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## Fast-Track Regulation Agency Background Document

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|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <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>                                           | Expansion of options for reinstatement of lapsed occupational therapy or occupational therapy assistant license |
| <b>Date this document prepared</b>                            | 6/26/2025                                                                                                       |

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.*

In response to stakeholder concerns regarding cost and barrier to practice issues, the Board is amending regulations to ensure rapid return to practice in Virginia for those holding out of state licenses and inactive licenses in Virginia or who have allowed a Virginia license to lapse. The amendments would expand what the Board would accept for reinstatement and a reactivation of an inactive license to include a license in another jurisdiction and completing continuing competency hours in addition to currently accepted items. This action also removes references to active practice which was removed in another regulatory action.

### 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.*

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OT – Occupational therapist  
OTA – Occupation therapy 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) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”*

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On June 26<sup>th</sup>, 2025, the Board of Medicine adopted final amendments to Regulations Governing the Practice of Occupational Therapy.

### 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.*

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The impetus for this action is stakeholder communication with concerns about overly-restrictive requirements to reinstatement and reactivation of Virginia licenses.

This regulatory change is expected to be noncontroversial and is appropriate for the fast-track rulemaking process because it expands options and reduces the time for someone with a lapsed or inactive license in Virginia to obtain a full and unrestricted license.

### 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.*

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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.”

## 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.*

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The rationale for this action is that by increasing the options for what evidence may be presented to satisfy requirements for returning to practice from inactive license or a lapsed licensed, there will be a reduced burden on OT licensure and more OTs and OTAs may return to practice in Virginia. This regulatory change is essential to protect the health, safety, and welfare of citizens because the General Assembly has determined the Board is responsible for promulgating regulations to ensure the safety of the public. The goals of this regulatory change are to reduce barriers to returning to practice in Virginia and the problems the change is intended to solve are a limited and potentially burdensome pathway to returning to practice as an OT or OTA in Virginia.

## 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.*

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In 18VAC85-80-72, eliminated obsolete references to an active practice requirement in subsection A and C and expanded the list of evidence an applicant may provide to elevate their inactive license to a full license in subsection C. In addition to expanding the list, applicants are now required to provide evidence of two of the four accepted items.

In 18VAC85-80-80, expanded the list of evidence an applicant may provide to reinstate their license for those whose license has been lapsed less than four years in subsection B. Subsection C is rewritten entirely to mirror the requirements of 18VAC85-80-72(C).

## 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.*

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- 1) The primary advantages to the public are a possible increase of OTs and OTAs practicing in the Commonwealth. 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

|                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                  |
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| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:<br>a) fund source / fund detail;<br>b) delineation of one-time versus on-going expenditures; and<br>c) whether any costs or revenue loss can be absorbed within existing resources | 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.<br><br>This regulatory action will not create any costs or savings for the board or agency. |
| <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.                                                                                                                                                                                                                                      |

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| For all agencies: Benefits the regulatory change is designed to produce. | There are no benefits to state agencies. |
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### 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.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                   |
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| 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.                                                                                                                                                                                                                                                                                                                                                                                 | Individuals affected would include those with a current inactive license and anyone who at one time held an OT or OTA license and has since allowed it to lapse.                                  |
| 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:<br>a) is independently owned and operated and;<br>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.                                                                                                                                                                                                          | Numbers of regulated entities who could be affected can be found on the agency's quarterly licensing reports, located here: <a href="#">Virginia Dept. of Health Professions - Agency Reports</a> |
| 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:<br>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;<br>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;<br>c) fees;<br>d) purchases of equipment or services; and<br>e) time required to comply with the requirements. | There are no projected costs resulting from this regulatory change.                                                                                                                               |
| Benefits the regulatory change is designed to produce.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | A less burdensome process to reactivate a license or apply for reinstatement as an OT or OTA.                                                                                                     |

## 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.*

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There is no alternative to regulation. These changes amend a current regulation, and that may only be done through regulatory action.

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

### 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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(1) This action already establishes a less stringent requirement. (2) No schedules or compliance requirements exist. (3) No schedules or compliance requirements exist. (4) No design or operational standards exist. (5) The agency does not regulate small businesses and, if it did, could not exempt small businesses from public safety requirements without severe detriment to the public.

### 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 Matt Novak, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233; by email to [matthew.novak@dhp.virginia.gov](mailto:matthew.novak@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.

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 | New chapter-section number, if applicable | Current requirements in VAC         | Change, intent, rationale, and likely impact of new requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------|-------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 80-72                          |                                           | Requirements for inactive licensure | <p>Eliminates “maintain hours of active practice or” in subsection A as this is from a now-defunct requirement and should be removed.</p> <p>Removes the same reference to active practice in subsection C and amends C1-C4 to add new options to meet the requirements for reactivating a license that has been inactive for six years or more, now requiring that an applicant provide evidence of two of the four acceptable items.</p> <p>In order, additions to the list are “evidence of a current, active, and unrestricted license in another U.S. jurisdiction” and “documentation of completed continued competency hours equal to the requirement for six years.” These allow individuals who have licenses in other jurisdictions and placed their Virginia licenses on inactive status to be reactivated faster. Other additions to the list include “evidence of” current certification by the national organization, as providing evidence of national certification is sufficient, and requiring a “passing score on the national examination obtained within two years</p> |

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|       |  |                                | <p>preceding application for reinstatement.”</p> <p>The addition of the two-year timeframe helps ensure those returning to practice after an extensive time out are up to date with current practice requirements and techniques.</p>                                                                                                                                                                                                                                          |
| 85-80 |  | Requirements for reinstatement | <p>Amends subsection B to add the same options as provided in 18VAC85-80-72(C), however an applicant for reinstatement who has allowed their license to lapse for less than four years need only provide evidence of one item on the list. Four years is equivalent to missing one renewal cycle, so protection of the public can be satisfied by proving only one of the options.</p> <p>Rewrites subsection C to be identical to 18VAC85-80-72(C). Reasons are the same.</p> |