



Virginia
Regulatory
Town Hall

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Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Nursing; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-50-10 et seq.
Regulation title	Regulations Governing the Certification of Massage Therapists
Action title	Regulatory reform
Date this document prepared	2/1/13

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Regulations are amended to facilitate electronic submission of documents and forms, to accept a certificate of naturalization as evidence of a name change, and to clarify when an applicant may engage in the provisional practice of massage therapy.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board of Nursing adopted the amendments to 18VAC90-50-10 et seq., Regulations Governing the Certification of Massage Therapists on January 29, 2013.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

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

- 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...*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amendments is to update language and clarify the process for provisional practice. Elimination of unnecessary or outdated provisions and inclusion of language consistent with current practices will facilitate submission of documentation for certification. The goal is to enable qualified applicants to obtain certification which provides the public with some assurance of competency and accountability in the delivery of massage therapy services.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and

(ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The amendments are less restrictive and not controversial. They are consistent with recommendations for regulatory reform received during the comment period on periodic review from the Virginia Chapter of the American Massage Therapy Association.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

Regulations are amended to facilitate electronic submission of documents and forms, to accept a certificate of naturalization as evidence of a name change, and to clarify when an applicant may engage in the provisional practice of massage therapy.

Issues

Please identify the issues associated with the proposed regulatory action, including:
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 indicate.

- 1) The primary advantage to the public is facilitation of applications and renewals and elimination of confusing, outdated language. There are no disadvantages.
- 2) The advantage to the Commonwealth is clarity in the regulations which reduces queries to board staff.
- 3) There are no other pertinent matters.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods. Elimination or reduction in the regulatory burden requires promulgation of amendments to regulations.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) 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; b) The agency will not incur additional costs for email notification to persons on the Public Participation Guidelines mailing lists. There will be no on-going expenditures related to this action.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Certified massage therapists or persons applying for certification.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than</p>	<p>There are currently 6345 persons certified as massage therapists in Virginia. The number of small businesses is unknown, but it would be estimated that the majority would be practicing in a solo or small practice settings.</p>

500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There would be no costs associated with this action.
Beneficial impact the regulation is designed to produce.	Greater efficiency in applying for certification and in renewal

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives that will accomplish the purpose of eliminating outdated language and reducing the regulatory burden.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

There is no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

For changes to existing regulation(s), use this chart:

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets out the operational requirements for the profession	<p>In subsection A, the amendment allows a change of address to be submitted <i>electronically</i> in addition to a written submission. <i>The change will facilitate submission of documentation. It is less burdensome and costly for certificate holders.</i></p> <p>In subsection B, the amendment will allow a certificate of naturalization to be used as documentation of a name change. <i>The amendment is less burdensome and costly; currently a court order or a marriage certificate would be required.</i></p>
40	Sets out the requirements for initial certification	<p>In 2012, the Code was amended to authorize acceptance of national examinations that do not result in national certification (such as the Licensing Examination of the Federation of State Massage Therapy Boards). Current language in subsection C still says an applicant shall pass “the national certifying” examination. <i>The amendment to subsection C will eliminate that phrase for consistency with the law.</i></p>
60	Sets out the criteria for provisional certification	<p>Subsection A provides that an applicant may practice with provision certification for 90 days between completion of the education program and the receipt of the results of the examination. That language has caused confusion with applicants who presume they can begin practice immediately upon completion of their education <i>before</i> they have filed a completed application and received authorization for provisional practice. The amendments will clarify the criteria for provisional certification, which will assist applicants in compliance with law and regulation.</p> <p>Subsection C refers to an outdated requirement for an applicant to become “nationally certified,” which is no longer required by law. <i>Deletion of that phrase is necessary for consistency with the law.</i></p>
70	Sets out requirements for renewal of certification	<p>Subsection B refers to returning an application form for renewal. Massage therapists and other health care practitioners are encouraged to use our on-line renewal system, so the language needs to be updated for consistency with electronic submissions.</p>