



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Douglas E. Lentivech  


**SUBJECT:** Proposed Amendment of Sections 76.6, 76.7, 76.8, 76.9 and 76.10 of the Regulations of the Commissioner of Education Relating to the Licensure of Occupational Therapy Assistants

**DATE:** September 1, 2016

**AUTHORIZATION(S):**  

#### **SUMMARY**

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents amend sections 76.6, 76.7, 76.8, 76.9 and 76.10 of the Regulations of the Commissioner of Education relating to the licensure of occupational therapy assistants?

#### **Reason for Consideration**

Required by State statute (L. 2015, Ch. 470).

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as a permanent rule at the September 2016 Regents meeting. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

#### **Procedural History**

The proposed amendment was adopted as an emergency action at the May 2016 Regents meeting, effective May 18, 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 1, 2016 for a 45-day public comment period. Because the May emergency rule was set to expire on August 14, 2016, a second emergency action was adopted at the July 2016 meeting, in

order to ensure that the emergency rule remains continuously in effect until September 28, 2016, which is the effective date of the adoption of the permanent rule.

Additionally, following the above-referenced publication of the Notice of Emergency Adoption and Proposed Rule Making, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed.

### **Background Information**

Currently, occupational therapy assistants are authorized to practice under an exemption to the practice law. Occupational therapy assistants have no representation on the State Board for Occupational Therapy (State Board), despite the fact that they are required to comply with its decisions. Occupational therapy assistants must also pay a fee to the Department every three years for this authorization, like occupational therapists. However, unlike occupational therapists, occupational therapy assistants receive no license for their fees to the Department.

Chapter 470 of the Laws of 2015, which became effective on May 18, 2016, was enacted to address the aforementioned situation by, inter alia, codifying the definition of occupational therapy assistant, requiring at least one occupational therapy assistant to serve on the State Board, and establishing the procedure for obtaining an occupational therapy assistant license.

Chapter 470 defines the practice of an occupational therapy assistant as the provision of occupational therapy and client related services under the direction and supervision of an occupational therapist or licensed physician in accordance with the Regulations of the Commissioner of Education.

Chapter 470 establishes the education, experience, examination, age, moral character, limited permit and fee requirements for applicants seeking licensure as an occupational therapy assistant. It should be noted that these statutory requirements are comparable to the requirements with which individuals seeking authorization to practice as occupational therapy assistants are currently required to comply under section 76.7 of the Regulations of the Commissioner of Education. Chapter 470 also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination, if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

Chapter 470 also amends section 7903 of the Education Law to require that at least one licensed occupational therapy assistant serve on the State Board and decreases the number of licensed occupational therapists on the State Board from at least seven to at least six.

The proposed amendment to subdivision (a) of section 76.6 of the Regulations of the Commissioner of Education provides that only a licensed or otherwise authorized

person is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant.

The proposed amendment to section 76.7 of the Regulations of the Commissioner of Education establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience and examination requirements, and conforms section 76.7 to Chapter 470 of the Laws of 2015.

The proposed amendment to subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education provides for written supervision plans for occupational therapy assistants, who are licensed or otherwise authorized to practice as occupational therapy assistants by providing occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician.

The proposed amendment to subdivision (b) of section 76.9 of the Regulations of the Commissioner of Education provides that occupational therapy assistant students, with limited permits to practice as exempt persons, pursuant to section 7906(4) of the Education Law, shall practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist.

The proposed amendment to paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education amends the definition of licensee to include occupational therapy assistants licensed to practice pursuant to section 7904-a of the Education Law.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a \$25 mandatory continuing competency fee at the beginning of each triennial registration period.

### **Recommendation**

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

VOTED: That subdivision (a) of section 76.6, section 76.7, subdivision (a) of section 76.8, subdivision (b) of section 76.9, paragraph (3) of subdivision (a) of section 76.10 and paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 28, 2016.

### **Timetable for Implementation**

The proposed amendment was adopted as an emergency rule at the May 2016 Regents meeting, effective May 18, 2016, and expired on August 14, 2016. A second emergency action was adopted at the July 2016 meeting and took effect on August 15, 2016. If adopted as a permanent rule at the September 12-13, 2016 Regents meeting, the proposed rule will take effect as a permanent rule on September 28, 2016.

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7902-a, 7903, 7904-a, 7905, 7906, and 7907 of the Education Law and Chapter 470 of the Laws of 2015

1. Subdivision (a) section 76.6 of the Regulations of the Commissioner of Education is amended, effective September 28, 2016, as follows:

(a) An occupational therapy assistant shall mean a person licensed or otherwise authorized in accordance with this Part who provides occupational therapy services under the direction and supervision of an occupational therapist or licensed physician and performs client related activities assigned by the supervising occupational therapist or licensed physician. Only a person licensed or otherwise authorized under this Part shall participate in the practice of occupational therapy as an occupational therapy assistant, and only a person licensed or otherwise authorized under this Part shall use the title occupational therapy assistant.

2. Section 76.7 of the Regulations of the Commissioner of Education is amended, effective September 28, 2016, as follows:

§76.7 Requirements for [authorization] licensure as an occupational therapy assistant.

To qualify for [authorization] licensure as an occupational therapy assistant pursuant to section [7906(7)] 7904-a of the Education Law, an applicant shall fulfill the following requirements:

(a) . . .

(b) have received an education as follows:

(1) 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; or

(2) completion of a postsecondary program [in occupational therapy satisfactory to the department and] 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) have a minimum of [three months] sixteen weeks clinical experience satisfactory to the State board for occupational therapy and in accordance with standards established by a national accreditation agency which is satisfactory to the department;

(d) . . .

(e) . . .

[(f) register triennially with the department in accordance with the provisions of subdivision (h) of this section, sections 6502 and 7906(8) of the Education Law, and sections 59.7 and 59.8 of this Title;]

[(g)] pay a fee for an initial license and a fee for each triennial registration period that shall be one half of the fee for initial license and for each triennial registration period established [in Education law] for occupational therapists; and

[(h)] except as otherwise provided by Education Law section 7907(2), pass an examination acceptable to the department.

3. Subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education is amended, effective September 28, 2016, as follows:

(a) A written supervision plan, acceptable to the occupational therapist or licensed physician providing direction and supervision, shall be required for each occupational therapy assistant providing services pursuant to section [7906(7)] 7902-a of the Education Law. The written supervision plan shall specify the names, professions and other credentials of the persons participating in the supervisory process, the

frequency of formal supervisory contacts, the methods (e.g., in-person, by telephone) and types (e.g., review of charts, discussion with occupational therapy assistant) of supervision, the content areas to be addressed, how written treatment notes and reports will be reviewed, including, but not limited to, whether such notes and reports will be initialed or co-signed by the supervisor, and how professional development will be fostered.

4. Subdivision (b) of section 76.9 of the Regulations of the Commissioner of Education is amended, effective September 28, 2016, as follows:

To be permitted to practice as an exempt person pursuant to section 7906(4) of the Education Law, an occupational therapy assistant student shall be enrolled in a program as set forth in section 76.7(b)(1) of this Part and shall practice under the direction and supervision of:

(a) an occupational therapist; or

(b) an occupational therapy assistant who [has obtained authorization] is licensed or otherwise authorized pursuant to section [7906(7)] 7904-a of the Education Law and who is under the supervision of an occupational therapist.

5. Paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective September 28, 2016, as follows:

(a) Definitions. As used in this section:

(1) . . .

(2) . . .

(3) Licensee means an individual licensed to practice occupational therapy pursuant to section 7904 of the Education Law or [authorized] licensed to practice as an occupational therapy assistant pursuant to section [7906(7)] 7904-a of the Education Law.

(4) . . .

(5) . . .

(6) . . .

(7) . . .

6. Paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective September 28, 2016, as follows:

(j) Fees.

(1) At the beginning of each registration period, a mandatory continuing competency fee of \$45 shall be collected from [licensees] each licensed occupational therapist engaged in the practice of occupational therapy in New York State and a mandatory continuing competency fee of \$25 shall be collected from [licensees] each person licensed or otherwise authorized to practice as an occupational therapy assistant in New York State, except for those exempt from the requirement pursuant to subparagraph (b)(2)(i) of this section. This fee shall be in addition to the registration fee required by section 7904 of the Education Law for [licensees] licensed occupational therapists [engaged in the practice of occupational therapy], and the registration fee required by section [76.7 of this Part] 7904-a of the Education Law for [individuals] persons licensed or otherwise authorized to practice as [an] occupational therapy assistants.