

Clearinghouse Rule 08-050
STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD

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

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/ort/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) Final for Adoption 10-22-08