



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 112-20 Regulations Governing the Practice of Physical Therapy
Department of Health Professions
Town Hall Action/Stage: 5362 / 8898
April 15, 2020

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 300 of the 2019 Acts of the Assembly (Chapter 300),¹ the Board of Physical Therapy (Board) proposes to amend 18 VAC 112-20 *Regulations Governing the Practice of Physical Therapy* in order for Virginia to participate in the Physical Therapy Licensure Compact (Compact).² The Compact is an agreement between member states to improve access to physical therapy services for the public by increasing the mobility of eligible physical therapy providers to work in multiple states. Also pursuant to Chapter 300, the Board proposes to require that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check.

Background

Chapter 300 states that “The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Physical Therapy Licensure Compact with any and all jurisdictions legally joining therein according to its terms, ...”

Chapter 300 also stipulates that “The Board shall require each applicant for licensure as a physical therapist or physical therapist assistant to submit fingerprints and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant. The cost of fingerprinting and the criminal history record search shall be paid by the applicant.”

¹ See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0300>

² See <http://ptcompact.org/about-compact>

The second enactment clause of Chapter 300 states “That the provisions of this act shall become effective on January 1, 2020. The third enactment clause stipulates “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.” An emergency regulation is currently in place and expires on June 30, 2021. The Board is now proposing non-expiring amendments.

Estimated Benefits and Costs

Compact

Under the Compact, physical therapists and physical therapist assistants licensed in a participating state are able to legally practice in other participating states without obtaining additional licenses from those other states. The physical therapists and physical therapist assistants would need only to obtain a compact privilege. In order to obtain a compact privilege, the applicant must:³

1. Hold a current, valid physical therapist or physical therapist assistant license in their home state.
2. Have their home state be a member of the Compact and actively issuing compact privileges.
3. Not have any encumbrances against any physical therapist or physical therapist assistant license.
4. Not have any disciplinary action against any physical therapist or physical therapist assistant license within the last two years.
5. Have the state where they are seeking a compact privilege be a member of the Compact and actively issuing compact privileges.
6. Successfully complete the jurisprudence requirement for the state(s) the applicant wants a compact privilege in. Note: Virginia does not have a jurisprudence requirement.
7. Pay a \$45 fee to the Physical Therapy Compact Commission.
8. Pay a fee to the state that the applicant wants a compact privilege in. This fee is set by each member state. Note: The Board proposes that the Commonwealth’s fee for obtaining a compact privilege to practice in Virginia be \$50.

³ Sources: http://ptcompact.org/portals/0/images/Eligibility_Requirements_to_Obtain_a_CompactPrivilege.pdf and <http://ptcompact.org/Compact-Privilege-Fee-Jurisprudence-and-Waiver-Table>

The current Compact members states are: Arizona, Arkansas, Colorado, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia. Delaware, Georgia, Maryland, Montana, New Jersey, South Carolina, South Dakota, and Wisconsin have enacted legislation to join the Compact, but are not yet issuing or accepting compact privileges.⁴

According to a report from the Virginia Healthcare Workforce Data Center,⁵ 97 percent of Virginia physical therapists were employed in the profession and involuntary unemployment⁶ was nearly nonexistent. Thus, it appears that the Commonwealth would benefit from having more qualified physical therapists available to offer their services. The Compact makes it easier for physical therapists and physical therapist assistants who are licensed in other states and wish to practice in the Commonwealth to do so. Practitioners who move to Virginia for family reasons, such as having a spouse in the military, and out-of-state practitioners who reside near the border and are willing able to serve patients within the Commonwealth are particularly likely candidates. The Compact also makes it easier for Virginia practitioners to gain more clients across the border into neighboring states. All states bordering Virginia either are current Compact members (Kentucky, North Carolina, Tennessee, and West Virginia) or have enacted legislation to join the Compact, but are not yet issuing or accepting compact privileges (Maryland). The District of Columbia does not appear to participate in the Compact.

The Commonwealth officially joined the Compact on January 1, 2020 and compact privileges were first issued on January 2, 2020. According to the Department of Health Professions (DHP), as of February, 14, 2020, 27 compact privileges had been issued to practice in Virginia: 19 as physical therapists and 8 physical therapist assistants. The privileges were obtained from the following numbers of persons licensed in the following states: 11 in North Carolina, 9 in Tennessee, 2 in Washington, 1 in Louisiana, 1 Kentucky, 1 in Colorado, 1 in New Hampshire, and 1 in Missouri. As of January 29, 2020, 11 Virginia licensees obtained compact

⁴ Source: <http://ptcompact.org/ptc-states>.

⁵ See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/pt/2305PT2018.pdf> This is for 2018, the most recent data available.

⁶ “Involuntary unemployment” is used here in the colloquial sense. Technically someone who is voluntarily not seeking employment would not be part of the labor force, and hence not technically unemployed.

privileges for other Compact states: seven as physical therapists and four as physical therapist assistants.

In its analysis of the impact of joining the Compact, the Board provided data in 2016 showing that there were 2,587 physical therapists and physical therapist assistants 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. If all of the Virginia licensees with out-of-state addresses do not choose to let their Virginia licenses lapse, then the reduction in revenue would be less. As of June 30, 2019, the Board had a balance of \$1,897,707; consequently, any potential loss of revenue could be absorbed in the current budget for the foreseeable future.

Criminal History Background Check

In order to join the Compact, each member state must require that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check. As stated above, this requirement was part of Chapter 300 and is now proposed to be added to the regulation. Adding this requirement enables the Commonwealth to gain the benefits of joining the Compact, and would help the Board gain additional information about license applicants when they are being considered for licensure. The proposed requirement that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check would cost in-state applicants \$35.95 and out-of-state applicants \$38.95.⁷

It is estimated that the requiring of criminal history background checks for all licensure applicants would require the Virginia State Police Central Criminal Records Exchange to process an additional 1,200 to 1,500 sets of fingerprints per year.⁸ It is estimated that one additional employee would be needed for the additional fingerprint searches, billing and record review at an annual rate of \$66,439 (salary and fringe).⁹

⁷ Source: DHP

⁸ See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1106FER122+PDF>

⁹ Ibid

Businesses and Other Entities Affected

There are 8,706 physical therapists and 3,691 physical therapist assistants licensed in Virginia.¹⁰ According to survey data from a Virginia Healthcare Workforce Data Center report published in March 2019, the primary type of employers of physical therapists in the Commonwealth are distributed as follows:¹¹

<u>Establishment Type</u>	<u>Percentage</u>
Private Practice, Group	17%
Rehabilitation Facility, Outpatient Clinic	15%
Home Health Care	14%
General Hospital, Outpatient Department	11%
General Hospital, Inpatient Department	10%
Skilled Nursing Facility	8%
Private Practice, Solo	7%
Rehabilitation Facility, Residential/Inpatient	4%
Academic Institution	3%
Physician Office	3%
K-12 School System	3%
Assisted Living or Continuing Care Facility	2%
Other	5%

Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Mandated by Chapter 300, the proposal to require that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check increases costs for

¹⁰ Source: <https://www.dhp.virginia.gov/about/stats/2020Q2/04CurrentLicenseCountQ2FY2020.pdf>

¹¹ Source: <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/pt/2305PT2018.pdf>

applicants. Thus, adverse impact is indicated to reflect the effects of the non-discretionary changes mandated by legislation.

Small Businesses¹² Affected:

Types and Estimated Number of Small Businesses Affected

The Board regulates individual practitioners, but not their employers. Thus, data on the number of small businesses affected is not available. The types of businesses that are potentially affected and may qualify as small are described in the table above.

Costs and Other Effects

Joining the Compact increases the supply of physical therapists and physical therapist assistants that could be hired by small firms in the Commonwealth. This may reduce their hiring costs.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities¹³ Affected¹⁴

Virginia's joining the Compact may particularly affect localities bordering or otherwise near North Carolina, Tennessee, Kentucky, West Virginia, and eventually Maryland. The first four states listed are current members. Legislation has passed in Maryland for that state to join as well.¹⁵

The proposal does not disproportionately affect any particularly locality nor appear to introduce additional costs for local governments.

¹² Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹³ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁴ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

¹⁵ See <http://ptcompact.org/ptc-states>

Projected Impact on Employment

Joining the Compact increases the supply of physical therapists and physical therapist assistants that could practice in the Commonwealth. This may lead to more physical therapists and physical therapist assistants working in Virginia.

Effects on the Use and Value of Private Property

To the extent that increasing the supply of physical therapists and physical therapist assistants that can practice in the Commonwealth decreases hiring costs for employers, the value of the employing firms may increase. The proposed amendments do not affect real estate development costs.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.