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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Physical Therapy; Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC112-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Physical Therapy
<b>Action title</b>	Expansion of approved continuing education providers
<b>Date this document prepared</b>	2/15/13

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

An amendment is adopted in response to a petition for rulemaking regarding inclusion of other accrediting organizations for approval of continuing education. The amendment to section 131 will approve CE courses offered by health care organizations that are accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation, rather than only those accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Board of Physical Therapy adopted the amendment to 18VAC112-20-10 et seq., Regulations Governing the Practice of Physical Therapy on February 15, 2013.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

**Chapter 24 of Title 54.1** establishes the general powers and duties of the Board of Physical Therapy including the responsibility to promulgate regulations.

*§ 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 and Chapter 25 of this title...*

The mandate for regulations setting criteria for continuing education is found in:

*§ 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.*

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The proposed regulatory action is intended to ease the burden of obtaining required hours of continuing education by accepting health care organizations that are deemed in compliance with CMS but do not necessarily maintain accreditation by the Joint Commission. The goal is to eliminate any requirement that is not essential to ensure that licensees are remaining current in their knowledge and practice skills for protection of the health and safety of their patients.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The amendment is less restrictive and not controversial. The Board is responding to a petition for rulemaking; all comments on the petition were supportive.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

The amendment to section 131 will approve CE courses offered by health care organizations that are accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation, rather than only those accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

**Issues**

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

- 1) More inclusive and less burdensome rules for continuing education facilitate completion of renewal requirements which is advantageous to the public and the licensees. There are no disadvantages.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.*

There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected.

**Regulatory flexibility analysis**

*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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

There are no alternative regulatory methods. The Code requires that the Board set out the criteria for approval of continuing education in regulation.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will not incur additional costs for email notification to persons on the Public Participation Guidelines mailing lists. There will be no on-going expenditures related to this action.</p>
<p><b>Projected cost of the new regulations or</b></p>	<p>There are no costs to localities.</p>

<b><i>changes to existing regulations on localities.</i></b>	
<b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Persons affected by changes would be licensed physical therapists and physical therapist assistants
<b>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.</b> Small business means 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.	There are 6090 licensed physical therapists and 2460 licensed physical therapist assistants. Most work in health care organizations or school systems; it is unknown how many would constitute small businesses.
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	There should be no costs associated with this action.
<b>Beneficial impact the regulation is designed to produce.</b>	There would be cost-avoidance by inclusion of health care organizations from which PT’s and PTA’s are able to obtain continuing education at no cost as part of their in-service training. If those hours are not approved for continuing education credit for renewal, the licensees will have to obtain their hours from some other organization or entity, resulting in time lost from work and out-of-pocket expenditures.

**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.*

There are no alternatives that will accomplish the purpose of facilitation and inclusion. The Board reviewed comments received in support of a petition for rulemaking and acted to reduce the regulatory burden of approval of continuing education.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage*

*economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

There is no impact on the institution of the family and family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is 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 action.*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
131	Sets out the criteria for approval of continuing education	<p>The current requirement is:                      For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:                      e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)</p> <p>The amendment will delete “the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)” and replace it with:  <u>a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation</u></p> <p>A petition for rulemaking was filed by a physical therapist on behalf of Sentara health care system which is moving to accreditation by DNV rather than The Joint Commission. Therefore, recognizing only The Joint Commission prohibits the Board from accepting continuing education courses offered by Sentara entities for their employees. Other accrediting bodies that have been deemed as meeting CMS standards for accreditation are also excluded.</p> <p>This issue was raised in the General Assembly in consideration of SB950, DHP legislation for changes to</p>

		<p>the Medical Practice Act. In that bill, an amendment was adopted to change the standard for accreditation for podiatrist performing surgery under general anesthesia from JCAHO accreditation to: “<i>accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).</i>”</p> <p>In its adoption of an amendment to section 131, the Board used similar language, which is inclusive of DNV and other similar accrediting bodies that meet CMS standards for quality.</p>
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