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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Board of Physical Therapy
Virginia Administrative Code (VAC) citation(s)	18VAC112-20
Regulation title(s)	Regulations Governing the Practice of Physical Therapy
Action title	Practice of dry needling
Date this document prepared	5/27/15

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The intent of the regulatory action is to incorporate into regulation the guidance on dry needling currently found in Guidance Document 112-9, including the additional hours of training, the requirement for a medical referral, and the disclosure to patients on the difference between acupuncture and dry needling.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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'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. ...*

In the statutory definition of physical therapy, the practice of dry needling is not addressed, but treatment may be interpreted to include such practice:

§ 54.1-3473. Definitions.
As used in this chapter, unless the context requires a different meaning:...
"Practice of physical therapy" means that branch of the healing arts that is concerned with, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders. The practice of physical therapy also includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures within the scope of practice of the physical therapist. However, the practice of physical therapy does not include the medical diagnosis of disease or injury, the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the action is to specify the qualifications for and limitations of the practice of dry needling as performed by physical therapists so as to differentiate such it from the practice of acupuncture which is reserved for licensed acupuncturists or doctors with additional training. For physical therapists, dry needling is not an entry level skill for which competency has been assured through an accredited educational program and national examination. It is an advanced procedure that requires additional training. Without a regulatory standard, the Board cannot hold a physical therapist accountable for obtaining the training required. Therefore, the Board has determined that regulations are necessary to protect the health and safety of patients who may receive dry needling in the course of a physical therapy treatment.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Dry needling is the use of either solid filiform needles (also referred to by some as acupuncture needles) or hollow-core hypodermic needles for therapy of muscle pain, including pain related to myofascial pain syndrome. Dry needling is sometimes also known as ***intramuscular stimulation*** *(IMS).[1] Acupuncture and dry needling techniques are similar but not the same.* (From Wikipedia)

Currently, Guidance Document 112-9 specifies the following:

- Dry needling is not an entry level skill but an advanced procedure that requires additional training.

- A physical therapist using dry needling must complete at least 54 hours of post professional training including providing evidence of meeting expected competencies that include demonstration of cognitive and psychomotor knowledge and skills.

- The licensed physical therapist bears the burden of proof of sufficient education and training to ensure competence with the treatment or intervention.

- Dry needling is an invasive procedure and requires referral and direction, in accordance with § 54.1-3482 of the Code of Virginia. Referral should be in writing and specific for dry needling; if the initial referral is received orally, it must be followed up with a written referral.

- If dry needling is performed, a separate procedure note for each treatment is required, and notes must indicate how the patient tolerated the technique as well as the outcome after the procedure.

- A patient consent form should be utilized and should clearly state that the patient is not receiving acupuncture. The consent form should include the risks and benefits of the technique, and the patient should receive a copy of the consent form. The consent form should contain the following explanation:

  Dry needling is a technique used in physical therapy practice to treat trigger points in muscles. You should understand that this dry needling technique should not be confused with a complete acupuncture treatment performed by a licensed acupuncturist. A complete acupuncture treatment might yield a holistic benefit not available through a limited dry needling treatment.

Qualifications for the performance of dry needling, the requirement for referral, and specification of a patient consent form are included in the guidance document. Such provisions are more appropriately stated in regulations adopted through the Administrative Process Act, so the Board is initiating rulemaking. The substance of the rules will likely follow the substance of the guidance

document, but may differ depending on the comments received after publication of the Notice of Intended Regulatory Action.

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.

The issue of whether dry needling is within the scope of the practice of physical therapy has been debated for a number of years. In 2007-2008, a Task Force of physical therapists and acupuncturists reviewed the issue in Virginia and recommended that the Board adopt guidance on the qualifications necessary to perform the technique and the disclosure to patient to distinguish dry needling from acupuncture.

Recently, the American Academy of Medical Acupuncture raised the issue again in a letter to Governor McAuliffe in opposition to the practice by physical therapists. The Board reviewed the letter and reiterated its position and that of the Federation of State Boards of Physical Therapy that "acupuncture is an entire discipline and profession where as dry needling is merely one technique which should be available to any professional with the appropriate background and training."

Since it is acknowledged that dry needling in physical therapy is an advanced skill, the Board does find it necessary to set out the additional training one should have to safely perform it on patients. Currently, a Guidance Document specifies such training, but it is not enforceable and is more appropriately regulatory in nature. Counsel for the Board has advised that the language in Guidance Document 112-9 is prescriptive and therefore should be included in 18VAC112-20-10 et seq.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

The Board will use its Regulation Committee to develop proposed regulations; a regulatory advisory panel will not be appointed to assist in the development of the proposed regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233; elaine.yeatts@dhp.virginia.gov; 804-527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action 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 (**http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi**). Both oral and written comments may be submitted at that time.