

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board (“Board”) of Examiners for Occupational Therapy will hold a rule hearing on Tuesday, December 14, 2021, at 10 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held virtually at the Regulation and Licensing located at 2550 Cerrillos Road, Santa Fe, NM 87505, via Cisco WebEx Meetings.

To join the meeting online by Cisco WebEx Meeting, please use the following link:
<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ede00a71638182658ae6ac18535e8940b>

Event number: 2491 348 0760
United States: Toll: 1-415-655-0002
Access code: 2491 348 0760

The purpose of the rule hearing is to consider proposed amendments, repealing and/ or replacing the following rules:

- 16.15.2 NMAC – Licensing Requirements
- 16.15.3 NMAC – Supervision
- 16.15.4 NMAC – Continuing Education Requirements

To obtain and review copies of the proposed changes you may go to the Board’s website at:
<https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/occupational-therapy/ot-laws-rules-and-policies/>, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Bertha Valerio, Board Administrator, via electronic mail (email) at OccupationalTherapy@stata.nm.us or by regular mail at Board of Examiners for Occupational Therapy Rules, P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, December 13, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/occupational-therapy/ot-laws-rules-and-policies/>, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Bertha Valerio, Board Administrator at (505) 476-4622 or OccupationalTherapy@state.nm.us

Statutory Authority:

Subsections (A) of Section 61-12A-9 NMSA 1978 of the Occupational Therapy Act, Sections 61-12A-1 to -25 NMSA 1978, specifically authorizes the Board to adopt, file, amend or repeal and regulations in accordance with the Uniform Licensing Act, Sections 61-1-1 to -36 NMSA 1978, to carry out the provisions of the Occupational Therapy Act. Sections 61-1-31.1 and 61-1-34 of the Uniform Licensing Act (“ULA”), Sections 61-1-1 to -36 NMSA 1978, requires the Board to update its expedited licensure for military families. Further, Section 61-1-36 NMSA 1978 of the ULA, requires the Board to “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the bases of a previous felony conviction.” Sections 28-2-3 and 28-2-4 of the Criminal Offender Employment Act, Sections 28-2-1 to -6 NMSA 1978, provide how certain criminal records should be viewed when obtaining a license or other authority to practice the profession.

Purpose of the Proposed Rules:

The proposed amendment/repeal/replace of the rules is intended to provide greater clarity in existing regulatory and statutory requirements and to generally satisfy the Board's obligation "to safeguard the public health, safety and welfare" by regulating persons offering occupational therapy services. Section 61-12A-2 NMSA 1978. Several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>, H.B. 120, 55th Leg., 1st Sess. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf>, and H.B. 30, 54th Legis., 1st Sess. (N.M. 2020) available at <https://nmlegis.gov/Sessions/20%20Regular/final/HB0030.pdf>. The proposed rules also incorporate statutory changes to the Criminal Offender Employment Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>

Summary of the Proposed Changes:

16.15.2 NMAC – Licensing Requirements (OTA supervision changes, CE changes for annual requirement and reinstatement of licenses)

The proposed amendment/repeal/replace to this part is to modify and add subsections to comply with the statutory changes to the Criminal Offender Employment Act and the Uniform Licensing Act. The rule also adds new language governing the Board's consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board's consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certification holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public's continued confidence in the profession. Further, a new subsection has been added to capture whether there have been any changes in supervision for occupational therapy assistants. Additionally, the reinstatement of license section has been updated to reflect the new requirement of 15 continuing education hours per year for each year of a lapsed New Mexico license, with a maximum of 75 hours as well as the option to demonstrate continued practice in another U.S. jurisdiction with an unrestricted license and meeting that jurisdiction's continuing education requirements. Subsections have been modified to include requiring certain documentation to qualify for expedited licensure for military service member, spouses and veterans, the absence of a license fee for the first three (3) years, and the requirement of the Board to issue the expedited license within 30 days of a completed application pursuant to the Uniform Licensing Act, Sections 61-1-31.1 and 61-1-34 NMSA 1978.

16.15.3 NMAC – Supervision

The proposed amendment/repeal/replace to this part is to add the definition of supportive services, to limit an occupational therapist in their first year of licensure from supervising no more than 3 occupational therapist assistants, and to add a subsection defining the occupational therapist's role in supervising non-licensed personnel.

16.15.4 NMAC – Continuing Education Requirements

The proposed amendment/repeal/replace to this part is to modify the annual continuing education requirements from 20 continuing education contact hours to 15 hours per year and noting that the Board provides electronic notification to licensees regarding renewal. In addition, the limits on categories of continuing education contact hours have been removed, a new category of competency assessment or knowledge and skills assessment is allowed to meet the continuing education contact hours, and 15 continuing education contact hours may be carried over from one licensing period into the next. In addition, a subsection detailing ineligible activities that do not count as continuing education contact hours is listed.

Technical Information: No technical information provided the basis for any of the proposed rules.

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