



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Board of Nursing/Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 90-50-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Certification of Massage Therapists
<b>Action Title:</b>	Review recommendations/continuing competency
<b>Date:</b>	9/29/01

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The board is recommending amendments to its regulations for the certification of massage therapists in order to address concerns about competency of certificate holders by requiring recertification by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or obtaining at least 25 hours of continuing education in the biennium before renewal. The Board will also amend regulations to further specify the requirements for licensure by endorsement, to delete outdated “grandfathering” provisions and unnecessary rules for provisional certification, and to incorporate by reference the code of ethics and standards of practice of the NCBTMB.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

18 VAC 90-50-10 et seq. Regulations Governing Certification of Massage Therapists was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification and licensure.
5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.
6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.

Chapter 1 of Title 54.1 authorizes health regulatory boards to impose additional requirements on certificate holders seeking renewal.

**§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.**

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

Chapter 30 of Title 54.1 authorizes the Board of Nursing to regulate massage therapists:

**§ 54.1-3000. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Nursing.

"Certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the Board.

"Clinical nurse specialist" means a person who is registered by the Board in addition to holding a license under the provisions of this chapter to practice professional nursing as defined in this section. Such a person shall be recognized as being able to provide advanced services according to the specialized training received from a program approved by the Board, but shall not be entitled to perform any act that is not within the scope of practice of professional nursing.

"Certified massage therapist" means a person who meets the qualifications specified in this chapter and who is currently certified by the Board.

"Massage therapy" means the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms "massage therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

**§ 54.1-3029. Qualifications for a certified massage therapist.**

A. In order to be certified as a massage therapist, the applicant shall furnish evidence satisfactory to the Board that the applicant:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program, having received programmatic approval from the Virginia Board of Education, Division of Proprietary Schools, or certified or approved by the Virginia Board of Education, Division of Proprietary Schools; the State Council of Higher Education; or an agency in another state, the District of Columbia or a United States territory which approves educational programs, notwithstanding the provisions of § 22.1-320;
3. Has passed the National Certification Exam for Therapeutic Massage and Bodywork or an exam deemed acceptable to the Board of Nursing leading to national certification; and
4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in this chapter.

B. The Board may certify any applicant who has been practicing massage therapy for up to ten years prior to July 1, 1997, and has completed at least 200 hours of training in an education program. Such programs may be, but shall not be required to be, certified or approved by the Virginia Board of Education, Division of Proprietary Schools; the State Council of Higher Education; or an agency in another state, the District of Columbia or a United States territory which approves educational programs, or has been in practice for ten years or more prior to July 1, 1997, and has completed 20 hours of such training; or has passed the National Certification Exam for Therapeutic Massage and Bodywork prior to 1994.

C. The Board may issue a provisional certification to an applicant prior to passing the National Certification Exam for Therapeutic Massage and Bodywork for such time and in such manner as prescribed by the Board. No more than one provisional certification shall be issued to any applicant.

D. The Board may certify without examination any applicant who is licensed or certified as a massage therapist in another state, the District of Columbia, a United States possession or territory, or another country, and, in the opinion of the Board, meets the requirements for certified massage therapists in this Commonwealth.

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## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the amended regulation is to clearly state in regulation the qualifications necessary for a person to become certified as a massage therapist and the requirements necessary to demonstrate continuing competency. The qualifications for initial certification are set forth in the Code of Virginia, but the Board determined that persons practicing massage therapy are still uncertain or unaware of the need to be certified. Therefore, it is proposed that the requirements be specified in regulation and that the provisions for “grandfathering” be deleted since those avenues to certification expired in June of 1998. It has not been required for certification by endorsement that applicants have credentials substantially equivalent to those required in Virginia. Without such a regulation, the Board had no criteria on which to base a decision on endorsement, so it was possible for less qualified individuals to become certified in Virginia. To assure the public that massage therapy is being delivered ethically and competently by persons certified by the Board, regulations must consistently provide minimal education and examination standards.

As an emerging profession, massage therapy is being utilized more and more for therapeutic purposes to alleviate the symptoms of disease or injury. Patients are seeking relief from symptoms of fibromyalgia, cancer, arthritis and other conditions. It is essential for public safety for massage therapists to remain current in their knowledge and technique to appropriately treat consumers and to be able to recognize the indications that a person should be referred to a health care practitioner. Virginia requires only 500 hours of education for certification whereas some states have adopted 1,000 hours as the minimum requirement. In addition, many massage therapists were initially certified under a “grandfather” provision that required only 200 hours of training and practice or 20 hours of training and at least 10 years of practice prior to July 1, 1997. Since the initial education of a certified massage therapist may have been minimal, the massage therapy advisory committee with the Board’s concurrence recommended some evidence of continuing competency for renewal of certification as means of protecting the public health and safety.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action’s changes.*

Amendments will specify in regulation the qualifications for certification that are currently in the Code of Virginia and delete the provisions for “grandfathering” that are no longer applicable. It will also be clarified that to be certified by endorsement, a massage therapist must have met

requirements substantially equivalent to those in Virginia. A section on provisional certification is being repealed because it is unnecessary. If a person practices massage therapy without using the designation of "massage therapist" or "certified massage therapist," he may do so without certification by the Board; so there is no need for provisional certification.

The Board is also proposing as a condition of renewal that massage therapists demonstrate evidence of continuing competency by holding current certification from the National Certification Board for Therapeutic Massage and Bodywork, the credentialing body for the profession, or complete at least 25 hours of continuing education or learning activities within the biennium. Finally, the Standards of Practice and the Code of Ethics of the NCBTMB have been incorporated by reference into this chapter.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

Issues in the regulation of massage therapists and the alternatives to dealing with those issues were addressed by the massage therapy advisory committee and the Board as following:

1) **Limitations of Certification.** The major issue for massage therapy in Virginia involves the potential risk to the public of massage therapy services being delivered by persons with little or no training and no regulatory oversight. Legislation passed in 1997 instituted a certification program with title protection for "massage therapist" or "certified massage therapist." Certification does not ensure that an insufficiently trained person cannot perform the service; it only protects the use of certain titles. Therefore, experience has shown that persons with considerably less training have adopted other titles, such as "massage therapy practitioner" and are engaged in practicing massage therapy on the public.

There were a number of alternatives discussed by the Committee, none of which involve a change in regulations since this is primarily a statutory issue. Without a change in the Code, the board has no authority to restrict the practice of massage therapy to only those persons it certifies. The Code would need to be amended to provide for licensure or mandatory certification for the practice of massage therapy, as it is currently defined in § 54.1-3000. A legislative initiative is not being recommended by the Board of Nursing at this time, but may be undertaken by other interested parties. In addition, massage therapists are working with the localities to restrict the practice of massage therapy to those persons who hold certification from the Board of Nursing. That has already occurred in the City of Richmond, and the effort to expand those restrictions is underway.

2) **Continuing competency requirements.** Comments received on the periodic review raised the issue of continuing competency for practitioners. Massage therapists, as with other health

care practitioners, need to learn new information and techniques in order to remain minimally competent to treat the public. Massage therapists benefit from learning experiences that improve their skills, further their knowledge about the clinical indicators that suggest a referral to a physician, and remind them of ethical dilemmas. In the opinion of the Advisory Committee and others in the profession, the basic 500-hour course required for certification is not adequate to ensure that a practitioner continues to be competent throughout his profession.

Alternatives discussed include:

- a) Continued certification or recertification by the national certifying body, the National Certification Board for Therapeutic Massage and Bodywork. Continued certification requires 50 hours of continuing education, both approved and non-approved course, over a four-year period.
- b) Hours of continuing education similar to that required by the certifying agency or 25 hours for each biennial renewal cycle. A further issue with this alternative would be the determination of approved courses. To avoid having the Board become the accrediting body for all continuing education in massage therapy, regulations would need drafted to recognize the NCBTMB or other credentialing bodies.
- c) Other types of learning experiences or requirements that would provide some assurance that certified massage therapists continue to be minimally competent. That could include practical experience, re-examination, or self-directed learning.

It was suggested that NCBMTB recertification be the standard for demonstrating continuing competency, but the Board determined that other alternatives must be available for those who had allowed their national certification to lapse or had been initially certified by the Board without NCBMTB certification. Based on review of the requirements of NCBMTB, the Board determined that a combination of the alternatives was the most reasonable and least burdensome approach. Regulations offer the massage therapist a variety of options including recertification by either retesting or acquiring continuing education or participation in approved and non-approved CE courses or activities.

### **1) Type and amount of continuing competency requirements**

It was suggested during comment on regulations that the Board adopt one standard for demonstrating continuing competency for those who held NCBMTB certification and another standard for those who were certified with lesser credentials during the “grandfathering” period prior to 1998. Such a differential standard would be impossible to enforce without tagging the records of all certified therapists with some indication of their credentials for certification. That methodology has never been adopted by the Board and would discriminate against those who are legitimately certified, all be it by a lesser stringent standard. Therefore, the Board chose to offer options for recertification or CE, based on what the practitioner determines is the most advantageous method for maintaining his skills and competencies.

The massage therapist who holds national certification by NCBTMB may chose to maintain that certification which would suffice to demonstrate continued competency for renewal of a

Virginia certificate. He may do so by acquiring 50 hours of CE over a four-year period - half in Category A from approved sponsors and half in Category B from non-approved sponsors. He also has the option of being recertified by NCBTMB by retesting to determine currency in massage technique and knowledge.

For those who do not want to recertify with NCBTMB, the Board requires 25 hours divided into two types: (1) In Category A continuing learning activities, the 12.5 hours required biennially must be offered by a sponsor or organization which is sanctioned by the NCBTMB and which provides documentation of hours to the practitioner; and (2) In Category B continuing learning activities, a maximum of 12.5 hours earned biennially may or may not be offered by an approved sponsor or organization but must be activities that expand the skills and knowledge related to the clinical practice of massage therapy; certificate holders document and record their own participation. Examples of Category A activities would be conferences, workshops, home study, video or computer programs with a required examination. Category B activities may include formal programs by non-approved sponsors, teaching or authoring an article.

The NCBTMB requires two hours of professional ethics during each four-year certification period. The Board believes that ethical principles are essential for public health and safety in the practice of massage therapy. Topics such as boundary issues, client confidentiality, and legal guidelines are accepted for hours in ethics and may be incorporated into other courses, provided there is documentation from the provider stating the amount of time that was devoted to the topic.

#### **Advantages to massage therapists:**

The proposed continuing competency requirements are intended to provide some assurance to the public that certified massage therapists are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to certificate holders. Massage therapists believe that many of their colleagues are currently certified by NCBTMB or already engage in enough learning activities to meet the requirements and should only have to maintain documentation of those activities and hours. Half of the 25 hours may be earned by the practitioner on his own time and schedule and may be hours that are useful to the therapist but not accredited or documented by an organization. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

#### **Disadvantages to massage therapists:**

For those practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. While opportunities for obtaining continued competencies exist that are at a minimal cost, there will be some additional expense associated with renewal of a certificate. However, it was determined by enactment of the statute and by the Board's concurrence that those practitioners and their patients would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort.

#### **Advantages or disadvantages to the public:**

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the massage therapists certified by the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients. There are also definite advantages to the public that at least one hour in ethics is required as a part of the continuing education. That requirement coupled with the Standards of Practice and Code of Ethics incorporated by reference will give the public assurance that persons who hold the title of certified massage therapist have a high standard by which they should conduct their practice.

**Advantages or disadvantages to the agency:**

As with the regulation of other health professions, there is some additional burden for the Department in administering a continuing education requirement. After each renewal cycle, there may be an audit of a percentage of the certificate holders, who will be required to submit documentation of compliance. Those documents (NCBTMB certification, certificate of completion from a provider, or transcript from a massage therapy education program) must be reviewed to determine hours of completion in each category. For those who are found out of compliance or who have not indicated compliance on their renewal form, some remedial action will be required. If the practitioner fails to comply with requirements within a given time frame, a disciplinary action will begin.

**Fiscal Impact**

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

**Projected cost to the state to implement and enforce:**

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$1500) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

It would also be expected that there will be additional costs to the Board for compliance enforcement. The Board will conduct a 1 to 2% audit of therapists at the conclusion of each

biennium. Each practitioner selected for the audit will be required to submit the required documentation of continuing learning activities. There will be some staff time involved in review of the documentation and in communicating with certified massage therapists about their deficiencies. Since the number selected for audit will be between 25 and 50, no additional personnel will be required to accomplish this activity.

It is also expected that a small percentage of massage therapists selected for audit will result in a disciplinary case being opened. From the experience of boards within the agency that currently have continuing competency requirements for renewal, the majority of those cases (estimated to be 5 to 10 per biennium) will probably be settled with a pre-hearing consent order. In those cases, the only costs would be for charges back to the Board from the Administrative Proceedings Division (APD) of the Department. Costs for cases that do result in an informal conference committee proceeding (estimated to be 1 to 2 per biennium) would include travel expenses and per diem for board members as well as costs for the services of APD. Informal conference committees typically hear several cases in a day, so the costs per case for board member and APD time would be minimized.

Cost estimates for disciplinary cases related to the failure to comply with continuing competency regulations range from \$100 to cases resulting in pre-hearing consent orders to \$500 per case for those that result in an informal conference committee. All expenses relating to enforcement of these regulations can be absorbed in the existing budget of the Board of Nursing.

**Projected cost on localities:**

There are no projected costs to localities.

**Description of entities that are likely to be affected by regulation:**

The entities that are likely to be affected by these regulations would be certified massage therapists.

**Estimate of number of entities to be affected:**

There are currently 2536 persons certified by the Board of Nursing as massage therapists.

**Projected costs to the affected entities:**

Costs for the affected entities to comply with these regulations would relate to new continuing competency requirements. Recertification by the NCBTMB costs \$100 and is valid for 4 years at a cost of \$50 for each biennium of renewal. While hours will be available at meetings of the five Virginia chapters of the American Massage Therapy Association (AMTA), there will be some costs associated with acquiring some of those hours. Examples of CE offerings in the past are an all-day Ethics workshop and a workshop on Arms, Hands and Carpal Tunnel, each gave 7 hours of credit at a cost of \$90 – both were offered by the Shenandoah Unit of AMTA. A Category A workshop offering 16 hours was held in Harrisonburg in April and

another is planned in October. There are also hours of accredited continuing education available for home study from the NCBTMB.

There would also be some very minimal costs involved with maintaining records. With the promulgation of these regulations, the Board will send each certificate holder the required form for maintenance of records. The form will also be available on the Board's website and may be downloaded into a file on the individual's personal computer. The massage therapist will have to maintain that form and the documentation of continuing learning activities for a period of four years. Total costs for compliance with continued competency requirements could range from zero for massage therapists who have in-service courses and programs available through their employer to several hundred dollars for certificate holders who will obtain continuing education hours through the state or national associations.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

#### **18 VAC 90-50-10. Definitions.**

The Board proposes to include definitions for three terms that are currently defined in the Code – “Board,” “Certified massage therapist,” and “Massage therapist.” In addition, the terms “Category A” and “Category B” used in the proposed section on continuing competency are included, as in the definition of NCBTMB, the certifying body in massage therapy.

#### **18 VAC 90-50-40. Initial certification.**

A. Although the qualifications for certification are spelled out in the Code, the Board proposes to include them in regulation so there is greater clarity and understanding of the requirements by applicants.

B. The initial "grandfathering" provisions permitted persons with lesser qualifications to be certified for a one-year period ending July 1, 1998. In order to reduce any possible confusion for potential applicants or the public, this section is being amended to clarify that those persons who had fulfilled the lesser criteria for certification listed in § 54.1-3029B must have submitted an application to the Board prior to June 30, 1998.

C. A new subsection is added to address qualifications of persons who have been licensed or certified in another country (similar language is now found in subsection C of section 50).

#### **18 VAC 90-50-50. Certification by endorsement.**

Amendments are proposed to clarify that an applicant who is licensed or certified in another state or country must have met qualifications substantially equivalent to those currently required in Virginia. The use of the phrase "substantially equivalent" allows the Board to retain its discretion to determine comparability of the educational and examination qualifications obtained in another jurisdiction.

**18 VAC 90-50-60. Provisional certification.**

This section is being repealed because it is unnecessary to have provisional certification in order to practice, provided a person does not use one of the restricted titles. Provisional certification prohibited the use of those same titles, so it served no purpose.

**18 VAC 90-50-70. Renewal of certification.**

Based on comments by certified massage therapists, amendments are recommended to provide some measure of assurance of continued competency as criteria for renewal.

**18 VAC 90-50-75. Continuing competency requirements.**

Certification by the National Certification Board for Therapeutic Massage and Bodywork is required for initial certification in Virginia. Since maintaining NCBTMB certification necessitates continuing education or experiences, both accredited and non-accredited, mandating current certification is one option for assuring continued competency. To provide an option for those who were initially "grandfathered" without national certification or for those who have allowed that certification to lapse, the Board proposes a total of 25 hours of continuing education or learning activities over the biennium - with at least half of the hours to be Category A, offered by an approved provider, and no more than half in Category B, which promote learning in the profession but do not have to be accredited. Regulations also provide for an exemption in the first biennium following initial certification, record-keeping requirements, and provisions for extension or exemptions for good cause.

**18 VAC 90-50-90. Disciplinary provisions.**

To set the standards for practice and the code of ethics by which massage therapy should be practiced, the Board proposes to incorporate by reference those provided by the NCBTMB, the national credentialing body. Regulations provide that failure to practice by those standards may constitute unprofessional conduct and subject the certificate holder to disciplinary action by the Board.

**Alternatives**

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

The two major issues facing the Board in the regulation of massage therapists and the alternatives to dealing with those issues are discussed below:

1) **Limitations of Certification.** The major issue for massage therapy in Virginia involves the potential risk to the public of massage therapy services being delivered by persons with little or no training and no regulatory oversight. Legislation passed in 1997 instituted a certification program with title protection for "massage therapist" or "certified massage therapist." Certification does not ensure that an insufficiently trained person cannot perform the service; it only protects the use of certain titles. Therefore, experience has shown that persons with considerably less training have adopted other titles, such as "massage therapy practitioner" and are engaged in practicing massage therapy on the public.

There were a number of alternatives discussed by the Committee, none of which involve a change in regulations since this is primarily a statutory issue. Without a change in the Code, the board has no authority to restrict the practice of massage therapy to only those persons it certifies. The Code would need to be amended to provide for licensure or mandatory certification for the practice of massage therapy, as it is currently defined in § 54.1-3000. A legislative initiative is not being recommended by the Board of Nursing at this time, but may be undertaken by other interested parties. In addition, massage therapists are working with the localities to restrict the practice of massage therapy to those persons who hold certification from the Board of Nursing. That has already occurred in the City of Richmond, and the effort to expand those restrictions is underway.

2) **Continuing competency requirements.** Comments received on the periodic review raised the issue of continuing competency for practitioners. Massage therapists, as with other health care practitioners, need to learn new information and techniques in order to remain minimally competency to treat the public. Massage therapists benefit from learning experiences that improve their skills, further their knowledge about the clinical indicators that suggest a referral to a physician, and remind them of ethical dilemmas. In the opinion of the Advisory Committee and others in the profession, the basic 500-hour course required for certification is not adequate to ensure that a practitioner continues to be competent throughout his profession.

Alternatives discussed include:

- a) Continued certification or recertification by the national certifying body, the National Certification Board for Therapeutic Massage and Bodywork. Continued certification requires 50 hours of continuing education, both approved and non-approved course, over a four-year period.
- b) Hours of continuing education similar to that required by the certifying agency or 25 hours for each biennial renewal cycle. A further issue with this alternative would be the determination of approved courses. To avoid having the Board become the accrediting body for all continuing education in massage therapy, regulations would need drafted to recognize the NCBTMB or other credentialing bodies.
- c) Other types of learning experiences or requirements that would provide some assurance that certified massage therapists continue to be minimally competent. That could include practical experience, re-examination, or self-directed learning.

The Board concluded that, in meeting requirements for continuing competency, massage therapists should be given the option of maintaining current certification with NCBTMB or complete 25 hours of continuing education.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

A Notice of Intended Regulatory Action was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board. Public comment was accepted from May 21, 2001 to June 20, 2001. During the 30-day comment period, no comments were received from members of the public.

During the review regulations that led to issuance of a NOIRA, four email and two written comments were received from members of the public. They are summarized as follows:

One person wrote that the laws and regulations need to be tougher in order to protect the health and safety of the public. Educational standards should be increased from a 500-hour program to a requirement of 1,000 hours of training, as is required in other states with higher standards. (*The statute requires a minimum of 500 hours, so the board has the authority to increase the number but has elected to not propose that at this time.*)

Several persons commented that the public is not adequately protected by the current law and regulation because persons without the education and qualifications required for certification are able to practice massage therapy by using a title, other than "certified massage therapist" or "massage therapist." (*Certification is basically title protection; to require certification in order to practice would require a change in the law and would constitute licensure*)

One person wrote that the scope of practice for massage therapy in the Code is appropriate but that licensure should be required rather than certification. (*see response above*)

One person wrote that the regulation on certification by endorsement should be clarified to make it clear that 500 hours and passage of the national certification examination are required for certification in Virginia. (*The Board is proposing such an amendment*)

One person requested that the board consider a rule requiring massage therapists to maintain national certification for renewal. Continuing education is necessary for public health and safety. Section 54.1-3008 should be expanded to prohibit the use of other titles or designations that imply someone is a massage therapist. (*The Board is proposing continuing competency requirements which may include current national certification.*)

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

An ad hoc advisory committee on massage therapy, comprised of certified therapists and members of the Board met to work on draft regulations in response to the recommendations from the periodic review. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation. To ensure that the regulation is clearly written and easily understandable, several sections are being amended.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

Public participation guidelines require the Board to review its regulations each biennium or as required by Executive Order. Therefore, the Board intends to review regulations governing the certification of massage therapists during the 2003-04 fiscal year.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability, economic self-sufficiency, or the marital commitment. The proposed amendments may result in a slight decrease in disposable family income for certified massage therapists to comply with continuing competency requirements.