

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

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

### 76.4 Limited Permits.

(a) ...

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

### (c) Supervision.

(1) A written supervision plan, acceptable to the occupational therapist or licensed physician providing direction and supervision, shall be required for each permittee providing services pursuant to section 7905 of the Education Law. The written supervision plan shall specify the names, professions and other credentials of the persons participating in the supervisory process, the frequency of formal supervisory contacts; the methods (e.g. in-person, by telephone) and types (e.g. review of charts, discussion with permittee) of supervision; the content areas to be addressed; how written treatment notes and reports will be reviewed, including, but not limited to, whether such notes and reports will be initialed or co-signed by the supervisor; and how professional development will be fostered.

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

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

(4) Direct supervision shall mean that the supervisor:

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

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

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

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

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

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

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

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

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

(a) An "occupational therapy assistant" shall mean a person authorized in accordance with this Part who provides occupational therapy services under the direction and supervision of an occupational therapist or licensed physician and performs client related activities assigned by the supervising occupational therapist or licensed physician. Only a person authorized under this Part shall participate in the practice of occupational therapy as an occupational therapy assistant, and only a person authorized under this Part shall use the title "occupational therapy assistant."

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

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

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

(3) the utilization of a program of purposeful activities, a treatment program, and/or consultation with the client, family, caregiver, or other health care or education providers, in

keeping with the treatment plan and under the direction of the supervising occupational therapist or licensed physician;

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

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

#### 76.7 Requirements for authorization as an occupational therapy assistant.

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

(a) file an application with the Department;

(b) have received an education as follows:

(1) completion of a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department; or

(2) completion of a postsecondary program in occupational therapy satisfactory to the Department and of at least two years duration;

(c) have a minimum of three months clinical experience satisfactory to the state board for occupational therapy and in accordance with standards established by a national accreditation agency which is satisfactory to the Department;

(d) be at least eighteen years of age;

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

(f) register triennially with the Department in accordance with the provisions of subdivision (h) of this section, sections 6502 and 7906(8) of the Education Law, and sections 59.7 and 59.8 of this Subchapter;

(g) pay a fee for an initial license and a fee for each triennial registration period that shall be one half of the fee for initial license and for each triennial registration period established in Education law for occupational therapists; and

(h) except as otherwise provided by Education Law section 7907(2), pass an examination acceptable to the Department.

#### 76.8 Supervision of occupational therapy assistant.

(a) A written supervision plan, acceptable to the occupational therapist or licensed physician providing direction and supervision, shall be required for each occupational therapy assistant providing services pursuant to section 7906(7) of the Education Law. The written supervision plan shall specify the names, professions and other credentials of the persons participating in the supervisory process, the frequency of formal supervisory contacts, the methods (e.g. in-person, by telephone) and types (e.g. review of charts, discussion with occupational therapy assistant) of supervision, the content areas to be addressed, how written treatment notes and reports will be reviewed, including, but not limited to, whether such notes and reports will be initialed or co-signed by the supervisor, and how professional development will be fostered.

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

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

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

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

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

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

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

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

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

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

76.9 Occupational therapy assistant student exemption. To be permitted to practice as an exempt person pursuant to section 7906(4) of the Education Law, an occupational therapy assistant student shall be enrolled in a program as set forth in section 76.7(b)(1) of this Part and shall be directly supervised by an occupational therapist in accordance with standards established by a national accreditation agency which is satisfactory to the Department. Direct supervision, as required by section 7906(4) of the Education Law, may be provided in conjunction with an occupational therapy assistant who is designated as a fieldwork educator by a program that meets the requirements of section 76.7(b)(1) of this Part. Any such work performed by an occupational therapy assistant as a fieldwork educator shall be subject to the supervision requirements of section 76.8 of this Part.