






TO: The Honorable the Members of the Board of Regents

FROM: Douglas E. Lentivech


SUBJECT: Proposed Amendment of §76.5 of the Regulations of the Commissioner of Education Relating to the Definition of Occupational Therapy Practice

DATE: January 11, 2018

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend §76.5 of the Regulations of the Commissioner of Education relating to the definition of occupational therapy practice?

Reason(s) for Consideration

Required by statute (Chapter 460 of the Laws of 2011).

Proposed Handling

The proposed amendment will be presented to the Full Board for permanent adoption at the January 2018 Regents meeting. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

The proposed amendment was discussed by the Professional Practice Committee at the October 2017 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on November 1, 2017. Following the 60-day public comment period, 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. A copy of the proposed rule is attached.

Background Information

Section 7901 of the Education Law defines the scope of practice of occupational therapy and provides that an occupational therapy treatment program designed to restore function shall be rendered on the prescription or referral of a physician, nurse practitioner or other health care provider acting within his or her scope of practice pursuant to Title VIII of the Education Law.

Prior to the amendments made by Chapter 460 of the Laws of 2011, §7901 of the Education Law defined the scope of practice of occupational therapy as the functional evaluation of the client and the planning and utilization of a program of purposeful activities to develop or maintain adaptive skills, designed to achieve maximal physical and mental functioning of the patient in his or her daily life tasks, and provided that any occupational therapy treatment program must be rendered on the prescription or referral of a physician or nurse practitioner. Chapter 460 of the Laws of 2011 amended §7901 of the Education Law to explicitly make a treatment program part of the definition of the scope of practice; to add consultation with the client, family, caregiver or organization to the scope of practice; and to additionally provide that activities within the scope of practice are done in order to restore performance abilities designed to achieve cognitive functioning. Chapter 460 of the Laws of 2011 also provided that treatment programs designed to restore function must be rendered on the prescription or referral of a physician, nurse practitioner or other health care provider acting within his or her scope of practice.

The proposed rule amends subdivision (b) of §76.5 of the Regulations of the Commissioner of Education, which defines purposeful activity, one of the statutory elements of occupational therapy practice. The proposed rule adds restoration or maintenance of activities of daily living to the aims of purposeful activity. The existing definition of purposeful activity required only that this activity be aimed at the development of functional daily living skills.

The proposed rule also amends paragraph (1) of subdivision (c) of §76.5 to provide that a treatment program may include the therapeutic use of goal-directed activities, exercises, or techniques to maximize the client's cognitive functioning in life tasks, in addition to the client's physical and/or mental functioning in life tasks, in order to conform this definition to the provisions of §7901 of the Education Law, as amended by Chapter 460 of the Laws of 2011.

The proposed rule amends subdivision (d) of §76.5 of the Regulations of the Commissioner of Education to provide that occupational therapy treatment programs designed to restore function shall be rendered on the prescription or referral of a physician, nurse practitioner or other health care provider acting within his or her scope of practice and to provide that nothing contained in the rule shall be construed to expand a licensee's scope of practice beyond what is authorized by law.

Other amendments to Part 76 of the Regulations of the Commissioner of Education to implement the provisions of Chapter 460 of the Laws of 2011 were approved by the Board of Regents at the September 2012 Regents meeting. However,

the above-referenced proposed amendments to §76.5 were not made at that time due to an oversight. Earlier this year, the inadvertent omission was brought to the attention of the Office of the Professions by other Department staff who received a question from a school district as to whether it could treat a student with a disability who had a treatment program not intended to restore function, without a prescription or referral; such treatment is permitted by the statute but not under the current regulation. The proposed amendment is therefore necessary to conform the Regulations of the Commissioner of Education to §7901 of the Education Law, as amended by Chapter 460 of the Laws of 2011.

Related Regents Items

[October 2017 Regents Item](http://www.regents.nysed.gov/common/regents/files/1017ppcd2.pdf): Proposed Amendment of §76.5 of the Regulations of the Commissioner of Education Relating to the Definition of Occupational Therapy Practice (<http://www.regents.nysed.gov/common/regents/files/1017ppcd2.pdf>)

[September 2017 Regents Item](http://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/September2012/912ppca1.pdf): Proposed Amendment to Part 76 of the Regulations of the Commissioner of Education Relating to Occupational Therapy Assistants, Occupational Therapy Assistant Students and Holders of Limited Permits in Occupational Therapy (<http://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/September2012/912ppca1.pdf>)

Recommendation

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

VOTED: That §76.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective February 7, 2018.

Timetable for Implementation

If adopted at the January meeting, the proposed amendment would become effective February 7, 2018.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, and 7901 of the Education Law and Chapter 460 of the Laws of 2011

Section 76.5 of the Regulations of the Commissioner of Education is amended as follows:

(a) . . .

(b) *Purposeful activity* is defined as goal-directed behavior designed to achieve maximal physical, cognitive and mental functioning of the client and aimed at the development, restoration or maintenance of functional daily living skills and activities of daily living in the categories of self-care, work, homemaking or play/leisure.

(c) A *treatment program* within the meaning of Education Law, section 7901 shall be consistent with the statutory scope of practice and may:

(1) Include the therapeutic use of goal-directed activities, exercises, or techniques to maximize the client's physical, cognitive and/or mental functioning in life tasks. Treatment is directed toward maximizing functional skill and task-related performance for the development of a client's vocational, avocational, daily living or related capacities.

(2) . . .

(3) . . .

(d) Any treatment program described in this regulation designed to restore function shall be rendered on the prescription or referral of a physician, nurse practitioner or other health care provider acting within his or her scope of practice. In accordance with section 7901 and articles 131 and 153 of the Education Law, nothing contained in this regulation shall be construed to permit any licensee hereunder to

engage in the practice of medicine or psychology, including psychotherapy[.] or
otherwise expand such licensee's scope of practice beyond what is authorized by law.