

DEPARTMENT OF HEALTH

SUBJECT: Arkansas State Board of Massage Therapy

DESCRIPTION: Act 1020 of 2015 requires the State Board of Massage Therapy to approve a curriculum for post-secondary massage therapy schools. Specifically, post-secondary schools will be required to enroll only students with a high school diploma or the equivalent, provide 600 hours of approved curriculum, and adopt a complaint process equal to the one provided for in the current Board of Massage Therapy Rules.

Schools may obtain dual licensure, if they also enroll students who do not have a high school diploma or the equivalent, but they must have a process in place to ensure that only students with a high school diploma or the equivalent are enrolled in the post-secondary school and receive Title VI funds.

PUBLIC COMMENT: A public hearing was held on August 24, 2015. The public comment period expired on August 24, 2015. The Department received the following comments and provided the following responses:

Comment	Response
<i>Responses to written comments from Brenda Midkiff received August 18, 2015, and oral comments from George Hrenchir received August 24, 2015:</i>	
<p>1. The proposed changes to the ASBMT Rules & Regulations for adoption of post-secondary massage school classification is an unfortunate example of the current massage therapy board's approach to policy. Rather than examine the document in full, and compare and contrast approaches to more readily delineate the document in a legible and concise manner, it appears that the editor for the proposed changes simply used a find and replace word processing function which increased the overall size of the Rules and Regulations by three pages without clarifying. Rather than the unnecessary wording throughout the document, we propose the following changes:</p> <ul style="list-style-type: none"><input type="checkbox"/> <i>Article 1, 12. Massage school as used throughout this document includes, unless otherwise indicated, both Massage Therapy Schools and Post-Secondary Massage Therapy Schools.</i><input type="checkbox"/> <i>Article 1, 13. Massage Therapy School means a registered and licensed facility that meets and follows the required educational standards as established by 17-86-306 and all pertinent rules and regulations.</i><input type="checkbox"/> <i>Article 1, 14. Post-Secondary Massage Therapy School means a massage therapy school that offers a post-secondary curriculum approved by the State Board of Health and whose enrollment is made up of only students with a high school diploma or its</i>	<p>Will use the word "school" in Article Seven to apply to both massage therapy schools and postsecondary massage therapy schools, unless otherwise indicated. Other areas will not be changed because they do not apply to both types of schools.</p> <p>The Definitions as proposed meet the USDE requirements. We will leave them as proposed at this time.</p>

Comment	Response
<p><i>equivalent.</i></p> <p>With the proposed change in definitions, there is no need to change Article 2 with the addition of paragraph 9. Article 8 outlines applicants as being considered after completion of a minimum of 500 hours of education, which does not change. Completion of 500 hours of education still meets qualification standards for Arkansas licensure, and completion of a post-secondary program instead of a minimum requirement program does not change the licensing process.</p>	
<p>2. With the proposed change in definitions, there is no need to change Article 2 with the addition of paragraph 9. Article 8 outlines applicants as being considered after completion of a minimum of 500 hours of education, which does not change. Completion of 500 hours of education still meets qualification standards for Arkansas licensure, and completion of a post-secondary program instead of a minimum requirement program does not change the licensing process.</p>	<p>Federal Government regulations require the state licensing agency to outline a licensing process that includes federal requirements. This is needed to ensure Title IV funding for Schools who wish to receive it.</p>
<p>3. Additionally, there is no need for the inclusion of proposed Article 5.5.c.3. The inclusion as written implies that someone may qualify as a continuing education provider by completing specialized training, attaining instructor credentials in a special skill, have two years of experience, and who graduated from both a 500 hour massage therapy program and a 600 hour massage therapy program. This means the person attempting to attain instructor recognition does not need to hold a current massage therapy license, bachelor's degree or higher, nor do they have to present evidence of training to qualify their expertise There is not a need to add the post-secondary school definition, as long as Article 5.5.c.2 is changed to:</p> <p><input type="checkbox"/> 2. <i>Graduated from a massage school or one which has a comparable in-classroom hours curriculum;</i></p>	<p>The Rule Amendment does not add a new requirement; it only adds another option for fulfilling the requirement of two of the criteria listed in (c).</p>
<p>4. The significant changes to Article 7 are unnecessary save the addition of paragraph 6 and paragraph 11.</p> <p>Paragraph 6 should read: <i>Any massage school wishing to teach both secondary and post-secondary students shall obtain both a license for a Massage Therapy School and a Post-Secondary Massage Therapy School. The school shall</i></p>	<p>Changed the Title of Article Seven and added the note referenced above. This change is not considered substantive as it only changes the</p>

Comment	Response
<p><i>also provide a procedure by which it will ensure that only students with a high school diploma or the equivalent are enrolled in the postsecondary school.</i> The inclusion of defining receipt of Title IV funds is moot, as to receive those funds the student must be enrolled in a post-secondary program, which is covered as written above.</p> <p>Paragraph 11 is adequate as written within the ASBMT changes.</p>	<p>terminology used, not the meaning of the Rule. Otherwise, the language addressed in this comment is required by the Federal Government.</p> <p>Licensed schools in other programs administered by ADH have expressed an interest in having dual enrollment for their programs. It was felt that Massage Therapy Schools would also like that option.</p>
<i>Response to a written comment from Jean Robinson received August 19, 2015:</i>	
<p>1. Concern of definition of Postsecondary Massage Therapy School, concern for setting standards for two different types of schools “massage therapy schools” and “postsecondary massage therapy schools”, concerns for 600 hour requirement by postsecondary schools.</p>	<p>The new language is required by the Federal Government and Act 1020 of 2015.</p>
<i>Responses to verbal comments from Audra Findley received August 24, 2015:</i>	
<p>1. What is the purpose of dual license?</p>	<p>It Allow schools to offer dual enrollment of students (those with Federal Funding and those without).</p>
<p>2. Definition of massage therapy school and postsecondary massage therapy school:</p>	<p>The new language is required by the Federal Government and Act 1020 of 2015.</p>

Comment	Response
<i>Responses to written comments from Sybil Davis received August 24, 2015:</i>	
1. Article Three 1. Complaint Committee make-up, 4 and 5 misuse, neglected and abused.	Does not apply to this Rule Revision; will be addressed by later rule amendments.
2. Article Four – state funding needed for testing instead of nonprofit organization	Does not apply to this Rule Revision; will be addressed by later rule amendments.
3. Article Five Continuing Education- should be anything related to health and additional information with health and wellness.	Does not apply to this Rule Revision; will be addressed by later rule amendments.
4. Article 7- 24: 75 % pass/fail rate not believable and not reliable and 38. a. guest instructors rule should be null and void.	Does not apply to this Rule Revision; will be addressed by later rule amendments.

The proposed effective date is pending legislative approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION:

THIS RULE ENACTS ACT 1020 OF 2015. The Act establishes the minimum standards for postsecondary education in Schools of Massage. Additionally, the Act transfers all the authority previously conferred to the State Board of Massage Therapy to the Department of Health. Specifically, the Act gives the Department the authority to promulgate and enforce reasonable rules regarding secondary and postsecondary massage therapy schools.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Health Systems Licensing and Regulation
DIVISION DIRECTOR Renee Mallory
CONTACT PERSON Renee Mallory
ADDRESS 4815 West Markham, Little Rock, AR 72205
PHONE NO. 501-661-2518 FAX NO. 501-661-2055 E-MAIL renee.mallory@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Robert Brech
PRESENTER E-MAIL robert.brech@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

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1. What is the short title of this rule? Rules and Regulations of the Arkansas State Board of Massage Therapy

 2. What is the subject of the proposed rule? To establish minimum standards for postsecondary education in Massage Therapy Schools.

 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. 34 C.F.R. 600.9

 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? June 29, 2015 (federal deadline of July 1, 2015)

 - When does the emergency rule expire? October 27, 2015

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 1020 of 2015, § 18, codified at A.C.A. § 17-86-306

7. What is the purpose of this proposed rule? Why is it necessary? To establish minimum standards for postsecondary education in Schools of Massage.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.healthy.arkansas.gov & www.arkansasmassagetherapy.com

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: August 24, 2015

Time: 10:00 a.m.

Place: 5800 West 10th Street, Room 801,
Little Rock, Arkansas

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 24, 2015, at 4:30 p.m.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

October 15, 2015

12. Do you expect this rule to be controversial? Yes No

If yes, please explain. _____

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health
DIVISION Health Systems Licensing and Regulation
PERSON COMPLETING THIS STATEMENT Renee Mallory
TELEPHONE NO. 501-661-2518 **FAX NO.** 501-661-2055 **EMAIL:** renee.mallory@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules and Regulations of the State Board of Massage Therapy

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

Total 0

Total 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds 0
Special Revenue 0
Other (Identify) 0

Total 0

Next Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds 0
Special Revenue 0
Other (Identify) 0

Total 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
 - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.