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Proposed Regulation Agency Background Document

Agency name	Board of Physical Therapy, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC112-20
Regulation title(s)	Regulations Governing the Practice of Physical Therapy
Action title	Periodic review recommendations
Date this document prepared	8/13/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board has adopted proposed amendments to ensure more clarity in supervision of trainees, facilitate renewal by modifying the active practice requirement, facilitate return to practice for some PTs with inactive or lapsed licenses, coordinate rules for foreign-trained applicants with requirements of FSBPT for approval to sit for the licensing examination, recognize PT licensure in Canada as qualification for endorsement, and expand the approval of entities that may offer or accredit continuing education.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

FSBPT = Federation of State Boards of Physical Therapy

PT = physical therapist

PTA = physical therapist assistant

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for initiation of rulemaking is the periodic review that concluded on February 6, 2019. The Board also included in its NOIRA a request from a petition for rulemaking for the National Strength and Conditioning Association to be considered as an organization to be approved for continuing education.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

18VAC112-20-10 et seq. Regulations Governing the Practice of Physical Therapy are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Physical Therapy the authority to promulgate regulations to 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:

- ...
- 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

Specific authority to promulgate regulations for initial and continuing licensure in physical therapy is found in § 54.1-3474 and all of Chapter 34.1 of Title 54.1 of the Code of Virginia.

§ 54.1-3474. Unlawful to practice without license; continuing competency requirements.

A. It shall be unlawful for any person to practice physical therapy or as a physical therapist assistant in the Commonwealth without a valid unrevoked license issued by the Board.

B. The Board shall promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants, which may include continuing education, testing, or such other requirements as the Board may determine to be necessary.

C. In promulgating continuing competency requirements, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

D. The Board may approve persons who provide or accredit programs to ensure continuing competency.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The practice of physical therapy requires specialized education and training and the maintenance of knowledge and skills in order to be performed safely. Regulation is essential to ensure minimal competency to protect the health and safety of patients receiving physical therapy services. Amendments are primarily intended to update and clarify current board policy.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The substantive provisions of the proposed regulations are:

- 1) Modification of active practice to allow licensees a longer period of time in which to count hours of practice and to allow the Board to grant exemptions or exceptions;
- 2) Amendments to requirements for reactivation or reinstatement to allow an applicant to count practice in Virginia if actively licensed in the past four years;
- 3) Coordination of rules for foreign-trained applicants with requirements of FSBPT for approval to sit for the licensing examination;
- 4) Recognition of PT licensure in Canada as qualification for endorsement; and
- 5) Expansion of the list of entities that may offer or accredit continuing education and the opportunities to obtain Type 2 continuing education hours.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 1) There are no specific advantages to the public, but facilitation of licensure or return to practice may have a modest increase in the number of licensees available to provide physical therapy services; there are no disadvantages.
- 2) There are no advantages or disadvantages to the agency; this action is the result of a periodic review so providing clarity and updating its regulation is an important goal of the Board.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under 54.1-2400 to *“promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system.”* There is no restraint on competition as a result of promulgating this regulation.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic

impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no costs to the agency resulting from the regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no costs to other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits, other than updating and clarifying regulations pursuant to a periodic review.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No costs</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>No benefit</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The persons affected by the regulatory change may be applicants for licensure and physical therapists or physical therapist assistants.</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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The agency has no estimate of the number of future applicants who may be affected, such as someone who has practiced in Canada. In the past 5 years, 140 persons went to PT school in Canada. There are 8,240 licensed PTs and 3,525 licensed PTAs. It is unknown how many constitute small businesses. In the 2018 Workforce survey, 62% reported working in a for-profit setting – but there is no information about whether those settings were small businesses or large health care entities. Only 7% reported they were engaged in private solo practice.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p>	<p>There are no costs to affected entities.</p>

<p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	
<p>Benefits the regulatory change is designed to produce.</p>	<p>Benefits may include a wider range of opportunities for continuing education, less restrictive timeframe for active practice hours required for renewal, and less restrictive rule for return to practice from an inactive or lapsed license.</p>

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives to the purpose of the regulation, which is to ensure minimal competency by practitioners and protect public health and safety in the provision of physical therapy services.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

To revise and clarify regulations, it is necessary to promulgate amendments. There are no alternative regulatory methods.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

There was a public comment period between May 13, 2019 and June 12, 2019; no comment was received.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the Board of Physical Therapy is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
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10		Defines words and terms used in the chapter	<p>The definition of “active practice” is amended from 160 hours in the past 24 months to 360 hours in the past 48 months. The definition is amended for consistency with the rules for reactivation and reinstatement and to give active licensees more time within which to meet the practice hours required for renewal. While the number of hours is doubled, the increase from a 24-month period to a 48-month period is beneficial to licensees who may retain an active license but curtail hours or discontinue practice for a period of time due to family considerations, etc. There have been situations in which a licensee could demonstrate active practice but not within the most recent 24 months and had to decide whether to renew in an inactive status or complete other requirements as a condition of renewal.</p> <p>A definition for “CAPTE” is added because the acronym is used in regulation. The definition of “approved program” is amended to use the acronym, which is now defined.</p> <p>The definition for “assessment tool” is deleted because oPTION is being discontinued, and no other assessment tool exists.</p> <p>The definition for CLEP is eliminated because it is not referenced in the regulation.</p> <p>There is a new definition for “encounter” because that is the term used in amended regulation to replace the requirements related to a patient “visit.”</p>
25		Sets out requirements for licensees to maintain current name and address	<p>The word “sent” replaces the word “mailed” to allow the Board to provide renewal notices by email rather than USPS.</p>
50		Sets out requirements for graduates of PT programs that are not accredited and approved by the Board	<p>Subsection B is amended to specify that the “current” Federation of State Boards of Physical Therapy (FSBPT) tool should be utilized and remove “based on the year of graduation.” The change is necessary to will align with FSBPT’s proposed changes to its examination requirements for Foreign Educated Physical Therapists in 2022.</p>

			<p>Subsection C is amended to include a provision that the credentials verification should be based on the current coursework tool used by the FSBPT for Physical Therapy Assistants (PTAs) to align with FSBPT’s upcoming changes to its requirements for the national examination. Current regulations were enacted before FSBPT had an evaluation tool for PTAs.</p> <p>Subsection D is amended to provide that traineeship extensions can be granted for officially declared disasters to make the provision consistent with other extension requests in the regulations.</p>
65		Sets out requirements for licensure by endorsement	<p>Amendments will:</p> <ol style="list-style-type: none"> 1) Update the reference to the report to the National Practitioners Data Bank (NPDB) to use the current title and acronym. 2) Include references to licenses held in Canada in addition to U.S. jurisdictions and to clarify that an exam may be accepted from a Canadian jurisdiction in addition to U.S. jurisdictions. 3) Delete the reference to the FSBPT assessment tool which is being discontinued by 2020.
70		Sets out provisions for a traineeship for an unlicensed graduate who is approved to sit for the examination	<p>Amendments will:</p> <ol style="list-style-type: none"> 1) Change the timeframe for expiration of a traineeship from two working days to five working days following receipt of the licensure exam results. 2) Clarify that an unlicensed graduate who has failed the examination must register to retake before a new traineeship will be approved. 3) Clarify that an unlicensed graduate who has passed the examination may be approved for a new traineeship while waiting to be granted a full license. 4) Specify that an unlicensed graduate may have no more than three traineeships within the one year period following the receipt of the first examination results
90		Sets out the general responsibilities of a physical therapist	In the allowance for a PTA to have a “visit” with a patient under the general supervision, the term “visit” has been changed to “encounter,” as defined in section 10.
100		Sets out the supervisory responsibilities of a licensee	Subsection B is amended to clarify that direct supervision is not required for

			<p>routine tasks that are not related to physical therapy (scheduling appts, etc.) Subsection C is amended to include students in the limitation of three per PT providing supervision. <i>The intent of the regulation was to include anyone undergoing training – whether that person is a “trainee” or a student.</i></p> <p>Subsection E is added to incorporate the current guidance in document 112-20, relating to direct supervision of students who are obtained clinical education from a program that is not accredited by has been granted “candidate status” from the accrediting body.</p>
120		Sets out responsibilities of a PT to his/her patients	<p>The term “visit” has been replaced with the term “encounter” as being more descriptive of the interaction a licensee has with a patient. “Encounter” is defined in section 10 of the regulation.</p>
130		Sets out the requirements for biennial renewal of licensure	<p>An amendment to subsection C changes the requirement for active practice from 160 hours within the past two years to 320 hours within the past four years. <i>The change will make the requirement consistent with reactivation or reinstatement requirements so it is not more burdensome to continue to renew an active license than it is to allow one’s license to lapse or become inactive before returning to practice. The longer time frame will make it easier on a licensee who needs or wants to take some time off from practice by being able to count hours over a four year period rather than two years.</i></p> <p>Subsections D and E are added to allow the Board to grant an exception or an exemption from the active practice requirement, just as it can for continuing education required for renewal of licensure.</p>
131		Establishes the requirements for continuing education, including the listing of entities that may approve or provide Type 1 CE	<p>The Board has amended the listing of entities to add the National Strength and Conditioning Association, as requested in a petition for rulemaking. It has also included in approval of Type 1 hours any provider approved by other state licensing boards for physical therapy. <i>The amendments will open new opportunities for continuing education and will facilitate compliance with renewal requirements for PTs who hold licenses in multiple states.</i></p> <p>In response to questions about how to count a college course for Type 1 hours,</p>

			<p>an amendment clarifies that one credit hour is equivalent to 15 hours of Type 1.</p> <p>The section on Type 2 hours is reorganized for clarity. In addition, the Board has added classroom instruction and clinical supervision of students to the listing of activities that qualify for Type 2 credit. In response to questions about how to count those hours, the regulation provides that 40 hours of instruction or supervision is the equivalent of one contact hour of Type 2.</p> <p>Subdivision 5 of subsection B is deleted because the Federation of State Boards of Physical Therapy will discontinue the assessment tool referenced as of December 31, 2019.</p> <p>Subsection H is amended to clarify that a written request for an exemption from the continuing education requirement must be received prior to the renewal deadline in order to be considered.</p>
135		Sets out provisions for inactive licensure and reactivation	<p>In order to reactivate a license, a PT must show that they had 320 hours of active practice within the four years preceding application. The current regulation specifies active practice in another jurisdiction. However, a Virginia licensee may have practiced full time for several years, taken inactive status for a couple of years, and then decided to apply to reactivate her license. The current rule would not allow her to count her time in practice <i>in Virginia</i> during that four-year period.</p> <p>Subsection B is amended to allow someone who had active practice in Virginia within the past four years to count those hours for reactivation.</p> <p>The allowance to use the FSBPT assessment tool in lieu of active practice is deleted because the tool is being discontinued as of December 31, 2019.</p>
136		Sets out provisions for reinstatement of a lapse license	The same changes are made in section 136 as were adopted for section 135.
140		Sets out provisions for a traineeship	Subsection A is amended to clarify that the traineeship approved by the Board must be “served” under the direction and supervision of a licensed PT.