

CHAPTER 411

PROFESSIONS AND OCCUPATIONS

SENATE BILL 13-180

BY SENATOR(S) Aguilar, Guzman, Kefalas, Newell, Nicholson, Schwartz, Todd;
also REPRESENTATIVE(S) Singer, Fields, Fischer, Ginal, Hullinghorst, Lebsack, Schafer, Young.

AN ACT

CONCERNING THE CONTINUATION OF THE REGULATION OF THE PRACTICE OF OCCUPATIONAL THERAPY, AND, IN CONNECTION THEREWITH, REQUIRING OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS TO OBTAIN A LICENSE FROM THE DEPARTMENT OF REGULATORY AGENCIES, MODIFYING PROVISIONS GOVERNING THE SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS, ADDING GROUNDS FOR DISCIPLINING LICENSEES, REQUIRING LICENSEES TO MAINTAIN PROFESSIONAL COMPETENCY, AUTHORIZING LICENSEES TO ENTER INTO AGREEMENTS TO LIMIT PRACTICE WHEN SUFFERING FROM A PHYSICAL OR MENTAL CONDITION, AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 12-40.5-115 as follows:

12-40.5-115. Repeal of article - review of functions. This article is repealed, effective ~~July 1, 2013~~ SEPTEMBER 1, 2020. Prior to ~~such~~ THE repeal, THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW the director's powers, duties, and functions under this article ~~shall be reviewed~~ as provided in section 24-34-104, C.R.S.

SECTION 2. In Colorado Revised Statutes, 24-34-104, **amend** (43.5) introductory portion and (51.5) introductory portion; **repeal** (43.5) (b) and (43.5) (c); and **add** (51.5) (g) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (43.5) The following agencies, functions, or both, ~~shall~~ terminate on June 30, 2013:

(b) ~~The regulation of occupational therapists in accordance with article 40.5 of title 12, C.R.S.;~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(c) The regulation of occupational therapists and occupational therapy assistants in accordance with article 40.5 of title 12, C.R.S.~~

(51.5) The following agencies, functions, or both, ~~shall~~ terminate on September 1, 2020:

(g) THE LICENSING OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS IN ACCORDANCE WITH ARTICLE 40.5 OF TITLE 12, C.R.S.

SECTION 3. In Colorado Revised Statutes, 12-40.5-103, **amend** (2), (7), (8), (9) (c) (III), (9) (c) (IX), (9) (c) (XII), (9) (c) (XIII), and (10); **repeal** (11); and **add** (6.5) and (9) (c) (XIV) as follows:

12-40.5-103. Definitions. As used in this article, unless the context otherwise requires:

(2) "Aide" means a person who is not ~~registered~~ LICENSED by the director and who provides supportive services to occupational therapists and occupational therapy assistants. ~~An aide shall function only under the guidance, responsibility, and supervision of a registered occupational therapist. The aide shall perform only specifically selected tasks for which the aide has been trained and has demonstrated competence to the registered occupational therapist or occupational therapy assistant.~~

(6.5) "LICENSEE" MEANS A PERSON LICENSED UNDER THIS ARTICLE AS AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT.

(7) "Low vision rehabilitation services" means the evaluation, diagnosis, management, and care of the low vision patient IN VISUAL ACUITY AND VISUAL FIELD AS IT AFFECTS THE PATIENT'S OCCUPATIONAL PERFORMANCE, including low vision rehabilitation therapy, education, and interdisciplinary consultation.

(8) "Occupational therapist" means a person ~~registered~~ LICENSED to practice occupational therapy under this article.

(9) "Occupational therapy" means the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. The practice of occupational therapy includes:

(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:

(III) IDENTIFICATION, development, remediation, or compensation of physical, cognitive, neuromuscular, ~~and~~ sensory functions, SENSORY PROCESSING, and behavioral skills;

(IX) Assessment, design, fabrication, application, fitting, and training in assistive technology AND adaptive AND ORTHOTIC devices AND TRAINING IN THE USE OF

PROSTHETIC DEVICES, excluding glasses, contact lenses, or other prescriptive devices to correct vision unless prescribed by an optometrist; ~~and orthotic devices and training in the use of prosthetic devices;~~

(XII) Management of feeding, eating, and swallowing to enable eating and feeding performance; ~~and~~

(XIII) Application of physical agent modalities and therapeutic procedures such as wound management; techniques to enhance sensory, perceptual, and cognitive processing; and manual techniques to enhance performance skills; ~~AND~~

(XIV) THE USE OF TELEHEALTH PURSUANT TO RULES AS MAY BE ADOPTED BY THE DIRECTOR.

(10) "Occupational therapy assistant" means a person ~~who has successfully completed an occupational therapy assistant program approved by the department to assist in the practice of occupational therapy~~ LICENSED UNDER THIS ARTICLE TO PRACTICE OCCUPATIONAL THERAPY under the supervision of AND IN PARTNERSHIP WITH an occupational therapist.

(11) ~~"Registrant" means an occupational therapist registered pursuant to this article.~~

SECTION 4. In Colorado Revised Statutes, **amend** 12-40.5-104 as follows:

12-40.5-104. Use of titles restricted. (1) Only a person ~~registered~~ LICENSED as an occupational therapist may use the titles "occupational therapist ~~registered~~ LICENSED", ~~"registered"~~ LICENSED occupational therapist", "occupational therapist", or ~~"doctorate"~~ "DOCTOR of occupational therapy" or use the abbreviation "O.T.", "O.T.D.", ~~or~~ "O.T.R.", "O.T./L.", "O.T.D./L.", OR "O.T.R./L.", or any other generally accepted terms, letters, or figures that indicate that the person is an occupational therapist.

(2) ONLY A PERSON LICENSED AS AN OCCUPATIONAL THERAPY ASSISTANT MAY USE THE TITLE "OCCUPATIONAL THERAPY ASSISTANT LICENSED" OR "LICENSED OCCUPATIONAL THERAPY ASSISTANT", USE THE ABBREVIATION "O.T.A./L." OR "C.O.T.A./L.", OR USE ANY OTHER GENERALLY ACCEPTED TERMS, LETTERS, OR FIGURES INDICATING THAT THE PERSON IS AN OCCUPATIONAL THERAPY ASSISTANT.

SECTION 5. In Colorado Revised Statutes, **amend** 12-40.5-105 as follows:

12-40.5-105. License required for occupational therapists and occupational therapy assistants - repeal. (1) (a) PRIOR TO JUNE 1, 2014, except as otherwise provided in this article, a person shall not practice occupational therapy or represent himself or herself as being able to practice occupational therapy in this state without possessing a valid registration issued by the director in accordance with this article and any rules adopted under this article. BEFORE JUNE 1, 2014, REFERENCES IN THIS ARTICLE TO "LICENSE" INCLUDE "REGISTRATION" AND REFERENCES TO "LICENSEE" AND "OCCUPATIONAL THERAPIST" INCLUDE "REGISTRANT" AND "OCCUPATIONAL THERAPIST", RESPECTIVELY, AS THOSE TERMS WERE DEFINED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED.

(b) THIS SUBSECTION (1) IS REPEALED, EFFECTIVE JUNE 1, 2014.

(2) (a) ON AND AFTER JUNE 1, 2014, EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A PERSON SHALL NOT PRACTICE OCCUPATIONAL THERAPY OR REPRESENT HIMSELF OR HERSELF AS BEING ABLE TO PRACTICE OCCUPATIONAL THERAPY IN THIS STATE WITHOUT POSSESSING A VALID LICENSE ISSUED BY THE DIRECTOR IN ACCORDANCE WITH THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE.

(b) ON JUNE 1, 2014, EACH ACTIVE OCCUPATIONAL THERAPY REGISTRATION BECOMES AN ACTIVE OCCUPATIONAL THERAPY LICENSE BY OPERATION OF LAW. THE CONVERSION FROM REGISTRATION TO LICENSURE DOES NOT:

(I) AFFECT ANY PRIOR DISCIPLINE, LIMITATION, OR CONDITION IMPOSED BY THE DIRECTOR ON AN OCCUPATIONAL THERAPIST'S REGISTRATION;

(II) LIMIT THE DIRECTOR'S AUTHORITY OVER ANY REGISTRANT; OR

(III) AFFECT ANY PENDING INVESTIGATION OR ADMINISTRATIVE PROCEEDING.

(c) THE DIRECTOR SHALL TREAT ANY APPLICATION FOR AN OCCUPATIONAL THERAPY REGISTRATION PENDING ON JUNE 1, 2014, AS AN APPLICATION FOR LICENSURE, WHICH APPLICATION IS SUBJECT TO THE REQUIREMENTS ESTABLISHED BY THE DIRECTOR.

(3) ON AND AFTER JUNE 1, 2014, EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A PERSON SHALL NOT PRACTICE AS AN OCCUPATIONAL THERAPY ASSISTANT OR REPRESENT HIMSELF OR HERSELF AS BEING ABLE TO PRACTICE AS AN OCCUPATIONAL THERAPY ASSISTANT IN THIS STATE WITHOUT POSSESSING A VALID LICENSE ISSUED BY THE DIRECTOR IN ACCORDANCE WITH THIS ARTICLE AND ANY RULES ADOPTED UNDER THIS ARTICLE.

SECTION 6. In Colorado Revised Statutes, 12-40.5-106, **amend** (1) introductory portion, (2) (a), (3), (4), (5), and (6) as follows:

12-40.5-106. Licensure of occupational therapists - application - qualifications - rules. (1) **Educational and experiential requirements.** Every applicant for a ~~registration~~ LICENSE as an occupational therapist ~~shall~~ MUST have:

(2) **Application.** (a) When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for examination and ~~registration~~ LICENSURE upon payment of a fee in an amount determined by the director. A person who fails an examination may apply for reexamination upon payment of a fee in an amount determined by the director.

(3) **Examination.** Each applicant shall pass a nationally recognized examination approved by the director ~~The examination shall measure~~ THAT MEASURES the minimum level of competence necessary for consumer protection. ~~The director may contract for assistance in creating and administering the examination~~ PUBLIC HEALTH, SAFETY, AND WELFARE.

(4) **Licensure.** When an applicant has fulfilled the requirements of subsections

(1) to (3) of this section, the director shall issue a ~~registration~~ LICENSE to the applicant; except that the director may deny a ~~registration~~ LICENSE if the applicant has committed any act that would be grounds for disciplinary action under section 12-40.5-110.

(5) **License by endorsement.** (a) An applicant for ~~registration~~ LICENSE by endorsement ~~shall~~ MUST file an application and pay a fee as prescribed by the director and ~~shall~~ MUST hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required for ~~registration~~ by subsection (1) of this section FOR LICENSE.

(b) An applicant for ~~registration~~ LICENSE BY ENDORSEMENT ~~shall~~ MUST submit with the application verification that the applicant has actively practiced for a period of time determined by rules of the director or otherwise maintained ~~continued~~ competency as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (5), the director shall review the application and make a determination of the applicant's qualification to be ~~registered~~ LICENSED by endorsement.

(d) The director may deny the ~~registration~~ APPLICATION FOR LICENSE BY ENDORSEMENT if the applicant has committed an act that would be grounds for disciplinary action under section 12-40.5-110.

(6) **License renewal.** (a) ~~A registrant shall be required to~~ AN OCCUPATIONAL THERAPIST MUST renew ~~the registration~~ HIS OR HER LICENSE issued under this article according to a schedule of renewal dates established by the director. The ~~registrant shall~~ OCCUPATIONAL THERAPIST MUST submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

(b) ~~Registrations shall be~~ LICENSES ARE renewed or reinstated in accordance with the schedule established by the director, and ~~such~~ THE DIRECTOR SHALL GRANT A renewal or reinstatement ~~shall be granted~~ pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a ~~registrant~~ AN OCCUPATIONAL THERAPIST fails to renew his or her ~~registration~~ LICENSE pursuant to the schedule established by the director, the ~~registration shall expire~~ LICENSE EXPIRES. Any person whose ~~registration has expired shall be~~ LICENSE EXPIRES IS subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

SECTION 7. In Colorado Revised Statutes, **amend** 12-40.5-107 as follows:

12-40.5-107. Supervision of occupational therapy assistants and aides.

(1) An occupational therapy assistant may practice only under the supervision of an occupational therapist who is ~~registered~~ LICENSED to practice occupational therapy in this state. The occupational therapist is responsible for occupational therapy evaluation, appropriate reassessment, treatment planning, ~~and~~ interventions, AND DISCHARGE FROM OCCUPATIONAL THERAPY SERVICES based on standard professional guidelines. Supervision of an occupational therapy assistant by an occupational therapist is a shared responsibility. The supervising occupational

therapist and the supervised occupational therapy assistant have legal and ethical responsibility for ongoing management of supervision, including providing, requesting, giving, or obtaining supervision. The SUPERVISING OCCUPATIONAL THERAPIST SHALL DETERMINE THE frequency, level, and nature of supervision ~~shall be determined by the supervising occupational therapist~~ with input from the occupational therapy assistant and shall ~~be based~~ BASE THE SUPERVISION DETERMINATION on a variety of factors, including the clients' required level of care, the treatment plan, and the experience and pertinent skills of the occupational therapy assistant.

(2) THE SUPERVISING OCCUPATIONAL THERAPIST SHALL SUPERVISE THE OCCUPATIONAL THERAPY ASSISTANT IN A MANNER THAT ENSURES THAT THE OCCUPATIONAL THERAPY ASSISTANT:

(a) DOES NOT INITIATE OR ALTER A TREATMENT PROGRAM WITHOUT PRIOR EVALUATION BY AND APPROVAL OF THE SUPERVISING OCCUPATIONAL THERAPIST;

(b) OBTAINS PRIOR APPROVAL OF THE SUPERVISING OCCUPATIONAL THERAPIST BEFORE MAKING ADJUSTMENTS TO A SPECIFIC TREATMENT PROCEDURE; AND

(c) DOES NOT INTERPRET DATA BEYOND THE SCOPE OF THE OCCUPATIONAL THERAPY ASSISTANT'S EDUCATION AND TRAINING.

(3) AN AIDE SHALL FUNCTION ONLY UNDER THE GUIDANCE, RESPONSIBILITY, AND SUPERVISION OF AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT. THE AIDE SHALL PERFORM ONLY SPECIFICALLY SELECTED TASKS FOR WHICH THE AIDE HAS BEEN TRAINED AND HAS DEMONSTRATED COMPETENCE TO THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT. THE SUPERVISING OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT SHALL SUPERVISE THE AIDE IN A MANNER THAT ENSURES COMPLIANCE WITH THIS SUBSECTION (3) AND IS SUBJECT TO DISCIPLINE UNDER SECTION 12-40.5-110 FOR FAILURE TO PROPERLY SUPERVISE AN AIDE.

SECTION 8. In Colorado Revised Statutes, 12-40.5-108, **amend** (1) introductory portion and (1) (d) as follows:

12-40.5-108. Scope of article - exclusions. (1) This article ~~shall~~ DOES not prevent or restrict the practice, services, or activities of:

(d) ~~The practice of Occupational therapy in this state by any legally qualified occupational therapist from another state or country when providing services on behalf of a temporarily absent occupational therapist registered~~ LICENSED in this state, so long as the ~~unregistered~~ UNLICENSED occupational therapist is acting in accordance with rules established by the director. The ~~unregistered~~ UNLICENSED practice ~~shall~~ MUST not be of more than four weeks' duration, and ~~no~~ A person shall ~~be authorized by the director to~~ NOT undertake ~~such~~ UNLICENSED practice more than once in any twelve-month period.

SECTION 9. In Colorado Revised Statutes, 12-40.5-110, **amend** (1), (2) introductory portion, (2) (b), (2) (c), (2) (d), (2) (h), (2) (j), (2) (k), (4) (a), (7) (b) (III), (12) (a), (13) (a), (13) (c) (III), and (14); and **add** (2) (l), (2) (m), (17), (18),

and (19) as follows:

12-40.5-110. Grounds for discipline - disciplinary proceedings - judicial review. (1) The director may take disciplinary action against a ~~registrant~~ LICENSEE if the director finds that the ~~registrant~~ LICENSEE has represented himself or herself as a ~~registered~~ LICENSED occupational therapist OR OCCUPATIONAL THERAPY ASSISTANT after the expiration, suspension, or revocation of his or her ~~registration~~ LICENSE.

(2) The director may revoke, suspend, deny, or refuse to renew a ~~registration~~ LICENSE; PLACE A LICENSEE ON PROBATION; ISSUE A LETTER OF ADMONITION TO A LICENSEE; or issue a cease-and-desist order to a ~~registrant~~ LICENSEE in accordance with this section upon proof that the ~~registrant~~ LICENSEE:

(b) Has falsified information in an application or has attempted to obtain or has obtained a ~~registration~~ LICENSE by fraud, deception, or misrepresentation;

(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102, C.R.S., or other drugs having similar effects; except that the director has the discretion not to discipline the ~~registrant~~ LICENSEE if he or she is participating in good faith in a program to end such use or abuse that the director has approved;

(d) (I) Has FAILED TO NOTIFY THE DIRECTOR, AS REQUIRED BY SECTION 12-40.5-114.5, OF a physical or mental condition or ~~disability~~ ILLNESS that ~~renders~~ IMPACTS the ~~registrant unable~~ LICENSEE'S ABILITY to provide occupational therapy services with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(II) HAS FAILED TO ACT WITHIN THE LIMITATIONS CREATED BY A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE PERSON UNABLE TO PRACTICE OCCUPATIONAL THERAPY WITH REASONABLE SKILL AND SAFETY OR THAT MAY ENDANGER THE HEALTH OR SAFETY OF PERSONS UNDER HIS OR HER CARE; OR

(III) HAS FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO UNDER A CONFIDENTIAL AGREEMENT ENTERED PURSUANT TO SECTION 12-40.5-114.5;

(h) Has fraudulently obtained, furnished, or sold any occupational therapy diploma, certificate, ~~registration~~, LICENSE, OR renewal of ~~registration~~ A LICENSE or record, or aided or abetted such act;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-40.5-114; ~~or~~

(k) ~~Has otherwise violated any provision of this article or lawful order or rule of the director.~~ HAS ENGAGED IN ANY OF THE FOLLOWING ACTIVITIES AND PRACTICES:

(I) ORDERING OR PERFORMING, WITHOUT CLINICAL JUSTIFICATION, DEMONSTRABLY UNNECESSARY LABORATORY TESTS OR STUDIES;

(II) ADMINISTERING TREATMENT, WITHOUT CLINICAL JUSTIFICATION, THAT IS

DEMONSTRABLY UNNECESSARY; OR

(III) AN ACT OR OMISSION THAT IS CONTRARY TO GENERALLY ACCEPTED STANDARDS OF THE PRACTICE OF OCCUPATIONAL THERAPY;

(l) HAS FAILED TO PROVIDE ADEQUATE OR PROPER SUPERVISION OF A LICENSED OCCUPATIONAL THERAPY ASSISTANT, OF AN AIDE, OR OF ANY UNLICENSED PERSON IN THE OCCUPATIONAL THERAPY PRACTICE; OR

(m) HAS OTHERWISE VIOLATED THIS ARTICLE OR ANY LAWFUL ORDER OR RULE OF THE DIRECTOR.

(4) (a) The director may commence a proceeding to discipline a ~~registrant~~ LICENSEE when the director has reasonable grounds to believe that the ~~registrant~~ LICENSEE has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(7) (b) (III) Upon failure of any witness or ~~registrant~~ LICENSEE to comply with a subpoena or process, the district court of the county in which the subpoenaed person or ~~registrant~~ LICENSEE resides or conducts business, upon application by the director with notice to the subpoenaed person or ~~registrant~~ LICENSEE, may issue to the person or ~~registrant~~ LICENSEE an order requiring that person or ~~registrant~~ LICENSEE to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. If the person or ~~registrant~~ LICENSEE fails to obey the order of the court, THE COURT MAY HOLD the person or ~~registrant~~ ~~may be held~~ LICENSEE in contempt of court.

(12) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a ~~registrant~~ LICENSEE is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required ~~registration~~ LICENSE, the director may issue an order to cease and desist ~~such~~ THE activity. The DIRECTOR SHALL SET FORTH IN THE order ~~shall set forth~~ the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or ~~unregistered~~ UNLICENSED practices immediately cease.

(13) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or ~~unregistered~~ UNLICENSED practice.

(c) (III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required ~~registration~~ LICENSE, or has ENGAGED or is about to engage in acts or practices constituting violations of this article, THE DIRECTOR MAY ISSUE a final cease-and-desist order ~~may be issued~~ directing the person to cease and desist from further unlawful acts or ~~unregistered~~ UNLICENSED practices.

(14) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an ~~unregistered~~ UNLICENSED act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(17) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES NOT WARRANT FORMAL ACTION BUT SHOULD NOT BE DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY SEND A LETTER OF ADMONITION TO THE LICENSEE.

(b) WHEN THE DIRECTOR SENDS A LETTER OF ADMONITION TO A LICENSEE, THE DIRECTOR SHALL NOTIFY THE LICENSEE OF THE LICENSEE'S RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS AFTER RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE THE PROPRIETY OF THE CONDUCT DESCRIBED IN THE LETTER OF ADMONITION.

(c) IF THE LICENSEE TIMELY REQUESTS ADJUDICATION, THE DIRECTOR SHALL VACATE THE LETTER OF ADMONITION AND PROCESS THE MATTER BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

(18) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED, BUT THE DIRECTOR HAS NOTICED CONDUCT BY THE LICENSEE THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT CORRECTED, THE DIRECTOR MAY SEND A CONFIDENTIAL LETTER OF CONCERN TO THE LICENSEE.

(19) ANY PERSON WHOSE LICENSE IS REVOKED OR WHO SURRENDERS HIS OR HER LICENSE TO AVOID DISCIPLINE UNDER THIS SECTION IS INELIGIBLE TO APPLY FOR A LICENSE UNDER THIS ARTICLE FOR AT LEAST TWO YEARS AFTER THE DATE THE LICENSE IS REVOKED OR SURRENDERED.

SECTION 10. In Colorado Revised Statutes, **amend** 12-40.5-111 as follows:

12-40.5-111. Unauthorized practice - penalties. A person who practices or offers or attempts to practice occupational therapy without an active ~~registration~~ LICENSE AS REQUIRED BY AND ISSUED UNDER THIS ARTICLE FOR OCCUPATIONAL THERAPISTS OR OCCUPATIONAL THERAPY ASSISTANTS commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense. For the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

SECTION 11. In Colorado Revised Statutes, 12-40.5-114, **amend** (1), (2), and (3) as follows:

12-40.5-114. Mental and physical examination of licensees. (1) If the director has reasonable cause to believe that a ~~registrant~~ LICENSEE is unable to practice with reasonable skill and safety, the director may order the ~~registrant~~ LICENSEE to take

a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Except where due to circumstances beyond the registrant's control, if the registrant fails or refuses to undergo a mental or physical examination, the director may suspend the registrant's registration until the director has made a determination of the registrant's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) In an order requiring a registrant to undergo a mental or physical examination, shall contain the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the grounds that they are privileged communication.

(3) The registrant may submit to the director testimony or examination reports from a physician chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from practicing with reasonable skill and safety. The director may consider the testimony and reports submitted by the registrant in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

SECTION 12. In Colorado Revised Statutes, add 12-40.5-106.5, 12-40.5-109.3, 12-40.5-109.5, 12-40.5-114.5, and 12-40.5-114.7 as follows:

12-40.5-106.5. Occupational therapy assistants - licensure - application - qualifications - rules. (1) Educational and experiential requirements. EVERY APPLICANT FOR A LICENSE AS AN OCCUPATIONAL THERAPY ASSISTANT MUST HAVE:

(a) SUCCESSFULLY COMPLETED THE ACADEMIC REQUIREMENTS OF AN EDUCATIONAL PROGRAM FOR OCCUPATIONAL THERAPY ASSISTANTS THAT IS OFFERED BY AN INSTITUTION OF HIGHER EDUCATION AND ACCREDITED BY A NATIONAL, REGIONAL, OR STATE AGENCY RECOGNIZED BY THE UNITED STATES SECRETARY OF EDUCATION, OR ANOTHER SUCH PROGRAM ACCREDITED THEREBY AND APPROVED BY THE DIRECTOR.

(b) SUCCESSFULLY COMPLETED A MINIMUM PERIOD OF SUPERVISED FIELDWORK EXPERIENCE REQUIRED BY THE RECOGNIZED EDUCATIONAL INSTITUTION WHERE THE APPLICANT MET THE ACADEMIC REQUIREMENTS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1). THE MINIMUM PERIOD OF FIELDWORK EXPERIENCE FOR AN OCCUPATIONAL THERAPY ASSISTANT IS SIXTEEN WEEKS OF SUPERVISED FIELDWORK EXPERIENCE OR SATISFACTION OF ANY GENERALLY RECOGNIZED PAST STANDARDS THAT IDENTIFIED MINIMUM FIELDWORK REQUIREMENTS AT THE TIME OF GRADUATION.

(2) **Application.** (a) WHEN AN APPLICANT HAS FULFILLED THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, THE APPLICANT MAY APPLY FOR LICENSURE

UPON PAYMENT OF A FEE IN AN AMOUNT DETERMINED BY THE DIRECTOR.

(b) THE APPLICANT MUST SUBMIT AN APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE DIRECTOR.

(3) **Examination.** EACH APPLICANT MUST PASS A NATIONALLY RECOGNIZED EXAMINATION, APPROVED BY THE DIRECTOR, THAT MEASURES THE MINIMUM LEVEL OF COMPETENCE NECESSARY FOR PUBLIC HEALTH, SAFETY, AND WELFARE.

(4) **Licensure.** WHEN AN APPLICANT HAS FULFILLED THE REQUIREMENTS OF SUBSECTIONS (1) TO (3) OF THIS SECTION, THE DIRECTOR SHALL ISSUE A LICENSE TO THE APPLICANT; EXCEPT THAT THE DIRECTOR MAY DENY A LICENSE IF THE APPLICANT HAS COMMITTED ANY ACT THAT WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER SECTION 12-40.5-110.

(5) **Licensure by endorsement.** (a) AN APPLICANT FOR LICENSURE BY ENDORSEMENT MUST FILE AN APPLICATION AND PAY A FEE AS PRESCRIBED BY THE DIRECTOR AND MUST HOLD A CURRENT, VALID LICENSE OR REGISTRATION IN A JURISDICTION THAT REQUIRES QUALIFICATIONS SUBSTANTIALLY EQUIVALENT TO THOSE REQUIRED FOR LICENSURE BY SUBSECTION (1) OF THIS SECTION.

(b) AN APPLICANT FOR LICENSURE BY ENDORSEMENT MUST SUBMIT WITH THE APPLICATION VERIFICATION THAT THE APPLICANT HAS ACTIVELY PRACTICED AS AN OCCUPATIONAL THERAPY ASSISTANT FOR A PERIOD OF TIME DETERMINED BY RULES OF THE DIRECTOR OR OTHERWISE MAINTAINED COMPETENCY AS AN OCCUPATIONAL THERAPY ASSISTANT AS DETERMINED BY THE DIRECTOR.

(c) UPON RECEIPT OF ALL DOCUMENTS REQUIRED BY PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (5), THE DIRECTOR SHALL REVIEW THE APPLICATION AND MAKE A DETERMINATION OF THE APPLICANT'S QUALIFICATION TO BE LICENSED BY ENDORSEMENT AS AN OCCUPATIONAL THERAPY ASSISTANT.

(d) THE DIRECTOR MAY DENY THE LICENSE IF THE APPLICANT HAS COMMITTED AN ACT THAT WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER SECTION 12-40.5-110.

(6) **License renewal.** (a) AN OCCUPATIONAL THERAPY ASSISTANT MUST RENEW HIS OR HER LICENSE ISSUED UNDER THIS ARTICLE ACCORDING TO A SCHEDULE OF RENEWAL DATES ESTABLISHED BY THE DIRECTOR. THE OCCUPATIONAL THERAPY ASSISTANT MUST SUBMIT AN APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE DIRECTOR AND SHALL PAY A RENEWAL FEE IN AN AMOUNT DETERMINED BY THE DIRECTOR.

(b) LICENSES ARE RENEWED OR REINSTATED IN ACCORDANCE WITH THE SCHEDULE ESTABLISHED BY THE DIRECTOR, AND THE DIRECTOR SHALL GRANT A RENEWAL OR REINSTATEMENT PURSUANT TO SECTION 24-34-102 (8), C.R.S. THE DIRECTOR MAY ESTABLISH RENEWAL FEES AND DELINQUENCY FEES FOR REINSTATEMENT PURSUANT TO SECTION 24-34-105, C.R.S. IF AN OCCUPATIONAL THERAPY ASSISTANT FAILS TO RENEW HIS OR HER LICENSE PURSUANT TO THE SCHEDULE ESTABLISHED BY THE DIRECTOR, THE LICENSE EXPIRES. ANY PERSON WHOSE LICENSE EXPIRES IS SUBJECT TO THE PENALTIES PROVIDED IN THIS ARTICLE

OR SECTION 24-34-102 (8), C.R.S., FOR REINSTATEMENT.

12-40.5-109.3. Continuing professional competency - rules. (1) (a) EACH OCCUPATIONAL THERAPIST AND OCCUPATIONAL THERAPY ASSISTANT SHALL MAINTAIN CONTINUING PROFESSIONAL COMPETENCY TO PRACTICE OCCUPATIONAL THERAPY.

(b) THE DIRECTOR SHALL ESTABLISH A CONTINUING PROFESSIONAL COMPETENCY PROGRAM THAT INCLUDES, AT A MINIMUM, THE FOLLOWING ELEMENTS:

(I) A SELF-ASSESSMENT OF THE KNOWLEDGE AND SKILLS OF A LICENSEE SEEKING TO RENEW OR REINSTATE A LICENSE;

(II) DEVELOPMENT, EXECUTION, AND DOCUMENTATION OF A LEARNING PLAN BASED ON THE SELF-ASSESSMENT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b); AND

(III) PERIODIC DEMONSTRATION OF KNOWLEDGE AND SKILLS THROUGH DOCUMENTATION OF ACTIVITIES NECESSARY TO ENSURE AT LEAST MINIMAL ABILITY TO SAFELY PRACTICE THE PROFESSION; EXCEPT THAT AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT LICENSED PURSUANT TO THIS ARTICLE NEED NOT RETAKE THE EXAMINATION REQUIRED BY SECTION 12-40.5-106 (3) OR 12-40.5-106.5 (3), RESPECTIVELY, FOR INITIAL LICENSURE.

(2) A LICENSEE SATISFIES THE CONTINUING COMPETENCY REQUIREMENTS OF THIS SECTION IF THE LICENSEE MEETS THE CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS OF ONE OF THE FOLLOWING ENTITIES:

(a) AN ACCREDITING BODY APPROVED BY THE DIRECTOR; OR

(b) AN ENTITY APPROVED BY THE DIRECTOR.

(3) (a) AFTER THE PROGRAM IS ESTABLISHED, A LICENSEE MUST SATISFY THE REQUIREMENTS OF THE PROGRAM IN ORDER TO RENEW OR REINSTATE A LICENSE TO PRACTICE OCCUPATIONAL THERAPY.

(b) THE REQUIREMENTS OF THIS SECTION APPLY TO INDIVIDUAL OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS, AND NOTHING IN THIS SECTION REQUIRES A PERSON WHO EMPLOYS OR CONTRACTS WITH AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT TO COMPLY WITH THIS SECTION.

(4) RECORDS OF ASSESSMENTS OR OTHER DOCUMENTATION DEVELOPED OR SUBMITTED IN CONNECTION WITH THE CONTINUING PROFESSIONAL COMPETENCY PROGRAM:

(a) ARE CONFIDENTIAL AND NOT SUBJECT TO INSPECTION BY THE PUBLIC OR DISCOVERY IN CONNECTION WITH A CIVIL ACTION AGAINST AN OCCUPATIONAL THERAPIST, OCCUPATIONAL THERAPY ASSISTANT, OR OTHER PROFESSIONAL REGULATED UNDER THIS TITLE; AND

(b) MAY BE USED ONLY BY THE DIRECTOR AND ONLY FOR THE PURPOSE OF DETERMINING WHETHER A LICENSEE IS MAINTAINING CONTINUING PROFESSIONAL COMPETENCY TO ENGAGE IN THE PROFESSION.

(5) AS USED IN THIS SECTION, "CONTINUING PROFESSIONAL COMPETENCY" MEANS THE ONGOING ABILITY OF A LICENSEE TO LEARN, INTEGRATE, AND APPLY THE KNOWLEDGE, SKILL, AND JUDGMENT TO PRACTICE OCCUPATIONAL THERAPY ACCORDING TO GENERALLY ACCEPTED STANDARDS AND PROFESSIONAL ETHICAL STANDARDS.

12-40.5-109.5. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules.

(1) EACH OCCUPATIONAL THERAPIST AND OCCUPATIONAL THERAPY ASSISTANT RESPONSIBLE FOR PATIENT RECORDS SHALL DEVELOP A WRITTEN PLAN TO ENSURE THE SECURITY OF PATIENT MEDICAL RECORDS. THE PLAN MUST ADDRESS AT LEAST THE FOLLOWING:

(a) THE STORAGE AND PROPER DISPOSAL OF PATIENT MEDICAL RECORDS;

(b) THE DISPOSITION OF PATIENT MEDICAL RECORDS IF THE LICENSEE DIES, RETIRES, OR OTHERWISE CEASES TO PRACTICE OR PROVIDE OCCUPATIONAL THERAPY SERVICES TO PATIENTS; AND

(c) THE METHOD BY WHICH PATIENTS MAY ACCESS OR OBTAIN THEIR MEDICAL RECORDS PROMPTLY IF ANY OF THE EVENTS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1) OCCURS.

(2) A LICENSEE SHALL INFORM EACH PATIENT IN WRITING OF THE METHOD BY WHICH THE PATIENT MAY ACCESS OR OBTAIN HIS OR HER MEDICAL RECORDS IF AN EVENT DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION OCCURS.

(3) UPON INITIAL LICENSURE UNDER THIS ARTICLE AND UPON RENEWAL OF A LICENSE, THE APPLICANT OR LICENSEE SHALL ATTEST TO THE DIRECTOR THAT HE OR SHE HAS DEVELOPED A PLAN IN COMPLIANCE WITH THIS SECTION.

(4) A LICENSEE WHO FAILS TO COMPLY WITH THIS SECTION IS SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION 12-40.5-110.

(5) THE DIRECTOR MAY ADOPT RULES REASONABLY NECESSARY TO IMPLEMENT THIS SECTION.

12-40.5-114.5. Confidential agreement to limit practice - violation - grounds for discipline.

(1) IF AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT HAS A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE PERSON UNABLE TO PRACTICE OCCUPATIONAL THERAPY WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT SHALL NOTIFY THE DIRECTOR OF THE ILLNESS OR CONDITION IN A MANNER AND WITHIN A PERIOD DETERMINED BY THE DIRECTOR. THE DIRECTOR MAY REQUIRE THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT TO SUBMIT TO AN EXAMINATION TO EVALUATE THE EXTENT OF THE ILLNESS OR CONDITION AND ITS IMPACT ON THE OCCUPATIONAL THERAPIST'S OR

OCCUPATIONAL THERAPY ASSISTANT'S ABILITY TO PRACTICE OCCUPATIONAL THERAPY WITH REASONABLE SKILL AND SAFETY TO CLIENTS.

(2) (a) UPON DETERMINING THAT AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT WITH A PHYSICAL OR MENTAL ILLNESS OR CONDITION IS ABLE TO RENDER LIMITED SERVICES WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE DIRECTOR MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT IN WHICH THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT AGREES TO LIMIT HIS OR HER PRACTICE BASED ON THE RESTRICTIONS IMPOSED BY THE ILLNESS OR CONDITION, AS DETERMINED BY THE DIRECTOR.

(b) AS PART OF THE AGREEMENT, THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT IS SUBJECT TO PERIODIC REEVALUATION OR MONITORING AS DETERMINED APPROPRIATE BY THE DIRECTOR.

(c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR OF MONITORING.

(3) BY ENTERING INTO AN AGREEMENT WITH THE DIRECTOR PURSUANT TO THIS SECTION TO LIMIT HIS OR HER PRACTICE, AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT IS NOT ENGAGING IN ACTIVITIES THAT ARE GROUNDS FOR DISCIPLINE PURSUANT TO SECTION 12-40.5-110. THE AGREEMENT DOES NOT CONSTITUTE A RESTRICTION OR DISCIPLINE BY THE DIRECTOR. HOWEVER, IF THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT FAILS TO COMPLY WITH THE TERMS OF THE AGREEMENT, THE FAILURE CONSTITUTES A PROHIBITED ACTIVITY PURSUANT TO SECTION 12-40.5-110 (1) (d), AND THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT IS SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION 12-40.5-110.

(4) THIS SECTION DOES NOT APPLY TO AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT SUBJECT TO DISCIPLINE FOR PROHIBITED ACTIVITIES AS DESCRIBED IN SECTION 12-40.5-110 (1) (c).

12-40.5-114.7. Professional liability insurance required - rules. (1) A PERSON SHALL NOT PRACTICE OCCUPATIONAL THERAPY UNLESS THE PERSON PURCHASES AND MAINTAINS, OR IS COVERED BY, PROFESSIONAL LIABILITY INSURANCE IN AN AMOUNT DETERMINED BY THE DIRECTOR BY RULE THAT COVERS ALL ACTS WITHIN THE SCOPE OF PRACTICE OF THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT.

(2) THIS SECTION DOES NOT APPLY TO AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT WHO IS A PUBLIC EMPLOYEE ACTING WITHIN THE COURSE AND SCOPE OF THE PUBLIC EMPLOYEE'S DUTIES AND WHO IS GRANTED IMMUNITY UNDER THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

SECTION 13. In Colorado Revised Statutes, 10-16-104, **amend** (1.4) (a) (XI) as follows:

10-16-104. Mandatory coverage provisions - definitions. (1.4) **Autism**

spectrum disorders. (a) As used in this subsection (1.4), unless the context otherwise requires:

(XI) "Therapeutic care" means services provided by a speech therapist; an occupational therapist ~~registered~~ OR OCCUPATIONAL THERAPY ASSISTANT LICENSED to practice occupational therapy pursuant to article 40.5 of title 12, C.R.S.; a physical therapist licensed to practice physical therapy pursuant to article 41 of title 12, C.R.S.; or an autism services provider. "Therapeutic care" includes, but is not limited to, speech, occupational, and applied behavior analytic and physical therapies.

SECTION 14. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of professions and occupations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2013, the sum of \$37,737 and 0.2 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$8,174 and 0.2 FTE to the division of professions and occupations for personal services;

(b) \$8,924 to the division of professions and occupations for temporary and contract personnel;

(c) \$789 to the division of professions and occupations for printing and imaging;

(d) \$12,746 to the executive director's office and administrative services for the purchase of legal services; and

(e) \$7,104 to the executive director's office and administrative services for the purchase of computer center services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$12,746, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (d) of subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated to the governor - lieutenant governor - state planning and budgeting, for the fiscal year beginning July 1, 2013, the sum of \$7,104, or so much thereof as may be necessary, for allocation to the office of information technology, for the provision of computer center services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (e) of subsection (1) of this section.

SECTION 15. Effective date. This act takes effect June 30, 2013.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 2013