

# PROPOSED RULEMAKING

## STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

### Oral Orders

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

#### A. *Effective Date*

The proposed regulation would be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

#### B. *Statutory Authority*

The Board has authority to adopt regulations not inconsistent with the law as it deems necessary for the performance of its duties and the proper administration of the law under section 5(b) of the Occupational Therapy Practice Act (act) (63 P. S. § 1505(b)).

#### C. *Background and Purpose*

Section 14 of the act (63 P. S. § 1514) specifies that implementation of direct occupational therapy to an individual for a specific medical condition must be based on a referral from a licensed physician or a licensed podiatrist. The Board construes this to include services ordered orally by a licensed physician or licensed podiatrist. The proposed regulation clarifies that occupational therapists may accept oral orders under the statute, and codifies the Board's longstanding interpretation of section 14 of the act.

The Board's construction of section 14 of the act in regulatory format will help alleviate uncertainty which currently exists in the regulated community as to whether occupational therapists may accept oral orders. The proposed regulation makes it clear that occupational therapists in private office/private practice settings, as well as in long-term care nursing facilities and home health care agencies, licensed under the Department of Health, may accept oral orders from a physician or podiatrist. Currently, frequent delays occur in providing needed services to consumers due to the time it may take to obtain a written order for services from a physician or podiatrist.

Additionally, if a physician or podiatrist telephones an oral order for occupational therapy services, occupational therapists in long-term care nursing facilities or home health care agency settings, uncertain about their ability to receive the order, may be obliged to summon a nurse, who is less conversant with the profession than the actual practitioner but who is clearly permitted to receive oral orders from a physician or podiatrist, to receive it; occupational therapists in private office settings may believe they are unable to receive the oral order at all.

Therefore, the proposed regulation makes interactions between physicians or podiatrists and occupational therapists more cost-efficient and timely, and prevents delays in providing services, thus preventing harm to consumers who require those services.

The proposed regulation also provides clarification for long-term care nursing facilities and home health care agencies, licensed under the Department of Health, in their utilization of occupational therapy services for their patients. Department of Health regulations for both long term nursing care facilities and home health care agencies provide that a nurse, physician, "or other individual authorized by appropriate statutes and the State Boards in the Bureau of Professional and Occupational Affairs" may receive a physician's oral order for services. 28 Pa. Code § 211.3 (long term care facilities); 28 Pa. Code § 601.31 (home health care agencies). Similarly, the proposed addition is consistent with Department of Public Welfare medical assistance regulations governing reimbursement to home health agencies for services provided to Medical Assistance recipients. Those regulations specifically permit an occupational therapist to receive oral orders from a physician pertaining to the occupational therapist's specialty. 55 Pa. Code § 1249.52. The proposed addition of § 42.25 makes it clear that occupational therapists are individuals "authorized by appropriate statutes and the State Boards in the Bureau of Professional and Occupational Affairs" to receive a physician's oral order for services, and it eliminates ambiguity and uncertainty for these treatment settings.

#### D. *Description of Proposed Regulation*

New § 42.25(a) specifies that occupational therapists shall accept written referrals from licensed physicians or licensed podiatrists unless the urgency of the medical circumstances requires immediate treatment. In that circumstance, the occupational therapist can accept an oral order if the oral order is immediately transcribed, with the date and time, in the patient's medical record and the occupational therapist who took the order signs it. In subsection (b), the proposed regulation provides that the occupational therapist in a private office setting must obtain the countersignature of the ordering physician or podiatrist within 5 days of receiving it; in the case of an occupational therapist providing services in a facility licensed by the Department of Health, the oral order must be countersigned by the ordering physician or podiatrist in accordance with applicable regulations of the Department of Health governing the licensed facility in question.

#### E. *Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the proposed regulation the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the profession, educational institutions and interested individuals.

#### F. *Fiscal Impact and Paperwork Requirements*

1. Commonwealth—There will be no adverse fiscal impact or paperwork requirements imposed.

2. Political subdivisions—There will be no adverse fiscal impact or paperwork requirements imposed.

3. Private sector—There is no adverse fiscal impact associated with this proposed regulation. The proposed regulation's requirement that an oral order must be immediately transcribed in the patient's medical record and countersigned by the ordering physician or podiatrist

in accordance with applicable regulations of the Department of Health governing the licensed facility in which the occupational therapist provides the ordered services places a minimal burden, in terms of paperwork requirements, on the licensee and the ordering physician or podiatrist. However, because careful and detailed recordkeeping is an essential aspect of all health care professionals' practice, licensees and ordering physicians or podiatrists would be keeping the records even in the absence of the specific regulation imposing the requirement.

*G. Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

*H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 3, 1999, the Board submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee (Committees). In addition to submitting the proposed regulation, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor, of objections raised.

*I. Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulation to Ruth D. Dunnewold, Counsel, State Board of Occupational Therapy Education and Licensure, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 of publication of this proposed rulemaking.

Please reference No. 16A-673 (Oral Orders), when submitting comments.

HANNA GRUEN,  
*Chairperson*

**Fiscal Note:** 16A-673. No fiscal impact; (8) recommends adoption.

**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.**

(a) An occupational therapist shall accept a referral in the form of a written order from a licensed physician 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 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 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 facility licensed by the Department of Health, the countersignature of the licensed physician or licensed podiatrist shall be obtained in accordance with applicable regulations of the Department of Health governing the licensed facility in which the occupational therapist provides the ordered services.

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