

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

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 20-016
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:

The Occupational Therapists Affiliated Credentialing Board conducted a comprehensive review of ch. OT 3, resulting in the following updates:

- Section OT 3.05 (2) and (3) (intro.) are revised to clarify the requirements for reinstatement apply to a licensee whose license has been denied at renewal.
- Section OT 3.06 (5) is revised to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder.
- Other provisions throughout ch. OT 3 have been revised to ensure consistency in terminology and compliance with current renewal methodology, standards for drafting style and format, and applicable Wisconsin statutes.

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 9, 2020. No public comments were received.

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

The proposed rule was submitted to the Medical Examining Board on January 15, 2020. The Medical Examining Board recommended the term "one or more" under s. OT 3.06 (3) be changed to "2 or more." This recommendation has been incorporated into the proposed rules.

All Legislative Council recommendations have been incorporated into the proposed rules.

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 20-016)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to **repeal** OT 3.06 (3) (Note); to **amend** ch. OT 3 (title), OT 3.01 to 3.04, 3.05 (intro.), (1), (2), and (3) (intro.) and (a), and 3.06 (1) to (3), (3) (table) lines (c), (d), (f), (n), (p), and (q), (4), and (5); and to **create** OT 3.06 (3) (table) (title), relating to biennial registration.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 440.03 (4m), Stats.

Statutory authority:

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

Explanation of agency authority:

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

Section 448.965 (1) (b), Stats., provides the Occupational Therapists Affiliated Credentialing Board may promulgate rules that establish “[c]ontinuing education requirements for license renewal for an occupational therapist or occupational therapy assistant under s. 448.967 (2).”

Related statute or rule:

None.

Plain language analysis:

- Section OT 3.05 (2) and (3) (intro.) are revised to clarify the requirements for reinstatement apply to a licensee whose license has been denied at renewal.

- Section OT 3.06 (5) is revised to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder.
- Other provisions throughout ch. OT 3 have been revised to ensure consistency in terminology and compliance with current renewal methodology, standards for drafting style and format, and applicable Wisconsin statutes.

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

None.

Comparison with rules in adjacent states:

Illinois: 68 Ill. Admin. Code 1315.145 f) 2) provides the requirements for retention and production of evidence of compliance with the continuing education requirements. The Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation may require additional evidence demonstrating compliance with the continuing education requirements. It is the responsibility of each applicant for renewal to retain or otherwise produce evidence of such compliance.

Iowa: 645 IAC 4.11 provides the requirements for retention and production of evidence of compliance with the continuing education requirements. The Iowa Board of Physical and Occupational Therapy may select licensees for audit following license renewal. Upon audit, a licensee is required to provide an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor. All licensees must retain documentation of compliance with the continuing education requirements for two years following license renewal.

Michigan: Mich Admin Code, R 338.1251 provides the requirements for certification of compliance and requirements for retention and production of evidence of compliance with the continuing education requirements. Submission of an application for renewal constitutes an applicant's certification of compliance with the continuing education requirements, and all licensees are required to retain documentation of meeting the requirements for a period of 4 years from the date of applying for license renewal. The Michigan Board of Occupational Therapists may require an applicant or licensee to submit evidence to demonstrate compliance with the continuing education requirements.

Minnesota: The Minnesota Statutes provide the requirements for retention and production of evidence of compliance with the continuing education requirements (Minnesota Statutes 2017, section 148.6443, Subds. 5. and 6.). Within one month following licensure expiration, each licensee must submit a continuing education report form provided by the Minnesota Board of Occupational Therapy Practice verifying the continuing education requirements have been met. The Board may audit a percentage of the continuing education reports based on random selection. In addition, renewal applications that are received after the expiration date and any licensee against whom a complaint is filed may be subject to a continuing education report audit. Licensees are required to maintain all required documentation for two years after the last day of the biennial licensure period in which the continuing education was obtained.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of ch. OT 3 to ensure consistency with current standards for drafting style and format and applicable Wisconsin statutes.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

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

Agency contact person:

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

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, 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 on the proposed rules. Information concerning the date, time, and location of the public hearing will be published in the Wisconsin Administrative Register and posted on the Legislature’s website at <https://docs.legis.wisconsin.gov/code/chr/hearings>.

TEXT OF RULE

SECTION 1. Chapter OT 3 (title) is amended to read:

CHAPTER OT 3

BIENNIAL REGISTRATION LICENSE RENEWAL

SECTION 2. OT 3.01 to 3.04 are amended to read:

OT 3.01 Authority and purpose. The rules in this chapter are adopted by the board under the authority of ss. 15.085 (5) (b), 227.11 (2), and 448.965, Stats., to govern biennial registration renewal requirements for occupational therapists and occupational therapy assistants.

OT 3.02 Registration Renewal required; method of registration renewal. Each licensee shall ~~register renew~~ biennially with the board. ~~Prior to June 1 of each odd numbered year, the department shall mail to each licensee at his or her last known address as it appears in the records of the board an application form for registration.~~ Each licensee shall ~~complete the~~ submit a completed renewal application form and return it with the required renewal fee to the department by the date specified in s. 440.08 (2) (a) 52. or 53., Stats., as applicable. The board shall notify a licensee within 30 business days of receipt of a completed renewal application whether renewal is approved or denied.

OT 3.03 Initial registration renewal. ~~Any~~ A licensee who is initially granted and issued a license ~~during a given calendar year shall register for that biennium. The board shall notify the licensee within 30 business days of receipt of a completed registration form whether the application for registration is approved or denied~~ renew the license as provided under s. OT 3.02 by the date specified in s. 440.08 (2) (a) 52. or 53., Stats., as applicable.

OT 3.04 Registration Renewal prohibited. ~~Any~~ The license of an occupational therapist or occupational therapy assistant ~~required to comply who has not complied with the provisions of s. OT 3.06; and s. 448.967; (2), Stats., and who has not so complied, will~~ may not be permitted to register renewed.

SECTION 3. OT 3.05 (intro.), (1), (2), and (3) (intro.) and (a) are amended to read:

OT 3.05 (intro.) Late renewal and reinstatement. Failure to renew a license ~~by June 1 of an odd numbered year to as required under s. OT 3.02~~ shall cause ~~the~~ a license to expire. A licensee who allows ~~the~~ a license to expire may apply to the board for late renewal or reinstatement of the license by completing one of the following:

(1) LATE RENEWAL BEFORE WITHIN 5 YEARS. If ~~the~~ a licensee applies for renewal ~~of the license less than within 5 years after its expiration~~ the renewal date, the license shall be renewed upon ~~payment~~ submission of the ~~renewal completed application and fee required under s. OT 3.02, payment of the late fee under s. 440.08 (3) (a), Stats., and fulfillment of the continuing education requirements under s. OT 3.06.~~

(2) LATE RENEWAL AFTER 5 YEARS. If ~~the~~ a licensee applies for renewal ~~of the license~~ more than 5 years after ~~its expiration~~ the renewal date, the board shall make such inquiry as it finds necessary to determine whether the applicant is competent to practice under the license in this state; ~~and~~ Subject to s. 440.08 (3) (b), Stats., the board shall impose any reasonable conditions on the renewal of the license, including oral examination, as the board deems appropriate. All applicants under this section subsection shall be required to pass the open book examination on statutes and rules, which is the same examination given to initial applicants. This Except as provided under sub. (3) (a), this subsection does not apply to licensees who have unmet disciplinary requirements or whose licenses have been denied at renewal, surrendered, or revoked.

(3) (intro.) REINSTATEMENT. A licensee who has unmet disciplinary requirements and failed to renew within 5 years of the renewal date or whose license has been denied at renewal, surrendered, or revoked, may apply to have the license reinstated ~~in accordance with.~~ An application for reinstatement shall include all of the following:

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

SECTION 4. OT 3.06 (1) to (3) are amended to read:

OT 3.06 (1) Each holder of a license as an occupational therapist shall, at the time of applying for renewal of ~~a the license of registration under s. 448.967, Stats.,~~ certify that ~~he or she the licensee~~ has, ~~in the 2 years preceding the renewal application,~~ completed at least 24 points of acceptable continuing education during the 2-year period immediately preceding the renewal date under s. 440.08 (2) (a) 52., Stats.

(2) Each holder of a license as an occupational therapy assistant shall, at the time of applying for renewal of ~~a the license of registration under s. 448.967, Stats.,~~ certify that ~~he or she the licensee~~ has, ~~in the 2 years preceding the renewal application,~~ completed at least 24 points of acceptable continuing education during the 2-year period immediately preceding the renewal date under s. 440.08 (2) (a) 53., Stats.

(3) At least 12 ~~of the~~ points of the continuing education required under subs. (1) and (2) shall be accumulated through 2 or more professional development activities listed under Table OT 3.06 that are related to occupational therapy in the following categories set forth in the following table. In Table OT 3.06, “contact hour” means not less than 50 minutes of actual professional activity.

SECTION 5. OT 3.06 (3) (table) (title) is created to read:

TABLE OT 3.06

SECTION 6. OT 3.06 (3) (table) lines (c), (d), (f), (n), (p), and (q) are amended to read:

PROFESSIONAL DEVELOPMENT ACTIVITIES	PROFESSIONAL DEVELOPMENT POINTS
(c) Satisfactory completion of a self-study course approved by the American occupational therapy association (AOTA) <u>Occupational Therapy Association</u> or other related recognized professional associations.	4 points per continuing education unit.
(d) Satisfactory completion <u>Review</u> of an AOTA American Occupational Therapy Association continuing education article (review and successful completion of the associated examination).	1 point per article.
(f) Initial completion of specialty board certification in occupational therapy, including but not limited to certification in neurorehabilitation, pediatrics, hand therapy, gerontology, driver rehabilitation, advanced practice, neuro-developmental treatment, case management, and rehabilitation counseling.	12 points.
(n) Professional presentations. Note: No additional points are given for subsequent presentations of the same content.	2 points per contact hour. <u>No additional points are given for subsequent presentations of the same content.</u>

(p) Student fieldwork supervision – Level I fieldwork.	2 points.
(q) Student fieldwork supervision – Level II fieldwork.	8 points.

SECTION 7. OT 3.06 (3) (Note) is repealed.

SECTION 8. OT 3.06 (4) and (5) are amended to read:

OT 3.06 (4) ~~Evidence~~ Certificates of completion or other evidence of compliance with this section ~~such as certificates of completion~~ shall be retained by each license holder ~~through the biennium~~ for at least 2 years following the biennium ~~for~~ in which credit is required for renewal of license ~~the continuing education was completed.~~

(5) The board ~~may require~~ shall audit any license holder ~~to submit evidence of~~ licensee who is under investigation by the board for alleged misconduct for compliance with this section ~~to the board for an audit at any time during the biennium following the biennium for which credit is required for license renewal.~~

SECTION 9. 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 6/22/2020

Agency *Laura O'Brien*
 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 12/05/2019
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) OT 3	
4. Subject Biennial registration	
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 The following updates have been made to ch. OT 3: Section OT 3.05 (2) and (3) (intro.) are revised to clarify the requirements for reinstatement apply to a licensee whose license has been denied at renewal. Section OT 3.06 (5) is revised to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder. Other provisions throughout ch. OT 3 have been revised to ensure consistency in terminology and compliance with current standards for drafting style and format and applicable Wisconsin statutes.	
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 of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.	
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 proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole. The Department estimates one-time administrative costs of \$59.98. These costs 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 providing updated requirements for reinstatement of a license and submission of proof of completing continuing education programs or courses. If the rule is not implemented, the requirements will remain outdated.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is updated requirements for reinstatement of a license and submission of proof of completing continuing education programs or courses.

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: 68 Ill. Admin. Code 1315.145 f) 2) provides the requirements for retention and production of evidence of compliance with the continuing education requirements. The Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation may require additional evidence demonstrating compliance with the continuing education requirements. It is the responsibility of each applicant for renewal to retain or otherwise produce evidence of such compliance.

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Minnesota: The Minnesota Statutes provide the requirements for retention and production of evidence of compliance with the continuing education requirements (Minnesota Statutes 2017, section 148.6443, Subds. 5. and 6.). Within one month following licensure expiration, each licensee must submit a continuing education report form provided by the Minnesota Board of Occupational Therapy Practice verifying the continuing education requirements have been met. The Board may audit a percentage of the continuing education reports based on random selection. In addition, renewal applications that are received after the expiration date and any licensee against whom a complaint is filed may be subject to a continuing education report audit. Licensees are required to maintain all required documentation for two years after the last day of the biennial licensure period in which the continuing education was obtained.

19. Contact Name

Dale Kleven

20. Contact Phone Number

(608) 261-4472

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
-