

STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS
AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE :
OCCUPATIONAL THERAPISTS : NOTICE OF PUBLIC HEARING
AFFILIATED CREDENTIALING BOARD :
: :
: :

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Occupational Therapists Affiliated Credentialing Board in §§15.085 (5) (b), 227.11 (2) (a) and 448.965, Wis. Stats., and interpreting §448.965, Wis. Stats., the Occupational Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to repeal OT 2.07 (5) and 3.06 (b) (Note); to amend OT 2.03 (2) (e), 2.03 (2) (j), 2.07 (6), 3.02, 3.05, 4.02 (2) (intro.), 4.02 (2) (a) and (b), 4.03 (1) (a), 4.03 (2) (title), 4.03 (2) (c), (d), and (e), 4.03 (3) (a), (b), and (f), 4.03 (5) (b) and (c), 4.03 (6) (b) and (c), 4.05 (6) and (7) (a); to repeal and recreate OT 1.02; and to create OT 3.06 (r), 4.02 (2) (j) to (q) and 4.02 (2) (intro.) (Note), relating to occupational therapy practice standards.

Hearing Date, Time and Location

Date: February 10, 2014
Time: 10:00 A.M.
Location: 1400 East Washington Avenue
Room 121C
Madison, Wisconsin

APPEARANCES AT THE HEARING:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 448.965, Stats.

Statutory authority:

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

Explanation of agency authority:

The Occupational Therapists Affiliated Credentialing Board (Board) is authorized generally, pursuant to s. 15.08 (5) (b), Stats., to promulgate rules for guidance within its profession. The Board may also promulgate rules that interpret statutes they enforce or administer per s. 227.11 (2) (a), Stats. Section 448.965 (2), Stats., is administered by the Occupational Therapist Affiliated Credentialing Board and provides, “[t]he affiliated credentialing board may promulgate rules that define the scope of practice of occupational therapy or the scope of assisting in the practice of occupational therapy.” The proposed rule seeks to modernize practice standards captured in the current rules and bring the code in line with current practice within the profession. Therefore, the Board is authorized both generally and specifically to promulgate the proposed rules.

Related statute or rule:

None.

Plain language analysis:

The Occupational Therapist Affiliated Credentialing Board (Board) reviewed its rules and determined that the rules were outdated. The Board identified several key areas in the rules that were not typical of practice within the profession. The Board addressed these key areas by redefining terms throughout the entire chapter for the purpose of adding clarity to the rules. The Board was also prompted by the American Occupational Therapy Association (AOTA) to modernize its rules and make them more consistent with the AOTA’s Model Practice Act. The Board will incorporate some of the language from the AOTA Model Practice Act within the proposed rules, where necessary, to give greater direction to practicing occupational therapist and occupational therapy assistants. Ultimately, the Board, via the proposed rule, seeks to institute changes that will update the rules regulating occupational therapist with current practices within the profession.

SECTION 1. repealed and recreated the definitions section.

SECTION 2. increases the time period from 3 to 5 years that an applicant may be required to complete an oral examination, if they have not practiced prior to their application.

SECTION 3. amends OT 2.03 (2) (j) by omitting the term “been”.

SECTION 4. repeals OT 2.07 (5).

SECTION 5. amends language regarding expiration of temporary licensure.

SECTION 6. amends the biennial renewal date from November 1 to June 1.

SECTION 7. repeals the note found in OT 3.06 (b) and the corresponding table.

SECTION 8. creates OT 3.06 (r) and added it to the table.

SECTION 9. amends language found in OT 4.02 (2), (a) and (b).

SECTION 10. creates a note following OT 4.02 (2) (intro.).

SECTION 11. creates additional provisions to the occupational therapy services listed in s. OT 4.02 (2).

SECTION 12. adds language to OT 4.03 (1) (a) specifying the objectives of occupational therapy.

SECTION 13. amends the title in OT 4.03 (2) by striking the terms “referral” and “physician”.

SECTION 14. removes terms and clarifies the distinction between orders and referrals.

SECTION 15. adds terms to substitute health care professional instead of health care provider as well as updated terms related to performance skills and performance patterns.

SECTION 16. clarifies the terms related to program implementation.

SECTION 17. amends OT 4.03 (6) (b) and (c) by adding terms that specify the support system that should be in place for discontinuation of services.

SECTION 18. amends OT 4.05 (6) and (7) (a) by deleting unnecessary language.

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

None.

Comparison with rules in adjacent states:

Illinois: The Illinois Occupational Therapy Practice Act ILL. Admin. Code tit. 68 §1315.100 governs OT practice in Illinois. The code sets forth provisions for modalities

in occupational therapy, supervision of occupational therapy assistants and several other sections that the Wisconsin rules do not cover.

Iowa: Iowa administrative code defines occupational therapy practice which includes physical agent modalities 645 IAC 206.1, and sets forth a Code of Ethics for occupational therapist 645 IAC 208.1, and grounds for discipline. 645 IAC 209. Other topics covered include continuing education and supervision requirements.

Michigan: In Michigan Occupational Therapists are governed under the Public Health Code 333.18313 MCL and the Department of Consumer and Industry Services. Michigan statutes and administrative code do not set forth provisions regarding modalities in occupational therapy or practice and supervision nor does it outline topic areas for the completion of continuing education credits unlike the current Wisconsin rules.

Minnesota: Minnesota statutes govern the scope of practice for Occupational Therapists. Minn. Stat. §§ 148.6401 -148.6450. The provisions cover such topics as physical agent modalities and supervision of occupational therapy assistants similar to the current Wisconsin rules.

Summary of factual data and analytical methodologies:

The impetus for the proposed rule was a review by the Board which indicated that there was a gap between terminology currently being used in the profession and the language that was in the rule. The Board decided to address this issue by drafting the proposed rule. No other factual data or analytical methodologies were used.

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

These proposed rules will not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Fiscal estimate and Economic Impact Analysis:

The Department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Fiscal Estimate and the Economic Impact Analysis

Initial Regulatory Flexibility Analysis or Summary:

None.

Environmental Assessment/Statement: [if required]

None.

Agency contact person:

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

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

Comments may be submitted to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on February 10, 2014 or to be included in the record of rule-making proceedings.

TEXT OF RULE

TEXT OF RULE

SECTION 1. OT 1.02 is repealed and recreated to read:

OT 1.02 (1) “Activity demands” means the specific features of an activity that influence the type and amount of the effort required to perform the activity. Activity demands include the specific objects, space demands, social demands, sequence and timing, required actions and of skills and body functions and body structures required to carry out the activity.

(2) “Assessment” is a component part of the evaluation process, and means the process of determining the need for, nature of, and estimated time of treatment at different intervals during the treatment, determining needed coordination with or referrals to other disciplines, and documenting these activities.

(3) “Board” means the occupational therapists affiliated credentialing board.

(4) “Body functions” means the physiological functions of body systems , including mental, sensory, pain, neuromusculoskeletal, movement, cardiovascular, hematological, immunological, respiratory, voice , speech, digestive, metabolic, endocrine, genitourinary, reproductive, lymphatic, integumentary and related structures.

(5) “Body structures” means anatomical parts of the body, such as organs, limbs, and their components that support body functions.

(6) “Client factors” means values, beliefs, and spirituality, body functions, and body structures that reside within the client and may affect performance of occupation and activities.

(7) “Consultation” means a work-centered, problem-solving helping relationship in which knowledge, experience, abilities and skills are shared with client, family, caregivers, and other professionals, including physicians, in the process of helping to habilitate or rehabilitate through the use of occupational therapy.

(8) “Entry-level” means the person has no demonstrated experience in a specific position, such as a new graduate, a person new to the position, or a person in a new setting with no previous experience in that area of practice.

(9) “Evaluation” means the process of obtaining and interpreting data necessary for understanding the individual system or situation. This includes planning for and documenting the evaluation process, results and recommendations, including the need for intervention and potential change in the intervention plan.

(10) “Experienced” means demonstrated competence in the performance of duties in a given area of practice.

(11) “Habilitation” means an occupational therapy intervention designed for the education, training or support services provided to individuals to assist them in acquiring and maintaining skills not yet gained or learned, thus enabling them to learn, practice and refine skills needed for independent living, productive employment activity and community participation.

(12) “Level I fieldwork” means an integral part of didactic courses and includes varied learning experiences. Students are supervised in observation and assistance with clients during short term contacts.

(13) “Level II fieldwork” means extended fieldwork which emphasizes the application and integration of academically acquired knowledge and skills in the supervised delivery of occupational therapy services to clients.

(14) “Occupation” means the functional abilities that occupational therapy addresses in the areas of activities of daily living, instrumental activities of daily living, rest and sleep, education, work and vocational activities, play, leisure, and social participation.

(15) “Occupational therapist educational program” means an educational program and supervised internships in occupational therapy recognized by the board and accredited by the Accreditation Council for Occupational Therapy Education or a program approved by the World Federation of Occupational Therapy.

(16) “Occupational therapy assistant educational program” means an educational program and supervised internships in occupational therapy recognized by the board and

accredited by the Accreditation Council for Occupational Therapy Education or a program approved by the World Federation of Occupational Therapy.

(17) “Order” means the practice of identifying the need for occupational therapy education and intervention and delegating the responsibility to perform the evaluation and intervention to an occupational therapist.

(18) “Performance contexts and environments” means a variety of interrelated conditions within and surrounding the client that influence an individual’s engagement in desired or required occupational performance including: personal (age, gender, education), cultural, (customs, beliefs, behaviors), temporal (maturation, time of day or year, duration, stage of disability), physical (natural and built environments), virtual (communication which occurs absent of physical contact via simulated, real time or near time activity), social (relationships and expectations of persons groups and systems).

(19) “Performance patterns” means patterns of behavior related to an individual’s daily life activities that are habitual or routine.

(20) “Performance skills” means the skills and abilities that an individual demonstrates in the actions they perform including sensorimotor, sensory-perceptual, emotional regulation, cognition, communication, and social skills.

(21) “Prevention” means the fostering of normal development, promoting health and wellness, sustaining and protecting existing functions and abilities, preventing disability or supporting levels of restoration or change to enable individuals to maintain maximum independence.

(22) “Referral” means the practice of requesting occupational therapy services and delegating the responsibility for evaluation and treatment to an occupational therapist.

(23) “Rehabilitation” means the process of treatment and education to restore a person’s ability to live and work as normally as possible after a disabling injury or illness.

(24) “Screening” means the review of occupational performance skills in natural environments, educational or clinical settings to determine the significance of discrepancy between current performance and expected level of performance, which may be done in consultation with a physician.

(25) “Service competence” means the determination made by various methods that 2 people performing the same or equivalent procedures will obtain the same or equivalent results.

(26) “Supervision” is a cooperative process in which 2 or more people participate in a joint effort to establish, maintain and elevate a level of competence and performance. One of the participants, the supervisor, possesses skill, competence, experience,

education, credentials, or authority in excess of those possessed by the other participant, the supervisee.

SECTION 2. OT 2.03 (2) (e) is amended to read:

OT 2.03 (2) (e) Has not practiced occupational therapy for a period of ~~3~~ 5 years prior to application, unless the applicant has graduated from a school of occupational therapy within that period. Practice for the purposes of this paragraph includes direct client treatment and education, occupational therapy instruction in an occupational therapy academic program recognized by the board, occupational therapy research, and service in administrative positions for health care providers or governmental bodies with responsibility relating to occupational therapy.

SECTION 3. OT 2.03 (2) (j) is amended to read:

OT 2.03 (2) (j) Has ~~been~~ graduated from an occupational therapy school not approved by the board.

SECTION 4. OT 2.07 (5) is repealed.

SECTION 5. OT 2.07 (6) is amended to read:

OT 2.07 (6) A temporary license shall remain in effect for 6 months and may not be renewed.

SECTION 6. OT 3.02 and 3.05 are amended to read:

OT 3.02 Registration required; method of registration. Each licensee shall register biennially with the board. Prior to ~~November 1~~ June 1 of each odd numbered year the department shall mail to each licensee at his or her last known address as it appears in the records of the board an application form for registration. Each licensee shall complete the application form and return it with the required fee to the department. ~~The board shall notify the licensee within 30 business days of receipt of a completed registration form whether the application for registration is approved or denied.~~

OT 3.05 Failure to be registered. Failure to renew a license by ~~November 1~~ June 1 of odd numbered years shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for reinstatement of the license as follows:

SECTION 7. OT 3.06 (b) Table (Note) is repealed.

SECTION 8. OT 3.06 (r) Table is created to read:

Professional Development Activities	Professional Development Points
(r) Reimbursement or Ethics Courses	1 point per contact hour

SECTION 9. OT 4.02 (2) (intro.) (a) and (b) are amended to read:

OT 4.02 (2) Occupational therapy ~~services~~ interventions include, but are not limited to the following:

OT 4.02 (2) (a) Screening, evaluating, developing, improving, sustaining or restoring skills in activities of daily living, work or productive activities, ~~including~~ instrumental activities of daily living, and play, and leisure activities, rest and sleep education, and social participation.

OT 4.02 (2) (b) Evaluating, developing, remediating, or restoring sensorimotor, neuromusculoskeletal, cognitive, or psychosocial components of performance.

SECTION 10. OT 4.02 (2) (intro.) (Note) is created to read:

Note: A comprehensive list of occupational therapy interventions can be found in the Model Practice Act of the American Occupational Therapy Association (AOTA). The AOTA may be contacted on the web at www.aota.org or by mail at American occupational therapy association, P.O. Box 31220, Bethesda, MD 20824-1220.

SECTION 11. OT 4.02 (2) (j) to (r) are created to read:

OT 4.02 (2) (j) Therapeutic use of occupations, exercises, and activities.

(k) Training in self-care, self-management, health management and maintenance, home management, community work reintegration, and school activities and work performance.

(L) Therapeutic use of self, including one's personality, insights, perceptions and judgments, as part of the therapeutic process.

(m) Assessment, recommendation, and training in techniques to enhance functional mobility, including management of wheelchair and other mobility devices.

(n) Low vision rehabilitation.

(o) Driver rehabilitation and community mobility.

(p) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(q) Facilitating the occupational performance of groups, populations, or organizations through the modification of environments and adaptation processes.

(r) Use of range of specific therapeutic procedures, such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; pain

management, lymphedema management, and manual therapy techniques, to enhance performance skills.

SECTION 12. OT 4.03 (1) (a) is amended to read:

OT 4.03 (1) (a) An occupational therapist, alone or in collaboration with an occupational therapy assistant, when practicing either independently or as a member of a treatment team, shall identify individuals who present deficits or declines in ~~occupational~~ performance of their occupations areas and including occupational performance skills and performance components patterns.

SECTION 13. OT 4.03 (2) (title) is amended to read:

OT 4.03 (2) REFERRAL REFERRALS AND PHYSICIAN ORDERS. (a) Evaluation, rehabilitation treatment, and implementation of treatment with individuals with specific medical conditions shall be based on an order from a physician, dentist or podiatrist, or any other qualified health care professional.

SECTION 14. OT 4.03 (2) (c), (d), and (e) are amended to read:

OT 4.03 (2) (c) Although ~~a referral~~ an order is not required, an occupational therapist or occupational therapy assistant may accept a referral for the purpose of providing services which include consultation, habilitation, screening, client education, wellness, prevention, environmental assessments, and work-related ergonomic services.

OT 4.03 (2) (d) ~~Physician orders~~ Orders shall be in writing. However, oral ~~referrals~~ orders may be accepted if they are followed by a written and signed order by the ~~referring physician~~ ordering professional within 72 hours from the date on which the client consults with the occupational therapist or occupational therapy assistant.

OT 4.03 (2) (e) ~~Physician order~~ Orders or referral from another health care ~~provider~~ professional is not required for evaluation or intervention if an occupational therapist or occupational therapy assistant provides services in an educational environment, including the child's home, for children and youth with disabilities pursuant to rules promulgated by the federal individuals with disabilities education act, the department of public instruction and the department of health services, or provides services in an educational environment for children and youth with disabilities pursuant to the code of federal regulations.

SECTION 15. OT 4.03 (3) (a), (b), (f), and (4) (d) are amended to read:

OT 4.03 (3) (a) EVALUATION. The occupational therapist directs the evaluation process upon receiving ~~a physician~~ an order or referral from another health care ~~provider~~ professional. An occupational therapist alone or in collaboration with the occupational therapy assistant shall prepare an occupational therapy evaluation for each individual

~~referred~~ ordered for occupational therapy services. The occupational therapist interprets the information gathered in the evaluation process.

OT 4.03 (3) (b) The evaluation shall consider the individual's medical, vocational, social, educational, family status, and personal and family goals, and shall include an assessment of how ~~occupational performance components~~ skills, and ~~occupational performance patterns and their contexts and environments~~ influence the individual's functional abilities and deficits in ~~occupational~~ the performance areas of their occupations.

OT 4.03 (3) (f) Evaluation results shall be communicated to the ~~referral source~~ ordering professional and to the appropriate persons in the facility and community.

OT4.03 (4) (d) In developing the program, the occupational therapist alone or in collaboration with the occupational therapy assistant shall also collaborate, as appropriate, with the individual, family, other health care professionals and community resources; shall select the media, methods, environment, and personnel needed to accomplish the goals; and shall determine the frequency and duration of occupational therapy ~~services~~ interventions provided.

SECTION 16. OT 4.03 (5) (b) and (c) are amended to read:

OT 4.03 (5) (b) The individual's occupations, occupational performance, areas skills, and occupational performance components patterns, and occupational performance contexts and environments shall be routinely and systematically evaluated and documented.

OT 4.03 (5) (c) Program modifications shall be formulated and implemented consistent with the changes in the individual's occupational performance areas skills, occupational performance components patterns and occupational performance contexts and environments.

SECTION 17. OT 4.03 (6) (b) and (c) are amended to read:

OT 4.03 (6) (b) A comparison of the initial and current state of functional abilities and deficits in occupational performance areas skills, and occupational performance components patterns, affecting performance in the individual's occupations shall be made and documented.

OT 4.03 (6) (c) A discharge plan shall be prepared, consistent with the ~~services~~ interventions provided, the individual's goals, and the expected prognosis. Consideration shall be given to the individual's occupational performance contexts and environments including appropriate community resources for referral, and environmental factors or barriers that may need modification.

SECTION 18. OT 4.05 (6) and (7) (a) is amended to read:

OT 4.05 (6) An occupational therapist or occupational therapy assistant may delegate to non-licensed personnel duties or functions ~~other than maintenance or restorative services to the clients~~, including but not limited to the following services:

OT 4.05 (7) (a) Interpretation of referrals or ~~prescriptions~~ orders for occupational therapy services.

SECTION 19. Effective Date. 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.

(END OF TEXT OF RULE)

COPIES OF RULE

Copies of this proposed rule are available upon request to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708-8366, by email at Shancethea.Leachwood@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.