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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Physical Therapy, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC112-20
<b>Regulation title(s)</b>	Regulations Governing the Practice of Physical Therapy
<b>Action title</b>	Implementation of the Physical Therapy Compact
<b>Date this document prepared</b>	8/13/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The amendments to Chapter 20 are adopted as necessary for participation by Virginia in the Physical Therapy Compact which allows a physical therapist or physical therapist assistant who has obtained a compact privilege to practice in the Commonwealth without a Virginia license. To comply with Compact rules, all applicants for licensure are required to have criminal background checks, and holders of a compact privilege are required to adhere to the laws and regulations governing practice in the compact state in which they practice. A member state may set a fee that is charged to obtain and renew a compact privilege in that state. An amendment will set the fee in Virginia at \$50, which is similar to the fee charged by other states.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

PT = physical therapist

PTA = physical therapist assistant

## Mandate and Impetus (Necessity for Emergency)

*Please explain why this rulemaking is an emergency situation in accordance with Virginia Code § 2.2-4011 A and B. In doing so, please either:*

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

*As required by § 2.2-4011, please also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.*

The statutory mandate for this regulation is found in Chapter 300 (SB1106) of the 2019 Acts of the Assembly with the adoption of language to authorize Virginia's membership in the Physical Therapy Compact.

The third enactment in Chapter 300 states: *3. That the Board of Physical Therapy shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.* Therefore, the Board must promulgate regulations for the Compact by an emergency action. It has also adopted a Notice of Intended Regulatory Action to replace the emergency regulations with permanent regulations.

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity'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, licensure, permit, or the issuance of a multistate licensure privilege 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, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.
5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege 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 (§ [2.2-4000](#) et seq.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. 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.)...

The specific statutory authority for regulation of physical therapists and physical therapist assistants as part of an interstate Compact is found in:

Chapter 34.1 of Title 54.1 a section numbered [54.1-3484](#) and an article numbered 2, consisting of sections numbered [54.1-3485](#) through [54.1-3496](#).

### Purpose

Please describe the specific reasons why the agency has determined that this regulation 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 this regulation is to establish the requirement, including a fee, for obtaining and maintaining a compact privilege to practice in Virginia without a Virginia license. In order to protect public health and safety in the delivery of physical therapy services, a practitioner holding a compact privilege is held to the same standards of practice and is accountable for compliance with all applicable laws and regulations pertaining to physical therapy.

### Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
10		Sets out definitions for words and terms used in the chapter	<p>The additional Code cite identifies the new section that includes definitions for terms used in relation to participation in the Compact.</p> <p>Definitions for “Compact” and “Physical Therapy Compact Commission” or “Commission” are added to define those terms in amendments to the chapter.</p>
27		Sets out the fees for licensure, renewal of licensure, and miscellaneous charges	<p>A new fee for obtaining or renewing a compact privilege in Virginia is necessary for the Board to have sufficient revenue to investigate and adjudicate any potential disciplinary cases involving PTs or PTAs with a compact privilege who have complaints filed by patients in Virginia.</p> <p>In a review of the 15 states that are currently members of the Compact, the cost of a Compact privilege varies from \$0 to \$150 with the average being \$47. Neighboring states that are members of the Compact are: NC (\$52); TN (\$25); and KY (\$50). The Compact collects the fee and assesses a 3.5% banking fee with the remainder going to the Compact state.</p> <p>In its analysis of the impact of joining the Compact, the Board provided data in 2016 showing that there were 2,587 PTs and PTAs licensed in Virginia with out-of-state addresses. If <b>all</b> of those licensees were in Compact states and <b>all</b> chose to let their Virginia licenses lapse and opted for a compact privilege, the Board would lose \$315,575 with each biennial renewal. If the compact privilege fee for Virginia is set at \$50, the revenue from that number of licensees would be \$129,350 (less 3.5% banking fee to Compact), resulting in a biennial loss of revenue of \$190,752. That appears to be the “worst case scenario.” As of June 30, 2019, the Board has a balance of \$1,897,707, so any potential loss of revenue can be absorbed in the</p>

			<p>current budget for the foreseeable future.</p> <p>The Board has determined that a reasonable fee of a compact privilege should be \$50. In the next few years, the Board will assess whether that amount is sufficient to cover the costs associated with membership in the Compact and with discipline of compact privilege holders.</p>
60 & 65		Establishes requirements for licensure by examination and endorsement	<p>Participation in the Compact mandates that member states conduct criminal background checks for initial licensure. Therefore, sections 60 and 65 are amended in compliance with the statutory requirement of § 54.1-3484.</p>
	82	Establishes the requirements for a compact privilege	<p>To obtain a compact privilege, a PT or PTA who is licensed in another member state must comply with the rules established by the Compact Commission in effect at the time of application for the privilege. There is no discretion in the adoption of this rule.</p>
90		Set out the general responsibilities for a physical therapist	<p>Subsection F is added to specify that a PT or PTA practicing in Virginia on a compact privilege is required to adhere to all the laws and regulations governing practice in Virginia. For example, Virginia law requires referral to PT for performance of an invasive procedure, but that is not the requirement in all states. Likewise, some states allow direct access to physical therapists, but in Virginia, there are some limitations on direct access. A PT practicing on a compact privilege is subject to those laws in Virginia.</p>
130		Sets out the requirements for biennial renewal of licensure	<p>The Compact requires that renewal of a compact privilege requires the holder to comply with rules adopted by the Commission in effect at the time of renewal. The only discretion for member states is the fee charged for such renewal. The Commission rules requires that the fee for an initial privilege and renewal of the privilege must be the same amount.</p>
140		Sets out requirements for a traineeship	<p>Since a criminal background check is a statutory requirement, the amendment specifies that a traineeship cannot be approved until an application has completed a criminal background check.</p>
200		Sets out rules for ethical advertising of services	<p>Amendments are made in subsections D and E to include a holder of a compact privilege to the same rules for a licensee.</p>

## Issues

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

- 1) The advantage to the public is increased access to physical therapy service from practitioners holding a compact privilege to practice in Virginia. Regulations for compact privilege holders require compliance with laws and regulations and adherence to the same standard of care. There are no disadvantages.
- 2) There are no particular advantages or disadvantages to the agency. While it is expected that the Board will experience a reduction in revenue from applicants for licensure from other states, it will have revenue from PTs and PTAs who want to have a compact privilege in Virginia. Any resulting decrease in revenue can be absorbed in the existing budget without any anticipated impact on current licensees or the operation of the Board.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under 54.1-2400 to “*promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system.*” There is no restraint on competition as a result of promulgating this regulation, as membership in the Physical Therapy Compact has the potential to increase access to care and open up opportunities for practice for physical therapists.

## Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are no alternatives to the regulatory action; it is mandated by Chapter 300 of the 2019 Acts of the Assembly. In order for the Commonwealth to become a member of the Physical Therapy Compact, regulations must be adopted by the state.

## Public Participation

In addition to any other comments, the Board of Physical Therapy is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.