

Economic Impact Statement

LSA Document #08-418

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

This proposed rule adds [844 IAC 10-1-2.2](#) and [844 IAC 10-1-2.3](#), amends [844 IAC 10-1](#), [844 IAC 10-2](#), [844 IAC 10-3](#), [844 IAC 10-4](#), [844 IAC 10-5](#), and [844 IAC 10-6](#) and adds [844 IAC 10-7](#). In 2007, House Enrolled Act 1821-2007 (P.L.197-2007) required the Indiana Occupational Therapy Committee to recommend to the Medical Licensing Board rules establishing requirements for continuing competency to renew an occupational therapist license or an occupational therapist assistant certification. After considering the committee's proposed rules, the Medical Licensing Board is required to adopt rules under [IC 4-22-2](#) establishing standards for the competent practice of occupational therapy. In addition, P.L.197-2007 changed the occupational therapist law from certification to licensure. LSA document #08-418 does the following:

- Adds [844 IAC 10-1-2.2](#) to define continuing competency.
- Adds [844 IAC 10-1-2.3](#) to define contact hour.
- Amends [844 IAC 10-1-2.5](#) to further define objective tests.
- Amends [844 IAC 10-1-3](#) to revise the definition of school or program of occupational therapy or program of occupational therapy assistants approved by the Board.
- Amends [844 IAC 10-2-2](#), [844 IAC 10-3-1](#), [844 IAC 10-3-2](#), [844 IAC 10-3-3](#), [844 IAC 10-4-1](#), [844 IAC 10-4-2](#), [844 IAC 10-4-3](#), and [844 IAC 10-6-2](#) to implement rule changes based on House Enrolled Act 1821 (P.L.197-2007) to change certification of occupational therapists to licensure of occupational therapists.
- Amends [844 IAC 10-5-5](#) to include discontinuation and transitioning in the list of duties that an occupational therapist can do under supervision.
- Amends [844 IAC 10-5-13](#) to require the supervising occupational therapist to notify the committee of any change in supervision of the holder of a temporary permit.
- Adds [844 IAC 10-7](#) to implement rules based on House Enrolled Act 1821 (P.L.197-2007), including establishing the continuing competency requirements, responsibilities of licensees, license period and number of hours required for the license period, category I continuing competency courses and category II continuing competency activities, approved organizations and standards for approval, application for approval as a continuing education sponsor, and requirement for renewal and form required.
- Amends various rules to reflect that occupational therapists are now licensed instead of certified. These amendments affect the fee rule only to the extent that the word "license" is added. The fees are not being amended by this rulemaking action.

Impact on Small Businesses:**1. Estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule:**

NAICS CODE 621340; Occupational therapists' offices (e.g., centers, clinics)

[IC 4-22-2.1-4](#) provides that "small business" means any person, firm, corporation, limited liability company, partnership, or association that:

- (1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;
- (2) is independently owned and operated;
- (3) employs one hundred (100) or fewer full-time employees; and
- (4) has gross annual receipts of five million dollars (\$5,000,000) or less.

There are currently 2,522 holders of active Indiana occupational therapist licenses and 1,008 holders of certification as an occupational therapist assistant. NAICS codes are not assigned to occupational therapists and occupational therapy assistants. Of these 3,530 license and certificate holders, 3,005 have Indiana addresses and, of these, an unknown percentage do not actively practice occupational therapy or occupational therapy assisting.

2. Estimate of the average annual reporting, record keeping, and other administrative costs that small business will incur to comply with the proposed rule:

The Indiana Professional Licensing Agency (IPLA) has determined, based on the information available at the time of the rule promulgation, that the proposed continuing competency rules will have an estimated economic impact of greater than five hundred thousand dollars (\$500,000) on regulated persons. The proposed rule will have a fiscal impact on state or local government but, because the amount of fees to be collected for licensure and certification is not being amended, there will be no additional revenue or expenditures for state or local government. The proposed continuing competency rule changes will impose costs and requirements on the small businesses affected by this proposed rule. The remaining proposed rule changes will not result in an economic impact on regulated persons or impose costs or requirements small businesses.

The types of small businesses most likely to be affected by this proposed rule are occupational therapy service companies or centers, occupational therapists, occupational therapy assistants, and continuing education providers. Occupational therapists and occupational therapy assistants must be licensed or certified to practice as or use the title of occupational therapists and occupational therapy assistant. In the proposed rule, occupational therapists and occupational therapy assistants will be required to obtain 18 hours of continuing education during each two year license period in order to renew their license or certificate.

Estimated number of individual licensees affected:

- Occupational Therapists/ Occupational Therapy Assistants 3,530

Estimated number of individual applicants affected per year, based upon average number of licenses issued in calendar years 2006 and 2007:

	2006	2007	Total
• Occupational Therapists/ Occupational Therapy Assistants	272	295	567

Estimated number of small businesses affected:

- Occupational Therapists/Occupational Therapy Assistants 3,530
- Occupational Therapy Professional Corporations 8
- Occupational Therapy Continuing Education Sponsoring Organizations 3

Although the proposed rule affects the practice of occupational therapists and occupational therapy assistants specifically, the small business for which these occupational therapy practitioners are employed will also be affected because of the licensees' compliance with the continuing education requirements. In addition, some businesses that employ occupational therapy practitioners and are affected by this rule are not small businesses so those businesses would not be included in this estimate.

It should be noted that there are only eight registered occupational therapy professional corporations in the state. Most occupational therapists and occupational therapy assistants are employed in health service settings. Private practices owned by occupational therapists are not common.

This proposed rule will also apply to and affect occupational therapy continuing education sponsoring organizations. At this time, the number of occupational therapy continuing education sponsoring organizations cited in this statement is only an estimate and is based upon the number of known organizations that have a presence in Indiana.

There will be no revenue generated by the state as a result of the proposed rule because continuing education sponsors and instructors are not required to pay a fee to obtain approval. Based on the current number of licensees, the possible revenue that would be generated by businesses (including small and large) providing continuing education for occupational therapy practitioners would be as follows:

Estimated annual revenue for small businesses:

- 3,530 licensed/certified occupational therapy practitioners × 18 continuing competency contact hours required = 63,540 CC hours every two years.
- 63,540 contact hours of continuing competency × \$50 per CC hour = \$3,177,000 potential revenue to small businesses offering continuing education every two years.
- Annual potential revenue to small businesses: \$1,588,500.

B. Estimated administrative costs:

The IPLA provides administrative services to 40 boards, commissions, and committees. These boards, commissions, and committees are charged with regulating a wide range of professionals and entities. The statutes include both standard setting and regulatory authority. By statute, IPLA consolidates budget requests and is urged to consolidate and coordinate operations of the various boards, commissions, and committees where feasible in order to provide efficient and cost-effective services.

The proposed rule will have an insignificant fiscal impact on the state or agency because while there may be providers applying to be a continuing education sponsoring organization, the Board expects that number to be minimal. The agency will have to create a new licensing status on its computer system. There is no cost imposed on the potential organizations because the Board will not charge a fee for organizations or instructors.

C. Estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule:

The cost per hour of continuing education for the licensee is estimated to be \$50 per contact hour. In some cases, this cost is being paid by employers for their staff to attend continuing competency seminars. The agency determined that there will be no annual revenue generated by this rulemaking action. The estimated annual

impact is based on the number of renewal applicants that the Board received in 2006 plus those licenses issued in 2007, which included:

- 3,530 licensed/certified occupational therapy practitioners × 18 continuing competency contact hours required every two years = 63,540 CC hours.
- 63,540 contact hours of continuing competency × \$50 per CC hour = \$3,177,000 every two years.
- Annual cost for obtaining nine hours of continuing competency = \$1,588,500.

Annual cost per licensee/certificate holder: nine hours per year × \$50 per course = \$450 per year.

This number is an estimated number of licensees and certificate holders licensed with the Board. Also, it is important to note that the National Board for Certification in Occupational Therapy currently requires continuing education as a condition of renewing the practitioner's national certification. Additionally, 42 other states require continuing education for renewal. Thus, this cost is already being incurred by licensees and small businesses. Adding continuing education as a requirement will allow an opportunity for licensees and small businesses to increase revenue by becoming approved providers.

3. Statement justifying any requirement or cost that is imposed on small businesses by the rule; or any other state or federal law:

In 2007, House Enrolled Act 1821-2007 (P.L.197-2007) required the Medical Licensing Board to adopt rules establishing requirements for continuing competency to renew an occupational therapist license or an occupational therapist assistant certification and to change certification of occupational therapists to licensure of occupational therapists. The proposed rule clarifies and revises language and removes out-of-date and unnecessary language in the rules to bring the rules into conformity with the Committee's statutes.

4. Regulatory flexibility analysis:

Consideration of alternative methods of achieving the purpose of the proposed rule:

The proposed rule creates the requirement for continuing education as a condition for renewing licensure. The Board did not consider alternate compliance or reporting requirements, or other operational standards. There is no new reporting or record keeping requirements for small businesses as a result of this proposed rule.

There is no alternative as the General Assembly mandated that the Board establish continuing competency requirements. Such training is not available without cost.

Conclusion:

The General Assembly has mandated the Medical Licensing Board to adopt rules establishing continuing competency requirements. The growing complexity of science and technology within the health care industry is one of many reasons for requiring that occupational therapists engage in activities to maintain their competency. Recipients of health care services deserve to be treated by competent individuals. While assessing minimal competency at the time of initial licensure remains a critical component of the state's oversight of regulated practitioners, it is important to provide a foundation for maintaining competency over the practitioner's lifetime of providing health care services.

Supporting Data, Studies, or Analyses:

The agency compared the requirement for continuing education with various states and determined that nearly all of the other states (42) require continuing education for renewal of licensure. Most occupational therapy practitioners are currently taking continuing education; therefore, this rule change would only make it an official requirement for renewal of licensure and would not increase costs to the licensees or small businesses. There is no application or renewal fee for continuing education sponsoring organizations and no fee is being proposed for the organizations. There is no increase in fees to the agency in implementing this rule.

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