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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC85-80
VAC Chapter title(s)	Regulations Governing the Practice of Occupational Therapy
Action title	Implementation of Compact
Date this document prepared	8/6/21

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 the subject matter, intent, and goals 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 or changes. 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 and requires the Board to promulgate regulations to implement the provisions of the act to be effective within 280 days of enactment.

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

OT = Occupational therapist
OTA= Occupational therapy assistant

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

Chapter 242 of the 2021 Acts of the Assembly mandates membership of the Commonwealth of Virginia in the Occupational Therapy Interjurisdictional Compact and, in the third enactment clause, requires the Board to promulgate regulations to implement the provisions of the act to be effective within 280 days of enactment. It has also adopted a Notice of Intended Regulatory Action to replace the emergency regulations with permanent 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 or Acts and 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.

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. ...

The Occupational Therapy Interjurisdictional Compact is created by § § [54.1-2956.7:1](#) in the Code of Virginia.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The amendment to define “practitioner” to be inclusive of OTs and OTAs practicing in Virginia is essential to ensure that those who are clinically practicing on patients/clients in Virginia are accountable for the same standards of care as OTs and OTAs who hold a Virginia license. Otherwise, occupational therapy services for Virginia citizens by persons practicing through the Compact would potentially be harmful to their 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 Compact, set the fee for a Compact privilege to practice in Virginia, and specify that renewal of the privilege is based on adherence to 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 advantage to the public is assurance that OTs and OTAs practicing Virginia through the Compact will be held to the same standards of conduct as Virginia licensees; there are no disadvantages to the public.
- 2) There are no specific advantages or disadvantages to the agency.
- 3) There are no other pertinent matters of interest.

The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The proposed regulation promulgated by the Board does not represent any restraint on that competition. Regulations for processors are a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth. 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” and has acted in accordance with a statutory mandate in § 54.1-2956.7:1 of the Code of Virginia.

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.

There are no alternatives as the promulgation of regulations is a mandate of the legislation.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Medicine is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts, Senior Policy Analyst, 9960 Mayland Drive, Suite 300, Henrico, VA 23233; email: Elaine.yeatts@dhp.virginia.gov FAX- 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.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://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.

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 emergency 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)

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	Words and terms used in § 54.1-2956.7:1, which is the Compact language, are included with definitions. 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.
80-26	Sets out fees charged for licensure and renewal	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 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 a reasonable fee should be \$75 for issuance or renewal of a privilege to practice for an OT and \$40 for an OTA.
80-70	Sets out requirements for biennial renewal of licensure	Subsection C is added to specify that in order to renew a compact privilege to practice in Virginia, the holder of that privilege must comply with the rules adopted by the Occupational Therapy Compact Commission in effect at the time of the renewal. The Virginia Board of Medicine is bound by participation in the Compact to adhere to the rules of the Compact regarding issuance and renewal of compact privileges.
80-71	Sets out continuing competency requirements for licensees	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.