Proposed Readoption with Amendments: N.J.A.C. 13:44K

Proposed New Rules: N.J.A.C. 13:44K-1.3, 5.4, 8.6, 8.7, 8.8 and 8.9

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Occupational Therapy Advisory Council Rules

Authorized By: Division of Consumer Affairs, David Szuchman, Director.


Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Submit comments by January 2, 2009 to:
Laura Anderson, Executive Director
Occupational Therapy Advisory Council
124 Halsey Street
P.O. Box 45037
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Division of Consumer Affairs (the Division), in consultation with the Occupational Therapy Advisory Council (the Council), is proposing to readopt N.J.A.C. 13:44K with amendments and new rules. These rules are scheduled to expire on October 3, 2008, pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1. Because this notice of readoption has been filed prior to October 3, 2008, the expiration date of the rules in Chapter 44K is extended by 180
days, to April 1, 2009, pursuant to N.J.S.A. 52:14B-5.1c.

In compliance with Executive Order No. 66 (1978), the Division, in consultation with the Council, undertook a thorough review of the existing provisions of N.J.A.C. 13:44K in order to delete unnecessary or unreasonable rules and to clarify existing provisions, where appropriate. The Division believes that the rules proposed for readoption, as amended, are necessary, reasonable, understandable and responsive to the purpose for which they were promulgated. The Division is also proposing several new rules that it believes are necessary to ensure the health, safety and welfare of New Jersey consumers.

The following is a summary of the existing rules of Chapter 44K, which the Division proposes to readopt, as well as a summary of the amendments and new rules that the Division is proposing.

Subchapter 1 contains rules of general applicability. N.J.A.C. 13:44K-1.1 sets forth the purpose and scope of the rules contained in Chapter 44K. The Division is proposing to amend N.J.A.C. 13:44K-1.1 to include a cross-reference to proposed new rule N.J.A.C. 13:44K-1.3, concerning the performance of occupational therapy services in New Jersey without a license, which is discussed below. N.J.A.C. 13:44K-1.2 sets forth definitions for relevant terms used throughout the chapter. The Division is proposing amendments to the definitions of "client" and "licensee" for clarification purposes. The Division is also proposing to amend the definition of "supervision" to clarify that supervision may be close, routine or general, as those terms are currently defined in N.J.A.C. 13:44K-6.2. For organizational purposes and in order to eliminate redundancies, the Division is proposing that the current definitions for the terms close, routine and general supervision be included in N.J.A.C. 13:44K-1.2 and be deleted from all other rules in which they currently appear.

The Division is proposing a new rule at N.J.A.C. 13:44K-1.3 concerning the temporary performance of occupational therapy services in New Jersey by occupational therapists and occupational therapy assistants who are licensed in other jurisdictions. N.J.S.A. 45:9-37.60(e) of the Occupational Therapy Licensing Act (the Act) provides that a person may perform occupational therapy services in this State for up to 60 days in a calendar year if the person works in association with a New Jersey licensed occupational therapist and provided the person is licensed in another jurisdiction, which has regulatory requirements that are substantially equivalent to those in New Jersey. Proposed new rule N.J.A.C. 13:44K-1.3 establishes procedures that must be followed by out-of-State occupational therapists and occupational therapy assistants and the New Jersey licensed occupational therapists who choose to work in association with such persons for the 60-day time frame authorized by the Act.

Under the proposed new rule, an occupational therapist or occupational therapy assistant licensed in another jurisdiction may work in association with a New Jersey licensed occupational therapist provided the New Jersey licensee has a permanent, active New Jersey license, which is in good standing. The New Jersey licensee must ensure, by confirming with the Council, that the jurisdiction in which the out-of-State occupational therapist or occupational therapy assistant is licensed has regulatory requirements that are substantially equivalent to the requirements in New Jersey and the New Jersey licensee must verify that the out-of-State occupational therapist's or occupational therapy assistant's licenses in all states where they are authorized to practice occupational therapy are in good standing. The New Jersey licensee must submit written notification to the Council of the out-of-State occupational therapist's or occupational therapy assistant's decision to work in New Jersey and must provide a copy of the Act and the Council's rules to the out-of-State therapist or assistant. When the association between the New Jersey licensee and the out-of-State occupational therapist or occupational therapy assistant is completed or terminated, the New Jersey licensee must notify the Council.

N.J.A.C. 13:44K-2.1 establishes licensure eligibility requirements for occupational therapists and occupational therapy assistants. N.J.A.C. 13:44K-2.1 provides, in part, that an applicant for licensure who has a degree in a field other than occupational therapy must have fulfilled the requirements of an occupational therapy program accredited by the Accreditation Council for Occupational Therapy Education, the World Federation of Occupational Therapy, or other nationally recognized agency. The Division is proposing to amend N.J.A.C. 13:44K-2.1 to provide the full name of the
The Division is proposing to amend N.J.A.C. 13:44K-3.1 and 3.2 to delete the current requirement contained in both rules that documentation of an applicant’s supervised fieldwork experience contain the number of hours per week the applicant worked and the location where the fieldwork was conducted. The Division believes that this information is not necessary because of the existing requirement in N.J.A.C. 13:44K-3.1 and 3.2 that applicants submit documentation verifying that their required fieldwork has been approved by their educational institution. The Division is also proposing that this documentation requirement be deleted from the licensing requirements for applicants for temporary licensure set forth in N.J.A.C. 13:44K-4.1.

The Division is proposing additional amendments to N.J.A.C. 13:44K-3.1, 3.2 and 4.1, which require applicants for licensure as occupational therapists, occupational therapy assistants and temporary licensees to undergo a criminal history background check, consistent with the requirements of N.J.S.A. 45:1-28. Criminal history background information will be considered by the Council in determining whether an applicant should be licensed in New Jersey.

The Division is also proposing to amend N.J.A.C. 13:44K-3.2 and 4.1 to delete the requirement that applicants for licensure as occupational therapy assistants and temporary licensed occupational therapists and occupational therapy assistants submit a “Verification of Supervision” form. The Division believes that the reference to this form in N.J.A.C. 13:44K-3.2 and 4.1 may lead some applicants to believe that employment is required prior to making initial application for licensure, which is incorrect. Applicants for licensure need not have a commitment of employment prior to beginning the licensure process.

The Division is proposing to amend N.J.A.C. 13:44K-4.1 to delete the word “permanent” in the reference to applicants for licensure. The Division believes that the reference to permanent licensure may be misleading to some members of the regulated community and, therefore, is proposing to amend N.J.A.C. 13:44K-4.1, and all rules that refer to “permanent licensure” to refer to licensure.

The Division is proposing to amend N.J.A.C. 13:44K-4.2, concerning the expiration of temporary licenses, to provide that a request for renewal of a temporary license must be submitted to the Council within 10 business days of the license’s expiration. In addition, the Director is proposing to amend various subsections of N.J.A.C. 13:44K-4.2 to clarify that the failure to cease practicing upon a temporary license holder’s notification of examination failure or upon expiration of the temporary license will be deemed professional misconduct and the unlicensed practice of occupational therapy.

N.J.A.C. 13:44K-5.1 and 5.2 delineate the scope of practice for occupational therapists and occupational therapy assistants, respectively. Currently, the rules provide, in part, that occupational therapists and occupational therapy assistants may administer assessments and/or observe a client to identify areas of functional abilities or deficits, including skills, which are affected by sensory, motor, perceptual, cognitive and/or psycho-social abilities. The Division is proposing to amend the scopes of practice delineated in N.J.A.C. 13:44K-5.1 and 5.2 to include the performance of assessments and observations of clients to identify skills, which are affected by developmental abilities. The Division is also proposing technical amendments to the provisions in N.J.A.C. 13:44K-5.1 and 5.2 that authorize occupational therapists and occupational therapy assistants to utilize physical agent modalities, in order to provide a cross reference to proposed new rule N.J.A.C. 13:44K-5.4, which establishes requirements for the use of superficial and advanced physical agent modalities. The proposed new rule is discussed below.

N.J.A.C. 13:44K-5.3 provides for the delegation of occupational therapy services to occupational therapy assistants, temporary licensed occupational therapists, temporary licensed occupational therapy assistants, and occupational therapy students fulfilling the required fieldwork component of their educational training. The Division is proposing to amend N.J.A.C. 13:44K-5.3 to clarify that an occupational therapist may only delegate the performance of
those occupational therapy services that fall within the scope of practice of the person to whom they are being
delegated.

Proposed new rule N.J.A.C. 13:44K-5.4 establishes requirements for the use of physical agent modalities for the
purpose of enhancing a client's functional performance. "Physical agent modalities" are defined as those modalities that
produce a biophysical response through the use of light, water, temperature, sound, electricity or mechanical devices.
The proposed new rule authorizes a licensed occupational therapist to use any of the superficial thermal agents
referred to in the rule. Those modalities are limited to hydro-therapy/whirlpool, cryotherapy (cold packs, ice),
fluidotherapy, hot packs, paraffin, water, infrared light and other commercially available heating and cooling
technologies and mechanical devices. The proposed new rule provides further that an occupational therapist may only
use advanced physical agent modalities after demonstrating competency. Advanced physical agent modalities are
defined as: diathermy; high-voltage galvanic stimulation; micro current galvanic stimulation; transcutaneous electrical nerve stimulation; neuromuscular electronic stimulation; iontophoresis; therapeutic ultrasound; phonophoresis; and cold lasers. In order to demonstrate competency, an applicant must complete a Council-approved training course or must be certified by the Hand Therapy Certification Commission or other national organization that utilizes substantially similar certification standards.

An approved training course must include at least 30 hours of didactic instruction and must include training in the
use of heat wave, electric wave, sound wave and light wave physical agent modalities. The primary instructor of the
course must be a licensed occupational therapist, licensed physical therapist licensed physical therapy assistant or a
licensed physician. Council-approval of the training course will only be valid for one year and resubmission of course
documentation is required for course approval renewal and whenever the course provider changes the course content.

The proposed new rule also provides that an occupational therapist may delegate the application of superficial
modalities to a licensed occupational therapy assistant consistent with the requirements of existing rule N.J.A.C.
13:44K-5.3, but that delegation of the application of advanced physical agent modalities is prohibited and will be deemed
professional misconduct. In addition, an occupational therapist that uses advanced physical agent modalities without
having satisfied the competency requirements of the new rule will be deemed to have engaged in professional
misconduct.

N.J.A.C. 13:44K-5.4 provides that within one year of the effective date of the new rule, an occupational therapist
who currently uses advanced physical agent modalities must submit documentation verifying that he or she has obtained
training in the use of these modalities that is substantially similar to the requirements of the new rule. Following this
one-year period, an occupational therapist must cease using advanced physical agent modalities until he or she satisfies
the competency requirements of the new rule. The proposed new rule also provides that notwithstanding the fact that an
occupational therapist meets the competency requirements of the new rule, it will be deemed professional misconduct
for a licensee to use a specific modality that he or she has not been trained to use until the licensee becomes familiar
with the device's proper use and contraindications.

The rules in Subchapter 6 establish requirements for the supervision of occupational therapy assistants. The
Director is proposing that N.J.A.C. 13:44K-6.1, which provides, in part, that an occupational therapy assistant shall
"work" only under the supervision of a licensed occupational therapist, be amended to clarify that assistants may only
provide occupational therapy services under the supervision of a licensed occupational therapist. The Division is
proposing a similar amendment to N.J.A.C. 13:44K-7.1, which sets forth supervision requirements for temporary
currently requires a designated supervisor to provide close supervision for any occupational therapy assistant that has
been engaged in the practice of occupational therapy for less than one year on a full-time basis and to any occupational
therapy assistant who has less than one year of full-time work experience in a particular practice area. The Division is
proposing to delete the requirement that close supervision be provided for an occupational therapy assistant who has
less than one year full-time work experience in a particular practice area. The Division believes that decisions
concerning the level of supervision required of experienced occupational therapy assistants are more appropriately left
to the discretion of the supervising occupational therapist.

N.J.A.C. 13:44K-6.2 also provides that an occupational therapist with less than 1,200 hours of work experience obtained over a two-year period may not supervise any persons engaged in the practice of occupational therapy services. The Division is proposing to amend N.J.A.C. 13:44K-6.2 to require the 1,200 hours of work experience to have been obtained in no less than one year and in no more than three years of practice, in order to ensure the competency of those licensees engaged as supervisors. The Division is proposing a similar amendment to N.J.A.C. 13:44K-7.2, which imposes the same 1,200-hour requirement on occupational therapists seeking to supervise temporary licensed individuals. N.J.A.C. 13:44K-6.3, which delineates the responsibilities of occupational therapy assistants, is proposed to be readopted without change. The Division is proposing N.J.A.C. 13:44K-6.4, which establishes requirements for the delegation of supervision responsibilities, without change.

In addition to the amendments discussed above, the Division is proposing a technical amendment to N.J.A.C. 13:44K-7.1 to correct an inadvertent reference to "occupational therapy assistants' in subsection (d) of the rule. The correct reference should have been to "temporary licensed occupational therapy assistants." N.J.A.C. 13:44K-7.3, which delineates the responsibilities of temporary licensed occupational therapists and temporary licensed occupational therapy assistants, is proposed to be readopted without change.

The rules in Subchapter 8 set forth the general obligations of all licensees. N.J.A.C. 13:44K-8.1 currently requires a licensee to notify the Council of any change of address. The Division is proposing to amend N.J.A.C. 13:44K-8.1 to refer to a licensee's address of record, consistent with the requirements imposed by other professional and occupational licensing boards within the Division. The term "address of record" is defined in N.J.A.C. 13:44K-8.1 to mean an address designated by a licensee, which is part of the public record and which may be disclosed to members of the public upon request. N.J.A.C. 13:44K-8.2, which requires a licensee to notify the Council of a name change or a professional practice name change, is proposed to be amended to delete the reference to practice name in the rule. The Division does not license occupational therapy offices and, therefore, does not believe that licensees should be required to notify the Council of changes in such names.

N.J.A.C. 13:44K-8.3 delineates those practices that will be deemed the unlicensed practice of occupational therapy. The Division is proposing an amendment to clarify a reference in the rule to those persons who are exempt from licensure under the Act. The proposed amendment provides that those persons who are exempt from obtaining a license under N.J.S.A. 45:9-37.60(e) of the Act, which authorizes the provision of occupational therapy services for 60 days without a license, shall only provide occupational therapy services consistent with the requirements of proposed new rule N.J.A.C. 13:44K-1.3. N.J.A.C. 13:44K-8.4, which delineates conduct that will constitute the aiding or abetting of unlicensed practice, is proposed to be readopted with a technical amendment.

N.J.A.C. 13:44K-8.5 prohibits occupational therapy licensees from engaging in sexual contact with clients. The Division is proposing to clarify the definition of "licensee" at N.J.A.C. 13:44K-8.5 to refer to any person licensed to engage in occupational therapy practice in the State. Currently, a licensee is defined to mean any person licensed by the Council. In addition to a technical amendment to the definition of "licensee," the Division is proposing to amend the definition of "spouse." Currently, spouse is defined to mean husband, wife, fiancee or an individual involved in a long-term committed relationship with the licensee. The Division is proposing to amend the definition to include civil union partners. In addition, the Division is proposing to amend subsection (b) of the rule, which prohibits a licensee from engaging in sexual contact with a client unless the therapist has terminated the relationship by way of written notice to the client or the last therapy occurred more than six months ago. The proposed amendments would prohibit a licensee from engaging in a sexual relationship with a client unless all of the current requirements are satisfied, that is, the licensee has terminated the professional relationship by way of written notice and the last therapy was rendered more than six months prior to commencing the relationship. The Division believes that the proposed amendment will provide added protection to consumers by prohibiting any sexual relationship between licensees and clients until a sufficient amount of time has passed following the termination of the professional relationship.
The Division is proposing several new rules, which establish requirements for license renewal, inactive status and license reinstatement. Proposed new rule N.J.A.C. 13:44K-8.6 concerns biennial licensure renewal. The proposed new rule provides that a licensee who seeks license renewal shall submit a renewal application and the renewal fee set forth in N.J.A.C. 13:44K-11.1 prior to the expiration date of the license. The Council shall send a notice of renewal to each licensee at the address of record with the Council at least 60 days prior to the expiration of the license. License renewal applications shall provide licensees with the option of either active or inactive status. A licensee electing inactive status shall not engage in the provision of occupational therapy services in New Jersey while on inactive status. If a licensee fails to renew his or her license by the expiration date, but does renew within 30 days of that date, he or she will be assessed a late fee in addition to the renewal fee. If a licensee fails to renew his or her license for more than 30 days following the license expiration date, the license will be automatically suspended. An individual who continues to practice with a suspended license shall be deemed to be engaged in unlicensed practice.

Proposed new rule N.J.A.C. 13:44K-8.7 provides that a licensee who has been inactive for a period of less than five years may, upon application to the Council, change from inactive to active status. The licensee must submit a renewal application, the renewal fee for the current biennial period and an affidavit of employment listing each job held during the period he or she was inactive. If a licensee has been inactive for a period of five years or more, the licensee must also submit evidence that he or she has maintained competency by either having completed course work in occupational therapy during the period of time he or she was inactive or having been continuously and actively engaged in the licensed practice of occupational therapy in another jurisdiction. A licensee who fails to demonstrate that he or she has maintained competency while on inactive status may be subject to an examination or other requirements prior to being permitted to return to active practice.

Proposed new rule N.J.A.C. 13:44K-8.8 establishes requirements for reinstatement from a license suspension. An individual whose license has been suspended for less than five years for failure to renew may be reinstated by the Council upon submission of a reinstatement application, an affidavit of employment listing each job held during the period the licensee was inactive, any outstanding penalties imposed by the Council and evidence that the licensee has maintained competency by either having completed course work in occupational therapy during the period of time he or she was inactive or having been continuously and actively engaged in the licensed practice of occupational therapy in another jurisdiction. An applicant who fails to demonstrate that he or she has maintained competency during the period of license suspension may be required to take an examination or complete other requirements prior to being reinstated. Applicants for reinstatement must also pay the reinstatement fee and appropriate biennial renewal fees. An individual whose license has been suspended for five years or more must also retake and pass the examination required for initial licensure.

The Division is proposing a new rule at N.J.A.C. 13:44K-8.9 concerning the submission of insurance forms. The proposed new rule prohibits a licensee from submitting any claim or bill to a third-party payor that involves dishonesty, fraud, deception or misrepresentation. A licensee may not submit any claim or bill, which contains any of the following: a treatment date, which does not accurately reflect the date when the services were actually provided; a description of a service, which does not accurately reflect the actual service provided; a statement material to the claim or bill, which is known to be false or misleading; or a charge for any service the amount of which has been advertised as free or complimentary or for an amount that exceeds the advertised charge for discounted services.

Proposed new rule N.J.A.C. 13:44K-8.9 provides further that a licensee who provides occupational therapy services to a client enrolled in an insurance plan with co-payment features and who intends to waive any part of the co-payment or all of the co-payment by the client shall, when submitting any claim or bill to the third-party payor, conspicuously disclose that the co-payment, or a portion of the co-payment, has not been billed to, or collected from, the client. The licensee whose name, license number or signature appears on the signature line of a claim shall be responsible for the accuracy of all information contained in the claim. All insurance records must be maintained consistent with the client record retention requirements in N.J.A.C. 13:44K-10.

The rules in Subchapter 9 concern business practices. In addition to technical amendments to N.J.A.C. 13:44K-9.1
to clarify a licensee's obligation to show his or her license to clients upon request, the Division is proposing to amend 
N.J.A.C. 13:44K-9.1 to provide that a licensee seeking a duplicate license must, in addition to paying a duplicate license 
fee, submit a certification verifying the reason he or she requires a duplicate license. N.J.A.C. 13:44K-9.2, concerning 
financial arrangements with clients and third-party payors, is proposed to be amended to delete those provisions that are 
duplicative of the requirements in proposed new rule N.J.A.C. 13:44K-8.9.

N.J.A.C. 13:44K-9.3, which requires an occupational therapist or an occupational therapy assistant to advise clients 
about the nature and purpose of the occupational therapy services to be provided, is proposed to be readopted without 
change. The Director is also proposing that N.J.A.C. 13:44K-9.4, which delineates the factors that the Council may 
consider in determining whether a fee charged by a licensee for his or her services is excessive and N.J.A.C. 
13:44K-9.5, which sets forth requirements for the termination of occupational therapy services, be readopted without 
change.

The rules in Subchapter 10 concern the maintenance and release of client records. N.J.A.C. 13:44K-10.1, which 
sets forth requirements for the preparation and maintenance of such records, provides, in part, that progress notes 
created by an occupational therapy assistant, a temporary licensed occupational therapist, a temporary licensed 
occupational therapy assistant or an occupational therapy student, must be countersigned by the supervising 
occupational therapist. The Division is proposing to amend the rule to provide that if more than one progress note 
appears on a page, one signature on the page shall be sufficient to indicate review and approval of all notes on the page. 
N.J.A.C. 13:44K-10.1 also currently provides that client records for minor patients must be maintained until the minor 
reaches the age of 25. The Division is proposing to amend the rule to provide that such records must be retained for 
seven years from the last treatment or for at least two years after the minor client reaches the age of 18, whichever is 
later. N.J.A.C. 13:44K-10.2, which sets forth requirements applicable to patient records if they are maintained on a 
computer and N.J.A.C. 13:44K-10.3, which sets forth requirements for the release of client records, are proposed to be 
readopted without change.

Subchapter 11 establishes the schedule of fees that will be charged by the Division. N.J.A.C. 13:44K-11.1 is 
proposed to be readopted without change.

The Director has provided a 60-day comment period for this notice of proposal, therefore, this notice is excepted 
from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Division believes that the rules proposed for readoption with amendments and new rules will have a positive 
impact upon members of the regulated community and will help to protect the health, safety and welfare of the citizens 
of New Jersey. These rules establish the requisite standards of licensure in the State and positively affect the regulated 
community by clarifying the varied aspects of occupational therapy practice for the benefit of all licensed occupational 
therapists, licensed occupational therapists, temporarily licensed persons and applicants for licensure.

The proposed readoption of the rules in N.J.A.C. 13:44K with amendments and new rule continues the accepted 
practice standards for licensed occupational therapists and occupational therapy assistants and temporary licensed 
occupational therapists and occupational therapy assistants established by the Division, and by so doing, provides 
licensees and applicants for licensure with a clear and comprehensive set of rules to guide them in their professional 
work. Applicants for licensure will benefit by having a set of rules, which govern the manner in which they may qualify 
for licensure. The Division also believes that licensees will benefit from the rules proposed for readoption with 
amendments and new rules as a result of the uniform standards that will be applied throughout the field of occupational 
therapy.

The Division believes that the rules proposed for readoption with amendments and new rules will have a positive 
impact upon the general public by continuing to safeguard the public health and safety by ensuring the maintenance of
appropriate practice standards, which will enable licensees to provide the highest quality service.

The Division believes that the proposed new rules will positively impact the regulated community and the consumers they serve. Proposed new rule N.J.A.C. 13:44K-1.3 will have a positive impact upon occupational therapists and occupational therapy assistants licensed in other jurisdictions who wish to provide occupational therapy services in New Jersey without obtaining a license during the statutorily authorized 60-day period, and upon New Jersey licensees with whom they choose to work, by clarifying the parties' rights and responsibilities under such arrangements. To the extent that the proposed new rule will help to facilitate such arrangements, the Division believes that New Jersey consumers will also be positively impacted by the new rule, if such arrangements result in increased opportunities for consumers to obtain occupational therapy services in the State.

Proposed new rule N.J.A.C. 13:44K-5.4 concerning the use of physical agent modalities, will have a positive impact upon licensees by clarifying what types of modalities they may use in their practice. In addition, the proposed new rule will positive impact consumers by ensuring that only those occupational therapists that have satisfied the competency requirements articulated in the new rule are permitted to utilize advanced physical agent modalities in the treatment of patients.

Proposed new rules N.J.A.C. 13:44K-8.6, 8.7 and 8.8 may positively impact licensees by clarifying their obligations with respect to license renewal, the election of inactive status, and the requirements that must be satisfied if a licensee seeks to resume practice following the election of inactive status or the suspension of his or her license following a failure to renew. Proposed new rule N.J.A.C. 13:44K-8.9 may have a positive impact upon licensees by delineating requirements that must be followed in the submission of claims and bills to third-party payors for the occupational therapy services they render.

Economic Impact

The Division anticipates that the rules proposed for readoption with amendments will not impose any new or additional significant costs upon applicants for licensure, licensees or consumers. The proposed readoption of the existing rules will continue the economic impact that the rules have had on such persons for the past five years.

The proposed readoption of N.J.A.C. 13:44K-2.1 with amendments will continue to have an economic impact upon applicants for licensure to the extent that the requirements in the rule may cause applicants to incur costs associated with obtaining the requisite education to qualify for licensure. The readoption of the rules in Subchapter 3 may also have an economic impact upon applicants for licensure to the extent that the existing requirements of N.J.A.C. 13:44K-3.1 and 3.2, as proposed to be amended, may cause applicants to incur administrative costs associated with submitting the documentation required in the rules.

The proposed readoption of the rules in Subchapter 4 may continue to have an economic impact upon applicants for, and holders of, temporary licenses, to the extent that applicants for temporary licensure may incur costs associated with submitting the documentation required for licensure under N.J.A.C. 13:44K-4.1. Temporary license holders may incur costs to renew their temporary licenses pursuant to the requirements of N.J.A.C. 13:44K-4.2.

The Division proposed amendments to N.J.A.C. 13:44K-3.1, 3.2 and 4.1, requiring applicants for licensure as occupational therapists, occupational therapy assistants and temporary licensed occupational therapists and occupational therapy assistants to undergo a criminal history background check, will have an economic impact upon applicants for licensure who will be required to pay the fees associated with such background checks.

The proposed amendments to N.J.A.C. 13:44K-6.2 and 7.2, prohibiting an occupational therapist from working as a supervisor unless he or she has 1,200 hours of work experience obtained in no less than one year and in no more than three years, may have an economic impact upon those licensees who fail to meet this requirement and, therefore, will be precluded from acting as supervisors.
The rules proposed for readoption in Subchapter 8 as amended may have an economic impact upon licensed occupational therapists and occupational therapy assistants to the extent that licensees may incur costs associated with notify the Council of address or name changes.

The rules in Subchapters 9 and 10 will continue to have an economic impact upon licensees and upon the consumers they serve. *N.J.A.C. 13:44K-9.1* may have an impact upon licensees who require duplicate licenses. Such licensees will be required to remit a duplicate license fee. In addition, the proposed readoption of *N.J.A.C. 13:44K-9.2* may have an economic impact upon licensees, to the extent that the rule limits the amount that may be charged by a licensee for his or her professional services. Fees must be reasonable and commensurate with the status and experience of an occupational therapist offering like services in the same geographic area, and are also subject to other limitations, including prohibitions against charging a fee for unkept appointments or collecting interest on unpaid accounts, unless the client has been notified in writing of these policies prior to receiving treatment.

The proposed readoption of *N.J.A.C. 13:44K-10.1*, which requires a licensee to keep an accurate and contemporaneous record of services provided to clients, may cause licensees to incur administrative costs associated with creating and maintaining a client record system. The proposed readoption of *N.J.A.C. 13:44K-10.3*, concerning release of client records, may also have an impact upon licensees and consumers, to the extent that licensees may charge a fee for the reproduction of a client record, for the compilation of a summary of the client record, or for the creation of a report regarding the client's treatment.

The proposed readoption of the fee schedule set forth at *N.J.A.C. 13:44K-11.1* will continue to have an economic impact upon applicants for licensure and licensees, to the extent that such persons will be required to remit to the Division the fees specified in the rule.

Proposed new rule *N.J.A.C. 13:44K-1.3* may have an economic impact upon New Jersey licensed occupational therapists who desire to work in association with occupational therapists or occupational therapy assistants licensed in other jurisdictions for the 60-day time frame authorized under the Act. These New Jersey licensees may incur administrative expenses to the extent that there are costs associated with submitting the required documentation to the Council and with providing copies of the Act and the rules in Chapter 44K to all licensees of other jurisdictions with whom they will be working.

Proposed new rule *N.J.A.C. 13:44K-5.4* may have an economic impact upon occupational therapists who seek to utilize advanced physical agent modalities in their practice, to the extent that they will be required to either complete a Council-approved training course or become certified by the Hand Therapy Certification Commission or other comparable organization. Licensees who are currently utilizing advanced physical agent modalities may incur costs in submitting the requisite documentation to the Council to substantiate that their past training qualifies them to utilize such modalities after the effective date of the new rule.

Proposed new rule *N.J.A.C. 13:44K-8.6*, concerning licensure renewal, will impose economic costs upon licensees who submit their renewal applications within 30 days after their license expiration date. Such licensees must submit a late fee, in addition to the standard license renewal fee. In addition, licensees who have had their licenses suspended for failure to renew within 30 days after the license expiration date will incur additional costs if they wish to have their license reinstated pursuant to proposed new rule *N.J.A.C. 13:44K-8.8*. Licensees seeking reinstatement will be required to pay a reinstatement fee, all appropriate renewal fees and any outstanding penalties imposed by the Council. Licensees will also be required to submit evidence of having maintained professional competency. Proposed new rule *N.J.A.C. 13:44K-8.7*, concerning inactive licensure status, may have an economic impact upon licensees seeking to resume practice after having elected inactive status. Such licensees must bear the costs associated with submitting the required documentation and fees set forth in the rule and in demonstrating competency to return to active practice.

The Division believes that any economic impact that may be borne by licensees as a result of the rules proposed for readoption with amendments and the proposed new rules is outweighed by the need to protect the health, safety and
welfare of consumers seeking occupational therapy services in the State.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption, the proposed amendments and the proposed new rules are governed by N.J.S.A. 45:9-37.51 et seq. and are not subject to any Federal requirements or standards.

Jobs Impact

The Division believes that the rules proposed for readoption, the proposed amendments and the proposed new rules will not result in the generation or loss of jobs.

Agriculture Impact

The rules proposed for readoption, the proposed amendments and the proposed new rules will not have any impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

Currently, the Division licenses approximately 4,700 occupational therapists, 700 occupational therapy assistants and 10 temporary licensed occupational therapists and occupational therapy assistants. If these licensees are considered "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., then the following analysis applies.

The rules proposed for readoption, the proposed amendments and the proposed new rules will impose various reporting, recordkeeping and compliance requirements upon members of the regulated community. Specifically, to comply with proposed new rule N.J.A.C. 13:44K-1.3, a New Jersey licensed occupational therapist who chooses to work in association with an occupational therapist or occupational therapy assistant who is licensed in another jurisdiction must comply with the notification requirements in the new rule. The New Jersey licensee is also responsible for providing the occupational therapist or occupational therapy assistant with whom he or she works in association with copies of New Jersey laws and regulations relating to the practice of occupational therapy.

N.J.A.C. 13:44K-2.1 requires an applicant for licensure as an occupational therapist or occupational therapy assistant to meet certain educational requirements, including having obtained a bachelor's or associate degree, respectively, or its equivalent, in occupational therapy, or to have completed the academic requirements of an educational program in occupational therapy. N.J.A.C. 13:44K-2.1 also requires an applicant for licensure to have a minimum amount of supervised fieldwork experience and to have successfully completed the certification examination administered by National Board for Certification in Occupational Therapy (NBCOT).

The requirements outlined in Subchapter 3 will impose compliance requirements upon applicants for licensure. N.J.A.C. 13:44K-3.1 and 3.2 continue to require applicants for licensure as occupational therapists and occupational therapy assistants, respectively, to submit documentation of an applicant's education, including official transcripts and documentation indicating that the applicant has completed the required fieldwork experience. All applicants must also submit an application fee and a certified photo of the applicant. Proposed amendments to N.J.A.C. 13:44K-3.1 and 3.2 will also require all applicants for initial licensure to undergo a criminal history background check conducted by the State as part of the licensure process.

The rules in Subchapter 4 will impose compliance requirements upon applicants for, and holders of, temporary licenses. N.J.A.C. 13:44K-4.1 requires all applicants for a temporary license to submit to the Council documentation of the applicant's education, including official transcripts and documentation indicating that the applicant has completed...
the required fieldwork experience. An applicant must also submit a letter from NBCOT, indicating that the applicant is eligible to take the licensure examination. All applicants must also submit an application fee and a certified photo. Proposed amendments to N.J.A.C. 13:44K-4.1 will also require applicants for temporary licensure to undergo a criminal history background check conducted by the State as part of the licensure process.

N.J.A.C. 13:44K-4.2 will impose various compliance requirements upon temporary license holders. N.J.A.C. 13:44K-4.2 requires the holder of a temporary license who does not take the licensing examination within 90 days of the issuance of the temporary license, or who fails the licensure examination for the first time, to apply to the Council for renewal of the temporary license. Proposed amendments to N.J.A.C. 13:44K-4.2 will require this renewal request to be made within 10 business days of the expiration of the temporary license. N.J.A.C. 13:44K-4.2 also requires an applicant seeking renewal of his or her temporary license to submit a written request to the Council certifying that he or she has requested registration for another examination from NBCOT. The candidate must also submit a temporary license renewal fee. N.J.A.C. 13:44K-4.2 requires the holder of a temporary license, upon notification from NBCOT that the applicant has failed the licensure examination for the second time, to cease and desist from practicing occupational therapy and to surrender his or her temporary license to the Council. A temporary license holder who has been notified by NBCOT of his or her passage of the licensure examination must cease practicing occupational therapy under the temporary license and surrender the temporary license to the Council within 180 days of such notification. The candidate must submit all documentation required for completion of his or her licensure application.

The rules in Subchapter 5 will impose recordkeeping and compliance requirements upon occupational therapists and licensed occupational therapy assistants. N.J.A.C. 13:44K-5.1 requires an occupational therapist to develop an intervention plan for all clients. N.J.A.C. 13:44K-5.3 authorizes a licensed occupational therapist to delegate selected occupational therapy services to occupational therapy assistants, temporary licensed occupational therapists, temporary licensed occupational therapy assistants, and occupational therapy students. Under N.J.A.C. 13:44K-5.3, a licensed occupational therapist is responsible for the proper supervision of all persons to whom he or she has delegated occupational therapy services. The occupational therapist must determine the degree of supervision required, based on an evaluation of the condition of the client, the education, skill and training of the person to whom the delegation is made and the nature of the task being delegated.

Proposed new rule N.J.A.C. 13:44K-5.4 will impose various compliance requirements upon licensed occupational therapists who desire to utilize physical agent modalities in their practices. Prior to utilizing advanced physical agent modalities, an occupational therapist must demonstrate competency by completing a Council-approved training course or by obtaining certification from the Hand Therapy Certification Commission or other comparable organization. These licensees are required to retain documentation of their training and make it available to the Council upon request.

The rules in Subchapter 6 and 7 will impose various compliance and recordkeeping requirements upon occupational therapists and the occupational therapy assistants and temporary licensees they supervise. N.J.A.C. 13:44K-6.1 and 7.1 require a licensed occupational therapy assistant and temporary licensee, respectively, to perform occupational therapy services only under the supervision of a licensed occupational therapist. N.J.A.C. 13:44K-6.1 and 7.1 also require the supervising occupational therapist to retain responsibility at all times for the occupational therapy care of the client being treated by the occupational therapy assistant or by the temporary licensee. In the event of a change of the supervising occupational therapist, the subsequent supervisor must assume responsibility for the ongoing supervision of any occupational therapy assistants and the temporary licensed personnel. N.J.A.C. 13:44K-6.2 and 7.2 require an occupational therapist to maintain a plan of supervision for each occupational therapy assistant and temporary license holder he or she supervises, which must include evidence of ongoing supervision. N.J.A.C. 13:44K-6.2 and 7.2 limit the number of persons an occupational therapist may supervise and also impose requirements as to the type of supervision required of different licensees, consistent with the condition of the client, the education, skill and training of the licensee and the nature of the tasks to be performed by the licensee. The proposed amendments to N.J.A.C. 13:44K-6.2 and 7.2 will require an occupational therapist to have at least 1,200 hours of work experience obtained in no less than one year and in no more than three years of practice prior to becoming a supervisor. N.J.A.C. 13:44K-6.3 and 7.3 require all occupational therapy assistants and temporary licensees to maintain a record of
supervision. *N.J.A.C. 13:44K-6.4* prohibits a designated supervisor from delegating his or her responsibilities to an occupational therapy assistant who has less than 3,600 hours obtained over a five-year period in the particular practice area in which the services are being provided and prohibits an occupational therapy assistant from supervising more than three persons at one time.

The rules in Subchapter 8 will impose compliance and recordkeeping requirements upon occupational therapists, occupational therapy assistants and temporary licensees. The proposed amendments to *N.J.A.C. 13:44K-8.1* will require all licensees to notify the Council within 30 days of any change in their address of record. *N.J.A.C. 13:44K-8.1* continues to require a licensee to notify the Council within 30 days of receiving a notice of disciplinary action taken against the licensee in another jurisdiction. *N.J.A.C. 13:44K-8.2* requires a licensee whose name has been legally changed to forward to the Council legal evidence of the name change and to pay a fee. *N.J.A.C. 13:44K-8.3* requires a licensee to use only the designation, which corresponds to his or her license. The proposed amendments to *N.J.A.C. 13:44K-8.5* require licensees to refrain from engaging in a sexual relationship with a client unless the licensee has provided the client with written notice terminating the client-therapist relationship and the last occupational therapy was provided to the client more than six months ago.

Proposed new rules *N.J.A.C. 13:44K-8.6, 8.7, 8.8 and 8.9* will impose various compliance requirements upon licensees. These requirements are discussed in the Summary above.

The rules in Subchapter 9 will impose various recordkeeping and compliance requirements upon licensees. Pursuant to *N.J.A.C. 13:44K-9.1*, a licensee must show his or her license to a client upon request and must ensure that information regarding the Council and the professional fees that may be charged for a licensee's services are prominently displayed in the office or facility where the services are provided. *N.J.A.C. 13:44K-9.2* requires a licensee to explain to a client the financial arrangements surrounding the provision of services. *N.J.A.C. 13:44K-9.3* requires an occupational therapist or occupational therapy assistant to advise a client of the nature of the services to be provided, as well as the limits and obligations associated with such services. *N.J.A.C. 13:44K-9.5* requires an occupational therapist to terminate services to a client when the client has achieved the predetermined goals established in the client's plan of care or when the occupational therapy services provided by the licensee no longer meet the client's needs. *N.J.A.C. 13:44K-9.5* also requires an occupational therapist who is unable to provide continued professional services to notify the client of the termination after making a reasonable effort to assist the client in obtaining services from another qualified licensee.

The rules in Subchapter 10 impose various recordkeeping and compliance requirements upon a licensee. *N.J.A.C. 13:44K-10.1* requires an occupational therapist to prepare and maintain a permanent, contemporaneous client record for each client to whom he or she provides services. All progress notes created by an occupational therapy assistant, a temporary licensee or an occupational therapy student fulfilling the required fieldwork component of his or her educational training, must be countersigned by the supervising occupational therapist. An occupational therapist must periodically review and update the client's plan of care. A licensee must retain the client record for at least seven years from the date of last entry. If the client is a minor, the proposed amendments to *N.J.A.C. 13:44K-10.1* require a licensee to maintain the record for seven years from the last treatment or for at least two years after the minor client reaches the age of 18, whichever is later.

*N.J.A.C. 13:44K-10.2* requires a licensee who prepares a client record, which is maintained solely on a computer to use a write-protected program that contains a permanently activated date and time recording for all entries and that automatically prepares a back-up copy of the file. The licensee must include in the client record at least two forms of identification and must finalize all entries through use of the confidential personal code. *N.J.A.C. 13:44K-10.3* requires an occupational therapist to provide a client with a copy of his or her record of occupational therapy services, within 30 days of a written request by the client and limits how much money a licensee may charge to reproduce records or to provide a record summary.

No additional professional services will be needed to comply with the rules proposed for readoption, the proposed
amendments and the proposed new rules. The costs of compliance with the rules proposed for readoption, the proposed amendments and the proposed new rules are discussed in the Economic Impact above. The Division believes that the rules proposed for readoption, the proposed amendments and the proposed new rules should be uniformly applied to all licensees in order to ensure the health, safety and welfare of the general public in the provision of occupational therapy services and, therefore, no differing compliance requirements for any licensees are provided based upon the size of the business.

**Smart Growth Impact**

The Division believes that the rules proposed for readoption, the proposed amendments and the proposed new rules will not have any impact upon the achievement of smart growth or upon the implementation of the State Development and Redevelopment Plan.

**Housing Affordability Impact**

The rules proposed for readoption with amendments and proposed new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments and proposed new rules concern the practice of occupational therapy.

**Smart Growth Development Impact**

The rules proposed for readoption with amendments and proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments and proposed new rules concern the practice of occupational therapy.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:44K.

Full text of the proposed amendments and new rules follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

**SUBCHAPTER 1. GENERAL PROVISIONS**

13:44K-1.1 Purpose and scope

(a)-(b) (No change.)

(c) This chapter shall not apply to those individuals exempt from the licensure requirements of the Act pursuant to N.J.S.A. 45:9-37.60, except as provided in N.J.A.C. 13:44K-1.3.

13:44K-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Client" means a person, group of persons or a system, that [are the recipients of] receives professional services rendered by a licensed occupational therapist, a licensed occupational therapy assistant or a temporary licensed occupational therapist or assistant in medical, health, educational, vocational or social settings.
"Licensee" means any individual holding a license [issued by the Council] to provide occupational therapy services in the State of New Jersey.

"Supervision" means the responsible and direct involvement of a licensed occupational therapist with an occupational therapy assistant, a temporary licensed occupational therapist, a temporary licensed occupational therapy assistant[,] or an occupational therapy student fulfilling the required fieldwork component of his or her educational training, for the development of an occupational therapy treatment plan and the periodic review of the implementation of that plan. Such supervision shall be close, routine or general, consistent with the following:

1. "Close supervision" means daily, face-to-face contact with and frequent observation of the performance of the individual at the location where he or she is rendering services;

2. "Routine supervision" means face-to-face contact with and observation of the performance of the individual at least once a week at the location where he or she is rendering services; and

3. "General supervision" means face-to-face contact with and observation of the performance of the individual at least once every two weeks at the location where he or she is rendering services.

13:44K-1.3 Occupational therapy services performed for 60 days without a license

(a) For purposes of this section, the term "in association with" means an employment relationship, independent contractor relationship, consultant relationship, or other agreement between a New Jersey licensed occupational therapist and an occupational therapist or occupational therapy assistant licensed in another state, whereby the New Jersey licensed occupational therapist agrees to assume the responsibilities set forth in this section.

(b) An occupational therapist or occupational therapy assistant licensed in another state with regulatory requirements that are substantially equivalent to the requirements in New Jersey shall be permitted to engage in the practice of occupational therapy in this State, in association with a New Jersey licensed occupational therapist who satisfies the requirements of (c) below, for up to 60 days in a calendar year without obtaining a license, pursuant to N.J.S.A. 45:9-37.60(e), consistent with the requirements of this section.

(c) The New Jersey licensed occupational therapist with whom an occupational therapist or occupational therapy assistant licensed in another state seeks to work in association with pursuant to (b) above shall:

1. Have a license in New Jersey that is active and in good standing, other than a temporary license;

2. Obtain confirmation from the Council that the state in which the occupational therapist or occupational therapy assistant is licensed has regulatory requirements that are substantially equivalent to the requirements in New Jersey;

3. Submit written notification to the Council of the occupational therapist or occupational therapy assistant's decision to work in New Jersey pursuant to this section, within seven business days of the commencement of work in New Jersey. The written notification shall include the occupational therapist or occupational therapy assistant’s name, address, states of licensure, out-of-State license numbers and the address in New Jersey where he or she will be providing occupational therapy services. The written notification shall also include a statement that the New Jersey licensee has verified with the licensing authority in each state in which the occupational therapist or occupational therapy assistant is licensed that:

   i. The licensee is in good standing; and
ii. The occupational therapist or occupational therapy assistant has not been convicted of a crime and does not have any criminal charges pending;

4. Provide a copy of the Occupational Therapy Licensing Act, N.J.S.A. 45:9-37.51 et seq., and the rules of this chapter to the occupational therapist or occupational therapy assistant prior to the commencement of work in New Jersey and shall ensure that the occupational therapist or occupational therapy assistant complies with all requirements set forth in the Act and in this chapter; and

5. Submit written notification to the Council whenever the association between the licensee and the occupational therapist or occupational therapy assistant is completed or is terminated. Such notification shall be submitted within seven business days of the completion or termination of the association.

(d) Failure on the part of an occupational therapist or occupational therapy assistant licensed in another state to comply with the requirements of N.J.S.A. 45:9-37.60(e) or this section while providing occupational therapy services in New Jersey shall be deemed a violation of the Occupational Therapy Licensing Act, N.J.S.A. 45:9-37.60(e), and this section. The Council shall give notice of such violation to the licensing authority in the state in which the occupational therapist or occupational therapy assistant is licensed. Such violation may be considered by the Council in evaluating any application by the occupational therapist or occupational therapy assistant for occupational therapy licensure in New Jersey.

(e) The New Jersey licensed occupational therapist with whom an occupational therapist or occupational therapy assistant licensed in another state seeks to work in association shall comply with the requirements set forth in (c) above in each calendar year that such association takes place.

(f) The New Jersey licensed occupational therapist who works in association with an occupational therapist or occupational therapy assistant licensed in another state shall maintain all documentation regarding such associations for a period of five years from the date of termination of each association.

(g) A New Jersey licensed occupational therapist who fails to comply with the requirements of this section shall be deemed to have engaged in professional misconduct.

SUBCHAPTER 2. OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS: ELIGIBILITY REQUIREMENTS

13:44K-2.1 Eligibility requirements; occupational therapist; occupational therapy assistant

(a) To be eligible for licensure as an occupational therapist, an applicant shall:

1.-2. (No change.)

3. Have successfully completed:

i. (No change.)

ii. A bachelor's degree or its equivalent in any field other than occupational therapy from an accredited college or university approved by the Commission on Higher Education or its successor and have fulfilled the academic requirements of an educational program in occupational therapy accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association, the World Federation of Occupational Therapy[,] or other nationally recognized programmatic accrediting agency;
(b) To be eligible for licensure as an occupational therapy assistant, an applicant shall:

1.-2. (No change.)

3. Have successfully completed:

i. (No change.)

ii. An associate's degree or its equivalent in any field other than occupational therapy from an accredited college or university approved by the Commission on Higher Education or its successor and have fulfilled the academic requirements of an educational program for occupational therapy assistant accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association, the World Federation of Occupational Therapy, or other nationally recognized programmatic accrediting agency;

4.-5. (No change.)

SUBCHAPTER 3. OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS: LICENSING PROCEDURE

13:44K-3.1 Licensing procedure: occupational therapist

(a) An applicant for licensure as an occupational therapist shall submit the following to the Council:

1. A completed application form, which contains the following:

i. (No change.)

ii. If the applicant has received a bachelor's degree or its equivalent in any field other than occupational therapy, documentation of the applicant's education, including official transcripts, which indicate that the applicant has completed the academic requirements of an educational program in occupational therapy accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association, the World Federation of Occupational Therapy, or other nationally recognized programmatic accrediting agency, which shall be forwarded to the Council directly by the educational program. If the applicant has completed all academic and administrative requirements necessary for completion of an educational program in occupational therapy, but has not had the program certificate conferred by the [page=6399] educational institution, the applicant may apply for a temporary license pursuant to N.J.A.C. 13:44K-4.1(b);

iii. Documentation [which indicates] that the applicant has successfully completed at least 24 weeks of supervised fieldwork experience, with a minimum of 720 hours, approved by the educational institution at which the applicant completed the occupational therapy education program in accordance with (a)1i or 1ii above, which shall be submitted to the Council directly by the educational institution. The applicant shall have completed the 24 weeks of supervised fieldwork experience within 24 months of completing the academic requirements of the educational institution. Documentation of the supervised fieldwork experience shall contain, at a minimum, the number of hours per week the applicant worked and the location where the supervised fieldwork was conducted;

iv.-viii. (No change.)
2. The application fee set forth in N.J.A.C. 13:44K-11.1; [and]

3. A two inch by two inch, recent head and shoulder photo of the applicant, certified by a Notary Public, and signed by the applicant; and

4. The applicant's name, address and fingerprints for purposes of a criminal history background check to be conducted by the State of New Jersey pursuant to N.J.S.A. 45:1-28 et seq., to determine whether criminal history record information exists, which may be considered by the Council in determining whether the applicant shall be licensed in the State.

13:44K-3.2 Licensing procedure: occupational therapy assistant

(a) An applicant for licensure as an occupational therapy assistant shall submit the following to the Council:

1. A completed application form, which contains the following:

   i. (No change.)

   ii. If the applicant has received an associate's degree or its equivalent in any field other than occupational therapy, documentation, including official transcripts, which indicate that the applicant has completed the academic requirements of an educational program for occupational therapy assistants accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association, the World Federation of Occupational Therapy[,] or other nationally recognized programmatic accrediting agency, which shall be forwarded to the Council directly by the educational program. If the applicant has completed all academic and administrative requirements necessary for completion of an educational program in occupational therapy, but has not had the program certificate conferred by the educational institution, the applicant may apply for a temporary license pursuant to N.J.A.C. 13:44K-4.1(b);

   iii. Documentation [which indicates] that applicant has successfully completed at least 12 weeks of supervised fieldwork experience, with a minimum of 360 hours, approved by the educational institution at which the applicant completed the occupational therapy education program in accordance with (a)1ii above, which shall be forwarded to the Council directly by the educational institution. The applicant shall have completed the 12 weeks of supervised fieldwork experience within 12 months of completing the academic requirements of the educational institution[. Documentation of the supervised fieldwork experience shall contain, at a minimum, the number of hours per week the applicant worked and the location where the supervised fieldwork was conducted];

   iv.-vi. (No change.)

   vii. A "Verification of State License" form from any state in which the applicant is now or has ever been licensed to practice as an occupational therapy assistant, which shall be forwarded to the Council directly by the state in which the license is or was held; and

   [viii. A "Verification of Supervision" form from all current employers if the applicant is currently employed. If the applicant is not currently employed, a "Verification of Supervision" form from all employers shall be submitted to the Council before employment commences; and]

   [ix.] viii. (No change in text.)

2. The application fee set forth in N.J.A.C. 13:44K-11.1; [and]
3. One two inch by two inch, recent head and shoulder photo of the applicant, certified by a Notary Public, and signed by the applicant; and

4. The applicant's name, address and fingerprints for purposes of a criminal history background check to be conducted by the State of New Jersey pursuant to N.J.S.A. 45:1-28 et seq., to determine whether criminal history record information exists, which may be considered by the Council in determining whether the applicant shall be licensed in the State.

SUBCHAPTER 4. TEMPORARY LICENSES

13:44K-4.1 Temporary license

(a) (No change.)

(b) A temporary license shall be available to an applicant for [permanent] licensure as an occupational therapist or an occupational therapy assistant who has completed all academic and administrative requirements for a degree or certificate in occupational therapy but has not had the degree [of] or certificate conferred by the university or college, provided that the applicant satisfies the requirements of (c) or (d) below.

(c) An applicant for temporary licensure as an occupational therapist shall submit the following to the Council:

1. A completed application form, which contains the following:

i. (No change.)

ii. If the applicant has received a bachelor's degree or its equivalent in any field other than occupational therapy, documentation, including official transcripts, which indicate that the applicant has completed the academic requirements of an educational program in occupational therapy accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association, the World Federation of Occupational Therapy[,] or other nationally recognized programmatic accrediting agency, which shall be forwarded to the Council directly by the educational program. If the applicant has completed all academic and administrative requirements necessary for completion of an educational program in occupational therapy, but has not had the program certificate conferred by the educational institution, the applicant may submit a letter from the director of the occupational therapy program, until the official transcript becomes available, verifying that all requirements of the educational program have been completed;

iii. Documentation [which indicates] that the applicant has successfully completed at least 24 weeks of supervised fieldwork experience, with a minimum of 720 hours, approved by the educational institution at which the applicant completed the occupational therapy education program in accordance with (b)ii or ii above, which shall be submitted to the Council directly by the educational institution. The applicant shall have completed the 24 weeks of supervised fieldwork experience within 24 months of completing the academic requirements of the educational institution[]. Documentation of the supervised fieldwork experience shall contain, at a minimum, the number of hours per week the applicant worked and the location where the supervised fieldwork was conducted;

iv.-v. (No change.)

vi. A "Verification of State License" form from any state in which the applicant is now or has ever been licensed to practice as an occupational therapist, which shall be forwarded to the Council by the state in which the license is or was held; and
[vii. A "Verification of Supervision" form from all current employers; and]

[viii. vii. (No change in text.)

2. The application fee set forth in N.J.A.C. 13:44K-11.1; [and]

3. One two inch by two inch, recent head and shoulder photo of the applicant, certified by a Notary Public, and signed by the applicant[.]; and

4. The applicant's name, address and fingerprints for purposes of a criminal history background check to be conducted by the State of New Jersey pursuant to N.J.S.A. 45:1-28 et seq., to determine whether criminal history record information exists, which may be considered by the Council in determining whether the applicant shall be licensed in the State.

(d) An applicant for temporary licensure as an occupational therapy assistant shall submit the following to the Council:

1. A completed application form, which contains the following:

i. (No change.)

ii. If the applicant has received an associate's degree or its equivalent in any field other than occupational therapy, documentation, including official transcripts, which indicate that the applicant has completed the academic requirements of an educational program in occupational therapy accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association, the World Federation of Occupational Therapy[,] or other nationally recognized programmatic accrediting agency, which shall be forwarded to the Council directly by the educational program. If the applicant has completed all academic and administrative requirements necessary for completion of an educational program in occupational therapy, but has not had the program certificate conferred by the educational institution, the applicant may submit a letter from the director of the occupational therapy program, until the official transcript becomes available, verifying that all requirements of the educational program have been completed;

iii. Documentation [which indicates] that the applicant has successfully completed at least 12 weeks of supervised fieldwork experience, with a minimum of 360 hours, approved by the educational institution at which the applicant completed the occupational therapy education program in accordance with (c)1ii above, which shall be forwarded to the Council directly by the educational institution. The applicant shall have completed the 12 weeks of supervised fieldwork experience within 12 months of completing the academic requirements of the educational institution[. Documentation of the supervised fieldwork experience shall contain, at a minimum, the number of hours per week the applicant worked and the location where the supervised fieldwork was conducted];

iv.-v. (No change.)

vi. A "Verification of State License" form from any state in which the applicant is now or has ever been licensed to practice as an occupational therapist, which shall be forwarded to the Council by the state in which the license is or was held; and

[vii. A "Verification of Supervision" form from all current employers; and]

[viii. vii. (No change in text.)

2. The application fee set forth in N.J.A.C. 13:44K-11.1; [and]
3. One two inch by two inch, recent head and shoulder photo of the applicant, certified by a Notary Public, and signed by the applicant[.] and

4. The applicant’s name, address and fingerprints for purposes of a criminal history background check to be conducted by the State of New Jersey pursuant to N.J.S.A. 45:1-28 et seq., to determine whether criminal history record information exists, which shall be considered by the Council in determining whether the applicant shall be licensed in the State.

13:44K-4.2 Expiration of temporary license; renewal of temporary license

(a)-(b) (No change.)

(c) A temporary license shall be renewable one time only. A temporary license holder seeking renewal of a temporary license shall submit a written request for renewal to the Council, within 10 business days of the expiration of the temporary license, certifying that he or she has requested a “Confirmation of Examination Registration and Eligibility to Examine Notice” from the National Board for Certification in Occupational Therapy (NBCOT), which shall be sent directly to the Council from NBCOT. The temporary license holder shall also submit the renewal fee set forth in N.J.A.C. 13:44K-11.1.

(d) A temporary license, which has been renewed pursuant to (c) above shall automatically expire upon notification to the temporary license holder from NBCOT that he or she has failed the licensure examination for the second time or upon the temporary license holder’s failure to take the licensure examination for the second time within 180 days of the date of issuance of the renewal. The temporary license holder shall immediately cease practice and surrender the temporary license to the Council upon such notification or upon expiration of the 180 days. Failure to cease practicing shall be deemed professional misconduct and the unlicensed practice of occupational therapy and may subject a licensee to the penalties set forth in N.J.S.A. 45:1-21 et seq.

(e) A temporary license shall expire within 180 days of the temporary license holder’s receipt of notification from NBCOT that he or she has passed the licensure examination. The temporary license holder shall cease practicing under the temporary license no later than 180 days after receiving the NBCOT notification. The temporary license holder shall submit all documentation required for [permanent] licensure as provided in N.J.A.C. 13:44K-2.1, and shall surrender the temporary license to the Council within 180 days of NBCOT notification. Failure to cease practicing shall be deemed professional misconduct and the unlicensed practice of occupational therapy and may subject a licensee to the penalties set forth in N.J.S.A. 45:1-21 et seq.

(f) A temporary license issued pursuant to N.J.A.C. 13:44K-4.1(b) to an applicant for [a permanent license] licensure who has completed the academic and administrative requirements necessary for an occupational therapy degree or certificate, but who has not had the degree or certificate conferred, shall be valid for 180 days from the date of issuance. The temporary license holder shall cease practicing under the temporary license no later than 180 days after the date the license is issued. The temporary license holder shall submit an official transcript of his or her education to complete his or her [permanent] licensure application, as provided in N.J.A.C. 13:44K-2.1, and shall surrender the temporary license to the Council within 180 days of the date of issuance. Failure to cease practicing shall be deemed professional misconduct and the unlicensed practice of occupational therapy and may subject a licensee to the penalties set forth in N.J.S.A. 45:1-21 et seq.

SUBCHAPTER 5. SCOPE OF PRACTICE

13:44K-5.1 Scope of practice of a licensed occupational therapist
(a) The scope of practice of a licensed occupational therapist shall include:

1. (No change.)

2. The administration of standardized and/or non-standardized assessments and/or the observation of a client and the environment to identify areas of functional abilities or deficits. Areas, which may be assessed shall include the performance of activities of daily living, including recreation, leisure or work related skills, which are affected by sensory, motor, developmental, perceptual, cognitive and/or psycho-social abilities;

3.-6. (No change.)

7. The utilization of physical agent modalities, consistent with N.J.A.C. 13:44K-5.4, as an adjunct to, or in preparation for, purposeful activities to enhance occupational performance with which the licensee is familiar as a result of training and experience.

13:44K-5.2 Scope of practice of a licensed occupational therapy assistant

(a) The scope of practice of a licensed occupational therapy assistant, working under the supervision of a licensed occupational therapist as provided in N.J.A.C. 13:44K-6.1, shall include:

1. (No change.)

2. The administration of standardized and/or non-standardized assessments and/or the observation of a client and the environment to assist in the identification of functional abilities or deficits. Areas, which may be assessed shall include the performance of activities of daily living, including recreation, leisure or work related skills which are affected by sensory, motor, developmental, perceptual, cognitive and/or psycho-social abilities;

3.-6. (No change.)

7. The utilization of physical agent modalities, consistent with N.J.A.C. 13:44K-5.4, as an adjunct to, or in preparation for, purposeful activity to enhance occupational performance with which the licensee is familiar as a result of training and experience.

13:44K-5.3 Delegation of occupational therapy services

(a) A licensed occupational therapist may delegate selected occupational therapy services [within his or her lawful scope of practice] to licensed occupational therapy assistants, temporary licensed occupational therapists, temporary licensed occupational therapy [page=6401] assistants and to occupational therapy students fulfilling the required fieldwork component of their educational training, provided the services are within the scope of practice of the individual to whom they are delegated.

(b) (No change.)

(c) The licensed occupational therapist shall be responsible for the proper supervision of persons to whom delegation of occupational therapy services is made. Such supervision shall be [either] close, routine or general supervision. [For purposes of this subsection, "close supervision" means daily, face to face contact with and frequent observation of the performance of the occupational therapy assistant at the location where his or her services are being rendered; "routine supervision" means face to face contact with and observation of the performance of the occupational therapy assistant at least once a week at the location where his or her services are being rendered; and "general supervision" means face to face contact with and observation of the performance of the occupational therapy assistant at least once every two
weeks at the location where his or her services are being rendered.] The degree of supervision exercised over such persons shall be determined by the licensed occupational therapist consistent with the requirements set forth in N.J.A.C. 13:44K-6.2 and based on an evaluation of:

1.-3. (No change.)

(d) (No change.)

13:44K-5.4 Use of physical agent modalities

(a) A licensed occupational therapist may use physical agent modalities as set forth in this section for the purpose of enhancing the functional performance of a client. For purposes of this section, "physical agent modalities" shall mean those modalities that produce a biophysical response through the use of light, water, temperature, sound, electricity or mechanical devices.

(b) A licensed occupational therapist may use superficial thermal agents, such as hydrotherapy/whirlpool, cryotherapy (cold packs, ice), fluidotherapy, hot packs, paraffin, water, infrared light and other commercially available heating and cooling technologies and mechanical devices, such as vasopneumatic and continuous passive motion devices.

(c) A licensed occupational therapist shall demonstrate competency, as provided in (e) or (f) below, prior to using any of the following advanced physical agent modalities: diathermy; high-voltage galvanic stimulation; micro current galvanic stimulation; transcutaneous electrical nerve stimulation; neuromuscular electronic stimulation; iontophoresis; therapeutic ultrasound; phonophoresis; and cold lasers.

(d) A provider of a training course in the use of advanced physical agent modalities may obtain Council approval of the course upon submission of documentation verifying that the course satisfies the requirements set forth in (e) below. Council approval for a training course shall be valid for one year. Resubmission of course documentation shall be required for renewal of course approval and whenever a provider changes the course content of an approved training course.

(e) A licensed occupational therapist may use advanced physical agent modalities if he or she has completed a Council-approved training course, which meets the following requirements:

1. The training course shall include at least 30 hours of didactic instruction. For purposes of this subsection, "didactic instruction" means live, in-person instruction and may include interactive telephonic or electronic instruction, but shall not include videotaped or audiotaped instruction. The training course shall include:
   i. Four hours of training in the use of heat wave physical agent modalities;
   ii. Sixteen hours of training in the use of electric wave physical agent modalities;
   iii. Six hours of training in the use of sound wave physical agent modalities; and
   iv. Four hours of training in the use of light wave physical agent modalities;

2. The training course shall include instruction in the following:
   i. Principles of physics related to specific properties of light, water, temperature, sound or electricity, as indicated by each modality;
ii. Physiological, neurophysiological and electrophysiological changes, as indicated, which occur as a result of the application of each modality;

iii. The response of normal and abnormal tissue to the application of each modality;

iv. Indications or contraindications related to the selection and application of each modality;

v. Guidelines for educating clients, including instructing about the process and possible outcomes of treatment, including risks and benefits;

vi. Safety rules and precautions related to each modality;

vii. Methods of documenting the effectiveness of the immediate and long-term effects of treatment;

viii. Characteristics of the equipment, including safe operation, adjustment and care of the equipment; and

ix. Hands-on application of each modality by each course participant. Such instruction shall be provided in-person. Interactive telephonic or electronic instruction in the application of modalities shall not be permitted; and

3. The primary instructor of the course shall be a licensed occupational therapist, a licensed physical therapist, a licensed physical therapy assistant or a licensed physician.

(f) A licensed occupational therapist may use advanced physical agent modalities if he or she holds a current certification from the Hand Therapy Certification Commission or any other national organization that utilizes substantially similar certification standards.

(g) A licensed occupational therapist shall retain documentation relating to his or her training in the use of advanced physical agent modalities pursuant to (e) or (f) above and shall make such documentation available to the Council upon request. The documentation shall include, if applicable:

1. The name and address of the person or organization presenting the program, workshop or seminar;

2. The name and address of the facility where the program, workshop or seminar was presented;

3. A copy of the program, workshop or seminar syllabus, which includes a detailed description of the learning objectives and teaching methods employed in the course and the qualifications of the instructor(s); and

4. A certificate of completion from the program, workshop or seminar sponsor.

(h) A licensed occupational therapist may apply to the Council for approval of a course in the use of advanced physical agent modalities that has not been pre-approved by the Council. The licensee shall submit the documentation set forth in (g) above to the Council for review.

(i) A licensed occupational therapist may delegate the application of the superficial thermal agent and mechanical device modalities set forth in (b) above to a licensed occupational therapy assistant consistent with the requirements of N.J.A.C. 13:44K-5.3. Delegation of the application of such modalities to anyone other than a licensed occupational therapy assistant shall be deemed professional misconduct and may subject a licensee to the penalties set forth in N.J.S.A. 45:1-21 et seq.
(j) A licensed occupational therapist shall not delegate the application of the advanced physical agent modalities set forth in (c) above. Delegation of advanced physical agent modalities shall be deemed professional misconduct and may subject a licensee to the penalties set forth in N.J.S.A. 45:1-21 et seq.

(k) A licensed occupational therapist who uses the advanced physical agent modalities set forth in (c) above without having satisfied the requirements set forth in (e) or (f) above shall be deemed to have engaged in professional misconduct and may be subject to the penalties set forth in N.J.S.A. 45:1-21 et seq.

(l) A licensed occupational therapist who uses the advanced physical agent modalities set forth in (c) above shall submit documentation verifying that he or she has obtained training in the use of advance physical agent modalities that is substantially similar to the requirements set forth in (e) above on or before (one year from the effective date of this section). After (12 months following the effective date of this section), a licensed occupational therapist shall meet the requirements set forth in (e) or (f) above in order to use advanced physical agent modalities.

(m) Notwithstanding the fact that a licensed occupational therapist is permitted to use advanced physical agent modalities because he or she has satisfied the training requirements of this section, a licensed occupational therapist shall not use a specific physical agent modality device that he or she has not been trained to use until he or she is familiar with the device's proper use and contraindications. Failure to comply with this section shall be deemed professional misconduct and may subject a licensed occupational therapist to the penalties set forth in N.J.S.A. 45:1-21 et seq.

SUBCHAPTER 6. SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS

13:44K-6.1 Supervision requirement: occupational therapy assistant

(a) A licensed occupational therapy assistant shall [work] provide occupational therapy services only under the supervision of a licensed occupational therapist [on a regularly scheduled basis] pursuant to the provisions of this subchapter.

(b)-(c) (No change.)

13:44K-6.2 Responsibilities of designated supervisor

(a)-(c) (No change.)

(d) A designated supervisor shall be responsible for the close, routine or general supervision of an occupational therapy assistant[, as defined in this section. For purposes of this section, "close supervision" means daily, face to face contact with and frequent observation of the performance of the occupational therapy assistant at the location where his or her services are being rendered; "routine supervision" means face to face contact with and observation of the performance of the occupational therapy assistant at least once a week at the location where his or her services are being rendered; and "general supervision" means face to face contact with and observation of the performance of the occupational therapy assistant at least once every two weeks at the location where his or her services are being rendered.]

(e) A designated supervisor shall determine the level of supervision required of each occupational therapy assistant consistent with the condition of the client, the education, skill and training of the occupational therapy assistant and the nature of the tasks and activities to be performed by the occupational therapy assistant; provided, however, that a designated supervisor shall provide close supervision for any occupational therapy assistant who[:
1. Has] has been engaged in the practice of occupational therapy for less than one year on a full-time basis[; or],

[2. Has less than one year of full-time work experience in a practice area.]

(f) (No change.)

(g) Notwithstanding the provisions of (a) through (d) above, an occupational therapist who has less than 1,200 hours of work experience obtained over a two year period shall not supervise any persons engaged in the practice of occupational therapy services prior to supervising any person engaged in the practice of occupational therapy services, an occupational therapist shall have at least 1,200 hours of work experience obtained in no less than one year and in no more than three years of practice.

(h)-(j) (No change.)

13:44K-6.4 Delegation of supervision responsibilities

(a) A designated supervisor providing close supervision of an occupational therapy assistant, a temporary licensed occupational therapy assistant or an occupational therapy student, may delegate his or her supervisory responsibility for the daily, face-to-face contact with and frequent observation of the performance of the occupational therapy assistant, the temporary licensed occupational therapy assistant or the occupational therapy student, to an occupational therapy assistant who, in the professional judgment of the supervising occupational therapist, has been adequately prepared by verified training and education in the provision of occupational therapy services consistent with the requirements set forth at N.J.A.C. 13:44K-2.1.

(b)-(e) (No change.)

SUBCHAPTER 7. SUPERVISION OF TEMPORARY LICENSED OCCUPATIONAL THERAPIST AND TEMPORARY LICENSED OCCUPATIONAL THERAPY ASSISTANT

13:44K-7.1 Supervision requirement: temporary licensed occupational therapist and temporary licensed occupational therapy assistant

(a) A temporary licensed occupational therapist shall [work] provide occupational therapy services only under the supervision of a licensed occupational therapist pursuant to the provisions of this subchapter.

(b)-(c) (No change.)

(d) In the event of a change of the supervising occupational therapist, the subsequent supervisor shall assume responsibility for the ongoing supervision of any temporary licensed occupational therapist(s) or temporary licensed occupational therapy assistant(s) providing care to the client and shall become the designated supervisor.

13:44K-7.2 Responsibilities of designated supervisor

(a)-(c) (No change.)

(d) Notwithstanding the provisions of (a) through (c) above, an occupational therapist who has less than 1,200 hours of work experience obtained over a two-year period shall not supervise any persons engaged in the practice of occupational therapy services, including temporary licensed occupational therapists or temporary licensed occupational therapy assistants prior to supervising any person engaged in the practice of occupational therapy services, an occupational therapist shall have at least 1,200 hours of work experience obtained in no less than one year and
in no more than three years of practice.

(e) A designated supervisor shall be responsible for the close supervision of a temporary licensed occupational therapist or temporary licensed occupational therapy assistant. [For purposes of this subsection, "close supervision" means daily, face to face contact with and frequent observation of the performance of a temporary licensee at the location where his or her services are being rendered.]

(f)-(g) (No change.)

SUBCHAPTER 8. GENERAL OBLIGATIONS OF LICENSEES

13:44K-8.1 Notification of change of address of record; service of process

(a) A licensee shall notify the Council, within 30 days, of any change in his or her address [on file with the Council and shall specify whether the address is a residence or employment address] of record. For purposes of this section, "address of record" means an address designated by a licensee, which is part of the public record and which may be disclosed upon request. "Address of record" may be a licensee's home, business or mailing address, but shall not be a post office box unless the licensee also provides another address, which includes a street, city, state and zip code.

(b)-(c) (No change.)

13:44K-8.2 Notification of change of name [or practice name]

(a)-(c) (No change.)

[(d) A licensee shall notify the Council by certified mail, return receipt requested, within 30 days, of any change in a professional practice name on file with the Council.]

13:44K-8.3 Unlicensed practice of occupational therapy

(a) The following acts or practices shall be deemed to be the unlicensed practice of occupational therapy:

1. Offering or rendering occupational therapy services by any person other than a licensed occupational therapist, a licensed occupational therapy assistant or a person who is exempt from licensure under the Occupational Therapy Licensing Act, pursuant to N.J.S.A. 45:9-37.60. Persons exempt from licensure pursuant to N.J.S.A. 45:9-37.60(e) shall only engage in the provision of occupational therapy services consistent with the provisions of N.J.A.C. 13:44K-1.3;

2. (No change.)

(b) (No change.)

13:44K-8.4 Aiding and abetting unlicensed practice

It shall be professional misconduct for a licensee to aid or assist any person engaging in conduct that violates N.J.A.C. 13:44K-8.3 and shall constitute a deviation from the normal standards of practice required of a [licensee] licensee, which may subject the licensee to the penalties of N.J.S.A. 45:1-21.

13:44K-8.5 Sexual misconduct
(a) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

... "Licensee" means any person licensed to engage in practice as an occupational therapist, occupational therapy assistant or temporarily licensed occupational therapist or occupational therapy assistant [by the Occupational Therapy Advisory Council] in the State of New Jersey.

... "Spouse" means the husband, wife, civil union partner or fiancee of the licensee or an individual involved in a long-term committed relationship with the licensee. For purposes of the definition of "spouse," a long-term committed relationship means a relationship, which is at least six months in duration.

(b) A licensee shall not engage in sexual contact with a client with whom he or she has a client-therapist relationship. The client-therapist relationship is ongoing for purposes of this section, unless:

1. Occupational therapy is terminated by way of written notice to the client and is documented in the client record; [or] and

2. The last occupational therapy was rendered more than six months ago.

(c)-(k) (No change.)

13:44K-8.6 Biennial license renewal; inactive status; license suspension

(a) Licenses issued by the Council to occupational therapists and occupational therapy assistants shall be issued for a two-year biennial period. A licensee who seeks license renewal shall submit a renewal application and the renewal fee set forth in N.J.A.C. 13:44K-11.1 prior to the expiration date of the license.

(b) The Council shall send a notice of renewal to each licensee at the address of record with the Council at least 60 days prior to the expiration of the license. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew during the period following licensure expiration, not to exceed the number of days short of 60 before the renewals were issued.

(c) License renewal applications shall provide licensees with the option of either active or inactive status. A licensee electing inactive status shall not engage in the provision of occupational therapy services in New Jersey during the period of inactive status.

(d) If a licensee does not renew the license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a renewal application and the renewal fee and late fee set forth in N.J.A.C. 13:44K-11.1. During this 30-day period, the license shall be valid, and the licensee shall not be deemed to be practicing without a license.

(e) A license that is not renewed within 30 days of its expiration shall be automatically suspended. An individual who continues to practice with a suspended license shall be deemed to be engaged in unlicensed practice.

13:44K-8.7 Inactive status: change of licensure status
(a) A licensee who has been inactive for a period of less than five years may, upon application to the Council, change from inactive to active status upon submission of the following:

1. A completed renewal application;

2. The renewal fee for the current biennial period set forth in N.J.A.C. 13:44K-11.1; and

3. An affidavit of employment listing each job held during the period the licensee was inactive, including the name, address and telephone number of each employer.

(b) A licensee who has been inactive for a period of five years or more may, upon application to the Council, change from inactive to active status upon submission of the following:

1. A completed renewal application;

2. The renewal fee for the current biennial period set forth in N.J.A.C. 13:44K-11.1;

3. An affidavit of employment listing each job held during the period the licensee was inactive, including the name, address and telephone number of each employer; and

4. Evidence that the licensee has maintained competency by either having completed course work in occupational therapy during the period of time he or she was inactive, or having been continuously and actively engaged in the licensed practice of occupational therapy in another jurisdiction. A licensee who fails to demonstrate that he or she has maintained competency while on inactive status may be subject to an examination or other requirements as determined by the Council prior to being permitted to return to active practice.

13:44K-8.8 Reinstatement of suspended license

(a) An individual whose license has been automatically suspended for less than five years for failure to renew pursuant to N.J.A.C. 13:44K-8.6 may be reinstated by the Council upon submission of the following:

1. A completed reinstatement application;

2. Payment of the reinstatement fee and the current biennial renewal fee set forth in N.J.A.C. 13:44K-11.1. If the applicant engaged in the practice of occupational therapy in New Jersey during the period of license suspension, the applicant shall also submit payment of all past delinquent biennial renewal fees;

3. An affidavit of employment listing each job held during the period the licensee was inactive, including the name, address and telephone number of each employer;

4. Any outstanding penalties imposed by the Council; and

5. Evidence that the licensee has maintained competency by either having completed course work in occupational therapy during the period of time he or she was suspended or having been continuously and actively engaged in the licensed practice of occupational therapy in another jurisdiction. An applicant who fails to demonstrate that he or she has maintained competency during the period of license suspension may be subject to an examination or other requirements as determined by the Council prior to being permitted to return to practice.

(b) An individual whose license has been automatically suspended for five years or more for failure to renew
pursuant to N.J.A.C. 13:44K-8.6 may be reinstated by the Council upon successful completion of the licensing examination required for initial licensure as set forth in N.J.A.C. 13:44K-3.1 or 3.2, as applicable, and upon submission of the following:

1. A completed reinstatement application;

2. Payment of the reinstatement fee and appropriate biennial renewal fees;

3. An affidavit of employment listing each job held during the period the licensee was inactive, including the name, address and telephone number of each employer; and

4. Any outstanding penalties imposed by the Council.

13:44K-8.9 Insurance forms

(a) No licensee shall submit any claim, bill or governmental assistance claim to a third-party payor for occupational therapy services rendered to any client that involves dishonesty, fraud, deception or misrepresentation.

(b) No licensee shall submit to a third-party payor any claim, bill or governmental assistance claim, which contains any of the following:

1. Any treatment date, which does not accurately reflect the date when the services were actually provided;

2. Any description of an occupational therapy service, which does not accurately reflect the actual service provided;

3. Any statement material to the claim, which is known to be false or misleading; or

4. A charge for any service the amount of which has been advertised as free or complimentary or for an amount that exceeds the advertised charge for discounted services.

(c) A licensee who provides occupational therapy services to a client enrolled in any insurance plan with co-payment features and who intends to waive any part of the co-payment or all of the co-payment by the client shall, when submitting any claim or bill to the third-party payor, conspicuously disclose on the face of the claim or bill in a legible manner, or in the electronic claim submission, that the co-payment, or a portion of the co-payment, has not or will not be billed to, or collected from, the client.

(d) The accuracy of all information contained in written or electronic submissions to a third-party payor, including predeterminations, claims, bills or governmental assistance claims, shall be the personal responsibility of the licensee whose name, license number or signature appears on the signature line of the claim. In the case of electronic claims the licensee identified as the provider shall be held responsible for the accuracy of the information whether or not said licensee actually completed the claim. The Council shall presume that the licensee identified on the claim reviewed its contents and approved its submission. It shall not be a defense to an allegation of a violation of this section that the claim was completed or submitted by an agent of the licensee.

(e) All insurance records shall be maintained pursuant to the provisions of N.J.A.C. 13:44K-10.

SUBCHAPTER 9. BUSINESS PRACTICES; PROFESSIONAL CONDUCT
13:44K-9.1 Display of notice of licensure; duplicate license; notification of availability of fee information

(a) All licensed occupational therapists and occupational therapy assistants shall make their licenses available to clients upon request. [Duplicate licenses may be obtained upon payment of the fees provided in N.J.A.C. 13:44K-11.1(a) 12 and 13.]

(b)-(c) (No change.)

(d) A licensee may obtain a duplicate license upon payment of the fee provided in N.J.A.C. 13:44K-11.1(a)12 or 13 and upon submission of a certification by the licensee that the original license was lost or destroyed or that a duplicate license is required by the licensee's employer.

13:44K-9.2 Financial arrangements with clients and third-party payors

(a)-(c) (No change.)

(d) An occupational therapist shall prepare and maintain a written list of current fees for standard services and, upon request, shall provide the list to clients. The list shall include the following information:

1.-2. (No change.)

3. Whether other third-party payor plans are accepted; and

[4. Whether insurance payments (excluding deductible and copay) are accepted as payment in full; and]  

[5.] 4. (No change in text.)

(e) (No change.)

[f] An occupational therapist who is directly billing the client or third party payor for his or her services shall include on all bills submitted to a client or third party payor the occupational therapist’s current license number.

SUBCHAPTER 10. CLIENT RECORDS

13:44K-10.1 Preparation and maintenance of client records

(a) (No change.)

(b) An occupational therapist, or an occupational therapy assistant, acting under the supervision of an occupational therapist, shall include at least the following information in the client record:

1.-5. (No change.)

6. Progress notes for each day of treatment. Progress notes shall include, at a minimum, the date the client received treatment, a description of the treatment rendered, the name of the licensee or other person rendering treatment, and notations of the client’s status regardless of whether significant changes have occurred since the last date of treatment.

i. An occupational therapist may dictate progress or session notes for later transcription provided the transcription is dated and identified as preliminary pending the occupational therapist’s final review and approval[; and].
ii. All progress notes that are created by a licensed occupational therapy assistant, temporary licensed occupational therapist, temporary licensed occupational therapy assistant or an occupational therapy student fulfilling the required fieldwork component of his or her educational training, consistent with the provisions of N.J.A.C. 13:44K-5.3, shall be countersigned by the supervising occupational therapist, notwithstanding the delegation of supervision responsibilities to a licensed occupational therapy assistant pursuant to N.J.A.C. 13:44K-6.4[;].

iii. If more than one progress note appears on a page, one signature on the page shall be sufficient to indicate review and approval of all progress notes on the page;

7.-10. (No change.)

(c) (No change.)

(d) The permanent client record of occupational therapy services shall be retained for at least seven years from the date of the last entry, unless otherwise provided by law, or in the case of a client who is a minor at the time of the last date of treatment, the licensee shall retain the record [until the minor reaches the age of 25.] for seven years from the last treatment or for at least two years after the minor client reaches the age of 18, whichever is later.

(e) (No change.)