



**VIRTUAL/TELECONFERENCE
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD**

Virtual, 4822 Madison Yards Way, Madison

Contact: Tom Ryan (608) 266-2112

June 7, 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 March 8, 2022 (5-12)**
- C. Reminders: Conflicts of Interest, Scheduling Concerns
- D. 9:30 A.M. PUBLIC HEARING – Clearinghouse Rule 22-027 (OT 2), Relating to Licensure Requirements (13-22)**
 - 1) Review and Respond to Public Hearing Comments and Clearinghouse Report
- E. 9:30 A.M. PUBLIC HEARING – Clearinghouse Rule 22-028 (OT 3), Relating to Continuing Education (23-33)**
 - 1) Review and Respond to Public Hearing Comments and Clearinghouse Report
- F. 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. O’Brien, Laura M. – 7/1/2019
 - 3) Wis. Stat. s. 15.085(3)(b) – Biannual Meeting with the Medical Examining Board
- G. National Board for Certification in Occupational Therapy (NBCOT) – Overview and Introduction to Resources and Services – Discussion and Consideration**
- H. Legislative and Policy Matters – Discussion and Consideration
- I. Consideration of Formation of an Occupational Therapy Examining Board - Discussion and Consideration (34)**

J. Occupational Therapy (OT) Licensing Compact Update - Discussion and Consideration

K. Administrative Rule Matters – Discussion and Consideration (35)

- 1) Scope Statement: OT 1 to 5, Relating to Implementation of the Occupational Therapy Licensure Compact **(36-37)**
 - a. 2021 Wisconsin Act 123 **(38-50)**
- 2) Rule Draft: OT 1 to 6, Relating to Telehealth **(51-58)**
 - a. 2021 Wisconsin Act 121 **(59-60)**
- 3) Pending and Possible Rulemaking Projects **(61)**

L. Credentialing Matters – Discussion and Consideration

- 1) Credentialing Statistics and License Counts

M. COVID-19 – Discussion and Consideration

N. 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

O. 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.).

P. Deliberation on Division of Legal Services and Compliance Matters

1) Case Closings

a. 21 OTB 004 – K.J.L. **(62-69)**

Q. 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

R. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

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

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

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

ADJOURNMENT

NEXT MEETING: SEPTEMBER 13, 2022

ORAL INTERVIEW OF CANDIDATES FOR LICENSURE

VIRTUAL/TELECONFERENCE

10:15 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 at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board’s agenda, please call the listed contact person. 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. Interpreters for the hearing impaired provided 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
MARCH 8, 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 9:30 a.m. A quorum was confirmed with four (4) board members present.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES OF NOVEMBER 16, 2021

MOTION: Terrence Erickson moved, seconded by Teresa Black, to approve the Minutes of November 16, 2021 as published. Motion carried unanimously.

ADMINISTRATIVE MATTERS

Election of Officers

Slate of Officers

NOMINATION: Terrence Erickson nominated the 2021 slate of officers to continue in 2022.

Tom Ryan, Executive Director, called for nominations three (3) times.

The Slate of Officers were elected by unanimous voice vote.

ELECTION RESULTS	
Chairperson	Laura O'Brien
Vice Chairperson	Teresa Black
Secretary	Terrence Erickson

Appointment of Liaisons and Alternates

LIAISON APPOINTMENTS	
Credentialing Liaison(s)	Laura O'Brien, Teresa Black <i>Alternate: Randi Hanson</i>
Education and Examinations Liaison(s)	Laura O'Brien, Teresa Black <i>Alternate: Randi Hanson</i>
Monitoring Liaison(s)	Randi Hanson <i>Alternate: Laura O'Brien</i>
Professional Assistance Procedure Liaison(s)	Randi Hanson <i>Alternate: Laura O'Brien</i>
Legislative Liaison(s)	Teresa Black <i>Alternate: Terrence Erickson</i>
Travel Authorization Liaison(s)	Teresa Black <i>Alternate: Terrence Erickson</i>
Website Liaison(s)	Randi Hanson <i>Alternate: Terrence Erickson</i>
Compact Liaison	Teresa Black <i>Alternate: Laura O'Brien</i>
Screening Panel	Terrence Erickson, Teresa Black <i>Alternate: Laura O'Brien</i>

Delegation of Authorities

Document Signature Delegations

MOTION: Randi Hanson moved, seconded by Teresa Black, to delegate authority to the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to sign documents on behalf of the Board in order to carry out its duties. Motion carried unanimously.

MOTION: Teresa Black moved, seconded by Randi Hanson, in order to carry out duties of the Board, the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) has the ability to delegate signature authority for purposes of facilitating the completion of assignments during or between meetings. The members of the Board hereby delegate to the Executive Director or DPD Division Administrator, the authority to sign on behalf of a board member as necessary. Motion carried unanimously.

Delegated Authority for Urgent Matters

MOTION: Terrence Erickson moved, seconded by Teresa Black, that in order to facilitate the completion of urgent matters between meetings, the Board delegates its authority to the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession), to appoint liaisons to the Department to act in urgent matters. Motion carried unanimously.

Delegation to Chief Legal Counsel Due to Loss of Quorum

MOTION: Teresa Black moved, seconded by Terrence Erickson, to delegate the review and authority to act on disciplinary cases to the Department's Chief Legal Counsel due to lack of/loss of quorum after two consecutive meetings. Motion carried unanimously.

Monitoring Delegations

Delegation of Authorities for Monitoring

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to adopt the "Roles and Authorities Delegated for Monitoring" document as presented in the March 8, 2022 agenda materials on pages 17-18. Motion carried unanimously.

Delegation of Authorities for Legal Counsel to Sign Monitoring Orders

MOTION: Teresa Black moved, seconded by Terrence Erickson, to delegate to Legal Counsel the authority to sign Monitoring orders that result from Board meetings on behalf of the Board Chairperson. Motion carried unanimously.

Credentialing Authority Delegations

Delegation of Authority to Credentialing Liaison

MOTION: Laura O'Brien moved, seconded by Terrence Erickson, to delegate authority to the Credentialing Liaison(s) to serve as a liaison between the Department and the Board and to act on behalf of the Board in regard to credentialing applications or questions presented to them, including the signing of documents related to applications. Motion carried unanimously.

Delegation of Authority to DSPS When Credentialing Criteria is Met

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to delegate credentialing authority to the Department to act upon applications that meet all credentialing statutory and regulatory requirements without Board or Board liaison review. Motion carried unanimously.

Delegation of Authority for Predetermination Reviews

MOTION: Teresa Black moved, seconded by Laura O'Brien, to delegate authority to the Department Attorneys to make decisions regarding predetermination applications pursuant to Wis. Stat. § 111.335(4)(f). Motion carried unanimously.

Delegation of Authority for Conviction Reviews

MOTION: Terrence Erickson moved, seconded by Randi Hanson, to delegate authority to the Department Attorneys to review and approve applications with convictions which are not substantially related to the practice of occupational therapy. Motion carried unanimously.

Delegation to DSPS When Applicant's History Has Been Previously Reviewed

MOTION: Randi Hanson moved, seconded by Teresa Black, to delegate authority to Department staff to approve applications where criminal background checks have been approved for a previous occupational therapy credential and there is no new conviction record. Motion carried unanimously.

Delegation of Authority for Reciprocity Reviews

MOTION: Laura O'Brien moved, seconded by Teresa Black, delegate authority to the Department Attorneys to review and approve reciprocity applications in which the out of state license requirements are substantially equivalent to the Board's requirements. Motion carried unanimously.

Delegated Authority for Application Denial Reviews

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to delegate authority to the Department's Attorney Supervisors to serve as the Board's designee for purposes of reviewing and acting on requests for hearing as a result of a denial of a credential. Motion carried unanimously.

Pre-Screening Delegation to Open Cases

MOTION: Teresa Black moved, seconded by Terrence Erickson, to delegate pre-screening decision making authority to the Department screening attorney for opening cases as outlined below:

1. OWIs of 3 or more that occurred in the last 5 years.
2. Reciprocal discipline cases.
3. Impairment and/or diversion at work that includes a positive drug/alcohol test or admission by respondent.
4. Conviction of a misdemeanor or felony that the attorney believes is substantially related and is not otherwise excluded from consideration via Wis. Stat. ch. 111.
5. No response from the respondent after intake requested a response (case would be opened for the failure to respond issue as well as the merits).

Motion carried unanimously.

Pre-Screening Delegation to Close Cases

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to delegate pre-screening decision making authority to the Department screening attorney for closing cases as outlined below:

1. One OWI that is non-work related and if AODA assessment completed, assessment does not indicate dependency.
2. Complaints that even if allegations are true, do not amount to a violation of law or rules.

Motion carried unanimously.

Voluntary Surrenders

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to delegate authority to the assigned case advisor to accept or refuse a request for voluntary surrender pursuant to Wis. Stat. § 440.19 for a credential holder who has a pending complaint or disciplinary matter. Motion carried unanimously.

Education and Examination Liaison(s) Delegation

MOTION: Teresa Black moved, seconded by Terrence Erickson, to delegate authority to the Education and Examination Liaison(s) to address all issues related to education, continuing education, and examinations. Motion carried unanimously.

Authorization for DSPS to Provide Board Member Contact Information to National Regulatory Related Bodies

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to authorize the Department staff to provide national regulatory related bodies with all board member contact information that the Department retains on file. Motion carried unanimously.

Optional Renewal Notice Insert Delegation

MOTION: Teresa Black moved, seconded by Terrence Erickson, to designate the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to provide a brief statement or link relating to board-related business within the license renewal notice at the Board's or Board designee's request. Motion carried unanimously.

Legislative Liaison Delegation

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to delegate authority to the Legislative Liaisons to speak on behalf of the Board regarding legislative matters. Motion carried unanimously.

Travel Authorization Liaison Delegation

MOTION: Laura O'Brien moved, seconded by Teresa Black, to delegate authority to the Travel Authorization Liaison to approve any board member travel to and/or participation in events germane to the board, and to designate representatives from the Board to speak and/or act on the Board's behalf at such events. Motion carried unanimously.

Website Liaison(s) Delegation

MOTION: Laura O'Brien moved, seconded by Randi Hanson, to authorize to the Website Liaison(s) to act on behalf of the Board in working with Department staff to identify and execute website updates. Motion carried unanimously.

Compact Liaison(s) Delegation

MOTION: Randi Hanson moved, seconded by Laura O'Brien, to delegate to the Compact Liaison the authority to act and answer questions on any matters related to the Occupational Therapy Licensure Compact. Motion carried unanimously.

BOARD CHAIR MEETING AND OPTIONS TO ADDRESS DEPARTMENT RESOURCES

MOTION: Teresa Black moved, seconded by Randi Hanson, that the Board communicate to the legislature requesting that they authorize the Department of Safety and Professional Services to utilize additional funding, which is currently available, to hire staff and improve technological infrastructure in order to reduce license processing timelines and to otherwise ensure public protection. Motion carried unanimously.

ADMINISTRATIVE RULE MATTERS

New Scope Statement Request: 2021 Wisconsin Act 123 – Occupational Therapy Licensure Compact

MOTION: Randi Hanson moved, seconded by Laura O'Brien, to request DSPTS staff draft a Scope Statement revising OT 1 to 5, relating to implementation of the Occupational Therapy Licensure Compact. Motion carried unanimously.

CLOSED SESSION

MOTION: Teresa Black moved, seconded by Randi Hanson, 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 11:10 a.m.

**DELIBERATION ON DIVISION OF LEGAL SERVICE
AND COMPLIANCE MATTERS**

Case Closings

MOTION: Terrence Erickson moved, seconded by Randi Hanson, to close the following DLSC Cases for the reasons outlined below:

1. 21 OTB 007 – K.J.R. – No Violation
 2. 21 OTB 011 – C.P.B. – No Violation
- Motion carried unanimously.

21 OTB 004 – K.J.L.

MOTION: Terrence Erickson moved, seconded by Teresa Black, to table consideration of DLSC Case Number 21 OTB 004, against K.J.L. 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 11:19 a.m.

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

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

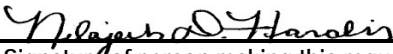
ADJOURNMENT

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

The meeting adjourned at 11:21 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: 05/24/22 <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: 06/07/22	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. Public Hearing – Clearinghouse Rule 22-027 on OT 2, Relating to Licensure Requirements 1. Review Public Hearing Comments and Respond to Clearinghouse Report	
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 Public Hearing on this rule as required by the rulemaking process.			
11) Authorization			
 Signature of person making this request		05/24/22 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)

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 occupational therapists and occupational therapy assistants.

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~~ 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)

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).

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).

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
-



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **22-027**

AN ORDER to amend OT 2.02 (1) (b), relating to licensure requirements.

Submitted by **OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD**

03-22-2022 RECEIVED BY LEGISLATIVE COUNCIL.

04-12-2022 REPORT SENT TO AGENCY.

SG:KAM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-027

Comments

[NOTE]: All citations to “Manual” in the comments below are to the **Administrative Rules Procedures Manual**, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

4. Adequacy of References to Related Statutes, Rules and Forms


The related statute, s. 448.963, Stats., references initial certification in both s. 448.963 (2) (b) 2. and 3., Stats., using slightly different language (“[r]eceived initial certification” and “[b]een initially certified”, respectively). If it is the agency’s intent that s. OT 2.02 (1) (b) refers to evidence of either of these occurrences, it may be useful to provide a more specific description of the relationship between the code provision and the statutes in the agency’s analysis of the proposed rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

The agency should use consistent capitalization of “National Board for Certification in Occupational Therapy” throughout the proposed rule and the related administrative code chapter. As currently proposed, the entity’s name will be capitalized in s. OT 2.02 (1) (b), but not in ss. OT 2.02 (1) (c), (2), and (3), and 2.03 (1) of the existing code. [See s. 1.06 (2), Manual.]

**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: 05/24/22 <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: 06/07/22	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. Public Hearing – Clearinghouse Rule 22-028 on OT 3, Relating to Continuing Education 1. Review Public Hearing Comments and Respond to Clearinghouse Report	
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 Public Hearing on this rule as required by the rulemaking process.			
11) Authorization			
 Signature of person making this request		05/24/22 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)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to **amend** ch. OT 3.06 (3); and to **amend** OT 3.06 (3) (table) (title), relating to continuing education.

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 3.06 (3) is revised to specify that the continuing education points obtained through means other than professional development activities in Table 3.06 should be in courses, programs, or other educational activities related to the licensee’s practice.
- Table OT 3.06 is revised to include webinars approved by the Wisconsin Occupational Therapists Association (WOTA) and/or the American Occupational Therapists Association (AOTA), initial certification in specified subjects, and specialty certifications from AOTA in the list of professional development activities for continuing education credit.

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

Comparison with rules in adjacent states:

Illinois: 68 Ill. Admin. Code 1315.145 b) specifies the requirements for continuing education courses for occupational therapists to be approved. All CE activities shall be relevant to the advancement, extension, and enhancement of professional clinical skills and scientific knowledge in the practice of occupational therapy; provide experiences that contain scientific integrity, relevant subject matter and course materials; and be developed and presented by persons with education and/or experience in the subject matter. Subsection c) specifies other activities from which CE may be earned, and subsection d) names approved sponsors of CE programs.

Iowa: 645 IAC 207.3(1) and (2) specify general and specific criteria for approval of continuing education activities for occupational therapists. General criteria include that the program constitutes an organized program of learning which contributes directly to the professional competency of the licensee; that it pertains to subject matters which integrally relate to practice; that it is conducted by individuals who are qualified by education, training, and experience; that it fulfills stated program goals and/or objectives; and that it provides proof of attendance to licensees. Specific criteria expands into what types of activities and what subjects generally are and are not acceptable for continuing education credit.

Michigan: Mich Admin Code, R 338.1252 provides the requirements for acceptable continuing education for occupational therapists and occupational therapists assistants, including format and subject matter requirements. Subsection (3) provides a table of acceptable continuing education activities along with the maximum allowable hours of credit that can be completed for each activity.

Minnesota: The Minnesota Statutes provide standards for determining qualified continuing education activities and define activities that qualify for continuing education contact hours (Minnesota Statutes 2017, section 148.6443, Subds. 2. and 3.). To qualify for continuing education credit, an activity must constitute an organized program of learning; it must reasonably be expected to advance the knowledge and skills of the practitioner; it must pertain to subjects directly related to the practice of occupational therapy; it must be conducted by a sponsor approved by the American Occupational Therapy Association or by individuals who should be considered experts on the topic due to their education, training, and experience; and it must be presented by a sponsor who has a means to verify attendance and maintain records for three years. Subd. 3. defines acceptable means of obtaining continuing education credit through various courses and activities and the maximum allowable hours that can be obtained through any particular activity.

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 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, P.O. Box 8366, Madison, Wisconsin 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 3.06 (3) is amended to read:

OT 3.06 (3) At least 12 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. The remainder of the continuing education required under subs. (1) and (2) shall be accumulated through courses, programs, or other educational activities related to the licensee’s practice. In Table OT 3.06, “contact hour” means not less than 50 minutes of actual professional activity.

SECTION 2. OT 3.06 (3) (table) lines (b), (f), and (g) are amended to read:

PROFESSIONAL DEVELOPMENT ACTIVITIES	PROFESSIONAL DEVELOPMENT POINTS
(b) Attendance at seminars, workshops, lectures, professional conferences, interactive on-line courses, video courses <u>and webinars approved by the Wisconsin Occupational Therapists Association (WOTA) and/or the American Occupational Therapists Association (AOTA).</u>	1 point per contact hour of attendance.
(f) Initial completion of specialty board certification in <u>physical rehabilitation, mental health, pediatrics, or gerontology from AOTA, or certification in neurorehabilitation, pediatrics, hand therapy, occupational therapy, including certification in neurorehabilitation, pediatrics, hand therapy, gerontology, driver rehabilitation, advanced practice, neuro-developmental treatment, case management, and rehabilitation counseling.</u>	12 points.
(g) Authorship of a book in occupational therapy or a related professional area <u>Specialty certification in low vision, driving and community mobility, school system, feeding/eating/swallowing, or environmental modification from AOTA.</u>	<u>10 points.</u>

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)

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 December 16, 2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) OT 3	
4. Subject Continuing Education	
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 proposed rule revises the Board's rules related to continuing education and what courses, webinars, and certifications are eligible for continuing education credit.	
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's website for 14 days to solicit economic impact comments from business, local governmental units, and individuals. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. The proposed rule was posted on the department's website for 14 days to solicit economic impact comments from local governmental units. No comments were received.	
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) A one time cost to the department of \$510 is anticipated and can be absorbed within the agency's budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is to update the criteria for courses and activities that are eligible for continuing education credit.	
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is to update the criteria for courses and activities that are eligible for continuing education credit.	
17. Compare With Approaches Being Used by Federal Government None	
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Illinois: 68 Ill. Admin. Code 1315.145 b) specifies the requirements for continuing education courses for occupational therapists to be approved. All CE activities shall be relevant to the advancement, extension, and enhancement of professional clinical skills and scientific knowledge in the practice of occupational therapy; provide experiences that contain scientific integrity, relevant subject matter and course materials; and be developed and presented by persons with education and/or experience in the subject matter. Subsection c) specifies other activities from which CE may be earned, and subsection d) names approved sponsors of CE programs.

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19. Contact Name Jameson Whitney, Attorney	20. Contact Phone Number (608) 266-8098
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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
-



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **22-028**

AN ORDER to amend ch. OT 3.06 (3); and to amend OT 3.06 (3) (table) (title), relating to continuing education.

Submitted by **OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD**

03-22-2022 RECEIVED BY LEGISLATIVE COUNCIL.

04-14-2022 REPORT SENT TO AGENCY.

MSK:KAM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-028

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In s. OT 3.06 (3) (table) line (b), revise “interactive on-line courses, video courses and webinars approved...” to “interactive on-line courses, ~~and~~ video courses, and webinars approved...” to indicate all amendments to the list. [s. 1.04 (4) (a) 1., Manual.]

b. Also, in s. OT 3.06 (3) (table) line (b), remove the parenthetical acronyms “(AOTA)” and “(WOTA)”. Alternatively, the board may remove the full terms and use only the acronyms, if the acronyms are defined. To properly identify an acronym, the acronym should be defined among the rule’s definitions in s. OT 1.02. Once defined, an acronym should be used consistently, and the full terms could be removed from line (b) of the table. [s. 1.08 (2) (a), Manual.]

c. In s. OT 3.06 (3) (table) lines (b) and (g), the slashed alternatives should be removed and the board should identify the intended meaning. [s. 1.08 (1) (d), Manual.]

d. In s. OT 3.06 (3) (table) line (f), the underscored phrase “physical rehabilitation, mental health, pediatrics, or gerontology from AOTA, or certification in neurorehabilitation, pediatrics, hand therapy,” should be moved to follow the stricken phrase “occupational therapy, including certification in neurorehabilitation, pediatrics, hand therapy, gerontology, driver rehabilitation, advanced practice,”. Underscored material should follow stricken material. Also, as some of the terms from the stricken material are repeated in the underscored material, the board could consider retaining those stricken terms without needing to reinsert them. [s. 1.04 (4) (a) 2., Manual.]

e. In s. OT 3.06 (3) (table) lines (f) and (g), revise both instances of the acronym “AOTA” to the full term, “American Occupational Therapy Association”. Alternatively, as noted above, if the acronym is properly defined, the acronym may be used without the full term and this comment would not apply. [s. 1.08 (2), Manual.]

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Teri Black, OTACB Vice Chairperson		2) Date when request submitted: 3/8/2022 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: 6/7/2022	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Consideration of Formation of an Occupational Therapy Examining Board	
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: Ms. Black would like the Board to discuss starting a process to form an Examining Board separate from the Medical Examining Board.			
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.			

**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: 05/24/22 <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: 06/07/22	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 <ol style="list-style-type: none"> 1. Scope Statement: OT 1 to 5, Relating to Implementation of the Occupational Therapy Licensure Compact <ol style="list-style-type: none"> a. 2021 Wisconsin Act 123 2. Rule Draft: OT 1 to 6, relating to Telehealth <ol style="list-style-type: none"> a. 2021 Wisconsin Act 121 3. 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: <ol style="list-style-type: none"> 1. Scope Statement – OT 1 to 5 2. 2021 Wisconsin Act 123 3. Rule Draft – OT 1 to 6 4. 2021 Wisconsin Act 121 5. Rule Project Chart 			
11) Authorization <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <i>Nilajah D. Hardin</i> Signature of person making this request </div> <div style="width: 35%; text-align: right;"> 05/24/22 Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Supervisor (if required) </div> <div style="width: 35%; text-align: right;"> Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Executive Director signature (indicates approval to add post agenda deadline item to agenda) </div> <div style="width: 35%; text-align: right;"> Date </div> </div>			
Directions for including supporting documents: <ol style="list-style-type: none"> 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. 			

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:

Approved for implementation:

Authorized Signature

Authorized Signature

Date Submitted

Date Submitted

State of Wisconsin



2021 Senate Bill 412

Date of enactment: **February 4, 2022**
Date of publication*: **February 5, 2022**

2021 WISCONSIN ACT 123

AN ACT *to amend* 49.45 (9r) (a) 7. c., 146.81 (1) (es), 146.997 (1) (d) 4., 146.997 (1) (d) 5., 155.01 (7), 252.14 (1) (ar) 4p., 440.03 (9) (a) (intro.), 440.03 (9) (a) 2., 440.03 (13) (b) (intro.), 440.03 (13) (c), 440.15, 446.01 (1v) (h), 448.956 (1m), 448.96 (4) and (6), 448.961, 448.968 (2) (intro.), 450.10 (3) (a) 5. and 451.02 (1); and *to create* 14.89, 440.03 (11m) (c) 2r., 448.96 (1n) and (1o) and subchapter XI of chapter 448 [precedes 448.987] of the statutes; **relating to:** ratification of the Occupational Therapy Licensure Compact, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 14.89 of the statutes is created to read:

14.89 Occupational therapy licensure compact.

There is created an occupational therapy compact commission as specified in s. 448.987. The delegate of the commission representing this state shall be an individual described in s. 448.987 (8) (b) 2. The commission has the powers and duties granted and imposed under s. 448.987.

SECTION 2. 49.45 (9r) (a) 7. c. of the statutes is amended to read:

49.45 (9r) (a) 7. c. An occupational therapist who is licensed under subch. VII of ch. 448 or who holds a compact privilege under subch. XI of ch. 448.

SECTION 3. 146.81 (1) (es) of the statutes is amended to read:

146.81 (1) (es) An occupational therapist or occupational therapy assistant who is licensed under subch. VII of ch. 448 or who holds a compact privilege under subch. XI of ch. 448.

SECTION 4. 146.997 (1) (d) 4. of the statutes is amended to read:

146.997 (1) (d) 4. A physician, physician assistant, podiatrist, or perfusionist, physical therapist, or physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448 ~~or~~; a physical therapist or physical therapist assistant who holds a compact privilege under subch. IX of ch. 448; or an occupational therapist or occupational therapy assistant who holds a compact privilege under subch. XI of ch. 448.

SECTION 5. 146.997 (1) (d) 5. of the statutes is amended to read:

146.997 (1) (d) 5. ~~An occupational therapist, occupational therapy assistant, physician assistant or~~ A respiratory care practitioner certified under ch. 448.

SECTION 6. 155.01 (7) of the statutes is amended to read:

155.01 (7) "Health care provider" means a nurse licensed or permitted under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448, a person practicing Christian Sci-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

ence treatment, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a physical therapist or physical therapist assistant who holds a compact privilege under subch. IX of ch. 448, an occupational therapist or occupational therapy assistant who holds a compact privilege under subch. XI of ch. 448, a partnership thereof, a corporation or limited liability company thereof that provides health care services, a cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility, or a home health agency, as defined in s. 50.49 (1) (a).

SECTION 7. 252.14 (1) (ar) 4p. of the statutes is amended to read:

252.14 (1) (ar) 4p. An occupational therapist or occupational therapy assistant who is licensed under subch. VII of ch. 448 or who holds a compact privilege under subch. XI of ch. 448.

SECTION 8. 440.03 (9) (a) (intro.) of the statutes is amended to read:

440.03 (9) (a) (intro.) Subject to pars. (b) and (c) and s. 458.33 (2) (b) and (5), the department shall, biennially, determine each fee for an initial credential for which no examination is required, for a reciprocal credential, and for a credential renewal and any fee fees imposed under ~~s. ss.~~ 448.986 (2) and 448.9875 (2) by doing all of the following:

SECTION 9. 440.03 (9) (a) 2. of the statutes is amended to read:

440.03 (9) (a) 2. Not later than January 31 of each odd-numbered year, adjusting for the succeeding fiscal biennium each fee for an initial credential for which an examination is not required, for a reciprocal credential, and, subject to s. 440.08 (2) (a), for a credential renewal, and any fee fees imposed under ~~s. ss.~~ 448.986 (2) and 448.9875 (2), if an adjustment is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential, credential renewal, or compact privilege is in effect and, for purposes of each fee for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) during the fiscal biennium in progress at the time of the deadline for an adjustment under this subdivision or during the fiscal biennium beginning on the July 1 immediately following the deadline for an adjustment under this subdivision.

SECTION 10. 440.03 (11m) (c) 2r. of the statutes is created to read:

440.03 (11m) (c) 2r. The coordinated database and reporting system under s. 448.987 (9), if such disclosure is required under the occupational therapy licensure compact under s. 440.987.

SECTION 11. 440.03 (13) (b) (intro.) of the statutes is amended to read:

440.03 (13) (b) (intro.) The department may investigate whether an applicant for or holder of any of the following credentials has been charged with or convicted of a crime only pursuant to rules promulgated by the department under this paragraph, including rules that establish the criteria that the department will use to determine whether an investigation under this paragraph is necessary, except as provided in par. (c) and ss. 441.51 (5) (a) 5., 448.980 (5) (b) 3., ~~and 448.985 (3) (a) 4., and 448.987 (3) (a) 5. a. and (5) (b) 2. a.:~~

SECTION 12. 440.03 (13) (c) of the statutes is amended to read:

440.03 (13) (c) The department shall require an applicant for a private detective license or a private security permit under s. 440.26, an applicant for a juvenile martial arts instructor permit under sub. (17), an applicant for a real estate appraiser certification under s. 458.06 or license under s. 458.08, an applicant for a multistate license under s. 441.06 (1c) or 441.10 (1c), an applicant for a compact license under s. 448.05 (2) (f), an applicant for a physical therapist license under s. 448.53 or physical therapist assistant license under s. 448.535, an applicant for an occupational therapist or occupational therapy assistant compact privilege under s. 448.987 (4), an applicant for an occupational therapist or occupational therapy assistant license described in s. 448.987 (5) (b) 2. a., and a person for whom the department conducts an investigation under par. (b), to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may submit the fingerprint cards, and the department of justice shall submit the fingerprint cards of all applicants for a real estate appraiser certification under s. 458.06 or license under s. 458.08, of all applicants for a multistate license under s. 441.06 (1c) or 441.10 (1c), of all applicants for a compact license under s. 448.05 (2) (f), and of all applicants for a physical therapist license under s. 448.53 or a physical therapist assistant license under s. 448.535, to the federal bureau of investigation for the purpose of verifying the identity of the persons fingerprinted and obtaining records of their criminal arrests and convictions. Information obtained from the federal bureau of investigation may be shared with the department or the appropriate credentialing board, but shall otherwise be kept confidential and is not subject to disclosure under s. 19.35.

SECTION 13. 440.15 of the statutes, as affected by 2021 Wisconsin Act 25, is amended to read:

440.15 No fingerprinting. Except as provided under ss. 440.03 (13) (c), 441.51 (5) (a) 5., 448.980 (5) (b) 3., 448.985 (3) (a) 4., 448.987 (3) (a) 5. a. and (5) (b) 2. a., 450.071 (3) (c) 9., and 450.075 (3) (c) 9., the department or a credentialing board may not require that an applicant for a credential or a credential holder be finger-

printed or submit fingerprints in connection with the department's or the credentialing board's credentialing.

SECTION 14. 446.01 (1v) (h) of the statutes is amended to read:

446.01 (1v) (h) Occupational therapists affiliated credentialing board under subch. VII of ch. 448. "Health care professional" also includes an individual who holds a compact privilege under subch. XI of ch. 448.

SECTION 15. 448.956 (1m) of the statutes is amended to read:

448.956 (1m) Subject to sub. (1) (a), a licensee may provide athletic training to an individual without a referral, except that a licensee may not provide athletic training as described under s. 448.95 (5) (d) or (e) in an outpatient rehabilitation setting unless the licensee has obtained a written referral for the individual from a practitioner licensed or certified under subch. II, III, IV, V, or VII of this chapter; under ch. 446; or under s. 441.16 (2) or from a practitioner who holds a compact privilege under subch. IX or XI of ch. 448.

SECTION 16. 448.96 (1n) and (1o) of the statutes are created to read:

448.96 (1n) "Compact" means the occupational therapy licensure compact under s. 448.987.

(1o) "Compact privilege" means a compact privilege, as defined in s. 448.987 (2) (d), that is granted under the compact to an individual to practice in this state.

SECTION 17. 448.96 (4) and (6) of the statutes are amended to read:

448.96 (4) "Occupational therapist" means an individual who is licensed by the affiliated credentialing board to practice occupational therapy or who holds an occupational therapist compact privilege.

(6) "Occupational therapy assistant" means an individual who is licensed by the affiliated credentialing board to assist in the practice of occupational therapy under the supervision of an occupational therapist or who holds an occupational therapy assistant compact privilege.

SECTION 18. 448.961 of the statutes is amended to read:

448.961 License required. (1) Except as provided in s. 448.962 (1), ~~a no person who is not licensed as an occupational therapist may not practice occupational therapy, designate himself or herself as an occupational therapist, claim to render occupational therapy services, or use the abbreviation "O.T." or "O.T.R." after the person's name unless the person is licensed as an occupational therapist or holds a valid occupational therapist compact privilege.~~

(2) Except as provided in s. 448.962 (2) ~~a, no person who is not licensed as an occupational therapy assistant may not assist in the practice of occupational therapy, describe himself or herself as an occupational therapy assistant or claim to render occupational therapy services as an occupational therapy assistant, or use the~~

abbreviation "O.T.A." or "C.O.T.A." after the person's name unless the person is licensed as an occupational therapy assistant or holds a valid occupational therapy assistant compact privilege.

SECTION 19. 448.968 (2) (intro.) of the statutes is amended to read:

448.968 (2) (intro.) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may reprimand a licensee or compact privilege holder or deny, limit, suspend or revoke a license granted under this subchapter or a compact privilege if it finds that the applicant ~~or licensee, or compact privilege holder~~ has done any of the following:

SECTION 20. Subchapter XI of chapter 448 [precedes 448.987] of the statutes is created to read:

CHAPTER 448

SUBCHAPTER XI

OCCUPATIONAL THERAPY

LICENSURE COMPACT

448.987 Occupational therapy licensure compact.

(1) **PURPOSE.** The purpose of this compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. This compact is designed to achieve the following objectives:

(a) Increase public access to occupational therapy services by providing for the mutual recognition of other member state licenses;

(b) Enhance the states' ability to protect the public's health and safety;

(c) Encourage the cooperation of member states in regulating multi-state occupational therapy practice;

(d) Support spouses of relocating military members;

(e) Enhance the exchange of licensure, investigative, and disciplinary information between member states;

(f) Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and

(g) Facilitate the use of telehealth technology in order to increase access to occupational therapy services.

(2) **DEFINITIONS.** As used in this compact, and except as otherwise provided, the following definitions shall apply:

(a) "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 USC ch. 1209 and 10 USC ch. 1211.

(b) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an occupational therapist or occupational therapy

assistant, including actions against an individual's license or compact privilege such as censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

(c) "Alternative program" means a non-disciplinary monitoring process approved by an occupational therapy licensing board.

(d) "Compact privilege" means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

(e) "Continuing competence/education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

(f) "Current significant investigative information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(g) "Data system" means a repository of information about licensees, including but not limited to license status, investigative information, compact privileges, and adverse actions.

(h) "Encumbered License" means a license in which an adverse action restricts the practice of occupational therapy by the licensee or said adverse action has been reported to the National Practitioners Data Bank (NPDB).

(i) "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(j) "Home state" means the member state that is the licensee's primary state of residence.

(k) "Impaired practitioner" means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

(L) "Investigative information" means information, records, and/or documents received or generated by an occupational therapy licensing board pursuant to an investigation.

(m) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of occupational therapy in a state.

(n) "Licensee" means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

(o) "Member state" means a state that has enacted the compact.

(p) "Occupational therapist" means an individual who is licensed by a state to practice occupational therapy.

(q) "Occupational therapy assistant" means an individual who is licensed by a state to assist in the practice of occupational therapy.

(r) "Occupational therapy," "occupational therapy practice," and the "practice of occupational therapy" mean the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the member state's statutes and regulations.

(s) "Occupational therapy compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(t) "Occupational therapy licensing board" or "licensing board" means the agency of a state that is authorized to license and regulate occupational therapists and occupational therapy assistants.

(u) "Primary state of residence" means the state (also known as the home state) in which an occupational therapist or occupational therapy assistant who is not active duty military declares a primary residence for legal purposes as verified by: driver's license, federal income tax return, lease, deed, mortgage, or voter registration or other verifying documentation as further defined by commission rules.

(v) "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

(w) "Rule" means a regulation promulgated by the commission that has the force of law.

(x) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy.

(y) "Single-state license" means an occupational therapist or occupational therapy assistant license issued by a member state that authorizes practice only within the issuing state and does not include a compact privilege in any other member state.

(z) "Telehealth" means the application of telecommunication technology to deliver occupational therapy services for assessment, intervention and/or consultation.

(3) STATE PARTICIPATION IN THE COMPACT. (a) To participate in the compact, a member state shall:

1. License occupational therapists and occupational therapy assistants;
2. Participate fully in the commission's data system, including but not limited to using the commission's unique identifier as defined in rules of the commission;
3. Have a mechanism in place for receiving and investigating complaints about licensees;

4. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

5. Implement or utilize procedures for considering the criminal history records of applicants for an initial compact privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;

a. A member state shall, within a time frame established by the commission, require a criminal background check for a licensee seeking/applying for a compact privilege whose primary state of residence is that member state, by receiving the results of the federal bureau of investigation criminal record search, and shall use the results in making licensure decisions.

b. Communication between a member state, the commission or among member states regarding the verification of eligibility for licensure through the compact shall not include any information received from the federal bureau of investigation relating to a federal criminal records check performed by a member state under P.L. 92-544.

6. Comply with the rules of the commission;

7. Utilize only a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

8. Have continuing competence/education requirements as a condition for license renewal.

(b) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(c) Member states may charge a fee for granting a compact privilege.

(d) A member state shall provide for the state's delegate to attend all occupational therapy compact commission meetings.

(e) Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the compact privilege in any other member state.

(f) Nothing in this compact shall affect the requirements established by a member state for the issuance of a single-state license.

(4) COMPACT PRIVILEGE. (a) To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:

1. Hold a license in the home state;

2. Have a valid United States social security number or national practitioner identification number;

3. Have no encumbrance on any state license;

4. Be eligible for a compact privilege in any member state in accordance with pars. (d), (f), (g), and (h);

5. Have paid all fines and completed all requirements resulting from any adverse action against any license or compact privilege, and 2 years have elapsed from the date of such completion;

6. Notify the commission that the licensee is seeking the compact privilege within a remote state(s);

7. Pay any applicable fees, including any state fee, for the compact privilege;

8. Complete a criminal background check in accordance with sub. (3) (a) 5.;

a. The licensee shall be responsible for the payment of any fee associated with the completion of a criminal background check.

9. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and

10. Report to the commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

(b) The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of par. (a) to maintain the compact privilege in the remote state.

(c) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(d) Occupational therapy assistants practicing in a remote state shall be supervised by an occupational therapist licensed or holding a compact privilege in that remote state.

(e) A licensee providing occupational therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(f) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date on which the home state license is no longer encumbered in accordance with subd. 1.

(g) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of par. (a) to obtain a compact privilege in any remote state.

(h) If a licensee's compact privilege in any remote state is removed, the individual may lose the compact privilege in any other remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;
2. All fines have been paid and all conditions have been met;
3. Two years have elapsed from the date of completing requirements under subds. 1. and 2; and
4. The compact privileges are reinstated by the commission and the compact data system is updated to reflect reinstatement.

(i) If a licensee's compact privilege in any remote state is removed due to an erroneous charge, privileges shall be restored through the compact data system.

(j) Once the requirements of par. (h) have been met, the license must meet the requirements in par. (a) to obtain a compact privilege in a remote state.

(5) OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT PRIVILEGE. (a) An occupational therapist or occupational therapy assistant may hold a home state license, which allows for compact privileges in member states, in only one member state at a time.

(b) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving between two member states:

1. The occupational therapist or occupational therapy assistant shall file an application for obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.

2. Upon receipt of an application for obtaining a new home state license by virtue of compact privilege, the new home state shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in sub. (4) via the data system, without need for primary source verification except for:

a. An FBI fingerprint based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with P.L. 92-544;

b. Other criminal background check as required by the new home state; and

c. Submission of any requisite jurisprudence requirements of the new home state.

3. The former home state shall convert the former home state license into a compact privilege once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

4. Notwithstanding any other provision of this compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in sub. (4), the new

home state shall apply its requirements for issuing a new single-state license.

5. The occupational therapist or the occupational therapy assistant shall pay all applicable fees to the new home state in order to be issued a new home state license.

(c) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a member state to a non-member state, or from a non-member state to a member state, the state criteria shall apply for issuance of a single-state license in the new state.

(d) Nothing in this compact shall interfere with a licensee's ability to hold a single-state license in multiple states; however, for the purposes of this compact, a licensee shall have only one home state license.

(e) Nothing in this compact shall affect the requirements established by a member state for the issuance of a single-state license.

(6) ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES. (a) Active duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state or through the process described in sub. (5).

(7) ADVERSE ACTIONS. (a) A home state shall have exclusive power to impose adverse action against an occupational therapist's or occupational therapy assistant's license issued by the home state.

(b) In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against an occupational therapist's or occupational therapy assistant's compact privilege within that member state.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(c) For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing,

the home state shall apply its own state laws to determine appropriate action.

(d) The home state shall complete any pending investigations of an occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The home state, where the investigations were initiated, shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the OT compact commission data system. The occupational therapy compact commission data system administrator shall promptly notify the new home state of any adverse actions.

(e) A member state, if otherwise permitted by state law, may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that occupational therapist or occupational therapy assistant.

(f) A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action.

(g) *Joint investigations.* 1. In addition to the authority granted to a member state by its respective state occupational therapy laws and regulations or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(h) If an adverse action is taken by the home state against an occupational therapist's or occupational therapy assistant's license, the occupational therapist's or occupational therapy assistant's compact privilege in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an occupational therapist's or occupational therapy assistant's license shall include a statement that the occupational therapist's or occupational therapy assistant's compact privilege is deactivated in all member states during the pendency of the order.

(i) If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

(j) Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

(8) ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT COMMISSION. (a) The compact member states hereby create and establish a joint public agency known as the occupational therapy compact commission:

1. The commission is an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(b) *Membership, voting, and meetings.* 1. Each member state shall have and be limited to one delegate selected by that member state's licensing board.

2. The delegate shall be either:

a. A current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

b. An administrator of the licensing board.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the commission within 90 days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

6. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

7. The commission shall establish by rule a term of office for delegates.

(c) The commission shall have the following powers and duties:

1. Establish a code of ethics for the commission;

2. Establish the fiscal year of the commission;

3. Establish bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

6. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;

7. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state occupational therapy licensing board to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state.

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

12. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

14. Establish a budget and make expenditures;

15. Borrow money;

16. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

17. Provide and receive information from, and cooperate with, law enforcement agencies;

18. Establish and elect an executive committee; and

19. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of occupational therapy licensure and practice.

(d) *The executive committee.* The executive committee shall have the power to act on behalf of the commission according to the terms of this compact.

1. The executive committee shall be composed of 9 members:

a. Seven voting members who are elected by the commission from the current membership of the commission;

b. One ex-officio, nonvoting member from a recognized national occupational therapy professional association; and

c. One ex-officio, nonvoting member from a recognized national occupational therapy certification organization;

2. The ex-officio members will be selected by their respective organizations.

3. The commission may remove any member of the executive committee as provided in bylaws.

4. The executive committee shall meet at least annually.

5. The executive committee shall have the following duties and responsibilities:

a. Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

b. Ensure compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the commission;

e. Monitor compact compliance of member states and provide compliance reports to the commission;

f. Establish additional committees as necessary; and

g. Perform other duties as provided in rules or bylaws.

(e) 1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in sub. (10).

2. The commission or the executive committee or other committees of the commission may convene in a closed, non-public meeting if the commission or executive committee or other committees of the commission must discuss:

a. Non-compliance of a member state with its obligations under the compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(f) *Financing of the commission.* 1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(g) *Qualified immunity, defense, and indemnification.* 1. The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing in this subdivision shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

(9) **DATA SYSTEM.** (a) The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(b) A member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable (utilizing a unique identifier) as required by the rules of the commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Non-confidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial;
6. Other information that may facilitate the administration of this compact, as determined by the rules of the commission; and
7. Current significant investigative information.

(c) Current significant investigative information and other investigative information pertaining to a licensee in any member state will only be available to other member states.

(d) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(e) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(f) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

(10) RULEMAKING. (a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this subsection and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(b) The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(c) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

(d) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(e) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. On the website of the commission or other publicly accessible platform; and

2. On the website of each member state occupational therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules;

(f) The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(g) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(h) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least 25 persons;

2. A state or federal governmental subdivision or agency; or

3. An association or organization having at least 25 members.

(i) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this subsection shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this subsection.

(j) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(k) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(L) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(m) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this subsection shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

(n) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting

typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

(11) OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT. (a) *Oversight.* 1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

3. The commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

(b) *Default, technical assistance, and termination.*

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and/or any other action to be taken by the commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(c) *Dispute resolution.* 1. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) *Enforcement.* 1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

(12) DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT. (a) The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(b) Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force

and effect of law on the day the compact becomes law in that state.

(c) Any member state may withdraw from this compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until 6 months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(d) Nothing contained in this compact shall be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(e) This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

(13) CONSTRUCTION AND SEVERABILITY. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

(14) BINDING EFFECT OF COMPACT AND OTHER LAWS.

(a) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(b) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(c) Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(d) Any lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(e) All agreements between the commission and the member states are binding in accordance with their terms.

(f) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

448.9875 Implementation of the occupational therapy licensure compact. (1) In this section:

(a) "Compact" means the occupational therapy licensure compact under s. 448.987.

(b) "Compact privilege" means a compact privilege, as defined in s. 448.987 (2) (d), that is granted under the compact to an individual to practice in this state.

(c) "Examining board" means the occupational therapists affiliated credentialing board.

(2) The department may impose a fee for an individual to receive a compact privilege as provided in s. 448.987 (3) (c).

(3) The examining board may, by rule, require an individual seeking a compact privilege to meet a jurisprudence requirement in accordance with s. 448.987 (4) (a) 9., if such a requirement is imposed by the examining board under s. 448.964 in order to obtain a license under s. 448.963.

(4) (a) An individual who holds a compact privilege shall comply with s. 440.03 (13) (am).

(b) Subject to s. 448.987 and any rules promulgated thereunder, ss. 440.20 to 440.22 and the rules promulgated under s. 440.03 (1) shall apply to an individual who holds a compact privilege in the same manner that they apply to holders of licenses issued under subch. VII.

SECTION 21. 450.10 (3) (a) 5. of the statutes is amended to read:

450.10 (3) (a) 5. A physician, physician assistant, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448 ~~or~~ a physical therapist or physical therapist assistant who holds a compact privilege under subch. IX of ch. 448, or an occupational therapist or occupational therapy assistant who holds a compact privilege under subch. XI of ch. 448.

SECTION 22. 451.02 (1) of the statutes is amended to read:

451.02 (1) An individual holding a license, permit or certificate under ch. 441, 446, 447, 448, or 449 or a compact privilege under subch. IX or XI of ch. 448 who engages in a practice of acupuncture that is also included within the scope of his or her license, permit ~~or~~ certificate, or privilege.

SECTION 23. Nonstatutory provisions.

(1) 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.

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)

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.

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:

Kassandra Walbrun, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone (608) 261-4463; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kassandra 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 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 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)

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 December 28, 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) OT 1 to 6	
4. Subject Telehealth	
5. Fund Sources Affected <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	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input 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 Current administrative rules of the Occupational Therapy 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.	
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.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is established standards of practice, care, and conduct for providing occupational therapy services using a telehealth visit. If the rule is not implemented, these standards will remain unclear	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is established standards of practice, care, and conduct for providing occupational therapy services using a telehealth visit.

17. Compare With Approaches Being Used by Federal Government

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.

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

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.

19. Contact Name	20. Contact Phone Number
Dale Kleven	(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
-

State of Wisconsin



2021 Senate Bill 309

Date of enactment: **February 4, 2022**
Date of publication*: **February 5, 2022**

2021 WISCONSIN ACT 121

AN ACT *to renumber and amend* 250.15 (1); and *to create* 250.15 (1) (b), 250.15 (2) (d), 440.01 (1) (ab), (bm), (dg) and (hm) and 440.17 of the statutes; **relating to:** funding for free and charitable clinics and defining telehealth.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 250.15 (1) of the statutes is renumbered 250.15 (1) (intro.) and amended to read:

250.15 (1) ~~DEFINITION DEFINITIONS.~~ (intro.) In this section, "community:

(a) "Community health center" means a health care entity that provides primary health care, health education and social services to low-income individuals.

SECTION 2. 250.15 (1) (b) of the statutes is created to read:

250.15 (1) (b) "Free and charitable clinics" means health care organizations that use a volunteer and staff model to provide health services to uninsured, underinsured, underserved, economically and socially disadvantaged, and vulnerable populations and that meet all of the following criteria:

1. The organizations are nonprofit and tax exempt under section 501 (c) (3) of the Internal Revenue Code or are a part of a larger nonprofit, tax-exempt organization.

2. The organizations are located in this state or serve residents in this state.

3. The organizations restrict eligibility to receive services to individuals who are uninsured, underinsured, or have limited or no access to primary, specialty, or prescription care.

4. The organizations provide one or more of the following services:

a. Medical care.

b. Mental health care.

c. Dental care.

d. Prescription medications.

5. The organizations use volunteer health care professionals, nonclinical volunteers, and partnerships with other health care providers to provide the services under subd. 4.

6. The organizations are not federally qualified health centers as defined in 42 USC 1396d (1) (2) and do not receive reimbursement from the federal centers for medicare and medicaid services under a federally qualified health center payment methodology.

SECTION 3. 250.15 (2) (d) of the statutes is created to read:

250.15 (2) (d) To free and charitable clinics, \$1,500,000.

SECTION 4. 440.01 (1) (ab), (bm), (dg) and (hm) of the statutes are created to read:

440.01 (1) (ab) "Asynchronous telehealth service" means telehealth that is used to transmit medical data about a patient to a health care provider when the transmission is not a 2-way, real-time interactive communication.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(bm) “Interactive telehealth” means telehealth delivered using multimedia communication technology that permits 2-way, real-time, interactive communications between a health care provider at a distant site and the patient or the patient’s health care provider.

(dg) “Remote patient monitoring” means telehealth in which a patient’s medical data is transmitted to a health care provider for monitoring and response if necessary.

(hm) “Telehealth” means a practice of health care delivery, diagnosis, consultation, treatment, or transfer of medically relevant data by means of audio, video, or data communications that are used either during a patient visit

or a consultation or are used to transfer medically relevant data about a patient. “Telehealth” includes asynchronous telehealth services, interactive telehealth, and remote patient monitoring.

SECTION 5. 440.17 of the statutes is created to read:

440.17 Telehealth. If the department, an examining board, or an affiliated credentialing board promulgates rules related to telehealth, the department, the examining board, or the affiliated credentialing board shall define “telehealth” to have the meaning given in s. 440.01 (1) (hm).

**Occupational Therapists Affiliated Credentialing Board
Rule Projects (updated 05/24/22)**

Clearinghouse Rule Number	Scope #	Scope Expiration	Code Chapter Affected	Relating clause	Current Stage	Next Step
Not Assigned Yet	Not Assigned Yet	Not Assigned Yet	OT 1 to 5	Implementation of the Occupational Therapy Licensure Compact	Scope Statement Submitted for Board Review at 06/07/22 Meeting	Submission to the Governor's Office for Approval
21-033	087-20	01/06/2023	OT 1 to 6	Telehealth	Board Review of Rule Draft in Relation to 2021 WI Act 121 at 06/07/22 Meeting	Finalize Rule Draft and Legislative Report for Submission to the Governor's Office for Approval
22-027	001-21	07/04/2023	OT 2	Licensure Requirements	Public Hearing at 06/07/22 Meeting	Finalize Rule Draft and Legislative Report for Submission to the Governor's Office for Approval
22-028	044-21	11/03/2023	OT 3	Continuing Education	Public Hearing at 06/07/22 Meeting	Finalize Rule Draft and Legislative Report for Submission to the Governor's Office for Approval