



Notice of Intended Regulatory Action (NOIRA) 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	Traineeships and continuing competency requirements
Date this document prepared	4/3/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the regulatory action is to provide more flexibility and accountability in traineeships for graduates of approved or unapproved (foreign) programs in physical therapy and for applicants who have not had recent clinical experience and are seeking licensure by endorsement or reinstatement. Additionally, the goal of the amendments is to provide more opportunities for obtaining the necessary continuing education hours for physical therapists and physical therapist assistants to maintain current licensure.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Physical Therapy to promulgate regulations and administer a licensure and renewal program.

§ 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.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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 and Chapter 25 of this title.*

Chapter 34.1 requires a license to practice and the promulgation of regulation establishing requirements to ensure continuing competency.

§ 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.

Need

Please detail 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, delineate any potential issues that may need to be addressed as the regulation is developed.

During the periodic review of regulations conducted in 2008, there were several comments and issues relating to traineeships and continuing competency that the Board elected to refer to the Legislative/Regulatory Committee. In consultation with the Virginia Physical Therapy Association representatives and a faculty member at VCU Health Systems, the Committee and the Board concluded that it should retain traineeships but make certain adjustments that would offer more flexibility and licensee oversight. Certain requirements may be added for more accountability and greater assurance of public safety including provisions that should result in the trainee being adequately supervised, that the diagnosis and treatment being provided by a trainee is appropriate, and that there is continuity of supervision. For the sake of public health and safety, a trainee should be so identified to the patient; and the progress notes from the trainee should be countersigned to document physical therapist oversight and responsibility for patient care.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Board has recommended the following be included in a Notice of Intended Regulatory Action (NOIRA):

- 1) Clarify section 70 regarding traineeships to specify that the unlicensed graduate applying for a traineeship has been scheduled to take the national examination.
- 2) Amend section 140 to limit the number of supervisors for each trainee to no more than two PT's to ensure some continuity in training.
- 3) Amend section 140 to specify that a trainee be designated as a "PT Trainee" or "PTA Trainee" for the sake of public safety.
- 4) Amend section 140 to state that all patient progress notes must be countersigned by the trainee's supervisor. This includes computerized/electronic patient care notes to have documentation that the trainee is being supervised.
- 5) Amend section 50 D, which currently requires a 1,000 hour full-time traineeship to allow a part-time traineeship, but include a limitation of two years on the amount of time allotted for

completion. The time limit could be waived or extended for hardship circumstances in which the trainee needs additional time for completion.

6) Consider allowing the PTA traineeship to be a fewer number of hours than the PT traineeship, since PTA education programs are shorter than PT education programs, and the scope of services provided by the PTA is less than that provided by a PT. Traineeship hours for an unlicensed graduate or an inactive PTA could be reduced from 480 hours to 320 or 240 hours.

7) Consider elimination of “face-to-face” requirement for Type I courses to allow home study, online or audio courses offered by the approving organizations to be counted, but increase the number of hours that must be Type I from 15 to 20 per biennium for PT’s and from 10 to 15 for PTA’s. Type II hours would be reduced from 15 to 10 for PT’s and from 20 to 15 for PTA’s, so the total number of hours would remain the same.

8) Consider granting credit for all or part of the continuing competency hours for licensee who takes the new Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy. The amount of credit would be designated depending on whether the PT used the PRT as a self-assessment or as a measure of competency by meeting the standard set by the Federation.

9) Consider amendments to sections on endorsement, reinstatement or reactivation to use the new Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy as a competency assessment for PT’s who have not been in active clinical practice. The PRT could be used to allow the PT to assess his or her areas of weakness, so a precepted experience could be more directed. Additionally, PT’s who meet the standard on the review tool could be granted credit for some of the traineeship hours.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

To address issues relating to traineeships, the Board considered the elimination of traineeships for unlicensed graduates who are waiting to take the licensure examination. Since the examination is now offered throughout the year, the original purpose of the traineeship, to bridge the gap of time between graduation and the examination date, is no longer valid. Additionally, if graduates were not allowed to begin work in a trainee capacity, they would have more time to concentrate on studying for and passing the national examination. In support of continuing traineeships, members and commenters noted that the traineeships allow graduates an opportunity to gain some experience in practice, while still under supervision; and a traineeship allows an employer an opportunity to observe the clinical skills of a new graduate.

For the graduate of an unapproved (“foreign”) educational program, there was a recommendation to reduce the number of traineeship hours and allow for part-time employment. The Board did

not recommend a reduction in hours, because the foreign graduate needs time to demonstrate clinical skills but also to acclimate himself to a different health care environment with U.S. patients. Allowing part-time traineeships will benefit the foreign-educated trainee by giving them more options and opportunities to work.

In addressing issues relating to continued competence, the Board will consider elimination of the face-to-face requirement in obtaining Type 1 CE to allow more home study and potentially reduce the time commitment and cost of continuing education. Additionally, the Board will consider granting credit for taking the PRT as a self-assessment instrument for licensees in fulfilling continuing competency hours. The PRT could also be used for persons seeking reinstatement or reactivation, which would give an applicant the opportunity to demonstrate current clinical competence and could reduce the period of traineeship to allow them to be licensed and begin employment more quickly.

There are no alternatives to regulatory action but the Board is considering amendments that will represent more options and opportunities to demonstrate clinical competence.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include 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 on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone may submit comment on the Virginia Regulatory Townhall at www.townhall.virginia.gov or submit written comments to the Department of Health Professions to Elaine Yeatts, Senior Policy Analyst, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or by fax to (804) 527-4434 or by email to Elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

After publication of proposed regulations, a public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency will involve interested parties in the development of regulations and will consider any comment received on the Notice of Intended Regulatory Action.

Family impact

Assess the potential 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 of the proposed regulatory action on the family.