



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 85-80 Regulations for Licensure of Occupational Therapists
Department of Health Professions
Town Hall Action/Stage: 6121 / 9840
August 9, 2023

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

As the result of a periodic review,² the Board of Medicine (Board) proposes to 1) remove text from various portions of 18 VAC 85-80 *Regulations for Licensure of Occupational Therapists*, 2) reduce required continuing education hours, and 3) amend the requirements to reactivate or reinstate licensure.

Background

Repealing Text

The Board relates that each portion of text proposed for removal falls into one of the following categories: 1) a definition not used in the regulation, 2) a reference to another regulation, 3) is either obsolete (no longer applicable), repetitive of other regulatory text or duplicative of statute, 4) imposes a rarely used \$10 fee that costs more to administer than the

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2148>.

amount of the fee, or 5) requires the Board to periodically conduct audits that are no longer conducted in practice.

Continuing Education

Under the current regulation, in order to renew an active license biennially, practitioners must complete at least 20 contact hours of continuing learning activities within the two-year period of licensure. At least ten of the hours must consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and is approved or provided by one of the following organizations or any of its components: Virginia Occupational Therapy Association; American Occupational Therapy Association; National Board for Certification in Occupational Therapy; local, state, or federal government agency; regionally accredited college or university; health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation; or an American Medical Association Category 1 Continuing Medical Education program.

Up to ten of the hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation, or other such experiences that promote continued learning. Two of the Type 2 continuing education hours may be satisfied through delivery of occupational therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services as documented by the health department or free clinic.

The Board proposes to reduce the required number of contact hours of continuing learning activities within the two-year period of licensure from 20 to ten. In doing so, the Board would eliminate the Type 2 category. All of the current Type 1 activities would count toward the requirement. As mandated by Code of Virginia § 54.1-2400, delivery of occupational therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic would also continue to count toward approved contact hours of

continuing learning activities. Consultation with another therapist, independent reading or research, preparation for a presentation would not count toward the reduced ten hours.

The Board also proposes to specify that up to two of the continuing education hours may be satisfied through supervision or experiences that promote the education of students. One hour of continuing education may be credited for eight hours of providing such supervision as documented by the educational institution for which supervision is performed. According to the Department of Health Professions (DHP), the Board had accepted this as qualifying for Type 2 activity and felt that it would be worthwhile for both practitioners and students.

Reactivation

A licensed occupational therapist or an occupational therapy assistant who holds a current, unrestricted license in Virginia shall be issued an inactive license upon a request on the renewal application and submission of the required fee. The holder of an inactive license is not required to maintain hours of active practice or meet the continued competency requirements, and is not entitled to perform any act requiring a license to practice occupational therapy in Virginia.

Under the current regulation, an inactive licensee may reactivate his license upon submission of the following:

An application as required by the board;

Payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure; and

Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive.

In addition to the above requirements, if the license has been inactive for two to six years documentation must be submitted of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist;

Alternatively, if the license has been inactive for six years or more and the individual has not engaged in active practice, documentation must be submitted of having completed a

board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

For licenses that have been inactive for two to six years, the Board proposes to no longer impose any additional requirements (i.e., documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist).

For licenses that have been inactive for six years or more, instead of requiring supervised practice or evidence of having engaged in active practice, the Board proposes to require the occupational therapist or occupational therapy assistant provide evidence of current certification by the National Board for Certification in Occupational Therapy (NBCOT) or retake and pass the national (NBCOT) examination.

Additionally, the Board proposes to amend the required submission of “Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed **four years**, in which the license has been inactive” to “Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed **six years**, in which the license has been inactive.”³

Reinstatement

To be reinstated, an occupational therapist or occupational therapy assistant who allows his license to lapse for a period of two years or more and then chooses to resume his practice must submit the following to the Board: a reinstatement application, information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed, and the fee for reinstatement of his licensure.

In addition to the above requirements, under the current regulation an occupational therapist or occupational therapy assistant who has allowed his license to lapse for two years but less than six years, and who has not engaged in active practice, must serve a board-approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed occupational therapist. An occupational therapist or occupational therapy assistant who has allowed his license to lapse for six years or more, and who has not engaged in active practice

³ Bold added for emphasis.

must serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist in order to have their license reinstated. Completion of continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive must also be accomplished.

Regardless of the number of years that the license has been lapsed, instead of requiring supervised practice or evidence of having engaged in active practice, the Board proposes to require the occupational therapist or occupational therapy assistant provide evidence of current certification by NBCOT or retake and pass the national (NBCOT) examination.

Analogous to the proposed amendment to the cap on required continued competency hours for reactivation, the Board proposes to raise the cap on the number of required hours of continued competency for reinstatement from the required amount for four years to the required amount for six years.

Estimated Benefits and Costs

Repealing Text

According to DHP, the \$10 fee for an individual licensed out-of-state to register for voluntary practice itself costs more administratively to collect than \$10. Thus, eliminating the fee would be beneficial in that it would both reduce cost for occupational therapists and occupational therapy assistants licensed out-of-state seeking to volunteer in Virginia, and net costs for the Board.

The current regulation states that “The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.” According to DHP, the Board has only performed one or two of these audits in the last two decades, and only on two sets of its 18 types of licensees. DHP adds that the Board does not have staff or the ability to conduct such audits and has not for years. Thus, the proposed repeal of the quoted sentence at the beginning of this paragraph would conform the regulation to practice.

Removing the other instances noted above – definitions that are not used in the regulation, and text that either refers to another regulation, or is obsolete (no longer applicable),

or is repetitive of other regulatory text, or is duplicative of statute – would have no impact on requirements for regulated entities or the public.

Continuing Education

According to DHP, the Board believes that the reporting requirement for Type 2 continuing learning activity hours is unnecessarily burdensome and that most practitioners would complete activities that are included as Type 2 regardless of the requirement. Thus, eliminating the requirement for Type 2 hours would be beneficial in that it would eliminate the burden of reporting such activities. As described by DHP, the proposed elimination of the Type 2 activity requirement is not likely to have a substantive impact on activities (beyond reporting) in practice.

Reactivation

For practitioners with licenses that have been inactive for two to six years and have not engaged in the active practice of occupational therapy (perhaps in another state) and who do not plan to work under the supervision of another practitioner, the proposal to no longer require documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist would be beneficial. Eliminating the requirement would allow such practitioners to work in their preferred circumstance right away rather than find someone else to supervise them over a 60-day period.

For practitioners with licenses that have been inactive for five or six years, the proposal to amend the required submission of “Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed **four** years, in which the license has been inactive” to “Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed **six** years, in which the license has been inactive” increases the amount of continued competency hours that they must complete to reactivate their licenses. Under the proposed regulation, five hours of continuing learning activities are required per annum. Thus, the proposed increase in the cap would result in five additional hours of required continuing learning activities for those practitioners with licenses that have been inactive for five years, and ten additional hours of required continuing learning activities for those practitioners with licenses that have been inactive for six years. Their costs in time and fees would increase commensurately.

For practitioners with licenses that have been inactive for six years or more and have not engaged in the active practice of occupational therapy and who do not plan to work under the supervision of another licensed occupational therapist, the proposal to replace the requirement to work under the supervision of another practitioner with evidence of current certification by NBCOT (or to retake and pass the national examination) may be beneficial. According to DHP, most occupational therapists and occupational therapy assistants maintain NBCOT certification. Thus, this proposed change would benefit practitioners with licenses that have been inactive for six years or more and have not engaged in the active practice of occupational therapy and who do not plan to work under the supervision of another practitioner, but have maintained NBCOT certification, by permitting work in their preferred circumstance right away rather than find someone else to be supervised by over four months. Practitioners with licenses that have been inactive for six years or more, have not engaged in the active practice of occupational therapy, and do not have NBCOT certification, but do intend to work under the supervision of another licensed occupational therapist, would be worse off under this proposal since they would meet the existing working under supervision requirement, but would not meet the NBCOT requirement.

Reinstatement

For practitioners with a lapsed license who have not engaged in active practice and who do not plan to work under the supervision of another practitioner, the proposal to replace the requirement to work under the supervision of another practitioner with evidence of current certification by NBCOT (or to retake and pass the national examination) may be beneficial for the same reason as described in the above Reactivation subsection. Practitioners with a lapsed license who have not engaged in active practice and do not have NBCOT certification, but do intend to work under the supervision of another licensed occupational therapist, would be worse off under this proposal for the same reason as described in the above Reactivation subsection.

Analogous with reactivation, for practitioners with licenses that have been inactive for five or six years, the proposed increase of the cap on required amount of continued competency hours increases the amount of continued competency hours that they must complete to reinstate their licenses. Thus, their costs in time and fees would increase commensurately.

Businesses and Other Entities Affected

The proposed amendments affect the 5,019 occupational therapists and 1,785 occupational therapy assistants licensed in the Commonwealth,⁴ as well as their patients and employers. According to survey data from the most recently published Virginia Healthcare Workforce Data Center report on occupational therapists,⁵ the primary type of employers of occupational therapists in the Commonwealth are distributed as follows:

<u>Establishment Type</u>	<u>Percentage</u>
General Hospital, Inpatient Department	15%
Skilled Nursing Facility	14%
K-12 School System	13%
Home Health Care	13%
Rehabilitation Facility, Outpatient Clinic	9%
Private Practice, Group	7%
Rehabilitation Facility, Residential/Inpatient	7%
General Hospital, Outpatient Department	5%
Assisted Living or Continuing Care Facility	4%
Academic Institution	3%
Private Practice, Solo	3%
Mental Health, Inpatient	1%
Other	7%

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or

⁴ Source: <https://www.dhp.virginia.gov/about/stats/2023Q3/04CurrentLicenseCountQ3FY2023.pdf>

⁵ See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0119OT2020.pdf>

⁶ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on

reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As described above, costs would increase for practitioners who wish to reactivate or reinstate their license if their license has been inactive or lapsed for five or six years. Thus, an adverse impact is indicated.

Small Businesses⁷ Affected:⁸

The proposed amendments do not appear to substantively adversely affect small businesses.

Localities⁹ Affected¹⁰

The proposed amendments do not appear to disproportionately affect any particular localities, nor introduce costs for local governments.

Projected Impact on Employment

The proposed amendments are not likely to have a substantive impact on total employment.

Effects on the Use and Value of Private Property

Depending on their circumstances as described above, practitioners seeking to reactivate or reinstate their license may encounter either increases or decreases in cost under the proposed regulation. In net, it is unlikely that the proposed changes would have a substantial impact on hiring costs for firms. Thus, for non-solo practices, there would not likely be a substantive impact on the use and value of private property. The proposed replacement of NBCOT certification for working under supervision as a requirement for reactivation or reinstatement

Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

⁸ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

could allow practitioners who prefer to work solo to start doing so sooner. The proposed amendments do not affect real estate development costs.