies that if the active duty military member is reassigned to a duty station outside of Ohio, the temporary license will be invalid.

4757-3-02 Abbreviations and titles.

Defines approved abbreviations and titles for persons licensed by the Board; describes when and how the titles may be used.

- Removes the terms ISW and ISW-S. Neither abbreviation is commonly used. LISW and LISW-S are the acceptable abbreviations.
- Clarifies that Marriage and Family Therapists may not use the abbreviation LMFT or the title Licensed Marriage and Family Therapist as neither is included ORC 4757.

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

This rule addresses a range of ethical issues that relate to the appropriate practice of the profession including but not limited to confidentiality, competency, informed consent, and communications with clients. This rule establishes some of the basic constraints of the professional-client relationship.

- Amends the current language regarding non-discrimination to include additional potential biases based on, for example, housing status, political belief, or source of income. Aligned with the potential biases outlined in 4757-6-01.

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

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

CSIPublicComments@governor.ohio.gov

Establishes the requirement for licensees to report to the Board ethical violations committed by other licensed professionals or themselves. The rule identifies other Revised Code sections applicable to CSWMFT Board licensees. This rule is critical as it makes clear for licensees reporting responsibilities.

- Corrects an incorrect reference to another chapter of the Revised Code covering duty to report the abuse, neglect, or exploitation of an adult. The change will ensure licensees are referring to the correct reference when reviewing the rule for guidance.

4757-6-01 Reports prepared for court review including custody, visitation and guardianship concerns.

Defines licensee responsibilities toward clients when their role is mandated by a court, when the relationship between the licensee and client may be involuntary. Given the nature of custody and other court-based reports, it is important that licensees understand clearly how they can work within the court system as a licensee of the Board to ensure the rights of clients are not violated while meeting requirements imposed by the courts.

- Expands the biases licensees should consider when preparing reports for the courts. Aligned with the possible biases identified in 4757-5-02. Licensees engaged with work directed by the courts are often the subject of complaints owing to the unique nature of the work they are undertaking. Clarifying these biases helps to make licensees aware of potential issues while also protecting the public.

4757-6-02 Summary suspension.

Describes the process the Board must employ, as further defined in ORC Chapter 119, when it is deemed necessary to suspend a license prior to completing a full investigation. While rarely used, this rule establishes a process and provides the Board with authority to act when a licensee is threat to the public. Use of this rule strictly follows requirements in ORC Chapter 119, further ensuring the rule is not misapplied.

- No changes proposed.

4757-7-02 Practice with expired license or certificate of registration is prohibited.

Defines as a violation of ORC 4757 when persons continue to practice with a lapsed or expired license.

- No changes proposed.

4757-11-02 impaired practitioner rules.

Defines the types of impairments, for example drug or alcohol abuse, upon which the Board can investigate and discipline a licensee. This rule is critical to public protection because it gives the Board

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

CSIPublicComments@governor.ohio.gov

authority to act, for example to require an evaluation of a licensee's fitness to practice, when a practitioner is reasonably assumed to be impaired. Additionally, it establishes a process for the Board to work with licensees consider impaired so they may return to practice.

- Expands the definition of impairment to include the side effects of appropriate treatment for a medical condition or mental or emotional disorder when such side effects negatively impact the licensee's ability to work. For example, if a licensee is being treat for a condition and the treatment results in them not being able to work within the scope of practice, the Board could address the issue through an investigation and resulting action.

4757-13-03 Requirements for licensure as a licensed professional clinical counselor.

Defines the education, experience, and exam required for the issuance of an LPCC license. The requirements in the rule are like the standards for licensure in other U.S. jurisdictions.

- A reference to a discontinued form was removed.

4757-25-01 Education requirements for admission to the examination for marriage and family therapist.

Defines the accreditation and course work standards for marriage and family therapist applicants. These standards ensure that persons licensed as MFTs have a level of education appropriate to the scope of practice within which they can work with clients.

- Revised to align with current COAMFTE accreditation standards. The revisions should make it easier for applicants to apply and qualify for licensure. The review of applications will also be more efficient.

4757-25-04 Requirements for licensure as an independent marriage and family therapist

- No changes proposed.

4757-25-05 Temporary marriage and family therapist license

Defines the requirements for the issuance of temporary license. Temporary licenses are issued when a licensee has met all licensure requirements but has not yet been issued a final transcript verifying the qualifying degree has been awarded.

- No changes proposed.

4757-27-01 Scope of practice of a marriage and family therapist.

Defines what a marriage and family therapist may or may not do when providing services to a client(s). Without a scope rule, licensees may provide services beyond their training or ability.

- No changes proposed.

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

CSIPublicComments@governor.ohio.gov

4757-29-01 Marriage and family therapy supervision.

Outlines how marriage and family therapists must be supervised in general work settings as well as when working toward licensure as an Independent Marriage and Family Therapist. The rule also defines the role of the training supervisor.

- Allows Independent Marriage and Family Therapists with a supervision endorsement (IMFT-S) to meet the three-hour supervision continuing education requirement at renewal by demonstrating the IMFT-S has maintained their status as a American Association of Marriage and Family Therapy-approved supervisor.

4757-31-01 Definitions.

Rules 4757-31-01 through 4757-31-05 define how and when staff may access confidential personal information. These rules are necessary to protect the confidential personal information of licensees, applicants, and complainants.

- No changes proposed.

4757-31-02 Procedures for accessing confidential personal information.

- No changes proposed.

4757-31-03 Valid reasons for accessing confidential personal information.

- No changes proposed.

4757-31-04 Confidentiality statutes.

- No changes proposed.

4757-31-05 Restricting and logging access to confidential personal information in computerized personal information systems.

- No changes proposed.

4757-99-01 Independent rules.

Indicates that the rules are separate and that the invalidation of one rule does not result in the invalidation of all rules.

- No changes proposed.

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

CSIPublicComments@governor.ohio.gov

- 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 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, supervision, educational standards, notices to the public, scopes of practice, impairment, 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 with education standards ensure persons licensed are meet basic, nationally accepted standards for education in the profession. The changes proposed in this filing align Ohio's MFT education requirements with prevailing national standards and should make it simpler for persons educated outside of Ohio to qualify. Additionally, the rules have been revised to specify that supervisors have specific duties with regard to reporting violations of the laws and rules. 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?**

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

CSIPublicComments@governor.ohio.gov

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.

Licensees and stakeholders were notified on July 19, 2019 of the opportunity to comment on proposed rule changes. The ongoing rule review process was included in newsletters and other communications issued by the Board. Additionally, the rules were discussed during public Board meetings in May, July, September, and November 2019, as well as January 2020.

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

The Board has received a limited number of comments. Most comments received were questions seeking to understand to the proposed changes and not correspondence opposing the change or offering an alternative.

- 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.

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. Currently the Board is seeking only to make minor adjustments or no changes to existing rules. However, the Board is engaged in a strategic planning review of some of the rules, for example Rule 4757-29-01 may be modified and combined in the future with supervision rules for Counseling and Social Work after the Board completes an ongoing review of supervision as part of its strategic planning effort. This combination would expand supervision options.

- 12. 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?

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

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

CSIPublicComments@governor.ohio.gov

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 staff is available to consult with licensees who are subject to the rules. When issuing the rules, a summary of the changes is included to better help licensees easily identify changes. From time to time the Board provides ethics trainings which provide an opportunity for licensees to ask questions. Guidance is also issued in the Board's newsletter. Further, Board staff often consult with providers of trainings to help them provide the most up to date trainings.