



Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 85-80
Regulation title	Regulations Governing the Practice of Occupational Therapy
Action title	Credential required for use of title, occupational therapy assistant
Document preparation date	10/14/04

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The adoption of an “emergency” regulation by the Board of Medicine was required to comply with amendments to § 54.1-2956.1 and the second enactment clause in HB 309 passed by the 2004 General Assembly (Chapter 61 of the Acts of the Assembly). § 54.1-2956.1 mandates that the Board “*designate in regulation those credentialing organizations from which a person may obtain initial certification as an occupational therapy assistant in order to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof.*”

The second enactment clause of Chapter 61 required the adoption of the regulation as an emergency in accordance with the Administrative Process Act, and the proposed regulation will replace the emergency regulation currently in effect. The current regulation requires a person who calls himself an occupational therapy assistant or uses the designation of O.T.A. or any derivation thereof to hold the credential for a Certified Occupational Therapy Assistant issued by the National Board for Certification in Occupational Therapy (NBCOT) .

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 Medicine 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. 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

In the Medical Practice Act (§ [54.1-2900 et seq.](#)), the Board of Medicine is mandated to set in regulation the credentialing organizations from which a person may obtain initial certification as an occupational therapy assistant in order to use the title or initials, O.T.A.

§ [54.1-2956.1](#). Powers of Board concerning occupational therapy.

The Board shall be empowered to take such actions as may be necessary to ensure the competence and integrity of any person who practices occupational therapy or claims to be an occupational therapist or who holds himself out to the public as an occupational therapist or who engages in the practice of occupational therapy, and to that end it may license practitioners as occupational therapists.

In addition, the Board shall designate in regulation those credentialing organizations from which a person may obtain initial certification as an occupational therapy assistant in order to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof.

In addition, § 54.1-2956.5 requires initial certification from a credentialing organization approved in regulation in order for a person to use the title of occupational therapy assistant or use the designation, O.T. A.

§ [54.1-2956.5](#). Unlawful to practice occupational therapy without license; restriction of titles for occupational therapy assistants.

A. It shall be unlawful for any person not holding a current and valid license from the Board to practice occupational therapy or to claim to be an occupational therapist or to assume the title "Occupational Therapist," "Occupational Therapist, Licensed," "Licensed Occupational

Therapist," or any similar term, or to use the designations "O.T." or "O.T.L." or any variation thereof. However, a person who has graduated from a duly accredited educational program in occupational therapy may practice with the title "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has taken and received the results of any examination required by the Board or until one year from the date of graduation, whichever occurs sooner.

B. In addition, no person shall hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof unless such person has obtained initial certification as an occupational therapy assistant from a credentialing organization approved in regulation by the Board.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action is to comply with the statutory mandate in § 54.1-2956.1 which requires the Board to establish the credentialing body and initial certification required for a person to hold himself out to be an occupational therapy assistant or to use the designation O.T.A. or any derivation thereof. While the credential of OTA is not required for practice, its use does imply some education and training for practice and does provide measure of minimal competency and protection for the public. The intent of the legislation, implemented by this regulation, was to ensure that those persons who go by the protected title have a credential based on educational preparation, a practice component and an examination. The National Board on Certification in Occupational Therapy (NBCOT) is the only such credentialing body through which one can currently obtain initial certification.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Section 61 is added to Part II to establish the Certified Occupational Therapy Assistant issued by the National Board for Certification in Occupational Therapy (NBCOT) as the credential that must be held by a person who calls himself an occupational therapy assistant or uses the designation of O.T.A. or any derivation thereof.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Advantages and disadvantages to the public:

There are no disadvantages to patients receiving occupational therapy services; they are better protected by more specific rules on the use of professional titles by unlicensed persons. Use of a title that implies certification and competency should be reserved for persons who have met the requirements and passed an examination entitled them to the credential. Although a COTA may use the title in conjunction with his name and practice, the licensed occupational therapist remains responsible for the services provided and for the treatment of the patient.

Advantages and disadvantages to the agency or the Commonwealth:

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the Board and does not involve additional cost or staff time. In part, the amended regulation will clarify use of the protected titles, so the agency may benefit from fewer inquiries from applicants, licensees and employers.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	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 some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and meetings already scheduled; there will be no on-going expenditures because the Board will not be regulating occupational therapy assistants.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The entities that are likely to be affected by these regulations would be persons who wish to use the title of occupational therapy assistant.
Agency’s best estimate of the number of such entities that will be affected	Since OTA’s are not regulated or registered in Virginia, there is no estimate of the number of entities affected. In 2003, only 920 persons

	through the U.S. took the NBCOT examination.
Projected cost of the regulation for affected individuals, businesses, or other entities	Since use of the title is not required in order to work as an assistant or an aide in occupational therapy, there would be no cost unless employment is dependent on holding the initial certification required for the title. For those who choose to obtain the COTA title through certification by NBCOT, the cost will be approximately \$450 for an exam application. Renewal or maintenance of the COTA credential is not required by law.

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.

There are no alternatives to the adoption of regulations for the designation of the credentialing organization from which a person may obtain initial certification as an occupational therapy assistant, as it is mandated by Chapter 61 of the 2004 Acts of the Assembly.

While adoption of a credentialing organization is mandated, the Board is not authorized to register or regulate those persons who have obtained certification and who use the designated title or initials after their names. Chapter 61 only establishes title protection and specifically provides that an individual can continue to assist in the “provision of occupational therapy services under the supervision of an occupational therapist pursuant to such requirements as may be imposed by the Board” (§ 54.1- 2956.5 C of the Code of Virginia). While the Board does not have regulatory authority vis-à-vis occupational therapy assistants or the ability to take disciplinary action against their credential, it can exercise its regulatory and disciplinary authority over the practice of occupational therapists under whom the assistants are required to perform their duties.

In development of a proposed regulation, the Board considered the recommendation of the Advisory Board on Occupational Therapy and the Study of the Appropriate Level of Regulation of Occupational Therapy Assistants in Senate Document 7 (2001). In the study of OTA’s, conducted by the Board of Health Professions in response to SJR 153 of the 2000 General Assembly, the only credentialing organization for occupational therapists or occupational therapy assistants was the National Board for Certification in Occupational Therapy. The NBCOT offers an examination and certification for assistants which entitles them to use of the title Certified Occupational Therapy Assistant or COTA. According to the SJR 153 study, there are 170 accredited OTA programs in the U.S. with four located in Virginia – Community Hospital of Roanoke Valley, J. Sargeant Reynolds Community College, Southwest Virginia Community College and Tidewater Community College. Occupational therapy assistants complete a supervised clinical internship during their academic preparation, and the majority of the OTA graduates elect to take the national examination from NBCOT so they can use the recognized credential of COTA.

In addition, the examination and credential accepted for licensure as an occupational therapist in Virginia are those prescribed and provided by NBCOT. Therefore, the Advisory Board and the Board of Medicine did not find another alternative to identification of NBCOT as the credentialing organization through which a person must obtain initial certification in order to call themselves an occupational therapy assistant or an OTA.

Public comment

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

Commenter	Comment	Agency response
Virginia Occupational Therapy Association	Supportive of the NBCOT credential as the certification required to use the COTA title in Virginia	Board appreciates support of the VOTA

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

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

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
n/a	61	n/a	This new section provides that, effective one year from the effective date of the regulation, a person who holds himself

			<p>out to be or advertises that he is an occupational therapy assistant or uses the designation "O.T.A." or any variation thereof must have obtained initial certification by the National Board on Certification in Occupational Therapy (NBCOT) as a certified occupational therapy assistant.</p> <p>The regulation and the law specify that only initial certification is required, an occupational therapy assistant is not required to maintain certification with NBCOT in order to continue to use the protected title. However, the designation of COTA is copyrighted by NBCOT and reserved for those who hold current certification. It is not required that one use the designation of COTA in order to call oneself an occupational therapy assistant.</p> <p>The third enactment for HB 309 provides "That, notwithstanding the effective date of this act, initial compliance with the provisions herein shall be as established by the Board of Medicine pursuant to its regulations." Therefore, the Board has provided in regulation a delayed effective date of one year to give persons who were not initially certified by NBCOT time to obtain the credential. In the meantime, the Act does not prevent a person from using the protected title, and thereafter, the Act does not prevent a person from assisting with provision of OT services provided he does not use the protected title.</p>
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