



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Physical Therapy, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC112-20-10 et seq.
Regulation title	Regulations Governing the Practice of Physical Therapy
Action title	Regulatory reform changes
Date this document prepared	8/23/13

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Amendments are promulgated to: 1) eliminate specific remedial requirements for persons who fail the licensure examination three times; 2) reduce the traineeship hours required for applicants by endorsement, reactivation or reinstatement; 3) clarify that a re-evaluation of patients is required at certain intervals of care; and 4) eliminate the requirement that traineeships be served in facilities approved as clinical sites for students enrolled in an accredited education program.

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.

On August 9, 2013, the Board of Physical Therapy adopted amendments to 18VAC112-20-10 et seq., Regulations Governing the Practice of Physical Therapy by a fast-track action.

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.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which 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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 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 for regulation of physical therapy is found in:

§ 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 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 amended regulation is to address some inconsistencies in the clinical practice requirements for applicants by reactivation, reinstatement or licensure by endorsement and to make the traineeship less burdensome. The amendments will not reduce the responsibility of supervisors for trainees and will continue to protect the health and safety of the public. Additionally, changes to the evaluation responsibilities of physical therapists will not affect public safety because the language is more clarifying and consistent with current practice.

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?

The action is less restrictive regulation for applicants and practitioners. It will resolve some issues relating to evaluation of patients by physical therapists and be more consistent with current practices. It will not be controversial.

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.

Amendments are promulgated to: 1) eliminate specific remedial requirements for persons who fail the licensure examination three times; 2) reduce the traineeship hours required for applicants by endorsement, reactivation or reinstatement; 3) clarify that a re-evaluation of patients is required at certain intervals of care; and 4) eliminate the requirement that traineeships be served in facilities approved as clinical sites for students enrolled in an accredited education program.

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) There are no advantages or disadvantages to the public. The public continues to be protected by assurances that applicants will have clinical competency evidenced by hours of active practice in another jurisdiction or hours under supervision in a traineeship.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent issues.

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.

To achieve this less restrictive regulation, there are no alternative methods, other than the promulgation of an amendment to the licensure and practice requirements.

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 incur no costs for electronic notifications to the Public Participation Guidelines. There are no on-going expenditures relating amendments to regulations for physician assistants.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</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>The entities that are likely to be affected by these regulations are physical therapists and applicants for licensure.</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 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently 6580 licensed physical therapist and 2692 physical therapist assistants currently licensed in Virginia. The number of PT’s who hold direct access certification is 779.</p>
<p>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.</p>	<p>There are no costs to small businesses or other entities.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The patient evaluation requirements may be less burdensome for physical therapists. Traineeship hours for persons reactivating, reinstating or seeking licensure by endorsement are reduced.</p>

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 viable alternatives.

Periodic review/small business impact review result

If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

There were no comments on the Notice of Periodic Review

- 1) In accordance with the Code of Virginia, the Board is required to promulgate regulations for the licensure and practice of physical therapists and physical therapist assistants. Therefore, there is a continued need for the regulation.
- 2) There were no complaints or comments received from the public.
- 3) The regulation is organized and written similarly to other chapters promulgated by boards within the agency; it appears to be clear and easily understood.
- 4) The regulation does not overlap with federal or state law, which is not specific about the criteria for licensure or the standards of practice. Grounds for unprofessional conduct in § 54.1-3483, which are not repeated in the regulations.
- 5) The regulation is frequently reviewed for consistency with changes in technology and practice. Accordingly, it has been amended 14 times in the last 12 years. The last periodic review was completed in 2009.

The economic impact of this regulation is minimal for a licensure scheme. The biennial fee for active license renewal for a physical therapist is \$135 and for a physical therapist assistant, it is \$70. Licensees have had a reduction in renewal fees three times in the last 10 years. Fees required to obtain and maintain a license do not appear to be burdensome or inhibiting the growth of the profession as there was a growth rate in the number of 8.7% for physical therapists and 10.5% for physical therapist assistants in the last biennium.

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 family.

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.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	Sets out definitions of words and terms used in regulations	A definition for "re-evaluation" is added because term is introduced in the amended regulation.
27	Sets out the fees for applicants and licensees	<i>The fees in this new section are identical to current section 150.</i> The fee provisions are being moved to Part I, General Provisions for consistency and clarity. Fees for inactive licensure, currently set in section 135, are included in this fee section for ease of compliance.
60	Sets out the requirements for passage of a licensing examination	Subsection B, which currently sets out requirements for an applicant who fails the national examination three times, is being deleted. The requirement to "review areas of deficiency with the applicant's physical therapy educational program and develop a plan, which may include additional clinical training or coursework, to address deficiency areas" was very problematic for applicants and programs, which are not organized to assume that responsibility. The Board determined that remedial steps following failure of an examination should be left to the individual.
65	Sets out the requirements for licensure by endorsement	Since the requirement for "active, clinical practice is being deleted in subdivision 5 of subsection B, the only reference to active, clinical practice is now in subdivision 1. Therefore, the current definition of "active, clinical practice" (2,500 hours of patient care) within the general context of this section was deleted and moved into subdivision 1 as the alternative to an applicant's educational qualifications. Subdivision 3 was amended to delete a current report from the National Practitioner Data Bank because the two federal reports have been consolidated into one, the Healthcare

		<p>Integrity and Protection Data Bank (HIPDB).</p> <p>Subdivision 5 was amended to delete the requirement for active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia if the applicant did not take the same examination Virginia required at the time of initial licensure in another state. The Board believes passage of the examination required for licensure in the other state is adequate evidence of competency. Additionally, all states have required the FSBPT examination for many years, so the likelihood of receiving an application from a person who passed only a state examination is decreasing.</p> <p>Current requirements for licensure by endorsement include documentation of active practice in physical therapy in another U. S. jurisdiction for at least 320 hours within the four years immediately preceding his application for licensure. If an applicant cannot document active practice, he is currently required to complete a 480-hour internship. In the amended regulation, the internship is reduced to 320 hours for consistency with the active practice requirement and to enable the applicant to become fully licensed more quickly. If the applicant completes the Practice Review Tool (PRT) offered by FSBPT, he can reduce the internship hours to 160 (amended from the current requirement of 320 hours).</p>
90	Sets out the general responsibilities for physical therapists	<p>Currently, the physical therapist is responsible for periodic evaluations including documentation of the patient's response to therapeutic intervention. What the PT actually performs is a "re-evaluation" of the patient as opposed to an initial evaluation. The use of the term "evaluation" in this context has been confusing and problematic. Therefore, the proper term "re-evaluation" is used and defined in the amended regulation.</p> <p>Another problematic regulation has been the requirement for the physical therapists to document the status of the patient at the time of discharge, including the response to therapeutic intervention. Often the patient is discharged from a health care facility without the opportunity for the physical therapist to re-evaluate the patient, so the amended regulation will allow the final note in the patient record to document patient status.</p>
120	Sets out the responsibilities of physical therapist to the patients	<p>For patients in settings other than in-patient, the PT is required to "evaluate" the patient not less than once out of 12 visits made to the patient during a 30-day period, or once every 30 days from the last "evaluation" whichever occur first. In most PT practices, the physical therapist assistant is working with the patient and documenting in the patient record. The physical therapist will "re-evaluate" the patient according to the prescribed schedule, rather perform an "evaluation."</p> <p>The requirement for "re-evaluation" every 30 days is burdensome for patients who have been receiving physical</p>

		therapy care for the same condition or injury over an extended period of time. For example, children with physical disabilities who are receiving physical therapy in school settings may not need “re-evaluation” every 30 days. There will not be enough significant progress within that time frame to warrant a re-evaluation by the PT. Therefore, the requirement for re-evaluation of those patients who have been receiving care for the same condition or injury for six months or longer is amended to require re-evaluation at least every 90 days from the last re-evaluation.
135	Sets requirements for inactive licensure	<p>Fees for obtaining an inactive license are deleted in this section and included in section 27 on Fees. An obsolete fee that expired in 2010 is deleted.</p> <p>Currently, an applicant for re-activation of an inactive license must provide proof of active practice hours in another jurisdiction equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive or serve a traineeship to assure clinical competency. The requirement can be burdensome for some inactive licensees; for example, if a PT has been inactive in Virginia for four years, she would have to provide proof of 640 hours of active practice in another jurisdiction or 960 hours if inactive for six years. Instead, the Board recommends a requirement of 320 active practice hours in another jurisdiction within the four years immediately preceding application for reactivation.</p> <p>If the applicant does not have hours of active practice, she may serve a traineeship, which is currently required to be 480 hours. The Board has reduced that amount to 320 hours. If the applicant completes the Practice Review Tool, she may complete 160 hours in a traineeship to qualify for reactivation.</p>
136	Sets requirements for reinstatement of a lapsed license	<p>Current regulations require 320 active practice hours in another jurisdiction within four years preceding application. If the applicant does not have hours of active practice, she may serve a traineeship, which is currently required to be 480 hours. The Board has reduced that amount to 320 hours. If the applicant completes the Practice Review Tool, she may complete 160 hours in a traineeship to qualify for reactivation.</p>
140	Sets the traineeship requirements	<p>In subsection A, it is currently required that a traineeship be served in a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia. That requirement is too limiting and burdensome and substantially reduces the physical therapy settings in which an applicant or graduate may serve a traineeship. The Board proposes to eliminate that provision in the requirements but retain the requirement that the traineeship be under direction and supervision of a licensed physical therapist to assure patient safety.</p>
150	Sets out the fees for applicants and licensees	<p>The section is being repealed and provisions moved to Part I in section 27.</p>