

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (CBOT) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on November 28, 2011, or must be received by the CBOT at the hearing.

The CBOT does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 pm. on November 14, 2011.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by sections 2570.13 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.2, 2570.3 2570.4, 2570.5, 2570.6, and 2570.13, the Board is proposing changes to Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Code (BPC) section 2570.20, authorizes the Board to adopt rules in accordance with the Administrative Procedures Act relating to the professional conduct of occupational therapy practitioners to carry out its regulatory purpose. Existing law sets forth the supervision requirements for occupational therapy aides and assistants. The proposed regulations are designed to define and clarify the roles and responsibilities of occupational therapists, occupational therapy assistants, and occupational therapy aides, delivering professional services.

The following regulatory changes are proposed:

- Amend CCR section 4180. Definitions (pertaining to Supervision of Occupational Therapy Assistants, Limited Permit Holders, Students, and Aides).

The proposed amendment adds a new definition for "Clinical Supervision" by incorporating by reference the American Occupational Therapy Association's "Standards of Practice for Occupational Therapy".

- Amend CCR section 4184. Delegation of Tasks to Aides

The proposed amendment deletes subsection (d) that states "All documented client related services shall be reviewed and cosigned by the supervising occupational therapist." The proposed amendment is intended to delete any reference or authority that an aide is authorized to document client record under any circumstance. The proposed regulation eliminates conflict with newly enacted statutory language contained in Business and Professions Code section 2570.2(a) which states in pertinent part "The occupational therapist or occupational therapy assistant is responsible for documenting the client's record regarding the patient related tasks that are performed by the aide.

- Add CCR section 4187. Supervision Plan for Occupational Therapist

The proposed regulation would add a new subsection that would require a documented plan be established for the clinical supervision of an occupational therapist(s) who is employed in facilities or businesses that are owned by an occupational therapy assistant or have an occupational therapy assistant functioning in an administrative, management, or directive role over the clinical services provided by the business or facility. It is the intent of the Board to allow occupational therapy assistants to function in administrative, management, and lead positions. However, the Board seeks to make it clear that an occupational therapy assistant functioning in these roles is not in any way, authorized to practice beyond his or her scope of practice as an occupational therapy assistant. Furthermore, it is not proper for an assistant functioning as an administrator, manager, or other directive role, to evaluate the clinical performance of an occupational therapist.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Requires Reimbursement: None

Business Impact: The amendment to proposed section 4187 may have a cost impact to businesses or facilities that provide occupational therapy services that are owned by or whose services are administered or managed by an occupational therapy assistant. In cases where a business or facility only has one occupational therapist on staff, the regulations would require that another occupational therapist be hired or contracted to evaluate the clinical performance of the occupational therapist employed by the business or facility. The Board does not have data that indicates how many occupational therapy assistants own or operate their own practice. The Board does not have data regarding the number of facilities that employ an occupational therapy assistant in a supervisory, management, or clinical director capacity who oversees the delivery of occupational therapy services provided by the occupational therapists. This regulation is not thought to have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses from other states.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board has determined that there may be a cost impact to occupational therapy practices that are owned by or operated by an occupational therapy assistant. In such cases the owner operator would be required to hire or contract with another occupational therapist to evaluate the clinical services of the therapist who conducts the businesses assessments and develops the treatment plans. In cases where a facility that employs multiple occupational therapists that are managed or supervised by an occupational therapy assistant, the business would be required to designate one of the

occupational therapists as the clinical evaluator. It is anticipated that the cost impact would be minimal.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that there would be fiscal impact to an occupational therapy assistant that owns and operates his/her own private practice. Please refer to the Business Impact statement above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice. Adoption of the proposed regulatory action is consistent with the Board's mandate to coordinate, administer, and regulate the practice of occupational therapy.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

OR

Heather Martin
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations > Proposed Regulations.**