



Periodic Review / Retain Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-80-10 et seq.
Regulation title	Regulations for Licensure of Occupational Therapists
Document preparation date	2/22/13

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

...
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. ...

Specific authority for regulation of occupational therapists is found in:

§ 54.1-2956.1. Powers of Board concerning occupational therapy.

The Board shall 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 occupational therapy assistant or who holds himself out to the public as an occupational therapist or occupational therapy assistant or who engages in the practice of occupational therapy, and to that end it may license practitioners as occupational therapists or occupational therapy assistants who have met the qualifications established in regulation by the Board.

The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as an occupational therapist during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure as an occupational therapist.

§ 54.1-2956.5. Unlawful to practice occupational therapy without license.

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 six months from the date of graduation, whichever occurs sooner.

B. It shall be unlawful for any person to practice as an occupational therapy assistant as defined in § [54.1-2900](#) or 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 unless such person holds a current and valid license from the Board to practice as an occupational therapy assistant. However, a person who has graduated from a duly accredited occupational therapy assistant education program may practice with the title "Occupational Therapy Assistant-License Applicant" or "O.T.A.-Applicant" until he has taken and received the results of any examination required by the Board or until six months from the date of graduation, whichever occurs sooner.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The regulation was thoroughly reviewed by staff of the Board of Medicine and the Department of Health Professions and by the Advisory Board on Occupational Therapy to identify any regulation that could be revised pursuant to the Governor's regulatory reform project. There were no problems identified with the understanding of or compliance with the existing regulations. Regulations were also circulated among constituent groups, advisory board members and other interested parties. There were no recommendations for amendments that would repeal regulations or reduce the regulatory burden.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Notice of Periodic Review was posted on the Virginia Regulatory Townhall and sent to interested parties with comment requested from November 5, 2013 to December 5, 2013. There were no comments received.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Through its review of 18VAC85-80-10 et seq., Regulations for Licensure of Occupational Therapists, the Board determined that the regulation is necessary to protect the public by inclusion of criteria for licensure, continuing education for renewal, and standards of conduct for practice. Neither the staff of the Board nor any regulants identified any language that was not clearly written and easily understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

As a result of the periodic review conducted in accordance with the Governor's regulatory reform project, the Board has determined that the regulation should stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

1) In accordance with the Code of Virginia, the Board is required to promulgate regulations. *"The Board shall 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 occupational therapy assistant or who holds himself out to the public as an occupational therapist or occupational therapy assistant or who engages in the practice of occupational therapy, and to that end it may license practitioners as occupational therapists or occupational therapy assistants who have met the qualifications established in regulation by the Board"* Therefore, there is a continued need for the regulation.

2) There were no complaints or comments received from the public.

3) The regulation is organized and written similarly to all other chapters promulgated by the Board of Medicine; it appears to be clear and easily understood.

4) The regulation does not overlap with federal or state law, which is not specific about the criteria for licensure or the standards of practice. Grounds for unprofessional conduct in § 54.1-2915, which apply to all regulated entities under the Board, are not repeated in the regulations.

5) The regulation is frequently reviewed for consistency with changes in technology and practice. Accordingly, it has been amended 10 times in the last 10 years.

The economic impact of this regulation is minimal for a licensure scheme. Fees of \$135 per biennium are required to maintain a license and do not appear to be burdensome or inhibiting the growth of the profession as there was a growth rate in the number of occupational therapists of 12.3% and of occupational therapy assistants of 25.4% in the last biennium.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

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