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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board of Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC85-80
<b>VAC Chapter title(s)</b>	Regulations Governing the Practice of Occupational Therapy
<b>Action title</b>	Implementation of 2022 periodic review of Chapter 80
<b>Date this document prepared</b>	October 6, 2022 Revised August 5, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

Pursuant to its periodic review of Chapter 80, the Board has adopted amendments to delete outdated or redundant provisions and clarify others consistent with current practice and to reduce barriers to licensure.

### 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 therapist assistant

### Statement of Final Agency Action

*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.*

The Board of Medicine voted to amend the Regulations Governing the Practice of Occupational Therapy by fast-track action on October 6, 2022.

### 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 the ORM procedures, "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."*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

The impetus for these amendments were the Board's 2022 periodic review of this chapter. Additionally, this rulemaking reduces requirements for licensees, will be noncontroversial, and is appropriate for fast-track rulemaking.

### 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 of the Board of Medicine are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o 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."

Virginia Code § 54.1-2956.1 requires the Board to license occupational therapists.

### 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 is intended to solve.*

The rationale for the changes included in this action are the reduction of regulations, elimination of provisions redundant of statutory language, eliminations of provisions that are no longer needed, and to reduce barriers to licensure. The elimination of redundant provisions and reduction of barriers to licensure generally protect the health, safety, and welfare of citizens by ensuring a sufficient workforce of OTs and OTAs with a reduction of barriers and reduction of redundant or outdated requirements. The goals the regulatory change is intended to solve is the elimination of redundant or outdated provisions from Chapter 80.

## 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.*

The changes delete redundant statutory provisions or useless directions in regulation, including provisions related to: public participation regulations; outdated fee reductions; requirements to verify professional practice to obtain a license; eliminate the requirement to attest to any hours of Type 2 continuing education; eliminate the Board's requirement to periodically conduct random audits; eliminate redundant scope of practice provisions which are identical to language in the Code; and eliminate language related to maintenance of documents and closing of a practice which are related to physicians, not OTs or OTAs.

## 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 primary advantages to the public are potentially increased numbers of practitioners obtaining a license, thereby increasing the number of practitioners available in the Commonwealth to see patients. There are no disadvantages to the public.
- 2) There are no primary 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. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 "[t]o 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 promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

## 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**

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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**

Consistent with § 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 the proposed change versus the status quo.

**Impact on State Agencies**

<p><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</p>	<p>The Department of Health Professions is a Special Fund agency. All operating costs for the regulatory boards are taken from fees for licensing and renewal of regulated professions. Although one \$10 fee has been eliminated, that fee is so minimal and used so infrequently that its elimination will have virtually no effect on Board funds.</p>
<p><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.</p>	<p>There are no costs to other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to state agencies.</p>

**Impact on Localities**

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

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

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

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.	Current licensees, potential applicants by endorsement, and potential registrants for voluntary out of state licenses will be affected.
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 Board has no data regarding any potential applicants by endorsement or potential registrants for voluntary out of state licenses.  As of June 30, 2022, there were 4,952 individuals licensed as OTs and 1,824 individuals licensed as OTAs.
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: 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.	There are no costs to individuals, businesses, or entities.
Benefits the regulatory change is designed to produce.	Fewer redundant regulations and reduced regulatory burden.

**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.*

These are existing regulatory requirements. To remove or change them, the Board must amend the applicable regulations. There is no alternative.

**Regulatory Flexibility Analysis**

*Consistent with § 2.2-4007.1 B 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.*

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The amendments are necessary to reduce burdens on applicants and remove redundant or duplicative provisions, as stated above. 1) These amendments already reduce compliance requirements. 2) The amendments already reduce reporting requirements. 3) The amendments already simplify compliance. 4) There are no design or operational standards in the regulations, and the regulations do not apply to businesses. 5) The regulations do not apply to businesses.

### 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.*

*Consistent with § 2.2-4011 of the Code of Virginia, 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.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail to Erin Barrett, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233; by email to [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov); by fax to (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.

### 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.*

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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	Contains a definition of “advisory board.”	This term is not used in Chapter 80. Therefore, the Board has deleted it in this section.
80-20	Instructs individuals to review 18VAC85-11 for information regarding involvement of the public in development of regulations for the Board of Medicine.	Deleted. This is a reference to another existing chapter of the regulations of the Board of Medicine. Regulations do not need to contain a reference.
80-26(A)(3)	Contains a reduced fee for the 2020 renewal cycle.	Deleted. This fee reduction renewal period has passed.
80-35(3)	Requires all applicants to provide verification of active practice to receive licensure.	Requirement deleted. The requirement to provide proof of active practice does not make sense for initial applicants. The provision referred to, 18VAC85-80-60 is directed to applicants from other jurisdictions. This appears to have been an error.
80-65(4)	80-65(4) requires an applicant for voluntary out-of-state practice to pay the Board \$10.	Deletion of this fee. The fee itself costs more administratively to collect than the amount. This provision is not used frequently, so the loss of \$10 will not negatively impact the Board’s funds.
80-71	(A) and (B) contain requirements for continuing education, including 20 total hours, made up of Type 1 and Type 2.  (D) currently requires the Board to conduct audits of continuing education.	The Board has deleted the requirement for Type 2 continuing education hours, making the new requirement for 10 hours of continuing education per biennium (5 per year). The Board feels that the reporting requirement for Type 2 hours, and the requirement for Type 2 hours, is unnecessarily burdensome. Most practitioners would complete activities that are included as Type 2 regardless of the requirement, and most practitioners obtain far more than 10 hours of Type 1 continuing education per renewal cycle. Thus the Type 2 requirement is an unnecessary and often impossible to verify requirement.  (C) is added to allow up to two hours of continuing education to be satisfied through supervision of students. The Board felt that supervision of students was one category of Type 2 hours that was needed and worthwhile for both practitioners and students. The Board, however, did not feel it should be a separate category and has combined it into the 10 hours required per biennium that will now be required.

		80-71(D) is deleted. The Board has only performed one or two of these audits in the last two decades, and only on two sets of its 18 types of licensees. The Board does not have staff or the ability to conduct such audits and has not for years.
80-72	<p>(B)(3) requires applicants to reactivate a license that was inactive for two to six years to demonstrate two years of active practice to reactivate a license.</p> <p>(C) requires applicants to reactivate a license that was inactive for more than six years to likewise demonstrate active practice.</p>	<p>Deleted because the requirement is nonsensical and requires work out of state. An inactive licensee cannot practice in Virginia. The language was originally drafted with individuals living and working out of state in mind. That is not the current workforce, however, which is far more likely to include individuals taking time away from work to care for family or for other reasons, not to work in another state. The Board felt this was an unnecessarily restrictive requirement.</p> <p>For applicants to reactivate a license that has been inactive for six or more years who have not been engaged in active practice, presumably in another state, the Board is requesting evidence of current certification by the National Board for Certification in Occupational Therapy or for the applicant to retake and pass the national examination. The Board feels this demonstration of clinical competence would be necessary if an individual had been out of practice for six or more years.</p>
80-73(D)	Requires holders of restricted volunteer licenses to obtain 10 hours of continuing education per biennium in both Type 1 and Type 2.	Consistent with the continuing education requirement changes for active licenses, the requirement for Type 2 continuing education is eliminated here and the amount of continuing education required is cut in half, from 10 hours to 5.
80-80	<p>(B) requires OTs or OTAs who have allowed their license to lapse for two years but less than six years, and have not engaged in active practice, to perform supervised active practice during two months.</p> <p>(C) requires an OT or OTA whose license has lapsed for six or more years, and has not engaged in active practice, to perform supervised active practice for four months.</p>	These provisions require unlicensed individuals to actively practice, which makes no sense. The Board instead intends to require that an individual who allowed their license to lapse for two or more years provide evidence of current certification by the National Board for Certification in Occupational Therapy or to retake the national exam. The difference between two to six years of a lapsed license and more than six years is deleted.
80-90	States scope of practice for OTs and OTAs.	This section is repealed. This language is very close to the scopes of practice contained in Virginia Code § 54.1-2900, and what is not contained in Code is repeated in the sections following 90. The only provision not included is now added to section 100 (see below).



80-100	Section lists individual responsibilities.	<p>The title is changed from “Individual responsibilities” to “Responsibilities.”</p> <p>(E) is added to place language regarding supervisory, administrative, educational, or consultative activities constituting occupational therapy from the repealed section 90.</p>
80-140	<p>This section covers treatment and handling of patient records. (E)(2) requires practitioners post information related to destruction of patient records.</p> <p>(F) restates provisions of Virginia Code § 54.1-2405 regarding requirements of closing, selling, or relocating a practice.</p>	<p>(E)(2) is deleted and the subsection reorganized for clarity. The posting requirement regarding destruction of patient records was intended for physicians, not OTs or OTAs that predominantly work for medical offices or hospitals which maintain their own destruction policies.</p> <p>(F) is deleted. This is a repetition of language in statute, where the practitioner requirement is located. The language is not a full repetition of the language, however, and is therefore misleading to practitioners who would refer to the regulation rather than the statute.</p>