

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2022-46

Rule Number Plc 303

1. Agency Name & Address:

**Office of Professional Licensure &
Certification
7 Eagle Square
Concord, NH 03301**

2. RSA Authority: RSA 328-B:4, VII

3. Federal Authority: n/a

4. Type of Action:

- ☐ Adopt
☐ Amendment (only if Initial
Proposal was filed before 9/27/20.)
☐ Repeal
☐ Readoption
☒ Readoption w/amendment

5. Short Title: **Massage Therapy License by Reciprocity**

6. Contact person for copies and questions:

Name: **Gretchen Hamel**

Title: **Program Specialist IV**

Address: **OPLC
7 Eagle Square
Concord, NH 03301**

Phone #: **Please contact via email:
Gretchen.Hamel1@oplcnh.gov**

7. The rulemaking notice appeared in the Rulemaking Register on **March 24, 2022**.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number 2022-46

Rule Number Plc 303

1. Agency Name & Address: Office of Professional Licensure & Certification 7 Eagle Square Concord, NH 03301	2. RSA Authority: <u>RSA 328-B:4, VII</u>
	3. Federal Authority: <u>n/a</u>
	4. Type of Action:
	Adoption _____
	Repeal _____
	Readoption _____
	Readoption w/amendment <u>X</u>

5. Short Title: **Massage Therapy License by Reciprocity**

6. (a) Summary of what the rule says and of any proposed amendments:

The Office of Professional Licensure and Certification (OPLC) is proposing to readopt Plc 303, relative to massage therapists obtaining a license in New Hampshire by reciprocity, with amendments to better implement RSA 328-B:6, III relative to what constitutes licensing requirements that are “substantially equivalent to or not less than” New Hampshire’s requirements. The amendments (1) add a purpose section, a statement of the non-waivable statutory requirements that are referenced in the purpose section, and a definition of “substantially equivalent to or not less than”; (2) clarify that a “license” from another jurisdiction that qualifies under this section can be called a certificate or registration so long as the “substantially equivalent...” requirements are met; (3) establish a requirement, if the other jurisdiction’s criteria called for more than 500 hours but fewer than 750 hours of education, for the applicant to have worked one year for each 50 hours below 750, (4) update the information relative to obtaining an application form, and (5) clarify that application fees will not be refunded if the applicant withdraws an application.

6. (b) Brief description of the groups affected:

The proposed rules affect individuals who have a license, certification, or registration to practice massage therapy in another U.S. jurisdiction who wish to obtain a license by reciprocity to practice in New Hampshire.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule(s)	State Statute(s) Implemented
Plc 303.01-303.04	RSA 328-B:6, III

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Gretchen Hamel**

Title: **Program Specialist IV**

Address: **OPLC
7 Eagle Square
Concord, NH 03301**

Phone #: **Please contact via email**

Fax #: **[discontinued]**

E-mail: Gretchen.R.Hamel1@oplc.nh.gov

The rules can be reviewed on-line at
<https://www.oplc.nh.gov/oplc-laws-and-rules>

TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 PM on Friday, April 22, 2022**

Please submit comments to OPLC-Rules@oplcnh.gov

☐ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, April 14, 2022 at 1:30 PM**

Place: **Board Room, Office of Professional Licensure & Certification
7 Eagle Square, Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # **22:040**, dated **03/11/2022**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

There may be a benefit to State citizens who are licensed, registered, or certified as a massage therapist in another jurisdiction as the clarification in the rules may financially benefit them by being able to practice in NH if they meet the requirements of the proposed rule. There is no cost or benefit to political subdivisions.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules do not apply to political subdivisions. The rules thus do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures and so do not violate Part I, Article 28-a of the N.H. Constitution.

State of New Hampshire
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
7 Eagle Square, Suite 200
Concord, N.H. 03301-2412
Telephone 603-271-2152

Lindsey B. Courtney
Executive Director



FP 2022-46, Plc 303 Massage Therapy License by Reciprocity
Summary of Comments on Initial Proposal with OPLC Responses
April 28, 2022

Background

The Office of Professional Licensure and Certification (OPLC) is proposing to readopt Plc 303, relative to massage therapists obtaining a license in New Hampshire by reciprocity, with amendments to better implement RSA 328-B:6, III relative to what constitutes licensing requirements that are “substantially equivalent to or not less than” New Hampshire’s requirements. More information about the proposed changes was provided in the Rulemaking Notice published in the March 24, 2022 *Rulemaking Register*.

No one from the public attended the public hearing held on April 14, 2022. Written comments were received from licensees and are addressed below. At the time of filing the Final Proposal, the OLS/Administrative Rules attorney who reviewed the rules indicated as a preliminary matter that she had no comments.

The OPLC made the following revisions on its own initiative:

Plc 303.02: Changed (1) and (2) to (a) and (b).

Plc 303.04(f): inserted “abandoned,” prior to “withdrawn” and inserted a comma after withdrawn, to make it clear that application fees are not refunded if an application is not pursued (*i.e.*, is abandoned) by the applicant. This change is based on rules relative to licensure that are being drafted that distinguish between abandoning an application, by filing an incomplete application and then not submitting the information required to complete it, and affirmatively withdrawing an application, by filing a notice that the application is being withdrawn.

Plc 303 generally

Comment 1: *I am licensed LMT, Esthetician, and Barber. At a certain point in NH The Massage licensing was controlled by DHHS. They tried at one point to roll that responsibility in with the board of Cosmetology, which I actually agree with, but then decided to put it back with DHHS. Now they are recognizing Reflexology, Structural integration, as well as Asian Bodywork as a separate License, which I also support, yet do not see why the rules for all body workers including massage are not the same. Also I feel there is no representation, or professional board of Massage or Bodywork. I feel that this profession should have the same type of board, board*

members, and representation that other professions are involved with. After all the environment these professions are in are similar, if not the same environment as in salon/spa.

Response 1: RSA 328-B:5, “Advisory Board of Massage Therapists”, requires the Executive Director of the OPLC to establish the Advisory Board of Massage Therapists. The Board consists of 3 massage therapists who are licensees in New Hampshire. Information on the Board can be found at <https://www.oplc.nh.gov/advisory-board-massage-therapists>.

Comment 2: *I have been a massage therapist practicing in the North Country since 1999. I am adamantly opposed to the reduction of required training hours for reciprocity for licensure of massage therapists. Once these changes are put in place, it is highly unlikely that we will return to our former standards, under our present state. When I began practicing, New Hampshire was the strictest state in the country and although I often chuckled at our state motto, in conjunction with the message, “Live Free or Die”, I also took a level of pride in our requirements. ... Prior to the pandemic I had approximately nine therapists and one esthetician who would work with me in the course of a month. A significant amount of our work revolved around couples work (two therapists and the couple). Naturally this was no longer a viable option, as there were very few therapists practicing. At present I am practicing solo, as I have not been able to entice any staff to return to my practice, or to employ new therapists/recent graduates, leaving me to scramble for work after twenty three years in the field. ... One would suspect I would be open to any measure of recruiting therapists, even if by reducing requirements...however I am not! ... Lowering the standard of practice will only encourage a less qualified therapist, resulting in potentially negative encounters and may even endanger clients. ...*

Response 2: The requirements for initial licensing for new massage therapists are not being changed in this rulemaking, and there presently are no plans to change them. The proposed rules are simply a recognition that work experience should be given credit when massage therapists who are licensed in other states wish to move to New Hampshire and work here. This recognition is made in many different professions; it is not unique to massage therapy. Further, as you note, New Hampshire’s education requirements are far greater than any nearby state, which means that other states have found that public health and safety can be achieved even with fewer years of formal education.

Comment 3: *I am a recent transplant to New Hampshire with 3 years of experience in massage therapy and licensure in 3 other states, as well as temporary licensure in the state. This amendment would have a huge positive impact on my life while still ensuring on the professionalism and expertise of massage therapists in New Hampshire. The current reciprocity rules without the proposed amendment would require me to complete further schooling at a time and a cost which places an undue burden on my lower income family, and on me as the main caregiver to my children. Please consider families like mine when making your decision.*

Response 3: The intent of this rulemaking was to acknowledge working experience as being valuable. We appreciate getting confirmation that it will make a difference.

Comment 4: *I just read the new proposed amendment regarding the above-named subject. I think it is wonderful! I wish that all states (jurisdictions) would fall into place and accept this.*

Response 4: Thank you.

Readopt with amendment Plc 303, eff. 9-21-18 (doc. #12621), to read as follows:

PART Plc 303 LICENSE BY RECIPROCITY

Plc 303.01 Purpose. The purpose of this part is to implement RSA 328-B:6, III, which provides as follows:

“Except for the requirements of subparagraphs I(b) and (c) of this section, the executive director may waive any requirements for licensure for any applicant for a massage therapist's license who, on the date of application hereunder, holds a valid license issued by any other state or country, but only if the other licensing body's requirements are substantially equivalent to or not less than the requirements under this chapter.”

Plc 303.02 Non-Waivable Requirements. As required by RSA 328-B:6, I(b) and (c), the applicant:

- (a) Shall be at least 18 years of age on the date of the application; and
- (b) Shall not have been convicted in New Hampshire or in any other state of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime.

Plc 303.03 Definition. For purposes of this part, “substantially equivalent to or not less than” means the licensing requirements include:

- (a) Not less than 500 hours of education, including practical experience, at a school that meets the criteria for a qualifying massage therapy school specified in Plc 302.04; and
- (b) Passage of a nationally-recognized certifying examination.

Plc 303.04 Initial License by Reciprocity.

(a) An applicant who holds a license, certificate, or registration from another jurisdiction whose licensing requirements are substantially equivalent to or not less than those specified in RSA 328-B and Plc 300 may apply for licensure by reciprocity.

(b) To qualify for a license by reciprocity when the applicant's hours of education are 500 hours or more but less than 750 hours, the applicant shall have worked as a massage therapist for one year for each 50 hours of education less than 750 hours.

(c) An applicant for licensure by reciprocity shall complete and submit a “Massage Therapist Licensure Application” form for licensure by reciprocity, available by creating an account at <https://forms.nh.gov/license/Login.aspx> and accessing the appropriate form, by providing the following:

- (1) The information required by Plc 302.06; and
 - (2) A written statement from the jurisdiction in which the applicant holds a license, certificate, or registration to practice massage therapy, verifying that the applicant is licensed, certified, or registered in that state and that the license, registration, or certificate is in good standing.
- (d) The completed application shall be submitted to the executive director with the initial license application fee specified in Plc 308.
- (e) Applications submitted under this section shall be processed as described in Plc 302.07, provided that the executive director shall also deny applications submitted under this section if he or she receives written verification from the jurisdiction(s) in which the applicant holds a license, certificate, or

registration to practice massage therapy that the applicant's license, certificate, or registration is not in good standing.

(f) Application fees shall not be refunded in the event an application is abandoned, withdrawn, or denied.

APPENDIX

Rule(s)	State Statute(s) Implemented
Plc 303.01-303.04	RSA 328-B:6, III