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Final Regulation Agency Background Document

Agency name	Board of Physical Therapy, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC112-20
VAC Chapter title(s)	Regulations Governing the Practice of Physical Therapy
Action title	Implementation of the Physical Therapy Compact
Date this document prepared	11/17/20

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) 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. 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

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

PT = physical therapist
PTA = physical therapist assistant

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On November 17, 2020, the Board of Physical Therapy adopted final amendments to 18VAC112-20-10 et seq., Regulations Governing the Practice of Physical Therapy.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

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.

This action is the promulgation of permanent regulations to replace the emergency regulations adopted pursuant to Chapter 300. There is no change in the mandate.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

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

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

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. Regulations are amended to implement Compact requirements in Virginia.

Issues

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 some 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.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than

applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Proposed regulations were published on August 31, 2020 with comment received until October 30, 2020. A public hearing was held on October 20, 2020. There was one written comment in favor of the proposed regulations from Joshua Bailey, PT, DPT, on behalf of the American Physical Therapy Association - Virginia.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

There were no change made since the previous stage was published.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

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 18 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 all of those licensees were in Compact states and all 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 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</p>

			with membership in the Compact and with discipline of compact privilege holders.
60 & 65		Establishes requirements for licensure by examination and endorsement	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.
	82	Establishes the requirements for a compact privilege	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.
90		Set out the general responsibilities for a physical therapist	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.
130		Sets out the requirements for biennial renewal of licensure	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.
140		Sets out requirements for a traineeship	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.
200		Sets out rules for ethical advertising of services	Amendments are made in subsections D and E to include a holder of a compact privilege to the same rules for a licensee.