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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Physical Therapy, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC112-20
<b>Regulation title(s)</b>	Regulations Governing the Practice of Physical Therapy
<b>Action title</b>	Use of assessment tool oPTion
<b>Date this document prepared</b>	11/17/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

The Board currently recognizes PRT, the Practice Review Tool for competency assessment developed and administered by the Federation of State Boards of Physical Therapy (FSBPT). Physical therapists who take the assessment and those who meet the standard, as set by FSBPT, can receive continuing education credits. Meeting the standard on the PRT also allows an applicant for licensure by endorsement or for reinstatement, who has not been actively practicing, to reduce the required number of hours in a traineeship.

FSBPT has informed member boards that, as of November 30, 2016, it will no longer offer the PRT and has replaced it with a different assessment tool called oPTion. With the shift to oPTion, the FSBPT has also eliminated the “standard” and replaced it with an assessment report that categorizes the therapist’s performance into level 1-4.

The Board will decide whether to replace the PRT with oPTion and, if so, it will need to determine if a specific level of performance will be required for the purpose of licensing therapists who have not been engaged in active practice or for granting credit to licensees for continuing education.

**Legal basis**

*Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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’s overall regulatory authority.*

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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:*

6. (Effective until January 1, 2017) 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. 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 Board has specific authority to require professional activity or to serve in a traineeship as evidence of competency to practice:

**§ 54.1-3479. Licensure by examination or endorsement; traineeships.**

*D. In granting licenses to out-of-state applicants, the Board may require physical therapists or physical therapist assistants to meet the professional activity requirements or serve traineeships according to regulations promulgated by the Board.*

Additionally, the Board has a statutory mandate to require continuing education for renewal:

**§ 54.1-3480.1. Continuing education.**

*As a prerequisite to renewal of a license or reinstatement of a license, each physical therapist shall be required to take biennial courses relating to physical therapy as approved by the Board. The Board shall prescribe criteria for approval of courses of study and credit hour requirements. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed physical therapist at the time he applies to the Board for the renewal or reinstatement of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.*

## Purpose

*Please describe the specific reasons why the agency has determined that the proposed regulatory action 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.*

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The purpose of the proposed action is determine whether to utilize a self-assessment tool which allows physical therapists to compare their knowledge, skills, and abilities to entry-level general physical therapy practice. A physical therapist cannot fail oPTion, and the results do not demonstrate minimal competence. Therefore, the Board must balance its responsibility to adopt regulations that protect the public health and safety with an opportunity for applicants to reduce the number of traineeship hours or receive continuing education credits by taking the assessment tool oPTion.

## 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.*

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At its meeting on November 15, 2016, the Board decided to issue a Notice of Intended Regulatory Action (NOIRA) in order to initiate rulemaking. In order to recognize the oPTion assessment tool, the Board would need to amend the sections on definitions, requirements for licensure by endorsement, continuing education, inactive license, and reinstatement. Since meeting the “standard” on the PRT has been replaced with four levels of competency, the Board will have to determine what level is appropriate for the purpose oPTion as used in regulation.

According to FSBPT, the levels are described as: 1) Level 1 indicates the ability to apply entry-level knowledge, concepts, and principles across a limited range of patient conditions; 2) Level 2 indicates the ability to apply entry-level knowledge, concepts, and principles across a moderate range of patient conditions; 3) Level 3 demonstrates ability in a broad range of patient conditions; and 4) Level 4 demonstrates ability across an extensive range of patient conditions.

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

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Since the PRT will not be available after November 30, 2016, the Board must revise its regulations to recognize oPTion if it wants to continue utilization of an FSBPT assessment tool. An assessment tool is an option for applicants or licensees; there is currently no regulation requiring someone to take the PRT. Therefore, applicants for endorsement, reinstatement, or reactivation who do not have active practice hours will not have the option of taking as

assessment tool to reduce traineeship hours but will be able to be licensed based on completion of a required traineeship.

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or by mail to Elaine Yeatts, 9960 Mayland Drive, Suite 300, Henrico, VA 23233; by email to [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov); by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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.