

Significant Legislative Rule Analysis
WAC 246-830-037 –Transfer of Training Hours
A Rule Concerning Training Requirements for Massage Practitioners
October 2015

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The Department of Health is proposing a new section to chapter 246-830 WAC to clarify existing language in RCW 18.108.070(1)(a). The proposed language states that applicants seeking a massage practitioner license must obtain their entire training and education from a school approved by the Washington State Board of Massage (board). The proposed rule will eliminate ambiguity amongst schools, applicants, and the department about the licensure qualifications.

History

To qualify for a massage practitioner license, an applicant must complete, among other things, a board-approved massage program (RCW 18.108.070(1)(a)). Over time, some board-approved massage schools created so called “bridge programs” for students who received education at a school not approved by the board. In such cases, the board-approved school would evaluate the student’s transcripts and create a condensed program for the student to complete in order to meet Washington’s minimum training requirements and graduate from the board approved school.

It was recently determined through investigations of license applications that board-approved schools were approving hours based on counterfeit documents submitted by students. In many cases, board-approved schools determined the student did not need to complete any training hours and merely required the student to pay a fee for the school to attest that they meet all training requirements.

In February 2015, a health law judge upheld the department’s decision to deny an applicant a massage license based on not meeting the education and training requirements. The Final Order went on to say that the applicant must satisfactorily complete an entire course of study in a board-approved program.

The proposed rule is needed so there is no ambiguity amongst schools, applicants, and the department about the licensure qualifications and to avoid assumption by the board-approved schools of the board’s authority to evaluate and determine what is an approved course of study.

The transfer rate appears to be dropping. The department’s assumption is that many schools have informed potential students of the results of the court case, which may have deterred students from undergoing the transfer process.

Is a Significant Analysis required for this rule?

Yes, as defined in RCW 34.05.328 the proposed rule requires a significant analysis.

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

Authority for the revision and adoption of rules for massage practitioners is established in chapter 18.108 RCW.

RCW 18.108.025 Board powers and duties.

(1) In addition to any other authority provided by law, the board of massage may:

(a) Adopt rules in accordance with chapter [34.05](#) RCW necessary to implement massage practitioner licensure under this chapter, subject to the approval of the secretary;

(b) Define, evaluate, approve, and designate those massage schools, massage programs, and massage apprenticeship programs including all current and proposed curriculum, faculty, and health, sanitation, and facility standards from which graduation will be accepted as proof of an applicant's eligibility to take the massage licensing examination;

...

Specifically, this proposed rule intends to clarify:

RCW 18.108.070 Qualifications for licensure or certification.

(1) The secretary shall issue a massage practitioner's license to an applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Effective June 1, 1988, successful completion of a course of study in an approved massage program or approved apprenticeship program;

...

The general goal of the language in this statute is to ensure public safety by only licensing applicants who have successfully completed a board-approved program.

The specific objectives of the proposed rule include:

- Avoiding the practice of board-approved schools evaluating student transcripts as a route for licensure.
- Ensuring that the board's authority for approving massage programs is not usurped.
- Unambiguously clarifying the language in statute that "course of study in an approved massage program" means an entire board-approved program.

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The department determined that the proposed rule is needed after a health-law judge ruled that an applicant's entire course of study must be in a board-approved program to be eligible for a massage license. The proposed rule will leave no ambiguity amongst schools, applicants, and the department about the licensure qualifications.

The consequences of not adopting the proposed rule are:

- A possible threat to public health and safety resulting from applicants unqualified to practice.
- Improper delegation to massage schools to approve education at schools which are not approved by the Washington state Board of Massage
- Lack of clarity in terms of the department's approach to licensing following the February 2015 Health Law Judge's decision.
- Increased costs to the program for continued investigations and prosecuting cases of applicants that applied with fraudulent documentation if the department continues its current practice.

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

This rule package only consists of one rule, WAC 246-830-037. In October 2014, Program staff drafted a briefing paper outlining the course of events that led to the proposed rulemaking. It has become common for students to take courses at colleges and universities and then transfer to a board-approved massage school. The proposed rule will not allow this arrangement to continue.

To gauge the impact of the proposed rule, the department staff surveyed nine board-approved massage schools. This survey asked the schools to identify the estimated impact of requiring students to receive all of the education and training in a board-approved school. The survey asked the schools to provide specific estimates for:

1. How schools calculate the cost they charge to students (i.e. flat rate, by number of credits, other)
2. How much the school charged students using the bridge program (transfer program)
3. Do they foresee any increase or decrease in student enrollment (would transfer students be likely to enroll in the full program?)
4. To identify the probable costs for small businesses to comply with the proposed rule.
5. To identify what kinds of things (i.e. administrative, supplies, training, etc.) they may have to change to comply with the proposed rule.

Department staff received survey responses from four schools. Schools indicated that fees to accept transfer students ranged from \$475 to \$800 for administration (reviewing files, interviews,

hands-on evaluation, recordkeeping/paperwork, etc.). If the student needs additional training hours, the fees were approximately \$20 per hour. None of the respondents indicated that they believed they would see an increase in the number of students due to the rule change. One respondent indicated that they would likely lose a number of students that currently transfer from another university. Schools indicated that they would incur nominal costs to make administrative changes to their program (website, printed materials, etc.) to reflect the change in rule.

Collectively, the survey responses showed that the proposed rule will have a significant impact on several board-approved massage schools in Washington State. Many will have to change the way they transfer training hours.

Options for existing unapproved schools to obtain approval

Unapproved schools have the opportunity to apply to the board for approval. The exact amount of time to receive approval depends on the completeness and accuracy of the application. The board requires no less than five weeks prior to a regularly scheduled board meeting to review documentation that a school submits requesting board approval. It may be longer if the applicant has to rework their application (i.e., submit additional documentation). Under the proposed rule, a student's course of study may be completed at more than one board-approved school. If more unapproved schools seek approval, this will increase the number of schools at which students can obtain their education and between which they can transfer their credits.

Conclusion

There are only a handful of schools that currently offer a bridge program option. These schools have full board-approved programs. The department is aware that the proposed rule will impact the existing massage schools that currently accept transfer students. These schools will likely lose revenue from no longer being able to accept transfer students from unapproved schools. Furthermore, these schools indicated they did not believe they would gain a number of students that elect to receive all of their education and training from their school.

The proposed rule will also have an impact on students who want to apply for a massage therapy license in Washington State but are currently taking courses from an unapproved massage school. Unfortunately these students will not be able to transfer credits from an unapproved school. Based on the result of the health-law-judge's ruling and the statute, the board does not have discretion to allow credits from an unapproved school, and although a number of massage schools and a number of massage school students may be impacted by the rule, the benefit of assuring that students receive adequate education and training from an approved school and thus demonstrate their ability to provide service in a safe and effective manner are greater than the potential impact. Therefore the total probable benefits of the rule exceed the total probable costs.

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.

The board considered the following alternative versions of the rule:

Alternatives	Disadvantage
Allow only a percentage of credits to transfer to a board-approved school	This still puts the schools in the position of evaluating which credits are acceptable.
Only allow the board to approve schools in Washington State and mandate a periodic site review at the school's expense	~ Currently there are several out of state board-approved schools. ~ It would put a financial burden on an otherwise qualified applicant to have to complete an entirely new course of study when their out-of-state training was done at a board-approved school. ~ There may be a decrease in the number of applicants for a massage license.
Require "bridge programs" to be approved by the board.	This option still puts the school in the position of evaluating which credits are acceptable..
Have the board evaluate transcripts and supporting documentation to determine if an applicant is eligible to complete an approved "bridge program"	This would require the board to review the application and documentation of all transfer applicants and would extend the time it takes to issue the license.
Have an independent third party verify and evaluate student transcripts from non-board approved schools	It is unclear if any such entity exists for this option. Additionally, this would also have a negative impact the profession's budget which is already struggling.

In the interest of protecting the public while also considering the significant costs the board has incurred investigating and prosecuting cases regarding fraudulent documentation, the department determined that the rule is the least burdensome alternative because it provides clear direction to the schools and applicants about the licensure qualifications.

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The proposed rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The proposed rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

The rule has been coordinated to the maximum extent practicable with other applicable laws.