

Regulatory Review Package

Emergency Regulations

Board of Medicine 18 VAC 85-80-10 et seq.

1. Regulatory Review Package

a. Proposed emergency regulation - See attached.

b. Source of the legal authority to promulgate the contemplated regulation.

The proposed emergency regulations are being promulgated to comply with statutory provisions of SB 599 passed by the 1998 General Assembly. Senate Bill 599 (Chapter 593) has an enactment clause requiring the Board of Medicine to promulgate regulations to implement the act to be effective within 280 days of the enactment. (See attached copy of Chapter 593)

Rulemaking is mandatory in order for the Board to comply with statutory language in which it is stated that the Board shall promulgate regulations within 280 days of the enactment date of 4/24/98, which means regulations must be in effective by 1/29/99.

c. Letter of assurance from the office of the Attorney General.

See attached.

d. Statement of necessity.

Promulgation of the Emergency Regulation, 18 VAC 85-40-10 et seq., is necessary to conform to statutory provisions of Chapter 593 of the 1998 Acts of the Assembly. In accordance with the Administrative Process Act, the “emergency situation” which exists is specified in § 9-6.14:4.1 (C)(5)(ii) of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law. The proposed regulations are not exempt from provisions of subdivision C of § 9-6.14:4.1.

e. Statement of changes which the regulations will implement.

18 VAC 85-80-10. The definition of “certification examination” was amended to the “national examination” which is approved for licensure in Virginia.

18 VAC 85-80-20. This section was amended to specify the regulation establishing Public Participation Guidelines for the Board of Medicine.

18 VAC 85-80-25. A new section was added to provide a requirement for each licensee to furnish the board with a current name and address with 30 days of any change and to specify that any notice sent to the address of record shall be duly given.

18 VAC 85-80-35. Application requirements have been amended to state some of the current requirements that are found in 18 VAC 85-80-50 and are presently included on the application and to specify the documentation or verification necessary to become licensed as an occupational therapist.

18 VAC 85-80-40. The educational requirements are identical to those which were required for certification by the board. The amendment will specify that an applicant whose occupational therapy education was outside the United States shall meet the requirements of National Board of Certification in Occupational Therapy, the national certifying body for the profession.

18 VAC 85-80-50. Amendments are adopted to clarify an applicant is required to pass any examination required by NBCOT for certification and that an applicant who fails the national examination must meet the requirements of the NBCOT for retaking that examination.

18 VAC 85-80-60. Amendments specify the completion of a board-approved supervised practice for those who have not practiced actively for more than two years. The hours of active practice (160 in two years) are consistent with those required by other professions licensed by the Board and with those required for renewal of licensure by occupational therapists in Virginia.

18 VAC 85-80-70. An amendment will provide specificity to the current requirement of active practice for renewal to be at least 160 hours during the past biennium.

18 VAC 85-80-80. The amended regulation provides requirements for reinstatement of a license to consist of a certain number of hours of a board-approved supervised practice. For a license which has been lapsed for more than two years, a practice of 160 hours within two months is required.

18 VAC 85-80-90. An amendment is adopted to provide that active practice, as required for renewal of licensure, may include supervisory, administrative or consultative services related to the delivery of occupational therapy services.

f. Statement of reasoning for the regulations.

The emergency regulations promulgated by the Board are essential to comply with the statutory mandate of §§ 54.1-2956.4 and 54.1-2956.5 of the Code of Virginia as amended by the 1998 General Assembly.

g. Statement on alternatives considered.

The Board did not consider alternatives to the promulgation of regulations as it was mandated to do so by the statute. It did adopt the least burdensome regulation consistent with the specific provisions of the statutes and with its concern for public health and safety.

On the effective date of the legislation, July 1, 1998, the Board revised its regulations to change from certification to licensure under an exemption from the APA. On advice from the Assistant Attorney General, § 9-6.14:4. (C) (4) was applicable and the amendments were exempt from Article 2 of the Administrative Process Act, as “necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved”. In making those amendments, the Board was

not able to consider any changes which were discretionary and not strictly conforming to changes in the statute.

In the development of emergency regulations, the Advisory Board on Occupational Therapy reviewed the qualifications for licensure, including education and examination and the requirements for renewal of licensure. The regulations were reviewed for consistency with statutory provisions, with regulations for licensure of other professions under the Board of Medicine, and with national standards in occupational therapy.

Licensure requirements.

In setting requirements for licensure, the Board chose to recognize the same credentials as those which had been accepted for certification. The Board accepts for licensure an accredited educational program as verified by the Accreditation Council for Occupational Therapy Education and the examination required for certification by the National Board for Certification in Occupational Therapy. If licensed or certified in another jurisdiction, the applicant would also have to document practice activity and verify that no disciplinary action had been taken by that jurisdiction.

For applicants who have been licensed in other states but who have not actively practiced occupational therapy for more than two years, the Advisory Board proposed a requirement for practice in a board-approved practicum under the supervision of a licensed occupational therapy. The Code does allow such practice by unlicensed persons, so the Board of Medicine adopted a proposal similar to those prescribed for other professions such as physical therapy. The requirement of 160 hours of active practice within a two-year period is considered minimal for practitioners who need to maintain a level of skill in working with patients.

Renewal requirements.

As minimal evidence of continuing competency, the Board adopted a requirement for at least 160 hours of active practice during the biennial renewal cycle. For practitioners who do not renew their licenses or who are unable to meet the practice requirement for renewal, regulations have been adopted for reinstatement of a license which has been expired for more than two years. The Advisory Board proposed and the Board adopted a supervised practicum of 160 hours to be completed in two consecutive months for persons out of practice for more than two years. In order to clarify and more broadly interpret active practice, the general responsibilities of an occupational therapist in section 90 have been amended to include supervisory, administrative consultative or educational activities related to the delivery of occupational therapy.

Impact on regulated entities:

There are no additional or amended fees included in these emergency regulations. An occupational therapist who has allowed this license to lapse will be required to serve a supervised practicum, but he may be employed as an occupational therapist assistant during that time. Therefore, there would be no cost to the individual who is seeking initial licensure or reinstatement.

2. Publication of a NOIRA to replace emergency regulations

The Board of Medicine hereby requests permission to publish a Notice of Intended Regulatory Action to replace the Emergency Regulations with permanent regulations. (NOIRA form to be submitted is attached.)