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Proposed Regulation Agency Background Document

Agency name	Board of Physical Therapy, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC112-20
Regulation title(s)	Regulations Governing the Practice of Physical Therapy
Action title	Implementation of the Physical Therapy Compact
Date this document prepared	2/14/20

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 (1 VAC7-10), 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 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

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

Please 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, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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 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.

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 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

Please 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

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 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

Please 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

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “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

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is 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	See analysis in Section 27 below
<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 costs to other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no benefits to agencies.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	No costs
Benefits the regulatory change is designed to produce.	No benefit

Impact on Other Entities

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.	The persons affected by the regulatory change would be physical therapists or physical therapist assistants who want to be issued a Compact privilege to practice in Virginia. The criminal background check for all applicants is a condition of membership in the Compact and
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	requirement of § 54.1-3484 of the Code of Virginia.
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Since the Compact Commission begin issuing privileges for Virginia on January 2, 2020:</p> <p>As of February 14th, 27 Compact Privileges issued for Virginia (19 PT; 8 PTA)</p> <p>The breakdown of those numbers is: 11 – NC; 9 – TN; 2 - WA; 1 each – LA, KY, CO, NY, MO</p> <p>As of January 29th, 11 Virginia home state licensees obtained CPs for other Compact states (7 PT; 4 PTA)</p> <p>It is unknown how many may constitute small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>There is a cost of \$50 for a PT or PTA from another Compact state to request a Compact privilege to practice in Virginia.</p> <p>See analysis of fee section 27 below.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of these regulations are compliance with the requirements to be a member of the PT Compact, which may result in the availability and access to physical therapy services from persons who purchase a privilege to practice in Virginia.</p>

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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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.

There is no alternative regulatory method by which the Board can participate in the Physical Therapy Compact.

Public Comment

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

The Notice of Intended Regulatory Action was published on 10/14/19 with comment requested until 11/13/19. There was no public comment.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

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 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.

Detail of Changes

Please 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.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

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	The additional Code cite identifies the new section that includes definitions for terms used in relation to participation in the Compact. Definitions for “Compact” and “Physical Therapy Compact Commission” or “Commission” are added to define those terms in amendments to the chapter.
27		Sets out the fees for licensure, renewal of licensure, and miscellaneous charges	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. 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. 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

			<p>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 with membership in the Compact and with discipline of compact privilege holders.</p>
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.