

**PROPOSED REGULATION OF THE
BOARD OF OCCUPATIONAL THERAPY**

LCB FILE NO. R001-21I

**The following document is the initial draft regulation proposed
by the agency submitted on 01/19/2021**

Board of Occupational Therapy Proposed Regulation

Chapter 640A of NAC is hereby amended by adding the provisions set forth as sections 1, 2 and 3 of this regulation.

Section 1. *Treating Occupational Therapist of Record*

- 1. 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.*
- 2. 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.*
- 3. An occupational therapist shall be a treating occupational therapist of record for a patient until the reassignment of that patient to another occupational therapist has occurred.*
- 4. Reassignment of the patient to another occupational therapists shall constitute a change in treating occupational therapist of record and must be documented as a reassignment by noting in the patient record.*
- 5. 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.*

Sec 2. *Telehealth: Requirements for practice.*

- 1. An occupational therapist or occupational therapy assistant who engages in the practice of occupational therapy by telehealth within this State or provides services by telehealth to any person physically located 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) Ensure services provided by telehealth observe the same standard of care as those delivered in person;*
- (e) Document any services provided by telehealth in the record of the person receiving the services;*
- (f) Comply with supervision documentation requirements as described in NAC 640A.250;*
- (g) Comply with the provisions of the Health Insurance Portability and Accountability Act in the delivery of occupational therapy services by telehealth; and*
- (h) Document client consent for telehealth services prior to delivery of occupational therapy services.*

2. Occupational therapy services provided by telehealth may be synchronous, delivered through interactive technologies in real time, or asynchronous, using store and forward technologies.

3. 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.

Sec 3. Conflicts of Interest: Related Parties, Management Roles

1. An occupational therapy practitioner shall avoid actual or perceived conflicts of interest when:

- (a) the practitioner holds a management position and provides clinical services at the same business, or*

(b). is related to a business owner, manager or immediate supervisor who holds a license with this Board.

2. Documentation of measures taken to remediate a potential or perceived conflict of interest shall be maintained in the practitioner's records, including methods utilized to meet the requirements for supervision detailed in NAC 640A.250.

3. For purposes of this section, "management position" shall mean a position that has control or influence over scheduling, hiring and firing; "related to" shall mean a practitioner who is the spouse, parent or child, by blood, marriage or adoption.

Sec 4. NAC 640A.068 is hereby amended to read as follows:

640A.068 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.

Sec 5. NAC 640A.135 is hereby amended to read as follows:

NAC 640A.135 *1.* 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) A written request; and
- ~~[2.]~~ (b) Payment of the appropriate fee.

2. 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.

3. As used in this section, "in good standing" means, the licensee:

(a) Has substantially complied with the laws and regulations governing the practice of occupational therapy in this state, including but not limited to NAC 640A.070, NAC 640A.120, NAC 640A.260 and LCB File No. 105-19 Section 1.; and

(b) Has successfully completed or is adhering to any terms and conditions of any disciplinary actions, if any, that are not a revocation or suspension of a license.

Sec 6. NAC 640A.160 is hereby amended to read as follows:

640A.160 1. Except as otherwise provided in subsection 2 *and 3*, the Board will charge and collect the following fees:

(a). For an occupational therapist:

(1) Initial standard license.....	\$250
(2) Biennial renewal of a standard license.....	250
(3) A temporary or provisional license.....	150
(4) Renewal of a temporary or provisional license.....	100
(5) Convert a temporary or provisional license to a standard license	100
(6) Reinstatement of an expired license.....	250
(7) Biennial renewal of an inactive license.....	150
(8) Convert an inactive license to a standard license.....	100

(b) For an occupational therapy assistant:

(1) Initial standard license.....	\$175
(2) Biennial renewal of standard license.....	175
(3) A temporary or provisional license.....	100
(4) Renewal of a temporary or provisional license.....	75
(5) Convert a temporary or provisional license to a standard license	75
(6) Reinstatement of an expired license.....	175
(7) Biennial renewal of an inactive license.....	75
(8) Convert an inactive license to a standard license.....	75 50

(c) General:

(1) Processing of an initial license.....	150
(2) Late fee for renewal of a license.....	125
(3) Verification of a license.....	25
(4) Returned payment processing.....	25

2. If an applicant for an initial license as an occupational therapist or occupational therapy assistant is an active member of, or the spouse of an active member of, the Armed Forces of the United States, a veteran or the surviving spouse of a veteran, the Board will charge a fee of \$75 for the processing of an initial license application and one-half of the fee set forth in subsection 1 for an initial license of any type.

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.

Sec 7. NAC 640A.250 is hereby amended to read as follows:

640A.250 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; *or*

(VII) Communications conducted through audio-visual 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.

Sec 8. NAC 640A.255 is hereby amended to read as follows:

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

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.

Sec 9. NAC 640A.265 is hereby amended to read as follows:

NAC 640A.265 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 may not:

- (a) Write formal evaluations of progress to another health care professional, as distinguished from daily chart notes in the client records;*
- (b) Be the sole occupational therapy representative in any meeting with clients, patients or other health care professionals where the patient's occupational therapy program of intervention may be modified, including in an educational setting; or*
- (c) 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.

~~[3.]~~ 5. A treating occupational therapist may delegate to an occupational therapist who holds a provisional license any of the activities identified in subsection 2.

~~[4.]~~ 6. 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.