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## Proposed Regulation 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>	3/30/17

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*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

The Board proposes to replace the Practice Review Tool, an assessment tool previously offered by the Federation of State Boards of Physical Therapy with oPTion, the tool currently available. Attainment of at least Level 2 on oPTion may be used for continuing education credits or to replace hours in a supervised traineeship for applicants for licensure by endorsement, or for reinstatement or reactivation, if the physical therapist has not been engaged in active practice for the two years immediately preceding application for an active license.

### Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

FSBPT = Federation of State Boards of Physical Therapy  
PRT = Practice Review Tool

**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.

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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.*

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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. oPTion uses scenarios and multiple-choice questions that emphasize clinical application of knowledge necessary for safe, effective practice. Each scenario is followed by three to five multiple-choice questions, for a total of 100 questions. With the shift to oPTion, the FSBPT has also eliminated the PRT “standard” and replaced it with an assessment report that categorizes the therapist’s performance into levels 1 through 4.

The purpose of the proposed action is 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 are not an assurance of 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, 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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Since meeting the “standard” on the PRT has been replaced with four levels of competency, the Board proposes to replace the Practice Review Tool, an assessment tool previously offered by the Federation of State Boards of Physical Therapy with oPTion, the tool currently available. Attainment of at least Level 2 on oPTion may be used for continuing education credits or to replace hours in a supervised traineeship for applicants for licensure by endorsement, or for reinstatement or reactivation, if the physical therapist has not been engaged in active practice for the two years immediately preceding application for an active license.

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.

### 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) The primary advantage of the amendments is more flexibility in meeting requirements for evidence of continued competency – both for current licensees to meet the hours of Type 1 CE required for renewal and for applicants who have not been engage in active practice in the past two years. There are no disadvantages to the public because attaining a minimum of Level 2 on oPTion would not be the only requirement necessary for continuing competency. Such assessment tools are advantageous in that they indicate to the licensee their areas of strength and weakness to encourage them to seek additional education and/or training if needed.

2) There are no advantages or disadvantages to the Commonwealth.

3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.”

The proposed amendments are a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth. They are optional and offer licensees more flexibility; and therefore, they do not constitute any restraint on competition.

### 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.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the Board of Physical Therapy is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or by fax to (804) 527-4434. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 this stage 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.

**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:</b>  <b>a) fund source / fund detail; and</b>  <b>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 incur no additional costs for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost involved. Every effort will be made to incorporate</p>
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	those into anticipated mailings and Board meetings already scheduled. There are no on-going expenditures.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	There is no cost to localities.
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Licensed physical therapists who want to use the assessment tool for part of their continuing competency hours Applicants for licensure by endorsement or reinstatement/reactivation who do not have the requisite active practice hours.
<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: 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.	There are 8277 physical therapists licensed in Virginia. There is no estimate of how many may choose to use oPTion in lieu of CE, nor is there an estimate of the number who are 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 including:</b> a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.	The oPTion assessment may be taken at a cost of \$49. The proposed regulation is optional, so the new regulation does not affect those who would continue to select traditional hours of continuing education. If a licensee achieves level 2 on oPTion, he/she would be credited with 5 hours of Type 1 continuing education. If he/she achieves level 3 or 4, he/she would be credited with 10 hours. It is likely there would be a cost benefit for a licensee who chooses to take oPTion.  If an applicant chooses the assessment tool in lieu of required hours of supervised training, he would likely realize a cost savings, since she/he typically has to pay a supervisor. Achieving level 2 would reduce the training hours from 320 to 160.
<b>Beneficial impact the regulation is designed to produce.</b>	Additional options for licensees and applicants to demonstrate competency to practice.

## 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.*

Since the PRT is no longer 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, until amended regulations are in effect, 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.

**Regulatory flexibility analysis**

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

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

There was a comment period on the NOIRA from January 23, 2017 to February 22, 2017; there was no public comment.

**Family impact**

*Please assess the impact of this 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 family.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

Current	Current requirement	Proposed change, intent, rationale, and likely impact of
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section number		proposed requirements
10	Sets out definitions for words and terms used in the chapter	<p>Section 10 is amended to delete the “PRT” and to add the definition for an “assessment tool” as meaning oPTion or any other competency assessment tool developed or approved by FSBPT.</p> <p>oPTion is the name of the current assessment tool used by FSBPT. The Board has chosen to name oPTion in the definition but include “any other competency assessment tool developed and approved by FSBPT.” Therefore, if the name changes, but the basic format for the assessment tool and the levels assigned for performance remain intact, the Board would not have to amend its regulations.</p>
65	Sets out requirements for licensure by endorsement	<p>Subsection B is amended to replace the option of meeting the standard of the PRT with “<u>attaining at least Level 2 on the FSBPT assessment tool.</u>” If the applicant has not been engaged in active practice in another jurisdiction, he can replace 160 hours of a required traineeship by attaining at least Level 2 on oPTion within the two years preceding application for licensure in Virginia.</p> <p><i>According to FSBPT, Level 2 indicates the ability to apply entry-level knowledge, concepts, and principles across a moderate range of patient conditions. The Board considered Level 2 to be the lowest level acceptable for replacement of supervised training for those applicants who have not been engaged in active practice.</i></p>
131	Sets out continued competency requirements for renewal of an active license	<p>Subsection B (5) is amended to allow a physical therapist who can document that he attained at least Level 2 on the FSBPT assessment tool to receive 5 hours of Type 1 credit for the biennium in which the assessment tool was taken. A physical therapist who can document that he attained at least Level 3 or 4 on the FSBPT assessment tool may receive 10 hours of Type 1 credit for the biennium in which the assessment tool was taken. Continuing competency credit can only be granted for the FSBPT assessment tool once every four years.</p> <p><i>As noted above, Level 2 indicates the ability to apply entry-level knowledge, concepts, and principles across a moderate range of patient conditions. The Board considered Level 2 to be the lowest level acceptable for granting CE credit; five of the 20 hours may be credited for attaining Level 2. If the assessment results in a Level 1, there is an indication that the PT only has entry-level knowledge to treat a limited range of conditions. Therefore, additional education or training should be necessary for independent, unsupervised practice. Level 3 or 4 indicates a higher level of expertise, so the PT may be credited with 10 of the 20 hours of Type 1 CE required for biennial renewal. Since there are limited variations of the assessment tool, the Board determined that repeating it in each biennium should not replace CE hours and other</i></p>



		<i>types of learning.</i>
135	Sets out the provisions relating to inactive licensure and reactivation to an active license.	<p>Subsection B is amended to replace the option of meeting the standard of the PRT with “<u>attaining at least Level 2 on the FSBPT assessment tool.</u>” If the inactive licensee has not been engaged in active practice in another jurisdiction, he can replace 160 hours of a required traineeship by attaining at least Level 2 on oPTion within the two years preceding application for licensure in Virginia.</p> <p><i>As noted above, Level 2 indicates the ability to apply entry-level knowledge, concepts, and principles across a moderate range of patient conditions. The Board considered Level 2 to be the lowest level acceptable for replacement of supervised training for those applicants who have not been engaged in active practice.</i></p>
136	Sets out requirements for reinstatement of a lapsed license.	<p>Subsection B is amended to replace the option of meeting the standard of the PRT with “<u>attaining at least Level 2 on the FSBPT assessment tool.</u>” If the PT with a lapsed license has not been engaged in active practice, he can replace 160 hours of a required traineeship by attaining at least Level 2 on oPTion within the two years preceding application for licensure in Virginia.</p> <p><i>As noted above, Level 2 indicates the ability to apply entry-level knowledge, concepts, and principles across a moderate range of patient conditions. The Board considered Level 2 to be the lowest level acceptable for replacement of supervised training for those applicants who have not been engaged in active practice.</i></p>