REGISTRAR'S SUBMISSION PACKAGE

BOARD OF MEDICINE
18 VAC 85-80-10 et seq.
Regulations for the Licensure of Occupational Therapists

Analysis of Proposed Amendments to Regulation

1. Basis of Regulation:

Title 54.1, Chapter 24 and Chapter 29 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and responsibility to promulgate regulations.

§§ 54.1-2956.1 through 54.1-2956.5 establishes the requirement for the licensure of this profession and specifies the powers and duties of the Advisory Board on Occupational Therapy.

2. Statement of Purpose:

Amendments are proposed pursuant to a statutory mandate in Chapter 227 of the 1997 Acts of the Assembly for the Board of Medicine to promulgate regulations which assure that licensed practitioners continue to be competent to practice. The proposed amendments are intended to establish those requirements for renewal or reinstatement of licensure which are necessary to protect the public health and safety in the delivery of occupational therapy services. The proposed amendments also establish an inactive license for licensees who are not engaged in practice and do not want to meet the requirements for renewal of an active license; and they set forth the conditions which must be met to reactivate such a license.

3. Substance of Regulations:

18 VAC 85-80-10. A definition of "active practice" was added to specify the number of hours necessary to constitute active practice and that the active practice of occupational therapy may include activities that are not direct patient care. Other amendments are technical and not substantive.

18 VAC 85-80-70. The current regulations require that an occupational therapist be professionally active in order to renew each biennium. The amendment will specify what is intended by the requirement – that the licensee must have practiced at least 160 hours during the past biennium. In addition, completion of continuing competency is required for biennial renewal. Other amendments are editorial only.

18 VAC 85-80-71. Continuing competency requirements for renewal of an active license.

This new section requires the following: a) Completion of an Continuing Competency Assessment and Activity Form showing as assessment of practice needs and at least 20 hours of continuing learning activities, 10 of which must be Type 1 offered by a sponsor recognized by the professions; b) exemption for newly licensed practitioners for their first renewal; c) retention of records for 6 years and a random audit by the board; and d) provisions for an extension or exemption for all or part of the requirements.

18 VAC 85-80-72. Inactive license.

A new section is proposed to allow a practitioner to request an inactive license without requiring evidence of continuing competency. Such a license does not entitle the licensee to perform any act which would require a license to practice. The proposed amendments would also add requirements for reinstatement of an inactive license to active status to include: evidence of continuing competency hours equal to the number of years of inactivity, not to exceed four years; and documentation of 160 hours of active practice or completion of a board-approved practice under the supervision of a licensed occupational therapists.

18 VAC 85-80-80. Reinstatement.

A proposed amendment will require that anyone who has allowed his license to lapse for two but less than six years to serve a board-approved practice of at least 160 hours under the supervision of a licensed occupational therapist. Anyone whose license has been lapsed for more than six years and who has not been practicing in another jurisdiction would be required to complete a board-approved practice under supervision for 320 hours in four consecutive months.

18 VAC 85-80-120. Fees.

The biennial renewal fee for an active license is currently $85; the proposed biennial renewal for an inactive license is $65.

4. <u>Issues of the Regulation</u>:

1) Type and amount of continuing competency requirements

Chapter 227 of the 1997 Acts of the Assembly amended the medical practice act by adding §54.1-2912.1, which mandates that the Board promulgate regulations for the establishment of continuing competency requirements. To carry out that mandate, the Board requested that each of the advisory boards study the need for and type of continuing competency requirements for its profession, review what other states require, and develop a recommendation in the form of proposed amendments to regulation.

The goal of the Advisory Board on Occupational Therapy and the intent of the Board was to develop requirements that would: 1) encourage learner-directed continuing education through which a practitioner can identify a practice question or problem, seek the learning activity which provides needed information or teaches a new skill, and thereby, enhance his expertise or ability to practice; 2) offer a choice of content and form that is flexible enough to meet the needs of occupational therapists

in a variety of practice settings in any location in Virginia; and 3) assure the public that occupational therapits ag their skills and competencies.

As a result, the Advisory Board recommended and the Board adopted a requirement which is aimed at involving the practitioner as a continuing learner who is consistently assessing the questions and problems encountered in his practice. The 20 hours of continuing competency required are divided into two types: (1) In Type 1 continuing learning activities, the 10 hours required biennially must be offered by a sponsor or organization which is sanctioned by the profession and which provides documentation of hours to the practitioner. The hours may include formal course work, in-service training, or specialty certification; and (2) In Type 2 continuing learning activities, the 10 hours required biennially may or may not be approved by a sponsor or organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning; occupational therapists document their own participation on the attached form.

After the activity is completed, the practitioner should indicate on the form provided by the Board the predicted outcome. He should indicate whether he will: a) make a change in his practice, b) not make a change in his practice, and/or c) needs additional information on this topic.

In its adoption of these requirements, the Board is responding to the research which indicates that the most effective continuing learning occurs when it is self-directed and designed to be practitioner-specific. It is also most effective if there has been some assessment of practitioner's needs and some evaluation of outcome and possible effects on practice. In addition, the Board is cognizant of the need to have at least half of these continuing learning hours validated through some recognized organization or sponsor.

2) Requirements for reactivation of an inactive or lapsed license.

Along with requirements for continuing competency for renewal of licenses, the Board is proposing an inactive license for those practitioners who want to take a leave of absence or are now out-of-state and have no intention of engaging in active practice in the Commonwealth. In doing so, requirements for reactivation of such a license are necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive to provide evidence of continuing competency hours equal to the amount of time the license has not been active, not to exceed four years. If a practitioner has not engaged in active practice for two but less than six years, the Board is requiring that he serve a board-approved practice of 160 hours under the supervision of a licensed occupational therapist. If a practitioner has not actively practiced for more than six years, the Board has concerns about his knowledge and skills and his ability to provide safe, effective care to patients. Therefore, the proposed regulations would require that practitioner to serve a board-approved practice under supervision for 320 hours in four consecutive months.

Advantages to the licensees:

The proposed continuing competency requirements are intended to provide some assurance to the public that licensees of the Board are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to licensees. The members of the Advisory Board

believe that the vast majority of occupational therapists already have more than 20 hours of continuing competency activities or courses in a biennium. Occupational therapists work for organizations which often require in-service training or continuing education for employment. Only 10 of the hours must be offered by a recognized sponsor, the other 10 may be acquired by the practitioner on his own time and schedule. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

Disadvantages to the licensees:

For a small minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. However, it was determined by enactment of the statute and by the Board's concurrence that those practitioners and their patients would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort.

Advantages or disadvantages to the public:

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the licensees for the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients. The public is also better served by a requirement for a board-approved practice under supervision if an occupational therapist has not been professionally active for a period of time. Such a practice will provide assurance by the observation and guidance of a licensed occupational therapists that the applicant for licensure or relicensure has regained his ability to practice.

5. Estimated Impact of the Regulations

A. Projected number of persons affected and their cost of compliance:

There are currently 1,769 occupational therapists who would be affected by these regulations

The cost for compliance will vary depending on the practitioner and the type of continuing learning activities chosen.

In many organizations where occupational therapists are employed, such as hospitals or school systems, attendance at in-service courses and presentations are expectations of employment and part of the employee's evaluation. Courses are available without any charge through a hospital or other health care organization which provides continuing education for persons on staff. Entities which employ occupational therapists, such as home health agencies, also routinely make in-service training available and encourage participation by their employees. Since an occupational therapist is only required to obtain 5 hours per year of Type 1 continuing learning (Type 1 must be offered and documented by a recognized entity such as a hospital or other organization), those hours could be obtained during the hours of employment at no cost to the employee.

For those occupational therapists who do not have such in-service training readily available, the Virginia Occupational Therapy Association has state conferences in different parts of Virginia which offer the sufficient number of continuing education hours. The VOTA is also divided into regional

districts, each of which offer continuing education at their meetings. Yearly membership in the VOTA is $40, but it is not necessary to be a member of the VOTA to attend one of the district meetings and obtain the continuing education offered.

The American Occupational Therapy Association offers a number of continuing learning opportunities ranging from its annual convention to courses by teleconferencing. On their website, there is a length list of continuing education offering, including: a) on-line workshops in which the practitioner can participate and communicate with faculty through e-mail (participation can occur at any time of the day or night); b) courses on disc, which range in costs from $17 to $62 and could be shared by a number of O. T.'s; and c) telephone seminar at which the course would be transmitted to a site for an average of $115. Since occupational therapists typically work within organizations, costs for these offerings could be underwritten by the employer or shared by a group of O. T.'s.

The 5 hours per year of Type II continuing learning is self-directed and self-verified. It is the type of learning in which every professional should routinely be engaged, consisting of reading journals, learning from colleagues, or self-study of any type. There should be no cost to the O. T. for acquiring hours of Type II learning.

There would also be some very minimal costs involved with maintaining records. With the promulgation of these regulations, the Board will send each occupational therapist the required form for assessment of practice needs and planning the activities to meet those needs. The form will also be available on the Board's website and may by downloaded into a file on the individual's personal computer. The O. T. will have to maintain that form and the documentation of continuing learning activities for a period of six years.

For those practitioners who have not engaged in practice for two or more years, the proposed regulations would require supervised practice before a license could be issued, reactivated or reinstated. Such persons would be able to have employment in occupational therapy, but they would not be able to call themselves occupational therapists or function as licensees until the board-approved practice under supervision was completed - either 160 hours in two months (2 to 6 years) or 320 hours in four months (six or more years).

B. Cost to the agency for implementation:

Impact on Board revenue:

For those practitioners who are taking a leave of absence or who are living out-of-state, there may be a percentage who would choose to take the inactive status and avoid the renewal requirements for continuing learning but it is not known how many licensees would do so. Of the 1,769 licensed occupational therapists, 344 list an out-of-state address. Most of those are likely to be working in Virginia but living in D.C. or a bordering state. It is estimated that 15 to 20 may take an inactive status, which would be a loss of $300 to $400 in revenue each biennium. If however, the inactive status is not incorporated into any regulation which includes continuing competency or active practice requirements for renewal, it is likely that many of those persons who are not actively practicing in Virginia would allow their license to lapse. If the 15 to 20 persons who are estimated to become inactive in a biennium let their license lapse instead, it would result in a loss of $1275 to $1700 in revenue to the Board each biennium. Therefore, the establishment of a category of inactive licensure may serve to preserve income for the Board.

The active renewal fee in Virginia is $85/biennium; the proposed inactive renewal fee is $65/biennium; so the cost of licensure renewal should not be a major factor in an occupational therapist's decision to seek inactive status.

Impact on Board expenditures:

The agency will incur some costs (less than $1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

It would also be expected that there will be additional costs to the Board for compliance enforcement. The Board will conduct a 1 to 2% audit of its licensees at the conclusion of each biennium. Each practitioner selected for the audit will be required to submit the required documentation of continuing learning activities. There will be some staff time involved in review of the documentation and in communicating with licensee about their deficiencies. Since the number selected for audit will be less than 35, no additional personnel will be required to accomplish this activity.

It is also expected that a small percentage of licensees selected for audit will result in a disciplinary case being opened. From the experience of boards within the agency that currently have continuing competency requirements for renewal, the majority of those cases (estimated to be 5 to 10 per biennium) will probably be settled with a pre-hearing consent order. In those cases, the only costs would be for charges back to the Board from the Administrative Proceedings Division (APD) of the Department. Costs for cases that do result in an informal conference committee proceeding (estimated to be 1 to 2 per biennium) would include travel expenses and per diem for board members as well as costs for the services of APD. Informal conference committees typically hear several cases in a day, so the costs per case for board member and APD time would be minimized.

Cost estimates for disciplinary cases related to the failure to comply with continuing competency regulations range from $100 to cases resulting in pre-hearing consent orders to $500 per case for those that result in an informal conference committee. All expenses relating to enforcement of these regulations can be absorbed in the existing budget of the Board of Medicine.

In addition, there would be some costs in terms of staff time associated with review of applications for reactivation of an inactive license. The applicant would be required to submit documentation of continuing competency and if he had been practicing in another jurisdiction, evidence of an unencumbered license or certification. Since the number applying to reactivate a license would be small (5 to 10 per biennium), the costs could be absorbed within the existing budget of the Board and with existing staff for occupational therapy.

C. Cost to local governments:

There will be no impact of these regulations on local government.

D. Fiscal Impact Prepared by the Department of Planning and Budget: (To be attached)

E. Agency Response:

c. Source of the legal authority to promulgate the contemplated regulation.

18 VAC 85-80-10 et seq. Regulations for the Licensure of Occupational Therapists was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

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

2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*

3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

4. *To establish schedules for renewals of registration, certification and licensure.*

5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*

6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 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 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for licensure, the Code provides a mandate for licensure and involvement of the Advisory Board on Occupational Therapy in:

§ 54.1-2956.1. Powers of Board concerning occupational therapy.

The Board shall be empowered to take such actions as may be necessary to ensure the competence and integrity of any person who claims to be an occupational therapist or who holds himself out to the public as an occupational therapist, and to that end it may license practitioners as occupational therapists.

§ 54.1-2956.2. Advisory Board of Occupational Therapy.

The Advisory Board of Occupational Therapy, referred to hereinafter as "Advisory Board," shall assist the Board in the manner set forth in this chapter.

§ 54.1-2956.3. Advisory Board of Occupational Therapy; composition; appointment.

The Advisory Board shall be comprised of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment occupational therapists who have practiced for not less than three years, one member shall be a physician licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large. Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term.

§ 54.1-2956.4. Advisory Board of Occupational Therapy; powers.

The Advisory Board shall, under the authority of the Board:
1. Recommend to the Board for its enactment into regulation the criteria for licensure as an occupational therapist and the standards of professional conduct for holders of licenses.
2. Assess the qualifications of applicants for licensure and recommend licensure when applicants meet the required criteria. The recommendations of the Advisory Board on licensure of applicants shall be presented to the Board, which shall then issue or deny licenses. Any applicant who is aggrieved by a denial of recommendation on licensure of the Advisory Board may appeal to the Board.
3. Receive investigative reports of professional misconduct and unlawful acts and recommend sanctions when appropriate. Any recommendation of sanctions shall be presented to the Board, which may then impose sanctions or take such other action as may be warranted by law.
4. Assist in such other matters dealing with occupational therapy as the Board may in its discretion direct.

§ 54.1-2956.5. Restriction of titles.

It shall be unlawful for any person not holding a current and valid license from the Board to claim to be an occupational therapist or to assume the title "Occupational Therapist," "Occupational Therapist, Licensed," " Licensed Occupational Therapist," or any similar term, or to assume the designations "O.T." or "O.T.L." However, a person who has graduated from a duly accredited educational program in occupational therapy shall be exempt from the preceding prohibition until he has taken and received the results of any examination required by the Board or until one year from the date of graduation, whichever occurs sooner. This section shall not be construed to prohibit any person operating under the supervision of an occupational therapist pursuant to such requirements as may be imposed by the Board from claiming to practice occupational therapy or from using the title "Certified Occupational Therapy Assistant" or any variation thereof, or from assuming the designations "O.T.A." or "C.O.T.A."

§54.1-2912.1 (Chapter 227) as enacted by the 1997 General Assembly **mandates** that the Board promulgate regulations for the establishment of continuing competency requirements.

§ 54.1-2912.1. Continued competency 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, and/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..*

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

In addition to § 54.1-2400 (cited above), the Board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal of licenses.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional

training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

d. Letter of assurance from the office of the Attorney General.

See attached.

e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.

The Notice of Intended Regulatory Action was published on March 1, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board; there was no comment received.

f. Changes to existing regulations.

18 VAC 85-80-10. A definition of "active practice" was added to specify the number of hours necessary to constitute active practice and that the active practice of occupational therapy may include activities that are not direct patient care. Other amendments are technical and not substantive.

18 VAC 85-80-70. The current regulations require that an occupational therapist be professionally active in order to renew each biennium. The amendment will specify what is intended by the requirement – that the licensee must have practiced at least 160 hours during the past biennium. In addition, completion of continuing competency is required for biennial renewal. Other amendments are editorial only.

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18 VAC 85-80-80. Reinstatement.

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18 VAC 85-80-120. Fees.

The biennial renewal fee for an active license is currently $85; the proposed biennial renewal for an inactive license is $65.

g. Statement of reasoning for the regulations.

Continuing competency requirements.

Chapter 227 of the 1997 Acts of the Assembly amended the medical practice act by adding §54.1-2912.1, which mandates that the Board promulgate regulations for the establishment of continuing competency requirements. To carry out that mandate, the Board requested that each of the advisory boards study the need for and type of continuing competency requirements for its profession, review what other states require, and develop a recommendation in the form of proposed amendments to regulation.

The goal of the Advisory Board on Occupational Therapy and the intent of the Board was to develop requirements that would: 1) encourage learner-directed continuing education through which a practitioner can identify a practice question or problem, seek the learning activity which provides needed information or teaches a new skill, and thereby, enhance his expertise or ability to practice; 2) offer a choice of content and form that is flexible enough to meet the needs of occupational therapists in a variety of practice settings in any location in Virginia; and 3) assure the public that occupational therapits ag their skills and competencies.

As a result, the Advisory Board recommended and the Board adopted a requirement which is aimed at involving the practitioner as a continuing learner who is consistently assessing the questions and problems encountered in his practice. The 20 hours of continuing competency required are divided into two types: (1) In Type 1 continuing learning activities, the 10 hours required biennially must be offered by a sponsor or organization which is sanctioned by the profession and which provides documentation of hours to the practitioner. The hours may include formal course work, in-service training, or specialty certification; and (2) In Type 2 continuing learning activities, the 10 hours required biennially may or may not be approved by a sponsor or organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning; occupational therapists document their own participation on the attached form.

After the activity is completed, the practitioner should indicate on the form provided by the Board the predicted outcome. He should indicate whether he will: a) make a change in his practice, b) not make a change in his practice, and/or c) needs additional information on this topic.

In its adoption of these requirements, the Board is responding to the research which indicates that the most effective continuing learning occurs when it is self-directed and designed to be practitioner-specific. It is also most effective if there has been some assessment of practitioner's needs and some evaluation of outcome and possible effects on practice. In addition, the Board is cognizant of the need to have at least half of these continuing learning hours validated through some recognized organization or sponsor.

Establishment of an inactive license.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

While the requirements for biennial renewal of licensure for occupational therapists are not burdensome, the Board determined that all its licensees should have the option of requesting an inactive license if they are not currently practicing their profession.

Requirements for reactivation of an inactive or lapsed license.

Along with requirements for continuing competency for renewal of licenses, the Board is proposing an inactive license for those practitioners who want to take a leave of absence or are now out-of-state and have no intention of engaging in active practice in the Commonwealth. In doing so, requirements for reactivation of such a license are necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive to provide evidence of continuing competency hours equal to the amount of time the license has not been active, not to exceed four years. If a practitioner has not engaged in active practice for two but less than six years, the Board is requiring that he serve a board-approved practice of 160 hours under the supervision of a licensed occupational therapist. If a practitioner has not actively practiced for more than six years, the Board has concerns about his knowledge and skills and his ability to provide safe, effective care to patients. Therefore, the proposed regulations would require that practitioner to serve a board-approved practice under supervision for 320 hours in four consecutive months.

As a certified profession regulated by the Board of Medicine, occupational therapists were required to indicate some professional activity as evidence of competency for biennial renewal of a license, but the level of that activity was undefined. Since they are now a licensed profession, it is expected that there be some further definition of active practice to determine qualification for initial licensure and for continued renewal of licensure. The Board determined that evidence of 160 hours of active practice in the profession within the past two years was the least burdensome regulation it could reasonably impose. Such a requirement is consistent with other professions that have a requirement for active practice, such as physical therapy and respiratory therapy.

h. Statement on alternatives considered.

The Board did not consider alternatives to the promulgation of regulations as it was mandated by the statute to provide some assurance of continuing competency for its licensees. It did adopt the least burdensome regulation consistent with the specific provisions of the statutes and with its concern for public health and safety.

Continuing competency hours

The Advisory Board considered the options for continuing competency and recommended that a minimum number of hours of active practice in a biennium combined with a small number of continuing learning activities would provide the assurance that an occupational therapist was maintaining his current knowledge and skills and being exposed to new ideas, techniques and technologies. The proposed requirements will only necessitate that someone actively practice for 160 hours (the equivalent of 4 weeks) within a biennium and have a total of 20 hours of continuing learning, 10 of which may be totally self-directed study or activity. Occupational therapists who recommended these requirements believe that they are minimal and will not present a burden for compliance. In 31 of the 50 states, there are requirements for continuing education or competency; the requirement ranges between 10 to 30 hours per year.

The availability of continuing learning opportunities and hours was discussed and considered in the adoption of these regulations. In many organizations where occupational therapists are employed, such as hospitals or school systems, attendance at in-service courses and presentations are expectations of employment and part of the employee's evaluation. Courses are available without any charge through a hospital or other health care organization which provides continuing education for persons on staff. Entities which employ occupational therapists, such as home health agencies, also routinely make in-service training available and encourage participation by their employees. Since an occupational therapist is only required to obtain 5 hours per year of Type 1 continuing learning (Type 1 must be offered and documented by a recognized entity such as a hospital or other organization), those hours could be obtained during the hours of employment at no cost to the employee.

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The 5 hours per year of Type II continuing learning is self-directed and self-verified. It is the type of learning in which every professional should routinely be engaged, consisting of reading journals,

learning from colleagues, or self-study of any type. There should be no cost to the O. T. for acquiring hours of Type II learning.

Requirement for active practice hours

The current regulations require 160 hours of supervised practice for an applicant or a lapsed licensee who has been out of practice for six or more years. In adopting regulations for licensure, the Advisory Board strongly recommended changing the regulation to require supervised practice for anyone who has not actively practiced for two or more years. With the changes occurring in health care, an occupational therapist who has not practiced at least 160 hours over a two-year period has likely not remained current with professional knowledge and skills.

An occupational therapist who is maintaining an active license to practice should be required to work a minimal number of hours during the biennium in order to keep up with a rapidly changing, highly technical field. The requirement of 160 hours of practice (the equivalent of four weeks) with a two-year period is easily obtainable, even for persons who are working only on a part-time basis.

To accommodate persons whose practice as an occupational therapist may now include educational, administrative, supervisory or consultative services rather than direct patient care, the Board added a definition of "active practice" to clarify that those professional activities were acceptable for the purpose of fulfilling the renewal or initial licensure requirements.

For those practitioners who have not engaged in practice for more than six years, the Board considered whether it should be necessary to require retesting as a measure of minimal competency. It decided to adopt a less restrictive requirement of practice under supervision for 320 hours before relicensure or initial licensure. Therefore, for those persons who have been out of practice for two or more years, the proposed regulations would require supervised practice before a license could be issued, reactivated or reinstated. Such persons would be able to have employment in occupational therapy, but they would not be able to call themselves occupational therapists or function as licensees until the board-approved practice under supervision was completed - either 160 hours in two months (2 to 6 years) or 320 hours in four months (six or more years).

Inactive licensure.

By requiring an inactive licensee to provide evidence of continued competency to resume practice, the Board has the opportunity to determine whether the practitioner has maintained active practice in another state, remained professionally current with continuing education or engaged in some other learning activities to update his knowledge and skills. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and eliminate the need to reapply for reinstatement of an expired license. Renewal of an inactive license is also less expensive than renewal of an active license.

i. Statement of clarity.

Prior to the adoption of proposed regulations by the Board, the Advisory Board on Occupational Therapy and the Legislative Committee discussed the changes in open sessions. The clarity and reasonableness of the language which was adopted had the approval of the occupational therapists, the Assistant Attorney General who worked with the Advisory Committee in drafting regulatory language, and members of the Board.

j. Schedule for review of regulation.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Advisory Board on Occupational Therapy and the Legislative Committee of the Board will review this set of regulations in 2001 and will bring any recommended amended regulations to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

k. Anticipated Regulatory Impact

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Medicine 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.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than $1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

For those practitioners who are taking a leave of absence or who are living out-of-state, there may be a percentage who would choose to take the inactive status and avoid the renewal requirements for continuing learning but it is not known how many licensees would do so. Of the 1,769 licensed occupational therapists, 344 list an out-of-state address. Most of those are likely to be working in Virginia but living in D.C. or a bordering state. It is estimated that 15 to 20 may take an inactive status, which would be a loss of $300 to $400 in revenue each biennium. If however,

the inactive status is not incorporated into any regulation which includes continuing competency or active practice requirements for renewal, it is likely that many of those persons who are not actively practicing in Virginia would allow their license to lapse. If the 15 to 20 persons who are estimated to become inactive in a biennium let their license lapse instead, it would result in a loss of $1275 to $1700 in revenue to the Board each biennium. Therefore, the establishment of a category of inactive licensure may serve to preserve income for the Board.

It would also be expected that there will be additional costs to the Board for compliance enforcement. The Board will conduct a 1 to 2% audit of its licensees at the conclusion of each biennium. Each practitioner selected for the audit will be required to submit the required documentation of continuing learning activities. There will be some staff time involved in review of the documentation and in communicating with licensee about their deficiencies. Since the number selected for audit will be less than 35, no additional personnel will be required to accomplish this activity.

It is also expected that a small percentage of licensees selected for audit will result in a disciplinary case being opened. From the experience of boards within the agency that currently have continuing competency requirements for renewal, the majority of those cases (estimated to be 5 to 10 per biennium) will probably be settled with a pre-hearing consent order. In those cases, the only costs would be for charges back to the Board from the Administrative Proceedings Division (APD) of the Department. Costs for cases that do result in an informal conference committee proceeding (estimated to be 1 to 2 per biennium) would include travel expenses and per diem for board members as well as costs for the services of APD. Informal conference committees typically hear several cases in a day, so the costs per case for board member and APD time would be minimized.

Cost estimates for disciplinary cases related to the failure to comply with continuing competency regulations range from $100 to cases resulting in pre-hearing consent orders to $500 per case for those that result in an informal conference committee. All expenses relating to enforcement of these regulations can be absorbed in the existing budget of the Board of Medicine.

In addition, there would be some costs in terms of staff time associated with review of applications for reactivation of an inactive license. The applicant would be required to submit documentation of continuing competency and if he had been practicing in another jurisdiction, evidence of an unencumbered license or certification. Since the number applying to reactivate a license would be small (5 to 10 per biennium), the costs could be absorbed within the existing budget of the Board and with existing staff for occupational therapy.

Projected cost on localities:

There is no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed occupational therapists.

Estimate of number of entities to be affected:

There are 1,769 occupational therapists licensed in Virginia. Their cost for compliance will vary depending on the practitioner and the type of continuing learning activities chosen.