

Comments of the Independent Regulatory Review Commission



State Board of Massage Therapy Regulation #16A-724 (IRRC #3203)

Fees

August 22, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the June 23, 2018 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the State Board of Massage Therapy (Board) to respond to all comments received from us or any other source.

1. Section 20.3. Fees. – Economic or fiscal impacts; Need for the regulation; Reasonableness of requirements, implementation procedures and timetables for compliance.

Under the Massage Therapy Law (Act), the Board is required to support its operations from the revenue it generates from fees, fines and civil penalties. Section (a) states, in part,

“If the revenues raised by the fees, fines and civil penalties imposed under this act are not sufficient to meet expenditures over a two-year period, the [B]oard shall increase those fees by regulation so that projected revenues will meet or exceed projected expenditures.” 63 P.S. § 627.11(a).

Under Section 49 of the Act, initial operating funds were transferred from the Professional Licensure Augmentation Account (PLAA) to the Board to be repaid within three years of the beginning of issuance of licenses. 63 P.S. § 627.49. The current fee schedule in Section 20.3 was established with the Board’s initial rulemaking in 2011 based upon an estimate of the costs of administering the functions of the Board at that time. However, since the Board began issuing licenses in 2011, it has not produced enough revenue to cover its current operating expenses or repay the moneys advanced from the PLAA. In fact, the deficit balance in the Board’s account as of the beginning of Fiscal Year 2017-2018 was over \$1 million.

As required by the Act, the Board proposes to increase several fees, including raising the biennial renewal fee from \$75 to \$200. While we acknowledge the statutory requirement for the Board to increase revenues through fees, fines and civil penalties to cover expenditures, we have several concerns.

Several hundred commenters, particularly those who work part-time, oppose such a significant increase in the license renewal fee for a variety of reasons, such as:

- “While we are categorized as healthcare professionals and conduct ourselves as such, we do not enjoy the same recognition as others in the healthcare field, as most insurance companies do not cover or reimburse massage-related expenditures.”
- “This much of an increase . . . is ridiculous, especially for a certification that requires no formal college degree. I also hold a license in Occupational Therapy, with a required Master’s degree, and that license renewal is only \$65 [biennially].”
- “We licensed massage therapists will be expected to pay more than double what the physical therapists pay and we make significantly lower incomes.”
- “In researching other professional [biennial] renewal fees, whose incomes greatly exceed our profession, \$200 is very close to the fees of chiropractors, dentists, and registered pharmacists.”
- “To renew a nursing license in Pennsylvania is \$65 and their earning potential is much higher.”
- “This increase of \$125 represents about 2.5 percent of my total yearly income from massage. This, of course, does not include costs for classes, ethics, [cardiopulmonary resuscitation] courses, massage supplies and local and federal taxes.”
- “The Board’s assumption that employers pay the licensure fees for therapists is certainly not the norm.”
- “This is a very physical job and increasing the amount of massages done each month to cover this fee is just not doable.”
- “From a hiring perspective, the applicant pool of qualified candidates is already shrinking If the board continues to make the fees too expensive for massage therapists to renew their licenses, this will create an even bigger shortage of professionals”
- “The only thing this proposal will do is encourage more people to leave the profession of massage therapy which should not be the goal of the State Board of Massage and will therefore lead to less licensed massage therapists, and consequently less revenue for the State Board in the long run”

We ask the Board to address the adverse economic impacts that commenters are asserting will result from this significant license renewal increase, as well as the reasonableness of imposing such a significant increase for license renewal.

Also, we ask the Board to provide additional information related to the PLAA. How much did the Board initially borrow? What is the remaining balance owed to the PLAA?

We ask the Board to explain whether the costs provided by the Board are strictly Board expenses or whether the costs include any Department overhead. Also, the Board should explain how it reconciles its deficit situation with the Department’s budget.

The Fee Report Form for Biennial Renewal Fee-Massage Therapy does not include “Fee-Related Activities and Costs” as do the other Fee Report Forms provided by the Board. Without the total estimated cost of Board activities related to biennial renewal fees, how was the proposed fee determined? We ask the Board to provide this information with the final-form regulation.

The Preamble states that the Board raises a majority of its revenue through biennial renewal fees, with a small percentage of revenue coming from application fees, fines and civil penalties. Many commenters raised concerns over the lack of enforcement for unlicensed bodywork shops. We ask the Board to address the issue of enforcement, since fines and civil penalties raise only “a small percentage of revenue.” What steps is the Board taking to increase revenue by shifting the burden from licensees to unlicensed individuals through fines and civil penalties?

Additionally, we ask the Board to explain in the Preamble of the final-form regulation why the initial estimate of the costs of administering the functions of the Board resulted in the Board not producing enough revenue to cover its operating expenses or repay the moneys advanced from the PLAA since it began issuing licenses in 2011.

We will review this information to evaluate the economic impacts and reasonableness of the regulation to determine if the regulation is in the public interest.

2. RAF and Preamble. – Clarity.

The Board should remove references to Section 11(b) of the Act from the RAF and Preamble of the final-form regulation since this citation references the authority of the Bureau of Professional and Occupational Affairs.