



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment of section 76.10 of the Regulations of the Commissioner of Education Relating to Continuing Competency in Occupational Therapy

DATE: October 11, 2013

AUTHORIZATION(S):

Issue for Decision

Should the Board of Regents amend section 76.10 of the Regulations of the Commissioner of Education relating to continuing competency requirements in occupational therapy?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for action at the October 2013 Regents meeting.

Procedural History

A Notice of Proposed Rule Making was published in the State Register on August 14, 2013 for a 45-day public comment period. The proposed amendment was discussed by the Professional Practice Committee at the September Regents meeting. A copy of the proposed amendment and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The proposed amendment to section 76.10(c)(2)(iii)(b) of the Regulations of the Commissioner of Education will explicitly recognize study in conjunction with the supervision of fieldwork education by occupational therapy students as independent study for the purpose of meeting the continuing competency requirements. It also increases the allowable credit for independent study from one-sixth to one-third of the 36 hour requirement. This amendment will provide credit for supervisors of occupational therapy students engaged in clinical education, based upon the time and effort spent in preparation for this supervision.

The proposed amendment to section 76.10(c)(2)(iii)(c)(2) of the Regulations of the Commissioner of Education will permit mentoring by any professional licensed under Article VIII of the Education Law for purposes of earning continuing competency credit. Current regulations only permit mentoring by another occupational therapist or occupational therapy assistant. This amendment will enhance mentoring opportunities for occupational therapists and occupational therapy assistants by permitting physicians, podiatrists and other licensed professionals to share their knowledge and expertise as mentors.

The proposed amendment to section 76.10(g)(2) of the Regulations of the Commissioner of Education will correct a technical error in the existing regulations by deleting extraneous words.

The proposed amendment to section 76.10(i)(2)(i) of the Regulations of the Commissioner of Education will add the American Occupational Therapy Association (AOTA) to those organizations whose approval of sponsors of continuing competency is recognized by the New York State Education Department. AOTA is the nationally recognized professional association in occupational therapy and has a long history of review and approval of continuing competency sponsors.

The proposed addition of section 76.10(j)(3) of the Regulations of the Commissioner of Education will establish a fee for approval as a sponsor of continuing competency programs. The fee will provide the Department with sufficient resources to review sponsors of coursework or training offered to occupational therapists and occupational therapy assistants who need to fulfill the continuing competency requirement.

Recommendation

VOTED: That of section 76.10(c)(2)(iii)(b), section 76.10(c)(2)(iii)(c)(2), section 76.10(g)(2), and section 76.10(i)(2)(i) of the Regulations of the Commissioner of Education be amended and that a new section 76.10(j)(3) of the Regulations of the Commissioner of Education be added, all as submitted, effective November 6, 2013.

Timetable for Implementation

If adopted at the October Regents meeting, the rule will become effective on November 6, 2013.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 6504, 6507, and 7908 of the Education Law

1. Clause (b) of subparagraph (iii) of paragraph (2) of subdivision (c) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective November 6, 2013, as follows:

(b) Independent study. Acceptable learning activities may include independent study as defined in paragraph [(a)](2) of subdivision (a) of this section. A licensee who completes independent study to meet the mandatory continuing competency requirement shall prepare a narrative account of what was learned and an overall written evaluation of the learning activity. Such licensee shall maintain a copy of the narrative account and written evaluation for six years after completion of this learning activity. Study in conjunction with supervision of fieldwork education conducted as part of a program of study as set forth in section 76.1 or 76.7 (b) of this Part or in conjunction with supervised experience conducted pursuant to section 76.2 of this Part may be considered independent study. A licensee who completes study in conjunction with such fieldwork supervision or supervised experience shall prepare and retain a narrative account of the preparation associated with the supervision in addition to the other requirements of this clause, and shall retain a letter of verification or certificate from the program that includes the dates of fieldwork. Three clock hours of independent study shall equal one continuing competency hour. No more than [one-sixth] one-third of the mandatory continuing competency requirement may be completed through independent study.

2. Subclause (2) of clause (c) of subparagraph (iii) of paragraph (2) of subdivision (c) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective November 6, 2013, as follows:

(2) The mentor shall be licensed as an occupational therapist or occupational therapy assistant[, as applicable], or in another profession licensed pursuant to Title VIII of the Education Law and have at least five years of post-licensure experience in the subject of the mentoring. The mentee shall be licensed as an occupational therapist or occupational therapy assistant.

3. Paragraph (2) of subdivision (g) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective November 6, 2013, as follows:

(2) In addition to meeting the recordkeeping requirement prescribed in paragraph (1) of this subdivision, each licensee who meets a portion of his or her continuing competency requirement through independent study, participation in a mentorship either as a mentor or as a mentee, or participation in a professional study group[, fieldwork supervision or volunteer supervision] shall meet the recordkeeping requirements prescribed in subparagraph (c)(2)(iii) of this section, applicable to that learning activity.

4. Subparagraph (i) of paragraph (2) of subdivision (i) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective November 6, 2013, as follows:

(i) A sponsor of coursework or training that is approved by the American Occupational Therapy Association, the National Board for Certification in Occupational Therapy, [or] the New York State Occupational Therapy Association, [or] the International Association for Continuing Education and Training, or an equivalent organization determined by the department to have adequate standards for approving sponsors of continuing education for professionals regulated by II[t]itle VIII of the Education Law that include but are not limited to standards that are equivalent to the standards prescribed in clauses (3)(ii)(a), (b), (c), (d), and (e) of this subdivision; or

5. Subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) effective November 6, 2013, to read as follows:

(3) Organizations desiring to offer coursework or training based upon a department review, pursuant to paragraph (i) (3) of this section, shall submit an application fee of \$900.00 with its application for approval to become a sponsor of coursework or training offered to occupational therapists and/or occupational therapy assistants to meet the continuing competency requirement. Application for a three-year renewal of the permit shall be accompanied by a fee of \$900.00.

8 NYCRR 76.10

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the August 14, 2013 State Register, the State Education Department has not received any comments from the public. A copy of the proposed rule was provided to the New York State Occupational Therapy Association (NYSOTA) prior to publication. NYSOTA provided comments summarized as follows.

1. Comment

Fieldwork supervision should be created as a separate category of acceptable learning activities, removed from the category “Independent study” [clause (b) of subparagraph (iii) of paragraph (2) of subdivision (c)]. Allowing only 12 learning hours over a 3 year period for fieldwork supervision and independent learning combined is too restrictive.

Response

The Department understands the significance of fieldwork supervision to the profession and the need to encourage occupational therapy professionals to take on this responsibility. However, once continuing competency became a requirement for New York State licensees, the Department had an obligation to ensure that credit is granted for learning activities that enhance the competency of such licensees, and that such activities are appropriately documented. Consistent with these goals, we do not believe it is appropriate to grant continuing education credit for fieldwork supervision alone. We do, however, believe it is appropriate to grant up to 12 hours of continuing competency credit for study undertaken in conjunction with fieldwork supervision. Accordingly, we have proposed a regulation that explicitly provides that the learning associated with fieldwork supervision could be recognized as part of independent study,

and have expanded the number of hours that can be earned through independent study from 6 to 12. We believe that the primary method of earning continuing competency hours is through formal study; therefore, the Department does not believe that expanding the upper limit of independent study hours beyond 12 is appropriate.

2. Comment

Clarify the status of “in-service training” under the category “Coursework or training” [clause (a) of subparagraph (iii) of paragraph (2) of subdivision (c)]. In-service training that is offered by an employer that has been approved as a sponsor will be eligible for learning hours under this category. However, if the in-service training is not offered by an employer that has been approved, we understand that the OT or OTA may be able to apply that learning experience to the category of independent study, a category that is already very limited in the number of hours allowed. We would recommend that the regulation language regarding in-service training needs to be clearer.

Response

The Department recognizes the value of in-service training provided by employers, and has worked with employers who are not already recognized as approved sponsors and who seek to apply to the Department for approval. The application for such approval is available on our website and the fee associated with this application, as proposed in this regulatory package, is a nominal \$300 per year. We may recognize credit for independent study for a professional whose employer provides some training but is not an approved sponsor, but view this as an exception to the preferred method and not appropriate in regulation.

3. Comment

Restricting mentoring to professions licensed under Title VIII of the Education Law may discourage valuable mentoring relationships in the field of education. This is true both for occupational therapists and assistants who work in primary and secondary education settings, as well as for therapists who are teaching at occupational therapy and assistant programs in colleges and universities. It is quite possible that an occupational therapist or occupational therapy assistant may find their most beneficial mentoring from a well-seasoned educator or school psychologist. For occupational therapy educators in post-secondary settings, further mentoring in pedagogical methods is critical to their development in their role as an educator.

Response

The Department is willing to expand mentoring to include mentors who are licensed professionals under Title VIII of the Education Law, as set forth in the amendments to the regulation, but is not willing to expand the available mentors to individuals who are not so licensed. We believe that the regulations provide individuals other options to gain knowledge on the related subjects that non-licensed mentors may be able to provide. We are also concerned over our lack of disciplinary authority over mentors who are not licensed.

4. Comment

Section 76.10(a)(3) of the Regulations of the Commissioner of Education currently defines “licensee” as including an occupational therapy assistant. This is inaccurate because occupational therapy assistants are not granted a license, but are exempted from the license by the statute. It is recommended that alternate language should be used in the definition section and throughout section 76.10.

Response

The continuing competency regulations apply to both occupational therapists and occupational therapy assistants in almost every respect and, therefore, the use of a common term was the most expedient way to refer to both. The regulations in their current form are lengthy, and the Department does not wish to complicate them further through the use of two separate identifiers that would need to be repeated throughout the regulation. The proposed regulation clearly limits the definition of “licensee” by indicating that the definition applies only to the continuing education section of the regulations.