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Proposed 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	Regulatory reduction
Date this document prepared	February 22, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 Board identified potential regulatory reductions which will reduce burdens on licensees and reduce unnecessary regulatory language.

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.

None

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The impetus for this action is [Executive Order 19](#).

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 of the Board of Physical Therapy are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o 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.”

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 is intended to solve.

The rationale/justification for this change is the Governor’s [Executive Order 19](#). The regulations themselves are necessary to protect the health, safety, and welfare of citizens; the changes are intended to reduce burdens on licensees without impacting the protection of the health, safety, and welfare of citizens. The goal of the regulatory changes is to reduce regulations and burdens on licensees. There are no problems the regulatory changes are intended to solve.

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.

In 18VAC112-20-27, the Board removed outdated fee reductions and an unnecessary payment statement. In 18VAC112-20-65, the Board removed a requirement that applicants for licensure by endorsement provide evidence of completion of 15 hours of continuing education per year for up to four years. In 18VAC112-20-131, the Board removed the specific lists of continuing education providers and will move the list of Board-approved providers to a guidance document.

The Board made minor changes to two regulations which references 18VAC112-20-131. Finally, the Board amended the advertising requirements of 18VAC112-20-200 to make that regulation less burdensome.

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) There are no primary advantages or disadvantages to the public.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 “[t]o 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 . . . 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.” The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	There are no expected costs, savings, fees, or revenues to the agency from this regulatory change.
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no expected costs, savings, fees, or revenues to other state agencies from this regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no benefits that these changes are designed to produce.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no expected costs, savings, fees or revenues to localities from this regulatory change.
Benefits the regulatory change is designed to produce.	There are no expected benefits to localities from this regulatory change.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	There are no businesses or entities affected by these changes. Licensed physical therapists and licensed physical therapist assistants, or those licensed in other states but applying for a Virginia license through licensure by endorsement, will be affected.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small	As of December 31, 2023, there were 9,523 licensed physical therapists in Virginia and 3,791 licensed physical therapist assistants in Virginia.

<p>business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The agency has no number of potential applicants for licensure by endorsement.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>There will be no costs for individuals or businesses.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits the changes are designed to produce are fewer burdens on licensees. There is no monetary benefit.</p>

Alternatives to Regulation

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.

No alternative to regulatory action exists. These regulations already exist; the Board must file a regulatory action to change them.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

1) This action already reduces reporting requirements. 2) This action already establishes less stringent compliance/reporting requirements. 3) This action already simplifies compliance requirements. 4) This provision does not apply to 18VAC112-20, Regulations Governing the

Practice of Physical Therapy. 5) The Board does not license businesses. Therefore this provision does not apply.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Not applicable.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s 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.

There were no comments.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board of Physical Therapy is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of the background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or erin.barrett@dhp.virginia.gov or by fax to (804) 915-0382. 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 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
20-27	Governs fees	<p>B 2 is deleted. There is no need to state in regulations where payment for an examination provided by an outside entity is given. The outside entity provides and holds the exam; the outside entity handles its own payment system.</p> <p>Language in D 1 and 2 related to fee reductions in 2020 is deleted as that language is no longer effective.</p>
20-65	Governs requirements for licensure by endorsement	<p>B 4 is deleted. This provision requires that an applicant for licensure by endorsement provide evidence of completion of 15 hours of continuing education for each year a license has been held in another jurisdiction or for 60 hours over the course of four years.</p> <p>This requirement is deleted because it is unnecessary and burdensome to applicants. An applicant for licensure by endorsement already holds an active license in another jurisdiction. To maintain that license in another jurisdiction, the applicant would have had to comply with requirements for renewal in the other jurisdiction. Most jurisdictions in the United States require a certain number of hours of continuing education for renewal of licensure as a physical therapist or physical therapist assistant. Requiring those applicants produce evidence to Virginia is redundant. For public health and safety, the Board</p>

		<p>needs to know if the applicant has been subject to any disciplinary action in another jurisdiction, if the applicant has been convicted of certain crimes in other jurisdictions, and whether the applicant has maintained a recent, active practice in another jurisdiction. The Board does not need to review and assess continuing education over the four years prior to application.</p> <p>The Board determined that this reduction should be included in this reduction action following complaints received from applicants for licensure by endorsement. Notably, when this provision was added in Action 2359 (spanning 2007 – 2009), the reason cited for the inclusion of this continuing education requirement was to make sure it was not easier to obtain a license to practice in Virginia for a practitioner who is already licensed in another jurisdiction. Given the modern move to increase portability, and the general recognition by licensing boards that a license held in another state should (in many cases) be taken at face value, there is no reason to maintain this requirement.</p>
20-81	Provides requirements for direct access certification	A 2 is amended to remove the reference to providers or sponsors of continuing education contained in 20-131. This change is necessary due to the amendment to 20-131, described below.
20-121	Provides requirements for the practice of dry needling	A 3 is amended to remove the reference to providers or sponsors of continuing education contained in 20-131. This change is necessary due to the amendment to 20-131, described below.
20-131	Provides continuing competency requirements for renewal of an active license	B is amended to remove the list of continuing education providers from regulatory language. The Board will move this list to a guidance document, which will allow the Board more flexibility to add to the approved sponsor list as needed. It is unnecessary to provide a list of approved sponsors in regulation.
20-200	Contains advertising requirements	<p>The Board added language to the beginning of C to state that no licensee or compact privilege holder shall advertise false, misleading, or deceptive information. The Board additionally deleted E and F.</p> <p>The Board determined that the language of E and F is too prescriptive and limiting. The language added to C appropriately captures requirements for advertising without dictating accountability for advertising based on the business model a licensee participates in. Additionally, the Board found no discernible reason to require licensees to maintain two years of documentation related to claims made in advertisements. If facing a disciplinary action by the Board for false, misleading, or deceptive advertising, the licensee would be responsible for providing evidence supporting the advertising claims, regardless of when the claims were made.</p> <p>The entirety of this section was copied from 18VAC85-20-30, which applies to physicians, chiropractors, and</p>

		<p>podiatrists. While portions of 18VAC85-20-30 may apply to physical therapists and physical therapist assistants, the reason behind the wholesale copy of the provision from 85-20 was not provided. The current Board of Physical Therapy did not agree that these provisions were necessary to protect the public.</p>
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