



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech


SUBJECT: Proposed Amendment of Sections 76.1 and 76.7 of the Regulations of the Commissioner of Education Relating to the Education Requirements for Occupational Therapists and Occupational Therapy Assistants

DATE: October 6, 2016

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents adopt, as an emergency action, the proposed amendment of sections 76.1 and 76.7 of the Regulations of the Commissioner of Education relating to the education requirements for occupational therapists and occupational therapy assistants?

Reason(s) for Consideration

Required by State statute (L. 2016, Ch. 124).

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the October 2016 meeting of the Board of Regents. A copy of the proposed rule and a Statement of Facts and Circumstances Which Necessitate Emergency Action are attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on November 2, 2016. A Notice of Emergency Adoption will be filed no later than

November 18, 2016 which is the effective date of the statute. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

Currently, pursuant to Education Law §7904(2), the education requirement for licensure as an occupational therapist requires applicants to have satisfactorily completed an approved occupational therapy curriculum in a baccalaureate or master's program, or a certificate program satisfactory to the Department which is substantially equivalent to a baccalaureate degree program, in accordance with the Commissioner's Regulations. Pursuant to Education Law §7904-a(b), the current education requirement for licensure as an occupational therapy assistant requires applicants to have received an education consisting of the completion of a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department.

However, the nationally recognized accrediting agency for the profession of occupational therapy, the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE), has determined that occupational therapist education programs may grant either a master's degree or a doctoral degree. Additionally, ACOTE has determined that occupational therapy assistant education programs may grant either an associate degree or a baccalaureate degree.

Chapter 124 of the Laws of 2016, which takes effect on November 18, 2016, was enacted to amend the Education Law's education requirements for licensure as an occupational therapist and occupational therapy assistant to provide the Department with the flexibility to grant licenses to applicants who have completed an education that exceeds the current requirements for licensure as either an occupational therapist or occupational therapy assistant, in recognition of the changes made to the national accreditation standards.

Chapter 124 amends Education Law §7904(2) to allow an applicant for licensure as an occupational therapist to satisfy the education requirement by having a baccalaureate or master's degree or greater, or its equivalent as determined by the Department.

Chapter 124 amends Education Law §7904-a(b) to allow an applicant for licensure as an occupational therapy assistant to satisfy the education requirement by having an associate degree or greater, or its equivalent as determined by the Department.

The proposed amendment to section 76.1 of the Regulations of the Commissioner of Education provides that, to meet the professional education requirement for licensure as an occupational therapist, the applicant must present evidence of: (1) at least a bachelor's or master's degree in occupational therapy from a program registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, or its equivalent, as determined by the

Department; or (2) completion of a program satisfactory to the Department of not less than four years of postsecondary study which includes the professional study of occupational therapy and which culminates in the degree or diploma accepted by the civil authorities of the country in which the studies were completed as preparation in occupational therapy in that country.

The proposed amendment to subdivision (b) section 76.7 of the Regulations of the Commissioner of Education provides that to meet the professional education requirement for licensure as an occupational therapy assistant, an applicant must complete at least a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, or its equivalent, as determined by the Department.

Related Regents Items

None.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 76.1 and subdivision (b) of section 76.7 of the Regulations of the Commissioner of Education be amended, as submitted, effective November 18, 2016, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to conform the Regulations of the Commissioner of Education to timely implement the requirements of Chapter 124 of the Laws of 2016, which amends the education requirements for licensure as an occupational therapist and occupational therapy assistant.

Timetable for Implementation

If adopted at the October 2016 meeting, the emergency rule will take effect on November 18, 2016, which is the effective date of the statute. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the January 2017 meeting, after publication of the proposed amendment in the State Register for the 45-day public comment period required under the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7904, and 7904-a of the Education Law, and Chapter 124 of the Laws of 2016

1. Section 76.1 of the Regulations of the Commissioner of Education is amended, effective November 18, 2016, as follows:

To meet the professional education requirement for licensure in this State, the applicant shall present evidence of:

(a) at least a bachelor's or master's degree in occupational therapy from a program registered by the department or accredited by a national accreditation agency which is satisfactory to the department, or its equivalent, as determined by the department; or

[(b) a certificate in occupational therapy from a program registered by the department or accredited by a national accreditation agency which is satisfactory to the department following the completion of a bachelor's degree from an institution acceptable to the department; or

(c)] (b) completion of a program satisfactory to the department of not less than four years of postsecondary study which includes the professional study of occupational therapy and which culminates in the degree or diploma accepted by the civil authorities of the country in which the studies were completed as preparation in occupational therapy in that country.

2. Subdivision (b) of section 76.7 of the Regulations of the Commissioner of Education is amended, effective November 18, 2016, as follows:

To qualify for licensure as an occupational therapy assistant pursuant to section 7904-a of the Education Law, an applicant shall fulfill the following requirements:

(a) . . .

[(b) have received an education as follows:

(1)] (b) complete[ion of] at least a two-year associate degree program for occupational therapy assistants registered by the department or accredited by a national accreditation agency which is satisfactory to the department, or its equivalent, as determined by the department]; or

(2) completion of a postsecondary program of at least two years duration that has been determined by the Board of Regents pursuant to Education Law section 6506(5) to substantially meet the requirements of Education Law section 7904-a(b)];

(c) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

8 NYCRR §§76.1 and 76.7

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 124 of the Laws of 2016, which takes effect on November 18, 2016. This amendment to the Education Law amends the education requirements for occupational therapists and occupational therapy assistants by providing the New York State Education Department with the flexibility to issue licenses to applicants who have completed an education that exceeds the current requirements for licensure as either an occupational therapist or occupational therapy assistant, as long as they meet the other licensure requirements for these two occupational therapy professions. Specifically, Chapter 124 amends Education Law §7904(2) to allow applicants for licensure as occupational therapists to satisfy the education requirement by having a baccalaureate or master's degree or greater, or its equivalent as determined by the Department. Chapter 124 also amends Education Law §7904-a(b) to allow applicants for licensure as occupational therapy assistants to satisfy the education requirement by having an associate degree or greater, or its equivalent as determined by the Department.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure (SAPA) Act section 201(1) and (5), would be the January 9-10, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the January meeting, would be January 25, 2017, the date a Notice of Adoption would be published in the State Register. However,

the provisions of Chapter 124 of the Laws of 2016 become effective November 18, 2016.

Therefore, emergency action is necessary at the October 2016 Regents meeting for the preservation of the public health and general welfare in order to provide the State Education Department with the flexibility to issue licenses to applicants who have completed an education that exceeds the current requirements for licensure as either an occupational therapist or occupational therapy assistant, as long as they meet the other licensure requirements for these two occupational therapy professions, which will increase the number of licensed professionals qualified to practice occupational therapy and help ensure continuing competency across the State.

It is anticipated that the proposed rule will be presented for adoption at the January 9-10, 2017 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.