



Steve Sisolak
Governor

STATE OF NEVADA
BOARD OF OCCUPATIONAL THERAPY

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Loretta L. Ponton
Executive Director

Notice of Workshop to Solicit Comments on Revised Proposed Regulation

The State of Nevada Board of Occupational Therapy is proposing the addition, amendment and/or repeal of regulations pertaining to Chapter 640A of the Nevada Administrative Code.

A Public workshop to solicit comments from interested persons has been set as follows:

**Saturday – November 14, 2020
10:00 a.m.**

Teleconference

1-888-273-3658 Access Code: 8751529

Pursuant to Governor's Declaration of Emergency – No Public Access Location

The purpose of the workshop is to solicit comments from interested persons on the revised proposed regulations. The revised proposed regulation includes new sections and incorporates revisions as a result of comments received at the Public Workshop held August 15, 2020. The revised proposed regulation may include the following and other matters properly relating thereto:

- NAC 640A.068 Inactive licensing; continuing education; renewal; conversion of inactive license to standard license.
Adds provisions for retired practitioners; removes CE requirement for inactive license, adds CE requirement to converted to "active" standard license.
- NAC 640A.135 Request for verification of license.
Adds clarification of contents of verification to include identifying information and defines designation of license in-good-standing.
- NAC 640A.160 Fees
Reduces COTA conversion fee; establish reduced fee for retired practitioners.
- NAC 640A.250 Occupational therapy assistant or provisional licensee: Practice under general supervision of occupational therapist.
Revises requirements for documentation of supervision pertaining to supervisory logs; adds audio-visual communication technology to mode of direct communication with occupational therapy assistant.

- NAC 640A.255 Occupational therapy assistant or provisional licensee: Review and approval of supervisory logs by primary supervisor; general supervision by treating occupational therapist.
Requires primary supervisor to review and ensure supervisory documentation is maintained by OTA and OT pursuant to NAC 640A.250.
- NAC 640A.265 Occupational therapy assistant or provisional licensee: Delegation of duties by treating occupational therapist; limitations.
Adds new paragraphs regarding limitations on what an occupational therapy assistant may perform; requires notification of changes in patient conditions; requires written plan of supervision for clinical services performed by an occupational therapy assistant under certain circumstances, and defines management position.
- NEW Treating Occupational Therapist of Record
Establishes responsibilities of treating occupational therapist and clarifies treating occupational therapist of record.
- NEW Professional responsibilities regarding business ownership and employment in management positions.
Clarifies responsibilities when a licensee is a business owner or employed in a management position.
- NEW Telehealth: Requirements for practice.
Establishes requirements for practice by telehealth.

A copy of the proposed regulations may be obtained by contacting the Board of Occupational Therapy, 6170 Mae Anne Ave., Suite 1, Reno, Nevada 89523. Copies of the proposed regulations are available for viewing or printing on the Board's website www.nvot.org. Written comments will be accepted in hard copy or by email addressed to board@nvot.org.

All licensees and interested parties are encouraged to participate in the regulatory review process.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to participate in the meeting. If special arrangements are necessary, please notify Loretta Ponton, Executive Director at (775) 746-4101 within 72 hours of meeting date and time.

This **Notice of Workshop to Solicit Comments on Revised Proposed Regulation** has been sent to all licensed occupational therapists and occupational therapy assistants and persons on the agency's mailing list for administrative regulations.

This **Notice of Workshop to Solicit Comments on Revised Proposed Regulation** has been posted on the Board's website www.nvot.org, the Board of Occupational Therapy Administrative Office, 6170 Mae Anne Ave., Suite 1, Reno, Nevada 89523 and at the following locations:

(Declaration of Emergency Directive 006)

LCB website: www.leg.state.nv.us ; State of Nevada Public Notice Website: www.nv.gov

Dated: October 15, 2020

Proposed Revisions to NAC 640A

Inactive License

NAC 640A.068 Inactive licensing; continuing education; renewal; conversion of inactive license to standard license. (NRS 640A.110, 640A.180)

1. In addition to the requirements set forth in NAC 640A.030, to convert a standard license to an inactive license:

(a) The license must not be suspended, revoked or otherwise restricted at the time of the request; ~~and~~

(b) The person must complete a form to be provided by the Board indicating that he or she no longer practices or represents to others that he or she is authorized to practice occupational therapy in this State; ~~and~~

(c) The person must indicate whether he or she is retired from the practice of occupational therapy.

~~—2.— A person with an inactive license must comply with the same requirements for continuing education as a person who holds a standard license.~~

~~—3.2.~~ To renew an inactive license, a person must meet the requirements of NAC 640A.030.

~~—4.3.~~ The holder of an inactive license may request that the license be converted to a standard license.

~~—5.4.~~ In addition to the requirements set forth in NAC 640A.030, to convert an inactive license to a standard license, a person must:

(a) Make a written request to the Board; and

(b) For an occupational therapy assistant, submit proof of employment and supervision by a primary supervisor upon conversion of the license. ~~and~~

(c) Submit proof of completion of continuing education requirements required for renewal of a standard license.

5. A retired person must pay the biennial renewal fee for a standard license to convert the inactive license to a standard license.

Definition—In Good Standing License Verification

NAC 640A.135 Request for verification of license. (NRS 640A.110) A person may request that a *written* verification of his or her license be provided to another organization or state by submitting to the Board:

1. A written request; and

2. Payment of the appropriate fee.

Verification of a license is available and may be viewed on the Board website, without charge.

Verification of a license shall include the licensee's name, professional title, license number, issue and expiration dates, current license status, if the license is in good standing and whether the license has disciplinary action.

“In good standing” defined. As used in this section, “in good standing” means, when used in reference to a verification of a license, the licensee:

(a) Has substantially complied with the ~~licensing requirements~~ laws and regulations governing the practice of occupational therapy in this state ~~of this Board~~, including but not limited to NAC 640A.070, NAC 640A.120, NAC 640A.260 and LCB File No. 105-19 Section 1. ~~reporting of current contact information, employment, supervision; and continuing education requirements; and~~

(b) Has successfully completed or is adhering to ~~or has successfully completed~~ any terms and conditions

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NAC 640A.160 Fees

1. Except as otherwise provided in subsection 2 *and* 3, the Board will charge and collect the following fees:

(b) For an occupational therapy assistant:

- | | |
|---|-------------------------------|
| (7) Biennial renewal of an inactive license | \$ 125.00 |
| (8) Convert an inactive license to a standard license | (\$ 75.00) \$50.00 |

3. If an applicant for a biennial renewal of a license as an occupational therapist or occupational therapy assistant is retired from the practice of occupational therapy, the Board will charge an inactive renewal fee of \$50.00.

Occupational Therapy Assistant Supervision and Documentation

NAC 640A.250 Occupational therapy assistant or provisional licensee: Practice under general supervision of occupational therapist. (NRS 640A.110, 640A.230)

1. An occupational therapy assistant or a provisional licensee shall not practice occupational therapy without the general supervision of an occupational therapist. Immediate physical presence or constant presence on the premises where the occupational therapy assistant or provisional licensee is practicing is not required of the occupational therapist. To provide satisfactory general supervision, the treating occupational therapist shall:

(a) Provide an initial program of intervention, and any subsequent changes to the initial program, for patients assigned to the occupational therapy assistant or provisional licensee.

(b) Not less than 1 hour for each 40 hours of work performed by the occupational therapy assistant or provisional licensee and, in any event, not less than 1 hour each month, engage in:

(1) Clinical observation of the occupational therapy assistant or provisional licensee; or
(2) Direct communication with the occupational therapy assistant or provisional licensee. The mode and frequency of that communication is dependent upon the setting for the practice of the occupational therapy assistant or provisional licensee. Direct communication may consist of, without limitation:

(I) Direct or joint treatment of a patient;
(II) Personal supervision of the occupational therapy assistant or provisional licensee while providing services;

(III) Conversation, in person or by telephone;

(IV) Exchange of written comments;

(V) Review of patient records; or

(VI) Conferences, or other face-to-face meetings ***conducted through audio-visual communication technology.***

(c) Establish the patient workload of the occupational therapy assistant or provisional licensee based on the competency of the occupational therapy assistant or provisional licensee as determined by the occupational therapist.

(d) Review written documentation prepared by the occupational therapy assistant or provisional licensee during the course of treatment of a patient. The completion of this review by the occupational therapist may be evidenced by:

(1) Preparation of a separate progress note; or

(2) The occupational therapist signing and dating the document prepared by the occupational therapy assistant or provisional licensee.

2. The treating occupational therapist and the occupational therapy assistant or provisional licensee shall jointly:

(a) Document, in a manner other than the mere signing of service records prepared by another person, the supervision required pursuant to this section ***Documentation may include, by preparing,*** without limitation:

(1) Daily or weekly treatment or intervention schedules;

(2) Logs of supervision, which ~~must~~ include, without limitation, the time and date of supervision, the type of supervision provided and the subject matter covered during the supervision; and

(3) Patient records.

(b) Ensure that the record regarding a patient treated by the occupational therapy assistant or provisional licensee is signed, dated and reviewed at least monthly by the occupational therapy assistant or provisional licensee and the occupational therapist. In reviewing the record, the occupational therapist and the occupational therapy assistant or provisional licensee shall verify, without limitation:

(1) The accuracy of the record; and

(2) That there is continuity in the services received by the patient pursuant to the program of intervention.

3. An occupational therapy assistant or provisional licensee may assist an occupational therapist in:

(a) Preparing and disseminating any written or oral reports, including, without limitation, the final evaluation and discharge summary of a patient;

(b) Unless the treatment is terminated by a patient or his or her provider of health care, determining when to terminate treatment; and

(c) Delegating duties to an occupational therapy aide or technician.

4. An occupational therapy assistant or provisional licensee shall document all treatment provided to a patient by the occupational therapy assistant or provisional licensee.

5. An occupational therapist shall not delegate responsibilities to an occupational therapy assistant or provisional licensee which are beyond the scope of the training of the occupational therapy assistant or provisional licensee.

6. The provisions of this section do not prohibit an occupational therapy assistant or provisional licensee from responding to acute changes in a patient's condition that warrant immediate assistance or treatment.

7. As used in this section, "sign" means to inscribe by handwriting or electronic means one's name, initials or license number.

NAC 640A.255 Occupational therapy assistant or provisional licensee: Review ~~and approval~~ of ~~supervisory logs~~ *supervisory documentation* by primary supervisor; general supervision by treating occupational therapist. (NRS 640A.110)

1. A primary supervisor of an occupational therapy assistant or a provisional licensee shall review and ~~approve monthly supervisory logs~~ *ensure supervisory documentation is* maintained by both the treating occupational therapist and the occupational therapy assistant or provisional licensee.

2. A treating occupational therapist shall provide general supervision, as described in [NAC 640A.250](#), to an occupational therapy assistant or provisional licensee to whom he or she delegated duties for the provision of care to a patient.

NAC 640A.265 Occupational therapy assistant or provisional licensee: Delegation of duties by treating occupational therapist; limitations. (NRS 640A.110, 640A.230)

1. A treating occupational therapist shall *provide direction and* supervise any program of intervention which is delegated to an occupational therapy assistant or provisional licensee.

2. Only an occupational therapist may:

(a) Interpret the record of a patient who is referred to the occupational therapist by a provider of health care;

(b) Interpret the evaluation of a patient and identify any problem of the patient;

(c) Develop a plan of care for a patient based upon the initial evaluation of the patient, which includes the goal of the treatment of the patient;

(d) Determine the appropriate portion of the program of intervention and evaluation to be delegated to an occupational therapy assistant;

(e) Delegate the treatment to be administered by the occupational therapy assistant;

(f) Instruct the occupational therapy assistant regarding:

(1) The specific program of intervention of a patient;

- (2) Any precaution to be taken to protect a patient;
 - (3) Any special problem of a patient;
 - (4) Any procedure which should not be administered to a patient; and
 - (5) Any other information required to treat a patient;
- (g) Review the program of intervention of a patient in a timely manner;
- (h) Record the goal of treatment of a patient; and
- (i) Revise the plan of care when indicated.

3. An occupational therapy assistant shall not:

- (a) Perform any clinical data collection, assessment or treatment prior to the evaluation of the patient by the occupational therapist;*
- (b) Establish or change a plan of care or program of intervention;*
- (c) Write progress notes to another health care professional, as distinguished from daily chart notes;*
- (d) Be the sole occupational therapy representative in any meeting with clients, patients or other health care professionals where the patient's program of intervention is assessed or may be modified, including in an educational setting; or*
- (e) Make clinical decisions that would conflict with or overrule those of an occupational therapist in the provision of client services*

4. An occupational therapy assistant or provisional licensee shall notify the treating occupational therapist and document in the patient record any changes in the patient's condition not within the planned progress or treatment goals and any change in the patient's general condition.

5. A written plan of supervision must be in place for clinical services performed by an occupational therapy assistant when an occupational therapy assistant:

- (a) is related to a business owner or treating occupational therapist who is the spouse, parent or child, by blood, marriage or adoption; or*
- (b) holds a management position in the occupational therapy business where the patient care is being provided.*

For purposes of this section, "management position" shall mean a position that has control or influence over scheduling, hiring and firing.

The plan of supervision shall include provisions for:

- (a) documentation of general supervision, as described in NAC 640A.250,*
- (b) review of documentation by a primary supervisor; and*
- (c) evaluation of clinical performance.*

36. A treating occupational therapist may delegate to an occupational therapist who holds a provisional license any of the activities identified in subsection 2.

47. Except as otherwise provided in NAC 640A.267, a licensee shall not knowingly delegate to a person who is less qualified than the licensee any program of intervention which requires the skill, common knowledge and judgment of the licensee.

PROPOSED NEW REGULATIONS

Treating Occupational Therapist

NEW - Treating Occupational Therapist of Record

A treating occupational therapist shall at all times be responsible for all occupational therapy services provided by an occupational therapy assistant and ensure the occupational therapy assistant does not function autonomously.

The treating occupational therapist has continuing responsibility to follow the progress of each patient, and is responsible for determining which elements of a program of intervention may be delegated to an occupational therapy assistant.

The occupational therapist who performs the initial evaluation of a patient shall be the treating occupational therapist of record for that patient until the reassignment of that patient to another occupational therapist has occurred.

Reassignment of the patient to another occupational therapists shall constitute a change in treating occupational therapist of record and must be documented in the patient records.

Temporary or intermittent services provided by another occupational therapist which are consistent with the program of intervention does not constitute a change of responsibility as the treating occupational therapist or constitute a reassignment of the patient.

Business Ownership and Employment in Management Positions

NEW - Professional responsibilities regarding business ownership and employment in management positions, ~~plan of supervision required.~~

1. An occupational therapist or occupational therapy assistant who is the owner, stockholder, partner or ~~other business affiliate~~ holds a management position in the business in which the practitioner is employed shall ensure compliance with relevant laws and regulations, and promote transparency in business and professional roles. ~~when participating in a business arrangement.~~

A licensee shall, in all appropriate instances:

(a) Formulate business policies and procedures in compliance with legal, regulatory, and ethical standards ~~and work to resolve any conflicts or inconsistencies.~~

(b) Bill and collect fees legally and justly in a manner that is fair, reasonable, and commensurate with documented services provided.

(c) Ensure that documentation for reimbursement purposes is done in accordance with applicable laws, guidelines, and regulations.

(d) Avoid using one's position or knowledge gained from that position in such a manner as to give rise to real or perceived conflicts of interest.

~~(e) Avoid dual relationships, conflicts of interest, and situations in which a practitioner is unable to maintain clear professional boundaries or objectivity.~~

(e) Use professional credentials or management job titles commensurate with their roles. ~~when engaged as business owners, administrators, directors and occupational therapy practitioners.~~

2. ~~A written plan of supervision must be in place for clinical services performed by an occupational therapy assistant when an occupational therapy assistant:~~

~~is:~~

~~(1) a business owner or business affiliate;~~

~~(2) an administrator, director or engaged in an administrative role; or~~

~~(3) related to a business owner as the spouse, parent or child, by blood, marriage or adoption.~~

~~The plan of supervision shall include provisions for:~~

- ~~(1) documentation of general supervision, as described in NAC 640A.250,~~
- ~~(2) review of documentation by a primary supervisor; and~~
- ~~(3) evaluation of clinical performance.~~

~~3. An occupational therapy assistant shall not make clinical decisions that would conflict with or overrule those of an occupational therapist in the provision of client services, including but not limited to documentation of services and billing.~~

Telehealth

NEW Telehealth: Requirements for practice. (NRS 629.515)

1. A person who engages in the practice of occupational therapy by telehealth within this State or provides services by telehealth to any person in this State must:

- (a) Hold a license to engage in the practice of occupational therapy in this State;**
- (b) Be knowledgeable and competent in the technology used to provide services by telehealth;**
- (c) Only use telehealth to provide services for which delivery by telehealth is appropriate,**
- (d) Provide services by telehealth that, as determined by the Board, are substantially equivalent in quality to services provided in person;**
- (e) Document any services provided by telehealth in the record of the person receiving the services;**
- (f) Document any supervision of an occupational therapy assistant conducted through telehealth, and**
- (g) Comply with the provisions of the Health Insurance Portability and Accountability Act in the delivery of occupational therapy services by telehealth.**

2. As used in this section, “telehealth” means engaging in the practice of occupational therapy using equipment that transfers information electronically, telephonically or by audio-visual communication technology.