

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**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:

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Rule Set Information:

ARD assigned rule set number:

2021-71 LR

Title of proposed rule set:

Massage Therapy – 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.

Each state establishes its own requirements with respect to massage therapists, so there are no federal rules or standards set by a national or state agency that the proposed rules can be compared to.

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

MCL 333.16145 requires the board to promulgate rules to specify the requirements for licenses, renewals, examination, and required passing scores. MCL 333.16148 requires the department to promulgate rules to establish the standards for training to identify victims of human trafficking. MCL 333.16287 requires the department, in consultation with the board, to promulgate rules for telehealth services. MCL 333.17963 requires the board to promulgate rules to create a code of professional ethics.

There is no federal mandate applicable to the proposed 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 proposed rules do not exceed a federal standard.

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

The proposed rules are consistent with the standards required in the Michigan Public Health Code and the rules are largely consistent with the requirements of other states in the Great Lakes region. Every state in the Great Lakes region, except Minnesota, provides for the regulation of this profession.

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

Overall, the standards in the proposed rules do not exceed those of the other states in the Great Lakes region that regulate massage therapists.

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

There are no other laws, rules, or other legal requirements that may duplicate, overlap, or conflict with these 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.

No coordination is needed because there are no other applicable laws that regulate the areas addressed in the proposed rules.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan 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.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

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

Part 3 Licensure: The current rules pertain to the licensure, relicensure, licensure by endorsement, and renewal requirements for a massage therapist. The proposed rules will update the rule pertaining to training standards for identifying victims of human trafficking. The intended behavior is compliance with those training requirements.

The proposed rules will also add references to the requirements for licensure or renewal contained in other rule sets, such as the Public Health Code General Rules. The requirements for licensure by endorsement will be reorganized into an easy-to-use chart format, and the rules pertaining to licensure by endorsement and relicensure will be amended to require the applicant to disclose every health care credential the applicant holds, and to provide that the applicant must have resolved any disciplinary action taken against the individual before being relicensed or licensed by endorsement.

The proposed rules are intended to ensure public safety and to assist an applicant in becoming licensed, relicensed, or to have his or her licensed renewed.

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

The frequency of use is not expected to change.

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

Part 3 Licensure: The current rules pertain to the licensure, relicensure, licensure by endorsement, and renewal requirements for a massage therapist. The proposed rules will update the rule pertaining to training standards for identifying victims of human trafficking. The desired behavior is to ensure that applicants have completed this statutorily required training.

The proposed rules will also add reference to the requirements for licensure or renewal contained in other rule sets, such as the Public Health Code General Rules. The requirements for licensure by endorsement will be reorganized into an easy-to-use chart format, and the rules pertaining to licensure by endorsement and relicensure will be amended to require the applicant to disclose every health care credential the applicant holds, and to provide that the applicant must have resolved any disciplinary action taken against the individual before being relicensed or licensed by endorsement.

The desired behavior is to ensure public safety and compliance with all requirements in the Public Health Code and administrative rules, by those who apply to be licensed, relicensed, or to have his or her licensed renewed.

C. What is the desired outcome?

Part 3 Licensure: The current rules pertain to the licensure, relicensure, licensure by endorsement, and renewal requirements for a massage therapist. The proposed rules will update the rule pertaining to training standards for identifying victims of human trafficking. The desired outcome is compliance with statute and to ensure that a licensee is trained in identifying victims of human trafficking.

The proposed rules will also add references to the requirements for licensure or renewal contained in other rule sets, such as the Public Health Code General Rules. The requirements for licensure by endorsement will be reorganized into an easy-to-use chart format, and the rules pertaining to licensure by endorsement and relicensure will be amended to require the applicant to disclose every health care credential the applicant holds, and to provide that the applicant must have resolved any disciplinary action taken against the individual before being relicensed or licensed by endorsement.

The desired outcome is compliance with all requirements of the Public Health Code and the applicable administrative rules.

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.

Part 3 Licensure: The current rules pertain to the licensure, relicensure, licensure by endorsement, and renewal requirements for a massage therapist. The proposed rules will update the rule pertaining to training standards for identifying victims of human trafficking. The harm that could result without the proposed change is that a licensee may lack the necessary training to identify victims of human trafficking.

The proposed rules will also add references to the requirements for licensure or renewal contained in other rule sets, such as the Public Health Code General Rules. The requirements for licensure by endorsement will be reorganized into an easy-to-use chart format, and the rules pertaining to licensure by endorsement and relicensure will be amended to require the applicant to disclose every health care credential the applicant holds, and to provide that the applicant must have resolved any disciplinary action taken against the individual before being relicensed or licensed by endorsement.

The harm that could result is that an applicant may fail to meet all requirements for license renewal, licensure, or relicensure.

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

Part 3 Licensure: The current rules do not identify all the requirements necessary for an applicant to become licensed, relicensed, or to have his or her licensed renewed. The proposed rules will ensure that the applicant has the information necessary to determine if he or she meets all requirements.

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.

Part 3 Licensure: The current rules pertain to the licensure, relicensure, licensure by endorsement, and renewal requirements for a massage therapist. The proposed rules will update the rule pertaining to training standards for identifying victims of human trafficking. The proposed rule is required by statute, so there is no less burdensome way to ensure compliance, and to the extent that the training requirement places a burden on an applicant, it is far outweighed by the benefit to the health, safety, and welfare of Michigan citizens when a licensee is trained in identifying victims of human trafficking.

The proposed rules will also add references to the requirements for licensure or renewal contained in other rule sets, such as the Public Health Code General Rules. The rules pertaining to licensure by endorsement and relicensure will be amended to require the applicant to disclose every health care credential the applicant holds and to ensure that the applicant has resolved any disciplinary action taken against him or her, before being relicensed or licensed by endorsement.

The proposed rules protect the health, safety, and welfare of Michigan citizens by ensuring that an applicant has complied with all requirements for license renewal, licensure, licensure by endorsement, or relicensure. The rules will also ensure that an applicant for licensure by endorsement or relicensure has gone through the appropriate verification process to determine if the applicant is eligible to practice. There is no identified burden placed on the applicant by these rules, but to the extent that there is, there is no less burdensome way to ensure the health, safety, and welfare of Michigan citizens, in order to determine whether a licensee has complied with all necessary requirements and has shown he or she is eligible to practice.

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

No rules can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

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).

The proposed rules are not expected to have a fiscal impact on the agency.

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

No agency appropriation has been made or a funding source provided because there are no 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.

Part 3 Licensure: The current rules pertain to the licensure, relicensure, licensure by endorsement, and renewal requirements for a massage therapist. The proposed rules will update the rule pertaining to training standards for identifying victims of human trafficking. The proposed rule is required by statute, so there is no less burdensome way to ensure compliance, and to the extent that the training requirement places a burden on an applicant, it is far outweighed by the benefit to the health, safety, and welfare of Michigan citizens, when a licensee is trained in identifying victims of human trafficking.

The proposed rules will also add references to the requirements for licensure or renewal contained in other rule sets, such as the Public Health Code General Rules. The rules pertaining to licensure by endorsement and relicensure will be amended to require the applicant to disclose every health care credential the applicant holds and to ensure that the applicant has resolved any disciplinary action taken against the individual before being relicensed or licensed by endorsement.

There is no identified burden placed on the applicant by these rules, but to the extent that there is, there is no less burdensome way to ensure the health, safety, and welfare of Michigan citizens, in order to determine whether a licensee has complied with all necessary requirements and has shown he or she is eligible to practice.

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

There is no identified burden imposed by the proposed rules.

Impact on Other State or Local Governmental Units

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 are no anticipated increases or reductions in revenue for other state or local governmental units as a result 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.

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, town, village, or school district as a result of these proposed rules.

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.

There are no anticipated actions that a governmental unit must take to comply with the proposed rules.

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.

No appropriations have been made to any governmental units as a result of the proposed rules. No additional expenditures are anticipated or intended with the proposed rules.

Rural Impact

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

The proposed rules impose requirements on individual licensees regardless of the location where the individual lives or works. Even if a licensee lives or works in a rural area, the department could not exempt him or her from the requirements of the proposed rules because it would create a disparity in the regulation of the profession.

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

The proposed rules will not impact public or private interests in rural areas.

Environmental Impact

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

The proposed rules do not have any impact on the environment.

Small Business Impact Statement

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

The department did not consider exempting small businesses because they are not impacted by the proposed rules.

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.

The rules cannot exempt small businesses because the rules do not directly regulate small businesses. The rules regulate individual licensees.

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

There are approximately 9,257 licensed massage therapists in Michigan .

A licensee may work in a small business. However, no matter what type of business environment the licensee works in, he or she will have to comply with the proposed rules. The rules do not impact small business differently because the impact is to the individual licensee only.

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.

The agency did not establish separate compliance or reporting requirements for small businesses. The proposed rules will apply to all massage therapy licensees. The rules were drafted to be the least burdensome on all affected licensees.

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 agency did not consolidate or simplify compliance and reporting requirements for small businesses with the proposed rules because the proposed rules do not impact small businesses. There are no skills necessary to comply with 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 establish performance standards to replace design or operation standards required by these rules.

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

The proposed rules do not impact small business. They impact an individual licensee. Therefore, there is no disproportionate impact on a small business because of its size or geographic location.

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 affect individuals applying for licensure and renewal, regardless if they practice in a small business. There is no separate cost to a small business.

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 are no expected costs for equipment, supplies, labor, or administrative costs that a small business would incur in complying with the proposed rules.

The rules impact licensees and not small 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.

There are no expected costs for legal, consulting, or accounting services that a small business would incur in complying with 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.

There are no expected costs to a small business that will cause economic harm to a small business or the marketplace as a result of the proposed rules.

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 a small business. Even if a licensee's practice qualifies as a small business, the department could not exempt his or her business because it would create disparity in the regulation of the profession.

Therefore, there is no cost to the agency for administering or enforcing the rules because exempting or setting lesser standards of compliance for a small business 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 proposed rules impose requirements on individual licensees rather than a small business. Even if a licensee's practice qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession. Therefore, exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

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

The department did not involve small businesses in the development of the proposed rules. The department worked with the Michigan Board of Massage Therapy in the development of the proposed rules. The Board is composed of massage therapists and public members.

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

No small businesses were involved in the development of the rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

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

There are no estimated compliance costs with these rule amendments on businesses or groups.

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

No businesses or groups will be directly affected or benefitted by the proposed rules. No additional costs will be imposed on any businesses or groups.

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.

No additional costs will be imposed on any businesses or groups.

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.

The proposed rules do not impose any costs on individuals. They do contain a reference to the implicit bias training requirement contained in the Public Health Code General Rules. The cost to take implicit bias training will vary, depending on the program chosen. Several Michigan hospitals offer free implicit bias training. Massage therapists will need to invest their time to obtain implicit bias training, but the investment of time is outweighed by the overall benefit of ensuring greater equity in access to and the provision of health care services.

It is estimated that there will be no new compliance costs imposed on individuals as a result of the proposed rules.

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

All licensees and applicants are affected by the proposed rules.

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

There is no qualitative or quantitative impact on individuals as a result of the proposed rules.

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

There are no cost reductions to businesses, individuals, groups of individuals, or governmental units as a result 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 and concise language and implement the statutory requirements for licensing. The clear and concise language allows the public, applicants, and licensees to better understand the requirements for licensure and renewal.

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

The rules are not expected to have an impact on business growth, job creation, or job elimination in Michigan.

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 individuals or businesses to be disproportionately impacted by the rules as a result of their industrial sector, segment of the public, business size, or geographic 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.

Illinois:

<http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2469&ChapAct=225%26nbsp%3BILCS%26nbsp%3B57%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Massage+Licensing+Act%2E>

<http://www.ilga.gov/commission/jcar/admincode/068/068012840000200R.html>

Indiana:

<http://www.in.gov/pla/3317.htm>;

<http://iac.iga.in.gov/iac//T08470/A00010.PDF?>

Kentucky: <http://bmt.ky.gov/Pages/laws.aspx>

<http://bmt.ky.gov/Pages/regulations.aspx>

Minnesota: Massage Therapy (mn.gov); <https://www.stpaul.gov/departments/safety-inspections/environmental-health/massage>

Ohio:

<http://codes.ohio.gov/oac/4731-1>

<http://codes.ohio.gov/orc/4731>

Pennsylvania:

<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/MassageTherapy/Documents/Applications%20and%20Forms/Non-Application%20Documents/MTM%20-%20Act%20118%20Amended%20Massage%20Therapy.pdf>

<http://www.pacodeandbulletin.gov/Display/pacode?>

[file=/secure/pacode/data/049/chapter20/chap20toc.html&d=reduce](http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/049/chapter20/chap20toc.html&d=reduce)

Wisconsin: <https://docs.legis.wisconsin.gov/statutes/statutes/460.pdf>

<https://dsps.wi.gov/Pages/RulesStatutes/MTBT.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., that demonstrate a need for the proposed rules.

Since the rules are required by statute, no estimates were made.

Alternative to Regulation

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

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

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

Since the rules are required by statute, a statutory change would be needed to provide an alternative.

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 the rules are required by statute, private market-based systems cannot serve as an alternative. The licensing and regulation of massage therapy professionals are state functions, and states regulate massage therapy professionals by statute, regulation, or both. Private market-based systems are not used for licensing and regulation.

There are professional organizations that establish criteria for membership, but these organizations would provide the public with significantly less protection because membership in many of these organizations is voluntary. This means an individual who meets the membership requirements but does not join one of the professional organizations would be able to practice, and there would be no way to ensure his or her competency or hold him or her accountable.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Since the rules are specifically required by statute, there are no alternatives to the proposed rules that the agency could consider. They are necessary for the administration and enforcement of the licensing process.

Additional Information

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

The instructions for compliance are included in the rules.