

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Regulations pertaining to the Supervision of Occupational Therapy Assistants, Limited Permit Holders, Students, and Aides

Sections Affected: Title 16, Division 39, Sections 4180, 4184, and 4187

Introduction:

The California Board of Occupational Therapy (Board) is the state governmental agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of California consumers. The Board also administers, coordinates, and enforces the provisions of the laws and regulations pertaining to occupational therapy.

The proposed regulations are intended to establish, clarify and implement practice and supervision standards relating to the delivery of occupational therapy services.

Specific Purpose of each adoption, amendment or repeal:

Amend Section 4180 (Definitions)

The proposed regulation adds a new definition for "Clinical Supervision" by incorporating by reference the American Occupational Therapy Association's (AOTA's) "*Standards of Practice for Occupational Therapy* (adopted 2010)".

Although the *Standards of Practice for Occupational Therapy* does not specifically provide a definition for "clinical supervision" it clarifies practice standards and defines the roles and responsibilities between occupational therapists and occupational therapy assistants.

The *Standards of Practice for Occupational Therapy* also describes and defines the practice of occupational therapy. It provides education, examination, and licensure requirements that are fundamental to the profession and consistent with California's licensure requirements. The *Standards of Practice for Occupational Therapy* also contains other professional responsibilities and provides definitions for terms used in the document pertaining to: Activity, Assessment, Client, Evaluation, Intervention, Occupation, Outcomes, Re-evaluation, and Screening.

The *Standards of Practice for Occupational Therapy* clarifies, enhances, and supports supervision requirements already established by the Board by breaking down the roles and responsibilities in four areas pertaining to the delivery of services. The four areas and a summary of the duties and responsibilities for practitioners follows:

(1) Professional Standing and Responsibility

This section clarifies that the delivery of occupational therapy services should reflect the philosophical base of occupational therapy and be consistent with established principals and concepts of theory. It specifies that an occupational therapy practitioner must be knowledgeable about the standards, policies, and guidelines of federal, state, and the profession pertaining to the delivery of services. It specifies that occupational therapy practitioners maintain current licensure as required by law, and specifies that occupational therapy practitioners shall abide by the Occupational Therapy Code of Ethics (AOTA 2005). It specifies occupational therapy practitioners are responsible for maintaining and updating their knowledge and skills and are responsible and accountable for the safety and effectiveness of delivered services.

This section specifies that occupational therapy assistants are responsible for providing safe and effective services under the supervision of an occupational therapist. It specifies occupational therapy practitioners be knowledgeable about legislative, political, social, cultural, societal, and reimbursement issues affecting occupational therapy practice. It specifies occupational therapy practitioners be knowledgeable about evidence-based research and apply it ethically and with a best practices approach. It specifies occupational therapy practitioners respect a client's sociocultural background and provide client-centered and family-centered occupational therapy services.

(2) Screening, Evaluation, and Re-evaluation

This section clarifies that an occupational therapist is responsible for all aspects of the screening, evaluation, and re-evaluation processes. It specifies an occupational therapist accepts and responds to referrals in compliance with federal and state laws, and other regulatory and payer requirements. It specifies that an occupational therapist is to collaborate with the client in the screening, evaluation, and re-evaluation processes. It specifies that an occupational therapist is responsible for initiating and directing the screening, evaluation, and re-evaluation processes. It specifies that an occupational therapy assistant may contribute to the screening, evaluation, and re-evaluation processes. It specifies occupational therapy practitioners use current assessments and assessment procedures and follows protocols during the screening, evaluation, and re-evaluation process. It specifies occupational therapy practitioners document the screening, evaluation, and re-evaluation in accordance with federal and state laws, and other regulatory and payer entities. It specifies occupational therapy practitioners respect a client's confidentiality and privacy. It specifies that occupational therapy practitioners shall make appropriate referrals based on a client's needs. It specifies that occupational therapy practitioners shall educate current and potential referral sources about occupational therapy services and processes for initiating services.

(3) Intervention

This section requires an occupational therapist be responsible for the development, documentation, and implementation of therapeutic intervention based on the evaluation, client goals, best available evidence, and professional and clinical reasoning; specifies an occupational therapist is responsible for ensuring the intervention plan is documented in accordance with federal and state laws, and other regulatory and payer

entity requirements. It specifies an occupational therapy practitioners collaborate with clients on developing and implementing an intervention plan and coordinate the intervention plan with other professionals when appropriate. It specifies occupational therapy practitioners use professional and clinical reasoning to select appropriate types of interventions in the delivery of services.

(4) Outcome.

This section clarifies that an occupational therapist is responsible for selecting, measuring, documenting, and interpreting expected or achieved outcomes. It specifies an occupational therapist is responsible for documenting changes in the client's performance and capabilities and for transitioning the client to other types or intensity of service or discontinuing services when the client has achieved identified goals, reached maximum benefit, or does not desire to continue services. It specifies an occupational therapist prepares and implements, and an occupational therapy assistant contributes to, a transition or discontinuation plan based on the client's needs, goals, performance, and appropriate follow up resources. It specifies an occupational therapy practitioner shall facilitate the transition or discharge process by collaborating with the client, family members, significant others, and other professionals when appropriate. It specifies an occupational therapist is responsible for, and an occupational therapy assistant contributes to, evaluating the safety of occupational therapy processes and interventions.

Factual Basis/Rationale:

Adoption of the proposed regulations would enhance the Board's ability to administer, coordinate, and enforce professional standards for occupational therapy. Incorporation of AOTA's Standards for Occupational Therapy Practice is designed to establish and clarify additional detail surrounding the roles, duties, functions, and responsibilities of practitioners providing services to the public. Incorporation of AOTA's Standards for Occupational Therapy Practice would align California practice standards with national standards. Incorporation of the AOTA's Standards for Occupational Therapy Practice would enhance the Board's ability to take disciplinary action against practitioners for deviations in practice standards. Incorporation of AOTA's Standards for Occupational Therapy Practice enhance and clarify existing similar regulations by providing specific examples and situations that occur in the delivery of occupational therapy services. The proposed regulations would serve to protect the public by ensuring occupational practitioners act in accordance with, and within, their scope of practice.

Delete Section 4184(d) (Delegation of Tasks to Aides)

The proposed regulation would delete current regulatory language that allows aides to document client related services.

Factual Basis/Rationale:

The regulatory language should be deleted as it conflicts with Business and Professions Code (BPC) section 2570.2(a) which states in pertinent part "The occupational therapist or occupational therapy assistant is responsible for documenting the client's record concerning the delegated client-related tasks performed by the aide."

When the Board first adopted the current regulatory language that allows an aide to document a client record it was done so essentially for the convenience of the occupational therapist. It was believed that that since the supervising occupational therapist was required to have the aide providing services directly in their line of sight, the therapist could verbally direct the aide what to document in the record (the aide was essentially transcribing the therapist's own entry) and the therapist would then co-sign the record.

Deletion of the regulatory language will eliminate any confusion regarding an aide's ability to document a client record. It is the intent of the Board that, consistent with BPC section 2570.2(a), only licensees (an occupational therapist or occupational therapy assistant) shall be responsible for documenting a client record.

Add Section 4187 (Supervision Plan for Occupational Therapist)

The proposed language requires that a documented plan be established for the supervision of clinical performance of an occupational therapist who is employed in facilities, settings, or by businesses that are owned by or have an occupational therapy assistant functioning in an administrative, management, leadership, or directive role in the facility or business.

Factual Basis/Rationale:

The Board is concerned with ethical implications that derive from situations where an owner, administrator, or director, of a facility or business who is an occupational therapy assistant evaluates the clinical performance of an occupational therapist(s), who is under their administrative supervision. The purpose of this regulation is to make certain that it would be improper for an occupational therapy assistant to evaluate the clinical performance of an occupational therapist. Some examples of implementing the proposed regulations are as follows:

Facility or business owned by an occupational therapist with one occupational therapist as an employee or contractor would require that the occupational therapy assistant owner/operator hire or contract with another occupational therapist to evaluate the performance of the occupational therapist employed or contracted to provide services for the facility/business.

Facility or business that has an occupational therapy assistant functioning as a rehabilitation director that employs or contracts with two or more occupational therapists to provide services would require that the documented plan specify the occupational therapist that is designated to perform the clinical evaluation of occupational therapist(s) employed or contracted at the facility.

BUSINESS IMPACT

The proposed amendment to Section 4180 would have minimal cost impact to businesses in that it sets forth standards for practice for occupational therapy practitioners. Any practitioner that violates these standards potentially could be disciplined by the Board resulting in revocation of the license thereby resulting in loss of income to the licensee.

The proposed deletion to Section 4184 would have no cost impact to an employer due to the fact that current law requires that an occupational therapist must be present when an aide provides therapeutic services to a client. The proposed regulations simply require that the occupational therapist document the client's record.

Adoption of proposed Section 4187 may have a cost impact to businesses or facilities that provide occupational therapy services that are owned by or whose rehabilitation services are supervised, managed, or administered by an occupational therapy assistant. The proposed regulation would require that another occupational therapist be employed or contracted to evaluate the clinical performance of the occupational therapist that is employed at the facility that is owned by an occupational therapy assistant or facility that managed or administered by an occupational therapy assistant. In cases where a business or facility employs more than two occupational therapists one of the therapists could be designated to provide the clinical evaluations.

UNDERLYING DATA

We relied on the American Occupational Therapy Association's documents entitled "Standards of Practice for Occupational Therapy" (adopted 2010) and "Occupational Therapy Code of Ethics and Ethics Standards" (adopted 2010). These documents are available upon request.

SPECIFIED TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and businesses than the proposed regulation.