



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 90-50 – Board of Nursing/Department of Health Professions Regulations Governing the Certification of Massage Therapists November 9, 2001

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The Board of Nursing is proposing (i) to incorporate in the regulation the statutory requirements on initial certification for massage therapists and delete the obsolete "grandfathering" rule currently included in the regulations, (ii) to establish continuing education requirements for certification renewal, (iii) to change requirements for licensure by endorsement, and (iv) to delete the provisional certification requirements.

Estimated Economic Impact

The qualifications for initial certification for massage therapy are established in section 54.1-3029 of the Code of Virginia. The code specifies two ways for certification. The first way is obtaining at least 500 hours of training from an approved program and passing the national certification exam. In addition to that, the Board of Nursing (the board) may have certified an applicant before July 1998, (a) who had completed 200 hours of training and had been practicing massage therapy prior to July 1, 1997, (b) who had completed 20 hours of training and had had at

least 10 years of practice prior to July 1, 1997. The second way, known as the “grandfathering” rule, expired in June 1998. Although expired, the current regulations still contain a list of the requirements in the regulation for certification through this rule. Also, the current regulations do not list the original qualifications for certification, but only reference the Code of Virginia. According to the Department of Health Professions (the agency), this has been creating some confusion among the applicants. Although the qualifications for certification are included in the Code of Virginia, some of the applicants have been falsely assuming that the current certification requirements were those listed in the regulations for certification under the obsolete grandfathering rule.

The proposed amendments will add in the regulations the qualifications for certification that are in the Code of Virginia and delete the provisions for the grandfathering rule that are no longer valid. Also, new language is added to clarify that those persons who had fulfilled the criteria for certification under the grandfathering rule must have submitted an application to the board prior to June 30, 1998. These proposed changes will likely improve the clarity of the regulation and reduce the confusion on the eligibility criteria.

Another proposal will establish continuing education requirements for certification renewal. According to the agency, massage therapy is an emerging profession and being utilized more and more for therapeutic purposes to alleviate the symptoms of disease or injury. Massage therapy is known to provide relief from symptoms of fibromyalgia, cancer, arthritis, and other health conditions.¹ Because of its widespread use and the potential effects on customer’s health, the board believes that it is important for massage therapists to remain current in their knowledge and techniques to appropriately treat consumers and to be able to recognize the indications that a person should be referred to a health care practitioner. Additionally, current initial certification requirements and the requirements for certification under the grandfathering rule are believed to be significantly less than what may be appropriate. For example, the agency indicates that Virginia requires only 500 hours of education for certification whereas some states have adopted 1,000 hours as the minimum requirement. The requirements for certification under the grandfathering rule were even lower. The advisory committee that suggested the proposed

¹ Source: The agency.

changes determined that qualifications for initial certification are not adequate to ensure continuous competency throughout a therapist's practice.

Since the initial education of a certified massage therapist is believed to have been minimal, the board is proposing to establish new continuing education requirements to keep the massage therapists updated in their professional knowledge. The proposed amendments will offer two options to satisfy the continuing education requirements, which will allow the practitioner to choose the preferred method for maintaining his skills and competencies. The board is proposing as a condition of renewal that massage therapists demonstrate evidence of continuing competency by holding a current certification from the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), the credentialing body for the profession, or complete at least 25 hours of continuing education or learning activities within the biennium. According to the agency, the combination of these two alternatives was the most reasonable alternative.

As mentioned, one way to satisfy the proposed continuing education requirements is to hold a current certification from NCBTMB. This certification is maintained current if a therapist obtains 50 hours of continuing education over a four-year period, which means 25 credit hours for each biennium on average. Maintaining NCBTMB certification does not require an overall exam, but there may be a post-test following a continuing education course on the material covered in the class. This option is likely to be used by those who already hold NCBTMB certification. Maintaining the national certification will suffice to demonstrate continued competency for renewal of a Virginia certificate. Under this option, therapists may satisfy the proposed requirement by taking half of the required 25 hours of credits from approved sponsors and the other half from non-approved sponsors. The therapist also has the option of being recertified by NCBTMB through retesting to determine adequacy of current knowledge in massage techniques and knowledge.

Another way to fulfill the continuing education requirement is to obtain 25 hours of education every biennial renewal cycle from other providers. This option is likely to be chosen by those who do not want to be certified by NCBTMB. This may include therapists who were initially "grandfathered" without national certification, or those who have allowed the national certification to lapse. Similar to the first option, half of the required hours can be completed at

an approved institution and the other half can be fulfilled by various other ways that does not require approval. The credits offered primarily for NCBTMB certification may also be used under this option. At least 12.5-hours must be offered by a sponsor or an organization approved by NCBTMB and documentation of hours must be provided to the practitioner. Examples of activities for the first half of the required credits are conferences, workshops, home study, video, or computer programs with a required examination. For the remaining part, up to 12.5 hours can be earned in a variety of different ways. These credits may or may not be taken from an approved sponsor or organization, but must be activities that expand the skills and knowledge related to the clinical practice of massage therapy, and the certificate holder must document and record their own participation. Examples of the activities in this category include formal programs by non-approved sponsors, teaching or authoring an article, practical experience, or self-directed learning. These activities promote learning in the profession but may not be accredited. The board is also proposing to accept credit for the courses on ethics and incorporate the regulations on ethical standards by reference. Topics such as boundary issues, client confidentiality, and legal guidelines will be accepted for hours in ethics and may be incorporated into other courses provided there is documentation from the provider stating the amount of time devoted. The main difference between the two options is that courses are offered as a package for NCBTMB certification whereas the therapists are responsible for making the arrangements for each credit to renew their certification through the second method.

The proposed continuing education requirements will impose additional costs on some massage therapists. These courses may be offered by Virginia chapters of the American Massage Therapy Association, NCBTMB, and other professional organizations. There will be dollar costs associated with acquiring the required credits. For example, an all-day ethics workshop and a workshop on arms, hands, and carpal tunnel were offered at an average cost of about \$13 per credit hour.² This suggests that fulfilling the continuing education requirement may cost up to \$325 for an individual therapist and \$824,200 for all of the therapists in Virginia every two years.

Another and more significant cost of the proposed continuing education requirements is the opportunity cost of the therapist's time devoted to take the credits. Opportunity cost concept

² Source: Ibid.

may not be as obvious as the other types of costs at first, nonetheless must be accounted for. In simple terms, opportunity cost of something is the next best thing given up for it. Just like everyone else, the therapists make decisions on how many hours to work and how many hours to reserve as leisure time. The opportunity cost of an hour of leisure is one hour of work, or equally one hour of wages given up. Since the proposed regulations will reduce the amount of therapists' work or leisure hours by an amount equal to fulfill the required continuing education credits, these work or leisure hours given up must be counted as additional costs and can be valued at the therapist's wage rate.

The proposed amendments will require that each therapist devote 25 hours to continuing education every biennium, which add up to 63,400 hours of therapy time in the state. The therapists will have to either give up an equal amount of work hours, leisure time, or a combination of both. The ongoing rate for an hour of massage therapy is about \$45 to \$50 in less populated areas and may be about \$70 to \$80 in cities.³ Since both work hours and leisure time can be valued in terms of lost wages, the opportunity cost of the proposed requirement for massage therapists is estimated to be between \$3 million and \$4.7 million per biennium.

However, these estimates are likely to significantly overstate the additional costs to therapists and should be regarded only as the potentially the highest costs because many therapists have already been continuously involved in a variety of activities as a part of their profession and will likely get credits for those activities. The agency believes that many therapists 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 required 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 agency believes that the resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia. Thus, the proposed regulations will impose additional costs on only those practitioners who do not currently engage in enough continuing learning in their profession. Since the number of therapists, who do not engage in activities that may be counted as credit, is not known, the amount of actual costs to therapists cannot be determined. In short, while some of the current activities of a large number of therapists may be counted toward the

³ Conversations with certified massage therapists.

required continuing education credits at minimal or no additional cost, there will be additional expenses associated with renewal of a certificate for some therapists.

Furthermore, therapists who choose to keep NCBTMB certification current will incur an additional \$50 for each biennium in recertification fees. This is in addition to the costs of obtaining credits. Since it is not known how many therapists will utilize this option, the total costs to some regulants in NCBTMB recertification fees cannot be determined.

There will also be recordkeeping requirements. With the promulgation of these regulations, the board will send each certificate holder the required form for maintenance of records. The form is a checklist for the agency and the massage therapist to indicate completion of the required hours. It is a chart showing the type of activity or class, whether it is earned toward the first or the second category of the continuing education requirements, and the number of hours obtained. Since a certificate is unlikely to be issued for some credits, the form will be a way to document those credits. The form will be available on the board's website and may be downloaded into 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. Thus, some very minimal costs involved with maintaining records of continuing education credits are expected, but the form will also facilitate documenting the credits that may not otherwise be documented.

There will be some additional costs for the agency in administering the continuing education requirement. After each renewal cycle, about 1% to 2% of the certificate holders will be audited. An audit procedure is needed to enforce compliance because the agency uses an electronic system to issue renewals without receiving any physical documents. The applicant only has to claim that he/she completed the continuing education requirements. The audits will be done at the agency without any travel because each practitioner selected for the audit will be required to submit the required documentation of continuing learning activities. Those documents including NCBTMB certification, certificate of completion from a provider, or transcript from a massage therapy education program will be reviewed to determine hours of completion in each category. There will be some staff time involved in review of the documentation and in communicating with certified massage therapists about their deficiencies.

A random audit can be completed in approximately 15 minutes. Current personnel will absorb the staff time required to conduct about 25 to 50 random audits every two years.

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 be initiated. It is expected that a small percentage of massage therapists selected for audit will result in a disciplinary case being opened. Cost estimates for disciplinary cases related to the failure to comply with continuing competency regulations range from \$100 for a case resulting in pre-hearing consent orders to \$500 per case for those that result in an informal conference committee. These costs are mainly in terms of travel expenses and per diem for the board members and the costs for the services provided by the agency to administer proceedings. The experience with similar programs at the agency indicates that about 5 to 10 cases per biennium will probably be settled with a pre-hearing consent order costing about \$500-\$1,000 to the agency. It is estimated that about one or two cases would result in an informal conference committee proceeding. This is expected to cost the agency an additional \$500 to \$1,000 per biennium.

On the benefits side, the proposed continuing competency requirements will provide some assurance that certified massage therapists are acquiring the most recent knowledge and skills, are updated about the clinical indicators that suggest a referral to a physician, and are aware of ethical considerations. Improved knowledge and skills may slightly reduce potential health risks to the customers seeking relief from various symptoms. For instance, therapists' knowledge and their ability to identify certain diseases such as blood clots may be improved and appropriate therapy can be provided. The education requirements may also improve the service provided and reduce the number of customer complaints by a small margin. The agency received 8 complaints in 1999 and 17 complaints in 2000 that were related to practice of massage therapists. Furthermore, these education requirements may also help slightly reduce the number of cases that would otherwise occur. For example, some of the cases the agency investigated were related to sexual misconduct, unlicensed practice as a midwife, drugs, and indecent exposure.

Finally, it should be noted that “massage therapist” or “certified massage therapist” titles identify the therapists with and without a certification, and may signal the quality of service that will be provided. Given that the massage therapy can be practiced by anyone in Virginia as long as the reserved titles are not used, the option to signal the quality of service has an economic value. If everyone could use these titles, there would be no chance to differentiate between the two groups of therapists, and there would be no financial benefits from certification for massage therapists. This expected benefit is the main reason that some therapists choose to be certified even if the certification introduces additional costs. The proposed regulations will increase the costs for those therapists who wish to differentiate themselves from other therapists without a certification and likely increase the value of signaling. For those therapists who choose to incur additional costs to maintain their certification, the value of the option to signal the quality of their services must exceed the costs of obtaining continuing education credits.

With another amendment, the board is proposing 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. Currently, there is no such requirement. The board has no criteria on which to base a decision on endorsement. Consequently, it is currently possible for less qualified individuals to become certified in Virginia.

The proposed substantial equivalency requirement may introduce additional burden on some therapists moving to Virginia while making sure that more competent professionals are delivering massage therapy.

The last proposed amendment will remove the provisional certification. Under the current regulations, eligible candidates are allowed to practice provisional message therapy on a temporary basis. For example, an applicant may practice massage therapy for up to 90 days between completion of an education program and the receipt of the certification exam result. The current regulations also specify that massage therapist or certified massage therapist titles shall not be used during provisional certification. In practice, the provisional certification has never been used. The reason is that anyone in Virginia can practice massage therapy as long as they do not use “massage therapist” or “certified massage therapist” titles. The statutory requirements protect these titles, but do not prohibit the massage practices under other titles. Since massage therapist or certified massage therapist designation cannot be used during

provisional certification anyways, there was no interest in obtaining a provisional certification. Since provisional certification has not been used in practice, the proposed elimination of provisional certification is not expected to have any significant economic impact.

Businesses and Entities Affected

The entities that are likely to be affected by the proposed regulations are 2,536 certified massage therapists.

Localities Particularly Affected

The proposed changes apply throughout the Commonwealth.

Projected Impact on Employment

Some of the therapists may not or may not be able to satisfy the proposed continuing education requirements due to additional costs and/or various other reasons. These therapists will not be able to renew their certification and practice massage therapy under the designated titles. Although most therapist may depend on being able to present themselves as “certified massage therapist” as indicated by the agency, some of those who are not able to renew their certification can continue to practice massage therapy under other titles that are not designated. They may also seek employment and get jobs elsewhere. Furthermore, any potential negative impact on employment will likely be balanced by the increase in additional demand for continuing education providers.

Effects on the Use and Value of Private Property

To the extent that the proposed regulations introduce additional costs on massage therapy businesses and reduce their profitability, the value of their businesses may decline. However, the decline in value of massage therapy businesses is likely to be very minor as most of the therapist believed to currently involve in sufficient continuing education activities and are not expected to incur large costs to comply with the proposed requirements. On the other hand, providers of continuing education for massage therapists may see a small increase in their profits and consequently, an increase in the value of their businesses to the extent the proposed regulations increase the demand for their services.