

STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

NOTICE OF PUBLIC MEETING

November 14, 2020

10:00 a.m.

Teleconference Access:

1-888-273-3658 Access Code: 8751529

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

AGENDA

The Public Workshop is being held prior to the scheduled Board Meeting which will begin immediately following the conclusion of the Public Workshop.

Second Regulatory Workshop – NAC 640A Revised Proposed Regulation

1. Introduction – Open Public Workshop (Informational)

The purpose of the Workshop is to solicit comments on the revised proposed revisions to NAC 640A. Public comments will be limited to 5 minutes per person and must be directly related to the proposed regulation topics. Interested parties are strongly encouraged to submit comments in writing prior to the Workshop.

New or revised sections since the August 15, 2020 Workshop are indicated by ***bold italic***.

- 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.

2. Public Comment

No vote may be taken upon a matter raised during a period devoted to public comment until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)
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3. Close Public Workshop

The scheduled Board Meeting which will begin immediately following the conclusion of the Public Workshop.

Public comment is welcomed by the Board. Public comment will be limited to five minutes per person and comments based on viewpoint will not be restricted. Public comment will be available prior to action items on the agenda and on any matter not specifically included on the agenda as the last item on the agenda. At the discretion of the Chairperson, additional public comment may be heard when that item is reached. The Chairperson may allow additional time to be given a speaker as time allows and in his/her sole discretion. (NRS 241.020, NRS 241.030)

Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the board may refuse to consider public comment. (NRS 233B.126)

Notice: *Persons with disabilities who require special accommodations or assistance at the meeting should contact the Board office at (775) 746-4101; or fax (775) 746-4105 no later than 48 hours prior to the meeting. Requests for special accommodations made after this time frame cannot be guaranteed.*

***THIS MEETING HAS BEEN PROPERLY NOTICED AND POSTED
IN THE FOLLOWING LOCATIONS:***

(Declaration of Emergency Directive 006)

Washoe County Courthouse 75 Court Street Reno, NV 89501	Office of the Attorney General 100 North Carson Street Carson City, Nevada 89701	Office of the Attorney General 5420 Kietzke Lane, Ste 202 Reno, Nevada 89511
Grant Sawyer State Office Building 555 E. Washington Avenue #3900 Las Vegas, Nevada 89101	Board of Occupational Therapy 6170 Mae Anne Ave., Suite 1 Reno, Nevada 89523 and Website www.nvot.org	Washoe County Clerk 1001 E. 9 th St. Bldg A P.O. Box 11130 Reno, NV 89520
Public Libraries	State of Nevada Public Notice Website www.nv.gov	Legislative Counsel Bureau Administrative Regulation Notices https://www.leg.state.nv.us

This agenda has been sent to all members of the State of Nevada Board of Occupational Therapy and other interested persons who have requested an agenda from the Board. Persons who wish to continue to receive an agenda and notice must request so in writing on an annual basis.

Supporting material relating to public meetings of the Board of Occupational Therapy is available at the Board of Occupational Therapy administrative offices located at 6170 Mae Anne Ave, Suite 1, Reno, Nevada 89523 or by contacting Loretta L. Ponton, Executive Director at (775) 746-4101 or email board@nvot.org.

Anyone desiring additional information regarding the meeting is invited to call the Board office at (775) 746-4101.



Steve Sisolak
Governor

STATE OF NEVADA
BOARD OF OCCUPATIONAL THERAPY

6170 Mae Anne Ave., Suite 1
Reno, Nevada 89523
Phone: (775) 746-4101 / Fax: (775) 746-4105
Email: board@nvot.org / Website: www.nvot.org

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
o

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.

SMALL BUSINESS IMPACT SUMMARY

The Board conducted an email survey on September 18, 2020 of 137 individual licensees holding a Nevada State Business License. A copy of the proposed revised regulation was provided for review and comment.

Nine (9) responses were received, eight of which indicated there would be no economic impact to their practice/small business. One respondent estimated an economic impact of \$2,000 - \$5,000 for review and revision of business policies related to the proposed new section *Professional responsibilities regarding business ownership and employment in management positions*.

The respondent stated “- if “*Professional responsibilities regarding business ownership and employment in management positions*” is removed entirely and the AOTA Code of Ethics in NAC 640A.250 is left as it currently is – the economic impact on small businesses will be **eliminated.**”

The respondent commented that the proposed new section was not necessary as the language mirrors or para-phrases language contained in the AOTA Code of Ethics which has been adopted in NAC 640A.205 and recommended addressing ethical conduct by expanding the Nevada Jurisprudence Exam to include questions on the AOTA Code of Ethics.

PUBLIC COMMENTS

Loretta Ponton

From: Karen Siran-Loughery <karen.siran@gmail.com>
Sent: Friday, October 9, 2020 3:58 PM
To: Loretta Ponton
Subject: Re: Small Business Impact Survey Request

Hi Loretta - Please see answer below
Thank you,
Karen Siran-Loughery

Please indicate whether there will be an Economic Impact to your business or practice. If Yes, please explain:
Yes.

Both adverse and beneficial effects

Yes there is an adverse effect with the following new proposed regulation.

Business Ownership and Employment in Management Positions

NEW - Professional responsibilities regarding business ownership and employment in management positions

Adverse effects include time and money toward policy research and writing, including time spent to date.

Direct and Indirect effects

Direct

This proposed law is going to have a direct financial effect because it requires policies and procedures to be implemented: “*a) Formulate business policies and procedures in compliance with legal, regulatory, and ethical standards*”

An attorney was given this section and that attorney reported that the cost of retaining an attorney to research and write policies related to this would be a \$2000 retainer and it likely would end up being closer to \$3000.

The attorney pointed out problems with language of the proposed law that would make writing these policies more difficult and costly – he noted there was “incongruent” wording and that “contract terms” were not clearly defined.

In addition, business owners/managers would have to spend an equivalent amount to time/money as the attorney in researching and consulting on this proposed revision.

Indirect financial effects

1. COVID19 PANDEMIC. Prior to reviewing the proposed regulations, the current pandemic and its economic impact was reviewed with the attorney- he stated he knew almost no one affected economically. This is the case with Occupational Therapy practitioners:

-Nevada Medicaid approved a 6% cut to reimbursement rates for occupational therapy services effective August 15, 2020

-On January 1, 2021 Medicare intends to globally cut therapy reimbursement rates – it is currently proposed at 9%. Although this is proposed, it is highly likely to happen, just as the Nevada Medicaid cuts were highly likely to happen when they were first proposed

-it is standard in the health insurance that when Medicare and Medicaid make cuts, all other insurances follow their lead and cut their rates as well.

2. ENFORCEMENT. The cost of implementing and enforcing this proposed new regulation will fall upon the Board including determining how to define/word and enforce this proposed regulation. The Board is currently experiencing financial effects of the pandemic in the form of deferred licensee payments.

The cuts that businesses are facing make this simply a bad economic time to place an additional financial burden on managers and business owners to have to put time and money into creating policies and procedures for new NAC laws that already exists in NAC 640A.205 – the simple answer is to add questions about NAC640A.205 to the Nevada Jurisprudence Exam.

Estimated fiscal impact on your business or practice

\$2000-\$5000

How any economic impact, if any, can be reduced

- If “*Professional responsibilities regarding business ownership and employment in management positions management*” is removed entirely and the adoption of the AOTA Code of Ethics in NAC 640A.205 is left as it currently is - the economic impact on small businesses will be **eliminated**.

- if the Board wants licensees to have improved awareness of ethics, they can add any questions on the AOTA code of ethics to the Nevada Jurisprudence exam – with no fiscal impact on small business - all of the following, taken from the AOTA Code of Ethics (adopted in NAC 640A.205) – are either paraphrased or copied in the proposed new regulations: from the AOTA code of ethics:

“Occupational therapy personnel shall:

- N. Ensure compliance with relevant laws and promote transparency when participating in a business arrangement as owner, stockholder, partner, or employee.
- L. Collaborate with employers to formulate policies and procedures in compliance with legal, regulatory, and ethical standards and work to resolve any conflicts or inconsistencies.
- M. Bill and collect fees legally and justly in a manner that is fair, reasonable, and commensurate with services delivered.
- O. Ensure that documentation for reimbursement purposes is done in accordance with applicable laws, guidelines, and regulations. “
- D. Avoid using one’s position (employee or volunteer) or knowledge gained from that position in such a manner as to give rise to real or perceived conflict of interest among the person, the employer, other AOTA members, or other organizations.
- A. Represent credentials, qualifications, education, experience, training, roles, duties, competence, contributions, and findings accurately in all forms of communication.”

Any other information regarding the impact of the proposed regulation on your business or practice

As a business owner I would like to see “equal protection” under Nevada Law for both employers/managers and employees: all OT personnel need to be clearly aware of ethical responsibilities:

Additional questions that I would like added to the current Nevada Jurisprudence Exam, along with the ones the Board has expressed interest in addressing with business owners/managers, are related to Principle 6, Fidelity, of the AOTA Code of Ethics (which is again adopted by NAC 640A.205): “Occupational therapy personnel shall treat clients, colleagues, and other professionals with respect, fairness, discretion, and integrity.

- D. Avoid using one’s position (employee or volunteer) or knowledge gained from that position in such a manner as to give rise to real or perceived conflict of interest among the person, the employer, other AOTA members, or other organizations.
- E. Be diligent stewards of human, financial, and material resources of their employers, and refrain from exploiting these resources for personal gain.
- K. Abide by policies, procedures, and protocols when serving or acting on behalf of a professional organization or employer to fully and accurately represent the organization’s official and authorized positions.”

On Fri, Sep 18, 2020 at 1:35 PM Loretta Ponton <board@nvot.org> wrote:

Business Licensees:

You are being contacted as an occupational therapy practitioner holding a business license with the State of Nevada. Please complete the following Small Business Impact Survey questions to assist the Board in determining whether the adoption and implementation of the regulation will adversely affect your business or practice. **A response is requested by October 10, 2020.** The draft revised proposed regulation is attached.

The Board of Occupational Therapy held an initial public workshop on August 15, 2020; comments have been considered and are incorporated into the attached revised proposed regulation. Language identified in Blue Bold Italic is original proposed new language; Red strikethrough is original proposed deleted language; Orange strikethrough is revised deleted language; and Purple Bold Italic is new language proposed in the Revised Proposed Regulation.

Please indicate whether there will be an Economic Impact to your business or practice. If Yes, please explain:

- a. Both adverse and beneficial effects
- b. Direct and Indirect effects
- c. Estimated fiscal impact on your business or practice

- d. How any economic impact, if any, can be reduced
- e. Any other information regarding the impact of the proposed regulation on your business or practice

Thank you in advance for your prompt response!

Stay Safe, Stay Healthy!

Loretta L. Ponton, Executive Director

Nevada Board of Occupational Therapy

6170 Mae Anne Ave., Suite 1

Reno, NV 89523

775-746-4101 / board@nvot.org

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Respectfully,

Karen Siran-Loughery

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Public Comment

Abigail Swidergal, COTA/L

Re: Proposed Revisions to NAC 640A

NAC 640A.250

- 1.2.III refers to: Conversation, in person or by telephone
- 1.2.VI refers to: Conferences, or other face-to-face meetings *conducted through audio-visual communication technology*

It would be clearer if:

conversations were also listed as "in person or *conducted through audio-visual communication technology*" in 1.2.III

Conferences *conducted through audio-visual communication technology* in 1.2.VI

Other face to face meetings were on its own as 1.2.VII

- 1.3.6 does not prohibit responding to changes, but this is in contradiction of NAC 640A.255.2.b

NAC 640A.255

- 2.b prohibits an OTA or provisional licensee from identifying any problem of the patient
- 2.f grants the OT ability to instruct the OTA regarding:
 - 2.f.1 the specific program of intervention of a patient

These violate the AOTA Standards of Practice, Standard III, 5 and 6

- 3.a disallows OTAs from performing assessments
- 3.b disallows OTAs from changing a program of intervention

These violate the AOTA Standards of Practice, Standard III, 5 and 6

- 3.c disallows OTAs from writing progress notes to other health professionals
- 3.d disallows OTAs from participating in meetings

These violate the AOTA Standards of Practice, Standard III, 4, 8, 9

- 5 states only these rules are required when an OTA is involved. Supervision plans, if being required should be in **EVERY** clinic, not exclusive to OTA ownership. This is discriminatory language. OT business owners should be held to the same rules.

NRS 629.515

For specificity, consider adding/rewording for no misinterpretation of the rule:

Hold a license in this State to engage in the practice of occupational therapy as an occupational therapist or occupational therapy assistant

AOTA STANDARDS OF PRACTICE 2015

4. An occupational therapist initiates and directs the screening, evaluation, and reevaluation process and analyzes and interprets the data in accordance with federal and state laws, other regulatory and payer requirements, and AOTA documents.
5. An occupational therapy assistant contributes to the screening, evaluation, and reevaluation process by administering delegated assessments and by providing verbal and written reports of observations and client capacities to the occupational therapist in accordance with federal and state laws, other regulatory and payer requirements, and AOTA documents.
6. An occupational therapy practitioner uses current assessments and assessment procedures and follows defined protocols of standardized assessments and needs assessment methods during the screening, evaluation, and reevaluation process.
7. An occupational therapist completes and documents the results of the occupational therapy evaluation. An occupational therapy assistant may contribute to the documentation of evaluation results. An occupational therapy practitioner abides by the time frames, formats, and standards established by practice settings, federal and state laws, other regulatory and payer requirements, external accreditation programs, and AOTA documents.
8. An occupational therapy practitioner communicates screening, evaluation, and reevaluation results within the boundaries of client confidentiality and privacy regulations to the appropriate person, group, or population.
9. An occupational therapist recommends additional consultations or refers clients to appropriate resources when the needs of the client can best be served by the expertise of other professionals or services.
10. An occupational therapy practitioner educates current and potential referral sources about the scope of occupational therapy services and the process of initiating occupational therapy services.

Standard III: Intervention Process

1. An occupational therapist has overall responsibility for the development, documentation, and implementation of the occupational therapy intervention plan based on the evaluation, client goals, best available evidence, and professional and clinical reasoning. When delegating aspects of the occupational therapy intervention to the occupational therapy assistant, the occupational therapist is responsible for providing appropriate supervision.
2. An occupational therapist ensures that the intervention plan is documented within the time frames, formats, and standards established by the practice settings, agencies, external accreditation programs, state and federal laws, and other regulatory and payer requirements.
3. An occupational therapy practitioner collaborates with the client to develop and implement the intervention plan, on the basis of the client's needs and priorities, safety issues, and relative benefits and risks of the interventions and service delivery.
4. An occupational therapy practitioner coordinates the development and implementation of the occupational therapy intervention with the intervention provided by other professionals, when appropriate.
5. An occupational therapy practitioner uses professional and clinical reasoning, available evidence-based practice, and therapeutic use of self to select and implement the most appropriate types of interventions. Preparatory methods and tasks, education and training, advocacy, and group interventions are used, with meaningful occupations as the primary treatment modality, both as an ends and a means.
6. An occupational therapy assistant selects, implements, and makes modifications to therapeutic interventions that are consistent with the occupational therapy assistant's demonstrated competency and delegated responsibilities, the intervention plan, and requirements of the practice setting.

7. An occupational therapist modifies the intervention plan throughout the intervention process and documents changes in the client's needs, goals, and performance.
8. An occupational therapy assistant contributes to the modification of the intervention plan by exchanging information with and providing documentation to the occupational therapist about the client's responses to and communications throughout the intervention.
9. An occupational therapy practitioner documents the occupational therapy services provided within the time frames, formats, and standards established by the practice settings, agencies, external accreditation programs, federal and state laws, other regulatory and payer requirements, and AOTA documents.

Standard IV. Transition, Discharge, and Outcome Measurement

1. An occupational therapist is responsible for selecting, measuring, documenting, and interpreting expected and achieved outcomes that are related to the client's ability to engage in occupations.
2. An occupational therapist is responsible for documenting changes in the client's performance and capacities 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.
3. An occupational therapist prepares and implements a transition or discontinuation plan based on the client's needs, goals, performance, and appropriate follow-up resources.
4. An occupational therapy assistant contributes to the transition or discontinuation plan by providing information and documentation to the supervising occupational therapist related to the client's needs, goals, performance, and appropriate follow-up resources.
5. An occupational therapy practitioner facilitates the transition or discharge process in collaboration with the client, family members, significant others, other professionals (e.g., medical, educational, social services), and community resources, when appropriate.
6. An occupational therapist is responsible for evaluating the safety and effectiveness of the occupational therapy processes and interventions within the practice setting.
7. An occupational therapy assistant contributes to evaluating the safety and effectiveness of the occupational therapy processes and interventions within the practice setting.
8. The occupational therapy practitioner responsibly reports outcomes to payers and referring entities as well as to relevant local, regional, and national databases and registries, when appropriate.

References

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