



COLORADO
Department of
Regulatory Agencies

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Fact Sheet HB16-1320:
Concerning the Regulation of Massage Therapy
to Modify Practices that are Linked to Criminal Behavior
Sponsors: Rep. Foote (D-12)/Rep. Carver (R-20); Sen. Cooke (R-13)

Why Colorado needs this bill:

Colorado has seen an increase in the number of prostitution and human trafficking offenses linked to massage therapy. Over the last two years, the Division of Professions and Occupations has dealt with more than 30 cases that indicate suspected human trafficking--cases that are a scourge on the legitimate practice of the massage therapy profession.

Loopholes in existing regulations allow traffickers to aid and abet unlicensed practice without penalty. Owners of businesses implicated in human trafficking typically have a number of unlicensed individuals being forced to provide massage services to customers.

The standard of care in massage cannot be enforced through existing statutory provisions. Current statute does not prohibit the following:

- sexual behavior during the massage that does not include the direct touching of a massage client (e.g., exposing oneself to a client)
- licensing applicants with minor criminal records linked to prostitution and trafficking (e.g., keeping a place of prostitution arrests that are pled down to a business-license violation)
- “foot spas” proliferating as fronts for prostitution businesses that traffic workers

Specific proposals in this bill:

Add 18 year age requirement for licensure. Minors are significantly more vulnerable to human trafficking and forced prostitution.

Expand criminal penalties to those facilitating unauthorized practice, allow fining. Current statute requires a criminal misdemeanor penalty against anyone found practicing without a license, but does not penalize traffickers that aid and abet such unlicensed practice. This proposal would expand the misdemeanor penalty to those aiding and abetting unlicensed practice, and also allow for fining of these individuals, thereby shifting the prosecutorial focus away from victims and onto perpetrators.

Clarify local government authority to regulate massage parlors. The bill clarifies the ability of local governments to regulate massage parlors -- a provision sought by jurisdictions where there is increased criminal activity. To prevent over-regulation, a narrow definition of massage parlor

will be established in rule by the Director, so as not to add regulatory burden on all massage therapy businesses, such as sole practitioners. The bill also clarifies that regardless of the venue where massage is being practiced, it must be performed by a state-licensed individual.

Move exemptions to rule to further define and close loopholes. Current statute exempts from massage therapy licensure a list of specific practices that employ touch but are not massage therapy. Some of these exemptions have been exploited by criminals to hide illegitimate activity. Thus, the bill would move these exemptions to rule where they can be defined in more detail and loopholes closed. The bill also requires the rule to exempt practices meeting certain conditions. The existing exemptions will continue without interruption until a thorough stakeholder process and public notice-and-comment rulemaking has occurred. The first such stakeholder meeting has already been noticed for May 16, 2016.

Implement good moral character standard but do not close doors to former victims of human trafficking. Moral character requirements exist in other licensing programs such as realtors, naturopathic doctors, and teachers. By adding this requirement for massage therapy licensure, the bill would allow the Director discretion to deny a license for convictions unrelated to the practice of massage but that are linked to pimping or trafficking and were pled down. The bill also includes a requirement that the Director consider whether an applicant with a criminal record has been rehabilitated, and specifically whether the applicant has been a victim of human trafficking.

Clarify grounds for discipline to reduce loopholes for inappropriate and unprofessional conduct. Currently the practice act allows for disciplinary action if a massage therapist engages in a sexual act with a client, however, the practice act defines sexual act by the criminal code found in Section 18-3-401, C.R.S. This proposal would adopt a broader definition of a sexual act to clarify the Director's ability to discipline in cases where boundaries have been inappropriately crossed, including sexual behavior that may not include the direct touching of a massage client.

Affected Statute: Title 12, Article 35.5 Massage Therapy Practice Act