

**STATE OF KANSAS
BOARD OF HEALING ARTS**

Notice of Public Hearing on Proposed Administrative Regulation

A public hearing will be conducted on Wednesday, February 22, 2023, at 11:00 a.m. in the board room at the Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level – Suite A, Topeka, Kansas, to consider a proposed regulation related to the minimum level of professional liability coverage required for Kansas licensed occupational therapists.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the regulation. All interested parties may submit comments prior to the hearing to Courtney Cyzman, General Counsel, at the Board of Healing Arts at the address above or via e-mail to KSBHA_HealingArts@ks.gov. All interested parties will be given a reasonable opportunity to present their views, orally or in writing, concerning the proposed regulation during the public hearing. In order to provide all parties with an opportunity to present their views, it may be necessary to request each participant limit any oral presentations to five minutes.

Copies of the proposed regulation and the Economic Impact Statement for the proposed regulation may be obtained from the Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level – Suite A, Topeka, Kansas 66612, on the agency website at <http://www.ksbha.org/publicinformation/publicinformation.shtml>, by contacting LeeAnn Hunter-Roach at (785) 296-4502, or by e-mailing the agency at KSBHA_HealingArts@ks.gov.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation being considered and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Sheila Rice at (785) 296-8558 or at Sheila.Rice@ks.gov. Individuals with hearing and/or speech disabilities may contact the Kansas Relay Center at 800-766-3777 for communication accommodations. Handicapped parking is located on 8th Street and in the building's parking garage. From the street, both the west entrance to the building on Jackson Street and the north entrance on 8th Street are accessible.

A summary of the proposed regulation and the economic impact follows:

RECEIVED

DEC 14 2022

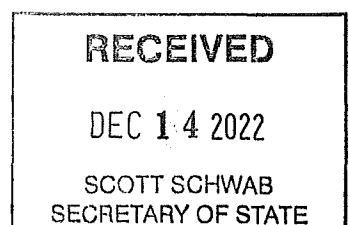
SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 100-54-13. Professional Liability Insurance.

The purpose of this proposed new regulation is to implement the regulation mandate of 2022 Senate Bill 440, establishing the minimum level of coverage of professional liability insurance each licensed occupational therapist actively practicing in this state must have as a condition of rendering professional services.

Although the agency does not employ an economist, the lay opinion of agency staff is that the economic effect on the affected businesses and business sector would not be significant. The only costs anticipated will be those incurred by an individual occupational therapist purchasing liability insurance prior to licensure and annual renewal of their license or an employer who covers an occupational therapist under an additional insured policy. It is difficult to ascertain a fixed price for an individual OT policy as each insurance carrier will vary. The agency does not anticipate any significant implementation or compliance costs associated with these changes.

The agency has had extensive discussions with members of the Occupational Therapy Advisory council, which is made up of 5 members, including 3 members who are licensed occupational therapists, a licensed physician, and a member of the Board of Healing Arts. The OT Council has reviewed and approves of this proposed regulation. Additionally, the agency has worked collaboratively with the Kansas Occupational Therapy Association ("KOTA"), the professional association for OT/OTAs, on the language of the proposed regulation and KOTA agrees. The agency has also met with an insurance carrier to ensure the proposed regulation accurately reflects how coverage for occupational therapists work. After these vital discussions with key stakeholders and those of the public who may be affected, the proposed regulation was discussed at the June 10, 2022, open Board meeting of which members of the public, business, and stakeholders could attend. Further it should be noted that the Board of Healing Arts is comprised of medical practitioners, business owners, and members of the public. The Board of Healing Arts intends to continue to comply with all public hearing requirements involved in the regulation promulgation process.



K.A.R. 100-54-13. Professional liability insurance. (a) Each individual licensed by the board as an occupational therapist shall, before rendering professional services within Kansas, submit to the board evidence that the individual has one of the following types of professional liability insurance coverage:

(1) Individual coverage of not less than \$100,000 per claim, subject to an annual aggregate of not less than \$300,000 for all claims made during the period of coverage; or

(2) coverage through the individual's employer under an additional insured policy for which the limit is not less than \$1,000,000 per claim, subject to an annual aggregate of not less than \$3,000,000.

(b) Each individual licensed by the board as an occupational therapist and rendering professional services in Kansas shall submit, with the annual application for renewal of the license, evidence that the individual has the professional liability insurance coverage specified in subsection (a). (Authorized by and implementing K.S.A. 2022 Supp. 65-5423; effective, T-

_____, _____; P-_____.)

APPROVED

NOV 09 2022

DEPT. OF ADMINISTRATION

APPROVED

DEC 05 2022

ATTORNEY GENERAL

RECEIVED

DEC 14 2022

SCOTT SCHWAB
SECRETARY OF STATE

Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas State Board of Healing Arts

Agency

Courtney Cyzman

Agency Contact

785-296-1384

Contact Phone Number

K.A.R. 100-54-13

K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

DOB APPROVAL STAMP (If Required)

RECEIVED

DEC 14 2022

**SCOTT SCHWAB
SECRETARY OF STATE**

Section I

Brief description of the proposed rule(s) and regulation(s).

The purpose of this proposed new regulation is to implement the regulation mandate of 2022 Senate Bill 440, establishing the minimum level of coverage of professional liability insurance each licensed occupational therapist actively practicing in this state must have as a condition of rendering professional services.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The proposed regulation is not mandated by federal law and the approach chosen to address the policy issues is not different from that utilized by agencies of contiguous states or the federal government.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

Although the agency does not employ an economist, in the lay opinion of agency staff, the proposed new regulation will not significantly enhance or restrict business activities and growth.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

Although the agency does not employ an economist, the lay opinion of agency staff is that the economic effect on the affected businesses and business sector would not be significant. The only costs anticipated will be those incurred by an individual occupational therapist purchasing liability insurance prior to licensure and annual renewal of their license or an employer who covers an occupational therapist under an additional insured policy. It is difficult to ascertain a fixed price for an individual OT policy as each insurance carrier will vary. In speaking with one insurance carrier, it is reasonable to expect it to be approximately \$276/year. Additional insured coverage (where an OT would be covered under their employer's policy) is a percentage of the professional liability premium amount for the entity. It is nearly impossible to determine the financial impact on the employer as the primary liability premium is calculated differently based on whether the employer is a hospital, clinic, etc. and the size of the entity. The agency does not anticipate any significant implementation or compliance costs associated with these changes.

DOB APPROVAL STAMP (If Required)

RECEIVED

DEC 14 2022

SCOTT SCHWAB
SECRETARY OF STATE

C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Businesses that employ occupational therapists may be directly affected as they (1) will need to ensure their OTs have either individual policy coverage; or (2) the employer has an additional insured policy covering their occupational therapists.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The main benefit will be the assurance that each occupational therapist will maintain at least a minimum amount of professional liability insurance coverage when they provide care. The main costs will be those incurred by each occupational therapist to purchase liability insurance prior to licensure and annual renewal of their license or by their employer who covers an occupational therapist under an additional insured policy.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The proposed new regulation reflects measures taken by the agency to minimize the cost and impact of the regulation on business and economic development by only enumerating requirements that are necessary, while maintaining a high standard of public protection.

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$Approximately \$276/year for individual OT policy

Total Annual Costs – Approximately \$276/year for individual OT policy
(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Lay rationale as described herein.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

DOB APPROVAL STAMP (If Required)

RECEIVED

DEC 14 2022

SCOTT SCHWAB
SECRETARY OF STATE

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

\$0

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

The only immediate or long-range economic impact anticipated will be those incurred by an individual occupational therapist purchasing liability insurance prior to licensure and annual renewal of their license or an employer who covers an occupational therapist under an additional insured policy. It is difficult to ascertain a fixed price for an individual OT policy as each insurance carrier will vary. In speaking with one insurance carrier, it is reasonable to expect it to be approximately \$276/year. Additional insured coverage (where an OT would be covered under their employer's policy) is a percentage of the professional liability premium amount for the entity. It is nearly impossible to determine the financial impact on the employer as the primary liability premium is calculated differently based on whether the employer is a hospital, clinic, etc. and the size of the entity.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The agency does not believe the proposed regulation will meaningfully impact the revenue of cities, counties, or school districts.

DOB APPROVAL STAMP (If Required)

RECEIVED

DEC 14 2022

SCOTT SCHWAB
SECRETARY OF STATE

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The agency has had extensive discussions with members of the Occupational Therapy Advisory council, which is made up of 5 members; including 3 members who are licensed occupational therapists, a licensed physician, and a member of the Board of Healing Arts. The OT Council has reviewed and approves of this proposed regulation. Additionally, the agency has worked collaboratively with the Kansas Occupational Therapy Association ("KOTA"), the professional association for OT/OTAs, on the language of the proposed regulation and KOTA agrees. The agency has also met with an insurance carrier to ensure the proposed regulation accurately reflects how coverage for occupational therapists' work. After these vital discussions with key stakeholders and those of the public who may be affected, the proposed regulation was discussed at the June 10, 2022, open Board meeting of which members of the public, business, and stakeholders could attend. Further it should be noted that the Board of Healing Arts is comprised of medical practitioners, business owners, and members of the public. The Board of Healing Arts intends to continue to comply with all public hearing requirements involved in the regulation promulgation process.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

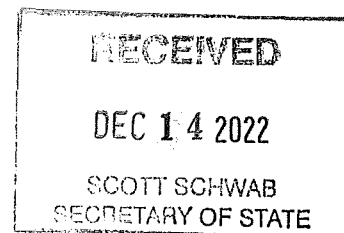
- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

DOB APPROVAL STAMP (If Required)



D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

DOB APPROVAL STAMP (If Required)

RECEIVED

DEC 14 2022

SCOTT SCHWAB
SECRETARY OF STATE