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## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC85-80
<b>VAC Chapter title(s)</b>	Regulations Governing the Practice of Occupational Therapy
<b>Action title</b>	Implementation of Compact
<b>Date this document prepared</b>	August 4, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

Chapter 242 of the 2021 Acts of the Assembly mandates membership of the Commonwealth of Virginia in the Occupational Therapy Interjurisdictional Compact ("OT Compact") and requires the Board to promulgate regulations to implement the provisions of the act to be effective within 280 days of enactment. The Board did so, and emergency regulations have been effective since January 1, 2022. The Board now submits final regulations to implement the OT Compact in accordance with law.

Amendments to the regulations add definitions consistent with the OT Compact, set the fee for a compact privilege to practice in Virginia, and specify that renewal of the privilege is based on adherence to the OT Compact rules for continued competency.

### 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.*

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OT = Occupational therapist  
OTA = Occupational therapy assistant  
OT Compact = Occupational Therapy Interjurisdictional Compact

### 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 August 4, 2023, the Board of Medicine amended the Regulations Governing the Practice of Occupational Therapy.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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Chapter 242 of the 2021 Acts of the Assembly mandates membership of the Commonwealth of Virginia in the Occupational Therapy Interjurisdictional Compact. The Board promulgated emergency regulations to implement the provisions of the act, which emergency regulations became effective January 1, 2022. The Board now submits final regulations to replace the emergency regulations.

### 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 Medicine 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."

Virginia Code § 54.1-2956.7:1 creates the OT Compact.

### 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 is intended to solve.*

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The final regulations are necessary to comply with the mandate of the General Assembly that required Virginia to participate in the OT Compact. Additionally, the amendment to define “practitioner” to be inclusive of OTs and OTAs practicing in Virginia pursuant to a compact privilege is essential to ensure that those who are clinically practicing on patients/clients in Virginia are accountable to the same standards of care as OTs and OTAs who hold a Virginia license. Otherwise, occupational therapy services for Virginia citizens provided by persons practicing through the OT Compact would potentially be harmful to the citizens’ health, safety, or welfare.

**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.*

Amendments to regulations add definitions consistent with the OT Compact, set the fee for a compact privilege to practice in Virginia, and specify that renewal of the compact privilege is based on adherence to the OT Compact rules for continued competency.

**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.*

- 1) The primary advantages to the public are a potential increase in available OTs and OTAs to provide services to citizens of the Commonwealth. 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. Any restraint on competition is additionally a foreseeable, inherent, and ordinary result of the General Assembly’s directive to enter the OT Compact in Virginia Code § 54.1-2956.7:1. 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**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no applicable federal requirements.

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

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

The Board received no public comment.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

There have been no changes made since the previous stage.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements

80-10	Sets out definitions for words and terms used in the chapter	<p>Words and terms used in § 54.1-2956.7:1, which is the OT Compact language, are included with definitions.</p> <p>In addition, the term “practitioner” is defined to include OTs and OTAs practicing in Virginia with a compact privilege. In regulations setting out the standards of practice, the term “practitioner” is used. It is essential to be able to interpret those standards as applicable to compact privilege holders as well as Virginia licensees.</p>
80-26	Sets out fees charged for licensure and renewal	<p>With the OT Compact, each state will issue a compact privilege to an OT or OTA who qualifies for a privilege as a licensee of another compact state. Since Virginia was the first state to adopt the OT Compact, there is no precedence for such a fee. There are administrative costs involved in issuance and renewal of a compact privilege, as well as the potential for costs associated with investigation and disciplinary action against a person practicing in Virginia with a compact privilege. Therefore, the Board determined that reasonable fees are \$75 for issuance or renewal of a privilege to practice for an OT and \$40 for an OTA.</p>
80-70	Sets out requirements for biennial renewal of licensure	<p>Subsection C is added to specify that, to renew a compact privilege to practice in Virginia, the holder of that privilege must comply with the rules adopted by the OT Compact Commission in effect at the time of the renewal. The Virginia Board of Medicine is bound by participation in the OT Compact to adhere to the rules of the OT Compact regarding issuance and renewal of compact privileges.</p>
80-71	Sets out continuing competency requirements for licensees	<p>The term “practitioner” is amended to “licensee” because the requirements of continuing education in section 71 are applicable to an OT or OTA renewing a Virginia license.</p>