

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

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
OCCUPATIONAL THERAPISTS : CR 22-027
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:

Section OT 2.02 (1) (b) requires an applicant to provide evidence that the applicant is certified as an occupational therapist or occupational therapy assistant by the National Board for Certification in Occupational Therapy (NBCOT). This requirement conflicts with the licensure provisions of s. 448.963, Stats., which require initial certification from NBCOT but do not require the certification be current. The proposed rules update s. OT 2.02 (1) (b) to reflect the requirements for licensure under s. 448.963, Stats.

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 7, 2022. The following people either testified at the hearing, or submitted written comments:

- Peter Welch, Wisconsin Occupational Therapy Association (WOTA)
- Wayne Winistorfer, OTR

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

- Mr. Welch submitted written comments on behalf of the WOTA. They rejected the proposed rule changes and instead proposed that the language in OT 2.02 (1) (b) be updated to read: “Evidence that the applicant has completed and occupational therapist education program, or an occupational therapy assistant educational program.”
- Mr. Winistorfer testified in support of the proposed rule changes. They noted that NBCOT (National Board for Certification in Occupational Therapy) initial certification has been required in Wisconsin since the late 1980’s. Additionally, most occupational therapy practitioners would not be able to maintain continuing or renewed NBCOT certification.

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 LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report have been accepted in whole.

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

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 22-027)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to amend OT 2.02 (1) (b), relating to licensure requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 448.963, Stats.

Statutory authority: Sections 15.085 (5) (b) and 227.11 (2) (a), 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 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Related statute or rule:

Section 448.963, Stats., sets forth the licensure requirements for both occupational therapists and occupational therapy assistants. This statute includes initial certification requirements by the National Board for Occupational Therapy.

Plain language analysis:

Section OT 2.02 (1) (b) requires an applicant to provide evidence that the applicant is certified as an occupational therapist or occupational therapy assistant by the National Board for Certification in Occupational Therapy (NBCOT). This requirement conflicts with the licensure provisions of s. 448.963, Stats., which require initial certification from NBCOT but do not require the certification be current. The proposed rules update s. OT 2.02 (1) (b) to reflect the requirements for licensure under s. 448.963, Stats.

Summary of, and comparison with, existing or proposed federal regulation: None.

Comparison with rules in adjacent states:

Illinois: Rules of the Illinois Department of Financial and Professional Regulation set forth the licensure requirements for occupational therapists and occupational therapy assistants (68 Ill. Admin. Code 1315.110). The requirements do not include certification by the National Board for Certification in Occupational Therapy (NBCOT).

Iowa: Rules of the Iowa Board of Physical and Occupational Therapy set forth the licensure requirements for occupational therapists and occupational therapy assistants (645 IAC 206). The requirements do not include certification by the National Board for Certification in Occupational Therapy (NBCOT).

Michigan: Rules of the Michigan Board of Occupational Therapists set forth the licensure requirements for occupational therapists (Mich Admin Code, R 338.1223) and occupational therapy assistants (Mich Admin Code, R 338.1233). The requirements do not include certification by the National Board for Certification in Occupational Therapy (NBCOT).

Minnesota: The Minnesota Statutes provide the licensure qualifications for occupational therapists (Minnesota Statutes 2020, section 148.6408) and occupational therapy assistants (Minnesota Statutes 2020, section 148.6410). The qualifications do not include certification by the National Board for Certification in Occupational Therapy (NBCOT).

Summary of factual data and analytical methodologies:

The proposed rules were developed by comparing the provisions of s. OT 2.02 with the requirements for licensure under s. 448.963, Stats.

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 are 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 Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing on June 7, 2022 at 9:30 a.m., to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OT 2.02 (1) (b) is amended to read:

OT 2.02 (1) (b) Evidence ~~that the applicant is certified~~ of initial certification as an occupational therapist or occupational therapy assistant ~~by~~ from the national board for certification in occupational therapy; and that the applicant has completed an occupational therapist educational program, or an occupational therapy assistant educational program.

SECTION 2. 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 8/16/2022

Agency 

Chairperson
Occupational Therapists Affiliated
Credentialing Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 5/12/2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) OT 2	
4. Subject Licensure requirements	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Section OT 2.02 (1) (b) requires an applicant to provide evidence that the applicant is certified as an occupational therapist or occupational therapy assistant by the National Board for Certification in Occupational Therapy (NBCOT). This requirement conflicts with the licensure provisions of s. 448.963, Stats., which require initial certification from NBCOT but do not require the certification be current. The proposed rules update s. OT 2.02 (1) (b) to reflect the requirements for licensure under s. 448.963, Stats.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the department website for 14 days to solicit comments. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. The Department estimates a total of \$368.06 one-time administrative costs, which may be absorbed in the agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is reflecting the requirements for licensure under s. 448.963, Stats. If the rule is not implemented, it will not reflect statutory requirements for licensure.	
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is reflecting the requirements for licensure under s. 448.963, Stats.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

17. Compare With Approaches Being Used by Federal Government
None

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Illinois: Rules of the Illinois Department of Financial and Professional Regulation set forth the licensure requirements for occupational therapists and occupational therapy assistants (68 Ill. Admin. Code 1315.110). The requirements do not include certification by the National Board for Certification in Occupational Therapy (NBCOT).

Iowa: Rules of the Iowa Board of Physical and Occupational Therapy set forth the licensure requirements for occupational therapists and occupational therapy assistants (645 IAC 206). The requirements do not include certification by the National Board for Certification in Occupational Therapy (NBCOT).

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Minnesota: The Minnesota Statutes provide the licensure qualifications for occupational therapists (Minnesota Statutes 2020, section 148.6408) and occupational therapy assistants (Minnesota Statutes 2020, section 148.6410). The qualifications do not include certification by the National Board for Certification in Occupational Therapy (NBCOT).

19. Contact Name Kassandra Walbrun	20. Contact Phone Number (608) 261-4463
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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