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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 8, 2011

Ellen L. Kolodner, Chair
State Board of Occupational Therapy Education and Licensure
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-677 (IRRC #2892)
State Board of Occupational Therapy Education and Licensure
Continuing Competency

Dear Chair Kolodner:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Fiona Wilmarth
Acting Executive Director
sfh
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Harry A. Readshaw, Minority Chairman, House Professional Licensure Committee
Honorable Julie Harhart, Majority Chairman, House Professional Licensure Committee
Honorable Carol Aichele, Secretary, Department of State
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



State Board of Occupational Therapy Education and Licensure Regulation #16A-677 (IRRC #2892)

Continuing Competency

June 8, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the April 9, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Occupational Therapy Education and Licensure (Board) to respond to all comments received from us or any other source.

1. Fiscal impact.

This proposed regulation requires occupational therapists to fulfill “continued competency requirements” in order to maintain licensure. The information provided in the Board’s Regulatory Analysis Form (RAF) relating to costs surrounding achieving these requirements is inconsistent.

Question 20 states that the total cost to the regulated community in fiscal year 2012-13 will be \$1,750,800. However, with 5,828 licensed therapists who will incur an approximate annual cost of \$300 for their license fees, this totals \$1,748,400. (RAF #17) Why is this \$2,400 difference listed as state government costs under Question 20? According to Question 17, the \$2,400 amount applies to provider approval fees, not to state government costs. In addition, the response to Question 19 states that the Board’s costs of renewing provider and individual activity applications will be borne by the applicant through a \$40 application fee. In the final-form regulation, the Board should provide a more detailed analysis of costs imposed both on the regulated community and on state government by this rulemaking.

2. Section 42.52. – Definitions. – Clarity.

Mentor

The definition states that a “mentor” can be “certified” by the Department of Education (Department). To improve clarity, the final-form regulation should explain what types of certifications received from the Department would be acceptable for a mentor, and whether “Department” includes both the federal and state Department of Education.

Protégé

The regulation defines this term as a “licensed occupational therapist” engaged in a relationship with “another health care professional.” However, the regulation does not specify who qualifies as “other health care professionals.” The final-form regulation should be amended to identify the practitioners encompassed by the term “other health care professionals.” In addition, since mentors are required to have a license, registration or certificate, this definition should also specify that these “other health care professionals” are licensed, registered or certified.

3. Section 42.53. – Continued competency requirements. – Protection of public health, safety and welfare; Reasonableness; Implementation procedures; Clarity.

Subsection (a)

Subsection (a) requires a licensed occupational therapist to complete a minimum of 24 hours in each biennial period in at least two of the acceptable continued competency activities. How did the Board determine 24 hours of continued competency was an appropriate timeframe for occupational therapists?

Subsection (b)

This subsection states that for the first biennial renewal after obtaining a license, the licensed occupational therapist is exempt from complying with the continued competency requirements. Can activities performed during that period be applied to the competency requirements set forth in Section 42.55? The final-form regulation should clarify this issue.

Subsection (c)

This subsection states that in order to reactivate a lapsed or inactive license, a licensed occupational therapist must demonstrate compliance with the continued competency requirements during the two years immediately prior to applying for reactivation. The American Occupational Therapy Association, Inc. (AOTA) commented that this requirement does not recognize the amount of time an occupational therapist may have actually been out of practice. Thus, these provisions regulate an occupational therapist who has been out of practice for 10 years the same as one whose license has lapsed for only a year. How does requiring an occupational therapist who has been out of practice for several years to complete continued competency requirements for the most recent two years protect public health and safety?

4. Section 42.54. – Program providers. – Implementation procedures; Clarity.

Subsection (b)

This subsection states that the Board reserves the right to reject an activity outside the scope of those permitted in Section 42.55, or if it's "otherwise unacceptable because of presentation or content." What types of circumstances would warrant the Board determining presentation or content as "otherwise unacceptable?" The final-form regulation should clarify this provision.

Subsection (c)

This subsection references pre-approved providers from a "state" association or "another State licensure board." We recommend that the final-form regulation specify whether "state" includes both in-state and out-of-state providers. Does the Board maintain a list of specific pre-approved providers? If so, then this list should be posted on the Board's website.

Subsection (f)

Subsection (f) states that the Board may withdraw provider approval for cause. What is the process to appeal a withdrawal? The final-form regulation should clarify this issue.

5. Section 42.55. – Acceptable continued competency activities.- Fiscal impact; Reasonableness; Need; Implementation procedures; Clarity.

Under this section, an occupational therapist must complete 24 contact hours of continuing competency activities in each biennial period in order to renew a

license. To fulfill the 24 hour requirement, a licensee may earn a maximum of 18 hours through educational courses. At least six hours must be completed in any of the following five areas set forth in Subsections (b)(2)-(6):

- Mentorship;
- Fieldwork supervision;
- Professional writing;
- Editing; or
- Presentation and instruction.

Several commentators object to the activities listed under Subsections (b)(2)-(6) because they assert that certain occupational therapists will not have access to these competency areas. As an example, commentators note that part-time occupational therapists, those who are taking a leave of absence from the field or new graduates would have limited access to these continuing competency areas. Due to this limited access, these classes of occupational therapists would have to make considerable efforts to find the necessary resources and fulfill these requirements. These efforts can be costly, and place an undue burden on these occupational therapists. Therefore, commentators contend that many of these occupational therapists will leave the field altogether, thus creating very limited opportunities for consumers to receive the care they need.

Commentators also suggest that the proposed continued competency requirements could be less restrictive by applying a national standard. Both the National Board for Certification in Occupational Therapy (NBCOT) and AOTA have standards and guidelines with far more options available for occupational therapists to fulfill continued competency. For example, according to a commentator NBCOT accepts 100% of the required units per renewal for attending workshops, seminars and continuing education; and AOTA permits independent study. Commentators also indicate that other states have followed the national standard and applied a less limited approach, such as Maryland which offers 23 options for maintaining continued competency.

Finally, several commentators note additional activities that should be included to determine continued competency, such as: accredited programs and certifications; occupational therapists who are professors; research projects; community projects; and participation as a member of a board.

In light of the concerns raised by commentators, we recommend that the Board:

- Explain the need for these requirements;
- Explain how occupational therapists, both full-time and part-time, can reasonably be expected to fulfill these requirements;

- Identify whether the costs of fulfilling these continued competency requirements will be greater for those with limited access to the proposed continued competency activities, in particular those in Subsections (b)(2)-(6);
- Explain why it did not adopt a national standard or guideline in its entirety; and
- Explain why the regulation does not provide more than six available options to complete continued competency requirements.

We also raise four issues related to clarity.

First, Subsection (b)(1)(ii) refers to “directed learning hours,” but it is unclear what activities would include “directed learning.” We recommend that the final-form regulation define “directed learning hours.”

Second, under Subsection (b)(3), supervisors can earn up to three contact hours for level I and up to six for level II fieldwork per biennium. An individual commentator asserts that more contact hours should be earned for level II fieldwork supervision. How did the Board determine the contact hours for level I and level II fieldwork supervision are appropriate?

Third, in Subsection (b)(4)(i)(D), what is a “non-peer-reviewed journal?” The final-form regulation should define this term.

Finally, in Subsection (b)(6)(i), what is an “invited presentation?” The final-form regulation should define this term.

6. Section 42.56. – Waivers of continued competency requirements and curing deficiencies. – Protection of public health, safety and welfare; Reasonableness; Implementation procedures; Clarity.

Subsection (a)

This subsection explains the process for the Board to waive an occupational therapist’s continued competency activity requirements. We raise two issues. First, in Subsection (a)(2), what will the Board consider appropriate “documentary evidence” of a “serious illness, injury or emergency”? The final-form regulation should specify what the Board will consider as acceptable “documentary evidence.” Second, Subsection (a)(3) establishes timelines for filing waiver requests. The final-form regulation also should include the timeline within which the Board will notify an occupational therapist whether the waiver request has been granted or denied.

Subsection (b)

This subsection explains how an occupational therapist can cure a deficiency in contact hours by submitting a “plan” to the Board. However, the regulation does not fully explain the difference between a waiver and curing a deficiency. If waivers are limited to cases of serious illness, injury or emergency under Subsection (a)(1), does Subsection (b) permit any deficiency to be cured, regardless of the cause, as long as there is an approved plan in place? What must a plan contain? Within what timeframe will the Board approve or disapprove a plan? The final-form regulation should be amended to address these questions. Additionally, what is the status of the occupational therapist’s license while the plan is being implemented? How is the public protected if an occupational therapist is allowed to practice without completing continued competency requirements?

7. Section 42.57. – Documentation and reporting of continued competency activities. – Implementation procedures.

Subsection (b)(1) requires licensed occupational therapists to prepare a “professional continued competence portfolio” and “retain it” for four years. To improve clarity, we recommend that the final-form regulation include a definition for a “professional continued competence portfolio.”

In Subsection (b)(2), how does a licensed occupational therapist “verify” completion of contact hours? The final-form regulation should clarify this issue.

Facsimile Cover Sheet



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To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200
3-3394 (Cynthia Montgomery)
Fax: 7-0251
Date: 6/8/11
Pages: 8

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Occupational Therapy Education and Licensure regulation #16A-677 (IRRC #2892). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Christine Leroy **Date:** 6-8-11
Receptionist