

Preliminary Evaluation of the State Board of Occupational Therapy Practice

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2025

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process also known as sunset review because most of the regulatory entities or activities subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 entities according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If further evaluation is waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Occupational Therapy Practice last underwent a preliminary evaluation as part of sunset review in 2001. Based on that evaluation, DLS recommended that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 11 years to July 1, 2015. Chapter 209 of 2002 extended the board's termination date and required DLS to conduct a sunset review of the board by July 1, 2014.

In conducting this preliminary evaluation, DLS staff reviewed statutory and regulatory changes related to occupational therapy; attended public board meetings and a closed executive session; and reviewed board documents including minutes, newsletters, and licensing, complaint, and financial data. Additionally, DLS staff conducted interviews with the board chairperson, the executive director, and a representative from the Maryland Occupational Therapy Association (MOTA).

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

Occupational Therapy

Occupational therapy is defined as the therapeutic use of goal-directed activities to treat individuals with various impairments or prevent impairments from occurring. Title 10 of the Health Occupations Article governs occupational therapists (OTs) and occupational therapy assistants (OTAs). Before individuals may practice occupational therapy or limited occupational therapy, they must first be licensed by the State Board of Occupational Therapy Practice. As of September 2012, there were approximately 2,700 licensed OTs and over 500 licensed OTAs practicing in the State.

The goals of occupational therapy are the promotion of independence in daily life and the remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes. Examples of occupational therapy include teaching a patient how to sit up and move during an initial recovery period in a hospital following open heart surgery, working in a rehabilitation facility with a spinal cord injury patient on exercises to help the patient regain the skills required in daily life, or helping a client recover from a stroke in the home health environment by teaching basic life skills.

The settings for occupational therapy include hospitals, rehabilitation facilities, nursing homes, home health environments, and school systems. The various settings in which occupational therapy services are rendered are due to several factors, including trends in reimbursement policies, shorter hospital stays, growth in the geriatric population, and a focus on preschool programs and mainstreaming children with special needs.

The shift to the community-based setting provides less of an opportunity for interaction with and institutional oversight of licensees; thus, there is an increased need for guidance of occupational therapists in execution of duties. The Maryland Occupational Therapy Practice Act (Title 10 of the Health Occupations Article) specifically describes the principles and procedures for the proper practice of occupational therapy.

The State Board of Occupational Therapy Practice

The State Board of Occupational Therapy Practice is housed within the Department of Health and Mental Hygiene (DHMH). The mission of the board is to protect the citizens of Maryland and to promote quality health care in the field of occupational therapy by:

- licensing OTs and OTAs;
- setting standards for the practice of occupational therapy; and
- receiving and resolving complaints from the public regarding OTs and OTAs who may have violated the Maryland Occupational Therapy Practice Act or related regulations.

The board consists of seven members appointed by the Governor, including four OTs, one OTA, and two consumers. Members serve four-year terms and may be reappointed once.

Section 10-203 of the Health Occupations Article authorizes the board to elect a chairperson and determine the appropriate duties. The prior chairperson resigned for medical reasons in August 2012. The vice chairperson has assumed the role of chair. With the resignation, there is currently no OTA member on the board.

The board is supported by an executive director, licensing coordinator, secretary, and network specialist, all of which are full-time positions. The board also employs an investigator on a contractual basis. The low volume of complaints and investigative work needed (which will be described later in this report) allows the board to manage without a full-time investigator. The board maintains a website at <http://dhmh.maryland.gov/botp> that is helpful to both licensees and the public.

Legislative and Regulatory Changes Since the 2001 Sunset Evaluation

No significant statutory changes affecting the occupational therapy profession have been adopted since the last sunset evaluation, as shown as shown in **Exhibit 1**. However, significant legislation was passed just prior to the evaluation in 2000. Chapter 412 of 2000 added definitions for occupational therapy, limited occupational therapy, occupational therapy practice, limited occupational therapy practice, occupational therapy principles, occupational therapy procedures, and various levels of supervision. According to the board, these additions have served to improve the guidance and availability of information regarding licensees practicing occupational therapy. Regulations detailing the statutory changes and were adopted by the board in a timely manner.

Though not specific to occupational therapy, Chapters 533 and 534 of 2010 enacted standardized guidelines for all health occupations boards regarding the disciplinary process, sanctioning of licensees, and other administrative matters. The board is currently in compliance with most of the requirements of Chapters 533 and 534. The board's sanctioning guidelines were proposed in January 2012 and adopted in April 2012. The board posts final public orders on its website. The board is authorized to convene a disciplinary subcommittee, but due to the small size of the board, the full board handles these matters. The board collects racial and ethnic information about applicants on its application forms. The board sends out email notifications to members when there are board vacancies, as well as listing vacancies on the board website and notifying MOTA. Additionally, the board maintains manuals for new and current board members, and new members participate in a training program.

Exhibit 1 Legislative Changes Since the 2001 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	209	<p>Extends the board's termination date by 11 years to July 1, 2015.</p> <p>Requires DLS to conduct a sunset review of the board by July 1, 2014.</p>
2010	533/534	<p>Set standardized guidelines for all health occupations boards regarding disciplinary processes, board membership, and other administrative matters.</p> <p>Require each board, to the extent permitted by administrative and fiscal resources, to establish a disciplinary subcommittee to be responsible for the investigation of complaints and other aspects of the disciplinary process.</p> <p>Establish a six-year statute of limitations on the bringing of charges by a board against a licensee.</p> <p>Require boards to adopt sanctioning guidelines and post final public orders on the boards' websites.</p> <p>Require board membership to reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State.</p> <p>Require boards to notify licensees of board vacancies.</p> <p>Require boards to develop a training process and materials for new board members.</p> <p>Require boards to collect racial and ethnic information about applicants.</p> <p>Authorize boards to establish a program that provides training, mentoring, or other forms of remediation to licensees who commit a single standard-of-care violation.</p> <p>Require the Secretary of Health and Mental Hygiene to confirm the appointment of an administrator or executive director to each board and establish goals for the timeliness of complaint resolution.</p>

Source: Laws of Maryland

Despite a lack of legislative changes, the board has made a number of regulatory changes since the last sunset evaluation, as shown in **Exhibit 2**. The most significant of these is the change from a two-year to a one-year license renewal period, including adjusting the continuing competency requirements to correspond to the one-year renewal period.

Exhibit 2 Regulation Changes Since the 2001 Sunset Review

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
2004	10.46.05.01	Increased application and renewal license fees.
2008	10.46.01	Added provisions to reflect a two-year licensure period; specified continuing competency requirements; authorized activities for OTAs; and established guidelines for supervision.
	10.46.02.01A	Updated general conduct requirement to provide services without regard to certain traits of the patient and to terminate treatment when appropriate to client needs.
	10.46.03.01, .02A, .04, and .05C	Established provisions for case resolution conference committees.
	10.46.04	Required recordkeeping of continuing competency activities and specified activities that count toward satisfying the requirements.
	10.46.05.01 and .02	Implemented a new fee schedule.
	10.46.06	Defined competency requirements for physical and electrical modalities.
2010	10.46.01.01B and .02	Reduced the length of the licensure period from 24 to 12 months and altered corresponding continuing competency requirements.
2011	10.46.04.02B, .04, .05, and .06	Aligned continuing competency requirements to require 12 contact hours annually and adjusted caps on the number of hours for specified activities that may be counted toward the yearly requirement.
2012	10.46.02.03	Established uniform standards for professional competency.
2012	10.46.07	Implemented sanctioning guidelines establishing minimum and maximum disciplinary sanctions for licensees.

Source: Code of Maryland Regulations, *Maryland Register*

Licensing Activity

The board issues licenses for occupational therapy practice on an ongoing basis; the completed applications are reviewed monthly by the board. The board issues two different licenses: (1) an OT license for an individual to practice occupational therapy; and (2) an OTA license for an individual to practice limited occupational therapy. Additionally, the board may issue a temporary OT or OTA license to an individual who has met the education and experiential requirements but has not received the required national examination results.

To be licensed, an applicant must be of good moral character, be at least 18 years old, satisfy the board's education and experience requirements, and pass an exam given by the National Board for Certification in Occupational Therapy or another national credentialing organization. OTs and OTAs who renew their licenses or seek reinstatement must complete a minimum of 12 contact hours of continuing education within the one-year period preceding the application for renewal or reinstatement. The board offers online license renewal to all licensees. In fiscal 2012, 97% of OTs and 96% of OTAs renewed their licenses online.

The number of licensed OTs and OTAs has grown at a modest pace over the last five years, as shown in **Exhibit 3**. The U.S. Bureau of Labor Statistics predicts job growth in the occupational therapy field at 33% over the period from 2010 through 2020, with a median annual wage of \$72,320 in May 2010. Obtaining an OT license requires a master's degree, while an OTA license can be obtained following completion of a two-year educational program.

Exhibit 3
Licensing Activity
Fiscal 2008-2012

<u>License</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Occupational Therapist					
Initial	197	192	187	187	216
Renewal	2,107	0	2,370	2,529	2,501
Subtotal	2,304	192	2,557	2,716	2,717
Occupational Therapist Assistant					
Initial	61	73	46	58	54
Renewal	422	0	496	533	520
Subtotal	483	73	542	591	574
Total	2,787	265	3,099	3,307	3,291

Note: In fiscal 2010, the board changed the renewal period from two years to one year. Fiscal 2009 reflects only new licensees as no renewals were processed.

Source: State Board of Occupational Therapy Practice

The board has consistently met its Managing for Results (MFR) goals with respect to licensing. In fiscal 2012, the board processed 82% of applications for initial licensure in less than five days, while the remaining applications were processed within the 30-day MFR goal. The board also processes 100% of renewal licenses within the five-day MFR goal.

Complaint Activity Has Been Minimal

The board investigates and acts upon complaints against OTs and OTAs if the complaint involves violations of the Maryland Occupational Therapy Practice Act. A description of the board's complaint review process and the complaint form are provided on the board's website. The complaints must be received in writing on the appropriate signed and dated form and cannot be anonymous.

Since fiscal 2008, the board has received a total of 29 complaints, as shown in **Exhibit 4**. The board credits the relatively low number of complaints to developing a jurisprudence exam that is designed to direct applicants to specific portions of the statute and regulations that have proven to be problem areas for licensees in the past. The exam is a requirement for new applicants and an option for renewing applicants. Many of the questions on the exam stem from scenarios presented to the board via the complaint and disciplinary process. According to the board, the goal of the exam is to use data about the nature of violations of the practice act as an opportunity to educate licensees and hopefully preempt future violations.

Exhibit 4
Complaint Activity
Fiscal 2008-2012

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Complaints	4	8	7	7	3
Disciplinary Actions	3	7	5	1	2
Dismissals ¹	1	1	2	3	0
Under Investigation	0	0	0	3	1

¹ One complaint received in fiscal 2010 was dismissed due to the death of the licensee.

Source: State Board of Occupational Therapy Practice

After a complaint has been considered by the board, it may be referred to an investigator. Once the investigator has examined the case and presented the findings to the board, the board must decide if the complaint is within its jurisdiction and whether to take informal or formal action. In cases of formal action, the board votes to refer the case to the Office of the Attorney General for issuance of charges. In cases of informal action, letters of education or admonishment are sent to the licensees and, in certain circumstances, an informal meeting is held between the board and the licensee.

The majority of complaints involve issues of fraudulent billing, fraud in obtaining a license, or practicing under an expired license. The most frequent disciplinary actions are letters of education or admonishment; however, in the past four years, the board has revoked

two licenses and resolved two cases by accepting letters of surrender. Three cases remain open from fiscal 2011. These cases deal with fraudulent or deceptive use of a license, aiding and abetting an unauthorized individual in the practice of occupational therapy, and willfully making or filing a false report or record. One case remains open from fiscal 2012 that involves an allegation of aiding and abetting an unauthorized individual in the practice of occupational therapy.

The board has consistently met its MFR goals with respect to its handling of complaints. The board has maintained 100% compliance for completing investigative reports and initial board action on complaints within its 180-day target. The board has also maintained 100% compliance for completing board action on receipt of a proposed decision on a case from the Office of Administrative Hearings or a board hearing panel within its 30-day MFR target.

The Board's Current Financial Standing

The board is self-supported entirely by special funds raised through licensing fees. Section 10-206 of the Health Occupations Article provides the board authority to set reasonable fees for the issuance and renewal of licenses and other provided services. Fees are to be set to approximate the cost of maintaining the board. These fees are the only means by which the board generates revenue. **Exhibit 5** shows the licensure fees charged by the board from fiscal 2008 through 2013. The board has been proactive in attempting to not only cover its costs as mandated by statute but also provide relief to licensees in the form of lower fees when practicable.

Exhibit 5
Initial and Renewal Licensure Fees Charged
Fiscal 2008-2013

<u>License</u>	<u>FY 2008¹</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>Projected FY 2013</u>
Initial OT/OTA	\$200	\$200	\$200	\$200	\$200
Renewal OT	297	68	183	113	163
Renewal OTA	210	40	110	80	95

¹ Fiscal 2008 reflects a two-year license renewal fee. The renewal period was reduced to one-year in fiscal 2010.

Source: State Board of Occupational Therapy Practice

Typically, license fees are set in regulation. The board's fee schedule is found under Code of Maryland Regulations 10.46.05.01. The renewal fees for OTs and OTAs are listed as \$270 and \$210, respectively. However, the board has not come close to charging these amounts since the one-year renewal cycle went into effect in fiscal 2010. The board does list the fees to

be charged for the current year on its website. Despite this practice, there is no compelling reason why the fees listed under the regulation are not the current fees for the fiscal year. **The board should regularly update its regulations to reflect the actual licensure fees charged to licensees.**

In fiscal 2010, the board changed its two-year licensure period to a one-year period as a way to develop more stable and predictable revenues. As shown in **Exhibit 6**, the fiscal 2008 to 2009 renewal period brought in close to \$880,000 in revenues, which was to provide funding for fiscal 2008 and 2009. Annual renewals of licenses began in fiscal 2010. Revenues have fluctuated since then as the board adjusted to the one-year revenue stream while reducing its large fund balance.

Exhibit 6
Financial History of the State Board of Occupational Therapy Practice
Fiscal 2008-2012

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Beginning Balance	\$183,423	\$543,384	\$282,871	\$58,018	\$168,004
Revenues	747,130	133,042	216,223	566,519	401,389
Total Available Funds	\$930,553	\$676,426	\$499,094	\$624,537	\$569,393
Direct Costs	\$344,425	\$357,038	\$399,440	\$373,611	\$401,600
Indirect Costs	42,744	36,517	41,636	72,869	82,666
Total Expenditures	\$387,169	\$393,555	\$441,076	\$446,480	\$484,266
Transfer to General Fund	-	-	-	10,053	-
Ending Fund Balance	\$543,384	\$282,871	\$58,018	\$168,004	\$84,964
Balance as % of Expenditures	140%	72%	13%	38%	18%
Target Fund Balance (20%)	\$77,434	\$78,711	\$88,215	\$89,296	\$96,853

Note: In fiscal 2010, the board changed the renewal period from two years to one year.

Source: State Board of Occupational Therapy Practice

Total board expenditures have averaged about \$430,500 over the past five years, with a nearly \$100,000 increase from fiscal 2008 to 2012. Current annual expenditures are nearing \$500,000. Expenses include indirect costs paid to DHMH for departmental costs such as information technology and human resources expenses and direct costs for personnel and all other expenses.

The board's fund balance has varied greatly, in part due to the two-year renewal cycle and transition to a one-year cycle. According to the board, it aims to maintain a fund balance of

between 15% and 20% of expenditures. The board amassed a significant fund balance by fiscal 2008 (\$543,384 or 140% of expenditures) mainly due to a larger than anticipated number of licensees. At the time of the board's last evaluation, the board had projected that the number of licensees would stabilize at about 2,000; however, the number of licensees grew to 2,787 by fiscal 2008, yielding much greater fee revenues than anticipated and a corresponding increase in the fund balance. In response to this large balance, the board appropriately lowered fees in fiscal 2009 and began to spend down the fund balance. Since that time, the board has been successful in adjusting fees to maintain a more appropriate fund balance.

An issue arose during the 2012 legislative session with respect to the board's budget. Inaccurate revenue projections showed the board with a substantially inflated fund balance. This fund balance was targeted for a fund transfer of \$241,036 in the Budget Reconciliation and Financing Act (BRFA) of 2012 based on the assumption there would be \$649,571 in revenue in fiscal 2012, resulting in a fund balance of \$329,158. Revenues for fiscal 2012 were actually estimated at around \$400,000, resulting in a fiscal 2012 ending fund balance of \$84,964 (18% of expenditures). Therefore, no transfer was made through the BRFA.

Also during the 2012 session, the budget committees expressed concern over the fund balances for various health occupations boards. The *Joint Chairmen's Report* required DHMH to submit a report detailing five-year budget projections for the boards. **Exhibit 7** demonstrates the board's projected revenues, expenses, and fund balances for the next five years as provided in the response.

Exhibit 7
Financial Projections of the State Board of Occupational Therapy Practice
Fiscal 2013-2017

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Beginning Balance	\$84,964	\$120,606	\$80,961	\$95,823	\$99,982
Revenues	550,000	485,000	550,000	550,000	550,000
Total Available Funds	634,964	605,606	630,961	645,823	649,982
Total Expenditures	514,358	524,645	535,138	545,841	556,758
Ending Fund Balance	\$120,606	\$80,961	\$95,823	\$99,982	\$93,224
Balance as % of Expenditures	23%	15%	18%	18%	17%

Source: Department of Health and Mental Hygiene

The board's financial projections indicate that, assuming current fees and stable licensing activity, it will bring in approximately \$550,000 in fee revenues annually. However, the board plans a slight reduction in fees for one year only, which will result in fiscal 2014

revenues of \$485,000. This action is intended to maintain a fund balance of less than 20% of expenditures. The board believes the projected fund balances will be adequate given that unanticipated board expenses, such as litigation expenses, have been low enough in recent years to allow for a smaller fund balance. In the event that the fund balance is depleted by unanticipated expenses, the board can appropriately adjust licensure fees.

Recommendations

The board plays an essential role in both protecting the health and safety of consumers in the occupational therapy arena and serving occupational therapy licensees. Based on this preliminary evaluation, DLS finds that the board and its staff are functioning well, maintaining appropriate standards, and promoting a high level of professionalism.

The occupational therapy industry appears to be stable. No legislation relating to the field has been enacted since the last sunset evaluation, which implies that the existing statutes are relevant and effective. With the exception of its regulations pertaining to licensure renewal fees, the board has continually promulgated corresponding regulations in a timely and effective manner. While the board has had some recent issues with its budget and fund balances, they have been appropriately addressed and the board anticipates stabilization in its revenues and fund balance now that licenses are renewed on an annual rather than biennial basis.

Therefore, DLS recommends that LPC waive the State Board of Occupational Therapy Practice from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025.

Appendix 1. Written Comments of the State Board of Occupational Therapy Practice



STATE OF MARYLAND

DHMH

MD Board of Occupational Therapy Practice

Maryland Department of Health and Mental Hygiene

Spring Grove Hospital Center • Bland Bryant Building, 4th Floor • Baltimore, MD 21228

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

November 7, 2012

Jennifer B. Chasse
Principal Policy Analyst
Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly

Dear Ms. Chasse:

Thank you for providing the Board of Occupational Therapy with a copy of the preliminary evaluation conducted by the Department of Legislative Services (DLS).

The Board has reviewed the document and finds no errors or discrepancies. The Board concurs with the recommendations contained in the report.

The Board wishes to thank you for your work in coordinating this review and also Mr. Phillip S. Anthony, Office of Policy Analysis, for all of his effort in conducting the evaluation. If any additional information is needed at this time, please do not hesitate to contact us.

Sincerely,

Dr. Christine Moghimi, ScD., MAS, OTR/L, Board Chairperson
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cc: Secretary Joshua M. Sharfstein, M.D., DHMH
Senator Paula Hollinger, Associate Director, Boards & Commission
Mr. Patrick D. Dooley, Chief of Staff to the Secretary of DHMH
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