

**PROPOSED REGULATION OF THE
BOARD OF OCCUPATIONAL THERAPY**

LCB File No. R001-21

July 20, 2021

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-4, 6 and 8-11, NRS 640A.110; § 5, NRS 640A.110 and 640A.180; § 7, NRS 640A.110, 640A.180 and 640A.190.

A REGULATION relating to occupational therapy; setting forth certain requirements relating to treating occupational therapists; setting forth certain requirements for the provision of occupational therapy services by telehealth; requiring certain licensees to take certain measures to avoid actual or perceived conflicts of interest; revising provisions relating to inactive licenses; setting forth certain requirements for the verification of a license by the Board of Occupational Therapy; establishing different fees for the renewal and conversion of an inactive license depending on whether the holder of the inactive license is retired from the practice of occupational therapy; revising provisions relating to the delegation of duties to and the supervision of occupational therapy assistants and provisional licensees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Board of Occupational Therapy to regulate the practice of occupational therapy in this State. (NRS 640A.110) Existing regulations designate a licensed occupational therapist who is responsible for the program of treatment of a patient as a “treating occupational therapist.” (NAC 640A.018) **Section 2** of this regulation provides that an occupational therapist who is the treating occupational therapist of record for a patient remains the treating occupational therapist of record for the patient until the responsibility for the program of treatment for the patient is reassigned to another occupational therapist. **Section 2** requires such a reassignment to be noted in the record of the patient.

Existing law requires the Board to adopt regulations establishing standards of practice for persons licensed by the Board. (NRS 640A.110) **Section 3** of this regulation authorizes a person licensed by the Board to provide occupational therapy services by “telehealth,” which **section 3** defines as the delivery of occupational therapy services to a patient at a different location by using equipment that transfers information electronically, telephonically or by other audio-visual communications technology. **Section 3** sets forth certain requirements for the provision of occupational therapy services by telehealth.

Existing law prohibits, with certain exceptions, a person from practicing occupational therapy in this State unless he or she holds a current license issued by the Board. (NRS 640A.230) Existing law authorizes the Board to take certain actions against a person who

engages in the practice of occupational therapy without a current license. (NRS 640A.230, 640A.250) **Section 3** prohibits a person who is required to be licensed by the Board to engage in the practice of occupational therapy from providing occupational therapy services by telehealth unless the person holds the appropriate license issued by the Board.

Section 4 of this regulation requires a person licensed by the Board to avoid any actual or perceived conflicts of interest under certain circumstances. **Section 4** requires certain persons licensed by the Board to maintain certain documentation demonstrating the measures that were taken to avoid such conflicts of interest.

Existing law authorizes the Board to place the license of a person on inactive status under certain circumstances. (NRS 640A.180) Existing regulations set forth certain requirements for the conversion of a standard license to an inactive license. (NAC 640A.068) **Section 5** of this regulation requires a person who wishes to convert his or her standard license to an inactive license to indicate to the Board whether the person is retired from the practice of occupational therapy. **Section 7** of this regulation establishes different fees for the renewal of an inactive license and the conversion of an inactive license to a standard license based upon whether the holder of the inactive license is retired. **Section 5** also eliminates a requirement that a person with an inactive license comply with the same requirements for continuing education as a person who holds a standard license. Instead, **section 5** requires the holder of an inactive license who wishes to convert the license to a standard license to comply with certain requirements for continuing education.

Existing regulations authorize a person who holds a license issued by the Board to request that the Board provide to another organization or state a verification of his or her license. (NAC 640A.135) **Section 6** of this regulation requires such a verification to be in writing and sets forth certain requirements for the contents of such a verification.

Existing regulations prohibit an occupational therapy assistant or a provisional licensee from practicing occupational therapy without the general supervision of an occupational therapist. (NAC 640A.250) **Sections 8-10** of this regulation revise certain requirements relating to the supervision of an occupational therapy assistant or provisional licensee by an occupational therapist.

Existing regulations set forth certain requirements and restrictions regarding the delegation of duties by a treating occupational therapist to an occupational therapy assistant or provisional licensee. (NAC 640A.250, 640A.255, 640A.265) **Section 9** of this regulation provides that a treating occupational therapist is responsible for all occupational therapy services provided by an occupational therapy assistant or provisional licensee to whom he or she has delegated duties. Existing regulations set forth certain activities that an occupational therapist is prohibited from delegating to an occupational therapy assistant. (NAC 640A.265) **Section 10** of this regulation prohibits an occupational therapist from engaging in certain additional activities. Additionally, **section 10** requires an occupational therapy assistant or provisional licensee to notify the treating occupational therapist of and document certain changes to the condition of a patient. **Section 11** of this regulation makes a conforming change to account for the revisions set forth in **section 10**.

Section 1. Chapter 640A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *An occupational therapist who is the treating occupational therapist of record for a patient remains the treating occupational therapist of record for the patient until the responsibility for the program of treatment for the patient is reassigned to another occupational therapist. After such a reassignment, the occupational therapist to whom the responsibility for the program of treatment for the patient is reassigned shall be the treating occupational therapist of record for the patient.*

2. *A reassignment of the responsibility for the program of treatment for a patient from the treating occupational therapist of record to another occupational therapist must be noted in the record of the patient.*

3. *Temporary or intermittent services provided to a patient by an occupational therapist who is not the treating occupational therapist of record for the patient and which are consistent with the program of intervention of the patient do not constitute a reassignment of the responsibility for the treatment of the patient for the purposes of this section.*

Sec. 3. 1. *A licensee may provide occupational therapy services by telehealth in accordance with the provisions of this section.*

2. *A licensee who provides occupational therapy services by telehealth shall:*

(a) Be knowledgeable and competent in the technology used to provide occupational therapy services by telehealth;

(b) Provide only such occupational therapy services by telehealth for which the provision by telehealth is appropriate;

(c) Ensure that occupational therapy services provided by telehealth observe the same standard of care as those provided in person;

(d) Document any occupational therapy services provided by telehealth in the record of the patient receiving the services;

(e) Comply with the requirements set forth in subsection 2 of NAC 640A.250;

(f) Comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, in the provision of occupational therapy services by telehealth; and

(g) Obtain the consent of the patient to receive occupational therapy services by telehealth before the provision of such services and document such consent.

3. A licensee may provide occupational therapy services by telehealth:

(a) Synchronously using interactive technologies which provide for communications in real time; or

(b) Asynchronously using technologies which provide for the storing and forwarding of information.

4. A person who is required to be licensed by the Board to practice occupational therapy pursuant to chapter 640A of NRS shall not provide occupational therapy services by telehealth to a patient who is physically located in this State unless the person holds the appropriate license to provide such services issued by the Board.

5. As used in this section, “telehealth” means the delivery of occupational therapy services to a patient at a different location by using equipment that transfers information electronically, telephonically or by other audio-visual communications technology.

Sec. 4. 1. *A licensee shall avoid any actual or perceived conflict of interest where the licensee:*

(a) Holds a management position at a business at which he or she also provides occupational therapy services; or

(b) Is the spouse or the parent or child, by blood, marriage or adoption, of:

(1) The owner or manager of a business at which the licensee provides occupational therapy services; or

(2) The immediate supervisor of the licensee who is also a licensee.

2. A licensee described in subsection 1 shall maintain documentation demonstrating the measures that he or she has taken to avoid actual or perceived conflicts of interests, including, without limitation, measures taken to avoid actual or perceived conflicts of interest in satisfying the requirements for supervision set forth in NAC 640A.250.

3. For the purposes of paragraph (a) of subsection 1, a licensee holds a management position at a business if the licensee has control or influence over the hiring, firing or scheduling of employees of the business.

Sec. 5. NAC 640A.068 is hereby amended to read as follows:

640A.068 1. In addition to the requirements set forth in NAC 640A.030, to convert a standard license to an inactive license:

(a) The license must not be suspended, revoked or otherwise restricted at the time of the request; and

(b) The person must complete a form to be provided by the Board indicating ~~that~~ :

(1) That he or she no longer practices or represents to others that he or she is authorized to practice occupational therapy in this State ~~+~~ ; *and*

(2) Whether the person is retired from the practice of occupational therapy.

2. ~~A person with an inactive license must comply with the same requirements for continuing education as a person who holds a standard license.~~

~~3.~~ To renew an inactive license, a person must meet the requirements of NAC 640A.030.

~~14.1~~ 3. The holder of an inactive license may request that the license be converted to a standard license.

~~15.1~~ 4. In addition to the requirements set forth in NAC 640A.030, to convert an inactive license to a standard license, a person must:

(a) Make a written request to the Board; ~~and~~

(b) For an occupational therapy assistant, submit proof of employment and supervision by a primary supervisor upon conversion of the license ~~1.1~~; *and*

(c) Provide proof of the completion of 24 hours of continuing education within the 2-year period immediately preceding the request for the conversion of the license.

Sec. 6. NAC 640A.135 is hereby amended to read as follows:

640A.135 1. A person may request that *a written* verification of his or her license be provided to another organization or state by submitting to the Board:

~~11.1~~ (a) A written request; and

~~12.1~~ (b) Payment of the appropriate fee.

2. *A written verification of the license of a person must include, without limitation:*

(a) The name of the licensee;

(b) The professional title of the licensee;

(c) The license number of the license;

(d) Whether the licensee is in good standing; and

(e) Whether any disciplinary action is pending or has been taken against the licensee.

3. *For the purposes of this section, a licensee is in good standing if the licensee:*

(a) Has substantially complied with the laws and regulations governing the practice of occupational therapy in this State, including, without limitation, NAC 640A.070, 640A.120 and 640A.260 and section 1 of LCB File No. R105-19; or

(b) Has been subject to disciplinary action and:

(1) The disciplinary action did not result in a suspension or revocation of the license of the licensee; and

(2) The licensee has successfully completed or is adhering to any terms and conditions imposed by the Board as a result of the disciplinary action.

Sec. 7. NAC 640A.160 is hereby amended to read as follows:

640A.160 1. Except as otherwise provided in subsection 2, the Board will charge and collect the following fees:

(a) For an occupational therapist:

(1) Initial standard license	\$250
(2) Biennial renewal of a standard license	250
(3) A temporary or provisional license	150
(4) Renewal of a temporary or provisional license	100
(5) Convert a temporary or provisional license to a standard license	100
(6) Reinstatement of an expired license	250
(7) Biennial renewal of an inactive license <i>for an occupational therapist who is not retired</i>	150
(8) <i>Biennial renewal of an inactive license for an occupational therapist who is retired</i>	50

(9) Convert an inactive license <i>for an occupational therapist who is not retired</i> to a standard license	100
(10) <i>Convert an inactive license for an occupational therapist who is retired to a standard license</i>	250
(b) For an occupational therapy assistant:	
(1) Initial standard license	\$175
(2) Biennial renewal of a standard license	175
(3) A temporary or provisional license	100
(4) Renewal of a temporary or provisional license	75
(5) Convert a temporary or provisional license to a standard license	75
(6) Reinstatement of an expired license	175
(7) Biennial renewal of an inactive license <i>for an occupational therapy assistant who is not retired</i>	125
(8) <i>Biennial renewal of an inactive license for an occupational therapy assistant who is retired</i>	50
(9) Convert an inactive license <i>for an occupational therapy assistant who is not retired</i> to a standard license	175 50
(10) <i>Convert an inactive license for an occupational therapy assistant who is retired to a standard license</i>	175
(c) General:	
(1) Processing of an initial license application.....	\$150
(2) Late fee for renewal of a license.....	125
(3) Verification of a license.....	25

(4) Returned payment processing..... 25

2. If an applicant for an initial license as an occupational therapist or occupational therapy assistant is an active member of, or the spouse of an active member of, the Armed Forces of the United States, a veteran or the surviving spouse of a veteran, the Board will charge a fee of \$75 for the processing of an initial license application and one-half of the fee set forth in subsection 1 for an initial license of any type.

Sec. 8. NAC 640A.250 is hereby amended to read as follows:

640A.250 1. An occupational therapy assistant or a provisional licensee shall not practice occupational therapy without the general supervision of an occupational therapist. Immediate physical presence or constant presence on the premises where the occupational therapy assistant or provisional licensee is practicing is not required of the occupational therapist. To provide satisfactory general supervision, the treating occupational therapist shall:

(a) Provide an initial program of intervention, and any subsequent changes to the initial program, for patients assigned to the occupational therapy assistant or provisional licensee.

(b) Not less than 1 hour for each 40 hours of work performed by the occupational therapy assistant or provisional licensee and, in any event, not less than 1 hour each month, engage in:

(1) Clinical observation of the occupational therapy assistant or provisional licensee; or

(2) Direct communication with the occupational therapy assistant or provisional licensee.

The mode and frequency of that communication is dependent upon the setting for the practice of the occupational therapy assistant or provisional licensee. Direct communication may consist of, without limitation:

(I) Direct or joint treatment of a patient;

(II) Personal supervision of the occupational therapy assistant or provisional licensee while providing services;

(III) Conversation, in person or by telephone;

(IV) Exchange of written comments;

(V) Review of patient records; ~~for~~

(VI) Conferences, or other face-to-face meetings ~~+~~ ; *or*

(VII) Communications conducted using audio-video communications technology.

(c) Establish the patient workload of the occupational therapy assistant or provisional licensee based on the competency of the occupational therapy assistant or provisional licensee as determined by the occupational therapist.

(d) Review written documentation prepared by the occupational therapy assistant or provisional licensee during the course of treatment of a patient. The completion of this review by the occupational therapist may be evidenced by:

(1) Preparation of a separate progress note; or

(2) The occupational therapist signing and dating the document prepared by the occupational therapy assistant or provisional licensee.

2. The treating occupational therapist and the occupational therapy assistant or provisional licensee shall jointly:

(a) Document, in a manner other than the mere signing of service records prepared by another person, the supervision required pursuant to this section . ~~by preparing,~~ ***Such documentation may include,*** without limitation ~~+~~ , ***the preparation of:***

(1) Daily or weekly treatment or intervention schedules;

(2) Logs of supervision, which ~~must~~ include, without limitation, the time and date of supervision, the type of supervision provided and the subject matter covered during the supervision; and

(3) Patient records.

(b) Ensure that the record regarding a patient treated by the occupational therapy assistant or provisional licensee is signed, dated and reviewed at least monthly by the occupational therapy assistant or provisional licensee and the occupational therapist. In reviewing the record, the occupational therapist and the occupational therapy assistant or provisional licensee shall verify, without limitation:

(1) The accuracy of the record; and

(2) That there is continuity in the services received by the patient pursuant to the program of intervention.

3. An occupational therapy assistant or provisional licensee may assist an occupational therapist in:

(a) Preparing and disseminating any written or oral reports, including, without limitation, the final evaluation and discharge summary of a patient;

(b) Unless the treatment is terminated by a patient or his or her provider of health care, determining when to terminate treatment; and

(c) Delegating duties to an occupational therapy aide or technician.

4. An occupational therapy assistant or provisional licensee shall document all treatment provided to a patient by the occupational therapy assistant or provisional licensee.

5. An occupational therapist shall not delegate responsibilities to an occupational therapy assistant or provisional licensee which are beyond the scope of the training of the occupational therapy assistant or provisional licensee.

6. The provisions of this section do not prohibit an occupational therapy assistant or provisional licensee from responding to acute changes in a patient's condition that warrant immediate assistance or treatment.

7. As used in this section, "sign" means to inscribe by handwriting or electronic means one's name, initials or license number.

Sec. 9. NAC 640A.255 is hereby amended to read as follows:

640A.255 1. A primary supervisor of an occupational therapy assistant or a provisional licensee shall review ~~and approve monthly supervisory logs~~ *documentation* maintained by both the treating occupational therapist and the occupational therapy assistant or provisional licensee ~~+~~ *pursuant to NAC 640A.250 to ensure that such documentation satisfies the requirements of that section.*

2. A treating occupational therapist shall provide general supervision, as described in NAC 640A.250, to an occupational therapy assistant or provisional licensee to whom he or she delegated duties for the provision of care to a patient.

3. A treating occupational therapist is responsible for all occupational therapy services provided by an occupational therapy assistant or provisional licensee to whom he or she delegates duties for the provision of care to a patient.

Sec. 10. NAC 640A.265 is hereby amended to read as follows:

640A.265 1. A treating occupational therapist shall *provide direction to and* supervise any program of intervention which is delegated to an occupational therapy assistant or provisional

licensee **H** *and shall ensure that the occupational therapy assistant or provisional licensee does not function autonomously.*

2. Only an occupational therapist may:

(a) Interpret the record of a patient who is referred to the occupational therapist by a provider of health care;

(b) Interpret the evaluation of a patient and identify any problem of the patient;

(c) Develop a plan of care for a patient based upon the initial evaluation of the patient, which includes the goal of the treatment of the patient;

(d) Determine the appropriate portion of the program of intervention and evaluation to be delegated to an occupational therapy assistant;

(e) Delegate the treatment to be administered by the occupational therapy assistant;

(f) Instruct the occupational therapy assistant regarding:

(1) The specific program of intervention of a patient;

(2) Any precaution to be taken to protect a patient;

(3) Any special problem of a patient;

(4) Any procedure which should not be administered to a patient; and

(5) Any other information required to treat a patient;

(g) Review the program of intervention of a patient in a timely manner;

(h) Record the goal of treatment of a patient; and

(i) Revise the plan of care when indicated.

3. A treating occupational therapist may delegate to an occupational therapist who holds a provisional license any of the activities identified in subsection 2.

4. *An occupational therapy assistant shall not:*

(a) Write formal evaluations of the progress of a patient to another health care professional. For the purposes of this paragraph, daily chart notes in the records of a patient does not constitute a formal evaluation of the progress of the patient.

(b) Participate in any meeting with a patient or a health care professional, including, without limitation, a meeting in an educational setting, at which:

(1) The occupational therapy assistant is the sole licensee; and

(2) The program of intervention of a patient may be modified.

(c) Make clinical decisions regarding the provision of occupational therapy services to a patient that conflict with or overrule the decisions of an occupational therapist.

5. An occupational therapy assistant or provisional licensee shall notify the treating occupational therapist of record for a patient and document in the records of the patient any change in the:

(a) General condition of the patient; and

(b) Condition of a patient that is not within the planned progress or treatment goals of the patient.

6. A treating occupational therapist of record for a patient shall continuously follow the progress of the patient.

7. Except as otherwise provided in NAC 640A.267, a licensee shall not knowingly delegate to a person who is less qualified than the licensee any program of intervention which requires the skill, common knowledge and judgment of the licensee.

8. As used in this section, "health care professional" has the meaning ascribed to it in NRS 629.076, as amended by section 15 of Senate Bill No. 137, chapter 289, Statutes of Nevada 2021, at page 1595.

Sec. 11. NAC 640A.270 is hereby amended to read as follows:

640A.270 1. A person may assist a licensed occupational therapist or occupational therapy assistant as an occupational therapy aide or technician. Such an occupational therapy aide or technician is not required to be licensed pursuant to the provisions of chapter 640A of NRS or possess the professional or advanced training in basic anatomical, biological, psychological or social sciences which are required for the practice of occupational therapy.

2. Except as otherwise provided in subsection 3, a licensed occupational therapist or occupational therapy assistant may delegate duties to an occupational therapy aide or technician if he or she determines, before delegating a duty, that the aide or technician possesses the necessary knowledge, competence, training and skills to perform the duty. The duties which may be delegated to an occupational therapy aide or technician include, but are not limited to, the:

- (a) Routine maintenance of a department;
- (b) Transportation of a patient;
- (c) Preparation of a work area for a therapy session with a patient;
- (d) Preparation of treatment equipment for a therapy session with a patient;
- (e) Attendance to the personal needs of a patient during treatment;
- (f) Assistance in the construction of adaptive equipment and splints;
- (g) Performance of clerical, secretarial and administrative duties; and
- (h) Monitoring a patient for safety purposes while the patient is performing an activity,

including, without limitation, the practice of repetitive skills.

3. A licensed occupational therapist or occupational therapy assistant may not delegate a duty to an occupational therapy aide or technician if the duty requires the aide or technician to

perform treatments or make independent evaluations, assessments or recommendations. The duties which may not be delegated to an aide or technician include, but are not limited to, the:

- (a) Interpretation of the record of a patient referred to an occupational therapist;
- (b) Interpretation of prescriptions for a patient;
- (c) Development, planning, adjustment or modification of procedures for the treatment of a patient;
- (d) Recordation of the treatment or progress of a patient;
- (e) Duties described in subsection ~~4~~ 7 of NAC 640A.265;
- (f) Performance of any duty which requires the aide or technician to act independently or without the supervision of a licensed occupational therapist or occupational therapy assistant during a therapy session with a patient; and
- (g) Performance of any treatments or procedures requiring professional training in occupational therapy.

4. An occupational therapist or occupational therapy assistant who delegates a duty to an aide or technician:

- (a) Shall directly supervise the aide or technician in accordance with the provisions of NAC 640A.275;
- (b) Is professionally responsible for the duty performed by the aide or technician; and
- (c) Shall note in the record of a patient any duties performed by the aide or technician.