

**CERTIFICATE**

**STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

*I, Valerie Payne, Executive Director, Division of Policy Development in the Wisconsin Department of Safety and Professional Services and custodian of the official records of the Occupational Therapists Affiliated Credentialing Board, do hereby certify that the annexed rules relating to supervision and practice of occupational therapy assistants were duly approved and adopted by the Occupational Therapists Affiliated Credentialing Board.*

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

*IN TESTIMONY WHEREOF, I have hereunto set my hand at 4822 Madison Yards Way, Madison, Wisconsin this 31<sup>st</sup> day of January, 2020.*



*Valerie Payne*

**Valerie Payne, Executive Director  
Division of Policy Development  
Department of Safety & Professional Services**

STATE OF WISCONSIN  
OCCUPATIONAL THERAPISTS  
AFFILIATED CREDENTIALING BOARD

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|                              |   |                             |
|------------------------------|---|-----------------------------|
| IN THE MATTER OF RULE-MAKING | : | ORDER OF THE                |
| PROCEEDINGS BEFORE THE       | : | OCCUPATIONAL THERAPISTS     |
| OCCUPATIONAL THERAPISTS      | : | AFFILIATED CREDENTIALING    |
| AFFILIATED CREDENTIALING     | : | BOARD                       |
| BOARD                        | : | ADOPTING RULES              |
|                              | : | (CLEARINGHOUSE RULE 19-108) |

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ORDER

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

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Subchapter VII of ch. 448, Stats.

**Statutory authority:**

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

**Explanation of agency authority:**

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

Section 448.965 (2), Stats., provides the Occupational Therapists Affiliated Credentialing Board “may promulgate rules that define the scope of practice of occupational therapy or the scope of assisting in the practice of occupational therapy.”

**Related statute or rule:**

None.

**Plain language analysis:**

Current rules provide that, when general supervision is allowed, the supervising occupational therapist must have direct contact with the occupational therapy assistant and face-to-face contact with the client by every tenth session of occupational therapy and no less than one time per calendar month. The rules create an exception to this

requirement for circumstances, including those in the practice areas of home health and children from birth to 3 years old, when occupational therapy services are provided once per calendar month or less frequently than once per calendar month.

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

None.

**Comparison with rules in adjacent states:**

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

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

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

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

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

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

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

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

**Summary of factual data and analytical methodologies:**

The rules were developed using recommendations from the Wisconsin Occupational Therapy Association and input from the Occupational Therapists Affiliated Credentialing Board. No other factual data or analytical methodologies were used.

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

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

**Agency contact person:**

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

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

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

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TEXT OF RULE

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

**OT 4.04 (4) (ah)** When general supervision is allowed, the supervising occupational therapist shall, except as provided under par. (ap), have direct contact with the occupational therapy assistant and face-to-face contact with the client by every tenth session of occupational therapy and no less than ~~one time~~ once per calendar month. ~~Direct contact with the occupational therapy assistant is for the purpose of reviewing the progress and effectiveness of treatment and may occur simultaneously or separately from the face-to-face contact with the client.~~

SECTION 2. OT 4.04 (4) (ap) and (at) are created to read:

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

**(at)** Direct contact with the occupational therapy assistant under pars. (ah) and (ap) shall include reviewing the progress and effectiveness of treatment, and may occur simultaneously or separately from face-to-face contact with the client.

SECTION 3. OT 4.04 (4) (c) is renumbered OT 4.04 (4) (ad) and amended to read:

**OT 4.04 (4) (ad)** In this subsection, “Direct direct contact” means face-to-face communication or communication by means of telephone, electronic communication, or group conference.

SECTION 4. 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.

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(END OF TEXT OF RULE)  
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Dated 1/31/2020

Agency Laura O'Brien  
Chairperson  
Occupational Therapists  
Affiliated Credentialing Board

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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|---|--|
| <b>1. Type of Estimate and Analysis</b><br><input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected   | <b>2. Date</b><br>September 24, 2018                 |
| <b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b><br>OT 4  |  |
| <b>4. Subject</b><br>Supervision and practice of occupational therapy assistants  |  |
| <b>5. Fund Sources Affected</b><br><input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S  | <b>6. Chapter 20, Stats. Appropriations Affected</b> |
| <b>7. Fiscal Effect of Implementing the Rule</b><br><input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget   |  |
| <b>8. The Rule Will Impact the Following (Check All That Apply)</b><br><input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors<br><input type="checkbox"/> Local Governmental Units <input type="checkbox"/> Public Utility Rate Payers<br><input type="checkbox"/> Small Businesses (if checked, complete Attachment A)  |  |
| <b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b><br>\$0  |  |
| <b>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)?</b><br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |
| <b>11. Policy Problem Addressed by the Rule</b><br>Current rules provide that, when general supervision is allowed, the supervising occupational therapist must have direct contact with the occupational therapy assistant and face-to-face contact with the client by every tenth session of occupational therapy and no less than one time per calendar month. The proposed rules create an exception to this requirement for circumstances, including those in the practice areas of home health and children from birth to 3 years old, when occupational therapy services are provided once per calendar month or less frequently than once per calendar month. |  |
| <b>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.</b><br>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.  |  |
| <b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b><br>No local governmental units participated in the development of this EIA.  |  |
| <b>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)</b><br>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.  |  |
| <b>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b><br>The benefit to implementing the rule is providing updated requirements for the supervision of occupational therapy assistants. If the rule is not implemented, the requirements will remain outdated.   |  |
| <b>16. Long Range Implications of Implementing the Rule</b><br>The long range implication of implementing the rule is updated requirements for the supervision of occupational therapy assistants.  |  |

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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17. Compare With Approaches Being Used by Federal Government  
None

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

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

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19. Contact Name

Dale Kleven

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20. Contact Phone Number

(608) 261-4472

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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**

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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)

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

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

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5. Describe the Rule's Enforcement Provisions

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

- Yes    No
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