

Clearinghouse Rule 19-108

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
BOARD : ADOPTING RULES
 : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to amend OT 4.04 (4) (a) and create OT 4.04 (4) (am), relating to supervision and practice of occupational therapy assistants.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

None.

Statutory authority:

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

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides an affiliated credentialing board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .” The proposed rule will provide guidance concerning the supervision and practice of occupational therapy assistants.

Section 448.965 (2), Stats., provides the Occupational Therapists 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.”

Related statute or rule:

None.

Plain language analysis:

Current rules provide that, when general supervision is allowed, the supervising occupational therapist must 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. The proposed rules create an exception to this requirement for circumstances, including those in the practice areas of home health and children from birth to 3 years old, when occupational therapy services are provided once per calendar month or less frequently than once per calendar month.

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

None.

Comparison with rules in adjacent states:

Illinois: Rules of the Illinois Department of Financial and Professional Regulation specify the requirements for supervision of an occupational therapy assistant (68 Ill. Adm. Code 1315.163). The rules provide a minimum guideline of formal supervision as follows:

- An occupational therapy assistant who has less than one year of work experience or who is entering new practice environments or developing new skills must receive a minimum of 5 percent on-site face-to-face supervision from a registered occupational therapist per month. On-site supervision consists of direct, face-to-face collaboration in which the supervisor must be on the premises. The remaining work hours must be supervised by a combination of telephone, electronic communication, telecommunication, technology, or face-to-face consultation.
- An occupational therapy assistant with more than one year of experience in current practice must have a minimum of 5 percent direct supervision from a registered occupational therapist per month. The 5 percent direct supervision must consist of 2 percent direct, face-to-face collaboration. The remaining 3 percent of supervision must be a combination of telephone, electronic communication, telecommunication technology, or face-to-face consultation. The remaining work hours must be supervised in varying patterns as determined by the demands of the areas of service and the competency of the individual assistant.

Iowa: Rules of the Iowa Board of Physical and Occupational Therapy specify the requirements for supervision of an occupational therapy assistant (645 IAC 206.8). The rules provide that a licensed occupational therapist may provide on-site supervision or supervision by telecommunication of an occupational therapy assistant, as long as the supervising occupational therapist participates in treatment. Participation in treatment must include direct face-to-face patient contact every twelfth visit or 60 calendar days, whichever comes first, for all patients regardless of setting.

Michigan: Rules of the Michigan Department of Licensing and Regulatory Affairs specify the requirements for supervision of an occupational therapy assistant (Mich Admin Code, R 338.1229). The rules provide that an occupational therapist who delegates limited assessments, tasks, or interventions to an occupational therapy assistant must determine and provide the appropriate level of supervision. The appropriate level of supervision must be determined based on the occupational therapy assistant's education, training, and experience and includes general supervision or direct supervision.

“General supervision” means that the occupational therapist is not required to be physically present on site, but shall be continuously available at the time the limited assessment, task, or intervention is performed. Continuously available includes availability by telecommunication or other electronic device.

“Direct supervision” means that the occupational therapist is physically present with the occupational therapy assistant or immediately available for direction and onsite supervision at the time the limited assessment, task, or intervention is performed, and that the occupational therapist has direct contact in the physical presence of the patient or client during each visit.

Minnesota: The Minnesota Statutes specify the requirements for supervision of an occupational therapy assistant (Minnesota Statutes 2017, section 148.6432). The statutes provide that an occupational therapist must determine the frequency and manner of supervision of an occupational therapy assistant performing delegated treatment procedures based on the condition of the patient or client, the complexity of the treatment procedure, and the proficiencies of the occupational therapy assistant. Face-to-face collaboration between the occupational therapist and the occupational therapy assistant must occur, at a minimum, every two weeks, during which time the occupational therapist is responsible for all of the following:

- Planning and documenting an initial treatment plan and discharge from treatment.
- Reviewing treatment goals, therapy programs, and client progress.
- Supervising changes in the treatment plan.
- Conducting or observing treatment procedures for selected clients and documenting appropriateness of treatment procedures.
- Ensuring the service competency of the occupational therapy assistant in performing delegated treatment procedures.

Summary of factual data and analytical methodologies:

The rules were developed using recommendations from the Wisconsin Occupational Therapy Association and input from the Occupational Therapists Affiliated Credentialing Board. 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:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:30 a.m. on September 10, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OT 4.04 (4) (a) is amended to read:

OT 4.04 (4) (a) When general supervision is allowed, the supervising occupational therapist shall, except as provided under par. (am), 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~~ once per calendar month. Direct contact with the occupational therapy assistant ~~is for the purpose of~~ shall include reviewing the progress and effectiveness of treatment, ~~and~~ Direct contact may occur simultaneously or separately from ~~the~~ face-to-face contact with the client.

SECTION 2. OT 4.04 (4) (am) is created to read:

OT 4.04 (4) (am) When general supervision is allowed, and occupational therapy services are provided to a client once per calendar month or less frequently than once per calendar month, the supervising occupational therapist shall have direct contact with the occupational therapy assistant and face-to-face contact with the client no less than every other session of occupational therapy.

SECTION 3. 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)
