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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board of Physical Therapy, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC112-20-65
<b>VAC Chapter title(s)</b>	Regulations Governing the Practice of Physical Therapy
<b>Action title</b>	Changes to comply with Compact rules
<b>Date this document prepared</b>	May 3, 2022

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*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.*

This amendment to 18VAC112-20-65 is necessary to comply with requirements for Virginia's continued participation in the Physical Therapy Compact as mandated in Virginia Code §§ 54.1-3485 – 54.1-3496.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

NPTE means the National Physical Therapy Examination administered by the Federation of State Boards of Physical Therapy.

## Statement of Final Agency Action

*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.*

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On May 3, 2022, the Board of Physical Therapy voted to initiate a Fast-Track Rulemaking to align 18VAC112-20-65 of the Regulations Governing the Practice of Physical Therapy with the Physical Therapy Compact Commission Rules governing eligibility of Compact participant state licensees for a compact privilege.

## Mandate and Impetus

*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, or board decision). 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."*

*As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

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The Board began a periodic review of Chapter 20 at the end of 2018. During the review, the Board decided to include physical therapy licensees from Canadian provinces as eligible for licensure by endorsement. When making those changes following the periodic review, the Board amended 18VAC112-20-65 to accept, among other things, evidence of passage of the examination required in Canadian provinces at the time the applicant received a license to practice. Although all U.S. jurisdictions except Michigan exclusively require the NPTE as the licensing test for physical therapist applicants, Canadian jurisdictions use the Physiotherapy Competency Exam. The changes that initiated with the 2018 periodic review did not become final until 2021.

Virginia joined the Physical Therapy Licensure Compact while the periodic review changes were proceeding through the regulatory process. The Board promulgated emergency regulations and began the regulatory process to implement changes required by the Compact in 2019.

The Physical Therapy Compact Commission issued its Rules in 2018, which were reaffirmed on October 24, 2021. Virginia Code § 54.1-3487(A)(6) requires Virginia to "[u]tilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission" in licensing all applicants. Rule 1.1 of the Compact Commission defines "recognized national exam" as the NPTE. The Physiotherapy Competency Exam is not recognized by the Commission as an acceptable national exam. Therefore, the Compact Commission has notified Virginia that the Commission believes this is a potential compliance issue which could have negative repercussions on Virginia's participation in the Compact.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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Regulations of the Board of Physical Therapy are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o 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.”

The specific legislative authority for this action can be found in [Chapter 300 of the 2019 Acts of Assembly](#).

### Purpose

*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.*

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1. The purpose of this regulatory change is to ensure Virginia remains in compliance with the requirements of the Physical Therapy Licensure Compact.
  2. If the regulation is not changed and Virginia is deemed to be out of compliance with rules of the Compact, Virginia citizens could lose the additional access to healthcare Virginia’s entry into the Compact was intended to provide. Both physical therapists practicing in Virginia under a compact privilege and those practitioner’s patients would be harmed by the inability of compact privilege practitioners to continue practicing. Since January 1, 2020 until the date this document was prepared, Virginia has issued compact privileges to 523 physical therapists and 103 physical therapy assistants to work in Virginia.
  3. This regulatory change will bring Virginia into compliance with Compact rules.

### Substance

*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.*

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This change removes the acceptance of any examination accepted by another state or Canadian provinces for licensure by endorsement applicants. Because Compact Commission rules require that states only accept the NPTE for licensure, any state examination (of which there are none in the United States) and the Physiotherapy Competency Exam accepted by Canadian provinces cannot be accepted to license physical therapists in Virginia.

### Issues

*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.*

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- 1) The primary advantage to private citizens is that Virginia will remain in compliance with the Compact and can continue to provide practitioners from other states a compact privilege to work in Virginia. There are no disadvantages to the public.
  - 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.

- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth and of the statutory directive to implement regulations consistent with participation in the Compact. The Board is authorized under § 54.1-2400 “[t]o 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 promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

**Requirements More Restrictive than Federal**

*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 regulations.

**Agencies, Localities, and Other Entities Particularly Affected**

*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, 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. 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:	The Department of Health Professions is a Special Fund agency. All operating costs for the regulatory boards are taken from fees for
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<p>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</p>	<p>licensing and renewal of regulated professions. The Board receives few, if any, applicants from Michigan or Canadian provinces. The loss of revenue from these applicants, if they elect not to take the NPTE for licensure in Virginia, will be minimal.</p>
<p><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.</p>	<p>There are no costs to other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to state agencies.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No impact on localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>No benefit to localities.</p>

**Impact on Other Entities**

<p>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.</p>	<p>The only individuals affected by the change would be physical therapists in Michigan or Canada contemplating a move to Virginia. The agency has no information regarding any businesses that would be affected by this change.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:                  a) is independently owned and operated and;                  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The agency has no estimate of the number of Canadian physical therapists that may be contemplating a move to Virginia with the intent of applying for licensure.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:                  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;                  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;                  c) fees;                  d) purchases of equipment or services; and                  e) time required to comply with the requirements.</p>	<p>There are no such projected costs.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of these regulations are continued compliance with the requirements to be a member of the Compact, which may result in the availability of and access to physical therapy services from persons who purchase a privilege to practice in Virginia.</p>

## Alternatives to Regulation

*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.*

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There are no alternatives to regulation since this change amends a provision of an existing regulation.

## Regulatory Flexibility Analysis

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

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The Board has no option except to amend the regulatory provision that is viewed by the Compact as not in compliance with Compact rules.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Physical Therapy is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail to Erin Barrett, 9960 Mayland Drive, Suite 300, Henrico,

Virginia 23233; by email to [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov); 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.

**Detail of Changes**

*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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>Current requirements in VAC</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
18VAC112-20-65		Currently, an applicant from another state or a Canadian province can provide documentation of passage of an examination required by that state or Canadian province at the time of initial licensure as part of an application for licensure by endorsement in Virginia.	<p>Clarifies that applicants for licensure by endorsement must provide documentation of passage of the national examination as prescribed by the Board. 18VAC112-20-10 defines “national examination” as “the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.” The NPTE is the examination developed and administered by the Federation of State Boards of Physical Therapy.</p> <p>The rationale for this change is to ensure consistency with Va. Code § 54.1-3487(A)(5), which requires the Board to comply with rules of the Compact Commission. Those rules state that the acceptable examination for all licensure in Compact states is the NPTE. The additional rationale for this change is to ensure compliance with Compact rules following notification by the Compact Commission that the Commission views this Virginia regulation as “non-compliant” with the Compact terms and may be the basis for initiation of action against Virginia.</p>

			<p>The NPTE has been in use for many decades and is widely accepted across the United States. All other states and the District of Columbia, with the exception of Michigan, currently require that applicants pass the NPTE to obtain licensure. Michigan remains the one outlier that accepts both the NPTE and the Canadian Physiotherapy Competency Exam due to the large number of Canadian physical therapists which live in and were educated in Canada but practice physical therapy in Michigan.</p>
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