

SUBJECT: Regulating massage therapy

COMMITTEE: Public Health — favorable, with amendments

VOTE: 6 ayes — Berlanga, Hirschi, Coleman, Davila, Delisi, Glaze
0 nays
3 absent— Janek, Maxey, Rodriguez

WITNESSES: For — David J. Lauterstein; Kenneth C. Looney, American Massage Therapy Association
Against — None
On — Ronald Clark; D. Alex Matthews; Debbie Bradford, Texas Department of Health

BACKGROUND : Massage therapists have been regulated since 1985 by the Texas Department of Health. Massage therapists, massage therapy instructors, massage establishments, and massage schools must be registered with the state, except for massage therapy students and schools and instructors approved by the Texas Education Agency. Applicants for a massage therapy registration certificate must successfully pass a 300-hour course of instruction over statutorily specified topics relating to massage therapy and pass practical and written exams.

The department is authorized to suspend, revoke and deny registration to persons who violate the act and may impose civil penalties and take actions to obtain injunctive relief.

DIGEST: HB 727 would require all massage schools and instructors to be registered with the state; authorize the board of health to adopt fees in amounts necessary to cover the costs of administering the bill; authorize the department of health to impose administrative penalties against a registrant who violated the act; specify that state law supersedes local regulation of massage therapy; and also make various nonsubstantive and conforming changes to the current act.

The bill would take effect September 1, 1997. Independent massage therapy instructors would have to register with the department to continue teaching independently on or after January 1, 1998. Schools previously exempted under the bill from registration would have to register by March 1, 1998.

Definitions

In addition to prohibitions currently in law, the definition of massage therapy would newly specify that it does not constitute the practice of physical therapy, osteopathic medicine, or activities of an athletic trainer.

An “independent massage therapy instructor” would be newly defined as an individual who is registered as a massage therapist and the sole person responsible for instructing one or more students in the 300-hour course of instruction required for registration. A “massage therapy instructor” would be defined as an individual who instructs at a massage school.

Advanced programs would be newly authorized and would be defined as instruction other than the required 300-hour course of study offered by a massage school or independent massage therapy instructor that serves to enhance the knowledge or skills of a massage therapist. An “advance program presenter” would be defined as a person who provides instruction in an advanced program.

Registration and qualifications

HB 727 would specify application procedures, and would replace provisions regarding minimum hours of instruction by topic with provisions that require the board to adopt rules that specify general course content and minimum number of hours of instruction in each of the subjects.

In addition to the current list of causes that could warrant punitive action, the department would be authorized to refuse to issue, suspend or revoke registration for a massage school, independent instructor, a school instructor or massage establishment for using drugs or alcohol to an extent that affected professional competence; involvement in prostitution or a sexual offense; being judged mentally incompetent by a court; or knowingly providing diagnosis or treatment of disease.

Instruction

Only registered massage schools and independent massage instructors could provide the required 300-hour course of instruction for registration and advanced programs. Schools or independent instructors would have to notify the department of any advanced program to be offered for placement on the massage therapy advanced program registry. The advanced program presenter would have to have the experience and credentials necessary to provide effective instruction, but would not have to be a registered massage therapist.

Administrative penalties

An administrative penalty for violations of the act could not exceed \$1,000. Each day a violation continued or occurred would be a separate violation for the purposes of imposing a penalty. Standard provisions regarding administrative penalty considerations, notice to the registrant, hearings, payment and judicial review would be enacted.

**SUPPORTERS
SAY:**

HB 727 would update Texas regulation of massage therapy, the fastest growing health profession in Texas. The act regulating massage therapy and establishments (art. 4512k, VCTS) has not been revised since it was first enacted in 1985. HB 727 would not expand the scope of practice, but would enact recommendations of two task forces to increase state oversight over the qualifications of massage therapists, schools and instructors, improve enforcement with the use of administrative penalties, and make clarifying changes in the law.

The need for continuing education has not yet been demonstrated, and enforcement of such a new requirement would exceed current and proposed fiscal 1998-99 department appropriations. The possibility of massage therapists doing harm in the performance of authorized practices is very low, and does not warrant increased financial and administrative continuing education burdens on the department and over 10,000 registered massage therapists. The department received only about 70 complaints from the public last fiscal year, and most of those complaints referred to sexually-related offenses — such as prostitutes fraudulently posing as legitimate massage therapists — that would not be mitigated by continuing education

requirements.

CSHB 727 recognizes the value of continuing education without enacting additional regulation by recognizing and registering advanced programs and authorizing presenters to be individuals other than registered massage therapists.

OPPONENTS
SAY:

HB 727 should include continuing education requirements for registered massage therapists because there are no mechanisms that require therapists to maintain their proficiency once they are registered. Continuing education is required for most health care professionals due to the rapidly changing nature and expanding knowledge of health care, and would further improve the services received by massage clients.

NOTES:

The committee amendments would specify that a massage therapist could not knowingly provide or offer to provide diagnosis or treatment of illness, injury or disease and add osteopathic medicine to the list of practices not constituted under the term massage therapy.