

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Massage Therapist

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Massage Therapist

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Massage Therapy provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) Massage Therapists engage in the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being. Massage therapy may include the use of oils, salt glows, heat lamps, and hydrotherapy. Massage therapy shall not include diagnosis or treatment, or use of procedures for which a license to practice medicine, surgery, chiropractics, podiatry is required, nor the use of microwave diathermy, short wave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal or joint adjustments. The creation of the Massage Therapy license is to provide oversight on educational standards, regulate scope of practice, and protect the public health, safety, and welfare.

IV. Number of Regulated Professionals in Nebraska

- A) There are 1,444 licensed Massage Therapists and Temporary Massage Therapists in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

I. Number of Members

- A) There are four members of the Board of Massage Therapy.

II. Who Appoints Members of the Board / Is Legislative Approval Required?

- A) The Board of Health appoints the members of the Board of Massage Therapy. Legislative approval is not required.

III. Term Length

- A) The length of term for service on the Board of Massage Therapy is up to two consecutive five year terms, on a rotating basis.

IV. Qualifications for Membership of the Board

- A) The Board of Massage Therapy is made up of three professional Massage Therapists and one public member. The professional Massage Therapists shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member.

V. The Number of Meetings Required Per Year / Meetings Actually Held

- A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 8.
B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 6.
C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 6.
D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 8.
E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 6.

VI. Annual Budget Information for the Previous Five Years

- A) The Board of Massage Therapy is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
B) For FY 2014-2015: \$92,644
C) For FY 2015-2016: \$97,460
D) For FY 2016-2017: \$82,806

- E) For FY 2017-2018: \$16,410
- F) For FY 2018-2019: \$6,793

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The Vice-Chair of the Board of Massage Therapy stated “In [the Vice-Chair’s] opinion the regulations for Massage Therapy have been and continue to be effective. These regulations safeguard the public, practitioner, and healthcare establishment. We have consistency in how applicants are awarded their license and violators of the regulations are penalized.”

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Massage Therapist occupation may be found in the Nebraska Revised Statutes, sections [38-1701](#) to [38-1725](#), which may be cited as the Massage Therapy Practice Act. For text of the Nebraska statutes relating to the Massage Therapist occupation, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the Massage Therapist occupation may be found in the Nebraska Administrative Code [Title 172, Chapter 81](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 631 total Massage Therapist licenses issued in the past five years, include 564 Massage Therapist licenses and 67 Temporary Massage Therapist Licenses.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There was one Massage Therapist license denied in the past five years.
- B) This license was denied based upon unlicensed practice.

III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years

- A) There were eight total licenses revoked in the past five years.
- B) Some of these revocations were levied against Massage Therapists for unprofessional or dishonorable conduct, sexual stimulation, and / or sexual abuse or misconduct.

- C) Some of these revocations were levied against a shop, school, or establishment, for permitting aiding and abetting, practicing in an unlicensed location, and violating a Department order.

IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years

- A) There have been seven Massage Therapist or establishment licenses penalized in the past five years.
- B) All penalties were civil penalties, with fines not to exceed \$20,000

V. Comparison of How Other States Regulate This Occupation

- A) Currently, 49 states and territories regulate the massage therapy profession in some form to ensure that safe and competent practitioners are the only legal massage therapy professionals practicing on the public. Links to how various states regulate Massage Therapists may be found on the Federation of State Massage Therapy Boards website, found [here](#).

All but four states require licensure or certification of Massage Therapists.

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) Eliminating the licensing or regulation of Massage Therapists would put the public at risk of being harmed. Massage Therapists need to understand the anatomical and physiological effects that massage has on the human body, which are gained through the educational requirements in licensure. Performing a massage technique incorrectly could injure an individual. A lack of educational standards would allow individuals with little or no training to practice the profession. With no oversight provided by the Board of Massage Therapy or the Department of Health and Human Services, there would be fewer avenues to file complaints against an individual or establishment if sexually based offenses occurred. There would be great potential for harm to the public health, safety, and welfare.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not

licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Massage Therapy and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Massage Therapist occupation by licensure is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE MASSAGE THERAPY PRACTICE ACT

38-1701. Act, how cited.

Sections 38-1701 to 38-1725 shall be known and may be cited as the Massage Therapy Practice Act.

Source: Laws 2007, LB463, § 608; Laws 2019, LB244, § 1.

38-1702. Definitions, where found.

For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707.01 apply.

Source: Laws 1955, c. 273, § 1, p. 861; Laws 1987, LB 473, § 42; R.S.Supp.,1987, § 71-2701; Laws 1988, LB 1100, § 132; Laws 1990, LB 1064, § 14; Laws 1991, LB 10, § 2; Laws 1993, LB 48, § 2; Laws 1999, LB 828, § 142; Laws 2003, LB 242, § 69; R.S.1943, (2003), § 71-1,278; Laws 2007, LB463, § 609; Laws 2019, LB244, § 2.

38-1703. Approved massage therapy school, defined.

Approved massage therapy school means (1) one which is approved by the board, (2) one which requires for admission a diploma from an accredited high school or its equivalent, (3) one which has attached to its staff a regularly licensed physician and employs one or more competent massage therapists as instructors, and (4) one which has a minimum requirement of a continuous course of study and training of not less than one thousand hours distributed over a term of not less than nine months. Such study and training shall consist of one hundred hours of each of the following: Physiology; anatomy; massage; pathology; hydrotherapy; hygiene and practical demonstration; and health service management. The remaining three hundred hours shall be obtained in subject areas related to the clinical practice of massage therapy.

Source: Laws 2007, LB463, § 610.

38-1704. Board, defined.

Board means the Board of Massage Therapy.

Source: Laws 2007, LB463, § 611.

38-1705. Massage therapist, defined.

Massage therapist means a person licensed to practice massage therapy.

Source: Laws 2007, LB463, § 612.

38-1706. Massage therapy, defined.

Massage therapy means the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy. Massage therapy does not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments.

Source: Laws 2007, LB463, § 613.

38-1707. Massage therapy establishment, defined.

Massage therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy. Massage therapy establishment includes a mobile massage therapy establishment.

Source: Laws 2007, LB463, § 614; Laws 2019, LB244, § 3.

38-1707.01. Mobile massage therapy establishment, defined.

Mobile massage therapy establishment means a self-contained, self-supporting, enclosed mobile unit licensed under the Massage Therapy Practice Act as a mobile site for the performance of the practices of massage therapy by persons licensed under the act.

Source: Laws 2019, LB244, § 4.

38-1708. Massage therapy; persons excepted.

The Massage Therapy Practice Act shall not be construed to include the following classes of persons:

- (1) Licensed physicians and surgeons, osteopathic physicians, chiropractors, registered nurses, practical nurses, cosmetologists, estheticians, nail technicians, physical therapists, barbers, and other persons credentialed under the Uniform Credentialing Act who are exclusively engaged in the practice of their respective professions;
- (2) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) Students performing massage therapy services when they render such services within the scope of an approved massage therapy school under the supervision of a licensed massage therapist; and

(4) Individuals who hold a current license as a massage therapist in another state and who travel with and provide massage therapy services to theatrical groups, entertainers, or athletic organizations.

Source: Laws 1955, c. 273, § 2, p. 862; Laws 1957, c. 297, § 1, p. 1070; R.S.1943, (1986), § 71-2702; Laws 1988, LB 1100, § 133; Laws 1989, LB 342, § 28; Laws 1990, LB 1064, § 15; R.S.1943, (2003), § 71-1,279; Laws 2007, LB463, § 615.

38-1709. School or establishment; massage therapist; license required.

No person shall engage in the practice of massage therapy or the operation of a massage therapy school or establishment unless he or she obtains a license from the department for that purpose.

Source: Laws 1955, c. 273, § 11, p. 866; Laws 1957, c. 297, § 7, p. 1073; R.S.1943, (1986), § 71-2712; Laws 1988, LB 1100, § 137; Laws 2002, LB 1021, § 31; R.S.1943, (2003), § 71-1,280; Laws 2007, LB463, § 616.

38-1710. Massage therapy license; applicant; qualifications.

Every applicant for an initial license to practice massage therapy shall (1) present satisfactory evidence that he or she has attained the age of nineteen years, (2) present proof of graduation from an approved massage therapy school, and (3) pass an examination prescribed by the board.

Source: Laws 1955, c. 273, § 5, p. 863; Laws 1957, c. 297, § 3, p. 1071; Laws 1973, LB 512, § 1; R.S.1943, (1986), § 71-2705; Laws 1988, LB 1100, § 135; Laws 1999, LB 828, § 143; R.S.1943, (2003), § 71-1,281; Laws 2007, LB463, § 617.

38-1711. Massage therapy; temporary license; requirements; applicability of section.

(1) A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination required by section 38-1710. A temporary licensee shall be supervised in his or her practice by a licensed massage therapist. A temporary license shall be valid for sixty days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license shall be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months. A temporary license shall not be issued to any person

failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

(2) This section shall not apply to a temporary license issued as provided under section 38-129.01.

Source: Laws 1993, LB 48, § 3; Laws 1999, LB 828, § 144; Laws 2003, LB 242, § 70; R.S.1943, (2003), § 71-1,281.01; Laws 2007, LB463, § 618; Laws 2017, LB88, § 57.

38-1712. Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Massage Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 619; Laws 2017, LB88, § 58.

38-1713. Fees.

The department shall establish and collect fees for credentialing under the Massage Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 620.

38-1714. Unprofessional conduct.

For purposes of the Massage Therapy Practice Act, unprofessional conduct includes the conduct listed in section 38-179 and the provision by a massage therapist of sexual stimulation as part of massage therapy.

38-1716. Massage therapy establishment; license required.

No person shall operate or profess or attempt to operate a massage therapy establishment unless such establishment is licensed by the department under the Massage Therapy Practice Act. The department shall not issue or renew a license for a massage therapy establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of massage therapy in any location or premises other than a licensed massage therapy establishment except as specifically permitted in the act.

Source: Laws 2019, LB244, § 5.

38-1717. Mobile massage therapy establishment; applicant; requirements.

In order to be licensed as a mobile massage therapy establishment by the department, an applicant shall meet the following requirements:

- (1) The proposed establishment is a self-contained, self-supporting, enclosed mobile unit;
- (2) The establishment has an automobile insurance liability policy which meets the requirements of the department for the mobile unit;
- (3) The establishment is clearly identified as such to the public by a sign placed on the outside of the establishment which includes the establishment's license number;
- (4) The establishment complies with the sanitary requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act;
- (5) The entrance into the proposed establishment used by the general public provides safe access by the public;
- (6) The proposed establishment has at least forty-four square feet of floor space. If more than one practitioner is to be employed in the establishment at the same time, the establishment shall contain an additional space of at least fifty square feet for each additional practitioner; and
- (7) The proposed establishment includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2019, LB244, § 6.

38-1718. Mobile massage therapy establishment; application; floor plan or blueprint.

Any person seeking a license to operate a mobile massage therapy establishment shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed establishment sufficient to demonstrate compliance with the requirements of section 38-1717.

Source: Laws 2019, LB244, § 7.

38-1719. Mobile massage therapy establishment; application; review; denial; inspection; issuance of permanent license.

Each application for a license to operate a mobile massage therapy establishment shall be reviewed by the department for compliance with the requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile massage therapy establishment. The department shall conduct an operation inspection of each establishment issued a certificate of consideration within six months after the issuance of such certificate. An

establishment which passes the inspection shall be issued a permanent license. An establishment which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2019, LB244, § 8.

38-1720. Mobile massage therapy establishment; operation; requirements.

In order to maintain its license in good standing, each mobile massage therapy establishment shall operate in accordance with the following requirements:

- (1) The establishment shall at all times comply with all applicable provisions of the Massage Therapy Practice Act and all rules and regulations adopted and promulgated under the act;
- (2) The establishment owner or his or her agent shall notify the department of any change of ownership, name, or office address and if an establishment is permanently closed;
- (3) No establishment shall permit any unlicensed person to perform any of the practices of massage therapy within its confines or employment;
- (4) The establishment shall display a name upon, over, or near the entrance door distinguishing it as a mobile massage therapy establishment;
- (5) The establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the establishment, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the establishment, all personnel, and all records requested by the inspector;
- (6) The establishment shall display in a conspicuous place the following records:
 - (a) The current license or certificate of consideration to operate an establishment;
 - (b) The current licenses of all persons licensed under the act who are employed by or working in the establishment; and
 - (c) The rating sheet from the most recent operation inspection;
- (7) At no time shall an establishment employ more employees than permitted by the square footage requirements of the Massage Therapy Practice Act;
- (8) No massage therapy services may be performed in an establishment while the establishment is moving. The establishment must be safely and legally parked in a legal parking space at all times while clients are present inside the establishment. An

establishment shall not park or conduct business within three hundred feet of another brick and mortar licensed massage therapy establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the establishment shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each establishment being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The establishment shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2019, LB244, § 9.

38-1721. Mobile massage therapy establishment license; renewal; procedure; insurance.

The procedure for renewing a mobile massage therapy establishment license shall be in accordance with section 38-143, except that in addition to all other requirements, the establishment shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the establishment and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the establishment.

Source: Laws 2019, LB244, § 10.

38-1722. Mobile massage therapy establishment license revoked or expired; not reinstated.

The license of a mobile massage therapy establishment that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 11.

38-1723. Mobile massage therapy establishment license; change of ownership or mobile unit; effect.

Each mobile massage therapy establishment license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 12.

38-1724. Mobile massage therapy establishment; owner; duties.

The owner of each mobile massage therapy establishment shall have full responsibility for ensuring that the establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the establishment.

Source: Laws 2019, LB244, § 13.

38-1725. Rules and regulations.

The department may adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases, other than the practice of massage in mobile massage therapy establishments. The department may, if it deems necessary, adopt and promulgate rules and regulations related to mobile massage therapy establishments. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Source: Laws 2007, LB463, § 622; R.S.1943, (2016), § 38-1715; Laws 2019, LB244, § 14.