



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Nursing
VAC Chapter Number:	18 VAC 90-50-10 et seq.
Regulation Title:	Regulations Governing the Certification of Massage Therapists
Action Title:	Periodic review
Date:	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

Regulations are promulgated to provide educational and examination requirements for the certification of massage therapists. Provisions also establish requirements for renewal or reinstatement of a license, fees to support the regulatory and disciplinary activities of the board, and the standards of conduct for certified massage therapists.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or

discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 30 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

§ 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.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation*

- with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
- 11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
 - 12. To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Sections 54.1-1-3000 and 54.1-3029 set forth statutory provisions for the definition and certification of massage therapists, as follows:

§ 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.

"Practical nurse" or "licensed practical nurse" means a person who is licensed under the provisions of this chapter to practice practical nursing as defined in this section. Such a licensee shall be empowered to provide nursing services without compensation. The abbreviation "L.P.N." shall stand for such terms.

"Practical nursing" or "licensed practical nursing" means the performance for compensation of selected nursing acts in the care of individuals or groups who are ill, injured, or experiencing changes in normal health processes; in the maintenance of health; in the prevention of illness or disease; or, subject to such regulations as the Board may promulgate, in the teaching of those who are or will be nurse aides. Practical nursing or licensed practical nursing requires knowledge, judgment and skill in nursing procedures gained through prescribed education. Practical nursing or licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a professional nurse, registered nurse or registered professional nurse or other licensed health professional authorized by regulations of the Board. "Practice of a nurse aide" or "nurse aide practice" means the performance of services requiring the education, training, and skills specified in this chapter for certification as a nurse aide. Such services are performed under the supervision of a dentist, physician, podiatrist, professional nurse, licensed practical nurse, or other licensed health care professional acting within the scope of the requirements of his profession.

"Professional nurse," "registered nurse" or "registered professional nurse" means a person who is licensed under the provisions of this chapter to practice professional nursing as defined in this section. Such a licensee shall be empowered to provide professional services without compensation, to promote health and to teach health to individuals and groups. The abbreviation "R.N." shall stand for such terms.

"Professional nursing," "registered nursing" or "registered professional nursing" means the performance for compensation of any nursing acts in the observation, care and counsel of individuals or groups who are ill, injured or experiencing changes in normal health processes or the maintenance of health; in the prevention of illness or disease; in the supervision and teaching of those who are or will be involved in nursing care; in the delegation of selected nursing tasks and procedures to appropriately trained unlicensed persons as determined by the Board; or in the administration of medications and treatments as prescribed by any person authorized by law to prescribe such medications and treatment. Professional nursing, registered nursing and registered professional nursing require specialized education, judgment, and skill based upon knowledge and application of principles from the biological, physical, social, behavioral and nursing sciences.

§ 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.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the board's review of its regulations governing the certification of massage therapists was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received until July 1, 2000. During the 30-day comment period, 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. A 500-hour program does not give a massage therapist enough background to understand the diseases and trauma they may encounter with a patient. There should also be oversight of the practice by the local health department.

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."

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 phrase, "in the opinion of the board," does not provide enough guidance to applicants about the acceptability of their qualifications.

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.

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.

An Ad Hoc Advisory Committee on Massage Therapy held a public meeting on August 16, 2000 to review the comments and conduct a review of regulations and discuss related issues, such as the problem of lesser-qualified persons performing massage and potentially placing the public at risk. The Committee was chaired by a LPN member of the Board and included another board member and four certified massage therapists. Based on the concerns expressed at the meeting and in the public comment, the Advisory Committee voted to request that the Board recommend certain amendments to regulations.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goals for this regulation are as follows:

1) Achieve high ratings on Customer Service Satisfaction Survey for application process and renewal of certification.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of certification was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 86.5% agreed or strongly agreed that the instructions were easy to understand; 93.2% agreed or strongly agreed that the application was processed promptly; and 93.5% agreed or strongly agreed that the forms were easy to complete. Therefore, only modest changes in regulations are being considered in respect to applying for certification by endorsement.

2) Increase the number of applicants for certification to increase availability of services.

Certification of massage therapists was initiated in Virginia in 1997; at that time it was estimated that 1,500 persons would eventually qualify for and seek board certification. At the conclusion of FY'98, there were 1,477 persons certified. As of August 21, 2000, there are 2,189 certified massage therapists. In the opinion of the board, the availability of practitioners has been enhanced by regulatory criteria that provide some assurance of qualification to practice. Certification by the Board of Nursing is recognized by some localities such as the City of Richmond as the standard for the practice of massage therapy. Persons who want to practice massage therapy in those localities may only do so if certified by the Board.

Certification of massage therapists is mandated by the Code of Virginia. Regulations implementing the certification program protect the public health and safety by providing assurance of initial, minimal competency through required hours of education and a national examination and by establishing standards of professional conduct for certified massage therapists. The regulations are generally clearly understood for compliance by the regulated entities with the possible exception of the requirements for certification by endorsement, which do not explicitly state that the qualifications of those applicants must be substantially equivalent to the qualifications of an applicant for initial certification in Virginia.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

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 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.

Based on further review and comment received following publication and distribution of the Notice of Intended Regulatory Action, the Board will determine which, if any, of the alternatives for continued competency it will recommend.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The board is recommending amendments to its regulations for the certification of massage therapists in order to address concerns about competency of certificate holders, which may include hours of continuing education by providers acceptable to the board and about the need to further specify the requirements for licensure by endorsement. Other amendments are recommended for greater clarity for the regulated entities.

Substance

Please detail any changes that would be implemented.

18 VAC 90-50-40. Initial certification.

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 should be 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.

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

Amendments are recommended 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 such phrases as "substantially equivalent" or "comparable to" allows the Board to retain its discretion to determine comparability of the educational and examination qualifications obtained in another jurisdiction.

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 a criteria for renewal. 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. The Board would need to consider other options for continuing competency for those persons who were "grandfathered" without NCBTMB certification or who have now allowed their certification to lapse. The Board will consider an hours-requirement for continued competency that could be obtained at a less burdensome cost and are reasonably available throughout the Commonwealth.

Family Impact Statement

Please provide a preliminary 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 preliminary 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.