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Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC85-80
VAC Chapter title(s)	Regulations Governing the Practice of Occupational Therapy
Action title	Implementation of Compact
Date this document prepared	April 8, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Chapter 242 of the 2021 Acts of the Assembly mandates membership of the Commonwealth of Virginia in the Occupational Therapy Interjurisdictional Compact (“OT Compact”) and requires the Board to promulgate regulations to implement the provisions of the act to be effective within 280 days of enactment. The Board did so, and emergency regulations have been effective since January 1, 2022. The Board now submits proposed permanent regulations to implement the OT Compact in accordance with law.

Amendments to the regulations add definitions consistent with the OT Compact, set the fee for a compact privilege to practice in Virginia, and specify that renewal of the privilege is based on adherence to the OT Compact rules for continued competency.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

OT = Occupational therapist
OTA = Occupational therapy assistant
OT Compact = Occupational Therapy Interjurisdictional Compact

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Chapter 242 of the 2021 Acts of the Assembly mandates membership of the Commonwealth of Virginia in the Occupational Therapy Interjurisdictional Compact. The Board promulgated emergency regulations to implement the provisions of the act, which emergency regulations became effective January 1, 2022. The Board now proposes permanent regulations to replace the emergency regulations.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’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, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system, states in pertinent part:

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions. ...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified,

licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. 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.).

Va. Code § 54.1-2400.

Section 54.1-2956.7:1 of the Code of Virginia creates the OT Compact.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The proposed permanent regulations, which are almost identical to the emergency regulations, are necessary to comply with the mandate of the General Assembly that required Virginia to participate in the OT Compact. Additionally, the amendment to define “practitioner” to be inclusive of OTs and OTAs practicing in Virginia pursuant to a compact privilege is essential to ensure that those who are clinically practicing on patients/clients in Virginia are accountable to the same standards of care as OTs and OTAs who hold a Virginia license. Otherwise, occupational therapy services for Virginia citizens provided by persons practicing through the OT Compact would potentially be harmful to the citizens’ health, safety, or welfare.

Substance

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.

Amendments to regulations add definitions consistent with the OT Compact, set the fee for a compact privilege to practice in Virginia, and specify that renewal of the compact privilege is based on adherence to the OT Compact rules for continued competency.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 1) The advantage to the public is assurance that OTs and OTAs practicing Virginia through the OT Compact will be held to the same standards of conduct as Virginia licensees; there are no disadvantages to the public.
- 2) There are no specific advantages or disadvantages to the agency.
- 3) There are no other pertinent matters of interest.

The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The proposed regulation promulgated by the Board does not represent any restraint on that competition. Regulations for participation in the OT Compact are a foreseeable result of the statute requiring the Board to join the OT Compact. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system” and has acted in accordance with a statutory mandate in § 54.1-2956.7:1 of the Code of Virginia.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

None

Localities Particularly Affected

None

Other Entities Particularly Affected

None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	See analysis below in discussion of 18VAC80-26.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no costs to other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no benefits to agencies.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	No cost to localities.
Benefits the regulatory change is designed to produce.	No benefits to localities.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The persons affected by this regulatory change would be occupational therapists or occupational therapy assistants who want to be issued a compact privilege to practice in Virginia. They will be able to obtain a compact privilege and practice in Virginia once the OT Compact is operational.
Agency's best estimate of the number of such entities that will be affected. 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.	The OT Compact only recently became operational with over 10 states participating. The OT Compact expects to begin issuing compact privileges in mid-2023 or later. Because no compact privileges have been issued, the agency has no estimate of the number of individuals who will seek to practice in Virginia under a compact privilege.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:	There is a cost of \$70 for an OT and \$45 for an OTA to obtain or renew a compact privilege. See analysis below in discussion of 18VAC80-26 for more information.

<p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of these regulations are compliance with the requirements to be a member of the OT Compact, which may result in greater availability of services and access to occupational therapy services for citizens of the Commonwealth from persons practicing under a compact privilege.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives as the promulgation of regulations is a mandate of the legislation.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There were no alternative regulatory methods considered as the Board has complied with the mandate to promulgate regulations to implement the OT Compact.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16,

2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Not applicable.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

The comment period on the NOIRA was open from January 17, 2022 to February 16, 2022. No comments were received.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board of Medicine is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Erin Barrett, Senior Policy Analyst, 9960 Mayland Drive, Suite 300, Henrico, VA 23233; email: erin.barrett@dhp.virginia.gov FAX- 804-527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website

(<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
80-10	Sets out definitions for words and terms used in the chapter	Words and terms used in § 54.1-2956.7:1, which is the OTCompact language, are included with definitions. In addition, the term “practitioner” is defined to include OTs and OTAs practicing in Virginia with a compact privilege. In regulations setting out the standards of practice, the term “practitioner” is used. It is essential to be able to interpret those standards as applicable to compact privilege holders as well as Virginia licensees.
80-26	Sets out fees charged for licensure and renewal	With the OT Compact, each state will issue a compact privilege to an OT or OTA who qualifies for a privilege as a licensee of another compact state. Since Virginia was the first state to adopt the OT Compact, there is no precedence for such a fee. There are administrative costs involved in issuance and renewal of a compact privilege, as well as the potential for costs associated with investigation and disciplinary action against a person practicing in Virginia with a compact privilege. Therefore, the Board determined that a reasonable fees are \$75 for issuance

		or renewal of a privilege to practice for an OT and \$40 for an OTA.
80-70	Sets out requirements for biennial renewal of licensure	Subsection C is added to specify that, in order to renew a compact privilege to practice in Virginia, the holder of that privilege must comply with the rules adopted by the OT Compact Commission in effect at the time of the renewal. The Virginia Board of Medicine is bound by participation in the OT Compact to adhere to the rules of the OT Compact regarding issuance and renewal of compact privileges.
80-71	Sets out continuing competency requirements for licensees	The term “practitioner” is amended to “licensee” because the requirements of continuing education in section 71 are applicable to an OT or OTA renewing a Virginia license.

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage
80-10	Sets out definitions for words and terms used in the chapter	The terms “compact” and “compact privilege” in the emergency regulations referred to § 54.1-2900 for definition of those terms, but the terms are not defined in that statute. “Compact” is now defined in the proposed regulation as “the Occupational Therapy Interjurisdictional Licensure Compact,” and “compact privilege” refers to the definition contained in § 54.1-2956.7:1.