



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 85-80 Regulations for Licensure of Occupational Therapists**  
**Department of Health Professions**  
**Town Hall Action/Stage: 5797 / 9593**  
September 2, 2022

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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 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

As the result of a 2021 legislative mandate, the Board of Medicine (Board) proposes to make permanent an emergency regulation that facilitates the state's membership in the Occupational Therapy Interjurisdictional Licensure Compact (Compact). The emergency regulation is scheduled to expire on June 30, 2023.<sup>2</sup>

### **Background**

Chapter 242 of the 2021 Acts of the Assembly<sup>3</sup> entered the Commonwealth into the Compact. Under the Compact, Occupational Therapists (OTs) and Occupational Therapy Assistants (OTAs) who are licensed in good standing in a Compact member state may practice in other Compact member states via a "compact privilege." The Occupational Therapy Compact Commission (Commission), which is comprised of representatives from the member states,

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<sup>1</sup> 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.

<sup>2</sup> See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9367>

<sup>3</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0242>

creates rules concerning the Compact that affect member states. Chapter 242 defines “rule” as a regulation promulgated by the Commission that has the force of law.

The Commission held their inaugural meeting on August 3 and 4 and has yet to create any rules. The Department of Health Professions (DHP) states that the Compact does not anticipate that member states will be able to issue compact privileges until late 2023 at the earliest.

The Board’s proposed amendments to the regulation are as follows:

- Adding definitions for compact,<sup>4</sup> compact privilege<sup>5</sup>, and practitioner;
- Specifying that “The fee for issuance of a compact privilege or the biennial renewal of such privilege shall be \$75 for an occupational therapist and \$40 for an occupational therapy assistant[;]”
- Stating that: “In order to renew a compact privilege to practice in Virginia, the holder shall comply with the rules adopted by the Occupational Therapy Compact Commission in effect at the time of the renewal[;]” and
- Changing “practitioner” to “licensee” in the section on continued competency requirements.

“Practitioner” is defined as “an occupational therapist or occupational therapy assistant licensed in Virginia or an occupational therapist or occupational therapy assistant practicing in Virginia with a compact privilege.” The Board is proposing to change “practitioner” to “licensee” in the continued competency requirements section since Virginia’s continued competency requirements would not apply to OTs and OTAs practicing in Virginia with a compact privilege. Those individuals would need to follow the continued competency requirements in the state where they are licensed.

The following states are current participants in the Compact: Alabama, Arizona, Colorado, Delaware, Georgia, Iowa, Kentucky, Maine, Maryland, Missouri, Nebraska, New

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<sup>4</sup> “Compact” is defined as “the Occupational Therapy Interjurisdictional Licensure Compact.”

<sup>5</sup> “Compact privilege” is defined as “the definition of the term in § 54.1-2956.7:1 of the Code of Virginia.” There it is defined as “the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.”

Hampshire, North Carolina, Ohio, South Carolina, Utah, Tennessee, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

### **Estimated Benefits and Costs**

Currently, OTs and OTAs must be licensed in each state in which they practice. As stated above, the Compact rules have yet to be issued. Chapter 242 does state the following: “The purpose of this Compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services.” So presumably the rules will make it easier and/or less expensive to gain compact privilege in a non-home state than to gain or renew licensure in that non-home state. The Board’s proposed fees for compact privileges are lower than the fees charged by the Board for initial licensure and license renewal (see table below).

	OTs	OTAs
Initial Licensure	\$130	\$70
Biennial License Renewal	\$135	\$70
Initial Compact Privilege	\$75	\$40
Biennial Compact Privilege Renewal	\$75	\$40

To the extent that the rules and fees are set so that it is substantially easier and/or less expensive to gain compact privilege in Virginia than licensure, we may see more OTs and OTAs who are licensed in other states begin to offer their services in the Commonwealth. This would be beneficial for Virginia consumers of occupational therapy services and employers looking to hire OTs and/or OTAs. Some Virginia-based OTs and OTAs and their employers may also benefit if it is easier and/or less expensive to gain compact privilege than licensure in other Compact states, so that clients can be served in those other states. This would be particularly true for those that are near the border with one of the Commonwealth’s neighboring states, all of which are Compact states.<sup>6</sup>

If there are more OTs and OTAs offering their services in Virginia, that would create greater competition for jobs. According to survey data from two Virginia Healthcare Workforce

<sup>6</sup> The District of Columbia does not appear to participate in the Compact.

Data Center reports (workforce reports) published in March 2021, nine percent of OTs and twelve percent of OTAs in the Commonwealth experienced involuntary unemployment in the previous year.<sup>7</sup> Thus, some OTs and OTAs may be worse off if membership in the Compact increases the supply of occupational therapy services in Virginia without a commensurate increase in demand.

According to DHP, there are 1,050 OTs and 221 OTAs who are licensed in Virginia but who have out-of-state addresses. The agency does not have data on how many of these individuals are licensed in other states. For those that are licensed in other Compact states, obtaining the compact privilege in the Commonwealth rather than renewing their Virginia license would save the OTs \$60 and the OTAs \$30. If all 1,050 OTs and 221 OTAs were licensed in other Compact states, and chose to obtain the compact privilege rather than renew their Virginia license, revenue for the Board would decrease by \$69,630. The Board's expenses may decrease as well though, since continued competency requirements would no longer need to be checked for these individuals. Additionally, as of July 31 the Board had a cash balance of over \$10 million; consequently, this potential loss of revenue could be absorbed in the current budget for the foreseeable future.

### **Businesses and Other Entities Affected**

There are a total of 4,919 OTs and 1,797 OTAs licensed in Virginia.<sup>8</sup> According to survey data from the workforce report on OTs, the primary type of employers of OTs in the Commonwealth are distributed as follows:

<u>Establishment Type</u>	<u>Percentage</u>
General Hospital, Inpatient Department	15%
Skilled Nursing Facility	14%
K-12 School System	13%
Home Health Care	13%
Rehabilitation Facility, Outpatient Clinic	9%

<sup>7</sup> Sources: <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0119OT2020.pdf> and <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0131OTA2020.pdf>

<sup>8</sup> Source: DHP

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%
Other	7%

According to survey data from the workforce report on OTAs, the primary type of employers of OTAs in the Commonwealth are distributed as follows:

<u>Establishment Type</u>	<u>Percentage</u>
Skilled Nursing Facility	40%
Home Health Care	15%
Assisted Living or Continuing Care Facility	9%
K-12 School System	8%
Rehabilitation Facility, Residential/Inpatient	8%
General Hospital, Inpatient Department	5%
Rehabilitation Facility, Outpatient Clinic	4%
Private Practice, Group	3%
Private Practice, Solo	1%
Academic Institution	1%
General Hospital, Outpatient Department	1%
Mental Health, Inpatient	1%
Other	4%

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>9</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Participation in the Compact enables OTs and OTAs licensed in Virginia to practice in other states. It also may increase the supply of OTs and OTAs who can practice in the Commonwealth, which brings more competition for jobs within Virginia. The increased competition resulting from the Compact may make it more difficult for some OTs and OTAs to find employment or preferred employment within the state. As stated above, the workforce surveys found that nine percent of OTs and 12 percent of OTAs experienced involuntary unemployment in the previous year. So some OTs and OTAs may be worse off. Participation in the Compact results from the legislation, and not the proposed amendments to the regulation. Thus, no adverse impact is indicated for the proposed amendments to the regulation.

### **Small Businesses<sup>10</sup> Affected:<sup>11</sup>**

#### Types and Estimated Number of Small Businesses Affected

The Board regulates individual practitioners, but not their employers. Thus, data on the number of small businesses affected is not available. The types of businesses that are potentially affected and may qualify as small are described in the tables above.

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<sup>9</sup> 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. 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.

<sup>10</sup> 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.”

<sup>11</sup> 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.

### Costs and Other Effects

Some small providers of occupational therapy services may be worse off through increased competition from firms based out of state. Others may be better off through increased access to out-of-state clients.

### Alternative Method that Minimizes Adverse Impact

As the Compact is required by statute, there is no alternative method that reduces adverse impact.

### **Localities<sup>12</sup> Affected<sup>13</sup>**

Virginia's decision to join the Compact may particularly affect localities bordering or otherwise near neighboring states, all of which are Compact members. Costs are not introduced for local governments.

### **Projected Impact on Employment**

Joining the Compact may increase the supply of OTs and OTAs that could practice in the Commonwealth. This may lead to more OTs and OTAs working in Virginia.

### **Effects on the Use and Value of Private Property**

To the extent that the supply of OTs and OTAs increases in the Commonwealth, hiring costs for employers may decrease. This would commensurately increase the value of the employing firms. The proposed amendments do not affect real estate development costs.

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<sup>12</sup> "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.

<sup>13</sup> § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.