



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 112-20 Regulations Governing the Practice of Physical Therapy
Department of Health Professions
Town Hall Action/Stage: 5951 / 9610
August 29, 2022

The Department of Planning and Budget (DPB) 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). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board of Physical Therapy (Board) is proposing to amend 18 VAC 112-20 *Regulations Governing the Practice of Physical Therapy* (regulation) to indicate that the only accepted examination for licensure as a physical therapist or physical therapist assistant is the National Physical Therapy Examination (NPTE).²

Background

The Board initiated a periodic review for 18 VAC 112-20 *Regulations Governing the Practice of Physical Therapy* in 2018. One of the changes resulting from that periodic review was an amendment to allow licensed physical therapists and physical therapist assistants to become licensed in Virginia via licensure by endorsement by documenting passage of an examination required by another state or Canadian province. At that time, Canadian jurisdictions

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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 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.

² The proposed text is "Documentation of passage of an examination equivalent to the national examination as prescribed by the board." The Agency Background Document makes clear that the national examination prescribed by the board is the NPTE. See

https://townhall.virginia.gov/l/GetFile.cfm?File=133\5951\9610\AgencyStatement_DHP_9610_v1.pdf

and Michigan allowed passage of the Physiotherapy Competency Exam instead of the NPTE. The regulatory changes stemming from the periodic review became final on April 30, 2021.

These changes, which allowed licensure via endorsement following passage of the Physiotherapy Competency Exam, inadvertently conflicted with state law. More specifically, the conflict results from the Physical Therapy Licensure Compact (Compact), which the Commonwealth entered into pursuant to Chapter 300 of the 2019 Acts of Assembly. Under the Compact, physical therapists and physical therapist assistants licensed in a participating state can legally practice in other participating states without obtaining additional licenses from those other states. The legislation also added § 54.1-3495 to the Code of Virginia, which in part states that “Any rule that has been previously adopted by the [Compact] Commission shall have the full force and effect of law on the day the Compact becomes law in that state.”

However, the Commission’s rules require Compact members to only license physical therapists and physical therapist assistants who have passed the NPTE, which the Board was not initially aware of. Now that the Board is aware of the conflict, it is proposing to amend the regulation to be consistent with the Commission’s rules by only allowing passage of the NPTE to be used when applying for licensure by endorsement.

Estimated Benefits and Costs

According to the Department of Health Professions (DHP), in practice no one has applied for Virginia licensure by endorsement based upon possessing a Canadian license as a physical therapist or a physical therapist assistant. Once the Board and DHP became aware of the conflict, they would not have accepted such an application since in their view, pursuant to § 54.1-3495, the Compact Commission rules have the effect of statutes and trump Virginia regulations.³ Thus the proposed amendment conforms the regulation to what is required in practice. Amending the text to accurately reflect the requirements in practice is beneficial in that readers of the regulation would no longer be misled concerning what examination or examinations are accepted.

³ Source: DHP

Businesses and Other Entities Affected

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An 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. The proposal does not increase costs or reduce revenue. Thus, no adverse impact is indicated.

Small Businesses⁵ Affected:⁶

The proposed amendment does not adversely affect small businesses.

Localities⁷ Affected⁸

The proposed amendment does not disproportionately affect any particular localities and does not affect costs for local governments.

Projected Impact on Employment

The proposed amendment does not affect total employment.

Effects on the Use and Value of Private Property

The proposal does not substantively affect the use and value of private property or costs related to the development of real estate.

⁴ 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. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁵ 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.”

⁶ 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.

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.