



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- Preproposal Statement of Inquiry was filed as WSR 14-15-103 ; or
- Expedited Rule Making--Proposed notice was filed as WSR \_ ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

**Title of rule and other identifying information:** (Describe Subject)

WAC 246-830-037 -- Transfer of training hours. The Department of Health is proposing a new section be added to existing massage rules regarding transfer of training hours for massage students.

**Hearing location(s):** Washington Department of Health  
Point Plaza East - Room 152  
310 Israel Rd SE  
Tumwater, WA 98504

Date: 12/17/15

Time: 1:30 pm

**Submit written comments to:**

Name: Megan Brown  
Address: PO Box 47852  
Olympia, WA 98504-7852  
e-mail: <http://www3.doh.wa.gov/policyreview/>  
fax 360-236-2901 by (date) 12/17/2015

**Assistance for persons with disabilities:** Contact

Cece Zenker at 360-236-4633 by 12/10/2015

TTY (800) 833-6388 or () 711

**Date of intended adoption:** 12/23/2015

(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The purpose of the proposed rule is to clarify that all applicants for massage practitioner licensure must successfully complete an entire course of study from a Board of Massage (board) approved program or programs to qualify for a license per RCW 18.108.070. The anticipated effect is that the Secretary will only issue a license to qualified applicants, which will provide greater protection to the public's health and safety.

**Reasons supporting proposal:**

The proposed rule is consistent with the requirements of chapter 18.108 RCW and a recent ruling by a Health Law Judge. Over the past several years many massage applicants transferred hours from an unapproved massage school to a board approved school. Department investigations found many of these applicants admitted having insufficient education and buying fake transcripts and the answers to the national exam. In a recent disciplinary case, the massage program denied a transfer applicant a license based on failure to meet education requirements. The health law judge upheld program's action.

**Statutory authority for adoption:**

RCW 18.108.025 and RCW 18.108.085

**Statute being implemented:**

RCW 18.108.070

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

DATE 11/02/2015

**NAME** (type or print)

John Wiesman, DrPH, MPH

**SIGNATURE**

, DrPH, MPH

**TITLE**

Secretary of Health

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: November 02, 2015**

**TIME: 4:33 PM**

**WSR 15-22-076**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

None

**Name of proponent:** (person or organization) Washington State Department of Health

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Megan Brown	111 Israel Rd SE, Tumwater, WA 98501	360-236-4945
Implementation....Megan Brown	111 Israel Rd SE, Tumwater, WA 98501	360-236-4945
Enforcement.....Megan Brown	111 Israel Rd SE, Tumwater, WA 98501	360-236-4945

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Megan Brown

Address: PO Box 47852  
Olympia, WA 98504-7852

phone 360-236-4945

fax 360-236-2901

e-mail [megan.brown@doh.wa.gov](mailto:megan.brown@doh.wa.gov)

No. Explain why no statement was prepared.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Megan Brown

Address: PO Box 47852  
Olympia, WA 98504-7852

phone 360-236-4945

fax 360-236-2901

e-mail [megan.brown@doh.wa.gov](mailto:megan.brown@doh.wa.gov)

No: Please explain:

**Small Business Economic Impact Statement**  
**WAC 246-830-037 –Transfer of Training Hours**  
**A Rule Concerning Training Requirements for Massage Practitioners**  
**September 2015**

**Describe the proposed rule, including: a brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

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 program(s) approved by the Washington State Board of Massage (board). The proposed rule will eliminate confusion amongst schools, applicants, and the department about the licensure qualifications. The proposed rule is needed to:

- Clarify the language in statute that “course of study in an approved massage program” means an entire board-approved program.
- Avoid the practice of approved massage schools to counting transfer students’ hours from a non-board-approved school to meet Washington’s education requirements, and ensure that the board’s authority for approving massage programs is not usurped;

History

Applicants for a massage license may pursue licensure through two avenues.

1. Demonstrating to the secretary’s satisfaction that they have successfully completed a course of study in a board-approved massage or apprenticeship program. (RCW 18.108.070)
2. Holding a current license to practice massage in another jurisdiction that has examination and education requirements substantially equivalent to those in Washington. (RCW 18.108.095)

Over time, some board-approved massage schools created “bridge programs” for students who received their education at a non-board-approved school. In such cases, the board-approved school evaluated the student’s transcripts and created a condensed program for the student to complete in order to meet Washington’s minimum training requirements. In many cases, the student did not complete any training hours at the board-approved school but rather paid a fee for the school to attest that the student met all training requirements and issue the student a diploma.

Multiple Department of Health investigations have been conducted on applicants who completed a bridge program and transferred their hours from a blacklisted school (blacklisted schools have been identified by the National Certification Board for Therapeutic Massage and Bodywork and/or the California Massage Therapy Council if the school is found to have been operating illegitimately). The investigations have found that the majority of these applicants admit to:

- Receiving minimal if any education and training.
- Paying hundreds or thousands of dollars for counterfeit transcripts and diplomas.
- Paying for and receiving the answers to a national exam that is required for licensure.

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 at any board-approved program.

A brief description of the probable compliance requirements

The majority of board-approved schools only offer a full program. The proposed rule would have no effect on such schools.

There are only a handful of schools that offer a transfer option. Additionally, these schools have full board-approved programs. Schools that accept transfer hours would have compliance requirements to include:

- Change its transfer program requirements to only offer the program to students that have received some of their education at a board-approved school.
- Change any advertisements, course syllabi, etc. that may indicate a person can transfer any previous educational hours.
- Be responsible about knowing which schools are / have been board-approved and train staff accordingly.

**Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

**Table A:**

<b>NAICS Code (4, 5 or 6 digit)</b>	<b>NAICS Business Description</b>	<b># of businesses in WA</b>	<b>Minor Cost Threshold = 1% of Average Annual Payroll</b>	<b>Minor Cost Threshold = .3% of Average Annual Receipts</b>
611519	Other Technical and Trade Schools (Includes Massage Instruction)	62	1% payroll = \$3,284.72	Not available

**Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

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 the proposed change of requiring applicants to receive all of the education and training in a board approved school. The survey asked the schools to provide specific estimates for:

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

Department staff received survey responses from four schools. Schools indicated that the tuition for transfer students ranged from \$475 to \$800. This fee covered administration costs (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 proposed rule.

**Analyze whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

Schools that accept transfer hours may see an initial loss in revenue because they will no longer be able to accept credits from transfer students from unapproved schools. The actual amount of “lost sales” is indeterminable.

The department’s assumption is that schools are aware that this change is coming in rule and are already taking steps to minimize their revenue loss.

**Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

The department is unable to estimate the probable cost of the proposed rule. The survey indicated that the schools would incur “administration costs” associated with changing curriculum, advertisements, course handouts, etc... In addition to the administrative costs, some schools did indicate that they would lose revenue due to not accepting credits from transfer students from unapproved schools but again, this amount is indeterminable. In the first year some schools may see a decrease in revenue as a result of students who choose not to enroll in a full program. Board-approved schools have been advised of the health-law judge’s ruling and are taking steps to address this loss of revenue.

There is a possibility for some approved schools to see an increase in revenue, based on bridge student enrollment. Due to this uncertainty, the department for the purposes of this analysis assumes that the rule will result in two or more massage schools incurring costs that exceed the minor cost threshold calculated at \$3,284.72.

**Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

As stated above, the rule will likely result in a reduction of revenue from students that will not be allowed to transfer credits from unapproved schools. The department assumes that the rule will also likely have a disproportionate impact on small businesses. Although, the proposed rule may initially have a disproportionate impact on the small business that offer a transfer program or accept transfer hours, these schools will still be able to offer a transfer program to a number of students who meet certain criteria (i.e. hours already obtained at a board approved school). The majority of the larger schools won't see much if any impact. Most of them do not offer a transfer option.

The department determined there are no mitigating options available. The rule clarifies what is already in law consistent with the health-law judge's ruling.

**Describe how small businesses were involved in the development of the proposed rule.**

Small businesses that offer transfer option have been very involved in attending board meetings and participating in rule discussion. All board approved schools were notified of the health-law judge's ruling and the department's action based on the order. Furthermore, the department surveyed schools that used the transfer option. The survey questions informed the schools about the potential impact of the rule.

**Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

Staff worked closely with constituents and the public to minimize the burden of this rule. Compliance with the rule should not require the creation or loss of jobs.

NEW SECTION

**WAC 246-830-037 Transfer of training hours.** The secretary shall only grant a license to an applicant seeking initial licensure under WAC 246-830-020 who completes their entire course of study through a massage program or programs approved by the Washington state board of massage.