



# Ohio Legislative Service Commission

## Final Analysis

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### Sub. H.B. 232

130th General Assembly  
(As Passed by the General Assembly)

**Reps.** Sears and Milkovich, Gonzales, Hackett, Stebelton, Smith, Johnson, DeVitis, Letson, Stinziano, Wachtmann, Cera, Pelanda, Stautberg, Barnes, Bishoff, Brown, Amstutz, Anielski, Beck, Buchy, Burkley, Damschroder, Green, Grossman, C. Hagan, McClain, Sears, Slaby, Batchelder

**Sens.** Brown, Burke, Eklund, Hite, LaRose, Lehner, Manning, Patton, Sawyer, Skindell, Smith, Tavares, Widener

**Effective date:** July 10, 2014

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## ACT SUMMARY

### Counselor titles

- Revises professional clinical counselor and professional counselor titles to *licensed* professional clinical counselor and *licensed* professional counselor.

### Licensing requirements

- Modifies licensing requirements for licensed professional clinical counselors, licensed professional counselors, independent social workers, and independent marriage and family therapists.
- Renames the provisional license that may be issued under certain circumstances to a licensed professional clinical counselor or licensed professional counselor as a temporary license, and adds a circumstance under which a temporary license may be issued to a licensed professional counselor for up to 90 days.
- Limits to 90 days the duration of a temporary social worker license under one of the circumstances for which a license may be granted, and modifies the requirements for a temporary license.
- Establishes a process whereby a person holding a license or certificate of registration issued by the Counselor, Social Worker, and Marriage and Family Therapist Board may have the license or certificate classified as inactive.

- Provides for voluntary registration of master's level counselor, social worker, and marriage and family therapy trainees enrolled in practice and internships.

### **Public employees**

- Generally prohibits an employee in the service of the state from engaging in the practice of professional counseling, social work, or marriage and family therapy without a license issued by the Board, unless on the act's effective date the employee has two years of service.
- Gives state employees practicing prior to the act's effective date who are not exempt two years to comply with the licensing requirement.
- Specifies that a vocational rehabilitation counselor or a caseworker not licensed as an independent social worker or social worker who is employed by a public children services agency is not required to be licensed or certified by the Board.

### **Counselor, Social Worker, and Marriage and Family Therapist Board**

- Revises the membership of the Board and specifies additional qualifications to be eligible to serve on the Board.
- Authorizes the Board to take disciplinary action against (1) a counselor trainee, social worker trainee, or marriage and family therapist trainee and (2) an individual or entity that has applied for or is registered to provide continuing education programs.
- Authorizes the appropriate professional standards committee of the Board to enter into a consent agreement in lieu of an adjudication.
- Authorizes the Board to impose discipline without a hearing if there is no timely request for a hearing.
- Modifies the confidentiality provisions that apply to records of Board investigations.
- Extends to all professionals licensed or registered by the Board an existing provision requiring a court to notify a professional licensing board if a person holding specified professional licenses has been convicted of or pleads guilty to certain drug offenses.

### **Professional conduct**

- Applies to independent marriage and family therapists and to marriage and family therapists the law governing circumstances under which a mental health provider



might be held liable for harm resulting from failing to predict, warn of, or take precautions against a client's violent behavior.

- Expands to all professionals licensed or registered by the Board requirements regarding reports of abuse or neglect that apply to other professionals regulated by the Board.
- Exempts professionals licensed by the Board from the duty to disclose privileged information between the professional and a client that is related to a felony or knowledge of death.
- Permits professionals licensed by the Board to provide services through certain business entities formed in combination with other health care professionals.

**Other provisions**

- Extends to athletic trainers, chemical dependency counselors, and alcohol and other drug prevention specialists qualified civil immunity when providing volunteer health care services.
- Includes additional health care professionals among those whose mental health services must be covered by certain health insurance policies.
- Includes reports of examinations conducted by independent marriage and family therapists and marriage and family therapists among the information that an entity placing a delinquent child in a foster home or for adoption must provide to foster caregivers or prospective adoptive parents.
- Eliminates a number of obsolete provisions and references.

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## CONTENT AND OPERATION

### Counselor titles

The act revises the title of a professional clinical counselor or professional counselor licensed under the Counselor, Social Worker, and Marriage and Family Therapist Law to *licensed* professional clinical counselor or *licensed* professional counselor throughout the Revised Code.<sup>1</sup>

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<sup>1</sup> R.C. 4757.02, 1701.03, 1705.03, 1705.04, 1705.53, 1785.01, 1785.02, 1785.03, 2152.72, 2305.234, 2305.51, 2317.02, 2921.22, 2925.01, 2951.041, 3107.014, 3701.046, 3701.74, 3709.161, 3721.21, 3793.02, 3923.28, 3923.281, 3923.282, 3923.30, 3963.01, 4723.16, 4725.33, 4729.161, 4731.226, 4731.65, 4732.28, 4734.17, 4734.41, 4755.471, 4757.02, 4757.03, 4757.04, 4757.11, 4757.16, 4757.21, 4757.22, 4757.23, 4757.26, 4757.30, 4757.31, 4757.34, 4757.36, 4757.37, 4757.41, 4757.43, 4758.40, 4758.41, 4758.561, 4758.59, 4758.61, and 4769.01.



## **Licensing requirements**

### **Licensed professional clinical counselors**

The act modifies two of the requirements that an applicant must meet to be eligible for a licensed professional clinical counselor license: the number and type of hours of graduate credit needed and what constitutes an accredited program for purposes of an applicant meeting graduate degree requirements.

#### **Graduate credit**

Regarding graduate credit in counselor training, the act requires an applicant to complete at least 90 quarter hours or 60 semester hours (rather than 90 quarter hours) of graduate credit in counselor training. It requires that an applicant's counselor training include instruction in areas currently specified in statute, but removes the requirement of at least 30 quarter hours of training in the specified areas.

#### **Graduate degree**

Under the act, to meet the requirement of a graduate degree from an accredited institution, a graduate degree in counseling obtained after January 1, 2018, from a mental health counseling program in Ohio must be from a clinical mental health counseling program, clinical rehabilitation counseling program, or addiction counseling program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP).<sup>2</sup>

#### **Counselor training**

The act provides that all of the following meet the requirement of continuing law that an applicant complete specified counselor training: (1) a clinical mental health counseling program accredited by CACREP, (2) until January 1, 2018, a mental health counseling program accredited by CACREP, (3) a graduate degree in counseling issued by an institution in another state from a clinical mental health counseling program, clinical rehabilitation counseling program, or an addiction counseling program accredited by CACREP, and (4) any other accredited counseling programs accepted by the Board in accordance with rules the Board adopts.<sup>3</sup>

#### **Rules**

Under the act, the Board must adopt rules to establish requirements for acceptance of accredited counseling programs by the Board's counselors professional

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<sup>2</sup> R.C. 4757.22(B).

<sup>3</sup> R.C. 4757.22(B).



standards committee. The Board also must adopt rules to establish course content requirements for qualifying counseling degrees issued by institutions in other states from clinical mental health counseling programs, clinical rehabilitation counseling programs, and addiction counseling programs that are not accredited by CACREP and for graduate degrees from other accredited counseling programs approved by the Board.<sup>4</sup>

### **Temporary license**

The bill continues the Board's authority to issue a license for a limited period to an applicant for a licensed professional clinical counselor license who meets the requirements for licensure other than the Board's receipt of the applicant's academic transcripts or the Board's determination of whether the applicant meets the requirements for a full license. The act renames the license a temporary license, instead of a provisional license.<sup>5</sup>

### **Licensed professional counselors**

#### **Graduate credit**

The act changes the graduate credit requirement for licensed professional counselors to either 90 quarter hours or 60 semester hours, rather than 90 quarter hours. The credit must include instruction in the following areas: (1) clinical psychopathology, personality, and abnormal behavior, (2) evaluation of mental and emotional disorders, (3) diagnosis of mental and emotional disorders, and (4) methods of prevention, intervention, and treatment of mental and emotional disorders. These are the same areas of instruction as those for which an applicant for a licensed professional clinical counselor license must receive training.<sup>6</sup>

#### **Graduate degree**

An applicant for a licensed professional counselor license must hold a graduate degree in counseling from an accredited educational institution. Under the act, to meet this requirement, a graduate degree in counseling obtained from a mental health counseling program in Ohio after January 1, 2018, must be from a clinical mental health counseling program, clinical rehabilitation counseling program, or an addiction counseling program accredited by CACREP.<sup>7</sup>

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<sup>4</sup> R.C. 4757.22(F).

<sup>5</sup> R.C. 4757.22(D).

<sup>6</sup> R.C. 4757.23(B).

<sup>7</sup> R.C. 4757.23(B).



## **Counselor training**

The act provides that all of the following meet the requirement that an applicant complete specified counselor training: (1) a clinical mental health counseling program accredited by CACREP, (2) until January 1, 2018, a mental health counseling program accredited by CACREP, (3) a graduate degree in counseling issued by an institution in another state from a clinical mental health counseling program, clinical rehabilitation counseling program, or an addiction counseling program accredited by CACREP, and (4) any other accredited counseling programs accepted by the Board in accordance with rules the Board adopts.<sup>8</sup>

## **Rules**

The act requires the Board to adopt rules that establish course content requirements for qualifying counseling degrees issued by institutions in other states from clinical mental health counseling programs, clinical rehabilitation counseling programs, and addiction counseling programs that are not accredited by CACREP and for graduate degrees from any other accredited counseling programs accepted by the Board. The Board must also adopt rules that establish requirements for acceptance of accredited counseling programs by the Board's counselors professional standards committee.<sup>9</sup>

## **Temporary license**

The bill continues the Board's authority to issue a license for a limited period to an applicant for a licensed professional counselor license if the applicant otherwise meets the requirements for licensure other than the Board's receipt of the applicant's academic transcripts or the Board's determination of whether the applicant meets the requirements for a full license. The act renames the license a temporary license, instead of a provisional license.<sup>10</sup>

The act also provides that a temporary license may be issued for up to 90 days to an applicant who provides a statement from the applicant's educational institution that the applicant has met the requirements for a degree and the date the applicant will receive a transcript. In this circumstance, the act provides that a temporary license may be renewed for good cause shown.<sup>11</sup>

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<sup>8</sup> R.C. 4757.23(B).

<sup>9</sup> R.C. 4757.23(F).

<sup>10</sup> R.C. 4757.23(D).

<sup>11</sup> R.C. 4757.23(D)(2).



## **Social workers**

The act adds "application of social work theory," to the definition of the "practice of social work," which is used to determine whether a person is subject to licensure as a social worker. It defines "social functioning," which is also included in the definition, as living up to the expectations that are made of an individual by the individual's own self, the immediate social environment, and by society at large, and includes meeting basic needs of the individual and the individual's dependents, including physical aspects, personal fulfillment, emotional needs, and an adequate self-concept.<sup>12</sup>

### **Independent social workers**

The act modifies the educational requirements an applicant must meet for an independent social worker license by requiring a master's degree in social work, rather than a master's or doctorate degree in social work. The master's degree in social work must be from an educational institution accredited by the Council on Social Work Education or an educational institution in candidacy for accreditation by the Council (rather than from an accredited educational institution).<sup>13</sup>

### **Temporary social worker license**

There are two circumstances under which continuing law permits the Board to issue a temporary social worker license. The first is when the Board is awaiting receipt of the applicant's academic transcripts or has not yet determined whether the applicant meets the requirements for a full license. The second is when the applicant has completed the educational requirements for licensure but is awaiting the actual awarding of the degree. Under the second circumstance, the act limits the duration of the temporary license to 90 days, but allows it, on application to the Board, to be renewed for good cause shown. The act requires the applicant under the second circumstance to submit a statement from the applicant's academic institution indicating, in addition to other information, the projected date that the applicant will receive a transcript showing a conferred degree. The statement no longer has to indicate whether the applicant is in good standing with the institution.<sup>14</sup>

## **Independent marriage and family therapists**

The act revises the training an applicant must have to be licensed as an independent marriage and family therapist. Rather than requiring two calendar years of

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<sup>12</sup> R.C. 4757.01(C) and (I).

<sup>13</sup> R.C. 4757.27(B)(2).

<sup>14</sup> R.C. 4757.28(C).



work experience in marriage and family therapy, the act requires two years of supervised training while engaged in the practice of marriage and family therapy.<sup>15</sup>

### **Inactive license or registration**

The act permits a person who holds a license issued by the Board or a certificate of registration as a social work assistant to apply to the Board to have the license or registration classified as inactive. The act specifies that this classification is not available to registered master's level counselor trainees, social worker trainees, marriage and family therapist trainees, or continuing education providers.

The Board is required to classify a license or registration as inactive if the license or registration is in good standing and the person who holds it meets any other requirements established in rules adopted by the Board under the act. The inactive classification becomes effective on the date immediately following the date that the license or registration is scheduled to expire. The Board may charge a fee for classifying a license or registration as inactive.

During the period that a license or registration is classified as inactive, the person who holds is prohibited from engaging in the practice of professional counseling, social work, or marriage and family therapy in Ohio or making any representation to the public indicating that the person is actively licensed or registered in Ohio.

The act specifies that the Board's jurisdiction to take disciplinary action pursuant to law governing professional counselors, social workers, marriage and family therapists, and social work assistants is not removed or limited when a license or registration is classified as inactive.

The act permits a person whose license or registration has been classified as inactive to apply to the Board to have the license or registration reactivated. The Board is required to reactivate the license or registration if the person meets the requirements established in rules adopted by the Board.

The act permits the Board to adopt rules as necessary for classifying a license or registration as inactive. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).<sup>16</sup>

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<sup>15</sup> R.C. 4757.30(C).

<sup>16</sup> R.C. 4757.321.



## **Voluntary registration of master's level trainees**

The act requires the Board to adopt rules for voluntary registration of (1) master's level counselor trainees enrolled in practice and internships, (2) master's level social worker trainees enrolled in fieldwork, practice, and internships, and (3) master's level marriage and family therapist trainees enrolled in practice and internships. The rules may not require that a trainee register with the Board and, if the trainee has not registered, the rules must prohibit any adverse effect regarding a trainee's application for licensure from the Board.<sup>17</sup>

## **Application review**

The act requires the professional standards committees of the Board to adopt rules under the Administrative Procedure Act concerning the process for review of each application received to determine whether the applicant meets the requirements for the license or certificate of registration applied for.<sup>18</sup>

## **State employees**

The act generally prohibits an employee in the service of the state, including an employee eligible for collective bargaining, from engaging in the practice of professional counseling, social work, or marriage and family therapy without a valid license issued by the Counselor, Social Worker, and Marriage and Family Therapist Board, unless the employee has two years of service on July 10, 2014 (the act's effective date). State employees who were practicing any of the above professions prior to that date and are not exempt must comply with the licensing requirement within two years after that date. An employee subject to the licensing requirement who fails to comply with it is to be removed from employment.<sup>19</sup>

The act provides that failure to comply with the licensing requirement constitutes nonfeasance or just cause under a collective bargaining agreement. If guilty of nonfeasance, an employee may, under continuing law, be reduced in pay or position, fined, suspended, or removed, or have the employee's longevity reduced or eliminated.<sup>20</sup> The act specifies that the licensing requirement does not restrict the Director of Administrative Services from developing new classifications related to the

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<sup>17</sup> R.C. 4757.10(G).

<sup>18</sup> R.C. 4757.16(B).

<sup>19</sup> R.C. 4757.41(A), (C), and (D).

<sup>20</sup> R.C. 124.34, not in the act.



licensing requirement or from reassigning an affected employee to an appropriate classification based on the employee's duties and qualifications.<sup>21</sup>

By October 8, 2014, the Office of Collective Bargaining in the Department of Administrative Services must negotiate with each state agency and the affected union to reach a mutually agreeable resolution for employees impacted by the act's changes. (See **COMMENT.**) Notwithstanding state job classification law or any other contrary provision of law, for state employees who are impacted by the changes, the Director of Administrative Services may implement any or all of the provisions of the resolutions negotiated under the act. The Office of Collective Bargaining must implement the act's changes by July 10, 2015.

Also by October 8, 2014, the Director must develop and assign new classifications as needed and reassign impacted employees to appropriate classifications based on their duties and qualifications.<sup>22</sup>

### **Exemption from licensure**

In addition to the professionals exempt from licensure under continuing law, the act exempts from the professional counseling, social work, and marriage and family therapy licensing law a vocational rehabilitation professional who (1) provides vocational rehabilitation counseling or services to handicapped individuals through the Opportunities for Ohioans with Disabilities Agency or (2) holds certification by the Commission on Rehabilitation Counselor Certification and is providing rehabilitation counseling services consistent with the Commission's standards. The act also exempts from licensure caseworkers not licensed as independent social workers or social workers who are employed by public children services agencies.<sup>23</sup> The act provides that nothing in the law governing professional counselors, social workers, and marriage and family therapists prevents a public children services agency from employing as a caseworker a person not licensed as an independent social worker or social worker.

### **Displaying license and fee schedule**

The act requires each individual who engages in the practice of professional counseling, social work, or marriage and family therapy to display prominently, in a conspicuous place in the office or place where a major portion of the individual's practice is conducted, and in such a manner as to be easily seen and read, the license granted the individual by the Board.

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<sup>21</sup> R.C. 4757.41(C).

<sup>22</sup> Section 3.

<sup>23</sup> R.C. 4757.41(A)(11) and (12), with a conforming change in R.C. 3107.014(A)(2)(f).



The act also requires a license holder engaged in a private individual practice, partnership, or group practice to display prominently the license holder's fee schedule in the office or place where a major portion of the holder's practice is conducted. The bottom of the first page of the fee schedule must include the following statement, which is to be followed by the name, address, and telephone number of the Board:

"This information is required by the Counselor, Social Worker, and Marriage and Family Therapist Board, which regulates the practices of professional counseling, social work, and marriage and family therapy in this state."<sup>24</sup>

The act eliminates a requirement under which a person who is licensed or registered by the Board may charge a client or receive remuneration for professional counseling, social work, or marriage and family therapy services only if the person posts a disclosure statement similar to the one described above or provides the disclosure statement to each client before providing services.<sup>25</sup>

## **Counselor, Social Worker, and Marriage and Family Therapist Board**

### **Members**

The act modifies the membership of the Counselor, Social Worker, and Marriage and Family Therapist Board, which consists of 15 members appointed by the Governor, with the advice and consent of the Senate. The membership must include professional clinical counselors or professional counselors, independent marriage and family therapists, marriage and family therapists, independent social workers, and social workers, as well as representatives of the general public.<sup>26</sup>

The act replaces a requirement that the counselor membership include at least two professional clinical counselors with a requirement that four Board members be licensed professional clinical counselors or licensed professional counselors.<sup>27</sup>

In place of former law's requirement that two members be independent marriage and family therapists and two members be marriage and family therapists, the act requires that four members be independent marriage and family therapists or marriage and family therapists. The act provides that at all times, the marriage and family therapist membership must include one educator who holds a teaching position in a

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<sup>24</sup> R.C. 4757.13.

<sup>25</sup> R.C. 4757.12, repealed by the act, with a conforming change in R.C. 4757.36(C)(4).

<sup>26</sup> R.C. 4757.03(A).

<sup>27</sup> R.C. 4757.03(A)(1).



master's degree marriage and family therapy program at an accredited educational institution recognized by the Board.<sup>28</sup>

The act requires that the counselor, social worker, and marriage and family therapist members be persons who, during the five years preceding appointment to the Board, have actively engaged in the practice of their respective professions. It requires the members who hold teaching positions to satisfy the practice requirement by educating and training master's, doctoral, or postdoctoral students of their respective professions, or by conducting research in their professions. Also, these members must, during the two years immediately preceding appointment, have devoted the majority of their professional time to the activity while residing in Ohio.<sup>29</sup>

The act also requires that at least three members, one from each professional standards committee, be persons who have practiced, during the five years preceding appointment, at a public agency or an organization certified or licensed by one of the following departments: Developmental Disabilities, Job and Family Services, Alcohol and Drug Addiction Services, or Mental Health (the last two are now one agency – the Department of Mental Health and Addiction Services).<sup>30</sup>

### **Term**

The act requires a Board member to hold the member's office until the member's successor takes office, rather than until the earlier of the date the member's successor takes office or 60 days have elapsed.<sup>31</sup>

### **Continuing education**

Continuing law requires the Board's professional standards committees to adopt rules establishing standards and procedures to be followed by the committees in conducting the continuing education approval process. The act requires the standards and procedures to include registering individuals and entities to provide continuing education programs approved by the Board.<sup>32</sup>

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<sup>28</sup> R.C. 4757.03(A)(2).

<sup>29</sup> R.C. 4757.03(B).

<sup>30</sup> R.C. 4757.03(C).

<sup>31</sup> R.C. 4757.03(G).

<sup>32</sup> R.C. 4757.33(A).



In addition to other fees the Board is currently authorized to establish and adjust, the act authorizes the Board to establish and adjust fees for late completion of counselor, social worker, or marriage and family therapy continuing education.<sup>33</sup>

### **Disciplinary action**

In addition to the professionals covered by continuing law, the act authorizes disciplinary action to be taken by the professional standards committees of the Board against (1) a counselor trainee, social worker trainee, or marriage and family therapist trainee and (2) an individual or entity that has applied for or is registered to provide continuing education programs.<sup>34</sup>

The appropriate professional standards committee is authorized, under continuing law, to take disciplinary action against a professional licensed or registered by the Board for a number of reasons, including suspension or revocation of the professional's license or registration by another state or jurisdiction for an offense that would violate Ohio laws governing that profession. The act authorizes the committee to take disciplinary action against a professional if any disciplinary action has been taken against the professional in another state or jurisdiction for an offense that would violate Ohio laws.<sup>35</sup>

### **Consent agreement**

The act allows, in lieu of an adjudication, the appropriate professional standards committee of the Board to enter into a consent agreement with an individual or entity to resolve an allegation of a violation of the Counselor, Social Worker, and Marriage and Family Therapist Law. A consent agreement, when ratified by the appropriate committee, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If a committee refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement are of no force or effect.<sup>36</sup>

### **Discipline without hearing**

The act provides that in any instance in which a professional standards committee of the Board is required by the Administrative Procedure Act to give notice of the opportunity for a hearing and the individual or entity subject to the notice does not timely request a hearing in accordance with that Act, the committee may adopt a

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<sup>33</sup> R.C. 4757.31(A)(10).

<sup>34</sup> R.C. 4757.36(A).

<sup>35</sup> R.C. 4757.36(C).

<sup>36</sup> R.C. 4757.36(D).



final order that contains the Board's findings. In that final order, the committee may order any of the sanctions it may order following a hearing.<sup>37</sup>

### **Confidentiality of investigation records**

Under the act, information received by the Board pursuant to a complaint or an investigation is confidential and not subject to discovery in any civil action. However, the Board may disclose information to law enforcement officers and government entities for purposes of an investigation of either an individual who holds a license or certificate of registration issued by the Board or an individual or entity that may have engaged in the unauthorized practice of professional counseling, social work, or marriage and family therapy. The act prohibits a law enforcement officer or government entity with knowledge of any information disclosed by the Board from divulging the information to any other person or government entity other than for the purpose of a government investigation, a prosecution, or an adjudication by a court or government entity. If an investigation requires a review of patient records, the investigation and proceeding must be conducted in such a manner as to protect patient confidentiality.

The act provides that all adjudications and investigations of the Board are civil actions for purposes of Ohio's Peer Review Committee Law, with the result that proceedings and records within the scope of a peer review committee of a health care entity are not subject to discovery or introduction in evidence in any Board adjudication or investigation.

Under the act, any Board activity that involves continued monitoring of an individual as part of or following any disciplinary action must be conducted in a manner that maintains the individual's confidentiality. Information received or maintained by the Board with respect to the Board's monitoring activities is not subject to discovery in any civil action and is confidential, except that the Board may disclose information to law enforcement officers and government entities for purposes of an investigation of an individual holding a license or certificate of registration issued by the Board.<sup>38</sup>

### **Board notification of drug offense conviction**

Continuing law requires a court to notify a professional licensing board if a person holding a specified professional license has been convicted of or pleads guilty to certain drug offenses. Of the persons licensed or registered by the Board, former law applied the notification requirement only to licensed professional clinical counselors,

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<sup>37</sup> R.C. 4757.36(E).

<sup>38</sup> R.C. 4757.38, by reference to R.C. 2305.252, not in the act.



licensed professional counselors, independent social workers, social workers, and social work assistants. The act extends the notification requirement to independent marriage and family therapists and marriage and family therapists.<sup>39</sup>

### **Potentially violent clients**

Continuing law provides that, only under certain circumstances, a mental health professional or mental health organization may be held liable in damages in a civil action, or may be subject to disciplinary action by a licensing or other regulatory authority, for serious physical harm or death resulting from failure to predict, warn of, or take precautions to provide protection from the violent behavior of a mental health client or patient. These circumstances may exist if the professional or organization receives information from a client or patient or a knowledgeable person about a threat of violence and fails to take one or more specified actions in a timely manner, including hospitalization, establishing a treatment plan, and contacting a law enforcement agency and any potential victims.<sup>40</sup>

The act expands the definition of "mental health service" by including marriage and family therapy, with the result that independent marriage and family therapists and marriage and family therapists may be subject to civil liability or disciplinary action only as described above.

### **Duty to report abuse or neglect**

Of the persons licensed or registered by the Board, former law required only licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, and social work assistants to report abuse or neglect of certain persons. The act extends the reporting requirements to independent marriage and family therapists and marriage and family therapists. Specifically, the act requires all professionals licensed or registered by the Board to do all of the following:

(1) Note in a patient's or client's records the professional's knowledge or belief that the patient or client has been a victim of domestic violence;

(2) Report the abuse, neglect, or misappropriation of property of a person residing in a nursing home or residential care facility;

(3) Report the abuse, neglect, or exploitation of an adult who is over age 60.<sup>41</sup>

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<sup>39</sup> R.C. 2925.01(W)(32).

<sup>40</sup> R.C. 2305.51.

<sup>41</sup> R.C. 2921.22, 3721.21, and 5101.61 and R.C. 3721.22, not in the act.



Continuing law requires social workers to report the abuse or neglect of a person with mental retardation or a developmental disability. The act extends this requirement to licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists.<sup>42</sup>

### **Privileged information**

In general, a person who fails to report information on a felony or who fails, on the request of a law enforcement officer, to provide information on the circumstances of a death is guilty of a second or fourth degree misdemeanor, depending upon the failure to report. The requirement that this information be disclosed, however, does not apply if the information was privileged, such as information provided under certain professional relationships, including attorney and client or doctor and patient.

The act makes information between a client and a licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist or marriage and family therapist privileged information for purposes of this requirement, exempting them from being required to disclose the information.<sup>43</sup>

### **Patient access to records and fees for copies**

Of the persons regulated by the Board, former law subjected only licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, and social work assistants to the laws governing a patient's access to the patient's records and the fees that may be charged for providing copies of the records to a patient, the patient's personal representative, or other person the patient authorizes. The act extends these laws governing patient access to records and copying fees to independent marriage and family therapists and marriage and family therapists.<sup>44</sup>

The act expands an exception to a patient's access to his or her records that under former law applied only to a physician or chiropractor. Under the act, a psychologist, licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist (in addition to a physician or chiropractor) who has treated a patient and determines that disclosure of a record is likely to have an adverse affect on

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<sup>42</sup> R.C. 5123.61.

<sup>43</sup> R.C. 2921.22.

<sup>44</sup> R.C. 3701.74(A) and 3701.741, not in the act.



the patient must provide the record to a person designated by the patient who is a physician, psychologist, licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, marriage and family therapist, or chiropractor.<sup>45</sup>

### **Adoption assessor**

Under continuing law, a person seeking to adopt a minor, other than an adoption of a foster child by the child's foster caregiver, must complete a home study for the purpose of determining whether the person is suitable to adopt. The report must contain the opinion of an assessor as to whether the person is suitable to adopt, and other information and documents specified in rules adopted by the Director of Job and Family Services.

The act permits an employee of a court or public children services agency who is employed to conduct the duties of an assessor to act as an adoption assessor. Under continuing law, to be an adoption assessor an individual must be employed by, appointed by, or under contract with a court, public children services agency, private child placing agency, or private noncustodial agency and complete training in courses on adoption placement practice, federal and state adoption assistance programs, and post adoption support services.<sup>46</sup>

### **Combined businesses**

The act permits the professionals licensed by the Board to provide services through a corporation, limited liability company, partnership, or professional association that is formed for the purpose of providing services in combination with optometrists, psychologists, chiropractors, nurses, pharmacists, physical therapists, occupational therapists, mechanotherapists, physicians, or podiatrists. The act also clarifies that occupational therapists may form these business entities as well.<sup>47</sup>

### **Civil immunity for volunteer health care professionals**

Continuing law grants immunity in a tort or other civil action to a health care professional who volunteers to provide free health care services to an indigent and

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<sup>45</sup> R.C. 3701.74(B).

<sup>46</sup> R.C. 3107.014, 3107.031, and 3107.33, not in the act.

<sup>47</sup> R.C. 4757.37, 1701.03, 1705.03, 1705.04, 1705.53, 1785.01, 1785.02, 1785.03, 4723.16, 4725.33, 4729.161, 4731.226, 4731.65, 4732.28, 4734.17, 4755.111, and 4755.471.

uninsured person, unless an action or omission constitutes willful or wanton misconduct. The act extends this qualified immunity to the following:<sup>48</sup>

(1) An athletic trainer licensed by the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board;

(2) An individual licensed or certified by the Chemical Dependency Professionals Board who is acting within the scope of the individual's license or certificate as a member of the profession of chemical dependency counseling or alcohol and other drug prevention services. The categories in which the Board licenses or certifies these professionals include independent chemical dependency counselor - clinical supervisor, independent chemical dependency counselor, chemical dependency counselor III, chemical dependency counselor II, chemical dependency counselor assistant, prevention specialist II, prevention specialist I, and prevention specialist assistant.

The qualified immunity previously applied to independent chemical dependency counselors, chemical dependency counselors III, and chemical dependency counselors II, but without the act's provision limiting it to individuals acting within the scope of their licenses.

### **Insurance coverage of mental health and alcoholism services**

The act adds additional health care professionals to those whose mental health services must be covered by certain health insurance policies. Continuing law requires the following:

(1) Every policy of group sickness and accident insurance providing coverage for mental or emotional disorders must provide benefits for services on an outpatient basis for mental or emotional disorders that are performed by a specified health professional;<sup>49</sup>

(2) Every policy of sickness and accident insurance and plan of health coverage must provide benefits for the diagnosis and treatment of biologically based mental illnesses on the same terms and conditions as those provided for the treatment and diagnosis of other physical diseases if the biologically based mental illness is clinically diagnosed by a specified health professional;<sup>50</sup>

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<sup>48</sup> R.C. 2305.234(A)(5).

<sup>49</sup> R.C. 3923.28(A).

<sup>50</sup> R.C. 3923.281(B) and 3923.282(B).



(3) Every person, the state, and any other political subdivision that provides payment for health care benefits for any of its employees, which benefits are not provided by contract with an insuring corporation, and whose plan of health care benefits provides payment for the treatment of mental or nervous disorders must provide benefits for services for mental or emotional disorders that are performed by a specified health professional.<sup>51</sup>

The health care professionals added by the act are independent marriage and family therapists and certified nurse practitioners. For the services that must be covered by an entity that does not contract with an insuring corporation, independent chemical dependency counselors are included and the services may be performed in an alcoholism treatment facility.

Similarly, continuing law requires every policy of group sickness and accident insurance to provide outpatient, inpatient, and intermediate primary care benefits for alcoholism if those services are performed by a specified health professional. The act adds licensed professional clinical counselors, licensed professional counselors, independent social workers, independent marriage and family therapists, independent chemical dependency counselors, clinical nurse specialists, and certified nurse practitioners to those whose services must be covered.<sup>52</sup>

### **Information to be provided to foster caregivers or adoptive parents**

Continuing law requires an entity placing a delinquent child in a foster home or for adoption to provide foster caregivers or prospective adoptive parents with specified background information about the child, including a report of a psychiatric or psychological examination conducted on the child by a licensed professional clinical counselor, licensed professional counselor, independent social worker, or a social worker. The act includes reports of examinations conducted on the child by independent marriage and family therapists and marriage and family therapists in the information that must be provided to foster caregivers or prospective adoptive parents.<sup>53</sup>

### **Obsolete provisions**

The act eliminates several outdated or obsolete provisions. It removes: (1) references to counselor assistant certificates of registration, which are no longer issued,<sup>54</sup>

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<sup>51</sup> R.C. 3923.30.

<sup>52</sup> R.C. 3923.29(A).

<sup>53</sup> R.C. 2152.72(B)(1)(d).

<sup>54</sup> R.C. 4757.29(B) and (C).



(2) a requirement that at least two of the counselor members of the Board have master's degrees, as all counselors must have at least a master's degree to obtain a license,<sup>55</sup> and (3) additional outdated language.<sup>56</sup>

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## COMMENT

The intent of the requirement that the Office of Collective Bargaining in the Department of Administrative Services implement changes concerning licensure of state employees<sup>57</sup> appears to be to have the act prevail over conflicting existing collective bargaining agreements, although that is not entirely clear. It is also unclear as to the effect of the Office and a union failing to reach an agreement, as Ohio's public employees' collective bargaining law does not require parties to agree to a particular issue. That law also states that, unless otherwise specified by the General Assembly, a collective bargaining agreement prevails over a conflicting statute or ordinance.

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## HISTORY

ACTION	DATE
Introduced	07-17-13
Reported, H. Health & Aging	10-17-13
Passed House (74-23)	11-06-13
Reported, S. Medicaid, Health & Human Services	04-02-14
Passed Senate (31-0)	04-02-14
House concurred in Senate amendments (87-2)	04-02-14

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<sup>55</sup> R.C. 4757.03(A)(1).

<sup>56</sup> R.C. 3923.28(A)(2), 3923.29(A)(3), 3923.30(A)(1)(e), 4757.03(A) and (E), 4757.28(B), and 4757.33.

<sup>57</sup> Section 3.

