

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Occupational Therapy Education and Licensure

(2) I.D. Number (Governor's Office Use)
16A-676

IRRC Number: 2567

(3) Short Title

Orders

(4) PA Code Cite

49 Pa. Code, § 42.25

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Herbert Abramson, Counsel**
State Board of Occupational Therapy Education and Licensure (717) 783-7200
Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking
 Omitted

(7) Is a 120-Day Emergency Certification Attached?

No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation renames § 42.25 to "Orders;" divides the section into two subsections headed "written orders" and "oral orders" and authorizes an occupational therapist to receive an oral order when it is impractical to receive a written order.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 5(b) of the Occupational Therapy Practice Act, 63 P.S. § 1505(b), authorizes the Board to promulgate rules and regulations not inconsistent with law as it deems necessary for the performance of its duties and the proper administration of the OT Act.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law or court order or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation is necessary to eliminate the impression that § 42.25 deals only with oral orders and to clarify when an occupational therapist may receive and implement therapy based on an oral rather than written order, namely when it is impractical to receive a written order.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The risk associated with non-regulation is that an individual consulting the current § 42.25 may conclude that the section deals only with oral orders and not written orders. Under the current section an occupational therapist may only implement therapy on an oral order if the situation is "urgent." This standard is unnecessarily restrictive and can lead to needless delay in the implementation of therapy. The preferable standard is to authorize implementation of occupational therapy on an oral order when it is impractical to receive a written order.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulated community and the public will benefit because the Board's regulations will be clearer and more reflective of contemporary health care practices without sacrificing quality. The Board has 5329 active occupational therapy licensees.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board cannot identify any group that will be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The Board has 5329 active occupational therapy licensees and 2336 active occupational therapy assistant licensees.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulation was discussed in several public meetings of the Board and prior to adopting proposed rulemaking, an exposure draft was mailed to more than twenty persons and entities identified as having an interest in the Board's regulations.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation will not be associated with either costs or savings to the regulated community. The regulation does not impose new legal, accounting or consulting procedures.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation will not result in costs or savings to local government.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulation will not result in increased costs or savings to state government and will not require legal, accounting, or consulting procedures.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	None	None	None	None	None	None
Local Government						
State Government						
Total Savings						
COSTS:	None	None	None	None	None	None
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	None	None	None	None	None	None
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

This regulation does not require any activity that could be associated with a cost.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
OT Board	\$118,000.00	\$125,000.00	\$150,000 (est.)	\$150,000 (est.)

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no costs associated with this regulation. The regulation will benefit the public by ensuring that board regulations will not be a source of confusion, will reflect contemporary and safe health care practice, and will facilitate efficient delivery of occupational therapy services.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

A nonregulatory alternative was not considered by the Board.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Board did not consider an alternative regulatory scheme.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The regulation is not more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation will not put Pennsylvania at a competitive disadvantage with other states. The Pennsylvania regulation will be clarified and will facilitate the implementation of therapy when it is impractical to obtain a written order immediately. West Virginia regulations require a "documented" order from a physician, psychologist, dentist, or podiatrist before initiating treatment. W. Va. Code 13.1.2.22. It is not clear from the regulation when the documentation must occur. Maryland requires the occupational therapist or occupational therapy assistant to document verbal orders and clarification orders (MD Code 10.46.01.03A.(2)). Ohio only states that it is the responsibility of the occupational therapist to interpret referrals or prescriptions for occupational therapy services, but does not distinguish between written and oral referrals or orders. (Ohio Revised Code 4755-7-03(A)(1). New Jersey does not have a referral requirement. New York State authorizes occupational therapy treatment on the prescription or referral of a physician or nurse practitioner, but does not distinguish between oral and written orders. N.Y. Education Law § 7901.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect regulations of other agencies because occupational therapists practicing in a facility regulated by another agency, such as the Department of Health, will be required to comply with any applicable regulation of the agency that may be more stringent. A policy statement of the Department of Aging pertaining to older adult daily living centers outlines the content of occupational therapy and speaks of the application of occupational therapy as depending on, *inter alia*, physician orders. The regulation does not distinguish between oral and written orders. 6 Pa. Code § 11.402. A regulation of the DOH pertaining to long-term care nursing facilities authorizes treatment based on an oral order when it is impractical for the order to be given in a written manner. 28 Pa. Code § 211.3(d). This is the standard now being adopted by the Board. A regulation of DOH pertaining to oral orders in special and general hospitals only permits an oral order for treatment to be accepted by specified personnel, who do not include occupational therapists, "under urgent circumstances when it is impractical for the order to be given in written manner by the responsible practitioner." 28 Pa. Code § 107.62. A regulation of the DOH pertaining to Home Health Care Agencies requires that a licensed nurse or other individual who is authorized by appropriate statutes and the State Boards in the Bureau of Professional and Occupational Affairs shall immediately record and sign oral orders, without regard to the impracticality of receiving a written order. 28 Pa. Code § 601.31(d). A regulation of the Department of Public Welfare contained in its mental retardation manual and pertaining to nonresidential agencies/ facilities/services states that "occupational therapy will be paid for only if a physician has, in writing, either documented the need for or prescribed a specific therapy program." 55 Pa. Code § 6350.24(b)(3).

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(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board does not plan any public hearing or informational meeting pertaining to this regulation. The Board will, however, place a special notice of the final rulemaking on its website and will provide a link to the publication in the *Pennsylvania Bulletin*.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will not change existing reporting, record keeping, or other paperwork requirements.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will take effect upon publication of final-form rulemaking in the *Pennsylvania Bulletin*. This regulation does not impose new compliance requirements.

(31) Provide the schedule for continual review of the regulation.

The Board reviews its regulations at least once a year to evaluate their continued effectiveness.

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INDEPENDENT REGULATORY REVIEW COMMISSION

FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

2507

Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies

BY: Amy M. Elliott (DEPUTY ATTORNEY GENERAL)

State Board of Occupational Therapy Education and Licensure (AGENCY)

Andrew C. Clark

JUN 14 2006

DOCUMENT/FISCAL NOTE NO. 16A-676

JUN 1 2006

DATE OF APPROVAL

DATE OF ADOPTION:

DATE OF APPROVAL

BY: Ellen L. Kolodner (Chairperson)

EXECUTIVE Deputy General Counsel

TITLE: Chairperson (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable. Copy not approved. Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 days after submission.

PROPOSED RULEMAKING COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE 49 PA. CODE, CHAPTER 42 ORDERS

PREAMBLE

The State Board of Occupational Therapy Education and Licensure (Board) proposes to amend §42.25 (relating to oral orders) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will take effect upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(b) of the Occupational Therapy Practice Act, Act of June 15, 1982, (P.L. 502, No. 140) (act) (63 P.S. § 1505(b)) authorizes the Board to promulgate and adopt rules and regulations not inconsistent with law as it deems necessary for the performance of its duties and the proper administration of the act.

Background and Purpose

Board members and licensees have noted the lack of clarity to the organization of the current § 42.25 (relating to oral orders). The section heading is "Oral Orders," although it discusses both written orders and oral orders. To clarify the organization of § 42.25, the Board proposes to divide the text into two subsections: (a) written orders and (b) oral orders.

Section 14 of the act (63 P.S. § 1514) (relating to practice and referral) authorizes an occupational therapist to implement direct occupational therapy to an individual for a specific medical condition based on a referral from a licensed physician, podiatrist or optometrist. The act does not require that the referral be written. The current § 42.25 requires that the referral be in the form of a written order unless the urgency of the medical circumstances requires immediate treatment in which case an oral order may be accepted. While the Board continues to express a preference for written orders over oral orders for the implementation of therapy, the current language has proven needlessly restrictive and difficult to interpret by practitioners in the field. In a typical situation the occupational therapist in a setting such as a long-term care facility may receive an oral rather written order. It may be very desirable, although not necessarily urgent, to begin therapy. It may be impractical to receive a written order. The Board proposes to amend § 42.25 by adopting the standard for long-term care facilities that permits oral orders for medication or treatment to be accepted when "it is impractical for the orders to be given in a written manner by the responsible practitioner" as set forth in 28 Pa. Code § 211.3 (relating to oral and telephone orders).

Prior to adopting proposed rulemaking the Board sent an exposure draft of the rulemaking to various persons and entities identified as having an interest in its rulemaking. The Board received

responses from the Department of Occupational Therapy of the School of Health and Rehabilitation Sciences of the University of Pittsburgh and from the Pennsylvania Occupational Therapy Association. Both supported the proposal.

Description of Amendments

The proposed rulemaking first renames and reorganizes § 42.25. The new heading is “Orders” because the section includes both written and oral orders. Subsection (a) deals with written orders and subsection (b) deals with oral orders. Second, both subsections would permit an occupational therapist to accept a referral in the form of an order issued by a licensed physician, licensed optometrist or licensed podiatrist. Third, while subsection (b) maintains the preference for written orders over oral orders, receiving an oral order would be acceptable when it is impractical for a written order to be given by the responsible practitioner.

Fiscal Impact and Paperwork Requirements

The amendments will not have a fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of the Commonwealth.

Sunset Date

The Board continuously monitors the effectiveness of the regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 20, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations, or objections regarding this proposed rulemaking to Herbert Abramson, Board Counsel, State Board of Occupational Therapy Education and Licensure, P.O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Ellen L. Kolodner
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY

EDUCATION AND LICENSURE

MINIMUM STANDARDS OF PRACTICE

§ 42.25. [Oral orders] Orders.

[(a) An occupational therapist shall accept a referral in the form of a written order from a licensed physician, licensed optometrist or licensed podiatrist in accordance with section 14 of the act (63 P.S. § 1514) unless the urgency of the medical circumstances requires immediate treatment. In these circumstances, an occupational therapist may accept an oral order for occupational therapy from a licensed physician, licensed optometrist or licensed podiatrist, if the oral order is immediately transcribed, including the date and time, in the patient's medical record and signed by the occupational therapist taking the order.

(b) The countersignature of the licensed physician, licensed optometrist or licensed podiatrist shall be obtained within 5 days of receipt of the oral order in the case of an

occupational therapist providing ordered services in a private office setting. In the case of an occupational therapist providing services in a setting that is independent of the prescribing physician's, optometrist's or podiatrist's office, the countersignature on a written copy of the order may be mailed or faxed to the occupational therapist.

(c) In the case of an occupational therapist providing services in a facility licensed by the Department of Health, the countersignature of the licensed physician, licensed optometrist or licensed podiatrist shall be obtained in accordance with applicable regulations of the Department of Health governing the facility, including 28 Pa. Code §§ 211.3 and 601.31 (relating to oral and telephone orders; and acceptance of patients, plan of treatment and medical supervision).]

(a) Written orders.

An occupational therapist shall accept a referral in the form of a written order from a licensed physician, licensed optometrist or licensed podiatrist.

(b) Oral orders.

(1) An occupational therapist may accept a referral in the form of an oral order if it is impractical for the order to be given in writing by the responsible licensed physician, licensed optometrist or licensed podiatrist.

(2) An occupational therapist receiving an oral order shall immediately transcribe the order in the patient's medical record, including the date and time the order was received, and shall sign the medical record.

(3) The occupational therapist in a private office setting who has received an oral order shall obtain the countersignature of the practitioner who issued the order within 5 days of receiving the order.

(4) If the occupational therapist who receives an oral order provides services in a setting that is independent of the prescriber's setting, the occupational therapist may accept the countersignature of the ordering practitioner on a written copy of the order that is mailed or faxed to the occupational therapist.

(5) If an occupational therapist provides services in a facility licensed by the Department of Health, the countersignature of the ordering practitioner shall be obtained in accordance with the applicable regulations of the Department of Health governing the facility, including 28 Pa. Code §§211.3 and 601.31 (relating to oral and telephone orders; and acceptance of patients, plan of treatment and medical supervision).

PUBLIC COMMENTATORS FOR 16A-676

There were no public comments received relating to Regulation 16A-676.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY
EDUCATION AND LICENSURE

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1389

September 20, 2006

The Honorable Alvin C. Bush, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Occupational Therapy Education and Licensure
16A-676: Orders

Dear Chairman Bush:

Enclosed is a copy of a proposed rulemaking package of the State Board of Occupational Therapy Education and Licensure pertaining to orders.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Ellen L. Kolodner".

Ellen L. Kolodner, Chairperson
State Board of Occupational Therapy
Education and Licensure

ELK/HA:kmh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
State Board of Occupational Therapy Education and Licensure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-676
SUBJECT: ORDERS
AGENCY: DEPARTMENT OF STATE
STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION & LICENSURE

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

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INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/20/06	<i>Riva Seehammer</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/20/06	<i>Charlotte C. Koser</i>	
9/20/06	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9/20/06	<i>Stephen Smith</i>	
9/20/06	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
9/20/06	<i>Marya Garcia</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)