



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 112-20 – Regulations Governing the Practice of Physical Therapy

Department of Health Professionals

December 18, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

§54.1-2400 of the Code of Virginia establishes the powers and duties of health regulatory board, including promulgating regulations, levying fees, administering a licensure and renewal program, and disciplining regulated professionals. Chapter 34.1 of Title 54.1 (§54.1-3473 through §54.1-3483) establishes statutory provisions for the licensure and practice of physical therapists and physical therapist assistants. Specifically, in §54.1-3475 of the Code of Virginia the general assembly mandates that the Board of Physical Therapy regulate the practice of physical therapy and carry out the provisions of the code relating to the qualification, examination, licensure, and regulation of physical therapists and physical therapist assistants.

The regulation proposes the following changes: (1) amends the examination requirements for licensure as a PT or PTA by removing the provision prohibiting the licensure of an individual who has failed the national examination six times and adding a provision requiring applicants who fail the examination three times to complete additional clinical training and coursework in

order to apply to the State Board of Physical Therapy for approval to sit for any subsequent examinations, (2) amends the licensure by endorsement requirements by allowing applicants whose initial licensure examination was not identical to the Virginia examination to be licensed by endorsement as long as the applicant is able to demonstrate at least seven years of active practice on a current unrestricted license, (3) changes the active practice requirements for the renewal or reactivation of a license to a two-year cycle from the existing four-year cycle, (4) requires foreign-trained graduates of an approved program applying for licensure as a physical therapist (PT) or physical therapist assistant (PTA) and foreign-trained graduates of a non-approved program applying for licensure as a PTA to take and pass the Test of Spoken English (TSE), (5) removes language specifying the minimum score required on the Test of English as a Foreign Language test in order to be licensed, (6) expands and clarifies the roles and responsibilities (supervisory or otherwise) of PTs, PTAs, and support personnel, and (7) removes language in the existing regulation specifying general and professional education requirements for PTA approved programs.

The proposed regulation also includes new definitions in order to improve the clarity of the regulation, such as a definition of what constitutes active practice. It also updates existing definitions to make them more consistent with the model practice act developed by the Federation of State Boards of Physical Therapy (FSBPT).

In addition, the proposed regulation also deletes redundant language, adds clarifying language, amends language to reflect current practice, and reorganizes sections in the existing regulation in order to improve clarity.

Estimated Economic Impact

(1) The proposed regulation amends the examination requirements in order to be licensed as a PT or PTA in Virginia. The provision prohibiting the licensure of individuals who have failed the examination six times has been removed. Instead, the proposed regulation requires that individuals who fail the examination three times apply to the State Board of Physical Therapy for approval to sit for any subsequent examinations and submit evidence of having successfully completed additional clinical training or coursework in the deficient areas.

According to the Department of Health Professionals (DHP), the proposed change is intended to make Virginia's examination requirements consistent with those of other states.

There has been one instance in the past few years when this requirement has proved problematic. An applicant failed the Virginia licensing examination six times and was consequently denied a license. Subsequently, the individual was licensed in another state and then applied for licensure by endorsement in Virginia. The FSBPT leaves it up to the individual states to determine how many times a person can sit for the examination. The State Board of Physical Therapy reviewed the requirements of other states and jurisdictions and chose to remove the prohibition on licensure after six failures.

Removal of the provision prohibiting individuals from being licensed following six examination failures is likely to produce some economic benefits. A survey of the licensure requirements in other states indicates that 16 states currently impose limits on the number of times an individual can appear for the licensure examination. Moreover, of the states that do impose a limit on the number of times an individual can appear for the examination, the limit ranges from three times in Pennsylvania to eight times in Texas. There is no evidence to indicate that the performance of PTs and PTAs in states with limits is better than the performance of PTs and PTAs in states with no limit and that a six-time limit is better at protecting public health than a limit of three, four, or eight times. Thus, by removing what appears to be an arbitrary requirement denying licensure to individuals failing the examination more than six times, the proposed change could result in more individuals being licensed as PTs and PTAs in Virginia, increasing competition and potentially reducing the cost of purchasing physical therapy services.

Rather than denying licensure after six failures, the proposed change now requires individuals to undertake some form of remediation following three failures. According to DHP, the remediation could take the form of additional coursework or clinical training in the deficiency areas or any other form of remediation deemed satisfactory by the State Board of Physical Therapy. The new requirement, while appearing unnecessary, is not likely to have a significant economic impact. Individuals already have an incentive to pass the licensure examination at the earliest try. Until an individual passes the examination and is licensed, she/he will not be able to practice physical therapy in Virginia. Moreover, under existing policy, individuals seeking to be licensed as a PT are required to pay a \$140 non-refundable license fee. The fee for individuals seeking licensure as a PTA is \$105. In addition, applicants are also required to pay all examination fees. Based on documents available on DHP's website, the fee for examination services each time an individual appears for the examination is \$285. Thus, in

addition to a desire to be licensed as soon as possible in order to begin practicing as a PT or PTA, the fees charged each time an individual applies for licensure and each time an applicant appears for the examination provide an added incentive for applicants to take and pass the examination at the earliest try. According to DHP, if an applicant chose to attend a remedial course, it would typically be a 3-credit hour course. One graduate credit hour costs \$371 to take at the Medical College of Virginia. Thus, a remedial course in a deficiency area would cost the individual approximately \$1,113.

While the remediation requirement may be unnecessary and not likely to have a significant economic impact, it should be noted that the three-time limit being proposed in the regulation appears arbitrary. A review of the examination requirements in other states indicates that 23 states require some form of remediation before allowing applicants to appear for the examination multiple times and three states leave it up to the board's discretion. Moreover, of the states that do require remediation, nine states require remediation after two failed attempts and 14 require remediation after three failed attempts. There is no evidence to indicate that the different remediation requirements produce a significant difference in the performance of PTs and PTAs. Thus, there is no evidence that requiring remediation after three failed attempts provides better protection to public health than requiring it after two failures or not requiring remediation at all.

The proposed change may produce a small net positive economic impact. The economic benefits of removing the six-year cap on the number of times an individual can appear for the examination are likely to be small. There have not been many cases of individuals being denied licensure following six examination failures. While DHP does not collect data on the number of times an individual fails the examination, they are not aware of more than one case when that has occurred. The proposed remediation requirement after three failures, while unnecessary, is not likely to have a significant economic impact. Most applicants already have an incentive to take and pass the examination as soon as possible. DHP does not believe that there have been many individuals who have failed the examination three times or more and who could be affected by the new remediation requirement.

(2) The proposed regulation amends the licensure by endorsement requirements by allowing applicants whose initial licensure examination was not identical to the Virginia

examination at the time to be licensed by endorsement as long as the applicant is able to demonstrate at least seven years of active practice on a current unrestricted license. Under existing policy, individuals who are licensed on the basis of an examination not equivalent to the Virginia examination cannot be licensed by endorsement. Only individuals who have passed the national examination or passed a state examination substantially equivalent to Virginia's examination can be licensed by endorsement.

The proposed change is likely to produce economic benefits by increasing the number of individuals who can seek licensure by endorsement in Virginia. This, in turn, could result in more individuals being licensed as PTs and PTAs in Virginia, increasing competition and potentially reducing the cost of purchasing physical therapy services. However, the extent of the benefits accruing from the proposed change is likely to be small. According to FSBPT, all state licensing authorities adopted the FSBPT criterion-referenced passing score effective July 1996. Thus, the proposed change would only apply to individuals who took their licensure examination prior to 1996 in a state that did not have an examination equivalent to the Virginia examination at the time of initial licensure.

According to DHP the seven-year active practice requirement was based on information regarding the effective life of an examination. According to FSBPT, the examination becomes less important as an indicator of competency than active practice without disciplinary action for individuals who have taken their initial licensure examination more than seven years ago. However, by requiring seven years of active practice, the proposed change completely discounts the merits of any state examination that was substantially different from that of Virginia. It does not address the differences between those states' examinations and Virginia's and whether an applicant from one of those states might be qualified to practice in Virginia with less than seven years of active practice.

The proposed change may produce a small net positive economic impact. By increasing the number of individuals who can apply for licensure by endorsement, the proposed change could lead to a rise in the number of PTs and PTAs operating in Virginia, increased competition, and a reduction in the price of these services in Virginia. However, the full benefit of the proposed change may not be felt due to the seven-year active practice requirement. It is not clear that seven years of active practice is a good proxy for the differences that existed between state

examinations. The net economic impact is likely to be small as the proposed change only applies to individuals applying for licensure by endorsement who took their initial licensure examination prior to 1996 in a state with a licensure examination that was not substantially equivalent to Virginia's at the time. The number of such individuals is likely to be small.

According to DHP, 523 PTs and 111 PTAs have been licensed by endorsement in Virginia since 2000. However, all these individuals had to pass an examination that was equivalent to Virginia's examination at the time of initial licensure. It is not known how many more individuals are likely to be licensed by endorsement following the proposed change and how many more would have been licensed by endorsement had the active practice requirement been directly related to the differences in state examination.

(3) The proposed regulation changes the active practice requirements for the renewal or reactivation of a license to a two-year cycle rather than a four-year cycle. Under the existing regulation, individuals seeking to renew or reactivate their license are required to demonstrate 320 hours of professional practice in the four years immediately preceding renewal or reactivation. The proposed regulation requires applicants for renewal or reactivation to demonstrate 160 hours of professional practice in the preceding two years. According to DHP, the proposed change is intended to make the active practice requirements consistent with the two-year license renewal requirement.

However, the proposed change could impose some unintended costs on applicants seeking renewal or reactivation of their license. By changing the active practice requirement from a four-year cycle to a two-year cycle, the proposed change is likely to reduce the flexibility currently available to individuals in meeting the renewal and reactivation requirements. For example, a woman taking a year off to have a baby would find it easier to renew her license under the four-year requirement (which would require her working 106.7 hours per year for three years) rather than the two-year requirement (which would require her working 160 hours in a year). Moreover, the reduction in flexibility is not likely to come with any significant additional benefits. There is no evidence to indicate current policy of 320 hours of professional practice over four years is not protecting public health and safety and that 160 hours of professional practice over two years would provide better protection.

However, the net economic impact of the proposed change is not likely to be significant. According to DHP, applicants for renewal or reactivation that do not meet the active practice requirement will be allowed by the State Board of Physical Therapy to make up the deficient hours and renew or reactivate their licenses rather than letting it lapse. Moreover, it is unlikely that changing the active practice requirements for renewal or reactivation is likely to result in many licensees being unable to renew or reactivate their license. Rather than requiring licensees to have eight weeks (or 320 hours) of professional practice over four years, the proposed change requires them to have four weeks (or 160 hours) of professional practice over two years. DHP believes that it is very unlikely that licensees will not be able to demonstrate four weeks of professional practice in two years.

(4) The proposed regulation requires foreign-trained graduates of an approved program applying for licensure as a PT or PTA and foreign-trained graduates of a non-approved program applying for licensure as a PTA to take and pass the Test of Spoken English (TSE). Currently, foreign-trained graduates of approved programs are required to take the Test of English as a Foreign Language (TOEFL). Foreign-trained PT graduates of non-approved programs are required to provide documentation of PT certification from the Foreign Credentialing Commission on Physical Therapy (which includes some English language requirements) and foreign-trained PTA graduates of non-approved programs are required to take the TOEFL. The TOEFL requirements can be waived on evidence of English proficiency. Under the proposed regulation, the requirements for foreign-trained PT graduates of non-approved programs will remain unchanged (i.e., PT certification from the Foreign Credentialing Commission on Physical Therapy), but all other foreign-trained graduates will be required to take the TSE in addition to the TOEFL. The TSE requirement can be waived upon evidence of English proficiency.

According to DHP, the proposed change is intended to ensure that all PTs and PTAs operating in Virginia are able to communicate effectively with their patients in English. While TOEFL tests an applicant's written proficiency in English, DHP believes that TSE is a more appropriate test for spoken proficiency. DHP is aware of one disciplinary case in the last three years when a licensed PT or PTA was not able to communicate effectively with a patient. The case is being appealed to the circuit court. Moreover, while DHP does not collect data on the number of foreign-trained applicants for licensure, they have observed an increase in the number

of such applicants seeking licensure over the past few years. The proposed change is intended to prevent cases such as the one currently under appeal in the future.

The proposed change is likely to produce some economic benefits. By better ensuring that PTs and PTAs are able to communicate with their patients in English, the proposed change is likely to reduce the risk of harm to patients from physical therapy-related activities. However, the proposed change is also likely to impose additional costs on foreign-trained applicants. According to DHP, it costs \$125 to take the TSE. The additional cost is also likely to discourage some applicants from applying for licensure, reducing the number of licensed PTs and PTAs operating in Virginia. This, in turn, will reduce competition and potentially raise the cost of physical therapy services in Virginia.

The net economic impact of the proposed change will depend on whether the additional benefits of reducing the risk to patients from PTs and PTAs unable to communicate effectively in English are greater than or less than the cost of (a) requiring applicants to take the TSE and (b) potentially raising the price of these services in Virginia. There is no data available at this time to make a precise determination of the net economic impact of the proposed change.

(5) The proposed regulation removes language specifying the minimum score required on the TOEFL in order to be licensed. The existing regulation requires that applicants pass the test with a grade not less than 560. Under the proposed regulation, the minimum passing grade for TOEFL and TSE is to be determined by the State Board of Physical Therapy.

According to DHP, The State Physical Therapy Board determines the minimum passing grade based on the recommendation of the TOEFL examination service. The TOEFL examination service periodically updates these grades. By removing language specifying the minimum passing grade, DHP will be able to update this requirement without having to go through the regulatory process.

The proposed change is not likely to have a significant economic impact. Individuals will still be able to get information regarding the minimum passing grade from the TOEFL examination service (as they currently do). To the extent that the proposed change provides the State Board of Physical Therapy with flexibility in incorporating any changes to the minimum passing grade, it is likely to produce some small economic benefits.

(6) The proposed regulation expands and clarifies the roles and responsibilities (supervisory or otherwise) of PTs, PTAs, and support personnel. The State Board of Physical Therapy was set up in 2000 and the regulations governing the practice of physical therapy that had been in effect under the State Board of Medicine were adopted with minor revisions. In the intervening three years, several areas that needed clarifying have been identified, including roles and responsibilities of PTs, PTAs, and support personnel.

The proposed regulation includes additional language that delineates the responsibilities of PTs and PTAs. The regulation specifies that PTs are responsible for conducting all initial evaluations, periodic re-evaluations, and evaluations conducted prior to discharge. PTs will also be responsible for communicating the overall plan of care to the patient and communicating with other doctors and medical personnel. PTAs are allowed to assist in various components of physical therapy care under the general supervision of a PT. The regulation also specifies that support personnel are only authorized to perform routine tasks (tasks that are nondiscretionary and do not require the exercise of professional judgment) under the direct supervision of a licensed PT or PTA. This language is based on FSBPT's model act.

The proposed change is not likely to have a significant economic impact. The additional language being proposed is intended to clarify and expand on existing policy in order to ensure an adequate level and quality of care. There is no data available on instances when the lack of clarity in the regulation has led to a patient being harmed. However, to the extent that the proposed change improves understanding of the regulation, it is likely to produce some economic benefits.

(7) The proposed regulation removes language specifying general and professional education requirements, including the minimum semester hours required for a non-approved program for PTAs. DHP believes the general and profession education requirements specified in the existing regulation to be unnecessary. PTA applicants from non-approved schools are already required to provide verification from a scholastic credentials service regarding the equivalency of the applicant's education to an approved PTA program.

The proposed change is not likely to have a significant economic impact. Graduates of non-approved PTA programs that qualify for licensure currently will continue to do so. To the

extent that it removes an unnecessary requirement, the proposed change is likely to produce some economic benefits.

The remaining changes being proposed, such as the inclusion of new definitions, the updating of existing definitions, the deletion of redundant language and the addition of clarifying language, amendments made to reflect current practice, and the reorganization of various sections are not likely to have a significant economic impact. To the extent that these changes improve the understanding and implementation of the regulation, they are likely to produce some economic benefits.

Businesses and Entities Affected

The proposed regulation affects all individuals seeking licensure as PTs and PTAs in Virginia. Applicants will no longer be denied licensure after failing the examination six times. Instead, applicants failing the examination three times will be required to complete some form of remediation in the deficiency areas before being allowed to appear for the examination again. Applicants for licensure from states with examinations not equivalent to Virginia's examination at the time of initial licensure will now be able to get licensed by endorsement on demonstrating that they have seven years of active practice. Foreign-trained applicants for PTA licensure (from approved and non-approved programs) and foreign-trained applicants for PT licensure from an approved program will now be required to take and pass the TSE in addition to the TOEFL.

According to DHP, there are approximately 4,401 PTs and 1,597 PTAs currently licensed in Virginia. The department gets approximately 380 applicants for licensure as a PT and 145 applicants for licensure as a PTA each year. Since 2000, 523 physical therapists and 111 physical therapist assistants have been licensed by endorsement into Virginia.

Localities Particularly Affected

The proposed regulation affects all localities in Virginia.

Projected Impact on Employment

The proposed regulation is not likely to have a significant impact on employment.

Effects on the Use and Value of Private Property

The proposed regulation is not likely to have a significant impact on the use and value of private property.