

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Professional Licensing

Name of person filling out RIS:

Weston MacIntosh

Phone number of person filling out RIS:

517-241-9269

E-mail of person filling out RIS:

MacIntoshW1@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2020-33 LR

Title of proposed rule set:

Counseling - General Rules

Comparison of Rule(s) to Federal/State/Association Standard:

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association. The Council for Accreditation of Counseling and Related Educational Programs (CACREP) accredits master's and doctoral degree programs in counseling. The rules adopt CACREP's accreditation standards.

A. Are these rules required by state law or federal mandate?

The rules must be promulgated under state law, including MCL 333.16141, 333.16145, 333.16148, 333.16201, 333.18101, 333.18106, 333.18107, and 333.18111, as well as Executive Reorganization Nos. 1991-9, 1996-2, 2003-1, 2008-4, and 2011-4, MCL 338.3501, 445.2001, 445.2011, 445.2025, and 445.2030.

No federal mandate demands the rules.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules do not exceed a federal standard or law.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

Licensure of counselors is necessary in Michigan under MCL 333.18105. The rules specify the conditions and requirements for education, training, licensure, renewal, and supervision.

All 7 of the other Great Lakes states have rules regulating the licensure of counselors, as listed below:

- Illinois – Applicants for licensure must hold at least a masters-level counseling, rehabilitation counseling, or psychology degree from an accredited school, take part in at least two years of supervised experience, and pass either the National Counselor Examination (NCE) of the National Board for Certified Counselors (NBCC), the Certified Rehabilitation Counselor Examination of the Commission on Rehabilitation Counselor Certification (CRCC), the National Clinical Mental Health Counseling Examination (NCMHCE), or the Examination of Clinical Counselor Practice (ECCP) examination prior to obtaining full licensure.
- Indiana – Applicants for licensure must hold at least a masters-level mental health counseling degree from an accredited school, take part in at least 3,000 hours of supervised experience, and pass the NCMHCE examination prior to obtaining full licensure.
- Minnesota – Applicants for licensure must hold at least a masters-level counseling degree from an accredited school, take part in at least 2,000 hours of supervised experience, and pass the NCE examination prior to obtaining full licensure.
- New York – Applicants for licensure must hold at least a masters-level counseling degree from an accredited school, take part in at least 3,000 hours of supervised experience, and pass the NCMHCE examination prior to obtaining full licensure.
- Ohio – Applicants for licensure must hold at least a masters-level clinical mental health counseling, clinical rehabilitation counseling, or addiction counseling degree from an accredited school, take part in at least two years of supervised experience, and pass the NCMHCE examination prior to obtaining full licensure.
- Pennsylvania – Applicants for licensure must hold at least a masters-level professional counseling degree from an accredited school, take part in at least 3,000 hours of supervised experience, and pass the NCE examination prior to obtaining full licensure.
- Wisconsin – Applicants for licensure must hold at least a masters-level professional counseling degree from an accredited school, take part in at least 3,000 hours of supervised experience, and pass either the NCE, NCMHCE, or the CRCC prior to obtaining full licensure.

When compared to other Great Lakes states, Michigan's licensure requirements for counselors is like other Great Lakes states.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

Statute demands promulgation of rules related to licensure. The rules do not exceed the licensing requirements of other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no federal regulations for counselors. There are no laws, rules, or other legal requirements that duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

Review of applicable statutory law avoided unnecessary duplication in the rules.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

No federal mandate demands the rules.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rules or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

No federal mandate demands the rules.

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

Statutory changes occurred to the practice of counseling in Michigan under recently enacted PA 96 of 2019. The specific topics that the proposed rules address, and the purpose of the proposed rules is set forth below:

R 338.1751. This rule pertains to definitions. It sets forth an explanation of specific terms used throughout the rule set. It clarifies definitions and the meaning of terms used in the rules.

Below shows rescission and replacement of R 338.1751a, R 338.1752, R 338.1752a, R 338.1753, R 338.1753a, R 338.1753b, R 338.1754, and R 338.1757, with changes noted. Rescission and replacement of the rules are necessary to organize them into a logical sequence and to separate them in to relevant and related parts. R 338.1753c, which pertains to relicensure of licensed professional counselors, and R 338.1755, which pertains to relicensure of limited license professional counselors, were both replaced by recently enacted MCL 333.18114.

R 338.1761. This rule replaces R 338.1753a and pertains to accreditation standards of higher education institutions. It sets forth the requirements for higher education institution accreditation. This rule includes updated higher institution educational program accreditation standards.

R 338.1763. This rule replaces parts of R 338.1753 and pertains to accreditation standards of counselor education programs. It sets forth the requirements for the Council for Accreditation of Counseling and Related Educational Programs (CACREP). This rule includes updated CACREP accreditation standards.

R 338.1765. This rule replaces parts of R 338.1751 and R 338.1753 and pertains to counselor education training requirements. It sets forth educational requirements for applicants for licensure. This rule clarifies the educational training program requirements for applicants who are graduates of both CACREP and non-CACREP accredited programs. It includes a future increased credit hour requirement for applicants who are graduates of non-CACREP accredited programs, to coincide with future CACREP imposed requirements. Graduates of non-accredited postsecondary institutions must bear the expense and supply an educational program equivalency determination to the department from a credential evaluation agency.

R 338.1771. This rule replaces R 338.1751a and pertains to detecting human trafficking. It sets forth the requirements for training on identifying victims of human trafficking. The human trafficking rule now includes a date of promulgation.

R 338.1772. This rule replaces R 338.1754 and pertains to applications for limited licenses. It sets forth the requirements for a limited license. Revisions to the language from the former rule included adding statutory citations.

R 338.1773. This rule replaces R 338.1752a and pertains to examinations. It sets forth the accepted examinations for licensure and passing scores. This rule adds the National Clinical Mental Health Counseling Examination (NCMHCE) as another approved examination for licensure.

R 338.1774. This rule replaces R 338.1752 and pertains to applications for licensure by examination. It sets forth the requirements for licensure by examination. Revisions to the language from the former rule were necessary to add statutory and edits to the requirements for attainment of supervised experience as it relates to experience gained in the

immediate physical presence of the supervisor.

R 338.1775. This rule replaces R 338.1753b and pertains to applications for licensure by endorsement. It sets forth the requirements for licensure by endorsement. Revisions to the language from the former rule were necessary to add statutory citations.

R 338.1776. This rule pertains to license renewal. It sets forth the requirements for renewal of a license. A rule that addresses license renewal was necessary, to avoid interruption in licensure due to confusion over requirements. It further clarifies that relicensure of the limited license counts the same as a renewal.

R 338.1781. This rule pertains to requirements for supplying counseling supervision. It sets forth the requirements for practice and training necessary to supply supervision. Updates bring the rule in line with the Approved Clinical Supervisor (ACS) credential from the Center for Credentialing and Education (CCE).

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

Promulgation of rules related to licensure is necessary under statute. This supplies a regulatory framework for the practice of counseling. The proposed changes supply greater clarity to licensees and aid in understanding the requirements of the rules.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Statute regulates the practice of counseling. This mandates licensure for provision of those services. Updating standards of educational programs and adding clarifications on points that may have been ambiguous under prior rules will make compliance easier for applicants and licensees.

C. What is the desired outcome?

Regulation is necessary for individuals who wish to practice as counselors. By improving and clarifying the rules, applicants and licensees should find compliance easier. This should result in fewer questions, fewer regulatory problems, and greater safety and protection of the public.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The use of outdated rules that do not comport with statutes governing the counseling profession creates conflict and confusion for counselors. The proposed rule set updates the previously adopted rules and puts the rules in a format that is more user friendly for licensees. Changes made specifically address the following:

R 338.1751 pertains to definitions. Terms used in the rule set without further definition can create confusion for applicants and licensees. The proposed changes supply clarification of the use of terms used throughout the set.

R 338.1761 replaces R 338.1753a and pertains to accreditation standards of higher education institutions. Outdated standards supply little help or guidance about proper training of counselors. The updated standards ensure future licensees are properly qualified.

R 338.1763 replaces parts of R 338.1753 and pertains to accreditation standards of counselor education programs. Outdated standards supply little help or guidance about proper training of counselors. The updated standards ensure future licensees are properly qualified.

R 338.1765 replaces parts of R 338.1751 and R 338.1753 and pertains to counselor education training requirements. Outdated standards supply little help or guidance about proper training of counselors. The updated standards ensure future licensees are properly qualified.

R 338.1771 replaces R 338.1751a and pertains to detecting human trafficking. A rule without specific compliance dates can create confusion for applicants and licensees. Including specific dates of promulgation aids applicants and licensees in following this rule.

R 338.1773 replaces R 338.1752a and pertains to examinations. The amendments add the NCMHCE as another approved examination for licensure.

R 338.1774 replaces R 338.1752 and pertains to applications for licensure by examination. The amendments clarify requirements for attainment of supervised experience, especially as it relates to experience gained in the immediate physical presence of the supervisor.

R 338.1776 pertains to license renewal. Failure to have a rule related to license renewal left ambiguity about the requirements for renewal. Further clarification was necessary that relicensure of the limited license counts the same as a renewal.

R 338.1781 pertains to requirements for supplying counseling supervision. Updates bring the rule in line with the Approved Clinical Supervisor (ACS) credential from the CCE.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The proposed rule set updates outdated standards, corrects typographical errors, supplies clarity to all rules on licensure, and re-organizes the rules in a format that is more user friendly for licensees.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules supply a regulatory mechanism for the practice of counseling. To protect the health, safety, and welfare of Michigan's citizens, it is important that members of the profession adhere to educational and professional standards.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

Rescission and replacement of R 338.1751a, R 338.1752, R 338.1752a, R 338.1753, R 338.1753a, R 338.1753b, R 338.1754, and R 338.1757, are necessary to rearrange the rule set in to a logical sequence and to separate the rules into relevant and related parts.

R 338.1753c, which pertains to relicensure of licensed professional counselors, and R 338.1755, which pertains to relicensure of limited license professional counselors, were both replaced by recently enacted MCL 333.18114.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There is no expected fiscal impact on the agency for promulgating the proposed rules.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

There has been no agency appropriation for the proposed rules because there are no expected agency expenditures associated with the proposed rules.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules supply a mechanism for the licensing and regulation of individuals in this state, as mandated by statute. Applicants and licensees will continue to have a cost related burden associated with licensing, renewal, or relicensure. The cost of licensure for a Limited Professional Counselor License is \$86.45. The cost of licensure for a Limited Professional Counselor – Relicensure is \$106.45. The cost of licensure for a Licensed Professional Counselor – By Exam is \$124.30. The cost of licensure for a Licensed Professional Counselor – By Endorsement is \$124.30. The cost of licensure for a Licensed Professional Counselor – Relicensure is \$144.30.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The rules are necessary to supply a mechanism for licensing and regulation of the profession. The rules are not more restrictive than allowed by statute. Despite the cost related burden of licensing, the rules and regulations are necessary to supply a framework of standards for educational and licensure requirements.

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There is no expected increase or decrease in revenues to other state or local government units, nor are there cost increases or reductions on other state or local government units expected because of the proposed rules. There is no expected increase or decrease in revenues to other state or local government units, nor are there cost increases or reductions on other state or local government units expected because of the proposed rules.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed rules do not impose any program, service, duty, or responsibility upon any city, county, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

No action is necessary for governmental units to follow the rule(s).

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

State and local government units will incur no added expenditures because of implementing the proposed rules. Therefore, no appropriation or funding source is necessary.

16. In general, what impact will the rules have on rural areas?

There is no expected disparate impact on rural areas because of the proposed rules.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

There is no expected disparate impact of public or private interests on rural areas because of the proposed rules.

17. Do the proposed rules have any impact on the environment? If yes, please explain.

No, the proposed rules will have no impact on the environment.

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The public health code authorizes the board and the department to regulate individuals with counseling licenses, not small businesses. Even if a licensee's practice qualified as a small business, the department could not exempt his or her small business because it would create disparity in the regulation of the profession.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

There is no expected economic impact on small businesses because of the proposed rules. The proposed rules affect individual licensees rather than small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The department does not collect or have access to information that would allow it to find and estimate the potentially affected number of small businesses. It is impossible to estimate the number of small businesses affected by the proposed rules. The only small businesses affected by these rules are health practitioners practicing in small business settings. The department does not track or have access to this type of information since it is not a data repository.

The rules do not affect the operation of the small business. The probable impact on small business is small.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

Because the proposed rules pertain to individuals and not small businesses, they do not have differing compliance or reporting requirements or timetables for small businesses. They are unnecessary for the proposed rules.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed rules do not impose any reporting requirements.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The agency did not set up performance standards to replace design or operation standards.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules affect individual licensees rather than small businesses. Therefore, there is no expected disproportionate impact on small businesses based on size or geographic location because of the rules.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rules do not need any reports.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There is no expectation of an effect on small businesses because of the proposed rules, nor are there any added costs, because the proposed rules apply to individuals and not businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The proposed rules, which apply to individuals and not businesses, should not create a need for any legal, consulting, or accounting services for small businesses to be able to follow the proposed rules.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Since the rules affect individual licensees rather than small businesses, there is no expected cause of economic harm or for the rules to adversely affect a small business' competition in the marketplace.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules impose requirements on individual licensees rather than small businesses. Even if a licensee's practice qualifies as a small business, the department could not exempt his or her small business because it would create disparity in regulation of the profession. Therefore, exempting or setting lesser standards of competence for small businesses is not in the best interest of the public.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The department is not able to exempt licensees that own a small business. If the department exempted small businesses, it would create a disparity in the regulation of a profession and have a negative impact on public safety.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

Development of the proposed rules involved consultation with the Michigan Board of Counseling, whose members include small business employees.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Development of the proposed rules involved consultation with the Michigan Board of Counseling, whose members include small business employees.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There are no small businesses affected by the proposed rules. Those affected are individuals who are engaged in the practice of counseling.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The licensees must follow the rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There will be no expected added costs imposed upon licensees because of compliance with these proposed rules.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

Applicants and licensees will continue to have a cost related burden associated with licensing, renewal, or relicensure. The cost of licensure for a Limited Professional Counselor License is \$86.45. The cost of licensure for a Limited Professional Counselor – Relicensure is \$106.45. The cost of licensure for a Licensed Professional Counselor – By Exam is \$124.30. The cost of licensure for a Licensed Professional Counselor – By Endorsement is \$124.30. The cost of licensure for a Licensed Professional Counselor – Relicensure is \$144.30.

A. How many and what category of individuals will be affected by the rules?

The rules affect all individuals who seek licensure as counselors.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The fees involved will be like those incurred in other regulated professions.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no expected reductions in costs to businesses, individuals, groups of individuals, or governmental units because of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules use clear, concise language, and implement the statutory requirements for licensing. The clear, concise language allows the public, licensees, and schools to better understand the requirements for licensure.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

There is no expected significant impact on business growth, job growth, or job elimination because of the rules.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The department does not expect any disproportionate effect on any individuals or businesses by their industrial sector, segment of the public, business size, or geographical location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Center for Credentialing and Education (CCE):
<https://cce-global.org/>

Commission on Rehabilitation Counselor Certification (CRCC):
<https://www.crc certification.com/>

Council for Accreditation of Counseling and Related Educational Programs (CACREP):
<https://www.cacrep.org/>

Council for Higher Education Accreditation (CHEA):
<https://www.chea.org/>

National Board of Certified Counselors (NBCC):
<https://www.nbcc.org/>

United States Department of Education Office of Postsecondary Education:
<https://www2.ed.gov/about/offices/list/ope/index.html>

Illinois:
<https://www.idfpr.com/profs/ProfCounselor.asp>

Indiana:
<https://www.in.gov/pla/social.htm>

Minnesota:
<https://mn.gov/boards/behavioral-health/>

New York:
<http://www.op.nysed.gov/prof/mhp/mhclhc.htm>

Ohio:
<https://cswmft.ohio.gov/wps/portal/gov/cswmft/>

Pennsylvania:
<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/SocialWorkersMarriageandFamilyTherapistsandProfessionalCounselors/Pages/default.aspx>

Wisconsin:
<https://dsps.wi.gov/Pages/Professions/LPC/Default.aspx>

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

Since statute mandates the rules, no estimate was necessary.

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

Since statute mandates the rules, there are no reasonable alternatives to the proposed rules.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

Since statute mandates the rules, there are no reasonable alternatives to the proposed rules.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Since statute mandates the rules, private market-based systems cannot serve as an alternative. The licensing and regulation of counselors are state functions, so a regulatory program independent of state intervention cannot be set up. One could consider counseling professional associations as regulatory mechanisms that are independent of state intervention; however, these professional organizations would provide the public with significantly less protection because membership in these organizations is voluntary. This means an individual who meets the membership requirements, but does not join, would still be able to practice and there would be no way to ensure his or her competency or hold them accountable for harm done to clients.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Since statute mandates the rules, there are no reasonable alternatives to the proposed rules. There were no alternatives that the department considered to achieve the intended changes. They are necessary for the administration and enforcement of the licensing process.

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The rules include the instructions for compliance.