



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: 6503 / 10381** September 20, 2024

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

The Board of Medicine (Board) proposes to remove the requirement that occupational therapists (OTs) and occupational therapy assistants (OTAs) have engaged in the active practice of occupational therapy in order to renew their license.

Background

The current regulation requires the following for biennial license renewal for both OTs and OTAs: 1) fee payment (\$135 for OTs; \$70 for OTAs), 2) a minimum of 160 hours of active professional practice as an OT or an OTA within the 24-month period immediately preceding renewal, and 3) 20 contact hours of continuing learning activities.

According to the Department of Health Professions (DHP), following time out of active practice, such as for parental leave or family leave, many OTs and OTAs have faced difficulty renewing their license due to the active practice requirement. All or most other professions

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.

licensed by the Board or the agency do not have this requirement and the Board does not believe it is necessary. Thus, the Board proposes to eliminate the active practice requirement.

Estimated Benefits and Costs

Currently, OTs and OTAs who do not have the 160 hours of active practice required for license renewal would have to have their license reinstated.² The reinstatement fee for a lapsed license is \$180 for an OT and \$90 for an OTA. An OT or OTA who has allowed his or her license to lapse for fewer 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 OT. An OT or OTA who has allowed his or her license to lapse for six years or more, and who has not engaged in active practice, must serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed OT. Additionally, the applicant for reinstatement must meet the continuing competency requirements for the number of years the license has been lapsed, not to exceed four years. The requirement to work under supervision may in particular discourage some competent OTs and OTAs from returning to active practice after time away for medical leave, caring for family, childbirth, or other circumstances.

The Board of Medicine, like other DHP boards, has determined that active practice is not necessary to assure competency of the practitioners. (The practitioners would still need to complete the contact hours of continuing learning activities.) The OTs and OTAs returning to practice would benefit by not having to work under supervision and by paying the lower renewal fee (\$135 for an OT and \$70 for an OTA) versus the higher reinstatement fee (\$180 for an OT and \$90 for an OTA). To the extent that some competent OTs and OTAs do not return to practice due to the current active practice requirement, removing the requirement would be beneficial for the public by increasing the availability of competent healthcare professionals.

² The definition of active practice in the regulation states in part that “The active practice of occupational therapy may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.” If the OT or OTA was close to fulfilling the 160 hours. He or she could potentially get to the 160 hours through educational activities. Then he or she would just pay the late fee (\$50 for an OT and \$30 for an OTA) rather than reinstatement.

Businesses and Other Entities Affected

As of June 30, 2024, there were 5,349 OTs and 1,811 OTAs licensed in the Commonwealth. DHP does not possess a count of OTs and OTAs negatively impacted by the active practice renewal requirement. According to survey data from the most recently published profession relevant Virginia Healthcare Workforce Data Center reports, the primary type of employers of OTs and OTAs in the Commonwealth are distributed as follows:

<u>Employer Type for OTs³</u>	<u>Percentage</u>
General Hospital, Inpatient Department	17%
K-12 School System	14%
Home Health Care	12%
Skilled Nursing Facility	11%
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%
Physician Office	1%
Other	7%

<u>Employer Type for OTAs⁴</u>	<u>Percentage</u>
Skilled Nursing Facility	36%
Home Health Care	15%
K-12 School System	9%
Rehabilitation Facility, Residential/Inpatient	8%
Assisted Living or Continuing Care Facility	8%
General Hospital, Inpatient Department	5%
Rehabilitation Facility, Outpatient Clinic	5%
Private Practice, Group	2%
Academic Institution	2%
General Hospital, Outpatient Department	2%
Private Practice, Solo	2%
Mental Health, Inpatient	1%
Mental Health, Outpatient	1%
Other	4%

³ See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0119OT2022.pdf>

⁴ See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0131OTA2022.pdf>

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ The proposed amendment neither increases net costs nor reduces net benefit. Thus, no adverse impact is indicated.

Small Businesses⁷ Affected:⁸

The proposed amendment does not adversely affect small businesses.

Localities⁹ Affected¹⁰

Localities that have a shortage of available OTs and/or OTAs may be particularly affected by the potential increase in available services. The proposed amendment does not increase costs for local governments.

Projected Impact on Employment

By removing a barrier from OTs and OTAs returning to active practice, the proposal may result in a small increase in employed OTs and OTAs.

⁵ 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 Finance.

⁶ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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.

Effects on the Use and Value of Private Property

As the proposed amendment may moderately increase the supply of licensed OTs and OTAs, the cost of hiring and employing OTs and OTAs may be moderately reduced. Consequently, the value of firms that employ and hire OTs and/or OTAs may moderately increase. The proposed amendment does not affect real estate development costs.