CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4170, ETHICAL STANDARDS OF PRACTICE.

The following documents are attached for review:

- Notice of Availability and Second Modified Text.
- Public comment received regarding Second Modified Text.

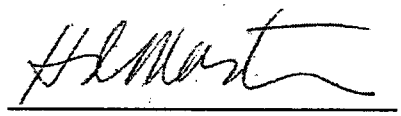
AVAILABILITY OF SECOND MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Occupational Therapy has proposed modifications to the proposed text of CCR Section 4170 in Division 39, Title 16. A copy of the modified text is enclosed.

Any person who wishes to comment on the proposed modifications may do so by submitting written comments on or before 5:00 PM on May 31, 2013, to the following:

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

DATED: May 16, 2013



HEATHER MARTIN
Executive Officer
CA Board of Occupational Therapy

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Specific Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.

Modified text is shown by ~~double strikeout~~ for deleted text and double underline for new text.

Second Modified text is shown by ~~double strikeout with highlight~~ for deleted text and double underline with highlight for new text.

Amend Title 16, Division 39, California Code of Regulations to read as follows:

§ 4170. Ethical Standards of Practice

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, ~~certificate or~~ a limited permit issued by the board, or is practicing on a license issued by another state, shall comply with the following ethical standards of practice:

(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.

(1) Occupational therapy practitioner's services shall be provided ~~services that reflect an understanding of how services can be affected by~~ consistent with socio-economic factors such as economic status, age, ethnicity, race, disability, marital status, sexual orientation, gender, gender identity, religion, residence, culture and political affiliation and insurance coverage.

(2) An occupational therapy practitioner offering pro bono ("for the good") or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services.

(b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.

(1) Occupational therapy practitioners shall not exploit ~~clients in any manner~~ or harm recipients of occupational therapy services, students, research participants, or employees.

(2) Occupational therapy practitioners shall, within six (6) months of termination of occupational therapy services, avoid relationships which may include emotional, physical, psychological, financial, social or any other manner, or activities that interfere with professional judgment and objectivity including avoiding:

(A) Any sexual relationship, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer; and

(B) Bartering for services or any relationship established as an occupational therapist or occupational therapy assistant to further one's own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, or the potential for exploitation and conflict of interest.

(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.

(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.

(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.

(3) Occupational therapy practitioners shall respect the client's right to refuse ~~professional~~ services~~, including to receive services delivered via telehealth, or involvement in research or educational activities~~.

(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.

(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so~~:~~

~~(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.~~

~~(2) Occupational therapy practitioners~~ and shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation ~~should~~ shall be done in collaboration with the client.

(e) Occupational therapy practitioners shall, through professional development units required for license renewal or in other ways assure continued competence with respect to their own current practice and technology.

(f) Occupational therapy practitioners shall report to the appropriate authorities any acts committed by another occupational therapy practitioner that they have reason to believe are unethical or illegal in practice, education, research, billing, and documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be required.

~~(e)~~ (g) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws~~.~~, and shall comply with the following:

(1) Practice occupational therapy only when holding a current and valid license issued by the Board, and appropriate national, state, or other requisite credentials for the services they provide; and

(2) Practice occupational therapy within his or her own level of competence and scope of practice.

~~(f)~~ (h) Occupational therapy practitioners shall provide accurate information about occupational therapy services~~:~~

~~(1) Occupational therapy practitioners~~ and shall accurately represent their credentials, qualifications, education, experience, training, and competence.

(2) (i) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.

(3) (j) Occupational therapy practitioners shall ~~refrain from using~~ not use or participat~~ing~~e in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.

~~(g)~~ (k) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.

~~(h) Occupational Therapy practitioners shall abide by the standards set forth in the American Occupational Therapy Association's "Occupational Therapy Code of Ethics and Ethics Standards" (2010), incorporated herein by reference.~~

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code section 2570.20 and 2570.36.

OTAC
Occupational Therapy
Association of California

May 31, 2013

Submitted via email to cbot@dca.ca.gov

Heather Martin, Executive Officer
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

Re: Proposed Regulations for Ethical Standards of Practice

Dear Ms. Martin:

I am writing on behalf of the Occupational Therapy Association of California (OTAC) to comment on the proposed regulations to Amend Title 16, Division 39 of the CCR Section 4170 related to Ethical Standards of Practice. OTAC was pleased to see some modifications made to the regulations, however, the Association still has one remaining concern with the provisions.

OTAC is concerned specifically with Section 4170, paragraph (f). This particular provision is written very broadly and could place requirements on occupational therapists (OT) that they do not have the capacity to comply with such as providing documentation about another OT or information that they do not have access to.

OTAC would request that paragraph (f) be clarified to ensure that OTs are not obliged to provide information they cannot acquire. This clarification could be accomplished by referencing Section 2570.36 of the California Business and Professions Code.

The Association looks forward to working with the Board on this remaining issue.
If we can provide you with any additional information please do not hesitate to contact me at (916) 444-0400.

Sincerely,

Patricia J. Nagaishi

Patricia Nagaishi, PhD, OTR/L
President, Occupational Therapy Association of California

CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO ADD TITLE 16, CCR SECTION 4172, STANDARDS OF PRACTICE FOR TELEHEALTH.

The following documents are attached for review:

- Notice of Availability and Second Modified Text
- Public comments received regarding Second Modified Text.

AVAILABILITY OF SECOND MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Occupational Therapy has proposed modifications to the text of CCR Sections 4172 in Division 39, Title 16. A copy of the second modified text is enclosed.

Any person who wishes to comment on the proposed modifications may do so by submitting written comments on or before 5:00 PM on May 31, 2013, to the following:

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

DATED: May 16, 2013

HEATHER MARTIN
Executive Officer
Board of Occupational Therapy

California Board of Occupational Therapy
Department of Consumer Affairs

Title 16. Division 39, California Code of Regulations

SECOND MODIFIED TEXT

Proposed amendments are shown by ~~strikeout~~ for deleted text and underline for new text.

Modifications to regulatory language are shown by ~~double strikeout~~ for deleted text and double underline for new text.

Second modified text is shown by ~~double strikeout with highlight~~ for deleted text and **bold double underline with highlight** for new modified language.

ARTICLE 8. Ethical Standards of Practice

Add section 4172 - Standards of Practice for Telehealth

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant ~~in this State or~~ providing services to a patient or client in this State must have a valid and current license issued by the Board.

~~(b) An occupational therapist or occupational therapy assistant must exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services.~~

~~(c)~~ (b) An occupational therapist shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth **consistent with Section 2290.5 of the Code**~~, and shall include~~. ~~Ddocumentation of that consent statement and a consent for release of records shall be maintained in the patient's or client's health record~~.

~~(e) All records, including but not limited to, patient consent statements, medical, billing, and employee records, must be provided to the Board upon request.~~

~~(d)~~ **(c)** Prior to providing occupational therapy services via telehealth~~,~~ ;

(1) an occupational therapist shall determine~~:~~ ~~(1)~~ whether an in-person evaluation is necessary~~;~~ and **ensure that** a ~~local~~ therapist must be available ~~should~~ **if** an onsite visit ~~be~~ **is** required;

(2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.

~~(c)~~ **(d)** ~~The obligations of an occupational therapist continue during the course of treatment to determine whether an in-person evaluation or intervention is necessary.~~ In making the~~se~~ determination~~s~~ whether an in-person evaluation or in-person interventions are necessary, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment~~. The obligations of an occupational therapist to determine whether an in-person evaluation or intervention is necessary continue during the course of treatment.~~

~~(e)~~ ~~(f)~~ **(e)** An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

~~(1)~~ (2) Provide services consistent with ~~the practice of occupational therapy as defined in~~ section 2570.2(k) of the Code; and

~~(2)~~ (3) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

~~(g)~~ **(f)** Failure to comply with these regulations shall be considered unprofessional conduct as set forth in the Occupational Therapy Practice Act.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2290.5 and 2570.20.

AOTA® The American Occupational Therapy Association, Inc.

May 31, 2013

Submitted via email to cbot@dca.ca.gov
Heather Martin, Executive Officer
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

Re: Proposed Regulations for Standards of Practice for Telehealth (Second Modified Text)

Dear Ms. Martin:

The American Occupational Therapy Association (AOTA) appreciates the opportunity to comment on the second modified text of the proposed regulations to establish standards of practice for telehealth. We recognize the growing significance of delivering occupational therapy services to patients and clients using increasingly advanced telecommunications technologies. The delivery of services in this manner has the potential to increase access to rural and underserved communities. We appreciate the Board's efforts to ensure the public is safe and professional standards are adhered to as telehealth practice becomes more prevalent, as well as the changes the Board has made to its prior proposals to address some of the concerns we have expressed previously. However, we have one remaining issue of concern as described below.

As we communicated in our March 18, 2013 comment letter, we believe paragraph (c) (previously paragraph (d)) could produce confusion and unintended consequences. For example, the language does not clearly indicate whether the necessity of an in-person evaluation to address one of a client's needs precludes a telehealth evaluation for another of a client's needs for which an in-person evaluation is not necessary. In addition, the language related to ensuring a therapist is available for onsite services seems to create a burden on therapists that is not realistic or enforceable. Each of these provisions may discourage occupational therapists from providing telehealth services, even when it is appropriate to do so. In an effort to clarify the proposed regulations while maintaining the intent of the Board, we suggest the following alternative language for paragraph (c).

> (c) When providing occupational therapy services via telehealth, an occupational therapist shall determine whether an in-person evaluation and/or interventions are necessary to address some or all of the patient's/client's needs. If some of the patient's/client's needs may be addressed without an in-person evaluation and/or interventions, an occupational therapist may proceed with an evaluation and/or interventions via telehealth only to address those needs for which an in-person evaluation and/or interventions are not necessary. If some or all of the patient's/client's needs must be addressed through an in-person evaluation and/or interventions, the

occupational therapist shall make a good-faith effort to ensure access to appropriate services and continuity of care consistent with Section 4170 of this article.

Our proposed language balances the benefits of encouraging occupational therapists to provide services via telehealth when appropriate, while ensuring that evaluations and interventions that should be performed in-person are not conducted via telehealth. In addition, our proposal enhances the responsibilities of therapists in a realistic way by requiring that they make an effort to ensure access to appropriate in-person services consistent with the regulations governing ethical standards of practice.

Thank you for the opportunity to comment on the proposed regulations related to the practice of telehealth. Please feel free to contact Jennifer Snyder at (916) 444-0400 with questions or for further information.

Sincerely,

Daniel S. Brown, JD
Senior State Policy Analyst, American Occupational Therapy Association

Enclosures: Comment letter dated March 18, 2013; Comment letter dated October 5, 2012

The American Occupational Therapy Association, Inc.

March 18, 2013

Submitted via email to cbot@dca.ca.gov

Heather Martin, Executive Officer
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

Re: Proposed Regulations for Standards of Practice for Telehealth

Dear Ms. Martin:

The American Occupational Therapy Association (AOTA) appreciates the opportunity to comment on the proposed regulations to establish standards of practice for telehealth. We recognize the growing significance of delivering occupational therapy services to patients and clients using increasingly advanced telecommunications technologies. The delivery of services in this manner has the potential to increase access to rural and underserved communities. **We appreciate the Board's efforts to ensure the public is safe and professional standards are adhered to as telehealth practice becomes more prevalent. However, we have significant concerns with the Board's latest draft regulations, and are eager to engage the Board in a dialogue to resolve these concerns.** In addition, we are attaching AOTA's new Telehealth Position Paper for your reference as you continue to develop these regulations. Our concerns with the proposed regulations are as follows.

In paragraphs (b) and (c) of the proposed regulations, new language has been inserted related to obtaining clients' consent to release their health records, and making those records and other records available to the Board "upon request." We believe the intent and effect of this language is not clear, and there may be conflicts with other laws, regulations, and policies with which occupational therapists may be required to comply.

For example, as to the clarity of the provisions, what if a client provides informed consent to receive telehealth services, but refuses to sign a release for his or her health records? Does that prevent that client from being able to receive telehealth services? Assuming the client signs the necessary release, does that mean the Board may request that client's health records even if no complaint has been filed with the Board by the client against the therapist who provided services? It is not clear to us the precise requirements and limitations imposed by this language.

In terms of potential conflicts with legal and contractual requirements, how are therapists expected to reconcile the Board's request for records when there is a conflict with state or federal privacy law related to health records, labor law related to employment records, or a

payer's contractual requirements to maintain the confidentiality of billing records? We believe this language has the potential to discourage occupational therapists from engaging in telehealth practice for fear of being unable to comply with the myriad other requirements being imposed on them that may conflict with this regulation. **We urge the Board to reconsider inclusion of the new language in paragraphs (b) and (c) unless the intent and effect can be clarified, and the potential for conflicts with other laws and policies can be resolved.**

In paragraph (d), the Board has included new language requiring the provision of in-person evaluations and interventions by local therapists should the necessity of such services be established. As with the previously mentioned additions to the regulations, we believe the intent and effect of this language is not clear. For example, if the occupational therapist determines an in-person evaluation or interventions are necessary to meet some of a client's needs, does that prevent the therapist from performing any evaluation or interventions, even those that do not require onsite services to meet that client's needs? In addition, the regulations, as currently drafted, state "...a local therapist ***must*** be available should an onsite visit be required..." [emphasis added] and "...an on-site occupational therapist...***shall*** provide the appropriate interventions" [emphasis added]. However, what if no therapist is available locally? Who is responsible to assure evaluations are conducted or interventions are provided? How would those provisions be enforced? **We urge the Board to reconsider inclusion of the new language in paragraph (d) unless the intent and effect can be clarified.**

Finally, we would like to bring your attention to language that was stricken from and added to paragraph (e). In that paragraph, as amended in this draft of the proposed regulations, a series of considerations are listed that an occupational therapist must take into account when determining whether in-person evaluations or interventions are necessary. However, we are of the opinion that those considerations should be viewed broadly, and applicable prior to and during the provision of occupational therapy services via telehealth, not just in terms of the necessity of in-person evaluations and interventions. **We would prefer language more closely aligned with that which is included in AOTA's Telehealth Position Paper, specifically:**

"To determine whether providing occupational therapy by means of telehealth is in the best interest of the client, the occupational therapist must consider the following:

- **Complexity of the client's condition**
- **Knowledge, skill, and competence of the occupational therapy practitioner**
- **Nature and complexity of the intervention**
- **Requirements of the practice setting**
- **Client's context and environment." (4-5)**

While our concerns stated above reflect our reaction to language added in this new draft of the proposed regulations, we also would like to remind the Board of the changes we suggested in our comment letter dated October 5, 2012. Our preference for the simplicity and clarity of that suggested language remains, and we have attached it for your reference.

We understand that the Board faces a significant challenge in terms of balancing the safety of consumers with the advent of new technologies that enable new forms of occupational therapy practice. We support the use of telehealth to provide occupational therapy services, while acknowledging the need to ensure consumers are protected and professional standards are adhered to.

Thank you for the opportunity to comment on the proposed regulations related to the practice of telehealth. We welcome the opportunity to provide additional feedback to the Board on these issues and hope that we can work together to ensure telehealth practice of occupational therapy is regulated in a manner that maximizes access to services and consumer safety. Please feel free to contact Jennifer Snyder at (916) 444-0400 for further information.

Sincerely,

Chuck Willmarth
Director of Health Policy and State Affairs
American Occupational Therapy Association

Enclosures: AOTA Telehealth Position Paper (2013); Comment letter dated October 5, 2012

OTAC
Occupational Therapy
Association of California

AOTA® The American
Occupational Therapy
Association, Inc.

October 5, 2012

VIA EMAIL to cbot@dca.ca.gov
Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

Re: Proposed Regulations for Standards of Practice for Telehealth

Dear Ms. Martin:

The Occupational Therapy Association of California (OTAC) and the American Occupational Therapy Association (AOTA) appreciate the opportunity to comment on the proposed regulations to establish standards of practice for telehealth. We recognize the growing significance of delivering occupational therapy services to patients and clients using increasingly advanced telecommunications technologies. The delivery of services in this manner has the potential to increase access to rural and underserved communities. We appreciate the Board's efforts to ensure the public is safe, and professional standards are adhered to, as telehealth practice becomes more prevalent. However, we request the Board consider the proposed modifications to the draft regulations enclosed with this letter. We believe our suggestions do not substantively change the intent of the Board's proposed language, but simply clarify several of the provisions.

The nature of and justification for our suggested changes are as follows.

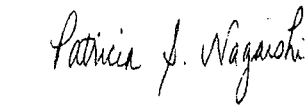
1. We recommend paragraph (d) be combined with paragraph (b), so that the reference to maintaining "the same standard of care when providing occupational therapy services via telehealth" is followed by the list of factors practitioners should consider prior to and during the provision of telehealth services.

2. We recommend all the factors an occupational therapist should consider prior to and during the provision of telehealth services be enumerated in a single list, and we added the patient's/client's "preferences" to that list.

3. We recommend the remaining changes, as we believe consolidating the provisions into fewer words, while maintaining the same intent, and changing some of the terminology, enhances clarity.

Thank you for the opportunity to comment on the proposed regulations related to the practice of telehealth. Please feel free to contact Jennifer Snyder at (916) 444-0400 for further information.

Sincerely,



Patricia Nagaishi, PhD, OTR/L
President, Occupational Therapy Association of California

Chuck Willmarth
Director, State Affairs, American Occupational Therapy Association

Enclosures: Standards of Practice for Telehealth Proposed Regulations with OTAC/AOTA's Suggested Modifications

California Board of Occupational Therapy
Department of Consumer Affairs
Title 16. Division 39, California Code of Regulations

PROPOSED LANGUAGE

ARTICLE 8. Ethical Standards of Practice

Add section 4172 - Standards of Practice for Telehealth

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant in this State or providing services to a patient or client in this State must have a valid and current license issued by the Board.

(b) An occupational therapist or occupational therapy assistant must exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services. Prior to and during the course of providing occupational therapy services via telehealth, the occupational therapist shall consider all of the following:

(1) the patient's/client's preferences, context, and environment;

(2) the complexity of the patient's/client's condition;

(3) the occupational therapist's or occupational therapy assistant's own knowledge, skills, and abilities;

(4) the nature and complexity of the patient's/client's condition;

(5) the requirements of the practice setting; and

(6) the necessity of in-person evaluations or interventions.

(c) An occupational therapist or occupational therapy assistant shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth, and shall include documentation of that consent statement in the patient's or client's health record.

~~(d) Prior to providing occupational therapy services via telehealth, an occupational therapist shall determine:~~

~~(1) whether an in-person evaluation is necessary; and~~

~~(2) whether in-person interventions are necessary.~~

~~The obligations of an occupational therapist continue during the course of treatment to determine whether an in-person evaluation or intervention is necessary. In making these determinations, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.~~

~~(c)~~ (d) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Provide services consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code; and

(2) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2290.5 and 2570.20.

OTAC
Occupational Therapy
Association of California

May 31, 2013

Submitted via email to cbot@dca.ca.gov

Heather Martin, Executive Officer
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

Re: Proposed Regulations for Standards of Practice for Telehealth – Second Modified Text of Title 16 Division 39, CCR , Section 4172

Dear Ms. Martin:

The Occupational Therapy Association of California (OTAC) appreciates the opportunity to provide comment on the Second Modified Text of Title 16, Division 39 CCR, Section 4172 – Standards of Practice for Telehealth. We appreciated that the Board made a number of positive changes to the proposed regulations. However, OTAC has one remaining concern with the provisions.

The proposed telehealth regulations still includes paragraph (c), which requires an occupational therapist to determine if an in-person evaluation and./or in-person intervention is necessary and if necessary ensure that a therapist is available to provide on-site care. We believe the intent and effect of this language is not clear and will require an OT to have an on-site OT available at all times at a tremendous burden and cost to them. We would recommend the following amendment to paragraph (c):

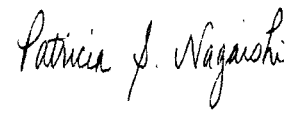
(c) ~~**Prior to**~~ **When** providing occupational therapy services via telehealth:

(1) an occupational therapist shall determine whether an in-person evaluation is necessary and ~~**ensure that a therapist must be available if an onsite visit is required.**~~ **make every effort to refer to other health care specialists if an on-site visit is required.**
(2) an occupational therapist shall determine whether in-person interventions are necessary. ~~**If it is determined in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.**~~ **and make every effort to refer to other qualified health care specialists if an on-site visit is required.**

We understand that the Board faces a significant challenge in terms of balancing the safety of consumers with the advent of new technologies that enable new forms of occupational therapy practice. We support the use of telehealth to provide occupational therapy services, while acknowledging the need to ensure consumers are protected and professional standards are adhered to. We do not, however, want to require OTs to provide care they cannot afford nor have the capacity to control.

Thank you for the opportunity to comment on the proposed regulations related to the practice of telehealth. Please feel free to contact Jennifer Snyder at (916) 444-0400 for further information.

Sincerely,



Patricia Nagaishi, PhD, OTR/L
President, Occupational Therapy Association of California

Center for
Connected
Health Policy

May 30, 2013

13 MAY 31 PM 1:30

Jeff Hanson
CA Board of Occupational Therapy
2005 Evergreen Street, Ste. 2050
Sacramento, CA 95815

Re: Title 16. Division 39, Article 8 – addition of sec. 4172 Standards of Practice for Telehealth.

Dear Mr. Hanson,

The Center for Connected Health Policy (CCHP) is a non-profit, non-partisan policy research, planning and technical support organization working to advance health care system utilization of telehealth technologies. We provided technical assistance and consultation to both the author and sponsor of AB 415, the Telehealth Advancement Act of 2011 as well as being responsible for the list of recommendations that became the contents of the bill. We applaud the Board for making modifications to the proposed language for Section 4172. We believe the majority of the changes the Board made at their May meeting will allow therapists, if they so choose, to incorporate telehealth as a means of delivering needed services while maintaining quality. However, one change that was made continues to be of concern.

Section 4172(c) Local Therapists

The modified language now reads:

> "Prior to providing occupational therapy services via telehealth:
>
> (1) an occupational therapist shall determine whether an in-person evaluation is necessary and ensure that a therapist must be available if an onsite visit is required;
> (2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions."

Section 4172(c)(1) is confusing and appears to be contradictory. It is unclear under what circumstances could an occupational therapist determine if an in-person evaluation is necessary. Is it the responsibility of the therapist seeing the patient via telehealth? If so, how can an occupational therapist make such a determination if it is to be done prior to any service delivered via telehealth? Would not the determination be a service?

If the responsibility falls on an occupational therapist that is onsite with the patient, it is unlikely the patient would need to utilize telehealth for services. A benefit of telehealth is to bring a specialty provider's service to an area where they are not available. In most cases, the patient will be utilizing

1331 Garden Highway • Sacramento, CA 95833 • T 916.285-1857 • F 916.285-1866 • www.cchpca.org
THE NATIONAL TELEHEALTH POLICY RESOURCE CENTER 1-877-707-7172

telehealth to see an occupational therapist because no such therapist is available to them in person. We do not see how and under what conditions a therapist utilizing telehealth will be able to ensure this requirement is met.

CCHP seeks to eliminate any policy barriers that become disincentives for providers and patients alike to take advantage of telehealth to improve quality and increase access to care. CCHP appreciates the efforts the Board has made on these regulations. We do ask that you reconsider Section 4172(c)(1) and remove this language as it may create a scenario that is impossible to fulfill.

Thank you for the opportunity to offer comments on the proposed regulations.

Respectfully,

Mario Gutierrez
Executive Director
CCHP

go2CARE

May 28, 2013

VIA EMAIL to cbot@dca.ca.gov
Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

RE: Modified Notice of Availability; Proposed Regulations for Standards of Practice for Telehealth

Dear Heather and Board Members,
I would like to extend my appreciation for the opportunity to comment on the second modification of language of the proposed regulations for standards of practice in telehealth. I appreciate the goal and vision of the Board to protect consumer interests. It is also a provision of the Board to promote the interests of the consumer. I, as a licensed provider also have the duty to advocate for appropriate health care for my patients.

As a framework to reviewing regulatory language, AB 415 and the Affordable Care Act were legislated to promote and advocate for consumers and their rights to access to care through telehealth. Our regulatory language should support that.

- ACA; promotes the use and investment of innovative care services to reduce costs and improving care. Studies have supported the fact that telehealth reduces costs and improves care and furthermore, is promoted by the Affordable Care Act through multiple grants and demonstration projects.

  http://www.healthcare.gov/law/features/rights/bill-of-rights/index.html

- California AB 415;
  SEC. 2. The Legislature finds and declares all of the following:
  (a) Lack of primary care providers, specialty providers, and transportation continue to be significant barriers to access to health services in medically underserved rural and urban areas.
  (b) Parts of California have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care.
  (c) Many health care providers in medically underserved areas are isolated from mentors, colleagues, and the information resources necessary to support them personally and professionally.
  (d) It is the intent of the Legislature to create a parity of

telehealth with other health care delivery modes, to actively promote telehealth as a tool to advance stakeholders' goals regarding health status and health system improvement, and to create opportunities and flexibility for telehealth to be used in new models of care and system improvements.

SEC. 6. Section 1374.13 is added to the Health and Safety Code, to read:
1374.13. (a) For the purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.
(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.

.....It goes on to say, that no health care insurer or Medi-Cal can require an in-person visit.
http://leginfo.ca.gov/pub/11-12/bill/asm/ab_0401-0450/ab_415_bill_20111007_chaptered.html

As an expert, educator, published author, advisor, consultant and provider of telehealth services, I would like to share my last concern with the second modification of the proposed regulations of practice in telehealth. It involves the confusing language surrounding paragraph (C) on bottom of page one and continued on page 2; including subparagraphs (1) and (2). My understanding of the Board's intent surrounding this paragraph was to bring special attention to the need for referring clients to other providers if necessary for in person, specialty services if determined by the treating therapist.

I would like to propose the following word edits:

(c) Prior to providing occupational therapy services via telehealth~~,~~ ;

Consideration:

(c)**When** providing occupational therapy serivces via telehealth;

*The word "prior" connotates the need to find a health provider before actually providing the service. Therefore, unclear on how to comply.

(1) an occupational therapist shall determine~~; (1)~~ whether an in-person evaluation is necessary~~;~~ and **ensure that** a ~~local~~ therapist must be available ~~should~~ **if** an onsite visit ~~be~~ **is** required;

(2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.

Recommendation:

(1) an occupational therapist shall determine whether an in-person evaluation is necessary and make every effort to refer to other health care specialists if an onsite visit is required

(2) an occupational therapist shall determine whether in-person interventions are necessary and make every effort to refer to other health care specialists if an onsite intervention is required

*in remote areas, there may not be an OT/OTA available or in-network or within specialty area of diagnosis required therefore, we need to have the flexibility to refer to other health care specialists who can meet professional qualifications and needs of client; i.e. physical therapist who specializes in hands. So I am proposing broader language.

Thank you for the opportunity to comment on the proposed modified regulations on standards in telehealth. I am available for additional comments and inquiries and welcome the chance to share my knowledge and experiences in telehealth.

Regards,

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