



VIRTUAL/TELECONFERENCE
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Tom Ryan (608) 266-2112
September 13, 2022

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.

AGENDA

9:30 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1-4)**
- B. Approval of Minutes of June 7, 2022 (5-7)**
- C. Reminders: Conflicts of Interest, Scheduling Concerns**
- D. Introductions, Announcements and Recognition – Discussion and Consideration**
 - 1) Introduction: Kari C. Inda, Occupational Therapist Member (Succeeds: Summers)
- E. Administrative Matters – Discussion and Consideration**
 - 1) Department, Staff and Board Updates
 - 2) Board Members – Term Expiration Dates
 - a. Black, Teresa L. – 7/1/2023
 - b. Erickson, Terry – 7/1/2023
 - c. Hanson, Randi J. – 7/1/2023
 - d. Inda, Kari C. – 7/1/2026
 - e. O’Brien, Laura M. – 7/1/2019
 - 3) Wis. Stat. s. 15.085(3)(b) – Biannual Meeting with the Medical Examining Board
- F. 9:30 A.M. PRELIMINARY PUBLIC HEARING ON STATEMENT OF SCOPE – SS 072-022 (OT 1 to 5), Relating to Implementation of the Occupational Therapy Licensure Compact (8-11)**
 - 1) Review and Respond to Preliminary Public Hearing Comments
- G. Occupational Therapy (OT) Licensing Compact Update - Discussion and Consideration**
- H. Administrative Rule Matters – Discussion and Consideration (12)**
 - 1) Final Rule Draft and Legislative Report: OT 1 to 6, Relating to Telehealth (13-29)
 - 2) Pending and Possible Rulemaking Projects (30)

- I. **Stakeholder Feedback Request from the American Occupational Therapy Association (AOTA) on the AOTA Model Occupational Therapy Act - Discussion and Consideration (31-56)**
- J. **Report of the Quarterly Chair Connection Meeting - Discussion and Consideration**
- K. Legislative and Policy Matters – Discussion and Consideration
- L. COVID-19 – Discussion and Consideration
- M. Discussion and Consideration of Items Added After Preparation of Agenda:
 - 1) Introductions, Announcements and Recognition
 - 2) Administrative Matters
 - 3) Election of Officers
 - 4) Appointment of Liaisons and Alternates
 - 5) Delegation of Authorities
 - 6) Education and Examination Matters
 - 7) Credentialing Matters
 - 8) Practice Matters
 - 9) Legislative and Policy Matters
 - 10) Administrative Rule Matters
 - 11) Liaison Reports
 - 12) Board Liaison Training and Appointment of Mentors
 - 13) Informational Items
 - 14) Division of Legal Services and Compliance (DLSC) Matters
 - 15) Presentations of Petitions for Summary Suspension
 - 16) Petitions for Designation of Hearing Examiner
 - 17) Presentation of Stipulations, Final Decisions and Orders
 - 18) Presentation of Proposed Final Decisions and Orders
 - 19) Presentation of Interim Orders
 - 20) Petitions for Re-Hearing
 - 21) Petitions for Assessments
 - 22) Petitions to Vacate Orders
 - 23) Requests for Disciplinary Proceeding Presentations
 - 24) Motions
 - 25) Petitions
 - 26) Appearances from Requests Received or Renewed
 - 27) Speaking Engagements, Travel, or Public Relation Requests, and Reports

N. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85(1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

- O. Deliberation of Items Added After Preparation of the Agenda
 - 1) Education and Examination Matters
 - 2) Credentialing Matters
 - 3) DLSC Matters
 - 4) Monitoring Matters

- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Order
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings
- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Case Closings
- 15) Board Liaison Training
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

P. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

Q. Vote on Items Considered or Deliberated Upon in Closed Session if Voting is Appropriate

R. Open Session Items Noticed Above Not Completed in the Initial Open Session

S. Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

NEXT MEETING: DECEMBER 6, 2022

ORAL INTERVIEW OF CANDIDATES FOR LICENSURE

VIRTUAL/TELECONFERENCE

10:30 A.M. OR IMMEDIATELY FOLLOWING FULL BOARD MEETING

CLOSED SESSION – Reviewing Applications and Conducting Oral Interviews of **Zero (0)** (at the time of agenda publication) Candidates for Licensure and Any Additional Examinations Added After Agenda Preparation – Laura O’Brien & Teresa Black

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held virtually unless otherwise indicated. In-person meetings are typically conducted at 4822 Madison Yards Way, Madison, Wisconsin, unless an alternative location is listed on the meeting notice. In order to confirm a meeting or to request a complete copy of the board’s agenda, please visit the Department website at <https://dps.wi.gov>. The board may also consider materials or items filed after the transmission

of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Requests for interpreters for the hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer at 608-266-2112, or the Meeting Staff at 608-266-5439.

**VIRTUAL/TELECONFERENCE
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD
MEETING MINUTES
JUNE 7, 2022**

PRESENT: Teresa Black, Terrence Erickson, Randi Hanson, Laura O'Brien

STAFF: Tom Ryan, Executive Director; Jameson Whitney, Legal Counsel; Nilajah Hardin, Administrative Rules Coordinator; Kimberly Wood, Program Assistant Supervisor-Adv.; and other Department staff

CALL TO ORDER

Laura O'Brien, Chairperson, called the meeting to order at 9:36 a.m. A quorum was confirmed with four (4) board members present.

ADOPTION OF AGENDA

MOTION: Terrence Erickson moved, seconded by Randi Hanson, to adopt the Agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF MARCH 8, 2022

MOTION: Teresa Black moved, seconded by Terrence Erickson, to approve the Minutes of March 8, 2022 as published. Motion carried unanimously.

**PUBLIC HEARING – CLEARINGHOUSE RULE 22-027 (OT 2),
RELATING TO LICENSURE REQUIREMENTS**

Review and Respond to Public Hearing Comments and Clearinghouse Report

MOTION: Randi Hanson moved, seconded by Terrence Erickson, to accept all Clearinghouse comments for Clearinghouse Rule 22-027 (OT 2), relating to Licensure Requirements. Motion carried unanimously.

MOTION: Randi Hanson moved, seconded by Teresa Black, to authorize the Chairperson to approve the Legislative Report and Draft for Clearinghouse Rule 22-027 (OT 2), relating to Licensure Requirements, for submission to the Governor's Office and Legislature. Motion carried unanimously.

**PUBLIC HEARING – CLEARINGHOUSE RULE 22-028 (OT 3),
RELATING TO CONTINUING EDUCATION**

Review and Respond to Public Hearing Comments and Clearinghouse Report

MOTION: Teresa Black moved, seconded by Randi Hanson, to accept all Clearinghouse comments for Clearinghouse Rule 22-028 (OT 3), relating to Continuing Education. Motion carried unanimously.

MOTION: Randi Hanson moved, seconded by Terrence Erickson, to authorize Teresa Black to approve the Legislative Report and Draft for Clearinghouse Rule 22-028 (OT 3), relating to Continuing Education, for submission to the Governor's Office and Legislature. Motion carried unanimously.

**NATIONAL BOARD FOR CERTIFICATION IN OCCUPATIONAL THERAPY (NBCOT) –
OVERVIEW AND INTRODUCTION TO RESOURCES AND SERVICES**

MOTION: Randi Hanson moved, seconded by Teresa Black, to acknowledge and thank Shaun Conway, NBCOT Vice President, External & Regulatory Affairs, and Wayne Winistorfer, NBCOT Ambassador, for their presentation to the Board. Motion carried unanimously.

**PUBLIC AGENDA REQUEST: WISCONSIN OCCUPATIONAL THERAPY ASSOCIATION
(WOTA) PROVISIONAL LICENSURE REQUEST**

MOTION: Randi Hanson moved, seconded by Teresa Black, to acknowledge and thank Laura Kocum, WOTA Executive Director, for appearing before the Board. Motion carried unanimously.

ADMINISTRATIVE RULE MATTERS

Scope Statement: OT 1 to 5, Relating to Implementation of the Occupational Therapy Licensure Compact

2021 Wisconsin Act 123

MOTION: Teresa Black moved, seconded by Randi Hanson, to approve the Scope Statement revising OT 1 to 5, relating to Implementation of the Occupational Therapy Licensure Compact, for submission to the Department of Administration and Governor's Office and for publication. Additionally, the Board authorizes the Chairperson to approve the Scope Statement for implementation no less than 10 days after publication. If the Board is directed to hold a preliminary public hearing on the Scope Statement, the Chairperson is authorized to approve the required notice of hearing. Motion carried unanimously.

CLOSED SESSION

MOTION: Randi Hanson moved, seconded by Teresa Black, to convene to Closed Session to deliberate on cases following hearing (§ 19.85(1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 448.02(8), Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.). Laura O'Brien, Chairperson, read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Teresa Black-

yes; Terrence Erickson-yes; Randi Hanson-yes; and Laura O'Brien-yes. Motion carried unanimously.

The Board convened into Closed Session at 11:45 a.m.

DELIBERATION ON DLSC MATTERS

Case Closings

21 OTB 004 – K.J.L.

MOTION: Terrence Erickson moved, seconded by Teresa Black, to close DLSC Case Number 21 OTB 004, against K.J.L., for No Violation. Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Terrence Erickson moved, seconded by Randi Hanson, to reconvene in Open Session. Motion carried unanimously.

The Board reconvened to Open Session at 11:52 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION, IF VOTING IS APPROPRIATE

MOTION: Randi Hanson moved, seconded by Terrence Erickson, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the closed session motions stand for the purposes of the affirmation vote.)

DELEGATION OF RATIFICATION OF LICENSES AND CERTIFICATES

MOTION: Randi Hanson moved, seconded by Teresa Black, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

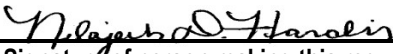
ADJOURNMENT

MOTION: Randi Hanson moved, seconded by Terrence Erickson, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:57 a.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Nilajah Hardin Administrative Rules Coordinator		2) Date when request submitted: 08/31/22 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: 09/13/22	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 9:30 A.M. Preliminary Hearing on Statement of Scope – SS 072-22 on OT 1 to 5, Relating to Implementation of the Occupational Therapy Licensure Compact 1. Review Preliminary Hearing Comments	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board will hold a Preliminary Hearing on this scope statement as directed by the Joint Committee for Review of Administrative Rules.			
11) Authorization			
 Signature of person making this request		08/31/22 Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

From: [Sen.Nass](#)
To: [Hereth, Daniel - DSPS; DSPS](#)
Cc: [Tierney, Michael - DSPS; DSPS Admin Rules; Sen.Nass - LEGIS; Rep.Neylon - LEGIS; Grosz, Scott A - LEGIS; Kauffman, Jill - LEGIS; Duchek, Mike - LEGIS](#)
Subject: JCRAR Directive to Hold Preliminary Hearing on Scope Statement SS 072-22
Date: Wednesday, August 31, 2022 2:35:16 PM

August 31, 2022

Laura O'Brien, Chairperson
Occupational Therapists Affiliated Credentialing Board
Department of Safety & Professional Services
P.O. Box 8366
Madison, WI 53708-8366

RE: SS 072-22 – Implementation of the Occupational Therapy Licensure Compact

Dear Chairperson O'Brien:

As co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) and pursuant to s. 227.136 (1), Stats., I write to direct the Occupational Therapists Affiliated Credentialing Board to hold a preliminary public hearing and comment period on Scope Statement SS 072-22, which was published in the Wisconsin Administrative Register on August 22, 2022.

Additionally, pursuant to s. 227.135 (2), Stats., please note that a scope statement may not be approved by the Secretary, the Department of Safety & Professional Services (DSPS), or any of the agencies under DSPS until after the preliminary public hearing and comment period is held by the agency, and accordingly, no activity may be conducted in connection with the drafting of a proposed rule until after such hearing and approval have occurred.

Please confirm receipt of this letter directing a preliminary hearing and comment period on the above scope statement.

Sincerely,

Steve Nass

Senator Steve Nass
Co-Chair, JCRAR

Cc: Dan Hereth, Secretary-designee, DSPS

STATEMENT OF SCOPE

OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD

Rule No.: OT 1 to 5

Relating to: Implementation of the Occupational Therapy Licensure Compact

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

2021 Wisconsin Act 123, Section 23 (1) provides that:

“The occupational therapists affiliated credentialing board and the department of safety and professional services may promulgate emergency rules under s. 227.24 necessary to implement this act.

Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until May 1, 2024, or the date on which permanent rules take effect, whichever is sooner.

Notwithstanding s. 227.24 (1) (a) and (3), neither the board nor the department is required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare or provide a finding of emergency for a rule promulgated under this subsection.”

2. Detailed description of the objective of the proposed rule:

The objective of this rule is to implement the statutory changes from 2021 Wisconsin Act 123.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Board intends to update the Administrative Code Chapters OT 1 to 5 to bring them into alignment with 2021 Wisconsin Act 123. An alternative would be to not revise the code to reflect these new requirements, which would create confusion and a lack of clarity for stakeholders as to what is required of occupational therapists and the board as it relates to the new statutory requirements.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 15.085 (5) (b), Stats. states that “[Each affiliated credentialing board] shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 120 hours

6. List with description of all entities that may be affected by the proposed rule:

Wisconsin licensed occupational therapists and occupational therapy assistants.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state's economy as a whole.

Contact Person: Nilajah Hardin, (608) 267-7139, DSPSAdminRules@wisconsin.gov

Approved for publication:



Authorized Signature

July 15, 2023

Date Submitted


Approved for implementation:

Authorized Signature

Date Submitted

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Nilajah Hardin Administrative Rules Coordinator		2) Date when request submitted: 08/31/22 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: 09/13/22	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Rule Matters Discussion and Consideration 1. Final Rule Draft and Legislative Report: OT 1 to 6, relating to Telehealth 2. Pending or Possible Rulemaking Projects	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Attachments: 1. Final Rule Draft – OT 1 to 6 2. Legislative Report – OT 1 to 6 3. Public Comments – OT 1 to 6 4. Rule Project Chart			
11) Authorization			
 Signature of person making this request		08/31/22 Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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 21-033)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to amend OT 4.05 (1) and (2) and create ch. OT 6, relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 448.965 (1) (c) and (2), Stats.

Statutory authority:

Sections 15.085 (5) (b) and 448.965 (1) (c) and (2), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides that an affiliated credentialing board, 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, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 448.965 (1) (c), Stats., provides the Occupational Therapists Affiliated Credentialing Board may promulgate rules that establish “[s]tandards of practice for occupational therapy, including a code of ethics and criteria for referral.”

Section 448.965 (2), Stats., 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.”

Related statute or rule:

Chapter OT 5 establishes the standards of conduct for occupational therapists and occupational therapy assistants. As provided in the proposed rule, these standards of conduct apply regardless of whether occupational therapy services are provided utilizing a telehealth visit or an in-person visit.

2021 Wisconsin Act 121 added a definition to the statute for “Telehealth” and a requirement that if the Board is going to make rules on this subject, they must use the new definition from the statute.

Plain language analysis:

Current administrative rules of the Occupational Therapists Affiliated Credentialing Board do not address telehealth practice. The proposed rule updates s. OT 4.05 and creates a new chapter, ch. OT 6, to establish standards of practice, care, and conduct for providing occupational therapy services using a telehealth visit.

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

The Code of Federal Regulations administers Medicare, including coverage of telehealth services by Medicare Part B (42 CFR § 410.78). Although generally not covered by Medicare Part B, in April of 2020 the Centers for Medicare & Medicaid Services announced it was using its waiver authority to allow occupational therapists and occupational therapy assistants to perform telehealth services for Medicare beneficiaries. The waiver is retroactive to March 1, 2020, and will remain in effect for the remainder of the COVID-19 Public Health Emergency. The federal Medicare regulations do not restrict the Board’s authority to establish standards for the provision of occupational therapy services using telehealth.

Federal regulations also administer the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Specifically, the HIPAA Security Rule establishes national standards to protect individuals’ electronic personal health information that is created, received, used, or maintained by a covered entity. The Security Rule requires appropriate administrative, physical, and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information. The Security Rule is located at 45 CFR Part 160 and Subparts A and C of Part 164. The proposed rule requires an occupational therapist or occupational therapy assistant who provides occupational therapy services using a telehealth visit to utilize technology that is secure and HIPAA-compliant.

Comparison with rules in adjacent states:

Illinois: The Illinois Statutes define “occupational therapy” to include occupational therapy services provided via technology or telecommunication methods, also known as telehealth, and provide that the standard of care is required to be the same whether a patient is seen in person, through telehealth, or other method of electronically enabled health care. (225 ILCS 75/2)

Iowa: Rules of the Professional Licensure Division of the Iowa Public Health Department provide the requirements for utilizing a telehealth visit to provide occupational therapy services. “Telehealth visit” is defined as the provision of occupational therapy services by a licensee to a patient using technology where the licensee and the patient are not at the same physical location for the occupational therapy session. (645 IAC 208.3)

Michigan: Michigan statutes and rules do not specifically address the provision of occupational therapy services using telehealth.

Minnesota: Minnesota statutes and rules do not specifically address the provision of occupational therapy services using telehealth.

Summary of factual data and analytical methodologies:

The proposed rules were developed by using the occupational therapy telehealth rules of the Professional Licensure Division of the Iowa Public Health Department (645 IAC 208.3) as a model and obtaining input and feedback from the Occupational Therapists Affiliated Credentialing Board.

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:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone (608) 267-7139; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Cassandra Walbrun, 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 June 8, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OT 4.05 (1) and (2) are amended to read:

OT 4.05 (1) An occupational therapist or occupational therapy assistant must provide direct supervision of non-licensed personnel at all times. Direct supervision requires that the supervising occupational therapist or occupational therapy assistant be on-premises and available to assist, either on premises or through technology and equipment meeting the requirements of s. OT 6.03.

(2) When an occupational therapist or occupational therapy assistant delegates to non-licensed personnel maintenance or restorative services to clients, the occupational therapist or occupational therapy assistant must be ~~in the immediate area and~~ within audible and visual range of the client and the non-licensed personnel, either on premises in the immediate area or through technology and equipment meeting the requirements of s. OT 6.03.

SECTION 2. Chapter OT 6 is created to read:

CHAPTER OT 6

TELEHEALTH

OT 6.01 Authority and purpose. The rules in this chapter are adopted by the board under the authority of ss. 15.085 (5) (b) and 448.965 (1) (c) and (2), Stats., to establish standards of practice, care, and conduct for providing occupational therapy services using a telehealth visit.

OT 6.02 Definitions. As used in this chapter:

(1) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(2) “Telehealth” has the meaning given in s.440.01 (1) (hm), Stats.

OT 6.03 Technology and equipment. An occupational therapist or occupational therapy assistant who provides occupational therapy services using a telehealth visit shall utilize technology that is secure and HIPAA-compliant and that includes, at a minimum, audio and video equipment that allows two-way real-time interactive communication with the patient. Technology that is not real-time may be utilized to prepare for an occupational therapy session or to communicate with a patient between occupational therapy sessions.

OT 6.04 Standards of practice, care, and conduct. (1) An occupational therapist or occupational therapy assistant shall be held to the same standards of practice, care, and professional conduct regardless of whether occupational therapy services are provided utilizing a telehealth visit or an in-person visit.

(2) A telehealth visit may not be utilized if the standard of care for the particular occupational therapy services provided cannot be met.

(3) An occupational therapist or occupational therapy assistant may provide an occupational therapy service using a telehealth visit only when the use of technology to provide the service is consistent with the education, training, and experience of the occupational therapist or occupational therapy assistant.

(4) When determining if a telehealth visit should be utilized as a medium for accomplishing the goals of a patient’s occupational therapy program, an occupational therapist shall collaborate, as appropriate, with the occupational therapy assistant, the patient, the patient’s family, other health care professionals, and community resources.

OT 6.05 Wisconsin license required. An occupational therapist or occupational therapy assistant who uses a telehealth visit to provide occupational therapy services to a patient located in this state shall be licensed by the board.

OT 6.06 Informed consent. Prior to an initial telehealth visit, an occupational therapist or occupational therapy assistant shall obtain informed consent from the patient specific to the occupational therapy services that will be provided using a telehealth visit. At a minimum, the informed consent shall specifically inform the patient of all the following:

- (1) The risks and limitations of the use of a telehealth visit to provide occupational therapy services.
- (2) The potential for unauthorized access to protected health information.
- (3) The potential for disruption of technology during a telehealth visit.

OT 6.07 Recordkeeping. An occupational therapist or occupational therapy assistant shall identify in the clinical record when occupational therapy services are provided utilizing a telehealth visit.

OT 6.08 Supervision. Supervision of an occupational therapy assistant or unlicensed personnel providing services to or assisting a client during a telehealth visit shall meet the requirements of s. OT 4.04 or 4.05, as appropriate.

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)

This Proposed Order of the Occupational Therapists Affiliated Credentialing Board is approved for submission to the Governor and Legislature.

Dated _____ Agency _____
Chairperson
Occupational Therapists
Affiliated Credentialing Board

**STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD**

**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 21-033
OCCUPATIONAL THERAPISTS :
AFFILIATED CREDENTIALING :
BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA: The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Current administrative rules of the Occupational Therapists Affiliated Credentialing Board do not address telehealth practice. The proposed rule updates s. OT 4.05 and creates a new chapter, ch. OT 6, to establish standards of practice, care, and conduct for providing occupational therapy services using a telehealth visit.

Additionally, 2021 Wisconsin Act 121 went into effect on February 5, 2022. This Act provides a statutory definition for “telehealth”, which the Board is required to use when promulgating rules on the subject. Therefore, in addition to any modifications listed below, the Board also updated this rule to align with the new statutory requirement.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Occupational Therapists Affiliated Credentialing Board held a public hearing on June 8, 2021. The following people either testified at the hearing, or submitted written comments:

- Letter from Gunderson Health System, signed by:
 - Jessica Easterday, Clinical Manager of Virtual Care
 - Jamie Lohrentz, Clinical Manager, Outpatient/Neuro-vestibular/Pediatric Occupational and Physical Therapy
 - Nathan Franklin, Direct, External Affairs
- Letter from OT Leaders and Wisconsin Hospital Association, signed by:
 - Matthew Stanford, General Counsel, Wisconsin Hospital Association
 - Kay Anderson, OT, Service Line Director, Rehabilitation, Ascension Wisconsin
 - Marilyn Bert, OT, Clinical Manager, Mayo Clinic Health System Northwest Wisconsin

- Lisa Morgan, OT, Rehabilitation Manager, May Clinic Health System – Southwest Wisconsin
- David Blair, MD, Chair, Virtual Care Committee, Mayo Clinic Health System – Wisconsin
- Corey Conrath, MD, Medical Director, Occupational Health, Marshfield Clinic Health System
- Chris Meyer, Director of Virtual Care and Telehealth, Marshfield Clinic Health System
- Stephanie Olive, MS, CCC-SLP, Director of Therapies and Developmental Services, Children’s Wisconsin
- Kimberly Cronsell, MD, Medical Director for Digital Health & Experience, Children’s Wisconsin
- Bill Brazeau, MBA, Director, Virtual Health, ThedaCare
- Jessica Easterday, MBA, BSN, RN, Clinical Manager-Virtual Care, Gunderson Health System
- Tom Brazelton, MD, MPH, FAAP, Medical Director, Telehealth Program, UW Health

The Occupational Therapists Affiliated Credentialing Board summarizes the comments received either by hearing testimony or by written submission as follows:

- Letter from Gunderson Health System, proposed changes:
 - Removal of OT 6.06 or have the Board work with stakeholders to come up with new language on informed consent.
- Letter from OT Leaders and Wisconsin Hospital Association, proposed changes:
 - Update OT 6.03 Technology and Equipment to read “An occupational therapist or occupational therapy assistant who provides occupational therapy services using a telehealth visit shall utilize technology that enables the transmission of information via the technology that is of sufficient quality to be functionally equivalent to face-to-face contact. Technology that is not real-time may be utilized to prepare for an occupational therapy session or to communicate with a patient between occupational therapy sessions.”
 - OT 6.04 (3) should be removed.
 - Update OT 6.04 (4) to read “Upon scheduling a telehealth visit, clear information shall be provided to the patient that the visit will be a telehealth visit”
 - OT 6.06 Informed Consent should be removed.
 - OT 6.07 Recordkeeping should be removed.

The Occupational Therapists Affiliated Credentialing Board explains modifications to its rule-making proposal prompted by public comments as follows: No further changes were made.

VI. RESPONSE TO MEDICAL EXAMINING BOARD AND LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The proposed rule was submitted to the Medical Examining Board on January 20, 2021. The Medical Examining Board expressed support for the proposed rule, and had no comments for the Occupational Therapists Affiliated Credentialing Board to consider.

Legislative Council staff did not make any recommendations for the proposed rule.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A

DRAFT

GUNDERSEN HEALTH SYSTEM®

May 24, 2021

Kassandra Walbrun
Administrative Rules Coordinator
Department of Safety and Professional Services
Division of Policy Development
P.O. Box 8366
Madison, WI 53708-8366

RE: CR 21-033: Occupational Therapists Affiliated Credentialing Board – relating to Telehealth

Dear Kassandra Walbrun,

On behalf of Gundersen Health System, we are writing to provide comments on the proposed revision to Occupational Therapists Affiliated Credentialing Board (the Board) Chapters 4 and 6, specifically relating to Telehealth.

Gundersen Health System is an integrated healthcare delivery system providing services throughout twenty-one counties in western Wisconsin, southeastern Minnesota, and northeastern Iowa. Our system includes a primary hospital in La Crosse, six critical access hospitals, and over 70 clinics throughout the region. With over 9,000 employees, we are the largest employer in the region. We are committed to supporting public policy that helps to enrich every life through improved community health, outstanding experience of care, and decreased cost burden. Our continued goal is to work with policymakers to improve quality, lower cost, and reduce regulatory burdens.

At Gundersen, we work to distinguish ourselves through excellence in patient care, education, research, and improved health in the communities we provide care for. Gundersen provides comprehensive occupational therapy services with specialties ranging from advanced rehabilitation, assistive technology to neurological and pediatric therapy. Since the beginning of the COVID-19 pandemic, we have utilized various state and federal telehealth waivers to provide care to our patients from the comfort of their home. As a result, Gundersen's telehealth visits increased by 1,296% from 2019 to 2020. These virtual visits have been helpful and beneficial for many of our patients. Virtual visits have eliminated our patients' long travel to appointments from rural areas to allow them to complete therapy activities from the comfort of their home. With our pediatric patients, it has allowed us to address unique challenges that are present at home and adapt to the child's interests by practicing their skills with items that the parents

have available at home. With one patient, in the clinic setting, our providers had been working on increasing her fine motor skills by doing activities such as writing, arts, and crafts. When our visits changed to virtual visits, our providers did not have access to the same tools and toys, but our providers were able to continue to work on her skills by using her interests and what she had available at home. Over the summer, we wrote “pen pal” letters back and forth to each other, practicing how to write letters, working on handwriting, and learning how to “mail” items. Our patient loved going to the mailbox each day to check for her letters! The ability to complete virtual pediatric occupational therapy sessions has been a wonderful experience for not only our patients, but for our therapists as well.

We look forward to the opportunity to provide input and improve Occupational Therapy regulations to better serve our patients and community. While we support the inclusion of telehealth in OT chapters, we have concerns with the informed consent requirement. In OT 6.06 Informed consent, the Board is proposing to include minimum specifications in the informed consent form. As part of our standard practice while scheduling telehealth appointments, we provide patients with educational documents containing exhaustive information on limitations and risks of using telehealth to provide OT services. This document along with our informed consent form informs the patients on all aspects of telehealth ranging from limitations to protected health information. With the ongoing expansion of telehealth, we are concerned that if each board imposes their own minimum requirements for informed consent, our staff will bear the added operational and regulatory burden of ensuring compliance with several different standardization practices. We would like to suggest that the Board either consider removing the minimum specifications for informed consent or the specifications remain optional for providers. If the Board must specify minimum requirements, we would like to appeal if each Board can work together to establish a universal informed consent form recognized and accepted by all Boards. This model of universal standardization will help providers eliminate the added regulatory burden of complying with different consent forms for different services provided.

In OT 6.06, the Board also asks that the informed consent shall be obtained by an occupational therapist or occupational therapy assistant. This specific requirement could serve as a barrier to provide care in a timely manner. We request that the Board allows the providers to make the decision on obtaining informed consent so that consent can be obtained by other medically trained professionals in an organization.

Conclusion

On behalf of Gundersen Health System, we appreciate the opportunity to provide input and comments on CR 21-033. We strongly support the inclusion of Telehealth in OT chapters and hope our comments provide a bridge to improve and advance existing policies. At Gundersen, we collaborate with many other services to ensure comprehensive treatment for our patients. The input we provide will help ensure that providers are assisted by these regulations to provide the best treatment possible. If you have any questions or need clarification, please feel free to contact us. We look forward to continuing to work with the Board to improve health policy for our patients and communities.

Sincerely,



Jessica Easterday
Clinical Manager of Virtual Care
Gundersen Health System
jeeaster@gundersenhealth.org



Jamie Lohrentz
Clinical Manager, Outpatient/Neuro-vestibular/Pediatric Occupational and Physical Therapy
Gundersen Healthcare System
jlohren@gundersenhealth.org



Nathan Franklin
Director, External Affairs
Gundersen Health System
nsfrankl@gundersenhealth.org

June 8, 2021

Laura O'Brien
Chair, Occupational Therapists Affiliated Credentialing Board
Department of Safety and Professional Services
4822 Madison Yards Way
Madison, WI 53708

RE: Invitation to comment on CR 20-033 –relating to telehealth

Dear Ms. O'Brien and members of the Occupational Therapists Affiliated Credentialing Board:

In March 2020, Governor Evers signed into law 2019 Act 56, bipartisan Medicaid telehealth legislation that removed barriers to telehealth. The reforms and simplifications in that Act were governed by a simple premise: Telehealth is simply another tool to deliver health care and not a different type of health care. As such, care delivered by telehealth should not be regulated differently if the care is functionally equivalent to in-person care.

That public policy approach to telehealth has served Wisconsin extremely well and helped Wisconsin health care providers quickly transition to from in-person care to care delivered via telehealth during the COVID pandemic. And based on very favorable patient satisfaction and quality data, it seems clear that patient demand for telehealth will continue well beyond the pandemic for multiple health care professions.

Occupational therapy leaders and telehealth leaders serving patients in rural and urban locations throughout Wisconsin appreciate the Occupational Therapists Affiliated Credentialing Board's interest in proactively considering the future role of telehealth tools for occupational therapist practice in Wisconsin. As demonstrated by the pandemic, telehealth will be a technology tool that is a part of the future of occupational therapy practice. We believe we share an intent with the Board to remove barriers to the utilization of telehealth tools in occupational therapy practice and minimize administrative burden on occupational therapists by not creating differing standards for services provided by telehealth versus in person if the services provided are functionally equivalent.

With those goals and intents in mind, we have attached some recommended modifications to the proposed rule CR 20-033 and provided additional rationale for each of the suggested modifications. At the heart of the proposals is the same concept enshrined in 2019 Act 56 – to minimize unnecessary regulatory burden, care delivered by telehealth should not be regulated differently if the care is functionally equivalent to in-person care. As noted in the attachment, we believe the intended goals of many of the proposed rules are either already addressed by existing unprofessional conduct rules and other applicable laws and standards such as HIPAA, or can be accomplished by through clearer, simpler language.

Thank you for the opportunity to comment on proposed rule CR 20-033. Please contact Matthew Stanford, WHA General Counsel, at 608-274-1820 or mstanford@wha.org with any questions.

Sincerely,

Kay Anderson, OT
Service Line Director, Rehabilitation
Ascension Wisconsin

Matthew Stanford
General Counsel
Wisconsin Hospital Association

Marilyn Bert, OT
Clinical Manager
Mayo Clinic Health System – Northwest
Wisconsin

Stephanie Olive, MS, CCC-SLP
Director of Therapies and Developmental
Services
Children’s Wisconsin

Lisa Morgan, OT
Rehabilitation Manager
Mayo Clinic Health System – Southwest
Wisconsin

Kimberly Cronsell, MD
Medical Director for Digital Health &
Experience
Children’s Wisconsin

David Blair, MD
Chair, Virtual Care Committee
Mayo Clinic Health System – Wisconsin

Bill Brazeau, MBA
Director, Virtual Health
ThedaCare

Corey Cronrath, MD
Medical Director, Occupational Health
Marshfield Clinic Health System

Jessica Easterday, MBA, BSN, RN
Clinical Manager-Virtual Care
Gundersen Health System

Chris Meyer
Director of Virtual Care and Telehealth
Marshfield Clinic Health System

Tom Brazelton, MD, MPH, FAAP
Medical Director, Telehealth Program
UW Health

Recommended changes to CR 20-033

All recommended changes to CR 20-33 are identified in **red** below, and additional rationale are provided in *[italics]*.

TEXT OF RULE

SECTION 1. OT 4.05 (1) and (2) are amended to read:

OT 4.05 (1) An occupational therapist or occupational therapy assistant must provide direct supervision of non-licensed personnel at all times. Direct supervision requires that the supervising occupational therapist or occupational therapy assistant be ~~on premises and~~ available to assist, either on premises or through technology and equipment meeting the requirements of s. OT 6.03.

(2) When an occupational therapist or occupational therapy assistant delegates to non-licensed personnel maintenance or restorative services to clients, the occupational therapist or occupational therapy assistant must be ~~in the immediate area and~~ within audible and visual range of the client and the non-licensed personnel, either on premises in the immediate area or through technology and equipment meeting the requirements of s. OT 6.03.

SECTION 2. Chapter OT 6 is created to read:

CHAPTER OT 6

TELEHEALTH

OT 6.01 Authority and purpose. The rules in this chapter are adopted by the board under the authority of ss. 15.085 (5) (b) and 448.965 (1) (c) and (2), Stats., to establish standards of practice, care, and conduct for providing occupational therapy services using a telehealth visit.

OT 6.02 Definitions. As used in this chapter:

(1) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(2) "Telehealth visit" means the provision of occupational therapy services using technology where the occupational therapist or occupational therapy assistant and the patient are not at the same physical location for the occupational therapy session.

OT 6.03 Technology and equipment. An occupational therapist or occupational therapy assistant who provides occupational therapy services using a telehealth visit shall utilize technology that enables the transmission of information via the technology that is of sufficient quality to be functionally equivalent to face-to-face contact. ~~is secure and HIPAA-compliant and that includes, at a minimum, audio and video equipment that allows two-way real-time interactive communication with the patient.~~ Technology that is not real-time may be utilized to prepare for an occupational therapy session or to communicate with a patient between occupational therapy sessions.

[We propose amending this standard to provide a stronger standard that is in alignment with the "functional equivalent" standard that Medicaid requires.]

We also propose removing the HIPAA language because HIPAA already regulates the transmission of this information and imposes penalties for non-compliance. Further, as a practical matter, an individual OT or OT assistant is relying on the expertise of the vendor or supplier of the technology that the technology is HIPAA complaint. The OT or OT assistant's individual professional license should not automatically be at risk if the supplied technology is found to not meet a HIPAA requirement.]

OT 6.04 Standards of practice, care, and conduct.

(1) An occupational therapist or occupational therapy assistant shall be held to the same standards of practice, care, and professional conduct regardless of whether occupational therapy services are provided utilizing a telehealth visit or an in-person visit.

(2) A telehealth visit may not be utilized if the standard of care for the particular occupational therapy services provided cannot be met.

~~**(3)** An occupational therapist or occupational therapy assistant may provide an occupational therapy service using a telehealth visit only when the use of technology to provide the service is consistent with the education, training, and experience of the occupational therapist or occupational therapy assistant.~~

[Current law under OT 5.02(7), (8), and (9) state that the following are unprofessional conduct by an OT or OT:

(7) Any practice or conduct which may constitute a danger to the health, welfare, or safety of client or public.

(8) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety to clients.

(9) Practicing or attempting to practice under any license beyond the scope of that license.

These provisions, together with the telehealth specific provisions in proposed OT6.04(1) and (2) provide full means for the Board to prohibit an OT or OT assistant from utilizing telehealth technology or any other technology that assists in the performance of an occupational therapy service without knowledge to perform the service with reasonable skill and safety. Retaining proposed OT 6.04 (3) could create confusion and be interpreted to create special education, training, and experience requirements for individual telehealth tools that are not currently specified for other individual technology tools utilized by OT and OT assistants such as gait trainers, spirometers, and other diagnostic tools.]

~~**(3)(4)** When determining if a telehealth visit should be utilized as a medium for accomplishing the goals of a patient's occupational therapy program, an occupational therapist shall collaborate, as appropriate, with the occupational therapy assistant, the patient, the patient's family, other health care professionals, and community resources. Upon scheduling a telehealth visit, clear information shall be provided to the patient that the visit will be a telehealth visit.~~

[The explicit requirement in the proposed rule does not exist for other tools and treatment options provided by an OT or OT assistant to a patient. Retaining it as a special requirement for telehealth

suggests that the provision of a service by telehealth is less safe or less effective than a service provided in person and will add an unnecessary step or steps to the provision of care by the OT or OT assistant.

It appears that an intent of the proposed provision is to ensure that the patient is aware that a service will be provided by telehealth, thus giving the patient the choice to agree or not agree with the provision of an occupational therapy service via telehealth. Consistent with such intent, we instead propose an explicit requirement that the patient receive notice that the service will be a telehealth visit when scheduling the service.]

OT 6.05 Wisconsin license required. An occupational therapist or occupational therapy assistant who uses a telehealth visit to provide occupational therapy services to a patient located in this state shall be licensed by the board.

~~**OT 6.06 Informed consent.** Prior to an initial telehealth visit, an occupational therapist or occupational therapy assistant shall obtain informed consent from the patient specific to the occupational therapy services that will be provided using a telehealth visit. At a minimum, the informed consent shall specifically inform the patient of all the following:~~

~~(1) The risks and limitations of the use of a telehealth visit to provide occupational therapy services.~~

~~(2) The potential for unauthorized access to protected health information.~~

~~(3) The potential for disruption of technology during a telehealth visit.~~

[As noted earlier, we agree that a patient needs to be aware that a service will be provided by telehealth, thus giving the patient the choice to agree or not agree with the provision of an occupational therapy service via telehealth. Consistent with that intent, we propose in OT 6.04(3) an explicit requirement that the patient receive notice that the service will be a telehealth visit when scheduling the service.

We ask the Board to not create a special and unique to telehealth provision for informed consent that does not exist for other tools and treatment options provided by an OT or OT assistant to a patient is unnecessary. Retaining a special informed consent to provide a service by telehealth could be interpreted by patients that telehealth is less safe or less effective than a service provided in person, and will add an unnecessary steps to the provision of care by the OT or OT assistant.]

~~**OT 6.07 Recordkeeping.** An occupational therapist or occupational therapy assistant shall identify in the clinical record when occupational therapy services are provided utilizing a telehealth visit.~~

[We ask the Board to not create a special and unique to telehealth provision regarding record keeping that does not exist for other tools and treatment options provided by an OT or OT assistant. If it is clinically relevant to the patient's care or billing that the service is provided via telehealth, then that fact will already be included in the OT or OT assistant's record keeping, just as any other clinically relevant information is included in the record. But, as provided in proposed OT 6.04 (1) and (2), the provision of service by telehealth must meet the same standards as in-person care. Thus, if the fact that the service was provided via telehealth rather than in person is not clinically

differentiated or clinically relevant, it should not be a requirement for such information to be in the clinical record.]

OT 6.08 Supervision. Supervision of an occupational therapy assistant or unlicensed personnel providing services to or assisting a client during a telehealth visit shall meet the requirements of s. OT 4.04 or 4.05, as appropriate.

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)

**Occupational Therapists Affiliated Credentialing Board
Rule Projects (updated 08/31/22)**

Clearinghouse Rule Number	Scope #	Scope Expiration	Code Chapter Affected	Relating clause	Current Stage	Next Step
Not Assigned Yet	072-22	02/22/2025	OT 1 to 5	Implementation of the Occupational Therapy Licensure Compact	Preliminary Hearing on Scope Statement at 09/13/22 Meeting	Scope Implementation
21-033	087-20	01/06/2023	OT 1 to 6	Telehealth	Board Review Final Rule Draft and Legislative Report at 09/13/2022 Meeting	Submission to the Governor's Office for Approval
22-027	001-21	07/04/2023	OT 2	Licensure Requirements	Legislative Review after 01/03/2023	Board Review of Adoption Order at a Future Meeting
22-028	044-21	11/03/2023	OT 3	Continuing Education	Legislative Review after 01/03/2023	Board Review of Adoption Order at a Future Meeting

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: American Occupational Therapy Association		2) Date when request submitted: 7/28/2022 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: 11/17/2022	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Stakeholder Feedback Request from the American Occupational Therapy Association on the AOTA Model Occupational Therapy Act	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if applicable: N/A	
10) Describe the issue and action that should be addressed: The Board will discuss whether to provide feedback to the survey, and if so, how to provide it. Here is the link to the survey: https://surveys.aota.org/s3/Model-Practice-Act-Revisions-2022 . Attachment 			
11) Authorization			
Signature of person making this request			Date
Supervisor (Only required for post agenda deadline items)			Date
Executive Director signature (Indicates approval for post agenda deadline items)			Date
Directions for including supporting documents: 1. This form should be saved with any other documents submitted to the Agenda Items folders. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Model Occupational Therapy Practice Act

Below is the proposed revised version of the Model Occupational Therapy Practice Act, with notations of the proposed changes, as well as a clean version of the proposed revised version. Survey to make comments on the proposed revised version can be found:

<https://surveys.aota.org/s3/Model-Practice-Act-Revisions-2022>

The current version of the Model Occupational Therapy Practice Act (approved 2007) can be found: <https://www.aota.org/-/media/corporate/files/advocacy/state/resources/practiceact/model%20practice%20act%20final%202007.pdf>

Thank you in advance. Your input in this process will help define the practice of occupational therapy. If you have any questions, please email AOTA State Affairs at stpd@aota.org

The Model Occupational Therapy Practice Act has been developed by the State Affairs Group of the American Occupational Therapy Association, Inc. in collaboration with the Commission on Practice for use by state occupational therapy associations or state regulatory boards interested in developing or revising legislation to regulate the practice of Occupational Therapy. The Model Practice Act also includes the Definition of Occupational Therapy, which is approved by the Representative Assembly Coordinating Committee (RACC) on behalf of the Representative Assembly (RA) and is included in the Scope of Practice Official Document. The current definition was approved in 2021.

The Model Practice Act must be reviewed and carefully adapted to comply with a State's legislative requirements and practices. It must also be adapted to reflect a State's administrative and regulatory laws and other legal procedures. The Model Practice Act leaves blanks or indicates alternatives in brackets when further detail needs to be considered or when adaptations are especially necessary. The term "state" is used throughout the document for ease of reading. Other jurisdictions such as the District of Columbia and Puerto Rico will need to modify the language accordingly.

Proposed Changes (with revisions noted):

Article I. General Provisions

1.01 Title [Title should conform to State requirements. The following is suggested for appropriate adaptation.]

An Act providing for the licensure of Occupational Therapists and Occupational Therapy Assistants; for a board of Occupational Therapy practice and its powers and duties; and for related purposes.

1.02 Short Title

This Act shall be known and may be cited as the "Occupational Therapy Practice Act".

1.03 Legislative Intent and Purpose

The Legislature finds and declares that the Occupational Therapy Practice Act is enacted to safeguard the public health, safety, and welfare, to protect the public from incompetent, unethical or unauthorized persons, to assure a high level of professional conduct on the part of Occupational Therapists and Occupational Therapy Assistants, and to assure the availability of high quality Occupational Therapy services to persons in need of such services. It is the

purpose of this Act to provide for the regulation of persons representing themselves as Occupational Therapists or as Occupational Therapy Assistants, or performing services that constitute Occupational Therapy.

1.04 Definitions

- (1) "Act" means the Occupational Therapy Practice Act.
- (2) "Aide" means a person who is not licensed by the Board and who provides supportive services to Occupational Therapists and Occupational Therapy Assistants. An Aide shall function only under the guidance, responsibility, and supervision of the licensed Occupational Therapist or an Occupational Therapy Assistant who is appropriately supervised by an Occupational Therapist. ~~The Aide provides only specifically selected client related or non-client related tasks for which the Aide has been trained and has demonstrated competence. An aide does not provide skilled occupational therapy services. An aide must first demonstrate competence before performing assigned, delegated client related and non-client related tasks.~~
- (3) "Association" means the _____ State Occupational Therapy Association.
- (4) "Board" means the _____ State Board of Occupational Therapy.
- (5) "Good Standing" means the individual's license, certification, or registration is not currently suspended or revoked by any State regulatory entity.
- (6) "Continuing competency" means the process in which an occupational therapist or occupational therapy assistant develops and maintains the knowledge, critical reasoning, interpersonal skills, performance skills, and ethical practice necessary to perform their occupational therapy responsibilities.
- (7) "The Practice of Occupational Therapy" means...
- (8) "Occupational Therapist" means a person who meets the education requirements specified in [SECTION] and is licensed to practice Occupational Therapy under this Act. The occupational therapist is responsible for and directs the evaluation process and develops the intervention plan.
- (9) "Occupational Therapy Assistant" means a person licensed to assist in the practice of Occupational Therapy under this Act and who shall work under the appropriate supervision of and in partnership with an Occupational Therapist.
- (10) "Person" means any individual, partnership, unincorporated organization, limited liability entity, or corporate body, except that only an individual may be licensed under this Act.
- (11) "Supervision" means a cooperative process in which two or more people participate in a joint effort to establish, maintain, and/or elevate a level of competence and performance. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development.
- (12) "Telehealth" means the application of evaluation, consultative, preventative, and therapeutic services delivered through information and communication technology.

Commented [MP1]: The model definition of occupational therapy was approved in 2021 and can be found: <https://www.aota.org/-/media/Corporate/Files/Advocacy/State/Resources/PracticeAct/OT-Definition-for-AOTA-Model-Practice-Act.pdf>

The definition has not changed since approval in 2021 and is not up for comment at this time.

Article II. Board of Occupational Therapy

2.01 Board Created

There is hereby established the _____ Board of Occupational Therapy hereafter referred to as the Board, which shall be responsible for the implementation and enforcement of this Act.

2.02 Board Composition

- (1) The Board shall be composed of at least five individuals appointed by the governor.
- (2) At least two members shall be licensed as Occupational Therapists in this State.
- (3) One member shall be an Occupational Therapy Assistant licensed in this State.

- (4) At least two members (~~“public members”~~) shall be representatives of the public with an interest in the rights of consumers of health services (public member) and a representative of healthcare (consumer member).

2.03 Qualifications

- (1) Public and consumer members must reside in this State for at least five years immediately preceding their appointment. Public members and consumer members shall understand or be willing to learn the specific responsibilities of the Board; be willing to learn about and develop contacts with major community service, civic, consumer, public service, religious, and other organizations in their state that have an interest in health care delivery and health care policy, including organizations that represent disadvantaged communities, rural, and non-English speaking populations; and have a track record of advocacy related to furthering consumer interests, especially in the area of health care. Public and consumer members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become an occupational therapist or occupational therapy assistant. Public and consumer members may not be related to or have a household member who is an occupational therapist or an occupational therapy assistant.
- (2) Occupational Therapy and Occupational Therapy Assistant members must be licensed consistent with state law and reside in the State for at least five years or have a privilege to practice through the occupational therapy licensure compact and have been engaged in rendering Occupational Therapy services to the public, teaching, consultation, or research in Occupational Therapy for at least five years, including the three years immediately preceding their appointment.
- (3) No member shall be a current officer, board member or employee of a statewide organization established for the purpose of advocating the interests of persons licensed under this Act.

2.04 Appointments

- (1) Within 90 days after the enactment of this Act, the first Board shall be appointed by the Governor from a list of names submitted by the State Occupational Therapy Association and from nominations submitted by interested organizations or persons in the State.
- (2) Each subsequent appointment shall be made from recommendations submitted by the State Occupational Therapy Association or from recommendations submitted by other interested organizations or persons in the State.

2.05 Terms

- (1) Appointments to the Board shall be for a period of three years, except for the initial appointments which shall be for staggered terms of one, two and three years. Members shall serve until the expiration of the term for which they have been appointed or until their successors have been appointed to serve on the Board. No member may serve more than two consecutive three-year terms or six consecutive years.
- (2) Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms of prescribed by this section.

2.06 Vacancies

In the event of a vacancy in the office of a member of the Board other than by expiration of a term the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

2.07 Removal of Board Members

The Governor or the Board may remove a member of the Board for incompetence, professional misconduct, conflict of interest, or neglect of duty after written notice and opportunity for a hearing. The Board shall be responsible for defining the standards for removal for regulation.

2.08 Compensation of Board Members

Members of the Board shall receive no compensation for their services, but shall be entitled to reasonable reimbursement for travel and other expenses incurred in the execution of their powers and duties.

2.09 Administrative Provisions

- (1) The Board may employ and discharge an Administrator and such officers and employees as it deems necessary, and shall determine their duties in accordance with [applicable State statute].
- (2) [This subsection should be used to include administrative detail covering revenues and expenditures, authentication and preservation of documents, promulgation of rules and regulations, etc., in accordance with prevailing State practice, and to the extent that such detail is not already taken care of in State laws of general applicability.]

2.10 Meetings

- (1) The Board shall, at the first meeting of each calendar year, select a chairperson and conduct other appropriate business.
- (2) At least 3 additional meetings shall be held before the end of each calendar year.
- (3) Other meetings, including telehealth and other telecommunication conference meetings, may be convened at the call of the chairperson or the written request of two of more Board members.
- (4) A majority of the members of the Board shall constitute a quorum for all purposes. The quorum must include at least one Occupational Therapist.
- (5) The Board shall conduct its meetings and keep records of its proceedings in accordance with the provisions of the Administrative Procedure Act of this State.
- (6) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to the state's Administrative Procedures Act [or other comparable statute], conduct any portion of its meetings or hearings in executive session, closed to the public.
- (7) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under Board jurisdiction.

2.11 Powers and Duties

- (1) The Board shall in accordance with the Administrative Procedures Act, perform all lawful functions consistent with this Act, or otherwise authorized by State law including that it shall:
 - a. Administer, coordinate, and enforce the provisions of this Act;
 - b. Evaluate applicants' qualifications for licensure in a timely manner;
 - c. ~~Approve an examination for Occupational Therapists and an examination for Occupational Therapy Assistants;~~
 - d. Establish licensure fees and issue, renew, or deny licenses;
 - e. Issue subpoenas, examine witnesses, and administer oaths;
 - f. Investigate allegations of practices violating the provisions of this Act;
 - g. Make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act;

- h. Conduct hearings and keep records and minutes;
 - i. Establish a system for giving the public, including its regulated profession, reasonable advance notice of all open Board and committee meetings. Emergency meetings, including telephone or other telecommunication conference meetings, shall be held in accordance with applicable Administrative Procedures Act provisions;
 - j. Communicate disciplinary actions to relevant State and federal authorities, the National Board for Certification in Occupational Therapy (NBCOT), the American Occupational Therapy Association (AOTA) Ethic's Commission, and to other State OT licensing authorities; ~~and~~
 - k. Publish at least annually Board rulings, opinions, and interpretations of statutes or rules in order to guide persons regulated by this Act; ~~and~~
 - l. Establish a system for tracking the amount of time the Board takes to issue a license to an applicant.
- (2) No member of the Board shall be civilly liable for any act or failure to act performed in good faith in the performance of his or her duties as prescribed by law.

2.12 Training of New Members

The Board shall conduct and new members shall attend a training program designed to familiarize new members with their duties. A training program for new members shall be held as needed.

Article III. Licensing and Examination

3.01 Unlawful Practice

- (1) ~~No Person shall practice Occupational Therapy or assist in the practice of Occupational Therapy or provide Occupational Therapy services or hold himself or herself out as an Occupational Therapist or Occupational Therapy Assistant, or as being able to practice Occupational Therapy or assist in the practice of Occupational Therapy or provide Occupational Therapy services in this State unless he or she is licensed under the provisions of this Act.~~
- (2) ~~It is unlawful for any person not licensed as an Occupational Therapist in this State or whose license is suspended or revoked to use in connection with his or her name or place of business in this State, the words "Occupational Therapist", "licensed Occupational Therapist", or use any word, title, letters, or designation that implies that the person is an Occupational Therapist.~~
- (3) ~~It is unlawful for any person not licensed as an Occupational Therapy Assistant in this State or whose license is suspended or revoked to use in connection with his or her name or place of business in this State, the words "Occupational Therapy Assistant", "licensed Occupational Therapy Assistant", or use any word, title, letters, or designation that implies that the person is an Occupational Therapy Assistant.~~

3.02 Exemptions

~~This Act does not prevent or restrict the practice, service or activities of:~~

- (1) ~~Any person licensed or otherwise regulated in this State by any other law from engaging in his or her profession or occupational as defined in the Practice Act under which he or she is licensed.~~
- (2) ~~Any person pursuing a course of study leading to a degree in Occupational Therapy at an accredited educational program, if that person is designated by a title which clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision.~~

- ~~(3) Any person fulfilling the supervised fieldwork experience requirements of Section 3.03 of this Act, if the experience constitutes a part of the experience necessary to meet the requirement of that section and he or she acts under appropriate supervision.~~
- ~~(4) An occupational therapist or occupational therapy assistant who is authorized to practice occupational therapy in any jurisdiction, if he or she practices occupational therapy in this State for the purpose of education, consulting, or training, for the duration of the purpose, as preapproved by the Board;~~

Commented [MP2]: Moved to section 4 and section renumbered

3.01 Requirements for Licensure

An applicant applying for a license as an Occupational Therapist or as an Occupational Therapy Assistant shall file a written application provided by the Board, demonstrating to the satisfaction of the Board that the applicant

- (1) Is in good standing as defined in Section 1.04;
- (2) Has successfully completed the minimum academic requirements of an educational program for Occupational Therapists or Occupational Therapy Assistants that is accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE) or predecessor organizations;
- (3) Has successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in Section 3.03 (2).
 - a. An Occupational Therapist must complete a minimum of twenty-four weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation.
 - b. An Occupational Therapy Assistant must complete a minimum of sixteen weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation; and
- (4) Has passed an written or computerized examination administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT) or by another nationally recognized credentialing body as approved by the Board, to test their knowledge of the basic and clinical sciences related to Occupational Therapy, Occupational Therapy theory and practice, and professional ethics and conduct including the applicant's professional skills and judgement in the utilization of Occupational Therapy techniques and methods, and such other subjects to determine the applicant's fitness to practice; as provided for in Section 3.04 of this Act.
- (5) Fulfills any additional state requirements for licensure, certification, or registration in their area of jurisdiction; and
- (6) A person satisfying the requirements of this section, excluding Subsection (4) may apply for examination. Internationally educated applicants shall comply with section 3.02.

3.02 Internationally Educated Applicants

An Occupational Therapist who is a graduate of a school of occupational therapy that is located outside of the United States and its territories shall:

- (1) Fulfill state requirements for licensure, certification, or registration
- (2) Complete occupational therapy education programs (including fieldwork requirements) that are deemed comparable by the credentialing body recognized by the state occupational therapy regulatory board or agency to entry-level occupational therapy education programs in the United States.

3.04 Examination

Commented [MP3]: Combined with requirements overall

- (1) A person satisfying the requirements of Section 3.03 excluding Subsection (4), may apply for examination. Internationally trained applicants shall comply with section 3.10. A person who fails an examination may apply for reexamination upon payment of the prescribed fee, consistent with regulations promulgated by the Board.
- (2) Each applicant for licensure shall be examined by written or computerized examination administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT) or by another nationally recognized credentialing body as approved by the Board, to test his or her knowledge of the basic and clinical sciences relating to Occupational Therapy, Occupational Therapy theory and practice, and professional ethics and conduct including the applicant's professional skills and judgement in the utilization of Occupational Therapy techniques and methods, and such other subjects as the Board may require to determine the applicant's fitness to practice.

3.05 License Endorsement

The Board may grant a license to any applicant who presents proof of current licensure as an Occupational Therapist or Occupational Therapy Assistant in another State, the District of Columbia, or any territory or jurisdiction of the United States which requires standards for licensure determined by the Board to be at least as stringent as the requirements for licensure in this Act.

3.03 Limited Permit

- (1) A limited permit to practice Occupational Therapy may be granted to a person who has completed the academic and fieldwork requirements for Occupational Therapist of this Act and has not yet taken or received the results of the entry-level certification examination. This permit shall be valid for ___ months and shall allow the person to practice Occupational Therapy under the direction and appropriate supervision of an Occupational Therapist licensed under this Act. This permit shall expire when the person is issued a license under Section 3.013-03 or if the person is notified that they he or she did not pass the examination. The limited permit may not be renewed.
- (2) A limited permit to assist in the practice of Occupational Therapy may be granted to a person who has completed the academic and fieldwork requirements of Occupational Therapy Assistants of this Act and has not yet taken or received the results of the entry-level certification examination. This permit shall be valid for ___ months and shall allow the person to practice Occupational Therapy under the direction and appropriate supervision of an Occupational Therapist licensed under this Act. This permit shall expire when the person is issued a license under Section 3.013 or if the person is notified that they he or she did not pass the examination. The limited permit may not be renewed.

3.04 Temporary License

An applicant who is currently licensed and in good standing to practice in another jurisdiction and meets the requirements for licensure by endorsement may obtain a temporary license while the application is being processed by the Board.

3.05 Issuance of License

The Board shall issue a license to any person who meets the requirements of this Act, as described in sections 3.013 or 3.024, upon payment of the prescribed license fee as described in Section 3.094.

3.06 Renewal of License

- (1) Any license issued under this Act shall be subject to annual [biennial] renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the Board.
- (2) The Board shall prescribe by rule continuing competence requirements as a condition for renewal of licensure.
- (3) The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules and regulations.
- ~~(4) Upon request, the Board shall grant inactive status to a licensee who maintains continuing competence requirements established by the Board, and

 - a. Does not practice during such "inactive" period as an Occupational Therapist or an Occupational Therapy Assistant, and
 - b. Does not during such "inactive" period hold him or herself out as an Occupational Therapist or an Occupational Therapy Assistant.~~
- (5) Licensees are granted a grace period of 30 days after the expiration of their licenses in which to renew retroactively if they meet statutory requirements for renewal and pay to the Board the renewal fee and any late fee set by the Board.
- (6) A suspended license is subject to expiration and may be renewed as provided in this Act, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgement by which the license was suspended.
- (7) A license revoked on disciplinary grounds is subject to expiration as provided in this Act, but it may not be renewed. The licensee, as a condition of reinstatement, shall meet license requirements for new licensees and shall pay a reinstatement fee set by the Board.

3.07 Inactive License

- (1) Upon request, the Board shall grant inactive status to a licensee who is in good standing and maintains continuing competence requirements established by the Board, and

 - a. Does not practice during such "inactive" period as an Occupational Therapist or an Occupational Therapy Assistant, and
 - b. Does not during such "inactive" period hold themselves out as an Occupational Therapist or an Occupational Therapy Assistant

3.08 Re-entry

- (1) Reentering Occupational Therapists and Occupational Therapy Assistants are individuals who have previously practiced in the field of occupational therapy and have not engaged in the practice of occupational therapy for a minimum of 24 months
- (2) Practitioners who are seeking reentry must abide by state licensure and practice regulations and any requirements established by the workplace

3.10 Internationally Educated Applicants

~~Occupational Therapists trained outside of the United States and its territories shall satisfy the examination requirements of Section 3.03 (4). The Board shall require these applicants to meet examination eligibility requirements as established by the credentialing body recognized by the Board and which are substantially equal to those contained in section (3.03) before taking the examination.~~

Commented [MP4]: Moved above

3.09 Fees

- (1) Consistent with the Administrative Procedures Act, the Board shall prescribe, and publish in the manner established by its rules, fees in amounts determined by the Board for the following:

- a. Initial license fee
 - b. Renewal of license fee
 - c. Late renewal fee
 - d. Limited permit fee
 - e. Temporary license fee
 - f. Any other fees it determines appropriate.
- (2) These fees shall be set in such an amount as to reimburse the State, to the extent feasible, for the cost of the services rendered.

3.12 Titles and Designations

- (1) ~~A licensed occupational therapist may use the words "occupational therapist," "licensed occupational therapist," or any words, title, letters, or other appropriate designation, including OT and OT/L, that identifies the person as a licensed occupational therapist in connection with:~~
- a. ~~His or her name or place of business; and~~
 - b. ~~Any activity, practice or service, so long as he or she is at all times in conformance with the requirements of this act when providing occupational therapy services.~~
- (2) ~~A licensed occupational therapy assistant may use the words "occupational therapy assistant," "licensed occupational therapy assistant," or any word, title, letters or other appropriate designation, including OTA or OTAL that identifies the person as a licensed occupational therapy assistant in connection with:~~
- a. ~~His or her name or place of business; and~~
 - b. ~~Any activity, practice, or service, so long as he or she is at all times in conformance with the requirements of this act when providing occupational therapy services.~~

Commented [MP5]: Moved to section 4

Article IV. Disciplinary Action Regulation of Practice

4.01 Unlawful Practice

- (4) No Person shall practice Occupational Therapy or assist in the practice of Occupational Therapy or provide Occupational Therapy services or hold ~~themselves himself or herself~~ out as an Occupational Therapist or Occupational Therapy Assistant, or as being able to practice Occupational Therapy or assist in the practice of Occupational Therapy or provide Occupational Therapy services in this State unless they are ~~he or she is~~ licensed under the provisions of this Act.
- (5) It is unlawful for any person not licensed as an Occupational Therapist in this State or whose license is suspended or revoked to use in connection with ~~their his or her~~ name or place of business in this State, the words "Occupational Therapist", "licensed Occupational Therapist", "Doctor of Occupational Therapy" or the professional abbreviations "O.T.," "O.T.L.," "M.O.T.," "O.T.D.," "M.O.T./L.," "O.T.D./L." or use any word, title, letters, or designation that implies that the person practices or is authorized to practice occupational therapy as an Occupational Therapist.
- (6) It is unlawful for any person not licensed as an Occupational Therapy Assistant in this State or whose license is suspended or revoked to use in connection with ~~their his or her~~ name or place of business in this State, the words "Occupational Therapy Assistant", "licensed Occupational Therapy Assistant," or the professional abbreviation "O.T.A.," or "O.T.A./L." or use any word, title, letters, or designation that implies that the person assists in, or is authorized to assist in, the practice of occupational therapy as is an Occupational Therapy Assistant.

Commented [MP6]: Previously 3.01

4.02 Exemptions

Commented [MP7]: Previously 3.02

This Act does not prevent or restrict the practice, service or activities of:

- (1) Any person licensed or otherwise regulated in this State by any other law from engaging in ~~their his or her~~ profession or occupational as defined in the Practice Act under which ~~they are he or she is~~ licensed.
- (2) Any person pursuing a course of study leading to a degree in Occupational Therapy at an accredited educational program, if that person is designated by a title which clearly indicates ~~their his or her~~ status as a student and if they act under appropriate instruction and supervision.
- (3) Any person fulfilling the supervised fieldwork experience requirements of Section ~~3-033.01~~ of this Act, if the experience constitutes a part of the experience necessary to meet the requirement of that section and ~~they he or she~~ acts under appropriate supervision.
- (4) Any person fulfilling an occupational therapy doctoral capstone experience if they act under appropriate supervision.
- (5) An occupational therapist or occupational therapy assistant who is authorized to practice occupational therapy in any jurisdiction, if ~~they he or she~~ practices occupational therapy in this State for the purpose of education, consulting, or training, for the duration of the purpose, as preapproved by the Board;

4.033-12- Titles and Designations

- (3) A licensed occupational therapist may use the words “occupational therapist,” “licensed occupational therapist,” “Doctor of Occupational Therapy” or any words, title, letters, or other appropriate designation, including ~~OT and OT/L, MOT, MOT/L, OTD, and OTD/L~~ that identifies the person as a licensed occupational therapist in connection with:
 - a. Their name or place of business; and
 - b. Any activity, practice, or service, so long as they are at all times in conformance with the requirements of this act when providing occupational therapy services.
- (4) A licensed occupational therapy assistant may use the words “occupational therapy assistant,” “licensed occupational therapy assistant,” or any word, title, letters or other appropriate designation, including OTA or OTA/L that identifies the person as a licensed occupational therapy assistant in connection with:
 - a. Their name or place of business; and
 - b. Any activity, practice, or service, so long as they are at all times in conformance with the requirements of this act when providing occupational therapy services.

Commented [MP8]: Previously 3.12

4.04 Grounds for Disciplinary Action

The Board may take action against a licensee as described in Section ~~4.05-08~~ for unprofessional conduct including:

- (1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
- (2) Being guilty of unprofessional conduct as defined by the rules established by the Board, or violating the Code of Ethics adopted and published by the Board;
- (3) Being convicted of a crime in any court except for minor offenses;
- (4) Violating any lawful order, rule, or regulation rendered or adopted by the Board;
- (5) Violating any provision of this Act (or regulations pursuant to this Act);
- (6) Practicing beyond the scope of the practice of Occupational Therapy;
- (7) Providing substandard care as an Occupational Therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established;
- (8) Providing substandard care as an Occupational Therapy Assistant, including exceeding the authority to perform components of intervention selected and delegated by the

- supervising Occupational Therapist regardless of whether actual injury to the patient is established;
- (9) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills or abilities to perform those responsibilities;
 - (10) Failing to provide appropriate supervision to an Occupational Therapy Assistant or Aide in accordance with this Act and Board rules;
 - (11) Practicing as an Occupational Therapist or Occupational Therapy Assistant when competent services to recipients may not be provided due to the therapist's own physical or mental impairment;
 - (12) Having had an Occupational Therapist or Occupational Therapy Assistant license revoked or suspended, other disciplinary action taken, or an application for licensure reused, revoked or suspended by the proper authorities of another State, territory or country, irrespective of intervening appeals and stays;
 - (13) Engaging in sexual misconduct. For the purposes of this paragraph, sexual misconduct includes:
 - a. Engaging in or soliciting sexual relationship, whether consensual or non-consensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person.
 - b. Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients.
 - (14) Aiding or abetting a person who is not licensed as an Occupational Therapist or Occupational Therapy Assistant in this State and who directly or indirectly performs activities requiring a license.
 - (15) Abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care.

4.05 Complaints

- (1) Any ~~individual, group, or entity person~~ may file a complaint with the Board against any licensed Occupational Therapist or licensed Occupational Therapy Assistant in the State charging that person with having violated the provisions of this Act.
- (2) The complaint shall specify charges in sufficient detail so as to disclose to the accused fully and completely the alleged acts of misconduct for which ~~they are he or she is~~ charged.
 - a. "Sufficient detail" is defined as a complainant's full name and contact information, respondent's full name and contact information when available, alleged violations of Standards of Conduct from the Code, signature, or e-signature, and supporting documentation.
- (3) Upon receiving a complaint, the Board shall notify the licensee of the complaint and request a written response from the licensee.
- (4) The Board shall keep an information file about each complaint filed with the Board. The information in each complaint file shall contain complete, current and accurate information including, but not limited to:
 - a. All persons contacted in relation to the complaint;
 - b. A summary of findings made at each step of the complaint process;
 - c. An explanation of the legal basis and reason for the complaint that is dismissed; and
 - d. Other relevant information.

4.06 Due Process

- (1) Before the Board imposes disciplinary actions, it shall give the individual against whom the action is contemplated an opportunity for a hearing before the Board.
- (2) The Board shall give notice and hold a hearing in accordance with the State's Administrative Procedures Act [or other comparable statute].
- (3) The individual shall be entitled to be heard in ~~their his or her~~ defense, along or with counsel, and may produce testimony and testify in ~~their his or her~~ own behalf, and present witnesses, without reasonable time limits.
- (4) Any person aggrieved by a final decision of the Board may appeal in accordance with the Administrative Procedures Act [or other comparable statute].

4.07 Investigation

To enforce this Act, the Board is authorized to:

- (1) Receive complaints filed against licensees and conduct a timely investigation.
- (2) Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the Board has reason to believe that there may be a violation of this Act.
- (3) Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.
- (4) For good cause, take emergency action ordering the summary suspension of a license or the restriction of the licensee's practice or employment pending proceedings by the Board.
- (5) Appoint hearing officers authorized to conduct hearings. Hearing officers shall prepare and submit to the Board findings of fact, conclusions of law and an order that shall be reviewed and voted on by the Board.
- (6) Require a licensee to be examined in order to determine the licensee's professional competence or resolve any other material issue arising from a proceeding.
- (7) If the Board finds that the information received in a complaint or an investigation is not of sufficient seriousness to merit disciplinary action against a licensee, it may take the following actions:
 - a. Dismiss the complaint if the board believes the information or complaint is without merit or not within the purview of the Board. The record of the complaint shall be expunged from the licensee's record.
 - b. Issue a confidential advisory letter to the licensee. An advisory letter is non-disciplinary and notifies a licensee that, while there is insufficient evidence to begin disciplinary action, the Board believes that the licensee should be aware of an issue.
- (8) Take other lawful and appropriate actions within its scope of functions and implementation of this Act.

The licensee shall comply with a lawful investigation conducted by the Board.

4.08 Penalties

- (1) Consistent with the Administrative Procedures Act, the Board may impose separately, or in combination, any of the following disciplinary actions on a licensee as provided in this Act:
 - a. Refuse to issue or renew a license;
 - b. Suspend or revoke a license;
 - c. Impose probationary conditions;
 - d. Issue a letter of reprimand, ~~or~~ concern, public order, or censure;
 - e. Require restitution of fees;
 - f. Impose a fine not to exceed \$ _____, which deprives the licensee of any economic advantage gained by the violation and which reimburses the Board for costs of the investigation and proceeding;

- g. Impose practice and/or supervision requirements;
 - h. Require licensees to participate in continuing competence activities specified by the Board;
 - i. Accept a voluntary surrendering of a license; or
 - j. Take other appropriate corrective actions including advising other parties as needed to protect their legitimate interests and to protect the public.
- (2) If the Board imposes suspension or revocation of license, application may be made to the Board for reinstatement, subject to the limits of section 3.069 (license renewal). The Board shall have the discretion to accept or reject an application for reinstatement and may require an examination or other satisfactory proof of eligibility for reinstatement.
- (3) If a licensee is placed on probation, the Board may require the license holder to:
- a. Report regularly to the Board on matters that are the basis of probation;
 - b. Limit practice to the areas prescribed by the Board;
 - c. Continue to review continuing competence activities until the license holder attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation;
 - d. Provide other relevant information to the Board.

4.09 Injunction

- (1) The Board is empowered to apply for relief by injunction, without bond, to restrain any person, partnership, or corporation from any threatened or actual act or practice, which constitutes an offense against this Act. It shall not be necessary for the Board to allege and prove that there is no adequate remedy at law in order to obtain the relief requested. The members of the Board shall not be individually liable for applying for such relief.
- (2) If a person other than a licensed Occupational Therapist or Occupational Therapy Assistant threatens to engage in or has engaged in any act or practice which constitutes an offense under this Act, a district court of any county on application of the Board may issue an injunction or other appropriate order restraining such conduct.

4.10 Referral Requirements

- (1) An occupational therapist may evaluate and initiate occupational therapy treatment on a patient without a referral from other health service providers.
- (2) An occupational therapist shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required.

4.11 Telehealth

A licensee may provide occupational therapy services to a patient utilizing a telehealth visit if the occupational therapy services are provided in accordance with all requirements of this Act.

- (1) "Telehealth visit" means the provision of occupational therapy services by a licensee to a patient using technology where the licensee and patient are not in the same physical location for the occupational therapy service.
- (2) A licensee engaged in a telehealth visit shall utilize technology that is secure and compliant with state and federal law.
- (3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person occupational therapy. A licensee shall not utilize a telehealth visit if the standard of care for the particular occupational therapy services cannot be met using technology.
- (4) Occupational therapy services provided by telehealth can be synchronous or asynchronous

- a. “asynchronous” means using means any transmission to another site for review at a later time that uses a camera or other technology to capture images or data to be recorded
- b. “synchronous” means real-time interactive technology

Article V. Other

5.01 Severability

- (1) If a part of this Act is held unconstitutional or invalid, all valid parts that are severable from the invalid or unconstitutional part shall remain in effect.
- (2) If a part of this Act is held unconstitutional or invalid in one or more of its applications, the part shall remain in effect in all constitutional and valid applications that are severable from the invalid applications.

5.02 Limitations on authority

Nothing in this Act is intended to limit, preclude, or otherwise interfere with the practices of other health care providers formally trained and licensed, registered, credentialled, or certified by appropriate agencies of the state.

5.032 Effective Date

- (1) The Act, except for Section 3.01, shall take effect ninety days (90) days after enactment [unless State practice or requirements require another effective date].
- (2) Section 3.01 of this Act shall take effect 180 days after enactment.

Proposed changes (clean):

Article I. General Provisions

1.01 Title [Title should conform to State requirements. The following is suggested for appropriate adaptation.]

An Act providing for the licensure of Occupational Therapists and Occupational Therapy Assistants; for a board of Occupational Therapy practice and its powers and duties; and for related purposes.

1.02 Short Title

This Act shall be known and may be cited as the “Occupational Therapy Practice Act”.

1.03 Legislative Intent and Purpose

The Legislature finds and declares that the Occupational Therapy Practice Act is enacted to safeguard the public health, safety, and welfare, to protect the public from incompetent, unethical or unauthorized persons, to assure a high level of professional conduct on the part of Occupational Therapists and Occupational Therapy Assistants, and to assure the availability of high quality Occupational Therapy services to persons in need of such services. It is the purpose of this Act to provide for the regulation of persons representing themselves as Occupational Therapists or as Occupational Therapy Assistants, or performing services that constitute Occupational Therapy.

1.04 Definitions

- (1) “Act” means the Occupational Therapy Practice Act.

- (2) "Aide" means a person who is not licensed by the Board and who provides supportive services to Occupational Therapists and Occupational Therapy Assistants. An Aide shall function only under the guidance, responsibility, and supervision of the licensed Occupational Therapist or an Occupational Therapy Assistant who is appropriately supervised by an Occupational Therapist. An aide does not provide skilled occupational therapy services. An aide must first demonstrate competence before performing assigned, delegated client related and non-client related tasks.
- (3) "Association" means the _____ State Occupational Therapy Association.
- (4) "Board" means the _____ State Board of Occupational Therapy.
- (5) "Good Standing" means the individual's license, certification, or registration is not currently suspended or revoked by any State regulatory entity.
- (6) "Continuing competency" means the process in which an occupational therapist or occupational therapy assistant develops and maintains the knowledge, critical reasoning, interpersonal skills, performance skills, and ethical practice necessary to perform their occupational therapy responsibilities.
- (7) "The Practice of Occupational Therapy" means...
- (8) "Occupational Therapist" means a person who meets the education requirements specified in [SECTION] and is licensed to practice Occupational Therapy under this Act. The occupational therapist is responsible for and directs the evaluation process and develops the intervention plan.
- (9) "Occupational Therapy Assistant" means a person licensed to assist in the practice of Occupational Therapy under this Act and who shall work under the appropriate supervision of and in partnership with an Occupational Therapist.
- (10) "Person" means any individual, partnership, unincorporated organization, limited liability entity, or corporate body, except that only an individual may be licensed under this Act.
- (11) "Supervision" means a cooperative process in which two or more people participate in a joint effort to establish, maintain, and/or elevate a level of competence and performance. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development.
- (12) "Telehealth" means the application of evaluation, consultative, preventative, and therapeutic services delivered through information and communication technology.

Commented [MP9]: The model definition of occupational therapy was approved in 2021 and can be found: <https://www.aota.org/-/media/Corporate/Files/Advocacy/State/Resources/PracticeAct/OT-Definition-for-AOTA-Model-Practice-Act.pdf>

The definition has not changed since approval in 2021 and is not up for comment at this time.

Article II. Board of Occupational Therapy

2.01 Board Created

There is hereby established the _____ Board of Occupational Therapy hereafter referred to as the Board, which shall be responsible for the implementation and enforcement of this Act.

2.02 Board Composition

- (1) The Board shall be composed of at least five individuals appointed by the governor.
- (2) At least two members shall be licensed as Occupational Therapists in this State.
- (3) One member shall be an Occupational Therapy Assistant licensed in this State.
- (4) At least two members shall be representatives of the public with an interest in the rights of consumers of health services (public member) and a representative of healthcare (consumer member).

2.03 Qualifications

- (1) Public and consumer members must reside in this State for at least five years immediately preceding their appointment. Public members and consumer members shall understand or be willing to learn the specific responsibilities of the Board; be willing to

learn about and develop contacts with major community service, civic, consumer, public service, religious, and other organizations in their state that have an interest in health care delivery and health care policy, including organizations that represent disadvantaged communities, rural, and non-English speaking populations; and have a track record of advocacy related to furthering consumer interests, especially in the area of health care. Public and consumer members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become an occupational therapist or occupational therapy assistant. Public and consumer members may not be related to or have a household member who is an occupational therapist or an occupational therapy assistant.

- (2) Occupational Therapy and Occupational Therapy Assistant members must be licensed consistent with state law and reside in the State for at least five years or have a privilege to practice through the occupational therapy licensure compact and have been engaged in rendering Occupational Therapy services to the public, teaching, consultation, or research in Occupational Therapy for at least five years, including the three years immediately preceding their appointment.
- (3) No member shall be a current officer, board member or employee of a statewide organization established for the purpose of advocating the interests of persons licensed under this Act.

2.04 Appointments

- (1) Within 90 days after the enactment of this Act, the first Board shall be appointed by the Governor from a list of names submitted by the State Occupational Therapy Association and from nominations submitted by interested organizations or persons in the State.
- (2) Each subsequent appointment shall be made from recommendations submitted by the State Occupational Therapy Association or from recommendations submitted by other interested organizations or persons in the State.

2.05 Terms

- (1) Appointments to the Board shall be for a period of three years, except for the initial appointments which shall be for staggered terms of one, two and three years. Members shall serve until the expiration of the term for which they have been appointed or until their successors have been appointed to serve on the Board. No member may serve more than two consecutive three-year terms or six consecutive years.
- (2) Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms of prescribed by this section.

2.06 Vacancies

In the event of a vacancy in the office of a member of the Board other than by expiration of a term the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

2.07 Removal of Board Members

The Governor or the Board may remove a member of the Board for incompetence, professional misconduct, conflict of interest, or neglect of duty after written notice and opportunity for a hearing. The Board shall be responsible for defining the standards for removal for regulation.

2.08 Compensation of Board Members

Members of the Board shall receive no compensation for their services, but shall be entitled to reasonable reimbursement for travel and other expenses incurred in the execution of their powers and duties.

2.09 Administrative Provisions

- (1) The Board may employ and discharge an Administrator and such officers and employees as it deems necessary, and shall determine their duties in accordance with [applicable State statute].
- (2) [This subsection should be used to include administrative detail covering revenues and expenditures, authentication and preservation of documents, promulgation of rules and regulations, etc., in accordance with prevailing State practice, and to the extent that such detail is not already taken care of in State laws of general applicability.]

2.10 Meetings

- (1) The Board shall, at the first meeting of each calendar year, select a chairperson and conduct other appropriate business.
- (2) At least 3 additional meetings shall be held before the end of each calendar year.
- (3) Other meetings, including telehealth and other telecommunication conference meetings, may be convened at the call of the chairperson or the written request of two or more Board members.
- (4) A majority of the members of the Board shall constitute a quorum for all purposes. The quorum must include at least one Occupational Therapist.
- (5) The Board shall conduct its meetings and keep records of its proceedings in accordance with the provisions of the Administrative Procedure Act of this State.
- (6) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to the state's Administrative Procedures Act [or other comparable statute], conduct any portion of its meetings or hearings in executive session, closed to the public.
- (7) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under Board jurisdiction.

2.11 Powers and Duties

- (1) The Board shall in accordance with the Administrative Procedures Act, perform all lawful functions consistent with this Act, or otherwise authorized by State law including that it shall:
 - a. Administer, coordinate, and enforce the provisions of this Act;
 - b. Evaluate applicants' qualifications for licensure in a timely manner;
 - c. Establish licensure fees
 - d. and issue, renew, or deny licenses;
 - e. Issue subpoenas, examine witnesses, and administer oaths;
 - f. Investigate allegations of practices violating the provisions of this Act;
 - g. Make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act;
 - h. Conduct hearings and keep records and minutes;
 - i. Establish a system for giving the public, including its regulated profession, reasonable advance notice of all open Board and committee meetings. Emergency meetings, including telephone or other telecommunication conference meetings, shall be held in accordance with applicable Administrative Procedures Act provisions;

- j. Communicate disciplinary actions to relevant State and federal authorities, the National Board for Certification in Occupational Therapy (NBCOT), the American Occupational Therapy Association (AOTA) Ethic's Commission, and to other State OT licensing authorities; ~~and~~
 - k. Publish at least annually Board rulings, opinions, and interpretations of statutes or rules in order to guide persons regulated by this Act; and
 - l. Establish a system for tracking the amount of time the Board takes to issue a license to an applicant.
- (2) No member of the Board shall be civilly liable for any act or failure to act performed in good faith in the performance of his or her duties as prescribed by law.

2.12 Training of New Members

The Board shall conduct and new members shall attend a training program designed to familiarize new members with their duties. A training program for new members shall be held as needed.

Article III. Licensing and Examination

3.01 Requirements for Licensure

An applicant applying for a license as an Occupational Therapist or as an Occupational Therapy Assistant shall file a written application provided by the Board, demonstrating to the satisfaction of the Board that the applicant

- (1) Is in good standing as defined in Section 1.04;
- (2) Has successfully completed the minimum academic requirements of an educational program for Occupational Therapists or Occupational Therapy Assistants that is accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE) or predecessor organizations;
- (3) Has successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in Section 3.03 (2).
 - a. An Occupational Therapist must complete a minimum of twenty-four weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation.
 - b. An Occupational Therapy Assistant must complete a minimum of sixteen weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation;
- (4) Has passed a written or computerized examination administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT) or by another nationally recognized credentialing body as approved by the Board, to test their knowledge of the basic and clinical sciences related to Occupational Therapy, Occupational Therapy theory and practice, and professional ethics and conduct including the applicant's professional skills and judgement in the utilization of Occupational Therapy techniques and methods, and such other subjects to determine the applicant's fitness to practice;
- (5) Fulfills any additional state requirements for licensure, certification, or registration in their area of jurisdiction; and
- (6) A person satisfying the requirements of this section, excluding Subsection (4) may apply for examination. Internationally educated applicants shall comply with section 3.02.

3.02 Internationally Educated Applicants

An Occupational Therapist who is a graduate of a school of occupational therapy that is located outside of the United States and its territories shall:

- (1) Fulfill state requirements for licensure, certification, or registration
- (2) Complete occupational therapy education programs (including fieldwork requirements) that are deemed comparable by the credentialing body recognized by the state occupational therapy regulatory board or agency to entry-level occupational therapy education programs in the United States.

3.03 Limited Permit

- (1) A limited permit to practice Occupational Therapy may be granted to a person who has completed the academic and fieldwork requirements for Occupational Therapist of this Act and has not yet taken or received the results of the entry-level certification examination. This permit shall be valid for ___ months and shall allow the person to practice Occupational Therapy under the direction and appropriate supervision of an Occupational Therapist licensed under this Act. This permit shall expire when the person is issued a license under Section 3.01 or if the person is notified that they did not pass the examination. The limited permit may not be renewed.
- (2) A limited permit to assist in the practice of Occupational Therapy may be granted to a person who has completed the academic and fieldwork requirements of Occupational Therapy Assistants of this Act and has not yet taken or received the results of the entry-level certification examination. This permit shall be valid for ___ months and shall allow the person to practice Occupational Therapy under the direction and appropriate supervision of an Occupational Therapist licensed under this Act. This permit shall expire when the person is issued a license under Section 3.01 or if the person is notified that they did not pass the examination. The limited permit may not be renewed.

3.04 Temporary License

An applicant who is currently licensed and in good standing to practice in another jurisdiction and meets the requirements for licensure by endorsement may obtain a temporary license while the application is being processed by the Board.

3.05 Issuance of License

The Board shall issue a license to any person who meets the requirements of this Act, as described in sections 3.01 or 3.02, upon payment of the prescribed license fee as described in Section 3.09.

3.06 Renewal of License

- (1) Any license issued under this Act shall be subject to annual [biennial] renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the Board.
- (2) The Board shall prescribe by rule continuing competence requirements as a condition for renewal of licensure.
- (3) The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules and regulations.
- (4) Licensees are granted a grace period of 30 days after the expiration of their licenses in which to renew retroactively if they meet statutory requirements for renewal and pay to the Board the renewal fee and any late fee set by the Board.
- (5) A suspended license is subject to expiration and may be renewed as provided in this Act, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgement by which the license was suspended.

- (6) A license revoked on disciplinary grounds is subject to expiration as provided in this Act, but it may not be renewed. The licensee, as a condition of reinstatement, shall meet license requirements for new licensees and shall pay a reinstatement fee set by the Board.

3.07 Inactive License

- (1) Upon request, the Board shall grant inactive status to a licensee who is in good standing and maintains continuing competence requirements established by the Board, and
 - a. Does not practice during such "inactive" period as an Occupational Therapist or an Occupational Therapy Assistant, and
 - b. Does not during such "inactive" period hold themselves out as an Occupational Therapist or an Occupational Therapy Assistant

3.08 Re-entry

- (1) Reentering Occupational Therapists and Occupational Therapy Assistants are individuals who have previously practiced in the field of occupational therapy and have not engaged in the practice of occupational therapy for a minimum of 24 months
- (2) Practitioners who are seeking reentry must abide by state licensure and practice regulations and any requirements established by the workplace

3.09 Fees

- (1) Consistent with the Administrative Procedures Act, the Board shall prescribe, and publish in the manner established by its rules, fees in amounts determined by the Board for the following:
 - a. Initial license fee
 - b. Renewal of license fee
 - c. Late renewal fee
 - d. Limited permit fee
 - e. Temporary license fee
 - f. Any other fees it determines appropriate.
- (2) These fees shall be set in such an amount as to reimburse the State, to the extent feasible, for the cost of the services rendered.

Article IV. Regulation of Practice

4.01 Unlawful Practice

- (1) No Person shall practice Occupational Therapy or assist in the practice of Occupational Therapy or provide Occupational Therapy services or hold themselves out as an Occupational Therapist or Occupational Therapy Assistant, or as being able to practice Occupational Therapy or assist in the practice of Occupational Therapy or provide Occupational Therapy services in this State unless they are licensed under the provisions of this Act.
- (2) It is unlawful for any person not licensed as an Occupational Therapist in this State or whose license is suspended or revoked to use in connection with their name or place of business in this State, the words "Occupational Therapist", "licensed Occupational Therapist", "Doctor of Occupational Therapy" or the professional abbreviations "O.T.," "O.T.L.," "M.O.T.," "O.T.D.," "M.O.T./L.," "O.T.D./L." or use any word, title, letters, or designation that implies that the person practices or is authorized to practice occupational therapy.
- (3) It is unlawful for any person not licensed as an Occupational Therapy Assistant in this State or whose license is suspended or revoked to use in connection with their name or place of business in this State, the words "Occupational Therapy Assistant", "licensed

Occupational Therapy Assistant,” or the professional abbreviation “O.T.A.,” or “O.T.A./L.” or use any word, title, letters, or designation that implies that the person assists in, or is authorized to assist in, the practice of occupational therapy as an Occupational Therapy Assistant.

4.02 Exemptions

This Act does not prevent or restrict the practice, service, or activities of:

- (1) Any person licensed or otherwise regulated in this State by any other law from engaging in their profession or occupational as defined in the Practice Act under which they are licensed.
- (2) Any person pursuing a course of study leading to a degree in Occupational Therapy at an accredited educational program, if that person is designated by a title which clearly indicates their status as a student and if they act under appropriate instruction and supervision.
- (3) Any person fulfilling the supervised fieldwork experience requirements of Section 3.01 of this Act, if the experience constitutes a part of the experience necessary to meet the requirement of that section and they act under appropriate supervision.
- (4) Any person fulfilling an occupational therapy doctoral capstone experience if they act under appropriate supervision.
- (5) An occupational therapist or occupational therapy assistant who is authorized to practice occupational therapy in any jurisdiction, if they practice occupational therapy in this State for the purpose of education, consulting, or training, for the duration of the purpose, as preapproved by the Board;

4.03 Titles and Designations

- (1) A licensed occupational therapist may use the words “occupational therapist,” “licensed occupational therapist,” “Doctor of Occupational Therapy” or any words, title, letters, or other appropriate designation, including OT, OT/L, MOT, MOT/L, OTD, and OTD/L that identifies the person as a licensed occupational therapist in connection with:
 - a. Their name or place of business; and
 - b. Any activity, practice, or service, so long as they are at all times in conformance with the requirements of this act when providing occupational therapy services.
- (2) A licensed occupational therapy assistant may use the words “occupational therapy assistant,” “licensed occupational therapy assistant,” or any word, title, letters or other appropriate designation, including OTA or OTA/L that identifies the person as a licensed occupational therapy assistant in connection with:
 - a. Their name or place of business; and
 - b. Any activity, practice, or service, so long as they are at all times in conformance with the requirements of this act when providing occupational therapy services.

4.04 Grounds for Disciplinary Action

The Board may take action against a licensee as described in Section 4.05-08 for unprofessional conduct including:

- (1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
- (2) Being guilty of unprofessional conduct as defined by the rules established by the Board, or violating the Code of Ethics adopted and published by the Board;
- (3) Being convicted of a crime in any court except for minor offenses;
- (4) Violating any lawful order, rule, or regulation rendered or adopted by the Board;
- (5) Violating any provision of this Act (or regulations pursuant to this Act);
- (6) Practicing beyond the scope of the practice of Occupational Therapy;

- (7) Providing substandard care as an Occupational Therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established;
- (8) Providing substandard care as an Occupational Therapy Assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising Occupational Therapist regardless of whether actual injury to the patient is established;
- (9) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills or abilities to perform those responsibilities;
- (10) Failing to provide appropriate supervision to an Occupational Therapy Assistant or Aide in accordance with this Act and Board rules;
- (11) Practicing as an Occupational Therapist or Occupational Therapy Assistant when competent services to recipients may not be provided due to the therapist's own physical or mental impairment;
- (12) Having had an Occupational Therapist or Occupational Therapy Assistant license revoked or suspended, other disciplinary action taken, or an application for licensure reused, revoked or suspended by the proper authorities of another State, territory or country, irrespective of intervening appeals and stays;
- (13) Engaging in sexual misconduct. For the purposes of this paragraph, sexual misconduct includes:
 - a. Engaging in or soliciting sexual relationship, whether consensual or non-consensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person.
 - b. Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients.
- (14) Aiding or abetting a person who is not licensed as an Occupational Therapist or Occupational Therapy Assistant in this State and who directly or indirectly performs activities requiring a license.
- (15) Abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care.

4.05 Complaints

- (1) Any individual, group, or entity may file a complaint with the Board against any licensed Occupational Therapist or licensed Occupational Therapy Assistant in the State charging that person with having violated the provisions of this Act.
- (2) The complaint shall specify charges in sufficient detail so as to disclose to the accused fully and completely the alleged acts of misconduct for which ~~they are he or she is~~ charged.
 - a. "Sufficient detail" is defined as a complainant's full name and contact information, respondent's full name and contact information when available, alleged violations of Standards of Conduct from the Code, signature, or e-signature, and supporting documentation.
- (3) Upon receiving a complaint, the Board shall notify the licensee of the complaint and request a written response from the licensee.
- (4) The Board shall keep an information file about each complaint filed with the Board. The information in each complaint file shall contain complete, current and accurate information including, but not limited to:
 - a. All persons contacted in relation to the complaint;
 - b. A summary of findings made at each step of the complaint process;

- c. An explanation of the legal basis and reason for the complaint that is dismissed; and
- d. Other relevant information.

4.06 Due Process

- (5) Before the Board imposes disciplinary actions, it shall give the individual against whom the action is contemplated an opportunity for a hearing before the Board.
- (6) The Board shall give notice and hold a hearing in accordance with the State's Administrative Procedures Act [or other comparable statute].
- (7) The individual shall be entitled to be heard in their defense, along or with counsel, and may produce testimony and testify in their own behalf, and present witnesses, without reasonable time limits.
- (8) Any person aggrieved by a final decision of the Board may appeal in accordance with the Administrative Procedures Act [or other comparable statute].

4.07 Investigation

To enforce this Act, the Board is authorized to:

- (1) Receive complaints filed against licensees and conduct a timely investigation.
- (2) Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the Board has reason to believe that there may be a violation of this Act.
- (3) Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.
- (4) For good cause, take emergency action ordering the summary suspension of a license or the restriction of the licensee's practice or employment pending proceedings by the Board.
- (5) Appoint hearing officers authorized to conduct hearings. Hearing officers shall prepare and submit to the Board findings of fact, conclusions of law and an order that shall be reviewed and voted on by the Board.
- (6) Require a licensee to be examined in order to determine the licensee's professional competence or resolve any other material issue arising from a proceeding.
- (7) If the Board finds that the information received in a complaint or an investigation is not of sufficient seriousness to merit disciplinary action against a licensee, it may take the following actions:
 - a. Dismiss the complaint if the board believes the information or complaint is without merit or not within the purview of the Board. The record of the complaint shall be expunged from the licensee's record.
 - b. Issue a confidential advisory letter to the licensee. An advisory letter is non-disciplinary and notifies a licensee that, while there is insufficient evidence to begin disciplinary action, the Board believes that the licensee should be aware of an issue.
- (8) Take other lawful and appropriate actions within its scope of functions and implementation of this Act.

The licensee shall comply with a lawful investigation conducted by the Board.

4.08 Penalties

- (4) Consistent with the Administrative Procedures Act, the Board may impose separately, or in combination, any of the following disciplinary actions on a licensee as provided in this Act:
 - a. Refuse to issue or renew a license;
 - b. Suspend or revoke a license;
 - c. Impose probationary conditions;

- d. Issue a letter of reprimand, ~~or~~ concern, public order, or censure;
 - e. Require restitution of fees;
 - f. Impose a fine not to exceed \$____, which deprives the licensee of any economic advantage gained by the violation and which reimburses the Board for costs of the investigation and proceeding;
 - g. Impose practice and/or supervision requirements;
 - h. Require licensees to participate in continuing competence activities specified by the Board;
 - i. Accept a voluntary surrendering of a license; or
 - j. Take other appropriate corrective actions including advising other parties as needed to protect their legitimate interests and to protect the public.
- (5) If the Board imposes suspension or revocation of license, application may be made to the Board for reinstatement, subject to the limits of section 3.069 (license renewal). The Board shall have the discretion to accept or reject an application for reinstatement and may require an examination or other satisfactory proof of eligibility for reinstatement.
- (6) If a licensee is placed on probation, the Board may require the license holder to:
- a. Report regularly to the Board on matters that are the basis of probation;
 - b. Limit practice to the areas prescribed by the Board;
 - c. Continue to review continuing competence activities until the license holder attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation;
 - d. Provide other relevant information to the Board.

4.09 Injunction

- (3) The Board is empowered to apply for relief by injunction, without bond, to restrain any person, partnership, or corporation from any threatened or actual act or practice, which constitutes an offense against this Act. It shall not be necessary for the Board to allege and prove that there is no adequate remedy at law in order to obtain the relief requested. The members of the Board shall not be individually liable for applying for such relief.
- (4) If a person other than a licensed Occupational Therapist or Occupational Therapy Assistant threatens to engage in or has engaged in any act or practice which constitutes an offense under this Act, a district court of any county on application of the Board may issue an injunction or other appropriate order restraining such conduct.

4.10 Referral Requirements

- (3) An occupational therapist may evaluate and initiate occupational therapy treatment on a patient without a referral from other health service providers.
- (4) An occupational therapist shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required.

4.11 Telehealth

A licensee may provide occupational therapy services to a patient utilizing a telehealth visit if the occupational therapy services are provided in accordance with all requirements of this Act.

- (5) "Telehealth visit" means the provision of occupational therapy services by a licensee to a patient using technology where the licensee and patient are not in the same physical location for the occupational therapy service.
- (6) A licensee engaged in a telehealth visit shall utilize technology that is secure and compliant with state and federal law.
- (7) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person occupational therapy. A licensee shall not utilize a

telehealth visit if the standard of care for the particular occupational therapy services cannot be met using technology.

- (8) Occupational therapy services provided by telehealth can be synchronous or asynchronous
 - a. "asynchronous" means using means any transmission to another site for review at a later time that uses a camera or other technology to capture images or data to be recorded
 - b. "synchronous" means real-time interactive technology

Article V. Other

5.01 Severability

- (3) If a part of this Act is held unconstitutional or invalid, all valid parts that are severable from the invalid or unconstitutional part shall remain in effect.
- (4) If a part of this Act is held unconstitutional or invalid in one or more of its applications, the part shall remain in effect in all constitutional and valid applications that are severable from the invalid applications.

5.02 Limitations on authority

Nothing in this Act is intended to limit, preclude, or otherwise interfere with the practices of other health care providers formally trained and licensed, registered, credentialled, or certified by appropriate agencies of the state.

5.03 Effective Date

- (3) The Act, except for Section 3.01, shall take effect ninety days (90) days after enactment [unless State practice or requirements require another effective date].
- (4) Section 3.01 of this Act shall take effect 180 days after enactment.