

(h) Form of an exemption certificate. An exemption certificate must be in substantially the form of a Texas Sales and Use Tax Exemption Certification, Form 01-339 (Back). Copies of the form may be obtained from the Comptroller of Public Accounts, Tax Policy Division or by calling 1-800-252-5555. The form is also available online at <https://comptroller.texas.gov/forms/01-339.pdf>.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2022.

TRD-202200550

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: April 3, 2022

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §362.1. Definitions. The amendments are proposed to clarify and cleanup the section and to replace the current definition of occupational therapy practice.

The amendments revise current definitions to increase clarity and uniformity, update and/or remove outdated and/or unnecessary definitions, and remove possible redundancy. For example, the definitions of occupational therapist registered and certified occupational therapy assistant will be removed as part of the amendments and related information will be collocated under the definitions of occupational therapist and occupational therapy assistant.

Changes will also revise the definition of non-licensed personnel, including to remove a reference to on-the-job training from the definition, particularly as the definition of an occupational therapy aide in Texas Occupations Code §454.002, Definitions, already includes such a reference.

The amendments include the replacement of the current definition of occupational therapy practice with an updated and expanded definition adapted from related information from the American Occupational Therapy Association (AOTA). The change will align the definition more closely with current language available on a national level.

The amendments also include the removal of information regarding phone numbers from the definition of a complete renewal. A related proposed amendment to Texas Administrative Code §369.2, Changes of Name or Address, which would add a requirement regarding notifying the Board of phone number

changes, has also been submitted for publication to the *Texas Register*.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup, clarification, and revision of existing occupational therapy regulations. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, these amendments do not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create new regulations;
- (6) the rules will repeal or limit existing regulations concerning certain definitions; the rules will expand existing regulations by replacing the current definition of occupational therapy practice with an expanded version;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

The agency has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.002, Definitions, §454.006, Practice of Occupational Therapy, and §454.213, Accepted Practice; Practitioner's Referral.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§362.1. Definitions.

The following words, terms, and phrases[;] when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

~~[(6) Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of~~

~~an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.]~~

~~[(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:]~~

~~[(A) A fine not to exceed \$4,000;]~~

~~[(B) Confinement in jail for a term not to exceed one year; or]~~

~~[(C) [Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).]~~

~~[(6) [(8)] Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (e.g. [i.e.], organizations, communities).~~

~~[(7) [(9)] Complete Application--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.~~

~~[(8) [(10)] Complete Renewal--Contains renewal fee, renewal form with continuing education submission form, home/work address(es) [and phone number(s)], jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.~~

~~[(9) [(11)] Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.~~

~~[(10) [(12)] Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.~~

~~[(11) [(13)] Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Occupational Therapy Practice Act[;] and who is applying for a Texas license for the first time.~~

~~[(12) [(14)] Evaluation--The process of planning, obtaining, documenting, and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.~~

~~[(13) [(15)] Examination--The Examination as provided for in §454.207 of the Occupational Therapy Practice Act (relating to License Examination). The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).~~

~~[(14) [(16)] Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.~~

~~[(15) [(17)] Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.~~

~~[(16) [(18)] Intervention--The process of planning and implementing specific strategies based on the plan of care, which includes the client's desired outcome and [;] evaluation data, and evidence[;] to effect change in the client's occupational performance leading to engagement in occupation to support participation.~~

(17) [(19)] Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees, applicants, and entities regulated by the Board.

(18) [(20)] Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.

(19) [(21)] Jurisprudence Examination--An examination covering information contained in the [Texas] Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book, online examination with multiple choice and/or true-false questions. The passing score is at least 70%.

(20) [(22)] License--Document issued by the Texas Board of Occupational Therapy Examiners that [which] authorizes the practice of occupational therapy in Texas.

(21) [(23)] Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post-surgical [post surgical] status. Synonymous with the term health care condition.

(22) [(24)] NBCOT--National Board for Certification in Occupational Therapy.

(23) [(25)] Non-Licensed Personnel--OT Aide [or OT Orderly] or other person not licensed by this board [Board] who provides support services to and requires supervision by occupational therapy practitioners [and whose activities require on-the-job training and supervision].

(24) [(26)] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions that [which] do not require the routine intervention of a physician.

(25) [(27)] Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life, and contributing to the social and economic fabric of their communities.

(26) [(28)] Occupational Therapist (OT)--An individual who holds a [valid regular or provisional] license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist [or one] who is designated as an Occupational Therapist, Registered (OTR®).

[(29)] Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.]

(27) [(30)] Occupational Therapy Assistant (OTA)-- An individual who holds a [valid regular or provisional] license to practice or represent self as an Occupational Therapy Assistant in Texas[,] and who is required to be under the general [continuing] supervision of an OT. This definition includes an Occupational Therapy Assistant [individual] who is designated as a Certified Occupational Therapy Assistant (COTA®) [or an Occupational Therapy Assistant (OTA)].

(28) [(31)] Occupational Therapy Plan of Care--A written statement of the planned course of occupational therapy [Occupational Therapy] intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(29) [(32)] Occupational Therapy Practice--The practice of occupational therapy includes the following components: [Includes:]

(A) Evaluation of factors affecting activities of daily living (ADLs), instrumental activities of daily living (IADLs), health management, rest and sleep, education, work, play, leisure, and social participation, including:

(i) Context (environmental and personal factors) and occupational and activity demands that affect performance.

(ii) Performance patterns, including habits, routines, roles, and rituals.

(iii) Performance skills, including motor skills (e.g., moving oneself or moving and interacting with objects), process skills (e.g., actions related to selecting, interacting with, and using tangible task objects), and social interaction skills (e.g., using verbal and non-verbal skills to communicate).

(iv) Client factors, including body functions (e.g., neuromuscular, sensory, visual, mental, psychosocial, cognitive, pain factors), body structures (e.g., cardiovascular, digestive, nervous, integumentary, genitourinary systems; structures related to movement), values, beliefs, and spirituality.

[(A) Methods or strategies selected to direct the process of interventions such as:]

[(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.]

[(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.]

[(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.]

[(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.]

[(v) Prevention of barriers to performance, including disability prevention.]

(B) Methods or approaches to identify and select interventions, such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed, is impaired, or is in decline.

(ii) Compensation, modification, or adaptation of occupations, activities, and contexts to improve or enhance performance.

(iii) Maintenance of capabilities to prevent decline in performance in everyday life occupations.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities and quality of life.

(v) Prevention of occurrence or emergence of barriers to performance and participation, including injury and disability prevention.

[(B) Evaluation of factors affecting activities of daily living (ADL); instrumental activities of daily living (IADL); education, work, play, leisure, and social participation, including:]

[(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).]

[(ii) Habits, routines, roles and behavior patterns.]

[(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.]

[(iv) Performance skills, including motor, process, and communication/interaction skills.]

(C) Interventions and procedures to promote or enhance safety and performance in ADLs, IADLs, health management, rest and sleep, education, work, play, leisure, and social participation, for example:

(i) Therapeutic use of occupations and activities.

(ii) Training in self-care, self-management, health management (e.g., medication management, health routines), home management, community and work integration, school activities and work performance.

(iii) Identification, development, remediation, or compensation of physical, neuromusculoskeletal, sensory-perceptual, emotional regulation, visual, mental, and cognitive functions; pain tolerance and management; praxis; developmental skills; and behavioral skills.

(iv) Education and training of persons, including family members, caregivers, groups, populations, and others.

(v) Care coordination, case management, and transition services.

(vi) Consultative services to persons, groups, populations, programs, organizations, and communities.

(vii) Virtual interventions.

(viii) Modification of contexts (environmental and personal factors in settings such as home, work, school, and community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting, and training in seating and positioning, assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility, including fitting and management of wheelchairs and other mobility devices.

(xi) Exercises, including tasks and methods to increase motion, strength, and endurance for occupational participation.

(xii) Remediation of and compensation for visual deficits, including low vision rehabilitation.

(xiii) Driver rehabilitation and community mobility.

(xiv) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xv) Application of physical agent and mechanical modalities and use of a range of specific therapeutic procedures (e.g., wound care management; techniques to enhance sensory, motor, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(xvi) Facilitating the occupational participation of persons, groups, or populations through modification of contexts (environmental and personal) and adaptation of processes.

(xvii) Efforts directed toward promoting occupational justice and empowering clients to seek and obtain resources to fully participate in their everyday life occupations.

(xviii) Group interventions (e.g., use of dynamics of group and social interaction to facilitate learning and skill acquisition across the life course).

[(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:]

[(i) Therapeutic use of occupations, exercises, and activities.]

[(ii) Training in self-care, self-management, home management and community/work reintegration.]

[(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.]

[(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.]

[(v) Education and training of individuals, including family members, caregivers, and others.]

[(vi) Care coordination, case management and transition services.]

[(vii) Consultative services to groups, programs, organizations, or communities.]

[(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.]

[(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.]

[(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.]

[(xi) Driver rehabilitation and community mobility.]

[(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.]

[(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.]

(30) [(33) Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this board [Board].

(31) [(34) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(32) [(35) Place(s) of Business--Any facility in which a licensee practices.

(33) [(36) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this board [Board] may practice occupational therapy in Texas, and the site of practice is the location

in Texas where the client is located at the time of the provision of services.

(34) [(37)] Rules--Refers to the TBOTE Rules.

(35) [(38)] Screening--A process used to determine a potential need for occupational therapy interventions[,] and educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(36) [(39)] Telehealth--A mode of service delivery for the provision of occupational therapy services delivered by an occupational therapy practitioner to a client at a different physical location using telecommunications or information technology. Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this board [Board] with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2022.

TRD-202200580

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 3, 2022

For further information, please call: (512) 305-6900



CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.2, §369.3

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §369.2, Changes of Name or Address, and §369.3, Use of Titles. The proposed amendments to §369.2 add a requirement to notify the Board of phone number changes and revise the rule title. The proposed amendments to §369.3 cleanup and clarify the section and add information regarding the use of the title doctor.

Amendments to §369.2, Changes of Name or Address, would require licensees to update the Board of phone number changes, and a related amendment would change the title of the section from "Changes of Name or Address" to a more comprehensive title, "Change of Name or Contact Information." Concomitant with such changes, a proposed amendment to 40 Texas Administrative Code §362.1, Definitions, has also been submitted to the *Texas Register* for publication and would remove information regarding phone numbers from the definition of a complete renewal.

Changes to §369.3 would clarify and cleanup current provisions regarding the use of titles to increase clarity and consistency in the section.

An additional change to the section is a reference to Occupational Therapy Practice Act §454.007, Use of Title of Doctor. The amendment provides that the use of the title doctor is governed by §454.007.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup, clarification, and increased uniformity of existing occupational therapy regulations. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, these amendments do not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new regulation in the Occupational Therapy Rules concerning the use of the title of doctor; however, they will not create a new requirement as the Occupational Therapy Practice Act already includes a regulation regarding such;
- (6) the rules will not repeal or limit an existing regulation; the rules will expand an existing regulation to add that licensees update the Board of phone number changes, though a related re-

quirement is currently included under the definition of a complete renewal in 40 Texas Administrative Code §362.1, Definitions;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

The agency has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.007, Use of Title of Doctor, and §454.201, License Required; Use of Title.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§369.2. *Changes of Name or Contact Information* [Address].

(a) A licensee or applicant shall notify the Board in writing of changes in name, phone number, business phone number, residential address, business address, mailing address, and/or email address within 30 days of such change(s). Applicants and temporary licensees, in addition, shall notify the Board in writing of changes of supervisor within 30 days of such change(s). A copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing a change in name must be submitted by the licensee or applicant with any written notification of a change in name. To request a replacement copy of the license to reflect a name change, refer to §369.1 of this title (relating to Display of Licenses).

(b) The address of record is the physical address that will be provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.

(c) Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to disciplinary action.

§369.3. *Use of Titles.*

(a) Licensed occupational therapists [A licensed occupational therapist] shall use the title occupational therapist or the abbreviation [initials] OT. Occupational Therapist, Registered is an alternate title for occupational therapist and OTR® is an alternate abbreviation [term] for OT if individuals [an individual] who are [is] licensed by this board take [takes] the responsibility for ensuring that they are [he or she is] qualified to use such [it] by maintaining certification through NBCOT.

(b) Licensed occupational therapy assistants [A licensed occupational therapy assistant] shall use the title occupational therapy assistant or the abbreviation [initials] OTA. Certified Occupational Therapy Assistant is an alternate title for occupational therapy assistant and COTA® is an alternate abbreviation [term] for OTA if individuals [an individual] who are [is] licensed by this board take [takes] the responsibility for ensuring that they are [he or she is] qualified to use such [it] by maintaining certification through NBCOT.

(c) No other titles or abbreviations [initials] are conferred for a license from this board.

(d) The use of the title doctor is governed by §454.007 of the Act (relating to Use of Title of Doctor).

~~[(d) Except when practicing as an occupational therapy practitioner in a higher education setting or when signing as an author for a publication, and that publication requires a recognized publication format, any letters designating other titles, academic degrees, or certifications must follow the initials OT or OTA (example John Doe, OT, CHT or Jane Doe, OTR, PhD).]~~

(e) The titles and abbreviations described by subsections (a) and (b) of this section must precede any other titles, abbreviations, academic degrees, or certifications (example: John Doe, OT, CHT or Jane Doe, OTR, PhD) with the following exception: if an occupational therapy practitioner is practicing in a higher education setting or is signing as an author for a publication that requires a recognized publication format, then the titles or abbreviations described by subsections (a) or (b) of this section may follow other titles, abbreviations, academic degrees, or certifications (Ex: John Doe, CHT, OT or Jane Doe, PhD, OTR).

(f) ~~[(e)]~~ Limitations. A person who does not hold a license to practice occupational therapy in Texas may not use any of the following terms in conjunction with the person's [their] business, work, or services:

(1) "occupational therapist," "licensed occupational therapist," "occupational therapist, registered";[s"]

(2) "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant";[s"]

(3) "OT," "OTR," "LOT," "OTR/L";[s"]

(4) "OTA," ["~~LOTA,~~"] "COTA," "LOTA," "COTA/L";[s"]

or

(5) any other words, letters, abbreviations, or insignia indicating or implying that the person [he or she] is an occupational therapist or an occupational therapy assistant.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2022.

TRD-202200581



CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.2

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §371.2, Retired Status. The changes are proposed to revise requirements concerning voluntary charity care.

The changes would remove the requirement that the voluntary charity care that licensees on retired status may offer may only be provided for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. The changes will expand the possible opportunities licensees on retired status have to offer voluntary charity care.

The changes also include a cleanup to the section to change "OT Practice Act" to "Occupational Therapy Practice Act" to achieve greater uniformity in the board rules.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the possible expansion of the opportunity for occupational therapy services and the cleanup of occupational therapy regulations. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed amendments and that the amendments do not restrict, limit, or impose a burden on an

owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the amendments do not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create new regulations in the Occupational Therapy Rules;
- (6) the rule will not expand or repeal existing regulations; the rule will limit existing regulations by removing the requirement that voluntary charity care may only be offered for certain organizations;
- (7) the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the rule will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rule is not subject to Texas Government Code §2001.0045 as the rule does not impose a cost on regulated persons. In addition, the rule does not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

The agency has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not a major environmental rule under Texas Government Code §2001.0225.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, and under Texas Occupations Code §112.051, Reduced License Requirements for Retired Health Care Practitioners Performing Charity Work, which requires each licensing entity to adopt rules providing for reduced fees and continuing education requirements for a retired

health care practitioner whose only practice is voluntary charity care.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by the amendments.

§371.2. Retired Status.

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "Voluntary charity care" means occupational therapy services provided as a volunteer with no compensation[, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety].

(2) "Compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year. The license may only be put on retired status at the time of renewal.

(c) Requirements for initial retired status are:

- (1) a completed retired status form;
 - (2) a passing score on the jurisprudence examination;
 - (3) completion of 6 hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter;
 - (4) the retired status fee and any late fees that may be due;
- and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

- (1) a completed retired status form;
- (2) a passing score on the jurisprudence examination;
- (3) the retired status fee and any late fees that may be due;
- (4) completion of 6 hours of continuing education each license renewal period as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter; and
- (5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the active status renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal) and 18 additional hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education). A licensee who has been on retired status for one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License).

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the Occupational Therapy [OT] Practice Act.

(i) The retired status fees and any late fees as set by the Executive Council are nonrefundable.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2022.

TRD-202200582

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 3, 2022

For further information, please call: (512) 305-6900



CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §372.1, Provision of Services. The changes are proposed to cleanup and clarify the section and revise requirements regarding the provision of occupational therapy services, including services delivered via telehealth.

Changes to the section include those that would clarify requirements concerning the provision of occupational therapy services. For example, a provision would be added that would clarify that the occupational therapist is responsible for determining whether an evaluation is needed and if a referral is required for an occupational therapy evaluation.

The changes are also proposed to clarify provisions regarding telehealth and the required client contact with an occupational therapy practitioner. For example, the amendments would clarify that when such contact may be in person or via telehealth, a combination of in-person contact and telehealth may be used.

The changes would also revise requirements concerning the contact required for an intervention session and would allow for such contact to also be satisfied by synchronous audio contact, provided that the occupational therapy practitioner makes use of store-and-forward technology in preparation for or during the intervention session. The changes include adding a definition of store-and-forward technology.

In addition, the amendments include the removal of a provision that requires the on-site presence of the occupational therapy practitioner for the initial application of devices that are in sustained skin contact with the client. The change may facilitate the possible expansion of occupational therapy services for consumers and allow for the occupational therapy practitioner, as applicable, to make determinations regarding the initial applications of such devices in compliance with further sections of the Occupational Therapy Practice Act and Board Rules, including Texas Administrative Code §373.1, Supervision of Non-Licensed Personnel, proposed changes concerning which, including concerning the initial application of adaptive/assistive equipment and splints, have also been submitted for publication to the *Texas Register*.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup and clarification of existing occupational therapy regulations and the possible expansion of the opportunity for

occupational therapy services. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, these amendments do not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create new regulations in the Occupational Therapy Rules;
- (6) the rules will repeal in the section an existing regulation concerning the initial application of certain devices; the rules will expand existing regulations concerning the method of contact for an intervention session; the rules will not limit an existing regulation;
- (7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

The agency has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordina-

tor, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.006, Practice of Occupational Therapy, and §454.213, Accepted Practice; Practitioner's Referral.

CROSS REFERENCE TO STATUTE

Proposed amendments to §372.1(e) and §372.1(f) implement Texas Occupations Code §111.007, Standard of Care for Telemedicine Medical Services, Teledentistry Dental Services, and Telehealth Services, which addresses the provision of health care services via telehealth.

§372.1. Provision of Services.

(a) Medical Conditions.

(1) Occupational therapists may evaluate the client to determine the need for occupational therapy services without a referral. However, a referral must be requested at any time during the evaluation process when necessary to ensure the safety and welfare of the client.

(2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(b) Non-Medical Conditions. The evaluation or intervention for a non-medical condition does not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.

(c) Methods of Referral[Plan of Care documentation]. The referral [~~or signed plan of care~~] must be from a licensed referral source in accordance with the Occupational Therapy Practice Act[,] §454.213 (relating to Accepted Practice; Practitioner's Referral)[,] and may be transmitted in the following ways:

(1) by a written document, including paper or electronic information/communications technologies;

(2) verbally, either in person or by electronic information/communications technologies. If a referral is transmitted verbally, it must be documented by the authorized personnel who receives the referral. In this subsection, [~~section~~] "authorized personnel" means staff members authorized by the employer or occupational therapist to receive referrals transmitted verbally; or

(3) by an occupational therapy plan of care, developed according to the requirements of this section, that is signed by the licensed referral source.

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner without a referral.

(e) Evaluation.

(1) The occupational therapist is responsible for determining whether an evaluation is needed and if a referral is required for an occupational therapy evaluation.

(2) [(4)] Only an occupational therapist may perform an initial evaluation or any re-evaluations.

(3) [(2)] An occupational therapy plan of care must be based on an occupational therapy evaluation.

(4) [(3)] The occupational therapist is responsible for determining whether any aspect of the evaluation may be conducted via telehealth or must be conducted in person.

[(4) ~~The occupational therapist must have contact with the client during the evaluation via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.~~]

(5) The occupational therapist must have contact with the client during the evaluation. The contact must be synchronous audio and synchronous visual contact that is in person, via telehealth, or via a combination of in-person contact and telehealth. Other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.

(6) [(5)] The occupational therapist may delegate to an occupational therapy assistant the collection of data for the evaluation. The occupational therapist is responsible for the accuracy of the data collected by the occupational therapy assistant.

(f) Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify, or complete an occupational therapy plan of care. It is a violation of the Occupational Therapy [OT] Practice Act for anyone other than the occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client should be discharged, or any other aspect of the provision of occupational therapy as set out in the Occupational Therapy Practice [OT] Act and Rules.

(2) Modifications to the plan of care must be documented.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) Except where otherwise restricted by rule, the occupational therapy practitioner is responsible for determining whether any aspect of the intervention session may be conducted via telehealth or must be conducted in person.

(8) The occupational therapy practitioner must have contact with the client during the intervention session.

(A) The contact must be either:

(i) synchronous audio and synchronous visual contact that is in person, via telehealth, or via a combination of in-person contact and telehealth; or

(ii) synchronous audio contact, provided that the occupational therapy practitioner makes use of store-and-forward tech-

nology in preparation for or during the intervention session. The synchronous audio contact may be in person and/or via telehealth. In this subsection, "store-and-forward technology" means technology that stores and transmits or grants access to a client's clinical information for review by an occupational therapy practitioner at a different physical location than the client.

(B) Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.

{(8) The occupational therapy practitioners must have contact with the client during the intervention session via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.}

{(9) Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, or therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.}

(9) [(40)] Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant tasks that they both agree are within the competency level of that occupational therapy assistant.

(g) Documentation.

(1) The client's records include the medical referral, if required; the initial evaluation; the plan of care, including ~~[; and the plan of care. The plan of care includes the initial evaluation;]~~ the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and any re-evaluations, if required; any patient related documents; and the discharge or discontinuation of occupational therapy services documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and ~~[and/or]~~ modalities provided.

(3) In each intervention note, the occupational therapy assistant must include the name of an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. The occupational therapist in the intervention note may be different from the occupational therapist who wrote the plan of care. The occupational therapy assistant may not provide services unless this requirement is met.

(h) Discharge or Discontinuation of Occupational Therapy Services.

(1) Only an occupational therapist has the authority to discharge clients from occupational therapy services. The discharge or discontinuation of occupational therapy services is based on whether the client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must complete and sign the discharge documentation, including reviewing any information from the occupational therapy assistant(s); determining if goals were met or not; and making recommendations for any further needs of the client in another continuum of care, should such further needs exist.

{(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge or discontinuation of occupational therapy services documentation, and/or make recommendations for any further needs of the client in another continuum of care.}

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2022.

TRD-202200583

Ralph A. Harper
Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 3, 2022

For further information, please call: (512) 305-6900



CHAPTER 373. SUPERVISION

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §373.1, Supervision of Non-Licensed Personnel. The proposed changes cleanup and clarify the section and revise requirements concerning the supervision required for the delegation of certain tasks to non-licensed personnel.

The section currently includes a list of tasks that an occupational therapy practitioner may delegate to non-licensed personnel. Changes to the section would remove general items that are not specific to occupational therapy practice. Such items concern routine department maintenance, transportation of clients, preparation or set up of intervention equipment and work area, and assisting clients with their personal needs during the intervention.

The changes would also include the removal of a provision that requires the on-site presence of the occupational therapy practitioner for the initial application of adaptive/assistive equipment and splints. The change will enable services to be provided via telehealth, make occupational therapy services more accessible for consumers, and allow the occupational therapy practitioner to determine when on-site supervision is necessary.

A proposed change to 40 Texas Administrative Code §372.1, Provision of Services, regarding removing a requirement concerning the on-site presence of the occupational therapy practitioner for the initial application of devices that are in sustained skin contact with the client, has also been submitted for publication to the *Texas Register*.

The section also includes a change to add the clarifying phrase "of the services provided" with regard to the requirement as per subsection (c) of the section that "Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight."

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state

or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup and clarification of existing occupational therapy regulations and the possible expansion of the opportunity for occupational therapy services. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, these amendments do not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create new regulations in the Occupational Therapy Rules;
- (6) the rules will repeal existing regulations concerning certain tasks that require the supervision of an occupational therapy practitioner and will limit existing regulations concerning the supervision required for the initial application of certain devices; the rules will not expand an existing regulation;
- (7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

The agency has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.002, Definitions.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§373.1. *Supervision of Non-Licensed Personnel.*

(a) Occupational Therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-licensed personnel must be under the supervision of an occupational therapy practitioner.

(b) Supervision in this section for occupational therapy aides as defined by the Occupational Therapy Practice Act[;] §454.002 (relating to Definitions)[;] is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client.

(c) Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight of the services provided.

(d) When occupational therapy practitioners delegate occupational therapy tasks to non-licensed personnel, the occupational therapy practitioners are responsible for ensuring that this person is adequately trained in the tasks delegated.

(e) The occupational therapy practitioners providing the intervention must interact with the client regarding the client's condition, progress, and/or achievement of goals during each intervention session.

(f) Delegation of tasks to non-licensed personnel includes, but is not limited to:

{(1) ~~routine department maintenance;~~ }

{(2) ~~transportation of clients;~~}

{(3) preparation or set up of intervention equipment and work area;}

{(4) assisting clients with their personal needs during the intervention;}

(1) [(5)] assisting in the construction of adaptive/assistive equipment and splints. The licensee must be [on-site and] attending for any initial applications to the client. When telehealth may be used for the supervision of non-licensed personnel as described in this section, the licensee may attend via telehealth, provided the licensee maintains line of sight of the services provided;

(2) [(6)] carrying out a predetermined segment or task in the client's care for which the client has demonstrated some previous performance ability in executing the task.

(g) The Non-Licensed Personnel may not:

(1) perform occupational therapy evaluative procedures;

(2) initiate, plan, adjust, or modify occupational therapy procedures;

(3) act on behalf of the occupational therapist in any matter relating to occupational therapy that [which] requires decision making or professional judgments;

(4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising occupational therapy practitioner. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising occupational therapy practitioner.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2022.

TRD-202200584

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 3, 2022

For further information, please call: (512) 305-6900

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