






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: July 5, 2016


AUTHORIZATION(S):


SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents, adopt as an emergency action, the 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?

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 an emergency rule at the July 2016 Regents meeting. A Statement of Facts and Circumstances Which Necessitate Emergency Action is attached.

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.

It is anticipated that the proposed amendment will be presented for permanent adoption at the September 12-13, 2016 Regents Meeting. However, because the May emergency rule will expire on August 14, 2016, a second emergency action is necessary at the July 2016 meeting to ensure that the rule remains continuously in effect until it can be presented for adoption and take effect as a permanent rule.

A copy of the proposed amendment is attached. Supporting materials are available from the Secretary to the Board of Regents.

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 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 August 15, 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 ensure that the emergency rule adopted at the May 2016 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the May 2016 Regents meeting, effective May 18, 2016, and will expire on August 14, 2016. If adopted at the July 2016 Regents meeting, the second emergency action will become effective on August 15, 2016. It is anticipated that the proposed rule will be presented for permanent adoption at the September Regents 2016 meeting.

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 August 15, 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 August 15, 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)]g) 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 August 15, 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 August 15, 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 August 15, 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 August 15, 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.

8 NYCRR §§76.6, 76.7, 76.8, 76.9 and 76.10

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 470 of the Laws of 2015, which became effective on May 18, 2016. The amendment to the Education Law made by Chapter 470 codifies and defines the practice of occupational therapy assistants, establishes requirements for licensure, and requires at least one occupational therapy assistant to serve on the State Board for Occupational Therapy. Pursuant to Chapter 470, the practice of an occupational therapy assistant is defined as the provision of occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician in accordance with the Regulations of the Commissioner of Education. It also establishes the requirements for licensure of occupational therapy assistants, which include, but are not limited to, professional education, experience and examination requirements. This amendment to the Education Law also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without a written 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.

The proposed amendment was adopted as an emergency action at the May 16-17, 2016 Regents meeting, effective May 18, 2016 and a Notice of Emergency Action and Proposed Rule Making was published in the State Register on June 1, 2016. Because 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 State Administrative Procedure Act

(SAPA) sections 202(1) and (5), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the May 2016 emergency rule will expire on August 14, 2016, 90 days from its filing with the Department of State on May 17, 2016.

If the rule were to lapse, applicants for licensure as occupational therapy assistants would be unable to become licensed until September 28, 2016, which could result in a temporary shortage in the number of licensed professionals qualified to practice occupational therapy and decrease New Yorkers' access to occupational therapy services. Emergency action is therefore necessary at the July 2016 Regents meeting for preservation of the public health and general welfare in order to ensure that the proposed rule adopted by emergency action at the May 2016 Regents meeting remains continuously in effect until the effective date of its permanent adoption, so that applicants for licensure as occupational therapy assistants, who do not meet the requirements for licensure under the grandparenting licensure pathway, can continue to be licensed as occupational therapy assistants, if they meet the licensure requirements of the proposed rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 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.