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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

RECEIVED
AUG 29 2008
BY: _____

STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OCCUPATIONAL THERAPISTS
OCCUPATIONAL THERAPISTS :AFFILIATED CREDENTIALING BOARD
AFFILIATED CREDENTIALING : ADOPTING RULES
BOARD : (CLEARINGHOUSE RULE 08-050)

TO: Senator Robert Jauch, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 118 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD is submitting in final draft form rules relating to occupational therapist supervision of occupational therapy assistants.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

**STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD**

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
OCCUPATIONAL THERAPISTS : **ON CLEARINGHOUSE RULE 08-050**
AFFILIATED CREDENTIALING : **(s. 227.19 (3), Stats.)**
BOARD :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The department estimates that the proposed rule will have no significant fiscal impact. The department finds that this rule has no significant fiscal effect on the private sector.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The purpose of revising the supervision rules is to ensure safe, effective, competent service is delivered to patients. The occupational therapist is accountable for the safety and effectiveness of the delivered occupational therapy services. Occupational therapist assistants must receive supervision in partnership with the occupational therapist such that the two people will achieve the same or equivalent results irrespective of the method of service delivery. Some of the current provisions relating to "close" and "general" supervision are viewed as too restrictive, and others are viewed as too expansive.

Section OT 4.04 (4) is being modified to address the frequency of contacts that an occupational therapist must have with an occupational therapy assistant. In so doing, the board intends to add a greater measure of flexibility for these licensees since the existing provisions were often found to be burdensome to implement. Furthermore, a new provision is being added to define "direct contact" between an occupational therapist and an occupational therapy assistant.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on July 15, 2008. The following individuals appeared and presented testimony:

Teri Black, COTA, ROH, Madison, WI

Ms. Black provided testimony in support of the proposed rules from her perspective as a practicing COTA and an educator of COTAs. Ms. Black recommended removing the word "meetings" in s. OT 4.04 (4) (a). She also suggested taking out the words "early intervention" from s. OT 4.04 (5). No changes were made to s. OT 4.04 (5) in the initial proposed rule-making.

Linda Anderson, MS, OTR, President, Wisconsin Occupational Therapy Association, Inc., Madison, WI

Ms. Anderson provided testimony in full support of the proposed rules and expressed appreciation that the board has put forth significant effort in revising and clarifying the current language in the rules and has shown a willingness to collaborate with the Association. Ms. Anderson stated that most of the proposed language significantly improves s. OT 4.04 and provides greater flexibility for OT practitioners. Ms. Anderson suggested changing "...after the tenth session of occupational therapy..." to "...coinciding with each tenth occupational therapy session..." Ms. Anderson also suggested deleting the word "meetings" and substituting the word "contacts" in s. OT 4.04 (4) (a), since the word "meeting" is not used in the definition of "direct contact."

Linda Tuchman, Ph.D., Director, Wisconsin Birth to 3 Personnel Development Project (Funded by Wisconsin Department of Health Services, Birth to 3 Program), Waisman Center – University of Wisconsin-Madison, Madison, WI

Dr. Tuchman appeared in her role as Director of the Waisman Center Birth to 3 Personnel Development Project, the goals of which are to address matters related to having a well qualified work force for Wisconsin's Birth to 3 Programs. Since the inception of this program, OTAs have been included in the list of qualified personnel contained in ch. HFS 90 which provides the rules and regulations for Wisconsin's Birth to 3 Program. She indicated her appearance at the public hearing was to provide educational information about how the proposed rule-making changes for general supervision of occupational therapy assistants will remove barriers for the employment of COTAs in Wisconsin Birth to 3 Programs. She suggested another change in the rules that would increase potential Birth to 3 employment and that was to remove early intervention from the list of providers that require close supervision prior to receiving general supervision.

Written comments were received from Joleen Freiberg, COTA, Evansville, WI

Ms. Freiberg provided written comments in support of the proposed rules from her perspective as a practicing COTA. Ms. Freiberg stated that the requirement of the occupational therapist seeing the client and the COTA is a problem in Birth to 3 programs. She expressed to the board that she was denied a particular job simply due to the supervision rules. Ms. Freiberg also agreed with Ms. Black in taking out the words

“early intervention” in s. OT 4.04 (5). She believes that taking out “early intervention” would allow COTAs to more readily practice in early intervention.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2.a. The definition of “direct contact” in s. OT 1.02 (3m) is not in proper form. It should be redrafted along the following lines: “Direct contact” means face-to-face communication or communication by means of telephone, electronic communication, or group conference. It appears that the term “direct contact” is only used in s. OT 4.04 (3) and (4); consideration might be given to defining the term in s. OT 4.04 rather than OT 1.02.

Response: The definition of “direct contact” was redrafted as suggested. Also, the creation of the definition of “direct contact” has been placed in s. OT 4.04 as suggested. The plain language analysis was amended to include this change.

Comment 2.b. The second clause of the last underscored sentence of s. OT 4.04 (4) (a) could be included in the previous underscored sentence so that it reads: “Direct contact with the occupational therapy assistant is for the purpose of reviewing the progress and effectiveness of treatment and may occur simultaneously or separately from the face-to-face contact with the client.” Note, in the last two underscored sentences, that use of “meetings” in connection with “direct contact” is misleading, given the definition of “direct contact.”

Response: The last two sentences of s. OT 4.04 (4) (a) were changed to read as suggested, which includes the removal of the word “meetings.” The deletion of the word “meetings” was also suggested by individuals who spoke at the public hearing.

The board also changed s. OT 4.04 (4) (a). The initial proposed rule-making order read, “When general supervision is allowed, the supervising occupational therapist shall have direct contact with the occupational therapy assistant and face-to-face contact with the client a minimum of one time per calendar month or by every tenth session of occupational therapy, which is sooner.” The board has amended that to read, “When general supervision is allowed, the supervising occupational therapist shall have direct contact with the occupational therapy assistant and face-to-face contact with the client by every tenth session of occupational therapy and no less than one time per calendar month.”

Comment 4. Does s. OT 4.04 (3) need to be amended in light of the definition of “direct contact” and the amendments to s. OT 4.04 (4) (a)?

Response: Section OT 4.04 (3) has been amended removing the word “direct.” The amendment to s. OT 4.04 (3) has also been added to the plain language analysis.

Comment 5. It is recognized that the language of s. OT 4.04 (4) (b) is contained in the current rule and is merely being relocated. However, does reference to “in writing” need to be clarified?

Response: The board does not find it necessary to make any changes to s. OT 4.04 (4) (b).

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

OT 4.04 (4) CR 08-050 (OT supervision of OTAs) Report to Leg 8-26-08

STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OCCUPATIONAL THERAPISTS
OCCUPATIONAL THERAPISTS : AFFILIATED CREDENTIALING
AFFILIATED CREDENTIALING : BOARD ADOPTING RULES
BOARD : (CLEARINGHOUSE RULE 08-050)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to renumber and amend OT 4.04 (4); to amend OT 4.04 (3); and to create OT 4.04 (4) (b) and (c), relating to occupational therapist supervision of occupational therapy assistants.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 448.96 (4) and (6), Stats.

Statutory authority:

Sections 15.085 (5) (b), 227.11 (2) and 448.965 (2), Stats.

Explanation of agency authority:

The Occupational Therapists Affiliated Credentialing Board has the authority to promulgate rules under s. 448.965, Stats., that define the scope of practice of occupational therapy or the scope of practice of assisting in the practice of occupational therapy.

Related statutes or rule:

The statutes and rules listed above, and s. PI 11.24.

Plain language analysis:

Section OT 4.04 (4) is being modified to address the frequency of contacts that an occupational therapist must have with an occupational therapy assistant. In so doing, the board intends to add a greater measure of flexibility for these licensees since the existing provisions were often found to be burdensome to implement. Furthermore, a new provision is being added to define "direct contact" between an occupational therapist and an occupational therapy assistant.

SECTION 1 amends s. OT 4.04 (3) to remove the word “direct” in light of the definition of “direct contact” created in s. OT 4.04 (4) (c) and the amendments to s. OT 4.04 (4) (a).

SECTION 2 amends the frequency of direct contacts that an occupational therapist (OT) must have with an occupational therapy assistant (OTA). Under this proposal, the required contact between the OT and OTA must be by every tenth session of occupational therapy and no less than one time per calendar month. The contacts need not be held during a treatment session, nor must the contacts be held simultaneously with the OT, OTA, and client. The rule identifies that the purpose of the contact is to review the progress and effectiveness of treatment.

SECTION 3 requires the occupational therapist to document supervisory activities, including the client’s name, status, and plan. SECTION 3 also creates a definition of “direct contact” between an occupational therapist and an occupational therapy assistant. Communication between the two may be face-to-face, by telephone, electronic communication, or group communication.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states:

Iowa:

Occupational therapists must provide direct, on-site and in-sight supervision for a minimum of four (4) hours per month to occupational therapy assistants. They must also identify in the treatment plan what has specifically been delegated to the occupational therapy assistant.

<http://www2.legis.state.ia.us/Rules/Current/iac/645iac/645206/645206.pdf>
<http://www2.legis.state.ia.us/rules/Current/iac/645iac/645208/645208.pdf>

Illinois:

Supervision is required of occupational therapy assistants depending upon the varying patterns as determined by the demands of the areas of patient/client service and the competency of the individual assistant. The supervision is structured according to the assistant’s qualifications, position, level of preparation, depth of experience and the environment within which he/she functions. However, there are minimal supervisory requirements. For instance, for an occupational therapy assistant who has less than one year of work experience, a minimum of 5% on-site, face-to-face supervision per month by an occupational therapist is required.

<http://www.ilga.gov/commission/jcar/admincode/068/068013150001630R.html>

Michigan:

Michigan does not appear to have any specific rules governing the supervisory requirements for occupational therapy assistants. Their rules appear to be limited to obtaining a credential.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Department&Dpt=CH&Level_1=Bureau+of+Health+Professions

Minnesota:

Minnesota requires face-to-face collaboration between an occupational therapist and an occupational therapy assistant every two weeks, at a minimum. Face-to-face collaboration is required more frequently if necessary to execute a patient's care.

<http://www.health.state.mn.us/divs/hpsc/hop/otp/ms148640.pdf>

Summary of factual data and analytical methodologies:

The board reviewed comments from occupational therapy professionals and held discussions during open session of its meetings regarding the impact of current supervision rules on the provision of care.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

No significant impact on small businesses is anticipated. There are no additional compliance or paperwork requirements.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935; telephone 608-266-0495; email pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before July 17, 2008, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OT 4.04 (3) is amended to read:

OT 4.04 (3) When close supervision is required, the supervising occupational therapist shall have daily, ~~direct~~ contact on the premises with the occupational therapy assistant. The occupational therapist shall provide direction in developing the plan of treatment and shall periodically inspect the actual implementation of the plan. The occupational therapist shall cosign evaluation contributions and intervention documents prepared by the occupational therapy assistant.

SECTION 2. OT 4.04 (4) is renumbered OT 4.04 (4) (a) and is amended to read:

OT 4.04 (4) (a) When general supervision is allowed, the supervising occupational therapist shall have direct contact ~~on the premises~~ with the occupational therapy assistant and face-to-face contact with the client at least once every 2 weeks. In the interim between direct contacts, the occupational therapist shall maintain contact with the occupational therapy assistant by telephone, written reports and group conferences. The occupational therapist shall record in writing a specific description of the supervisory activities undertaken for each occupational therapy assistant. The written record shall include client name, status and plan for each client discussed by every tenth session of occupational therapy and no less than one time per calendar month. Direct contact with the occupational therapy assistant is for the purpose of reviewing the progress and effectiveness of treatment and may occur simultaneously or separately from the face-to-face contact with the client.

SECTION 3. OT 4.04 (4) (b) and (c) are created to read:

OT 4.04 (4) (b) The occupational therapist shall record in writing a specific description of the supervisory activities undertaken for each occupational therapy assistant. The written record shall include client name, status and plan for each client discussed.

(c) "Direct contact" means face-to-face communication or communication by means of telephone, electronic communication, or group conference.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency _____

Chairperson
Occupational Therapists Affiliated
Credentialing Board

OT 4.04 (4) CR08-050 (OT supervision of OTAs) Draft to Leg 8-26-08



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 08-050

AN ORDER to renumber and amend OT 4.04 (4); and to create OT 1.02 (3m) and 4.04 (4) (b), relating to occupational therapist supervision of occupational therapy assistants.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

05-22-2008 RECEIVED BY LEGISLATIVE COUNCIL.

06-16-2008 REPORT SENT TO AGENCY.

RNS:DD

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Clearinghouse Director

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Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-050

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. The definition of “direct contact” in s. OT 1.02 (3m) is not in proper form. It should be redrafted along the following lines: “Direct contact’ means face-to-face communication or communication by means of telephone, electronic communication, or group conference.” It appears that the term “direct contact” is only used in s. OT 4.04 (3) and (4); consideration might be given to defining the term in s. OT 4.04 rather than OT 1.02.

b. The second clause of the last underscored sentence of s. OT 4.04 (4) (a) could be included in the previous underscored sentence so that it reads: “Direct contact with the occupational therapy assistant is for the purpose of reviewing the progress and effectiveness of treatment and may occur simultaneously or separately from the face-to-face contact with the client.” Note, in the last two underscored sentences, that use of “meetings” in connection with “direct contact” is misleading, given the definition of “direct contact.”

4. Adequacy of References to Related Statutes, Rules and Forms

Does s. OT 4.04 (3) need to be amended in light of the definition of “direct contact” and the amendments to s. OT 4.04 (4) (a)?

5. Clarity, Grammar, Punctuation and Use of Plain Language

It is recognized that the language of s. OT 4.04 (4) (b) is contained in the current rule and is merely being relocated. However, does reference to “in writing” need to be clarified?