Regulatory Analysis Form

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This space for use by IRRC

IRRC Number: 2467

(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-675

(3) Short Title

Oral 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**
X **Final Order, Proposed Rulemaking Omitted**

(7) Is a 120-Day Emergency Certification Attached?
X **No**
___ **Yes: By the Attorney General**
___ **Yes: By the Governor**

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

The regulation amends Section 42.25 to conform to a change made to section 14 of the Occupational Therapy Act (OT Act) (63 P.S. § 1514) by Act 30 of May 18, 2004 (P.L. 220), that now permits an occupational therapist to implement direct occupational therapy to an individual for a specific medical condition based on a referral from a licensed optometrist, as well as a licensed physician or licensed podiatrist. Prior to Act 30, only a licensed physician or licensed podiatrist could make the referral.

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

Section 5(b) of the OT Act, 63 P.S. § 15905(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. The recent amendment to the OT Act, however, renders the current Section 42.25 (pertaining to oral orders) inconsistent with the amended OT Act. See, No. (8) above.

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

The regulation is necessary to ensure that the Board regulations conform to current statutory changes and do not cause confusion in the regulated community or the health care community or in the general population.

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

The risk associated with non-regulation is that individuals consulting Section 42.25 would conclude that occupational therapy for a specific medical condition may be implemented lawfully only on the referral of a physician or podiatrist when in fact it may be implemented on the referral of an optometrist as well. Such a conclusion could lead to delay in the implementation of therapy and could cause needless expense if a person concludes that the patient must first be referred to a physician.

(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 no longer appear to be inconsistent with amendments to the OT Act that authorize an optometrist to refer a patient for occupational therapy.

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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 5375 active occupational therapy licensees and 2376 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.

Because the regulation is needed in order to conform Section 42.25 to the Act 30 amendment to the OT Act and because the regulation reflects only the change made by Act 30, public input in drafting the regulation was not required.

(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 are consistent with amendments to the OT Act and will not be a source of confusion.

(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.

Because the regulation only amends an existing regulatory scheme, 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 equivalent to, 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 regulation merely reflects a change to the OT Act. West Virginia regulations require a referral from a physician, psychologist, dentist, or podiatrist before initiating treatment. W. Va. Code 13.1.2.22. Maryland does not directly address what health care practitioners may refer persons to occupational therapists, but requires the occupational therapist to document verbal orders and clarification orders (MD Code 10.46.01.03A.(2)) and requires the occupational therapist to notify the referring professional and client if he declines to carry out an evaluation and treatment that has been ordered but the occupational therapist believes is contraindicated or unjustified. (MD Code 10.46.01.01A(18)) See also, MD Code 10.46.01.01B(1) and (2). Ohio does not directly address what health care practitioners may refer persons to occupational therapists, but states that it is the responsibility of the occupational therapist to interpret referrals or prescriptions for occupational therapy services. 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. 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.

There are Commonwealth agencies that limit by regulation or policy statement the ability of an occupational therapist in certain settings to implement occupational therapy only upon the order of a physician. A policy statement of the Department of Aging pertaining to older adult daily living centers which outlines the content of occupational therapy speaks of the application of occupational therapy as depending on the occupational therapy assessment, plan of care and physician orders. 6 Pa. Code § 11.402. A policy statement of the Department of Public Welfare contained in its mental retardation manual speaks of occupational therapy "based on either documentation or a prescription for a specific therapy program by a physician." 55 Pa. Code § 6000.663 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). A regulation of the Department of Health pertaining to rehabilitation services in special and general hospitals requires that rehabilitation programs such as occupational therapy be under the direction of persons licensed in the field and implement the programs and carry out treatments as ordered by the medical staff. 28 Pa. Code § 131.4 The same regulation elsewhere states that "[t]he medical staff shall be limited to physicians and dentists..." 28 Pa. Code § 107.2.

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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 has not scheduled public hearings or informational meetings on this rulemaking because it simply reflects a statutory change.

(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 in the Pennsylvania Bulletin. This regulation does not impose new compliance requirements, rather it acknowledges that a third category of health care practitioners may refer patients for occupational therapy.

(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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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

#2467

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 Independant Agencies.
BY: _____ (DEPUTY ATTORNEY GENERAL)	State Board of Occupational Therapy Education and Licensure (AGENCY)	BY: _____
	DOCUMENT/FISCAL NOTE NO. 16A-675	
DATE OF APPROVAL	DATE OF ADOPTION: _____	2.24.05 DATE OF APPROVAL
	BY: Melanie A. Wennick	EXECUTIVE Deputy General Counsel ~~(Chief Counsel, Independent Agency)~~ ~~(Strike inapplicable title)~~
	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.

FINAL RULEMAKING/PROPOSED OMITTED
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
ORAL ORDERS

PREAMBLE

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

Omission of Proposed Rulemaking

Under section 204 of the Commonwealth Documents Law (CDL) (45 P.S. §1204), the Board is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) if the Board finds that the criteria of section 204 of the CDL are met.

In accordance with section 204 (3) (45 P.S. §1204(3)) proposed rulemaking has been omitted because the procedures are under the circumstances unnecessary and contrary to the public interest. In addition, persons who are subject to the change have been given actual notice thereof under section 204 (2) (45 P.S. §1204(2)). The regulated community has been informed of the statutory change through the State Board of Occupational Therapy Newsletter, which is distributed to all licensees, and through a revised copy of the act and a special notice that appear on the Occupational Therapy page of the Department of State Website.

Description of Amendment

Section 14 of the Occupational Therapy Practice Act (act) (63 P.S. § 1514) originally provided that an occupational therapist could provide occupational therapy to an individual upon referral by a licensed physician or podiatrist. Act 30 of 2004 (effective July 17, 2004) amended Section 14 to allow an occupational therapist to accept a referral from a licensed optometrist. Currently § 42.25 of the Board's regulations governs acceptance and documentation of oral orders by a referring physician or podiatrist. The amendment to §42.25 (relating to oral orders) will conforms the regulatory language to the Act 30 amendment ~~to the~~ by adding licensed optometrists to licensed physicians and licensed podiatrists as referring health care providers.

Statutory Authority

Section 5(b) of the 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.

Fiscal Impact and Paperwork Requirements

The amendment will not have a fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of the Commonwealth. There may be fiscal savings to the general public. Prior to Act 30, when an optometrist determined that a patient would benefit from occupational therapy, the optometrist had to first obtain the referral from a physician or refer the patient back to the physician to obtain a referral. Commonwealth agencies whose regulations and policy statements limit implementation of direct occupational therapy to situations in which a physician has made a referral or order may consider revising their regulations.

Regulatory Review

Under Section 5.1(c) of the Regulatory Review Act (act) (71 P.S. §745.5a(c)), on March 11, 2005,the Board submitted copies of the regulations with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee, and the House Professional Licensure Committee. On the same date, the Board submitted a copy of the regulation to the Office of Attorney General under the Commonwealth Attorneys Act (71 P.S. §§732-101 – 732-506)

Under sections 5.1(e) and (j.2) of the act (71 P.S. §745.5a(e) and (j.2)), the amendments were approved by the House Committee on _____, 2005, approved by the Senate Committee on _____, 2005, and approved by IRRC on _____, 2005.

Additional Information

For additional information about the amendments, submit inquiries to Lisa Burns, State Board of Occupational Therapy Education and Licensure, P.O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389, ST-OCCUPATIONAL@state.pa.us.

Findings

The Board finds that:

(1) Public notice of the Board's intention to amend its regulations under the procedures in sections 201 and 202 of the Commonwealth Documents Law (CDL) (45 P.S. §§1201 and 1202) has been omitted under section 204 of the CDL (45 P.S. §1204) because public comment is unnecessary in that the amendments adopted by this order merely implement amendments to the Occupational Therapy Practice Act (act).

(2) The amendment of the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board hereby are amended at 49 Pa. Code §42.25 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Board shall certify this order and Annex and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin.*

Melanie A. Wennick
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.

(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).

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1389

March 11, 2005

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Occupational Therapy
16A-675: Oral Orders

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Occupational Therapy pertaining to Oral Orders.

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

Sincerely,

Herbert Abramson, for
Ellen L. Kolodner, Chairperson
State Board of Occupational Therapy

ELK/HA:lm
Enclosure
c: 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 K. Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
State Board of Occupational Therapy

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER:	16A-675
SUBJECT:	State Board of Occupational Therapy Education & Licensure - Oral Orders
AGENCY:	DEPARTMENT OF STATE

#2467

TYPE OF REGULATION

Proposed Regulation

Final Regulation

X 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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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/11/05	Sandra J. Harper	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/11/05	Nancy Walmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/11/05	Stephen J. Hoff	INDEPENDENT REGULATORY REVIEW COMMISSION
3/11/05	Jennifer Morin	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

February 24, 2005