



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

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**18 VAC 85-80 – Regulations Governing the Licensure of Occupational Therapists**  
**Department of Health Professions**  
April 11, 2009

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### **Summary of the Proposed Amendments to Regulation**

Pursuant to Chapters 64 and 89 of the 2008 Acts of the Assembly, the Board of Medicine proposes to promulgate regulations to govern the licensure of occupational therapy assistants. These proposed regulations will replace identical emergency regulations that will expire October 31, 2009.

### **Result of Analysis**

Costs likely outweigh benefits for this licensure program.

### **Estimated Economic Impact**

Until legislation mandated it in 2008, occupational therapy assistants were not required to be licensed. Individuals who engaged in the work of an occupational therapy assistant were, however, subject to title protection legislation that did not allow them to call themselves occupational therapy assistants (OTAs) unless they were certified by National Board of Certification in Occupational Therapy (NBCOT).

These proposed regulations, and the emergency regulations that they replace, require that OTAs pay a licensure fee of \$70 and attain the identical NBCOT certification that has been required by the title protection legislation in order to attain initial licensure. NBCOT requires that candidates for initial certification:

- complete a one year certificate program or a two year associates degree program (cost will vary from program to program but will likely be at least several thousand dollars),
- complete clinical field work as required to get their degree,

- pass the national examination (\$520 fee) and
- pay a certification fee that is prorated depending on when certificate holders would be eligible to renew.

The Board will require OTAs to renew their licenses biennially. Candidates for renewal will have to complete 20 hours of continuing education and pay a \$70 fee. Individuals who are more than 30 day late in renewing their licenses will be subject to a late fee. Any OTA who allows his or her license to lapse for two or more years will have to reinstate that license. Individuals whose licenses have been lapsed for at least two years but not more than six years will have to complete a Board approved practice of 160 hours and pay a reinstatement fee of \$90. Individuals whose licenses have been lapsed for more than six years will have to complete a Board approved practice of 320 hours and pay the reinstatement fee.

Additionally, the Board proposes to change supervision requirements in these regulations. Prior to the promulgation of emergency regulations, occupational therapists have to meet with their personnel (including OTAs) to review and evaluate treatment and progress of individual patients every fifth treatment session or 21 calendar days, whichever occurs first. These proposed regulations, and the emergency regulations that they replace, allow occupational therapists to meet with their personnel every 10 treatment sessions or every 30 calendar days, whichever occurs first. For facilities with larger occupational therapy programs, this change may allow occupational therapists to supervise a greater number of OTAs at one time. This may allow these facilities to realize some savings on labor costs as they may be able to have a staff consisting of a greater number of lower paid OTAs supervised by a fewer number of higher paid occupational therapists. This staff substitution effect, however, will be limited by other regulatory language that limits the number of OTAs occupational therapists may supervise to three.

OTAs that are subject to these regulations will incur the education (both initial and continuing education) and examination costs, as well as fees, listed above. Additionally, these individuals will incur opportunity costs for time spent gaining credentials needed for licensure rather than working in their chosen field and opportunity costs for time spent maintaining licensure. To the extent that non-certified individuals have been able to do the job of an occupational therapy assistant, even if they could not legally call themselves OTAs, these

increased costs may lead to fewer people working in this field as some of these individuals may choose to not seek licensure. This may increase the price of OTA services in the Commonwealth (increase the wage that licensed OTAs can demand).

These costs must be weighed against any possible benefit that might be gained by requiring licensure. The individuals who need occupational therapy might benefit, for instance, if the requirements for licensure increase OTA competency and decrease any instances of harm done to patients by incompetent practice. OTAs who gain licensure may benefit from higher wages if this licensure program serves as a barrier to entry for this field. Additionally, some businesses that have need for a larger number of occupational therapy personnel may save on labor costs due to less frequently required reviews and evaluations of individual patients' treatment plans and progress.

The Department of Health Professions (DHP) reports that the Board of Health Professions completed a study on the appropriate level of regulation for OTAs in 2001. This study concluded that there was not enough risk of harm to patients to warrant licensure. This finding combined with the fact that OTAs must still practice under the supervision of an occupational therapist, who has "ultimately responsible and accountable for patient care and occupational therapy outcomes", points to a conclusion that the public will get minimal benefit from this licensure program. Because of this, the costs of this licensure requirement likely outweigh its benefits.

### **Businesses and Entities Affected**

The Department of Health Professions (DHP) reports that there are currently 204 OTAs that are licensed by the Board.

### **Localities Particularly Affected**

No locality will be particularly affected by this proposed regulatory action.

### **Projected Impact on Employment**

The legislation that mandates this regulatory action may have the effect of decreasing the number of individuals who choose to work in this field.

## **Effects on the Use and Value of Private Property**

This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

## **Small Businesses: Costs and Other Effects**

Small businesses in the Commonwealth who employ OTAs may incur extra labor costs if this licensure program decreases the number of OTAs that are available for hire.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

There are likely no alternatives available to the Board that would minimize costs for small businesses. Any meaningful changes to the costs associated with this licensure program would require legislative action.

## **Real Estate Development Costs**

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the

regulation. The analysis presented above represents DPB's best estimate of these economic impacts.