

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

18 VAC 90 -50 Regulations Governing the Licensure of Massage Therapists
Department of Health Professions
Town Hall Action/Stage: 4559 / 7844
April 10, 2017

Summary of the Proposed Amendments to Regulation

As a result of the periodic review of regulations, the Board of Nursing (Board) proposes to amend the Regulations Governing the Licensure of Massage Therapists to: 1) offer additional options for completing continuing education, 2) explicitly include additional provisions to the standards of conduct, the violation of which may subject a licensee to disciplinary action. 3) require an attestation of compliance with laws and ethics for initial licensure, and 4) amend language for clarity.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Continuing Education Options

In order to renew a license biennially, a licensed massage therapist must complete at least 24 hours of continuing education or learning activities. Under the current regulation, a minimum of 12 of the 24 hours must be in activities or courses provided by a National Certification Board for Therapeutic Massage and Bodywork-approved provider. The Board proposes to allow activities or courses provided by the following organizations as well: 1) Federation of State Massage Therapy Boards, 2) American Massage Therapy Association, 3) Associated Bodywork

and Massage Professionals, 4) Commission on Massage Therapy Accreditation, 5) a nationally or regionally accredited school or program of massage therapy, and 6) a school of massage therapy approved by the State Council of Higher Education for Virginia. The addition of approved providers would potentially be beneficial for licensees in that they may be able to obtain coursework at a lower cost and there may be greater opportunity to become more professionally qualified in specialty areas of practice.

Unprofessional Conduct

Code of Virginia § 54.1-3007 authorizes the Board to take disciplinary action for unprofessional conduct. However, it does not define unprofessional conduct. The current regulation states that unprofessional conduct shall mean, but shall not be limited to:

- a. Performing acts which constitute the practice of any other health care profession for which a license or a certificate is required or acts which are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;
- b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;
- c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;
- d. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include but not be limited to actions that result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement or sexual conduct with a patient or client;
- e. Falsifying or otherwise altering patient or employer records;
- f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law;
- g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "licensed massage therapist";
- h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist; or
- i. Failing to practice in a manner consistent with the code of ethics of the NCBTMB, as incorporated by reference into this chapter with the exception of the requirement to follow all policies, procedures, guidelines, regulations, codes, and requirements promulgated by the NCBTMB.

The Board proposes to add the following five provisions to the list:

- 1) obtaining money or property of a patient or client by fraud, misrepresentation or duress;
- 2) violating state laws relating to the privacy of patient information, including but not limited to §32.1-127.1:03 of the Code of Virginia;
- 3) failing to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia;
- 4) providing false information to staff or board members in the course of an investigation or proceeding; and
- 5) violating any provision of this chapter.

All five of the proposed additional provisions are listed as actions that are considered unprofessional conduct for nurses in the Board's *Regulations Governing the Practice of Nursing* (18 VAC 90-19). Since the five additional provisions can in practice be considered unprofessional practice,¹ adding them explicitly to the regulation is beneficial in that it improves clarity for massage therapists and other readers of the regulation. It may also reduce the likelihood that massage therapists unintentionally violate the law through ignorance of §32.1-127.1:03, § 63.2-1509, or § 63.2-1606 of the Code of Virginia.

Attestation of Compliance

The Board proposes to add to the requirements for initial licensure as a massage therapist that the applicant “attest that he has read and will comply with laws and regulations and the professional Code of Ethics relating to massage therapy.” This proposal may be moderately beneficial in that it may: 1) increase the likelihood that new massage therapists are consciously aware of the specifics of the applicable laws and regulations and the professional Code of Ethics, and 2) reduce the likelihood that new massage therapists inadvertently violate applicable laws and regulations and the professional Code of Ethics.

Clarification

Improving the clarity of the regulation would potentially also be beneficial to the extent that it reduces the likelihood that readers of the regulation misunderstand applicable rules and requirements.

Businesses and Entities Affected

The proposed amendments potentially affect the 8,178 licensed massage therapists in the Commonwealth,² future licensure applicants, and providers of continuing education. Most licensed massage therapists likely operate as a small business or are employed by small businesses. Most providers of continuing education are also likely small businesses.

Localities Particularly Affected

¹ The Code of Virginia authorizes the Board to take disciplinary action for unprofessional conduct. All of the additional provisions can reasonably be considered unprofessional conduct. In fact, all of the additional provisions are specified as unprofessional conduct in the Board's *Regulations Governing the Practice of Nursing*. The *Regulations Governing the Licensure of Massage Therapists* states that “unprofessional conduct which shall mean, **but shall not be limited to:**” followed by the current list. Thus, the five additional provisions can in practice currently be considered unprofessional practice

² Data source: Department of Health Professions

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect total employment. The proposal to allow activities or courses provided by additional organizations to count toward continuing education hours may alter where licensed massage therapists obtain their continuing education. This may moderately affect the distribution of employment across continuing education providers.

Effects on the Use and Value of Private Property

The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

The proposal to allow activities or courses provided by additional organizations to count toward continuing education hours may lower costs for some massage therapists and their associated small firms.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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