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Notice of Intended Regulatory Action (NOIRA) 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	Periodic review recommendations
Date this document prepared	2/20/19

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).

The Board intends to consider amendments to ensure more clarity in supervision of students and trainees, facilitate renewal or return to practice for some PTs with inactive or lapsed licenses, coordinate rules for foreign-trained applicants with requirements of FSBPT for approval to sit for the licensing examination, recognize PT licensure in Canada as qualification for endorsement, and expand the approval of entities that may offer or accredit continuing education.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

FSBPT = Federation of State Boards of Physical Therapy

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 impetus for initiation of rulemaking is the periodic review that concluded on February 6, 2019. The Board also included in this NOIRA a request from a petition for rulemaking for the National Strength and Conditioning Association to be considered as an organization to be approved for continuing education.

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.

18VAC112-20-10 et seq. Regulations Governing the Practice of Physical Therapy are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) 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:

- ...
- 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

Specific authority to promulgate regulations for initial and continuing licensure in physical therapy is found in § 54.1-3474 and all of Chapter 34.1 of Title 54.1 of the Code of Virginia.

§ 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.

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 practice of physical therapy requires specialized education and training and the maintenance of knowledge and skills in order to be performed safely. Regulation is essential to ensure minimal competency to protect the health and safety of patients receiving physical therapy services. There are no specific issues to be addressed as the regulation is developed; amendments are primarily intended to update and clarify current board policy.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The following changes were recommended by the Legislative/Regulatory Committee and approved by the Board for consideration during the adoption of proposed regulations pursuant to its periodic review.

18VAC112-20-10 Definitions:

- Remove “CLEP” from the regulations as the term is no longer relevant or used in the Board’s statutes or regulations.
- Consider defining “encounter” for use in the regulations in place of “visit”

18VAC112-20-25 Current Name and Address:

- Change the word “mailed” to “sent” to clarify that the Board may electronically send renewal notices

18VAC112-20-50 Education requirements: graduates of schools not approved by an accrediting agency approved by the Board

- B(1): Specify that the “current” Federation of State Boards of Physical Therapy (FSBPT) tool should be utilized and remove “based on the year of graduation,” which will align with FSBPT’s proposed changes to its examination requirements for Foreign Educated Physical Therapists in 2020
- C(3): Include that the credentials verification should be based on the current coursework tool used by the FSBPT for Physical Therapy Assistants (PTAs) to align with FSBPT’s upcoming changes to its requirements for the national examination. Current regulations were enacted before FSBPT had an evaluation tool for PTAs.
- D: Include that traineeship extensions can be granted for officially declared disasters to make the provision consistent with other extension requests in the regulations

18VAC112-20-65 Requirements for licensure by endorsement

- B(3): Update the reference to the report to the National Practitioners Data Bank (NPDB)
- B(4): Include that a license may be held in Canada in addition to U.S. jurisdictions
- B(5): Include that an exam may be accepted from a Canadian jurisdiction in addition to U.S. jurisdictions
- B(6): Include that documentation of active practice can be accepted from a Canadian jurisdiction in addition to U.S. jurisdictions

18VAC112-20-70 Traineeship for unlicensed graduate scheduled to sit for the national examination

- B: Change the timeframe for expiration of a traineeship from two working days to five working days following receipt of the licensure exam results
- C: Allow an unlicensed graduate to have no more than three traineeships within the one year period following the receipt of the first examination results

18VAC112-20-90 General Responsibilities

- D: Change “visits to” to “encounter with” a patient to avoid confusion and to reflect newer terminology

18VAC112-20-100 Supervisory responsibilities

- B: Clarify that support personnel should only perform routine assigned “Physical Therapy” tasks under supervision
- C: Include that a physical therapist shall provide direct supervision to no more than three students at any one time to incorporate the Board’s current guidance on supervision of students (guidance document 112-24)
- Include an additional subsection to incorporate the Board’s guidance document (112-20) related supervision of a student from a non-approved program

18VAC112-20-120 Responsibilities to patients

- B: Change “visit” to “encounter” to avoid confusion and reflect newer terminology

18VAC112-20-130 Biennial renewal of license

- Consider an additional section to permit licensees to request an exemption from the Board’s active practice requirement or an extension to the active practice requirement for up to one year to parallel similar provisions for continuing education in 18VAC112-20-131 (G) and (H)

18VAC112-20-131 Continued competency requirements for renewal of an active license

- B: Consider approval of continuing education hours approved by other state boards of physical therapy. Consider inclusion of the National Strength and Conditioning Association to the list of approved providers as requested by a petition for rulemaking.
- H: Specify that an exemption request should be made in writing prior to the renewal date

18VAC112-20-135 Inactive license

- B(2): Specify that active practice hours for purposes of reactivation of an inactive license may be obtained in “any” jurisdiction where the applicant is/was “licensed for active practice”

18VAC112-20-136 Reinstatement requirements

- B(3): Specify that active practice hours for purposes of reinstatement of a lapsed license may be obtained in “any” jurisdiction where the applicant is/was “licensed for active practice”

18VAC112-20-140 Traineeship required

- A: To clarify the phrase, include language that the traineeship be “served” or “completed” under the direction and supervision of a licensed physical therapist

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 purpose of the regulation, which is to ensure minimal competency by practitioners and protect public health and safety in the provision of physical therapy services.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)),

and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review. This NOIRA is the result of a periodic review announced on January 7, 2019.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

The Board of Physical Therapy is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

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 Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by FAX to (804) 527-4434. 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 (<https://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.

The Legislative/Regulatory Committee has served as the panel to review the regulations and make recommendations for amendments.