

Report From Agency

**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