CERTIFICATE

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

I, Tom Ryan, Executive Director, Division of Policy Development in the Wisconsin Department of Safety and Professional Services and custodian of the official records of the Occupational Therapists Affiliated Credentialing Board, do hereby certify that the annexed rules relating toself-referral of occupational therapy services were duly approved and adopted by the Podiatry Affiliated Credentialing Board.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 1400 East Washington Avenue, Madison, Wisconsin this 8th day of July, 2016.

Tom Ryan, Executive Director
Division of Policy Development
Department of Safety & Professional Services

CR 15-053

STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS
AFFILIATED CRENDENTIALING BOARD

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD	:	ORDER OF THE OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD ADOPTING RULES (CLEARINGHOUSE RULE 15-053)

ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to repeal OT 1.02 (17), 4.03 (2) (a), (c), (d), and (e); amend OT 3.05 (title) and (intro.), 3.05 (2), 4.02 (2) (f), 4.03 (2) (title) and (b) and (3) (a) and (f); and create OT 3.05 (1) (title) and (3) relating to self-referral of occupational therapy services.

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), 440.08 (3) (b), 448.965 (1) (c), Wisconsin Statutes.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides that affiliated credentialing boards such as the Occupational Therapists 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 rule will provide guidance to occupational therapists regarding the topic of who may refer occupational therapy services.

Section 227.11 (2) (a), Stats., provides that, "[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation."

Section 440.08 (3) (b), Stats., provides that affiliated credentialing boards such as the Occupational Therapists Affiliated Credentialing Board, "[...] may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the [...] affiliated credentialing board determines are necessary to protect the public health, safety, or welfare."

Section 448.965 (1) (c), Stats., provides that the affiliated credentialing board shall promulgate rules that establish, "[s]tandards of practice for occupational therapy, including a code of ethics and criteria for referral."

Related statute or rule:

None.

Plain language analysis:

Under the current administrative rules, an occupational therapist may receive an order or a referral to perform occupational therapy services for a patient. Orders identify the need for occupational therapy evaluation and intervention while a referral is the act of requesting occupational therapy services. Currently, physicians, dentists, or podiatrists may order occupational therapy evaluation. However, occupational therapists may accept referrals from a variety of health care professionals including advanced practice nurses, chiropractors, optometrists, physical therapists, and physician assistants (Wisconsin Administrative Code OT 4.03 (2) (b)). Furthermore, there are some services that occupational therapists can perform without the need of a referral such as consultation, habilitation, screening, client education, wellness, prevention, environmental assessments, and work-related ergonomic services. According to Wisconsin Administrative Code OT 4.03 (2) (e), neither an order nor a referral from a physician is required for evaluation or intervention if the occupational therapy services are provided in an educational environment, including in a child's home if the child has disabilities.

The rule seeks to clarify that occupational therapists are able to self-refer occupational therapy services along with the host of other health care professionals that are listed above. Currently, the rule allows other health care professionals to refer occupational therapy services. However, the current rule does not specifically state that occupational therapists are allowed to self-refer. The self-referral of occupational therapy services would allow patients greater access to health care and would alleviate the burden on occupational therapists of relying on receiving orders and referrals from other health care professionals in order to provide health care services. The rule will also remove all references to orders received by health care professionals as this is outdated terminology that no longer reflects current practices.

The rule will also provide clarity to the process of renewing a license after 5 years by updating provisions regarding late renewal and reinstatement. The term reinstatement will be defined as the process by which a licensee whose license has been surrendered or revoked or who holds a license with unmet disciplinary requirements that has not been renewed within five years of the renewal date may apply to have that license reinstated with or without conditions.

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

None.

Comparison with rules in adjacent states:

Illinois: Illinois state statute provides that the implementation of direct occupational therapy treatment shall be based upon a referral from a licensed physician, dentist, podiatric physician, advanced practice nurse (who has a written collaborative agreement with a collaborating physician to provide or accept referrals from licensed occupational therapists), physician assistant (who has been delegated authority to provide or accept referrals from or to licensed occupational therapists), or optometrist (225 ILCS 75/3.1). An occupational therapist may consult with, educate, evaluate, and monitor services for individuals groups, and populations concerning occupational therapy needs without referral. A referral is not required for providing consultation, habilitation, screening, education, wellness, prevention, environmental assessments, and work-related ergonomic services to individuals, groups, or populations. Referral from a physician or other health care provider is not required for evaluation or intervention for children and youths if an occupational therapist or occupational therapy assistant provides services in a school-based or educational environment, including the child's home (225 ILCS 75/3.1).

Illinois administrative code provides that an occupational therapist seeking to restore a license that has expired or been placed on inactive status for 5 years must demonstrate completion of 24 hours of continuing education within 24 months prior to the restoration and one of the following: (1) Sworn evidence of active practice in another jurisdiction; (2) An affidavit attesting to military service; (3) Verification of successful completion of the Certification Examination of the NBCOT for licensure as a registered occupational therapist or certified occupational therapy assistant within the last 5 years prior to applying for restoration; or (4) Evidence of successful completion of 48 hours of continuing education in occupational therapy, including attendance at college level courses, professionally oriented continuing education classes, special seminars, or any other similar program completed within 2 years prior to application for restoration (68 Ill. Admin. Code pt. 1315.160).

Iowa: Iowa statutes provide that occupational therapy may be provided by an occupational therapist without referral from a physician, podiatric physician, dentist, or chiropractor, except that a hospital may require that occupational therapy services provided in the hospital be performed only following prior review by and authorization of the performance of the occupational therapy services by a member of the hospital medical staff (Iowa Code s. 148B.3A).

Iowa administrative code provides that an occupational therapist seeking to reactivate a license that has been inactive for 5 years or less must provide verification of the license(s) from every jurisdiction in which the applicant is or has been practicing during the time period the Iowa license was inactive and verification of 15 hours of continuing education for an occupational therapy assistant and 30 hours of continuing education for an occupational therapist within two years of application for reactivation. If the license has been on inactive status for more than five years, an applicant must provide verification of the license(s) from every jurisdiction in which the applicant is or has been practicing during the time period the Iowa license was inactive and verification of completion of 30 hours of continuing education for an occupational therapy assistant and 60 hours of continuing education for an occupational therapist within two years of application for reactivation; or

evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation (Iowa Admin. Code r. 645 – 206.11). A licensee whose license has been revoked, suspended, or voluntarily surrendered must reinstate their license in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. If the board determines that the license can be reinstated, then the license reactivation process is followed (Iowa Admin. Code r. 645 – 206.11 and Iowa Admin. Code r. 645 – 11.31).

Michigan: Michigan statutes and administrative code are silent with regards to required orders or referrals from other healthcare providers. An applicant whose license has lapsed for 3 years or more may be relicensed by meeting the following: (1) Passing the examination on state laws and rules related to the practice of occupational therapy; (2) Completing supervised practice experience requirements; (3) Verifying any license or registration from another state that was held while the license was lapsed; and (4) Either completing the NBCOT's certification examination for occupational therapists or presenting evidence that he or she was registered or licensed as an occupational therapist in another state during the 3-year period immediately preceding the application for relicensure (Mich. Admin. Code R. 338.1227).

Minnesota: Minnesota statutes do not require referral from a healthcare provider, however, in the absence of a physician referral or prior authorization, an occupational therapist must provide the following written notification: "Your health care provider, insurer, or plan may require a physician referral or prior authorization and you may be obligated for partial or full payment for occupational therapy services rendered." (Minn. Stat. s. 148.6438).

Summary of factual data and analytical methodologies:

The Board received input from the Wisconsin Occupational Therapy Association. Adjacent states' administrative rules were reviewed. 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 rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. 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 rules do not have a negative 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 Jeffrey.Weigand@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, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Dale2.Kleven@wisconsin.gov.

TEXT OF RULE

SECTION 1. OT 1.02 (17) is repealed.

SECTION 2. OT 3.05 (title) and (intro.) are amended to read:

OT 3.05 ~~**Failure to be registered**~~ **Late renewal and reinstatement.** ~~Failure to be registered.~~ Failure to renew a license by June 1 of an odd numbered year shall cause the license to ~~lapse~~ expire. A licensee who allows the license to ~~lapse~~ expire may apply to the board for late renewal or reinstatement of the license ~~as follows~~ by completing one of the following:

SECTION 3. OT 3.05 (1) (title) is created to read:

OT 3.05 (1) LATE RENEWAL BEFORE 5 YEARS.

SECTION 4. OT 3.05 (2) is amended to read:

OT 3.05 (2) LATE RENEWAL AFTER 5 YEARS. If the licensee applies for renewal of the license more than 5 years after its expiration, the board shall make such inquiry as it finds necessary to determine whether the applicant is competent to practice under the license in this state, and shall impose any reasonable conditions on ~~reinstatement~~ the renewal of the license, including oral examination, as the board deems appropriate. All applicants under this section shall be required to pass the open book examination on statutes and rules, which is the same examination given to initial applicants. This subsection does not apply to licensees who have unmet disciplinary requirements or whose licenses have been surrendered or revoked.

SECTION 5. OT 3.05 (3) is created to read:

OT 3.05 (3) REINSTATEMENT. A licensee who has unmet disciplinary requirements and failed to renew within 5 years of the renewal date or whose license has been surrendered or revoked, may apply to have the license reinstated in accordance with all of the following:

(a) Evidence of the completion of the requirements under sub. (2).

(b) Evidence of completion of disciplinary requirements, if applicable.

(c) Evidence of rehabilitation or change in circumstances warranting reinstatement of the license.

SECTION 6. OT 4.02 (2) (f) is amended to read:

OT 4.02 (2) (f) Application of physical agent modalities ~~based on a physician order as an adjunct to or in preparation for engagement in treatment~~. Application is performed by an experienced therapist with demonstrated and documented evidence of theoretical background, technical skill and competence.

SECTION 7. OT 4.03 (2) (title) is amended to read:

OT 4.03 (2) REFERRALS ~~AND ORDERS~~.

SECTION 8. OT 4.03 (2) (a) is repealed.

SECTION 9. OT 4.03 (2) (b) is amended to read:

OT 4.03 (2) (b) Referrals may be accepted from advanced practice nurses, chiropractors, dentists, optometrists, physical therapists, physicians, physician assistants, podiatrists, psychologists, or other health care professionals.

SECTION 10. OT 4.03 (2) (c), (d), and (e) are repealed.

SECTION 11. OT 4.03 (3) (a) is amended to read:

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

SECTION 12. OT 4.03 (3) (f) is amended to read:

OT 4.03 (3) (f) Evaluation results shall be communicated to the ~~ordering~~ referring health care professional, if any, and to the appropriate persons in the facility and community.

SECTION 13. 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)

Dated 7/8/2016

Agency Brian Holmquist OT
Chairperson
Occupational Therapists
Affiliated Credentialing Board