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Fast-Track Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC85-80-10 et seq.
Regulation title(s)	Regulations Governing the Licensure of Occupational Therapists
Action title	Elimination of CE form and change in title of chapter
Date this document prepared	6/28/17

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board has proposed amendments to section 71 on continued competency requirements to eliminate the requirement for completion of the Continued Competency Activity and Assessment Form. An amendment will also change the title of the chapter from Regulations Governing the Licensure of Occupational Therapists to Regulations Governing the Practice of Occupational Therapy.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 22, 2017, the Board of Medicine amended 18VAC85-80, Regulations Governing the Licensure of Occupational Therapists.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 (6), 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 (§2.2-4000 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 specific mandate for the Board of Medicine to promulgate regulations requiring continuing education is found in:

§ 54.1-2912.1. (Effective until July 1, 2022) Continued competency and office-based anesthesia requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence, which may include continuing education, testing, or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amendment is to: 1) eliminate the requirement that the Continued Competency Activity and Assessment Form be completed and retained with supporting documentation of CE courses or activities for renewal of an active license; and 2) change the title of the chapter for consistency with licensure and regulation of both occupational therapists and occupational therapy assistants. Since the content of the requirement for continuing education is not being amended, there is assurance that occupational therapists will continue to be minimally competent to practice with skill and competency and therefore to protect public health and safety.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The changes are unanimously approved by the Advisory Board on Occupational Therapy. These changes were included in an action that was previously adopted, which included an amendment for recognition of NBCOT certification as evidence of completion of continuing education. That proposed action has been withdrawn because there was opposition to that amendment, and there was legislation passed in the 2017 General Assembly to prohibit that amendment. The remaining amendments in the previous action – now included in the fast-track action – had no opposition.

Substance

Please 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.

The Board has proposed amendments to section 71 on continued competency requirements to eliminate the requirement for completion of the Continued Competency Activity and Assessment Form. An amendment will also change the title of the chapter from Regulations Governing the Licensure of Occupational Therapists to Regulations Governing the Practice of Occupational Therapy.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

- 1) There are no primary advantages or disadvantages to the public.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system.” There is no restraint on competition as a result of promulgating this regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Since the Continued Competency Activity and Assessment Form is a requirement in regulation, there is no flexibility in accomplishing the objective of this action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The individuals affected will be occupational therapists and occupational therapy assistants in renewal of licensure.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 3,803 persons with a current license as an occupational therapist and 1,384 with a current license as an occupational therapy assistant. 60% work in skilled nursing facilities 12% in rehab/residential or inpatient facilities 9% in K-12 school systems 6% in assisted living/continuing care 6% in home health care 16% in other settings, such as academic, private practice, etc. Only 2% work in private practices, either in a group or solo practice, so it is likely that would be the number of small businesses. (23 out of 1,037 responses)</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no costs.</p>

<p>Beneficial impact the regulation is designed to produce.</p>	<p>The amendments eliminate the need to maintain the continuing competency form provided by the Board, so licensees are allowed to document compliance by provision of certificates or other evidence of completion of the required hours.</p>
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no alternatives to the purpose of the action, which is less burdensome and less intrusive.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current	Current requirement	Proposed change, intent, rationale, and likely impact of
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section number		proposed requirements
71	Sets out the continued competency requirements for renewal of an active license, including maintenance of a Continued Competency Activity and Assessment Form.	<p>Maintenance of such a form is an additional burden for licensees, who can provide documentation of Type 1 activities and courses through certificates from approved providers or transcripts of coursework taken. The amended action also eliminates the specific percent of licensees who may be audited; a statistically valid number is calculated for each audit, so the regulatory requirement may be problematic.</p> <p>Additionally, the title of the chapter has not reflected the fact the occupational therapy assistants are also licensed and regulated. When regulation of OTs was changed from certification to licensure, the title of the chapter was amended under an exempt action. The chapter governing the practice of occupational therapy, not just the licensure of occupational therapists, so the amendment is necessary.</p>