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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 334
BOARD OF MASSAGE THERAPISTS

FILED
01/23/2019 10:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Set new board budget for 2019-2021 Biennium; Increase fees and clarify existing board rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/18/2019 8:05 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Ekaette Udosenata-Harruna
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 03/18/2019

TIME: 8:00 AM

OFFICER: Bob Ruark

ADDRESS: Board Office

728 Hawthorne Ave NE

Salem, OR 97301

NEED FOR THE RULE(S):

Budget: Establish budget for 2019-2021 Biennium; Licensure: Add language requiring licensees to complete pain management course by a licensee's next active renewal; Lapsed License: Add language to set a maximum period of renewals for a licensee wanting to reactive a lapsed license; Fees: Increase Initial Facility Permit fee, Initial Licensing fee, and Renewal fee for active and inactive license; Class Certification: Modify Verbiage for clarity; Continuing Education: Modify verbiage to add pain management as an approved topic for continuing education and add language to require licensees to complete pain management course by next active renewal.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR 334, 2018 and 2019 Board meeting minutes. These documents are available at www.oregon.gov/obmt.

FISCAL AND ECONOMIC IMPACT:

There is a minimal fiscal impact to licensees, applicants or small business; licensees or small businesses will see an increase of \$25 in renewal fee per biennium for an inactive license status, an increase of \$45 in renewal fee per biennium for an active license status. Increases of \$100 for initial license and \$50 increase for an initial license under 12 months and increases of \$150 for the initial facility permit fee. The Board of Massage Therapists will see an increase in revenue of about \$221,000 a year.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

334-001-0012 Budget, the Oregon Board of Massage Therapists Budget for 2019-2021 Biennium is \$2,417,000.

334-010-0015 Licensure, No projected fiscal Impact

334-010-0017 Lapsed License, No projected fiscal Impact

334-010-0033 Fees, licensees or small businesses will see an increase of \$25 in renewal fee per biennium for an inactive license status, an increase \$45 in renewal fee per Biennium for an active license status. An increases of \$100 of initial license and \$50 increase for an initial license under 12 months and an increase of \$150 for an initial facility permit fee.

334-010-0046 Class Certification, No projected fiscal Impact

334-010-0050 Continuing Education, No projected fiscal impact

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

334-001-0012 Budget, No projected fiscal impact

334-010-0015 Licensure, No projected fiscal Impact

334-010-0017 Lapsed License, No projected fiscal Impact

334-010-0033 Fees, licensees or small businesses will see an increase of \$25 in renewal fee per biennium for an inactive license status, an increase \$45 in renewal fee per biennium for an active license status. An increases of \$100 of initial license and \$50 increase for an initial license under 12 months and an increase of \$150 for an initial facility permit fee.

334-010-0046 Class Certification, No projected fiscal Impact

334-010-0050 Continuing Education, No projected fiscal impact

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

334-001-0012 Budget, No projected fiscal impact

334-010-0015 Licensure, No projected fiscal Impact

334-010-0017 Lapsed License, No projected fiscal Impact

334-010-0033 Fees, No projected fiscal Impact

334-010-0046 Class Certification, No projected fiscal Impact

334-010-0050 Continuing Education, No projected fiscal impact

c. Equipment, supplies, labor and increased administration required for compliance:

334-001-0012 Budget, No projected fiscal impact

334-010-0015 Licensure, No projected fiscal Impact

334-010-0017 Lapsed License, No projected fiscal Impact

334-010-0033 Fees, No projected fiscal Impact

334-010-0046 Class Certification, No projected fiscal Impact

334-010-0050 Continuing Education, No projected fiscal impact

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Each licensee may be considered a small business. Licensees and stakeholders were notified through meeting minutes and invitations to attend the meetings.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The proposed rules were discussed at board meetings and stakeholders attended the board meetings and provided input.

RULES PROPOSED:

334-001-0012, 334-010-0015, 334-010-0017, 334-010-0033, 334-010-0046, 334-010-0050

AMEND: 334-001-0012

RULE SUMMARY: Establish budget for 2019-2021 Biennium

CHANGES TO RULE:

334-001-0012

Budget ¶

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2017~~9~~-2021~~9~~ Biennium budget of \$~~2,280~~17,000.

Statutory/Other Authority: SB 1127, ORS 183, 687.121

Statutes/Other Implemented: Section 6, (1), (2)

AMEND: 334-010-0015

RULE SUMMARY: Add language requiring licensees to complete pain management course by a licensee's next active renewal.

CHANGES TO RULE:

334-010-0015

Licensure ¶

- (1) An applicant for licensure or renewal of a license must complete, in its entirety, an original application furnished by the Board. ¶
- (2) An applicant for an initial license and all lapsed and inactive licensees applying for reactivation must submit a completed electronic fingerprint for a criminal background check. ¶
- (3) All applications for licensure must be accompanied by proof of current certification in cardiopulmonary resuscitation (CPR) designed for professional health care providers. The CPR certification from standard is the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The A CPR certification card must include an expiration date.¶
- (4) An applicant must provide written explanation and copies of all related documentation as requested by the board if: ¶
 - (a) Applicant has ever been investigated, disciplined or denied licensure by this agency or any other governmental agency in any state or jurisdiction of the United States or foreign country; ¶
 - (b) Applicant has surrendered a massage license or other professional license in any state or jurisdiction of the United States or foreign country; ¶
 - (c) Applicant has been arrested, charged or convicted of any type of violation of the law, including both misdemeanors or felonies, other than minor traffic infractions in any state or jurisdiction of the United States or foreign country; ¶
 - (d) Applicant has abused or been treated for the abuse of alcohol, controlled or mind altering substances; or ¶
 - (e) Applicant has suffered from and/or received treatment for a mental, physical or emotional condition, which could impede applicant's ability to safely practice massage. ¶
- (5) Applicants for initial licensure must have passed a written examination approved by the board unless the applicant is applying through Health Indorsement in which the applicant must have passed a practical examination.¶
- (6) Licenses issued expire on the last day of the licensees' birth month of even numbered years for licensees with even numbered birth years and odd numbered years for licensees with odd numbered birth years. Thereafter, licenses may be renewed every other year upon completion of the application requirements. The application must be returned to the Board postmarked no later than the 1st day of the month of expiration. A delinquent fee must be paid if the completed application and all requirements are not received by the due date. ¶
- (7) Applicants for the renewal of an active license must sign a statement verifying completion of a minimum of 25 hours of continuing education. The Board may require proof of the continuing education hours. ¶
- (8) Applications for renewal of an active license must be accompanied by: ¶
 - (a) Current licensing fee; ¶
 - (b) Any applicable late fees; ¶
 - (c) Proof of current cardiopulmonary resuscitation (CPR) certification from the American Heart Association's ertification in Basic Life Support (BLS) Healthcare Providers Course or its equivalent cardiopulmonary resuscitation (CPR). The CPR certification card must include an expiration date; ¶
 - (d) Proof of 25 hours of continuing education as required in OAR 334-010-0050(1)(b); and ¶
 - (e) ¶
 - (e) All licensees must take and submit proof of completing the Pain management course, provided by the Oregon Pain Management Commission (OPMC), by a licensee's next active renewal; and ¶
 - (f) Any additional documentation required by the Board. ¶

(9) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read, understand, and must comply with all current Oregon Revised Statutes (ORS 687), Oregon Administrative Rules (OAR 334), and policy statements of the Board. ¶

(10) Licenses issued by the Board must not be transferable. ¶

(11) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the period of inactive status, the licensee may not practice massage for compensation in the State of Oregon. ¶

(12) An application to reactivate an inactive license must be accompanied by: ¶

(a) Current licensing fee; ¶

(b) Verification of current cardiopulmonary resuscitation (CPR) ~~certification from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent.~~ The CPR certification card must include an expiration date; ¶

(c) Verification of 25 hours of continuing education for each biennium the license was inactive. Of the 25 hours, at least 15 must be contact hours of continuing education training or Board approved activities. At least 4 contact hours must be in Professional Ethics, Boundaries ~~and/or~~ Communication. The remaining 10 of 25 hours may be contact or noncontact hours. ¶

(d) Verification of 50 hours of continuing education for the reactivation of inactive license more than 1 biennium must be submitted to the Board. Of the 50 hours, at least 30 must be contact hours of continuing education training or Board approved activities. At least 8 contact hours must be in Professional Ethics, Boundaries ~~and/or~~ Communication. The remaining 20 of 50 hours may be contact or noncontact hours; and ¶

(e) Completed electronic fingerprints for criminal background check.

Statutory/Other Authority: ORS 687.121, 687.051

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0017

RULE SUMMARY: Add language to set a maximum period of renewals for a licensee wanting to reactive a lapsed license.

CHANGES TO RULE:

334-010-0017

Lapsed License ¶¶

- (1) The massage therapist license is considered lapsed if an individual fails to complete the renewal process prior to the expiration of license. ¶¶
- (2) During the lapsed status, no such person shall practice massage in the State of Oregon. ¶¶
- (3) An applicant whose license is lapsed less than 24 months may return to active status by including the following with the completed application. ¶¶
 - (a) Payment of the current fee for activation of the license; ¶¶
 - (b) Late fee payment; ¶¶
 - (c) Proof of 25 hours of continuing education; ¶¶
 - (d) Verification of 4 contact hours in Professional Ethics, Boundaries and/or Communication. ¶¶
 - (e) Proof of current cardiopulmonary resuscitation (CPR) certification from the American Heart Association's B certification in in basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration date of the CPR certification; and ¶¶
 - (f) Complete and submit a completed electronic fingerprint for criminal background check. ¶¶
- (4) An applicant whose license is lapsed for more than 24 months and less than 36 months may return to active status by including the following with the completed application. ¶¶
 - (a) Payment of the current fee for activation of the license; ¶¶
 - (b) Payment of the licensing fee for the previous period of the lapsed license; ¶¶
 - (c) Late fee payment; ¶¶
 - (d) Proof of 50 hours of continuing education; ¶¶
 - (e) Verification of 8 contact hours in Professional Ethics, Boundaries and/or Communication. ¶¶
 - (f) Proof of current certification in cardiopulmonary resuscitation (CPR) certification from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration date (CPR); and ¶¶
 - (g) Complete and submit a completed electronic fingerprint for criminal background check. ¶¶
- (5) An applicant whose license is lapsed for 36 months or more, must meet all of the current initial license requirements listed in OAR 334-010-0005 (4) (a-d) to reactivate to active status; and include the following with the completed application. ¶¶
 - (a) Payment of the current fee for activation of the license; ¶¶
 - (b) Payment of the licensing fee applicable for the periods of the each biennium the license was lapsed and for the current licensing period but not to exceed, a maximum of two renewal periods, for any lapsed license; ¶¶
 - (c) Late fee payment; ¶¶
 - (d) Proof of 50 hours of continuing education; ¶¶
 - (e) Verification of 8 contact hours in Professional Ethics, Boundaries and/or Communication. ¶¶
 - (f) Proof of current certification in cardiopulmonary resuscitation (CPR) certification from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration date (CPR); and ¶¶
 - (g) Complete and submit a completed electronic fingerprint for criminal background check. ¶¶
- (6) An applicant whose license is lapsed for 12 months or less may renew as an inactive status; a license that is lapsed for 12 months or more is prohibited from renewing as an inactive status ¶¶
- (7) All information required for restoring a lapsed license to an active status must be received within 3 years of the date of lapsing along with the requirements listed in OAR 334-010-0017(3)(a-h). ¶¶

(8) Continuing Education is not required if this is your first subsequent renewal after receipt of your initial license.

Statutory/Other Authority: ORS 183, 687.121, 182.456 - 182.472

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0033

RULE SUMMARY: Increase Initial Facility Permit fee, Initial Licensing fee, and Renewal fee for active and in active license.

CHANGES TO RULE:

334-010-0033

Fees ¶¶

- (1) The fees are: ¶¶
- (a) ~~\$1200~~ for initial license; ¶¶
 - (b) ~~\$5100~~ for initial license under 12 months; ¶¶
 - (c) ~~\$155200~~ per biennial renewal for active license; ¶¶
 - (d) ~~\$75100~~ per biennial renewal for inactive license; ¶¶
 - (e) \$100 mid-cycle inactive to active renewal ¶¶
 - (f) \$25 per week, up to a maximum of \$100, for any late renewal; ¶¶
 - (g) \$100 for application processing; ¶¶
 - (h) \$150 for each practical examination; ¶¶
 - (i) \$100 for mailing list; ¶¶
 - (j) \$10 for license reprint; ¶¶
 - (k) \$10 for license verification; ¶¶
 - (l) \$250 Credentialing Review; ¶¶
 - (m) Current Oregon State Police Criminal Background Check Fee; ¶¶
 - (n) ~~\$5200~~ initial facility permit; ¶¶
 - (o) \$250 facility permit ownership transfer; ¶¶
 - (p) \$250 permitted facility name change; ¶¶
 - (q) \$10 facility permit reprint ¶¶
 - (r) \$10 permitted facility address change and ¶¶
 - (s) ~~O~~ther administrative fees as allowed by law. ¶¶
- (2) Application and licensure fees are not refundable

Statutory/Other Authority: 687.121, ORS 183, 182.456 - 182.472

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0046

RULE SUMMARY: Modify Verbiage to add clarity.

CHANGES TO RULE:

334-010-0046

Class Certification ¶¶

~~The following Rule language is effective as of January 1, 2017.¶¶~~

(1) A class or program certified under ORS 687.051 must be offered by: ¶¶

(a) In State Schools: ¶¶

(A) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or ¶¶

(B) By a community college or university and approved by the Division of Vocational Education or the Higher Education Coordinating Commission, or the appropriate agency of another jurisdiction; or ¶¶

(C) By a college accredited either by the Northwest Accreditation Commission or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; and ~~or.¶¶~~

(D) Approved by the Board. ¶¶

(b) Out of State Schools: ¶¶

(A) Must be accredited by the governing body where the school is located; or ¶¶

(B) By a college accredited either by the Northwest Accreditation Commission or a like regional association for the purpose of granting degrees.¶¶

(2) In order for a class or program to be approved, the person or institute offering the class or program must apply to the Board. The application packet must contain, but not be limited to: ¶¶

(a) A completed Board application; ¶¶

(b) Verification of content meeting the Model Curriculum; ¶¶

(c) Course descriptions and syllabi; ¶¶

(d) The institution's Code of Ethics and fraternization policy; ¶¶

(e) The method of evaluation to determine the student's successful completion of a class; ¶¶

(f) The attendance requirements for students to successfully complete each class; ¶¶

(g) Minimum qualifications for selecting instructors. ¶¶

(3) The authorized representative of the certified class or program must notify the Board at least 60 days prior to any significant changes to information provided in the application process. ¶¶

(4) A certified class or program must renew their certification on a regular basis as determined by the Board. ¶¶

(5) Certification of the class or program may be revoked by the Board if it is determined that the requirements have not been or are no longer being met. ¶¶

(6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, must be heard by the Board pursuant to ORS 183.411 to 183.497.

Statutory/Other Authority: ORS 687.121

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0050

RULE SUMMARY: Modify verbiage to add pain management as an approved topic for continuing education and add language to require licensees to complete pain management course by first active renewal.

CHANGES TO RULE:

334-010-0050

Continuing Education ¶

(1) The intent of Continuing Education is to protect the public by maintaining knowledge and skills of massage and/or bodywork. Each licensee must complete 25 hours of continuing education each renewal period. The continuing education hours must be from the following topics:¶

- (A) Massage and bodywork techniques;¶
- (B) Use of thermal modalities, topical preparations, mechanical assistive; devices/appliances;¶
- (C) Stretching and gymnastics that lengthen and shorten soft tissues;¶
- (D) Posture and movement assessment;¶
- (E) Massage and bodywork business practices;¶
- (F) Anatomy and physiology of the human body;¶
- (G) Kinesiology of the human body;¶
- (H) Pathology of the human body;¶
- (I) Professional Ethics, Boundaries or Communication;¶
- (J) Cultural competency¶
- (K) Body mechanics;¶
- (L) Somatic education; or¶
- (M) CPR/First Aid.¶

(N) Pain Management¶

(a) At renewal time, each licensee must sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. The Board may require proof of CE hours.¶

(b) Of the 25 hours, at least 15 must be contact hours of continuing education training or Board approved activities. At least 4 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 10 of 25 hours maybe contact or noncontact hours.¶

(2) The methods of obtaining continuing education contact hours shall include:¶

- (a) Attendance of courses, seminars, and workshops sponsored, certified by a licensed or accredited massage and bodywork training program;¶
- (b) Attendance of courses or activities for continuing education offered by a provider recognized by a massage and bodywork professional organization;¶
- (c) Attendance of courses provided by an accredited institution of higher education if topics are listed in OAR 334-010-0050(1)(A-M).¶
- (d) Attendance of courses, seminars, and workshops that meets the content requirement of OAR 334-010-0050(1)(A-M).¶
- (e) Individual interactive distance learning study courses with subject matter that is listed in OAR 334-010-0050(1)(E-J).¶
- (f) Courses in cardiopulmonary resuscitation/first aid if taken in the presence of an instructor;¶
- (g) Providing Board requested peer supervision or Board exam proctoring; One hour of CE contact credit will be given for each meeting/day.¶
- (h) Attendance at an Oregon Board of Massage Therapists board meeting, board committee meeting, board task force or serving on these committees/task forces. One hour of CE contact credit will be given for each meeting.¶

(3) The methods of obtaining continuing education non-contact hours shall include:¶

- (a) Publishing an article relating to massage and bodywork;¶
- (b) Self-study based on media (i.e. book/video, periodical, web based, DVD);¶

- (c) Courses or lectures on massage and bodywork which a licensee presents. A licensee may receive credit for presenting a course or lecture only one time per renewal period regardless of how many times the licensee presents the course or lecture.¶
- (4) If the Continuing Education subject matter is not listed under OAR 334-010-0050(1) it will not be accepted for continuing education.¶
- (5) The Oregon Board of Massage Therapists randomly selects a minimum of 10 percent of received monthly renewals for an audit.¶
- (a) If selected for an audit you will have 30 days to complete the audit form and submit copies (not originals) of your Continuing Education certificates.¶
- (b) If you fail to provide the requested information to the Board, within the 30 days, the Board may issue discipline per ORS 687.081 and 687.250.¶
- (6) The continuing education requirement does not apply to a licensee's first license renewal.¶
- (7) Continuing education must be completed within the renewal period. Contact hours taken and submitted during renewal in excess of the total number required may only be carried over to the next subsequent renewal period.¶
- (a) Contact hours taken in Professional Ethics, Boundaries and/or Communication in excess of the four hour requirement may be carried over to the next subsequent renewal period.¶
- (b) First renewal CE are not required to be submitted at the time of renewal, CE taken during the first renewal period may be submitted with second renewal.¶
- (c) All licensees must take and submit proof of completing the Pain management course, provided by the Oregon Pain Management Commission (OPMC), by a licensee's next active renewal.¶
- (8) Continuing education records must be maintained by each licensee for a minimum of five years.¶
- (9) If the Board finds indications of fraud or falsification of records, investigative action shall be taken. Findings may result in disciplinary action up to and including revocation of the licensee's license.¶
- (10) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.
- Statutory/Other Authority: ORS 687.081, 687.121, 687.122
- Statutes/Other Implemented: 687.081, 687.086, 687.121, ORS 687.011, 687.051, 687.057, 687.061, ~~687.081, 687.086, 687.121~~