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Periodic Review and Small Business Impact Review Report of Findings

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| Agency name | Board of Nursing, Department of Health Professions |
| Virginia Administrative Code (VAC) Chapter citation(s) | 18VAC90-50 |
| VAC Chapter title(s) | Regulations Governing the Licensure of Massage Therapists |
| Date this document prepared | July 31, 2023 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Nursing are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the

Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

Additionally, Virginia Code § 54.1-3005(10) requires the Board to “license . . . all massage therapists and to promulgate regulations governing the criteria for licensure as a massage therapist and the standards of professional conduct for licensed massage therapists.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to regulation. The Code requires the Board to license and regulate massage therapists. The Board is therefore required to maintain regulations related to massage therapists.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

| Commenter | Comment | Agency response |
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| Katie Jennings, Northern Virginia Community College | Request to amend 18VAC90-50-40 to define “or an exam deemed acceptable to the board” in the regulation. | This language allows the Board the ability to accept other examinations as they become known to the Board. If the Board were to recognize another examination, it would do so through meeting motion and guidance document rather than listing the examinations in regulatory language, which is exceedingly cumbersome to change. |

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This chapter of the regulations of the Board of Nursing is necessary for the protection of public health, safety and welfare because it sets for the requirements for licensure and standards of practice for massage therapists. These regulations are necessary to continue to renew licenses for massage therapists and to issue new licenses for massage therapists, which the General Assembly determined is a necessary component of the provision of healthcare in the Commonwealth. These regulations are additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The Board of Nursing has reviewed this chapter and determined that it is clearly written and understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board of Nursing voted to retain Chapter 50 as is.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

As stated in a previous section, the regulations are still needed because of the General Assembly directive for the Board to license and regulate massage therapists and the protection of the public. The comment received regarding this chapter is already summarized above. The comment requested a regulatory amendment which is not a topic the Board generally places in regulation. The regulations are not complex. The regulations do not overlap, duplicate, or conflict with state law or regulation. This chapter has been amended by regulatory action 12 times since 2001. The agency's decision will not minimize economic impacts on small businesses. The agency's decision to retain the Chapter as is, on its own, does not create an economic impact of any kind because specific amendments have not been considered or decided on by the Board.
