



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendments to the Regulations of the Commissioner of Education Relating to Continuing Competency in Occupational Therapy, Limited Permits for Occupational Therapy Assistants, and Supervision of Students in Occupational Therapy Assistant Programs

DATE: January 7, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents amend sections 76.4 and 76.9 and add a new section 76.10 to the Regulations of the Commissioner of Education relating to continuing competency requirements in occupational therapy, limited permits for occupational therapy assistants, and supervision of students in occupational therapy assistant programs?

Reason(s) for Consideration

Required by State statute (Chapters 329 and 444 of the Laws of 2012).

Proposed Handling

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

Procedural History

The proposed rule was discussed by the Professional Practice Committee at its November 2012 meeting. A Notice of Proposed Rule Making was published in the State

Register on November 14, 2012 for a 45-day public comment period. A copy of the proposed rule and an Assessment of Public Comment are attached. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

The proposed amendment to section 76.4 of the Regulations of the Commissioner of Education implements the provisions of Chapter 329 of the Laws of 2012 which authorize a limited permit for occupational therapy assistants. This amendment will permit occupational therapy assistants who have completed their education requirements but have not passed the examination to practice under the supervision of a physician or occupational therapist for a maximum of two years.

The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education implements the provisions of Chapter 329 of the Laws of 2012 which provide that an occupational therapy assistant student engaged in clinical practice may be supervised by an occupational therapy assistant, as well as by an occupational therapist.

The proposed addition of section 76.10 of the Regulations of the Commissioner implements the provisions of Chapter 444 of the Laws of 2012 which added a new section 7908 to the Education Law, establishing a continuing competency requirement for occupational therapists and occupational therapy assistants.

Proposed subdivision 76.10(a) sets forth definitions required to implement the continued competency requirements, including definitions of professional subjects and related subjects.

Proposed subdivision 76.10(b) sets forth the applicability of the new requirement to all registrants, provides for exemptions for the first triennial registration period, and authorizes the Department to make an adjustment to the requirements for good cause which prevents compliance.

Proposed subdivision 76.10(c) sets forth the requirement that 36 continuing competency hours be completed in each triennial registration period, including at least 24 hours in professional subjects, and describes the acceptable learning activities that may be used to meet this requirement.

Proposed subdivision 76.10(d) provides that a licensee must certify to compliance with the requirement upon re-registration. Proposed subdivisions (e) and (f) of section 76.10(e) set forth rules for licensees returning after a lapse in practice and establish the requirements for issuance of a conditional registration for those licensees who admit to non-compliance with the requirement, but who agree to remedy any deficiency in compliance, respectively.

Proposed subdivisions (g), (h), (i), and (j) of section 76.10 of the Regulations of the Commissioner set forth recordkeeping requirement for licensees, rules for measurement of a competency hour, provisions for approval of sponsors of continuing

competency coursework or training, and fees for licensees as mandated by the statute, respectively.

Recommendation

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

VOTED: That subdivision (a) of section 76.4 and section 76.9 of the Regulations of the Commissioner of Education be amended and that a new section 76.10 of the Regulations of the Commissioner of Education be added, all as submitted, effective February 13, 2013.

Timetable for Implementation

If adopted at the January Regents meeting, the rule will become effective on February 13, 2013.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 6504, 6507, 7905, 7906, and 7908 of the Education Law and Chapters 329 and 444 of the Laws of 2012

1. Subdivision (a) of section 76.4 of the Regulations of the Commissioner of Education is amended, effective February 13, 2013, to read as follows:

(a) The applicant shall submit satisfactory evidence of completion of a registered program in occupational therapy or a registered program for occupational therapy assistants, as applicable, or the substantial equivalent of a registered program.

2. Section 76.9 of the Regulations of the Commissioner of Education is amended, effective February 13, 2013, as follows:

76.9 Occupational therapy assistant student exemption. 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 [be directly supervised by an occupational therapist in accordance with standards established by a national accreditation agency which is satisfactory to the Department. Direct supervision, as required by section 7906(4) of the Education Law, may be provided in conjunction with an occupational therapy assistant who is designated as a fieldwork educator by a program that meets the requirements of section 76.7(b)(1) of this Part. Any such work performed by an occupational therapy assistant as a fieldwork educator shall be subject to the supervision requirements of section 76.8 of this Part] practice under the direction and supervision of:

(a) an occupational therapist; or

(b) an occupational therapy assistant who has obtained authorization pursuant to section 7906(7) of the Education Law and who is under the supervision of an occupational therapist.

3. Section 76.10 of the Regulations of the Commissioner of Education is added, effective February 13, 2013, to read as follows:

§76.10 Continuing competency for occupational therapists and occupational therapy assistants

(a) Definitions. As used in this section:

(1) Acceptable accrediting agency means an organization accepted by the Department as a reliable authority for the purpose of accreditation at the postsecondary level, that applies its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner, including, but not limited to, an agency recognized for this purpose by the United States Department of Education.

(2) Independent study means individualized professional study that is self-initiated, goal-driven learning based on reading and research.

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

(4) Peer reviewed means reviewed by an individual or individuals who have appropriate educational, licensure or other credentials and are recognized experts in the subject which they are reviewing.

(5) Professional subjects means acceptable learning activities, as defined in section 7908(4) of the Education Law and paragraph (2) of subdivision (c) of this

section, which contribute to continuing competence in the professional practice of occupational therapy, as defined in section 7901 of the Education Law and section 76.5 of this Part, or of an occupational therapy assistant, as defined in section 76.6 of this Part.

(6) Related subjects means acceptable learning activities, as specified in section 7908(4) of the Education Law and paragraph (2) of subdivision (c) of this section, relating to legal or regulatory issues, reimbursement issues, general supervision, business practices, pedagogical methodologies or other topics which contribute to continuing competence in the professional practice of occupational therapy as defined in section 7901 of the Education Law and section 76.5 of this Part, or of an occupational therapy assistant as defined in section 76.6 of this Part; or which relate to other matters of health care, law, ethics and professional responsibility which contribute to the health and welfare of the public.

(7) Self-study means structured study based on audio, audio-visual, written, on-line, and other media that is provided by a sponsor approved by the Department pursuant to subdivision (i) of this section.

(b) Applicability of requirement.

(1) Each licensed occupational therapist and occupational therapy assistant, required under Article 156 of the Education Law to register with the Department to practice in New York State, shall comply with the mandatory continuing competency requirements as prescribed in subdivision (c) of this section, except those licensees exempt from the requirement or who obtain an adjustment to the requirement pursuant

to paragraph (2) of this subdivision or who are subject to a different requirement pursuant to this section.

(2) Exemptions and adjustments to the requirement.

(i) Exemptions. The following licensees shall be exempt from the continuing competency requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice occupational therapy or as an occupational therapy assistant in New York State, except for licensees who have been previously licensed in occupational therapy or authorized as an occupational therapy assistant in another state or jurisdiction; and

(b) licensees who are not engaged in the practice of occupational therapy or as an occupational therapy assistant as evidenced by not being registered to practice in New York State, except as otherwise provided in subdivision (e) of this section for purposes of meeting the requirements for the resumption of practice in New York State after a lapse in practice.

(ii) Adjustments to the requirement. An adjustment to the continuing competency requirement, as prescribed in subdivision (c) of this section, may be made by the Department, provided that the licensee documents good cause that prevents compliance, which shall include, but not be limited to, any of the following reasons: poor health certified by a physician; or a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the Armed Forces of the United States; or other good cause which in the judgment of the Department makes

it impossible for the licensee to comply with the continuing competency requirements in a timely manner.

(c) Mandatory continuing competency requirement.

(1) General Requirement.

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 continuing competency hours of acceptable learning activities, as defined in paragraph (2) of this subdivision and within the limitations prescribed in such paragraph, provided that at least 24 continuing competency hours of such acceptable learning activities shall have as their primary focus one or more professional subjects, as defined in paragraph (5) of subdivision (a) of this section; and the remaining hours of such acceptable learning activities shall have as their primary focus one or more related subjects, as defined in paragraph (6) of subdivision (a) of this section. A licensee who seeks registration in both occupational therapy and as an occupational therapy assistant shall be required to complete such continuing competency requirement applicable to the profession of occupational therapy, which shall be considered compliance with the requirements of this section for both registrations.

(ii) Proration.

(a) Unless otherwise prescribed in this section, during each registration period of less than three-years duration, an applicant for registration shall complete acceptable learning activities, as defined in paragraph (2) of this subdivision and within the limitations prescribed in such paragraph, on a prorated basis at a rate of one hour per month up to 36 continuing competency hours in the registration period, provided that at

least two-thirds of such hours of acceptable learning activities shall have as their primary focus one or more professional subjects, as defined in paragraph (5) of subdivision (a) of this section, and the remaining hours of acceptable learning activities shall have as their primary focus one or more related subjects, as defined in paragraph (6) of subdivision (a) of this section.

(b) Notwithstanding the provisions of clause (a) of this subparagraph, any licensed occupational therapist or occupational therapy assistant whose first registration date following February 13, 2013 occurs less than three years from such date, shall complete acceptable learning activities on a prorated basis at the rate of one half hour per month for the period beginning February 13, 2013 up to the first registration date thereafter, provided that at least two-thirds of such hours of acceptable learning activities shall have as their primary focus one or more professional subjects as defined in paragraph (5) of subdivision (a) of this section, and the remaining hours of acceptable learning activities shall have as their primary focus one or more related subjects as defined in paragraph (6) of subdivision (a) of this section. Such acceptable learning activities shall be completed during any time in the registration period which immediately precedes the first registration date following February 13, 2013.

(2) Acceptable learning activities shall meet the requirements of this paragraph and be subject to the limitations prescribed in this paragraph.

(i) Subjects. Acceptable learning activities shall have as their primary focus one or more professional subjects as defined in paragraph (5) of subdivision (a) of this section, or one or more related subjects as defined in paragraph (6) of subdivision (a) of this section.

(ii) In those instances where subparagraph (iii) of this paragraph sets forth an upper limit on the number of continued competency hours which may be earned for a learning activity, the licensee shall be responsible for assigning a reasonable number of hours to such activity, subject to a final determination, if necessary, by the Department.

(iii) Types of learning activities. Acceptable learning activities shall be in one or more of the types of activities prescribed in this subparagraph, and shall be subject to the limitations prescribed in this subparagraph.

(a) Coursework or training offered by an approved sponsor. Acceptable learning activities may include coursework or training offered by a sponsor, approved pursuant to the requirements of subdivision (i) of this section, which may include but need not be limited to the following types of offerings by such approved sponsors: formal continuing education courses or workshops; or formal academic study offered as part of a registered program pursuant to Part 52 of this Title or an equivalent program that is accredited by an acceptable accrediting agency; or in-service training programs offered by an employer to its employees; or self-study, as defined in paragraph (7) of subdivision (a) of this section, provided that no more than two-thirds of the mandatory continuing competency requirement may be completed through self-study.

(b) Independent study. Acceptable learning activities may include independent study as defined in paragraph (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. Three clock hours of independent study shall equal one continuing competency

hour. No more than one-sixth of the mandatory continuing competency requirement may be completed through independent study.

(c) Mentoring or receiving mentoring as a mentee. Acceptable learning activities may include mentoring or receiving mentoring as a mentee in accordance with the requirements of this clause.

(1) The mentoring shall be a one-to-one relationship between a mentor and a mentee. The mentorship shall provide a minimum of 15 clock hours of direct contact between the mentor and the mentee.

(2) The mentor shall be licensed as an occupational therapist or occupational therapy assistant, as applicable, 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) The mentor and the mentee shall develop written mentee goals that shall be met during the mentorship by the mentee.

(4) The mentor shall develop a written teaching plan that shall guide the mentorship and shall provide for the formal evaluation of the mentee in writing.

(5) The mentee shall prepare a narrative account of what was learned in the mentorship and an overall evaluation of the mentorship.

(6) A licensee who is either a mentor or mentee who completes a mentorship that meets the requirements of this clause shall receive up to 10 continuing competency hours of credit for each mentoring relationship, except that no more than one-half of the mandatory continuing competency requirement may be completed through either

mentoring or receiving mentoring as a mentee, and the mentor or mentee shall not receive credit for activity that is conducted as part of their professional employment.

(7) Each licensee who meets a portion of his or her continuing competency requirement through participation in a mentorship either as a mentor or as a mentee shall maintain the following records for a period of six years from the date of the completion of this activity: name of the mentor and mentee, mentee goals, the teaching plan of the mentor, the evaluation of the mentee by the mentor, the narrative account of the mentee of what was learned, and the evaluation of the mentorship by the mentee or mentor, as applicable.

(d) Publication. Acceptable learning activities may include publication of a written work by the licensee during the registration period in accordance with the requirements of this clause.

(1) A licensee may receive up to 10 continuing competency hours of credit for publishing, as primary or co-author, an article, the subject of which shall be a professional subject as defined in paragraph (5) of subdivision (a) of this section in a professional journal that is peer reviewed as defined in paragraph (4) of subdivision (a) of this section, or a chapter in a text book, the subject of which shall be a professional subject as defined in paragraph (5) of subdivision (a) of this section. A licensee shall receive up to five continuing competency hours of credit for publishing, as primary or co-author, an article, the subject of which shall be a professional subject as defined in paragraph (5) of subdivision (a) of this section in a professional journal that is not peer reviewed as defined in paragraph (4) of subdivision (a) of this section, or in a non-professional journal.

(2) A licensee may receive up to 10 continuing competency hours of credit as primary or co-primary investigator in research activities, the subject of which shall be a professional subject as defined in paragraph (5) of subdivision (a) of this section, conducted by an educational program registered pursuant to Part 52 of this Title or an equivalent program that is accredited by an acceptable accrediting agency, or up to five continuing competency hours of credit for developing instructional materials, including but not limited to training manuals, multimedia or software programs, the subject of which shall be a professional subject as defined in paragraph (5) of subdivision (a) of this section, except that no more than one-half of the mandatory continuing competency requirement may be completed through such publication.

(3) A licensee may receive up to five continuing competency hours of credit for the peer review as defined in subdivision (a) of this section, of an article in a professional journal, or a chapter in a professional text book, the subject of which shall be a professional subject as defined in paragraph (5) of subdivision (a) of this section, except that no more than one-half of the mandatory continuing competency requirement may be completed through such peer review.

(e) Presentation at a professional conference. Acceptable learning activities may include a presentation by the licensee at a professional conference sponsored by a bona-fide organization that has an established record of sponsoring conferences for a profession licensed pursuant to Title VIII of the Education Law. A licensee who makes one or more such presentations during the registration period shall receive up to five continuing competency hours in total for this learning activity, except that no more than one-sixth of the mandatory continuing competency requirement may be completed through such a presentation.

(f) Chairing a professional practice committee. Acceptable learning activities may include chairing a professional practice committee of an international, national, state or local professional association that has an established record of providing support and guidance for the practice of occupational therapists or occupational therapy assistants. A licensee who serves as such chair for at least one year during the registration period shall receive up to five continuing competency hours in total for this learning activity, except that no more than one-sixth of the mandatory continuing competency requirement may be completed through such activity. Such activity shall be considered a learning activity in a related subject as defined in paragraph (6) of subdivision (a) of this section, and may only be credited as such in meeting the mandatory continuing competency requirement.

(g) Participation in a professional study group. Acceptable learning activities may include participation in a professional study group in accordance with the requirements of this clause.

(1) The professional study group shall be composed of three or more licensed occupational therapists or occupational therapy assistants.

(2) The study group shall have written goals for what it expects to accomplish and a written study plan to meet these goals. The study group shall evaluate the learning activity in writing when the group has met its study goals.

(3) The study group shall maintain attendance records and meeting notes for what transpired at each meeting of the study group.

(4) Each licensee who meets a portion of the continuing competency requirement through participation in a study group shall maintain the following records

for a period of six years from the date of the completion of this activity: a list of participants, an attendance record, goals of the group, study plan, notes of meetings, and the evaluation of the learning activity.

(5) Two clock hours of participation in a study group pursuant to this clause shall equal one continuing competency hour. No more than one-half of the mandatory continuing competency requirement may be completed through participation in a study group.

(d) Renewal of registration. At each renewal of registration, licensed occupational therapists or occupational therapy assistants shall certify to the Department that they have either complied with the continuing competency requirements, as prescribed in this section, or are subject to an exemption or adjustment to such continuing competency requirements, as prescribed in subdivision (b) of this section.

(e) Requirement for lapse in practice.

(1) Registrations prior to February 13, 2016. A licensee returning to the practice of occupational therapy or as an occupational therapy assistant after a lapse in practice, defined as not being registered to practice in New York State, whose first registration date after such lapse in practice begins prior to February 13, 2016, shall complete acceptable learning activities on a prorated basis at the rate of one-half hour per month for the period beginning February 13, 2013 up to the first registration date thereafter. Such licensee shall also complete acceptable learning activities, prorated at the rate of one continuing competency hour for each month for which the licensee was not authorized to practice occupational therapy or as an occupational therapy assistant as

applicable, in any jurisdiction in the three-year period prior to the commencement of the new registration period, up to an additional 36 continuing competency hours. At least two-thirds of the total number of continuing competency hours shall be in acceptable learning activities in one or more professional subjects, as defined in paragraph (5) of subdivision (a) of this section, and the remaining hours shall be in acceptable learning activities in one or more related subjects, as defined in paragraph (6) of subdivision (a) of this section. The continuing competency hours required by this paragraph shall be completed in the three-year period prior to the commencement of the new registration period, except that at least 12 of the total number of continuing competency hours shall be completed in the 12 months preceding the commencement of the new registration period.

(2) Registrations on or after February 13, 2016. A licensee returning to the practice of occupational therapy or as an occupational therapy assistant after a lapse in practice, defined as not being registered to practice in New York State, whose first registration date after such lapse in practice begins on or after February 13, 2013, shall complete 36 continuing competency hours of acceptable learning activities. Such licensee shall also complete acceptable learning activities, prorated at the rate of one continuing competency hour for each month for which the licensee was not authorized to practice occupational therapy or as an occupational therapy assistant, as applicable, in any jurisdiction in the three-year period prior to the commencement of the new registration period, up to an additional 36 continuing competency hours. At least two-thirds of the total number of continuing competency hours shall be in acceptable learning activities in one or more professional subjects as defined in paragraph (5) of subdivision (a) of this section, and the remaining hours shall be in acceptable learning

activities in one or more related subjects as defined in paragraph (6) of subdivision (a) of this section. The continuing competency hours required by this paragraph shall be completed in the three-year period prior to the commencement of the new registration period, except that at least 12 of the total number of continuing competency hours shall be completed in the 12 months preceding the commencement of the new registration period.

(f) Conditional registration.

(1) The Department may issue a conditional registration to a licensee who admits to noncompliance with the continuing competency requirements of this section, provided that such licensee meets the following requirements:

(i) the licensee agrees to remedy such deficiency within the conditional registration period;

(ii) the licensee agrees to complete the regular continuing competency requirement prorated at the rate of at least one continuing competency hour per month during such conditional registration period, and the licensee agrees to complete such additional continuing competency requirements during such conditional registration period as the Department may require to ensure the licensee's proper delivery of professional care consistent with the licensee's practice of occupational therapy or as an occupational therapy assistant, as applicable.

(2) The duration of such conditional registration shall not exceed one year and shall not be renewed or extended.

(g) Licensee records.

(1) Each licensee subject to the requirements of this section shall maintain, and ensure access by the Department to, the following records:

(i) a learning plan for continuing competency that shall record current and anticipated goals; and

(ii) a comprehensive list of acceptable learning activities completed, which includes for each learning activity:

(a) the sponsor's name, if any, and any identifying number;

(b) a written verification of attendance, if attendance was required;

(c) the date and location of the learning activity; and

(d) the number of continuing competency hours completed.

(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, 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.

(3) Such records shall be retained for at least six years from the date of completion of the activity and shall be available for review by the Department in the administration of the requirements of this section.

(h) Measurement of continuing competency learning activities. Continuing competency credit shall be granted only for learning activities that meet the

requirements set forth in paragraph (2) of subdivision (c) of this section. A minimum of 50 minutes of formal continuing education courses or workshops shall equal one continuing competency hour of credit. For credit-bearing university or college courses, each semester-hour of credit shall equal 15 continuing competency hours of credit, and each quarter-hour of credit shall equal 10 continuing competency hours of credit. For credit-bearing university or college courses not organized on a semester hour or quarter-hour basis, an equivalent competency hour determination shall be made by the Department. For activities that carry continuing education units (CEUs), one-tenth of a CEU shall equal one continuing competency hour.

(i) Sponsor approval.

(1) To be approved by the Department, sponsors of coursework or training offered to licensed occupational therapists or occupational therapy assistants to meet the continuing competency requirement shall meet the requirements of either paragraph (2) or (3) of this subdivision.

(2) The Department shall deem approved as a sponsor of coursework or training offered to licensed occupational therapists or occupational therapy assistants to meet the continuing competency requirement:

(i) A sponsor of coursework or training that is approved by 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 Title 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

(ii) postsecondary institutions, provided that such approval is limited only to the offering of courses in programs that are registered by the Department pursuant to Part 52 of this Title, or in equivalent programs that are accredited by an acceptable accrediting agency; or

(iii) postsecondary institutions, or a consortium of such institutions, that offer programs that are registered pursuant to Part 52 of this Title as leading to licensure in occupational therapy or authorization to practice as an occupational therapy assistant or postsecondary institutions that offer equivalent professional education programs accredited by an acceptable accrediting agency, for credit and noncredit offerings.

(3) Department review of sponsors.

(i) The Department shall conduct a review of sponsors that apply for approval of coursework or training offered to licensed occupational therapists or to occupational therapy assistants to meet the continuing competency requirement and that are not deemed approved pursuant to the requirements of paragraph (2) of this subdivision.

(ii) Organizations desiring to offer course work or training based upon a Department review under this paragraph shall submit, with the fee as set forth in subdivision (j) of this section, an application for advance approval as a sponsor at least 90 days prior to the date for the commencement of such coursework or training that documents that the organization:

(a) will offer courses of study in one or more professional subjects, as defined in subdivision (a) of this section or one or more related subjects as defined in subdivision (a) of this section;

(b) is an organized educational entity or is an entity that has expertise in the professional area that will be taught, including but not limited to, a postsecondary degree-granting institution; or an occupational therapy association; or a hospital or health maintenance organization; or a public school;

(c) provides instructors who are qualified to teach the courses which will be offered, including but not limited to, faculty of an occupational therapy or an occupational therapy assistant program accredited by an acceptable accrediting agency; or instructors who are authorities in the health sciences specially qualified, in the opinion of the Department after consultation with the State Board for Occupational Therapy, to conduct such courses;

(d) has a method of assessing the learning of participants, and describes such method; and

(e) will maintain records for at least six years from the date of completion of coursework, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty, a record of attendance of licensed occupational therapists or occupational therapy assistants in such coursework, an outline of the course of instruction, date and location of the coursework, and the number of hours for completion of the coursework. In the event an approved sponsor discontinues operation, the governing body of such sponsor shall notify the Department and shall transfer all records as directed by the Department.

(iii) Sponsors that are approved by the Department pursuant to the requirements of this paragraph shall be approved for a three-year term.

(iv) The Department may conduct site visits of or request information from a sponsor approved pursuant to the requirements of this paragraph to ensure compliance with such requirements, and a sponsor shall cooperate with the Department in permitting such site visits and in providing such information.

(v) A determination by the Department that a sponsor approved pursuant to the requirements of this paragraph is not meeting the standards set forth in this paragraph shall result in the denial or termination of the approved status of the sponsor.

(i) Fees.

(1) At the beginning of each registration period, a mandatory continuing competency fee of \$45 shall be collected from licensees engaged in the practice of occupational therapy in New York State and a mandatory continuing competency fee of \$25 shall be collected from licensees 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 engaged in the practice of occupational therapy, and the registration fee required by section 76.7 of this Part for individuals authorized to practice as an occupational therapy assistant.

(2) Licensees applying for a conditional registration, pursuant to the requirements of subdivision (f) of this section, shall pay a fee that is the same as and in addition to, the fee for the triennial registration required by section 7904 of the

Education Law. In addition, such licensees shall pay the mandatory continuing competency fee required by section 7908(6) of the Education Law.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the November 14, 2012 State Register, the State Education Department received over 100 comments from the public. The following is a summary assessing these comments.

1. Comment

The Department should include fieldwork supervision in the acceptable learning activities which meet the continuing competency requirement, as set forth in the proposed subdivision (c) of section 76.10 of the regulations. The commenters noted that the National Board for Certification in Occupational Therapy (NBCOT) has a three year 36 unit continuing competency requirement for national certification in occupational therapy, and permits an occupational therapist to earn 18 of those units through fieldwork supervision. The commenters asserted that fieldwork supervision is taken on as a voluntary activity by occupational therapists; that students have a difficult time finding placements due to a shortage of supervisors, and that the voluntary supervisors perform a needed service in the profession by taking on the supervision. The commenters asserted that the supervisors themselves gain knowledge of occupational therapy through exposure to new concepts that the students bring from their educational programs, and also gain needed supervisory experience by agreeing to supervise these students.

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. The Department is considering an amendment to the regulations in the near future which will provide for continuing competency credit for fieldwork supervision, based upon documentation of the time expended in preparing for the

supervision and an explanation of the additional competency achieved through the supervision activity.

2. Comment

The Department should not restrict the mentoring opportunities permitted as a learning activity for continuing competency to mentors who are licensed in occupational therapy or as occupational therapy assistants. The regulation should provide that continuing competency credits may be received through mentoring by other licensed professionals and non-professionals. The commenters asserted that occupational therapy professionals develop specialized areas of practice as they become more advanced. This specialization requires them to develop knowledge and skills in fields outside of occupational therapy in order to maintain competence, and that, therefore, mentoring by non-occupational therapists is a valuable learning activity.

Response

As noted above, the Department is considering an amendment to these regulations that will expand the qualifications of the mentor to include other individuals qualified to provide mentoring in a professional or related subject, as required by statute.

3. Comment

The Department should permit occupational therapy professionals to receive continuing competency credits through in-service training offered by an employer who is not an approved provider.

Response

The Department recognizes the value of in-service training provided by employers. However, subdivision (4) of section 7908 of the Education Law, as added by Chapter 444 of the Laws of 2012, provides that learning activities must be taken from

a sponsor approved by the Department. Given this statutory mandate, the Department has no authority to exempt employers who wish to offer in-service training from the requirement that they become approved sponsors.

4. Comment

The proposed limit of six continuing competency hours over a three year period for independent study is too low, and will discourage advanced practitioners from pursuing educational activities that are relevant to their competency needs.

Response

The Department finds that six continuing competency hours in independent study is an appropriate limitation on this activity. However, an expansion of this limit will be considered in conjunction with consideration of the recognition of fieldwork supervision for continued competency credit.

5. Comment

The Department should add the American Occupational Therapy Association to those entities the Department will recognize as approving sponsors of acceptable learning activities for continuing competency.

Response

The proposed regulation does not specify all organizations that will be determined to be an “equivalent organization”. We anticipate that the American Occupational Therapy Association will be recognized in this capacity under existing regulatory authority.

6. Comment

One commenter disagreed with the \$900 triennial fee assessed for Department approval of continuing competency sponsors.

Response

This fee is mandated by subdivision (7) of section 7908 of the Education Law, as added by Chapter 444 of the Laws of 2012, and is intended to cover the necessary costs incurred by the Department.

7. Comment

One commenter suggested allowing professionals to gain needed continuing competency credits while they are practicing, when circumstances prevent them from obtaining the necessary credits in a timely manner.

Response

The proposed regulations provide for this situation through the issuance of a conditional registration, authorized in section 76.10(f) of the proposed regulations.