



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: 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

DATE: September 4, 2012

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents amend 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?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed rule will be presented to the Professional Practice Committee for recommendation and to the Full Board for action at the September Regents meeting. Emergency action will also be needed at the September meeting to keep the emergency rule, which was adopted at the February Regents meeting and readopted at the April and June Regents meetings, continuously in effect until the effective date of the adoption of the permanent rule, as well as to revise such emergency rule to conform to changes added by the permanent rule. A statement of the facts and circumstances which necessitate emergency action is attached (Attachment 3).

Procedural History

Emergency regulations were adopted by the Board of Regents at its February 2012 meeting which amended those portions of Part 76 of the Regulations of the Commissioner of Education relating to the renewal of a limited permit, the definition of practice of an occupational therapy assistant, the requirements for authority to practice as an occupational therapy assistant, and the exemption to the practice requirements for occupational therapy assistant students. These emergency regulations became effective on February 14, 2012. They were adopted again by the Board of Regents as emergency measures at its April and June 2012 meetings to retain them in effect until more extensive regulations could be proposed and take effect.

A Notice of Proposed Rule Making was published in the State Register on March 14, 2012 for a 45-day public comment period. The proposed rule included provisions relating to the emergency rule topics referenced above and, in addition, provisions relating to the supervision of holders of limited permits in occupational therapy and supervision of occupational therapy assistants. These provisions were discussed by the Professional Practice Committee at the April Regents meeting.

The proposed rule was revised in response to public comment and a Notice of Revised Rule Making was published on July 18, 2012. These full regulations, as revised, will be presented to the Professional Practice Committee and the Board of Regents for adoption at the September 2012 Regents meeting.

Copies of the revised proposed rule (Attachment 1) and the emergency rule (Attachment 2) and an Assessment of Public Comment (Attachment 4) are attached. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

The proposed amendments to Part 76 of the Regulations of the Commissioner of Education implement the provisions of Chapter 460 of the Laws of 2011 relating to the profession of occupational therapy. Chapter 460, which became effective on February 13, 2012, amended the Education Law to modify the scope of practice of occupational therapists, change the composition of the State Board for Occupational Therapy, require the direct supervision of holders of limited permits in occupational therapy, and authorize occupational therapy assistant students to provide services as exempt individuals under the direct supervision of an occupational therapist. It also authorized occupational therapy assistants to provide services as exempt individuals and required the Commissioner to define occupational therapy assistants and to promulgate regulations governing their eligibility to practice.

The proposed amendment of section 76.4(b) of the Regulations of the Commissioner of Education eliminates the provision that bars a holder of a limited permit in occupational therapy from receiving a renewal in the event the holder has failed the licensing examination.

The proposed amendment of section 76.4(c) of the Regulations of the Commissioner defines the direct supervision of holders of limited permits in occupational therapy, requires the development of a written supervision plan and documentation of formal supervision contacts, and limits to five the number of holders of a limited permit that can be supervised by an occupational therapist or physician.

Proposed section 76.6 of the Regulations of the Commissioner defines the practice of an occupational therapy assistant (OTA). In accordance with new section 7906(7) of the Education Law, that definition requires OTAs to practice under the supervision of an occupational therapist or physician. Section 76.6 also restricts the use of the title “occupational therapy assistant” to those authorized by the Department to do so.

Proposed section 76.7 of the Regulations of the Commissioner sets forth requirements for authorization to practice as an OTA, including requirements relating to education, experience, and examination.

Proposed section 76.8 of the Regulations of the Commissioner of Education establishes the requirements for the supervision of OTAs, requires the development of a written supervision plan and documentation of formal supervision contacts, and limits to five the number of OTAs that can be supervised by an occupational therapist or physician.

Proposed section 76.9 of the Regulations of the Commissioner establishes the requirements for OTA students to qualify under the statutory exemption authorizing them to practice prior to licensure. That section also requires that they be supervised by an occupational therapist in accordance with standards established by a national accreditation agency acceptable to the Department.

In response to public comment, the following revisions were made to the proposed rule:

- Section 76.4(c)(1), which provides for a supervision plan for limited permittees in occupational therapy, was revised to align the wording of this paragraph with that found in section 76.8(a). Section 76.8(a) of the regulations provides for a supervision plan for occupational therapy assistants, and it contains a more appropriate wording of this requirement.
- Section 76.4(c)(4)(i) was revised to provide that the extent to which a supervisor of a limited permittee in occupational therapy must initiate, direct and participate in the initial evaluation of a client is to be set forth in the supervision plan required for such limited permittee.
- Section 76.4(c)(4)(ii) was revised to provide that the extent to which a supervisor of a limited permittee in occupational therapy must participate on a regular basis in the delivery of occupational therapy services is to be set forth in the supervision plan required for such limited permittee.

- In addition, nonsubstantive changes were made in subdivision (e) of section 76.8 to renumber provisions lettered (i) through (v) as paragraphs (1) through (5) and to delete extraneous language in paragraph (1).

Recommendation

VOTED: That section 76.4 of the Regulations of the Commissioner of Education be amended; that sections 76.5 and 76.6 be repealed and section 76.7 be renumbered as section 76.5; and that new sections 76.6, 76.7, 76.8 and 76.9 be added, all as submitted, effective September 26, 2012, and it is further

VOTED: That section 76.4 of the Regulations of the Commissioner of Education be amended; that sections 76.5 and 76.6 be repealed and section 76.7 be renumbered as section 76.5; and that new sections 76.6, 76.7, 76.8 and 76.9 be added, all as submitted, effective September 11, 2012, 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 in order to ensure that the emergency rule adopted at the February, April and June Regents meetings remains continuously in effect until the effective date of the permanent rule, and to revise such emergency rule to conform to changes added by the permanent rule .

Timetable for Implementation

The February emergency amendments became effective on February 14, 2012. The April emergency amendments became effective on April 24, 2012. The June emergency amendments became effective July 15, 2012 and will expire on September 10, 2012. If adopted at the September Regents meeting, the emergency rule will become effective September 11, 2012 and the permanent rule will become effective on September 26, 2012.

ATTACHMENT 1

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7905 and 7906 of the Education Law.

1. Section 76.4 of the Regulations of the Commissioner of Education is amended, effective September 26, 2012, as follows:

76.4 Limited Permits.

(a) ...

(b) Limited permits may be renewed once for a period not to exceed one year at the discretion of the department because of personal or family illness or other extenuating circumstances which prevented the permittee from becoming licensed[, provided that the permittee has not failed the licensing examination in occupational therapy].

(c) Supervision.

(1) A written supervision plan, acceptable to the occupational therapist or licensed physician providing direction and supervision, shall be required for each permittee providing services pursuant to section 7905 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 permittee) 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.

(2) Documentation of supervision shall include the date and content of each formal supervisory contact as identified in the written supervision plan and evidence of the review of all treatment notes and reports.

(3) The determination of the level and type of supervision shall be based on the ability level and experience of the permittee providing the delegated occupational therapy services, the complexity of client needs, and the setting in which the permittee is providing the services. The supervision plan shall require that the supervisor be notified whenever there is a clinically significant change in the condition or performance of the client, so that an appropriate supervisory action can take place.

(4) Direct supervision shall mean that the supervisor:

(i) initiates, directs and participates in the initial evaluation to the extent required in the supervision plan, interprets the evaluation data, and develops the occupational therapy services plan with input from the permittee;

(ii) participates, on a regular basis, in the delivery of occupational therapy services to the extent required in the supervision plan;

(iii) is responsible for determining the need for continuing, modifying, or discontinuing occupational therapy services;

(iv) takes into consideration information provided by the permittee about the client's responses to and communications during occupational therapy services; and

(v) is available for consultation with the permittee in a timely manner, taking into consideration the practice setting, the condition of the client and the occupational therapy services being provided.

(5) In no event shall the occupational therapist or licensed physician supervise more than five permittees, or its full time equivalent, provided that the total number of permittees being supervised by a single occupational therapist or licensed physician shall not exceed ten.

2. Sections 76.5 and 76.6 of the Regulations of the Commissioner of Education are repealed, and 76.7 of the Regulations of the Commissioner of Education is renumbered 76.5, effective September 26, 2012.

3. The Regulations of the Commissioner of Education are amended by the addition of new sections 76.6, 76.7, 76.8, and 76.9, effective September 26, 2012, to read as follows:

76.6 Definition of occupational therapy assistant practice and the use of the title occupational therapy assistant.

(a) An "occupational therapy assistant" shall mean a person 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 authorized under this Part shall participate in the practice of occupational therapy as an occupational therapy assistant, and only a person authorized under this Part shall use the title "occupational therapy assistant."

(b) As used in this section, client related activities shall mean:

(1) contributing to the evaluation of a client by gathering data, reporting observations and implementing assessments delegated by the supervising occupational therapist or licensed physician;

(2) consulting with the supervising occupational therapist or licensed physician in order to assist him or her in making determinations related to the treatment plan, modification of client programs or termination of a client's treatment;

(3) the utilization of a program of purposeful activities, a treatment program, and/or consultation with the client, family, caregiver, or other health care or education providers, in keeping with the treatment plan and under the direction of the supervising occupational therapist or licensed physician;

(4) the use of treatment modalities and techniques that are based on approaches taught in an occupational therapy assistant educational program registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, and

that the occupational therapy assistant has demonstrated to the occupational therapist or licensed physician that he or she is competent to use; or

(5) the immediate suspension of any treatment intervention that appears harmful to the client and immediate notification of the occupational therapist or licensed physician.

76.7 Requirements for authorization as an occupational therapy assistant.

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

(a) file an application with the Department;

(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;

(c) have a minimum of three months 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) be at least eighteen years of age;

(e) be of good moral character as determined by the Department;

(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 Subchapter;

(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.

76.8 Supervision of occupational therapy assistant.

(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) 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.

(b) Documentation of supervision shall include the date and content of each formal supervisory contact as identified in the written supervision plan and evidence of the review of all treatment notes, reports and assessments.

(c) Consistent with the requirements of this section, the determination of the level and type of supervision shall be based on the ability level and experience of the occupational therapy assistant providing the delegated occupational therapy services, the complexity of client needs, the setting in which the occupational therapy assistant is providing the services, and consultation with the occupational therapy assistant.

(d) The supervision plan shall require that the occupational therapist or licensed physician be notified whenever there is a clinically significant change in the condition or performance of the client, so that an appropriate supervisory action can take place.

(e) Direction and supervision means that the occupational therapist or licensed physician:

(i) initiates, directs and participates in the initial evaluation, interprets the evaluation data, and develops the occupational therapy services plan with input from the occupational therapy assistant;

(ii) participates, on a regular basis, in the delivery of occupational therapy services;

(iii) is responsible for determining the need for continuing, modifying, or discontinuing occupational therapy services, after considering any reports by the occupational therapy assistant of any changes in the condition of the client that would require a change in the treatment plan;

(iv) takes into consideration information provided about the client's responses to and communications during occupational therapy services; and

(v) is available for consultation with the occupational therapy assistant in a timely manner, taking into consideration the practice setting, the condition of the client and the occupational therapy services being provided.

(f) In no event shall the occupational therapist or licensed physician supervise more than five occupational therapy assistants, or its full time equivalent, provided that the total number of occupational therapy assistants being supervised by a single occupational therapist or licensed physician shall not exceed ten.

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.

ATTACHMENT 2

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7905 and 7906 of the Education Law.

1. Section 76.4 of the Regulations of the Commissioner of Education is amended, effective September 11, 2012, as follows:

76.4 Limited Permits.

(a) ...

(b) Limited permits may be renewed once for a period not to exceed one year at the discretion of the department because of personal or family illness or other extenuating circumstances which prevented the permittee from becoming licensed[, provided that the permittee has not failed the licensing examination in occupational therapy].

(c) Supervision.

(1) A written supervision plan, acceptable to the occupational therapist or licensed physician providing direction and supervision, shall be required for each permittee providing services pursuant to section 7905 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 permittee) 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.

(2) Documentation of supervision shall include the date and content of each formal supervisory contact as identified in the written supervision plan and evidence of the review of all treatment notes and reports.

(3) The determination of the level and type of supervision shall be based on the ability level and experience of the permittee providing the delegated occupational therapy services, the complexity of client needs, and the setting in which the permittee is providing the services. The supervision plan shall require that the supervisor be notified whenever there is a clinically significant change in the condition or performance of the client, so that an appropriate supervisory action can take place.

(4) Direct supervision shall mean that the supervisor:

(i) initiates, directs and participates in the initial evaluation to the extent required in the supervision plan, interprets the evaluation data, and develops the occupational therapy services plan with input from the permittee;

(ii) participates, on a regular basis, in the delivery of occupational therapy services to the extent required in the supervision plan;

(iii) is responsible for determining the need for continuing, modifying, or discontinuing occupational therapy services;

(iv) takes into consideration information provided by the permittee about the client's responses to and communications during occupational therapy services; and

(v) is available for consultation with the permittee in a timely manner, taking into consideration the practice setting, the condition of the client and the occupational therapy services being provided.

(5) In no event shall the occupational therapist or licensed physician supervise more than five permittees, or its full time equivalent, provided that the total number of permittees being supervised by a single occupational therapist or licensed physician shall not exceed ten.

2. Sections 76.5 and 76.6 of the Regulations of the Commissioner of Education are repealed, and 76.7 of the Regulations of the Commissioner of Education is renumbered 76.5, effective September 11, 2012.

3. The Regulations of the Commissioner of Education are amended by the addition of new sections 76.6, 76.7, 76.8, and 76.9, effective September 11, 2012, to read as follows:

76.6 Definition of occupational therapy assistant practice and the use of the title occupational therapy assistant.

(a) An "occupational therapy assistant" shall mean a person 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 authorized under this Part shall participate in the practice of occupational therapy as an occupational therapy assistant, and only a person authorized under this Part shall use the title "occupational therapy assistant."

(b) As used in this section, client related activities shall mean:

(1) contributing to the evaluation of a client by gathering data, reporting observations and implementing assessments delegated by the supervising occupational therapist or licensed physician;

(2) consulting with the supervising occupational therapist or licensed physician in order to assist him or her in making determinations related to the treatment plan, modification of client programs or termination of a client's treatment;

(3) the utilization of a program of purposeful activities, a treatment program, and/or consultation with the client, family, caregiver, or other health care or education providers, in keeping with the treatment plan and under the direction of the supervising occupational therapist or licensed physician;

(4) the use of treatment modalities and techniques that are based on approaches taught in an occupational therapy assistant educational program registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, and

that the occupational therapy assistant has demonstrated to the occupational therapist or licensed physician that he or she is competent to use; or

(5) the immediate suspension of any treatment intervention that appears harmful to the client and immediate notification of the occupational therapist or licensed physician.

76.7 Requirements for authorization as an occupational therapy assistant.

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

(a) file an application with the Department;

(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;

(c) have a minimum of three months 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) be at least eighteen years of age;

(e) be of good moral character as determined by the Department;

(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 Subchapter;

(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.

76.8 Supervision of occupational therapy assistant.

(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) 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.

(b) Documentation of supervision shall include the date and content of each formal supervisory contact as identified in the written supervision plan and evidence of the review of all treatment notes, reports and assessments.

(c) Consistent with the requirements of this section, the determination of the level and type of supervision shall be based on the ability level and experience of the occupational therapy assistant providing the delegated occupational therapy services, the complexity of client needs, the setting in which the occupational therapy assistant is providing the services, and consultation with the occupational therapy assistant.

(d) The supervision plan shall require that the occupational therapist or licensed physician be notified whenever there is a clinically significant change in the condition or performance of the client, so that an appropriate supervisory action can take place.

(e) Direction and supervision means that the occupational therapist or licensed physician:

(1) initiates, directs and participates in the initial evaluation, interprets the evaluation data, and develops the occupational therapy services plan with input from the occupational therapy assistant;

(2) participates, on a regular basis, in the delivery of occupational therapy services;

(3) is responsible for determining the need for continuing, modifying, or discontinuing occupational therapy services, after considering any reports by the occupational therapy assistant of any changes in the condition of the client that would require a change in the treatment plan;

(4) takes into consideration information provided about the client's responses to and communications during occupational therapy services; and

(5) is available for consultation with the occupational therapy assistant in a timely manner, taking into consideration the practice setting, the condition of the client and the occupational therapy services being provided.

(f) In no event shall the occupational therapist or licensed physician supervise more than five occupational therapy assistants, or its full time equivalent, provided that the total number of occupational therapy assistants being supervised by a single occupational therapist or licensed physician shall not exceed ten.

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.

ATTACHMENT 3

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment to the Regulations of the Commissioner of Education is necessary to conform the Commissioner's Regulations to the requirements of Chapter 460 of the Laws of 2011. Chapter 460 amended Article 156 of the Education Law to amend the scope of practice of occupational therapists, to provide for the supervision of limited permittees in occupational therapy, to provide for practice as exempt individuals by occupational therapy assistant students, to authorize and provide for the definition of practice of occupational therapy assistants, to provide that occupational therapist assistants shall be subject to the disciplinary and regulatory authority of the Board of Regents and the Department, and to make various technical changes to these sections of the Education Law.

The proposed amendment is necessary to implement the new law. The Board of Regents adopted the proposed amendment as an emergency rule at its February meeting, with an effective date of February 14, 2012, consistent with the effective date of the law, and readopted the emergency rule at the April and June Regents meetings to ensure the rule remains continuously in effect until it can be adopted on a permanent basis. The emergency rule included provisions relating to the renewal of a limited permit, the definition of practice of an occupational therapy assistant, the requirements for authority to practice as an occupational therapy assistant, and the exemption to the practice requirements for an occupational therapy assistant.

A Notice of Proposed Rule Making was published in the State Register on March 14, 2012, which provides for the permanent adoption of regulations governing the topics

of the previous emergency rules described above, and in addition, included provisions relating to the supervision of holders of limited permits in occupational therapy and supervision of occupational therapy assistants. The 45-day comment period expired on April 30, 2012. The proposed rule was subsequently revised in response to public comment and a Notice of Revised Rule Making was published on July 18, 2012.

The proposed rule, as revised, has now been adopted as a permanent rule at the September 10-11, 2012 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the proposed amendment, if adopted at the September Regents meeting, would be September 26, 2012, the date a Notice of Adoption will be published in the State Register. However, the June emergency rule expires on September 10, 2012, 60 days after its filing with the Department of State on July 13, 2012. A lapse in the rule could potentially disrupt the practice of occupational therapy pursuant to Chapter 460 of the Laws of 2011. Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the emergency rule adopted at the February, April and June Regents meetings remains continuously in effect until the effective date of the permanent rule, and to also revise such emergency rule to conform to changes added by the permanent rule.

ATTACHMENT 4

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the March 14, 2012 State Register, the State Education Department received the following comments.

1. COMMENT:

Generally, the extent of the requirements contained in the regulations governing supervision of occupational therapy assistants will inhibit the hiring of individuals in these professions or cause lay-offs of these professionals. It was noted specifically that no other similarly educated professionals are required to have a written supervision plan, which is required by the proposed regulations.

DEPARTMENT RESPONSE:

The Department considers the supervision requirements in the proposed amendments appropriate to the circumstances of the profession of occupational therapy. The key element to the supervision of both holders of limited permits in occupational therapy and of occupational therapy assistants in the proposed regulations is the development of a supervision plan. The plan would be unique for each supervised professional and would be tailored to the ability and experience of that professional, to the setting where services are being provided, and to the complexity of the client needs. The Department believes that the supervision plan, if properly developed, will meet the supervision requirements for each individual, and will not be so burdensome as to cause a disruption in the workplace for these professionals.

The occupational therapy profession is unique in that once an evaluation of a client's needs is determined, and a treatment plan is developed, the therapeutic activities that ensue may be performed by an occupational therapist or an occupational

therapy assistant under supervision. Unlike other professions, there is generally no restriction on the therapeutic activities which may be performed by an occupational therapy assistant as long as they are within the scope of practice. Nor is there a requirement that a supervisor be in physical proximity to the occupational therapy assistant. Under these circumstances, the Department perceives a need for supervision requirements which are sufficient to protect the public, but are flexible enough to meet the needs of the profession.

2. COMMENT:

The requirements contained in the regulations governing supervision of holders of limited permits in occupational therapy are too restrictive and unnecessary, given the fact that such individuals have completed their education requirements, including clinical fieldwork. Some comments characterized these supervision requirements as equating holders of limited permits to occupational therapy assistants.

DEPARTMENT RESPONSE:

The Department has considered the comment, and agrees that the supervisor of a holder of a limited permit need not, in all instances, initiate, direct and participate in the initial evaluation of the client, nor in all instances, participate on a regular basis in the delivery of occupational therapy services. The extent of the supervisor's involvement in these activities may vary depending on the client needs and the experience and training of the holder of the limited permit. Therefore, we have revised the proposed regulation to provide that the extent of the involvement of the supervisor in these activities is to be addressed in the supervision plan.

3. COMMENT:

The requirement that the ratio of supervised holders of limited permits in occupational therapy and occupational therapy assistants to supervisors be five to one is arbitrary, and should be left to the discretion of the supervisor of these professionals.

DEPARTMENT RESPONSE:

Some reasonable limitation on the number of professionals one individual occupational therapist or physician may supervise is necessary, and a five to one ratio is considered appropriate by the Department. In discussions with interested parties before the promulgation of this regulation, a provision was developed and included in the proposed regulation which would provide for the supervision of the full-time equivalent of five individuals, to recognize a setting where part-time individuals are being supervised.

4. COMMENT:

The requirement that the supervisor consider the input of the holder of a limited permit in occupational therapy or occupational therapy assistant in developing a supervision plan is inappropriate and not consistent with the level of expertise and training of the supervising professionals.

DEPARTMENT RESPONSE:

The proposed regulation at section 76.8(c) requires that the determination of the level and type of supervision be based upon consultation with the supervised occupational therapy assistant. No similar requirement is found with regard to supervision of holders of limited permits in section 76.4(c). The Department recognizes that in many instances, an experienced occupational therapy assistant has been working with a given client population for a long time with positive results. It is appropriate for input to be provided by the supervised occupational therapy assistant so

that the level and type of supervision will not disrupt successful therapeutic relationships that are in place.

5. COMMENT:

The requirement that the supervision plan specify how professional development of a holder of a limited permit in occupational therapy or an occupational therapy assistant be fostered should not be included in regulation, as regulations should not force one professional to foster another.

DEPARTMENT RESPONSE:

The Department considers the professional development of licensed professionals to be a basic element of competent practice, and considers it appropriate, therefore, that the supervision plan address professional development.

6. COMMENT:

The provision in section 76.4(b) that would prohibit the renewal of a limited permit in occupational therapy for an individual who has failed the licensing examination should not be removed. This diminishes the public protection role of the State Board for Occupational Therapy.

DEPARTMENT RESPONSE:

This provision conforms the existing regulation to a change in statute.

7. COMMENT:

The proposed amendment to section 76.9 is appreciated, as it permits occupational therapy assistants to participate in the supervision of occupational therapy assistant students engaged in clinical practice, to the extent permitted by statute. Alternatively, one comment suggested that the amendment would prevent an occupational therapy assistant student from working with an occupational therapy assistant as a fieldwork educator.

DEPARTMENT RESPONSE:

Education Law section 7906(4) permits an occupational therapy student to engage in clinical practice, but only under the direct supervision of an occupational therapist. The Department is aware that accreditation standards applicable to this clinical practice authorize the use of occupational therapy assistants as fieldwork educators. The proposed regulation recognizes the role of such fieldwork educators to the extent permitted under existing law.