# Ohio Legislative Service Commission

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# Fiscal Note & Local Impact Statement

**Bill**: Am. Sub. H.B. 232 of the 130th G.A. **Date**: November 15, 2013

**Status**: As Passed by the House **Sponsor**: Reps. Sears and Milkovich

**Local Impact Statement Procedure Required**: No

**Contents**: Modifies the laws governing professional counselors, social workers, and marriage and family therapists

## State Fiscal Highlights

- The bill generally prohibits an employee in the service of the state, including public employees 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 state Counselor, Social Worker, and Marriage and Family Therapist (CSWMFT) Board. If these individuals choose to become licensed, the CSWMFT Board could realize a gain in licensing revenue and a corresponding increase in costs to process these additional licenses. Fee revenues collected by the Board are deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90).
- The bill allows a licensee or registrant to apply to the CSWMFT Board to have the license or registration placed into inactive status if the licensee or registrant is in good standing. The bill allows the CSWMFT Board to charge a fee for classifying a license or registration as inactive. The CSWMFT Board would realize a gain in fee revenue if a licensee elects to move their license to inactive status instead of allowing their license to lapse. Fee revenues collected by the Board are deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90). The CSWMFT Board would also realize an increase in administrative costs to implement the new license classification.
- The bill eliminates a requirement that a person who is licensed or registered 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 or provides a disclosure statement to each client before providing services. This provision would reduce administrative costs to state agencies and local governments that provide counseling, social work, or marriage and family therapy services.

- The bill allows, in lieu of an adjudication, the appropriate professional standards committee 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. As a result, there could be a reduction in costs related to disciplinary action if consent agreements are utilized in lieu of adjudication.
- The bill authorizes the CSWMFT Board to establish and adjust fees for late completion of counselor, social worker, or marriage and family therapy continuing education. This provision could result in additional revenue to the CSWMFT Board. Fee revenues collected by the Board are deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90).
- The bill extends current laws governing patient access to records and copying fees to independent marriage and family therapists and marriage and family therapists. This provision could result in a minimal gain in revenue and minimal increase in costs to state agencies if they employ marriage and family therapists.

## Local Fiscal Highlights

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# Detailed Fiscal Analysis

## License requirements

### Professional clinical counselors

The bill revises the number and type of hours of graduate credit in counselor training that must be completed and requires the Counselor, Social Worker, and Marriage and Family Therapist Board (CSWMFT Board) to adopt rules regarding accrediting organizations that will be accepted by the CSWMFT Board for purposes of an applicant meeting educational requirements. The CSWMFT Board could incur a minimal increase in costs to adopt these rules.

#### Accrediting organizations

Current law provides that to be eligible for a professional clinical counselor license, an individual must hold a graduate degree in counseling from an accredited educational institution. The bill requires the CSWMFT Board to adopt rules that do all of the following:

1. Requires that a graduate degree in counseling obtained after January 1, 2018, from a clinical mental health counseling program, clinical rehabilitation counseling program, or addiction counseling program be from an institution accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) in clinical mental health counseling, clinical rehabilitation counseling, or addiction counseling;
2. Stipulates that any in-state or out-of-state CACREP accredited programs in clinical mental health counseling and, until January 1, 2018, mental health counseling, clinical rehabilitation counseling, or addiction counseling and any other accredited counseling programs approved by the CSWMFT Board by rule are deemed to have met the requirement that an individual complete at least 90 quarter hours or 60 semester hours of graduate credit in counselor training;
3. Establishes course content requirements for qualifying counseling degrees from in-state and out-of-state clinical mental health counseling programs, clinical rehabilitation counseling programs, and addiction counseling programs that are not CACREP accredited clinical mental health, clinical rehabilitation, or addiction counseling programs and for graduate degrees accredited by other counseling accreditation programs recognized by the CSWMFT Board.

The CSWMFT Board could incur a minimal increase in costs to adopt these rules.

### Professional counselors

The bill revises the number and type of hours of graduate credit in counselor training that must be completed by an applicant and requires the CSWMFT Board to adopt rules regarding accrediting organizations that will be accepted by the CSWMFT Board for purposes of an applicant meeting educational requirements. The CSWMFT Board could incur a minimal increase in costs to adopt these rules.

#### Accrediting organizations

Current law provides that to be eligible for a professional counselor license, an individual must hold a graduate degree in counseling from an accredited educational institution. The bill requires the CSWMFT Board to adopt rules that do all of the following:

1. Requires that a graduate degree in counseling obtained after January 1, 2018, from an Ohio mental health counseling program, clinical rehabilitation counseling program, or addiction counseling program be from an institution accredited by CACREP and other CACREP accredited programs approved by the CSWMFT Board by rule;
2. Establishes that, until January 1, 2018, individuals that have graduate degrees in clinical mental health counseling, clinical rehabilitation counseling, or addiction counseling from a CACREP accredited program, a mental health counseling program accredited by CACREP, or any other accredited counseling programs accepted by the CSWMFT Board in rule are deemed to have met the requirement that an individual complete at least 90 quarter hours or 60 semester hours of graduate credit in counselor training;
3. Establishes course content requirements for qualifying counseling degrees from out-of-state clinical mental health counseling, clinical rehabilitation counseling, or addiction counseling programs that are not CACREP accredited programs, and for graduate degrees from any other in-state or out-of-state institution accredited by other counseling accreditation programs recognized by the CSWMFT Board.

The bill also requires the CSWMFT Board to adopt rules regarding criteria for the professional standards committees to use in determining whether an applicant's supervised experience should be approved. The CSWMFT Board could incur a minimal increase in costs to adopt these rules.

### Independent social workers

The bill requires an independent social worker license applicant hold a master's degree in social work from an educational institution accredited by or in candidacy for accreditation by the Council on Social Work Education, replacing the requirement that an applicant hold a master's or doctorate degree in social work from an accredited

educational institution. According to a spokesman for the CSWMFT Board, the bill clarifies what currently exists in rule; therefore, there would be no fiscal effect.

### Temporary counselor licenses

The bill changes the names of the provisional professional clinical counselor license and the provisional professional counselor license to the temporary professional clinical counselor license and the temporary professional counselor license, respectively. In addition, the bill limits the duration of the temporary professional counselor license to 90 days, but allows the temporary license, upon application to the CSWMFT Board, to be renewed for good cause shown. The bill also requires that the statement from an applicant's academic institution required for a temporary professional counselor license state the projected date the applicant will receive the applicant's transcript showing a conferred degree. This provision could result in a negligible increase in administrative costs to the CSWMFT Board to process the statement from an applicant's academic institution.

### Temporary social worker license

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### Voluntary registration of master's level trainees

The bill requires the CSWMFT Board to adopt rules for voluntary registration of (1) master's level counseling 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 and therapy trainees enrolled in practice and internships. According to a spokesman for the CSWMFT Board, these rules already exist for counseling and social worker trainees. There could be a negligible increase in administrative costs to implement this provision for marriage and family therapists.

### Independent marriage and family therapists

The bill requires an applicant seeking an independent marriage and family therapist license to have two years of supervised training while engaged in the practice of marriage and family therapy, replacing the requirement of two calendar years of work experience in marriage and family therapy. According to a spokesman for the CSWMFT Board, the bill clarifies what currently exists in rule; therefore, there would be no fiscal effect.

### Exemptions from licensing requirements

The bill exempts vocational rehabilitation professionals providing vocational rehabilitation counseling or services to handicapped individuals from the requirement to be licensed to practice counseling, social work, or marriage and family therapy. In addition, the bill exempts a vocational rehabilitation professional who has a national rehabilitation counseling certification granted by the Commission on Rehabilitation Counselor Certification and is providing rehabilitation counseling services consistent with the Commission's standards and a nonlicensed caseworker employed by a public children services agency from the same licensing requirements. The bill also stipulates that nothing in the law shall be construed to prevent public children services agencies from employing as a caseworker a person not licensed as an independent social worker or social worker. According to a spokesman for the CSWMFT Board, these changes codify existing practice; therefore, there would be no fiscal effect.

## State employees practicing professional counseling, social work, or marriage and family therapy

The bill generally prohibits an employee in the service of the state, including public employees 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 CSWMFT Board unless the employee has at least two years of service on the bill's effective date. State employees who were practicing any of the above professions prior to the bill's effective date and are not exempt must comply with the licensing requirement within two years after its effective date. Any employee who fails to comply with the licensing requirement is to be removed from employment.

The bill 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 current law, be reduced in pay or position; fined, suspended, or removed; or have the employee's longevity reduced or eliminated. The bill specifies that the licensing requirement does not restrict the Director of the Department of Administrative Services (DAS) from developing new classifications related to the licensing requirement or from reassigning an affected employee to appropriate classifications based on the employee's duties and qualifications.

Within one year after the bill's effective date, the Office of Collective Bargaining in DAS is required to implement the changes made by the bill. Within 90 days after the bill's effective date, the Office of Collective Bargaining must negotiate with each state agency and the affected union to reach a mutually agreeable resolution for employees impacted by the changes. Notwithstanding state job classification law or any other contrary provision of law, for state employees who are impacted by the changes, the Director of DAS may implement any or all of the provisions of the resolutions.

The bill also requires, within 90 days, the Director of DAS to develop and assign new classifications as needed and reassign impacted employees to appropriate classifications based on the employee's duties and qualifications.

DAS will incur an increase in costs related to negotiations with each affected state agency and union and for developing and assigning new classifications as needed. If the state employees affected by this provision choose to become licensed, the CSWMFT Board could realize a gain in licensing revenue and a corresponding increase in costs to process these additional licenses.

### Displaying license and fee schedule

The bill requires each individual who engages in the practice of counseling, social work, or marriage and family therapy to prominently display, 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 to the individual by the CSWMFT Board. The bill also requires a license holder engaged in a private individual practice, partnership, or group practice to prominently display the license holder's fee schedule in the office or place where a major portion of the holder's practice is conducted. There could be a negligible fiscal impact on state agencies or local governments with employees practicing professional counseling, social work, or marriage and family therapy if the agencies are required to display the fee schedules.

In addition, the bill eliminates a requirement that a person who is licensed or registered 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 or provides a disclosure statement to each client before providing services. According to a spokesman for the CSWMFT Board, state agencies and local governments that employ counselors, social workers, and marriage and family therapists will no longer have to provide a large disclosure statement to patients. Therefore, this provision would reduce administrative costs to those state agencies and local governments.

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

### Inactive license classification

The bill allows a licensee or registrant to apply to the CSWMFT Board to have the license or registration placed into inactive status if the licensee or registrant is in good standing. The bill allows the CSWMFT Board to charge a fee for classifying a license or registration as inactive. The bill also requires the CSWMFT Board to adopt rules as necessary for classifying a license or registration as inactive and the procedure for reactivating an inactive license. The CSWMFT Board would realize a gain in fee revenue if a licensee elects to move their license to inactive status instead of allowing their license to lapse. Fee revenues collected by the Board are deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90). The CSWMFT Board would also realize an increase in administrative costs to implement the new license classification and to adopt rules.

### Members

The bill modifies the membership of the CSWMFT Board. In addition, the bill requires a board member to hold their seat until their successor takes office. Current law requires a member to remain in their seat until the earlier of the date the member's successor takes office or until 60 days have elapsed. This provision could increase the CSWMFT Board's costs if a board member continues to hold their seat and be reimbursed for their costs beyond what is currently required by law.

### Application review and continuing education

The bill requires the professional standards committees of the CSWMFT Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) concerning the process for reviewing an application to determine whether the applicant meets the eligibility requirements for any license or registration issued by the CSWMFT Board.

Current law requires the CSWMFT 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 bill specifies that the standards and procedures must include registering individuals and entities to provide approved continuing education programs. According to a spokesman for the CSWMFT Board, this could potentially result in additional hearings, which would increase hearing costs. The CSWMFT Board could also incur a minimal increase in costs to adopt or amend rules.

### Disciplinary action

In addition to the professionals covered by current law, the bill authorizes disciplinary action to be taken by the professional standards committees of the CSWMFT 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 courses or programs. The bill also authorizes the appropriate professional standards committee to take disciplinary action against a professional if disciplinary action has been taken against the professional in another state or jurisdiction for an offense that would violate those laws. As a result, the CSWMFT Board could incur costs related to additional disciplinary action.

#### Consent agreement

The bill allows, in lieu of an adjudication, the appropriate professional standards committee 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. There could be a reduction in costs related to disciplinary action if consent agreements are utilized in lieu of adjudication.

#### Discipline without hearing

The bill allows the CSWMFT Board to adopt a final order that contains the CSWMFT Board's findings for disciplinary action if the CSWMFT Board provides notice of the opportunity of a hearing as required by Ohio's Administrative Procedure Act and the individual or entity subject to the notice does not timely request a hearing in accordance with that Act. There could be a reduction in hearing costs if fewer hearings occur.

#### Confidentiality of investigation records

The bill requires that information received by the CSWMFT Board pursuant to a complaint or an investigation is not subject to discovery in any civil action. However, the CSWMFT 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 under the Counselor, Social Worker, and Marriage and Family Therapist Law or an individual or entity that may have engaged in the unauthorized practice of professional counseling, social work, or marriage and family therapy. There could be a negligible increase in administrative costs to provide the records to law enforcement or other entities.

#### Threats

The bill expressly provides that an independent marriage and family therapist or a marriage and family therapist and their employing organization is potentially subject to civil liability or disciplinary action 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 *only* under specified circumstances. The provision has no fiscal effect because, under existing law, the same potential liability applies to any regulated mental health professional who provides mental health services.

#### Notification of drug offense conviction

The bill adds independent marriage and family therapists and marriage and family therapists to an existing provision requiring a court to notify a professional licensing board if a person holding specified professional licenses has been convicted or pleads guilty to certain drug offenses. This provision could result in an increase in notifications from the courts to the CSWMFT Board. As a result, there could be a negligible increase in administrative costs to courts that send notices to the CSWMFT Board. In addition, the CSWMFT Board could experience an increase in costs related to examining the notifications from the courts and disciplinary actions the CSWMFT Board elects to take against the individual.

### Fees

In addition to other fees the CSWMFT Board is currently authorized to establish and adjust, the bill authorizes the CSWMFT Board to establish and adjust fees for late completion of counselor, social worker, or marriage and family therapy continuing

education. This provision could result in additional revenue to the CSWMFT Board. Fee revenues collected by the Board are deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90).

### Civil immunity for volunteers

Current law grants immunity in a tort or other civil action to a health care professional who volunteers to provide health care services to an indigent and uninsured person, unless the action or omission constitutes willful or wanton misconduct. By expanding the definition of "health care professional" the bill extends this qualified immunity to individuals licensed or certified to provide chemical dependency counseling or alcohol and other drug prevention services who are acting within the scope of their license or certificate as members of chemical dependency counseling or alcohol and other drug prevention services. The bill also extends this qualified immunity to licensed athletic trainers.

This provision could reduce liability for any state or local government employee who is an athletic trainer, counselor, social worker, marriage and family therapist, psychologist, or individual licensed or certified to provide chemical dependency counseling or alcohol and other drug prevention services who volunteers to provide health care services to an indigent and uninsured person, unless the action or omission by the employee constitutes willful or wanton misconduct.

### Duty to report abuse or neglect

Of the persons currently licensed or registered by the CSWMFT Board, only professional clinical counselors, professional counselors, independent social workers, social workers, and social work assistants are required to report abuse or neglect of certain persons. The bill extends the reporting requirements to independent marriage and family therapists and marriage and family therapists. Specifically, the bill requires all professionals licensed or registered by the CSWMFT 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 or neglect of an adult who is over age 60.

Current law requires social workers to report the abuse or neglect of a person with mental retardation or a developmental disability. The bill extends this requirement to professional counselors and marriage and family therapists. This provision could minimally increase costs for state and local governments that employ professional counselors and marriage and family therapists. This provision could also increase the investigation costs for state and local law enforcement agencies that receive additional cases.

## Patient access to records and fees for copies

Of the persons currently regulated by the CSWMFT Board, only professional clinical counselors, professional counselors, independent social workers, social workers, and social work assistants are subject to the laws governing a patient's access to his or her 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 bill extends these laws governing patient access to records and copying fees to independent marriage and family therapists and marriage and family therapists. This provision could result in a minimal gain in revenue and minimal increase in costs to state and local governments if they employ marriage and family therapists.

## Adoption assessor

The bill clarifies that professional counselors who can serve as adoption assessors include licensed professional clinical counselors, independent social workers, and independent marriage and family therapists. The bill also 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. According to a spokesman for the CSWMFT Board, this provision has no fiscal effect.

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