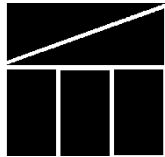


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes<sup>1</sup>  Not Needed

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

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**18 VAC 112-20 Regulations Governing the Practice of Physical Therapy**  
**Department of Health Professions**  
**Town Hall Action/Stage: 5228 / 8722**  
October 11, 2019

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### **Summary of the Proposed Amendments to Regulation**

The Board of Physical Therapy (Board) proposes numerous amendments to the *Regulations Governing the Practice of Physical Therapy* (regulation) that: 1) provide greater time flexibility for physical therapist and physical therapist assistant licensees and trainees, 2) allow granting an exemption to the active practice requirement for circumstances beyond the control of the licensee, 3) modify the reactivation and reinstatement requirement to include active practice in Virginia towards the amount of time necessary to substantiate 320 hours of active practice, 4) permit renewal notices to be sent by email rather than by letter, 5) increase the number of traineeships that an unlicensed graduate may have within the one year period following the receipt of the first examination results, 6) insert language concerning continuing learning activities (CLA) that is currently in guidance documents into the regulation, 7) add to the list of qualifying organizations that can provide or approve CLA, and 8) improve clarity.

### **Background**

The Board proposes to add the National Strength and Conditioning Association (NSCA) to the list of organizations that can provide or approve CLA. This stems from a 2018 petition for

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<sup>1</sup> Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

rulemaking.<sup>2</sup> Otherwise, the current action is the result of a periodic review. The findings of the periodic review were published on February 20, 2019.<sup>3</sup>

### **Estimated Benefits and Costs**

#### *Active practice*

One of the license renewal requirements in the current regulation is the completion of “a minimum of 160 hours of active practice in the preceding two years.” Active practice is defined as professional practice as a physical therapist or physical therapist assistant and may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services. The Board proposes to keep the minimum average number of hours per year at 80, but proposes to allow licensees greater flexibility as to when those hours occur. Specifically, the Board proposes to change the required number of hours of active practice for license renewal from 160 hours over two years to 320 hours over four years. The Board also proposes to permit at its discretion extending the deadline for completing active practice requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date. These two proposals are clearly beneficial for licensees. To the extent that the greater flexibility in the timing of when the active practice is conducted does not negatively affect the licensees’ current competency, the proposals do not introduce cost or risk for the public.

Additionally, the Board proposes to permit at its discretion granting of an exemption to the active practice requirement for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disaster, upon a written request from the licensee prior to the renewal date. Consistent with all of the proposed amendments in this action, this proposal is beneficial for licensees. To the extent that maintaining active practice is important for current competency, this proposal could result in some reduced current competency in some cases.

One of the methods in the current regulation to reactivate or reinstate a license includes demonstrating 320 active practice hours in “another” jurisdiction within the four years

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<sup>2</sup> See <https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=284>

<sup>3</sup> See [https://townhall.virginia.gov/l/GetFile.cfm?File=C:\TownHall\docroot\Review\1752\Preview\\_DHP\\_1752\\_v1.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=C:\TownHall\docroot\Review\1752\Preview_DHP_1752_v1.pdf)

immediately preceding application for reactivation or reinstatement. 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 or reinstate her license. Because the current rule applies only to active practice hours in another jurisdiction, it would not allow her to count her time in practice in Virginia during that four-year period. To address this situation, the Board proposes to allow someone who had active practice in Virginia, not just those with active practice outside of the Commonwealth, within the past four years to count those hours for reactivation or reinstatement. This proposal is beneficial for physical therapists and physical therapist assistants, and should not introduce any cost or risk for the public.

### *Traineeships*

The regulation specifies that upon approval of the president of the Board or his designee, an unlicensed graduate who is registered with the Federation of State Boards of Physical Therapy to sit for the national examination may be employed as a trainee under the direct supervision of a licensed physical therapist until the results of the national examination are received. The current regulation states that the traineeship shall terminate two working days after receipt by the candidate of the licensure examination results. The Board proposes to lengthen the timeframe for expiration of the traineeship from two working days to five working days after receipt of the licensure examination results. The Board also proposes to permit traineeships to be extended when officially declared disasters occur. The current regulation does not address the number of traineeships that an unlicensed graduate may have, but a Board guidance document species that there may be up to “two” within the one year period following the receipt of the first examination results. The Board proposes to specify in the regulation that an unlicensed graduate may have up to “three” traineeships within the one year period following the receipt of the first examination results. These three proposals all are beneficial for the trainee in that he would have additional time for experience and would not likely produce any cost or risk for the public.

### *Continuing learning activities*

In order to renew an active license biennially, physical therapists and physical therapist assistants must complete at least 30 contact hours of CLA within the two years immediately preceding renewal. A minimum of 20 of the contact hours required for physical therapists, and 15 of the contact hours required for physical therapist assistants, must be in Type 1 courses. A

Type 1 course is an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

- a. The Virginia Physical Therapy Association;
- b. The American Physical Therapy Association;
- c. Local, state, or federal government agencies;
- d. Regionally accredited colleges and universities;
- e. Health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;
- f. The American Medical Association - Category I Continuing Medical Education course;
- g. The National Athletic Trainers' Association; or
- h. The Federation of State Boards of Physical Therapy.

The Board proposes to add the following to the above list: 1) NSCA, and 2) providers approved by other state licensing boards for physical therapy. This would increase choice of CLA providers for licensees and may result in reduced costs (either through lower fees or reduced travel or both) and the opportunity to have CLA that is more applicable to some physical therapists and physical therapist assistants count toward the required the number of contact hours. If some licensees do take advantage of the newly approved sources of CLA instead of existing approved CLA providers, some existing providers of CLA would encounter reduced demand for their services, potentially resulting in reduced revenue.

In addition, the board proposes to add certain information to the regulation that is presently in guidance documents. Specifically, information on: 1) what qualifies as Type 2 continuing education, 2) the ratio of college course credit hours to Type 1 CLA contact hours, and 3) the ratio of hours of clinical supervision or instruction to contact hours of Type 2 activity would be added. This would be beneficial in that it may reduce confusion for affected entities and other interested parties.

*Other*

The current regulation requires that notices be “mailed” to licensees. The Board proposes to amend “mailed” to “sent.” This would permit the Board to email renewal notices, rather than use the U.S. Postal Service. This would produce savings in postage and staff time.

**Businesses and Other Entities Affected**

The proposed amendments affect the 8,240 licensed physical therapists, 3,525 licensed physical therapist assistants, and physical therapy trainees in the Commonwealth, and their employers.<sup>4</sup> Providers of CLA to physical therapists and physical therapist assistants are also affected. The proposed amendments do not appear to introduce costs for the affected entities, but some existing CLA providers may encounter reduced revenue.

**Localities<sup>5</sup> Affected<sup>6</sup>**

The proposed amendments apply statewide, and do not disproportionately affect any particular locality. The proposed amendments do not appear to introduce costs for local governments.

**Projected Impact on Employment**

The proposed amendments do not appear to affect total employment.

**Effects on the Use and Value of Private Property**

The proposal to add new approved providers of CLA potentially reduces costs for licensees. This may indirectly reduce costs for firms that employ physical therapists and physical therapist assistants if the firms subsidize their employees’ CLA costs or take those costs into consideration when determining pay. Certain proposals may increase the pool of licensed physical therapists and licensed physical therapist assistants available to work for firms that provide physical therapy services at any given time. Specifically, proposals: to provide greater time flexibility for physical therapist and physical therapist assistant licensees, to allow granting an exemption to the active practice requirement for circumstances beyond the control of the licensee, and to modify the reactivation and reinstatement requirement to include active practice

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<sup>4</sup> The Department of Health Professions licenses individual physical therapists and physical therapist assistants, but not their employers. Consequently, the number of licensed individuals is available, but the number of employers is not.

<sup>5</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>6</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

in Virginia towards the amount of time necessary to substantiate 320 hours of active practice may do so. A larger pool to choose from may reduce some of these firms' hiring costs. The potential reduced expenditures on CLA and hiring may increase the value of some firms that provide physical therapy services

The proposal to add new approved providers of CLA would increase the competition in the provision of CLA that is applicable to physical therapists and physical therapist assistants. To the extent that some licensees take advantage of the newly approved sources of CLA instead of existing approved CLA providers, some existing providers of CLA would likely encounter reduced revenue. This could negatively affect the net value of some such firms.

### **Adverse Effect on Small Businesses<sup>7</sup>:**

#### Types and Estimated Number of Small Businesses Affected

The proposed amendments affect small providers of physical therapy services and small providers of CLA to physical therapists and physical therapist assistants. Data are not available on the number of firms. The 8,240 licensed physical therapists and 3,525 licensed physical therapist assistants in the Commonwealth are affected.

#### Costs and Other Effects

The proposed amendments do not appear to increase costs. Some small providers of CLA may encounter reduced demand for their services, and consequently reduced revenue.

#### Alternative Method that Minimizes Adverse Impact

The proposal to add new approved providers of CLA creates benefit for licensed physical therapists and physical therapist assistants. The benefit cannot be achieved without the resulting potential loss of business for some small existing CLA providers.

### **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 14 (as amended, July 16, 2018). 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

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<sup>7</sup> 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."

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(D): 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.