

AN ACT

RELATING TO LICENSURE; DESCRIBING OCCUPATIONAL THERAPY SERVICES; EXPANDING QUALIFICATIONS FOR PROFESSIONAL MEMBERSHIP ON THE BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY; CHANGING LICENSURE REQUIREMENTS; EXTENDING AGENCY LIFE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-12A-1 NMSA 1978 (being Laws 1996, Chapter 55, Section 1) is amended to read:

"61-12A-1. SHORT TITLE.--Chapter 61, Article 12A NMSA 1978 may be cited as the "Occupational Therapy Act"."

Section 2. Section 61-12A-2 NMSA 1978 (being Laws 1996, Chapter 55, Section 2) is amended to read:

"61-12A-2. PURPOSE.--It is the purpose of the Occupational Therapy Act to provide for the regulation of persons offering occupational therapy services to the public in order to safeguard the public health, safety and welfare; to protect the public from being misled by incompetent and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of such services."

Section 3. Section 61-12A-3 NMSA 1978 (being Laws 1996, Chapter 55, Section 3) is amended to read:

"61-12A-3. DEFINITIONS.--As used in the Occupational Therapy Act:

A. "board" means the board of examiners for occupational therapy;

B. "censure" means a formal expression of disapproval that is publicly announced;

C. "denial of license" means that a person is barred from becoming licensed to practice in accordance with the provisions of the Occupational Therapy Act either indefinitely or for a certain period;

D. "licensee" means an occupational therapist or occupational therapy assistant, as appropriate;

E. "occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico;

F. "occupational therapy" means the therapeutic use of everyday life activities with persons or groups to participate in roles and situations in home, school, workplace, community and other settings to promote health and wellness in clients who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. "Occupational therapy" includes addressing the physical, cognitive, psychosocial, sensory and other aspects of performance in a variety of contexts to support a client's

engagement in everyday life activities that affect health, well-being and quality of life;

G. "occupational therapy aide or technician" means an unlicensed person who assists in occupational therapy, who works under direct supervision of an occupational therapist or occupational therapy assistant;

H. "occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists an occupational therapist under the supervision of the occupational therapist;

I. "person" means an individual, association, partnership, unincorporated organization or corporate body;

J. "probation" means continued licensure is subject to fulfillment of specified conditions such as monitoring, education, supervision or counseling;

K. "reprimand" means a formal expression of disapproval that is retained in the licensee's file but not publicly announced;

L. "revocation" means permanent loss of licensure; and

M. "suspension" means the loss of licensure for a certain period, after which the person may be required to apply for reinstatement."

Chapter 55, Section 4) is repealed and a new Section 61-12A-4 NMSA 1978 is enacted to read:

"61-12A-4. OCCUPATIONAL THERAPY SERVICES.--Occupational therapy services include:

A. selected strategies to direct the process of interventions, such as:

(1) establishment, remediation or restoration of a skill or ability that has not yet developed or is impaired;

(2) compensation, modification or adaptation of activity or environment to enhance performance;

(3) maintenance and enhancement of capabilities without which performance in everyday life activities would decline;

(4) health promotion and wellness to enable enhanced performance in everyday life activities; and

(5) prevention of barriers to performance, including disability prevention;

B. evaluation of factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation, including:

(1) client factors, including neuromuscular, sensory, visual, perceptual and cognitive functions and cardiovascular, digestive, integumentary and genitourinary

systems;

(2) habits, routines, roles and behavior

patterns;

(3) cultural, physical, environmental, social and spiritual contexts and activity demands that affect performance; and

(4) performance skills, including motor, process and communication and interaction skills; and

C. interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation, including:

(1) therapeutic use of occupations, exercises and activities;

(2) training in self-care, self-management, home management and community-work reintegration;

(3) development, remediation or compensation of physical, cognitive, neuromuscular and sensory functions and behavioral skills;

(4) therapeutic use of self, including one's personality, insights, perceptions and judgments, as part of the therapeutic process;

(5) education and training of persons, including family members, caregivers and others;

(6) care coordination, case management and

transition services;

(7) consultative services to groups, programs, organizations or communities;

(8) modification of environments and adaptation or processes, including the application of ergonomic principles;

(9) assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices and orthotic devices and training in the use of prosthetic devices;

(10) assessment, recommendation and training in techniques to enhance functional mobility, including wheelchair management;

(11) driver rehabilitation and community mobility;

(12) management of feeding, eating and swallowing to enable eating and feeding performance; and

(13) application of physical agent modalities and use of a range of specific therapeutic procedures such as wound care management; techniques to enhance sensory, perceptual and cognitive processing; and manual therapy techniques to enhance performance skills."

Section 5. Section 61-12A-5 NMSA 1978 (being Laws 1996, Chapter 55, Section 5) is amended to read:

"61-12A-5. SUPERVISION--REQUIRED--DEFINED.--

A. Occupational therapy shall not be performed by an occupational therapy assistant, occupational therapy aide or technician or by any person practicing on a provisional permit unless such therapy is supervised by an occupational therapist. The board shall adopt rules defining supervision, which definitions may include various categories such as "close supervision", "routine supervision" and "general supervision".

B. An occupational therapy aide or technician is not a primary service provider of occupational therapy in any practice setting and, therefore, does not provide skilled occupational therapy services. An occupational therapy aide or technician is trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks, and the occupational therapist is responsible for the overall use and actions of the occupational therapy aide or technician. An occupational therapy aide or technician must demonstrate competence to perform the assigned, delegated client and nonclient tasks."

Section 6. Section 61-12A-6 NMSA 1978 (being Laws 1996, Chapter 55, Section 6) is amended to read:

"61-12A-6. LICENSE REQUIRED.--

A. Unless licensed to practice the level of occupational therapy provided in the Occupational Therapy Act, a person shall not practice as an occupational therapist or

occupational therapy assistant.

B. It is unlawful for a person not licensed pursuant to the Occupational Therapy Act or whose license has been denied, suspended or revoked in this or another state to hold himself out as an occupational therapist or occupational therapy assistant or to use words or titles containing "occupational therapist" or "occupational therapy assistant" that would indicate or imply that the person is licensed as an occupational therapist or occupational therapy assistant.

C. A facility or employer shall not represent that it offers occupational therapy unless it uses the services of a licensee pursuant to the provisions of the Occupational Therapy Act.

D. A person offering or assisting in the offering of occupational therapy shall be properly identified by a name badge or other identification indicating whether the person is an occupational therapist, an occupational therapy assistant, an occupational therapy aide or technician or a person practicing under a provisional permit."

Section 7. Section 61-12A-8 NMSA 1978 (being Laws 1996, Chapter 55, Section 8, as amended) is amended to read:

"61-12A-8. BOARD CREATED.--

A. The "board of examiners for occupational therapy" is created.

B. The board shall be administratively attached to



the regulation and licensing department.

C. The board shall consist of five members appointed by the governor who have been residents of the state for at least two years preceding the appointment.

D. Three members shall be licensed under the provisions of the Occupational Therapy Act; have a minimum of five years' professional experience, with two years' experience in New Mexico; and have not had their licenses suspended or revoked by this or any other state. One of the professional members may be an occupational therapy assistant and one of the professional members may be a retired occupational therapist or occupational therapy assistant, who has been retired for no more than five years at the time of appointment.

E. Two members shall represent the public. The two public members shall have no direct interest in the profession of occupational therapy. The public members shall not:

(1) have been convicted of a felony;

(2) be habitually intemperate or be addicted to the use of habit-forming drugs or be addicted to any other vice to such a degree as to render the member unfit to fulfill his board duties and responsibilities; or

(3) be guilty of a violation of the Controlled Substances Act.

F. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A board member shall not serve more than two consecutive terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting.

G. An individual member of the board shall not be liable in a civil or criminal action for an act performed in good faith in the execution of his duties as a member of the board.

H. Members of the board shall be reimbursed for per diem and travel expenses as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

I. A simple majority of the board members currently serving shall constitute a quorum of the board for the conduct of business.

J. The board shall meet at least four times a year and at other times as it deems necessary. Additional meetings may be convened at the call of the president of the board or on the written request of any two board members to the president. Meetings of the board shall be conducted in accordance with the provisions of the Open Meetings Act.

K. A member failing to attend three consecutive meetings, unless excused as provided by board policy, shall

automatically be recommended for removal as a member of the board.

L. At the beginning of each fiscal year, the board shall elect a president, vice president and secretary-treasurer."

Section 8. Section 61-12A-11 NMSA 1978 (being Laws 1996, Chapter 55, Section 11) is amended to read:

"61-12A-11. REQUIREMENTS FOR LICENSURE.--

A. An applicant applying for a license as an occupational therapist or occupational therapy assistant shall file a written application provided by the board, accompanied by the required fees and documentation, and demonstrating to the satisfaction of the board that the applicant has:

(1) successfully completed the academic requirements of an educational program in occupational therapy that is either:

(a) accredited by the American occupational therapy association's accreditation council for occupational therapy education; or

(b) in the case of a foreign educational program, accepted by the national board for certification in occupational therapy when the therapist applies to take that board's examination;

(2) successfully completed a period of supervised field work experience at a recognized educational

institution or a training program approved by the educational institution where the occupational therapist or the occupational therapy assistant has met the academic requirements of Paragraph (1) of this subsection; provided that:

(a) an occupational therapist shall complete a minimum of twenty-four weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation; and

(b) an occupational therapy assistant shall complete a minimum of sixteen weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation;

(3) has passed an examination prescribed by the national board for certification in occupational therapy or the board; and

(4) has no record of unprofessional conduct or incompetence.

B. In the case of an occupational therapy assistant or a person practicing on a provisional permit, the applicant shall file with the board a signed, current statement of supervision by the occupational therapist who will be the responsible supervisor.

C. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license."

Section 9. Section 61-12A-12 NMSA 1978 (being Laws 1996, Chapter 55, Section 12) is amended to read:

"61-12A-12. EXAMINATIONS.--The board shall require proof of passage of the national board for certification in occupational therapy examination. The board may require each applicant to pass an examination on the state laws and rules that pertain to the practice of occupational therapy."

Section 10. Section 61-12A-13 NMSA 1978 (being Laws 1996, Chapter 55, Section 13) is amended to read:

"61-12A-13. PROVISIONAL PERMITS.--A provisional permit may be granted to a person who has completed the education and experience requirements of the Occupational Therapy Act. The permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist. The provisional permit shall be valid until the date on which the results of the next qualifying examination have been made public. The provisional permit shall not be renewed if the applicant has failed the examination. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license."

Section 11. Section 61-12A-14 NMSA 1978 (being Laws

1996, Chapter 55, Section 14) is amended to read:

"61-12A-14. LICENSURE BY ENDORSEMENT.--Upon verification, the board may grant a license to an applicant who presents a current license in good standing as an occupational therapist or an occupational therapy assistant in another state, the District of Columbia or a territory of the United States that meets the requirements of Section 61-12A-11 NMSA 1978."

Section 12. Section 61-12A-24 NMSA 1978 (being Laws 1996, Chapter 55, Section 24, as amended) is amended to read:

"61-12A-24. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of examiners for occupational therapy is terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Occupational Therapy Act until July 1, 2016. Effective July 1, 2016, the Occupational Therapy Act is repealed."

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.=====