

Board of Medical and Osteopathic Examiners
Notice of Public Hearing to Adopt Rules

A public hearing will be held at 101 N. Main Ave., in the First Dakota National Bank building in room 306, Sioux Falls, South Dakota on March 10, 2022 at 10:00 a.m. (CT)/9:00 a.m. (MT) to consider the adoption of proposed rules numbered: §§20:64:01:01; 20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01; 20:84:05:02; 20:61:01:02. The public hearing will also be accessible via the Dakota Digital Network (DDN) at the following locations: CAP A, 500 E. Capitol, Pierre, SD and the Rapid City SDSM&T Public Room 501 East Saint Joseph St., EEP Building Room 144, Rapid City, 57701.

The effect of §20:64:01:01 is to clarify the definition of supervision between an occupational therapist and occupational therapy assistant. The reason for adopting §20:64:01:01 is to allow for supervision of an occupational therapy assistant via telecommunication. The effect of 20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01; 20:84:05:02 is to repeal Article 20:85 related to the regulation of medical assistants. The reason for the repeal is to reflect the repeal of the registration requirement for medical assistants. The effect of §20:61:01:02 is to remove the reference to EMT-student status. The reason for adopting §20:64:01:01 is to reflect the repeal of the license requirement for EMT-student status.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Board of Medical and Osteopathic Examiners, 101 N. Main Ave., Suite 301, Sioux Falls, SD 57104 or by email to SDBMOE@state.sd.us. Material sent by mail or email must reach the Board by March 7, 2022 to be considered.

After the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Board at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 367-7781.

Proposed rules text is available on the following websites: www.sdbmoe.gov and www.rules.sd.gov. Copies of the proposed rules may be obtained without charge from the following address.

South Dakota Board of Medical and Osteopathic Examiners
101 N. Main Ave. Ste.301
Sioux Falls, South Dakota 57104

Published at the approximate cost of \$_____.

CHAPTER 20:64:01

DEFINITIONS

Section

20:64:01:01 Definitions

20:64:01:01. Definitions. Words defined in SDCL 36-31 have the same meaning when used in this article. In addition, terms used in this article mean:

(1) "Applicant," a person applying to the board for any purpose relating to that person's licensure by the board;

(2) "Direct supervision," the physical presence of an occupational therapist or occupational therapy assistant in the immediate room when remediative tasks are being performed by an occupational therapy aide;

(3). "Supervision," ~~the physical presence of an occupational therapist on the premises where a patient is being cared for by an occupational therapy assistant~~ shared responsibility between an occupational therapist and an occupational therapy assistant that occurs in person or by telecommunications while the occupational therapist assistant is treating patients.

Source: 14 SDR 72, effective November 23, 1987.

General Authority: SDCL 36-31-13.

Law Implemented: SDCL 36-31-1, 36-31-4, 36-31-5, 36-31-6, 36-31-14.

ARTICLE 20:84
MEDICAL ASSISTANTS

(Repealed)

Chapter

~~20:84:01 — Definitions.~~

~~20:84:02 — Contents of application.~~

~~20:84:03 — Qualifications of applicants.~~

~~20:84:04 — Approval of education programs.~~

~~20:84:05 — Renewal of registration.~~

CHAPTER 20:84:01

DEFINITIONS

Section

~~20:84:01:01 — Definitions.~~

~~— **20:84:01:01. Definitions.** Terms defined in SDCL chapter 36-9B have the same meaning when used in this article. In addition, terms used in this article mean:~~

~~— (1) "Board," the South Dakota Board of Medical and Osteopathic Examiners;~~

~~— (2) "Direct supervision," the physician, physician assistant, certified nurse practitioner, or certified nurse midwife are physically present or available by means of electronic communication.~~

~~— **Source:** 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 6, effective July 1, 2018.~~

~~— **General Authority:** SDCL 36-9B-7.~~

— ~~Law Implemented:~~ SDCL 36-9B-1, 36-9B-4.

CHAPTER 20:84:02

CONTENTS OF APPLICATION

Section

20:84:02:01 — Contents of application.

20:84:02:02 — Medical assistant supervision.

— ~~20:84:02:01. Contents of application.~~ An applicant for medical assistant registration shall apply for registration on a form approved by the board.

— ~~Source:~~ 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 7, effective July 1, 2018.

— ~~General Authority:~~ SDCL 36-9B-7.

— ~~Law Implemented:~~ SDCL 36-9B-4.

— ~~20:84:02:02. Medical assistant supervision.~~ A registered medical assistant shall submit with the application a supervision registration form. The supervision registration form shall be submitted on a form approved by the board.

— ~~Source:~~ 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 8, effective July 1, 2018.

— ~~General Authority:~~ SDCL 36-9B-7.

— ~~Law Implemented:~~ SDCL 36-9B-1, 36-9B-2.

CHAPTER 20:84:03

QUALIFICATIONS OF APPLICANTS

Section

~~20:84:03:01~~ — Qualifications of applicants.

~~20:84:03:01. Qualifications of applicants.~~ An applicant for registration shall provide:

~~(1) Proof of graduation from a medical assistant program or completion of a training program approved by the board;~~

~~(2) Proof of good moral character;~~

~~(3) Proof the applicant has graduated from high school or passed a standard equivalency test;~~

~~(4) Documentation showing the applicant is at least 18 years of age; and~~

~~(5) Proof of having passed a national certifying exam approved by the board.~~

~~Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 9, effective July 1, 2018; 45 SDR 9, effective August 1, 2018.~~

~~General Authority: SDCL 36-9B-7.~~

~~Law Implemented: SDCL 36-9B-4.~~

CHAPTER 20:84:04

APPROVAL OF EDUCATION PROGRAMS

Section

~~20:84:04:01~~ — Approved education programs.

~~— **20:84:04:01. Approved education programs.** A medical assistant training program shall be approved by the board or accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or a similar accrediting institution approved by the United States Department of Education. Approved programs must provide classroom, laboratory, and clinical learning experiences that provide for student attainment of entry level competence as a registered medical assistant.~~

~~— **Source:** 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 10, effective July 1, 2018; 45 SDR 9, effective August 1, 2018.~~

~~— **General Authority:** SDCL 36-9B-7.~~

~~— **Law Implemented:** SDCL 36-9B-5.~~

CHAPTER 20:84:05

RENEWAL OF REGISTRATION

Section

~~20:84:05:01 — Medical assistant registration renewal.~~

~~20:84:05:02 — Reinstatement of lapsed registration.~~

~~— **20:84:05:01. Medical assistant registration renewal.** A registered medical assistant shall renew the registration biennially on an application form approved by the board. The application shall be accompanied by the registration renewal fee. If a registered medical assistant does not submit a registration renewal form by December 31 of the year of the registration's expiration, the registration is lapsed.~~

—— **Source:** ~~43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 11, effective July 1, 2018.~~

—— **General Authority:** ~~SDCL 36-9B-7.~~

—— **Law Implemented:** ~~SDCL 36-9B-4.~~

—— **20:84:05:02. Reinstatement of lapsed registration.** ~~Any person whose registration has lapsed may have it reinstated by making written application on a form approved by the board and paying the biennial renewal fee.~~

—— **Source:** ~~43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 12, effective July 1, 2018.~~

—— **General Authority:** ~~SDCL 36-9B-7.~~

—— **Law Implemented:** ~~SDCL 36-9B-4.~~

CHAPTER 20:61:01

LICENSURE

Section

20:61:01:02 Application for license.

20:61:01:02. Application for license. Any person seeking a license ~~as an emergency medical technician-student status,~~ as an emergency medical technician-special skills; or as an emergency medical technician-paramedic in South Dakota shall apply to the State Board of Medical and Osteopathic Examiners at the principal office of the board. The application shall be on applications provided by the board.

Source: 5 SDR 68, effective February 15, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-4B-35.

Law Implemented: SDCL 36-4B-13.

CHAPTER 20:64:01

DEFINITIONS

Section

20:64:01:01 Definitions

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(2) "Direct supervision," the physical presence of an occupational therapist or occupational therapy assistant in the immediate room when remediative tasks are being performed by an occupational therapy aide;

(3). "Supervision," ~~the physical presence of an occupational therapist on the premises where a patient is being cared for by an occupational therapy assistant~~ the treatment of a patient by an occupational therapist assistant in the presence of an occupational therapist. For purposes of this subdivision, "presence" means in-person presence or presence by telecommunications.

Source: 14 SDR 72, effective November 23, 1987.

General Authority: SDCL 36-31-13.

Law Implemented: SDCL 36-31-1, 36-31-4, 36-31-5, 36-31-6, 36-31-13, 36-31-14.

ARTICLE 20:84

MEDICAL ASSISTANTS

(Repealed)

Chapter

- 20:84:01 Definitions, Repealed.
- 20:84:02 Contents of application, Repealed.
- 20:84:03 Qualifications of applicants, Repealed.
- 20:84:04 Approval of education programs, Repealed.
- 20:84:05 Renewal of registration, Repealed.

CHAPTER 20:84:01

DEFINITIONS

(Repealed)

Section

- 20:84:01:01 Definitions, Repealed.

20:84:01:01. Definitions. ~~Terms defined in SDCL chapter 36-9B have the same meaning when used in this article. In addition, terms used in this article mean:~~

- ~~—— (1) "Board," the South Dakota Board of Medical and Osteopathic Examiners;~~
- ~~—— (2) "Direct supervision," the physician, physician assistant, certified nurse practitioner, or certified nurse midwife are physically present or available by means of electronic communication~~Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 6, effective July 1, 2018.

— ~~General Authority: SDCL 36-9B-7.~~

— ~~Law Implemented: SDCL 36-9B-1, 36-9B-4.~~

CHAPTER 20:84:02
CONTENTS OF APPLICATION
(Repealed)

Section

20:84:02:01 Contents of application, Repealed.

20:84:02:02 Medical assistant supervision, Repealed.

20:84:02:01. Contents of application. ~~An applicant for medical assistant registration shall apply for registration on a form approved by the board~~Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 7, effective July 1, 2018.

— ~~General Authority: SDCL 36-9B-7.~~

— ~~Law Implemented: SDCL 36-9B-4.~~

20:84:02:02. Medical assistant supervision. ~~A registered medical assistant shall submit with the application a supervision registration form. The supervision registration form shall be submitted on a form approved by the board~~Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 8, effective July 1, 2018.

— ~~General Authority: SDCL 36-9B-7.~~

~~— **Law Implemented:** SDCL 36-9B-1, 36-9B-2.~~

CHAPTER 20:84:03
QUALIFICATIONS OF APPLICANTS

(Repealed)

Section

20:84:03:01 Qualifications of applicants, Repealed.

20:84:03:01. Qualifications of applicants. ~~An applicant for registration shall provide:~~

~~— (1) Proof of graduation from a medical assistant program or completion of a training program approved by the board;~~

~~— (2) Proof of good moral character;~~

~~— (3) Proof the applicant has graduated from high school or passed a standard equivalency test;~~

~~— (4) Documentation showing the applicant is at least 18 years of age; and~~

~~— (5) Proof of having passed a national certifying exam approved by the board~~Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 9, effective July 1, 2018; 45 SDR 9, effective August 1, 2018.

~~— **General Authority:** SDCL 36-9B-7.~~

~~— **Law Implemented:** SDCL 36-9B-4.~~

CHAPTER 20:84:04

APPROVAL OF EDUCATION PROGRAMS

(Repealed)

Section

20:84:04:01 Approved education programs, Repealed.

20:84:04:01. Approved education programs. ~~A medical assistant training program shall be approved by the board or accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or a similar accrediting institution approved by the United States Department of Education. Approved programs must provide classroom, laboratory, and clinical learning experiences that provide for student attainment of entry level competence as a registered medical assistant.~~ Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 10, effective July 1, 2018; 45 SDR 9, effective August 1, 2018.

~~**General Authority:** SDCL 36-9B-7.~~

~~**Law Implemented:** SDCL 36-9B-5.~~

CHAPTER 20:84:05

RENEWAL OF REGISTRATION

(Repealed)

Section

20:84:05:01 Medical assistant registration renewal, Repealed.

20:84:05:02 Reinstatement of lapsed registration, Repealed.

20:84:05:01. Medical assistant registration renewal. ~~A registered medical assistant shall renew the registration biennially on an application form approved by the board. The application shall be accompanied by the registration renewal fee. If a registered medical assistant does not submit a registration renewal form by December 31 of the year of the registration's expiration, the registration is lapsed.~~ Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 11, effective July 1, 2018.

— ~~**General Authority:** SDCL 36-9B-7.~~

— ~~**Law Implemented:** SDCL 36-9B-4.~~

20:84:05:02. Reinstatement of lapsed registration. ~~Any person whose registration has lapsed may have it reinstated by making written application on a form approved by the board and paying the biennial renewal fee.~~ Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 12, effective July 1, 2018.

— ~~**General Authority:** SDCL 36-9B-7.~~

— ~~**Law Implemented:** SDCL 36-9B-4.~~

CHAPTER 20:61:01

LICENSURE

Section

20:61:01:02 Application for license.

20:61:01:02. Application for license. Any person seeking a any advanced life support personnel license ~~as an emergency medical technician-student status, as an emergency medical technician-special skills, , or as an emergency medical technician-paramedic~~ in South Dakota shall apply to the ~~State~~-Board of Medical and Osteopathic Examiners at the principal office of the board. The application shall be on applications provided by the board.

Source: 5 SDR 68, effective February 15, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-4B-35.

Law Implemented: SDCL 36-4B-13.



February 23, 2022

Ms. Brooke Blaalid
Board of Medical and Osteopathic Examiners
101 N. Main Avenue, Suite 301
Sioux Falls, South Dakota 57104

Dear Ms. Blaalid:

The Legislative Research Council received proposed rules from the Board of Medical and Osteopathic Examiners on February 8, 2022. In accordance with SDCL 1-26-6.5, the Council reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommended corrections.

Please find attached:

- Proposed Rules Review Checklist;
- The proposed rules with recommended form, style, and clarity corrections;
- Directions for Submitting the Final Draft of the Rules; and
- The Interim Rules Review Committee Rules Presentation Format.

In addition to the recommended corrections to form, style, and clarity included in the proposed rules, the Council identifies the following issues regarding legality:

- The proposed definition of "supervision" in § 20:64:01:01 includes the language "shared responsibility between an occupational therapist and an occupational therapy assistant." The use of "shared responsibility" for "supervision" seems to be contrary to the plain meaning of "supervision," which means "oversight." Further, the definition does not provide what responsibilities are being shared between an occupational therapist and an occupational therapy assistant. The board should consider rewriting or clarifying this definition.
- Section 20:61:01:02 includes a reference to the term, "emergency medical technician-special skills." This term is no longer used in the official code; it was replaced with "emergency technician-intermediate/99" in 2003. This technical terminology change should be made to § 20:61:01:02.

Under SDCL 1-26-4(4), the Board is required to adopt the recommended corrections, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination.

Please do not hesitate to contact me if you have any questions or if you would like to discuss any of the recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "JRM", written over a horizontal line.

John R. McCullough
Code Counsel
Enclosures

CC: Joan Adam, Interim Secretary, Department of Health

**Legislative Research Council
Proposed Rules Review Checklist**

Date Proposed Rules Received by LRC: February 9, 2022

Date Public Hearing Scheduled: March 10, 2022

Proposed Rules Reviewed by: John McCullough

Fiscal Note Reviewed by: Joey Knofczynski

"No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter." (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY

ENTRY:	"[Initials]"	"N/A"	"[Initials]*"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue

1. Verify the rules packet includes ([SDCL 1-26-4\(2\)](#)):
 - a. The proposed rules: JRM
 - i. Any incorporated material: N/A
 - b. Fiscal note: JK
 - c. Small business impact statement: JK
 - d. Notice of hearing: JRM

2. Verify all documents have correct citations to the proposed rules provided in the packet. JRM

3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. ([SDCL 1-26-4\(1\)](#)) JRM

- 4. If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.**

5. Review proposed rules for:
 - a. Form, style, and clarity in accordance with the Administrative Rules Drafting Manual (including all existing language, not just amended language). JRM
 - i. Verify the most recent rule is used. ([Manual](#), pg. 3) JRM
 - ii. Verify all cross-references in text are current. ([Manual](#), pg. 3) JRM
 - iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. ([Manual](#), pg. 3) JRM
 - iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. ([Manual](#), pg. 4) JRM

- b. Legality, including:
- i. Verify the General Authority statute provides rule-making authority (i.e., “. . . shall/may promulgate rules to . . .”). ([Manual](#), pg. 5) JRM
 - ii. Verify the Law Implemented statute identifies the policy intended to be implemented. ([Manual](#), pg. 5) JRM
 - iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. ([SDCL 1-26-6.6](#); [Manual](#), pgs. 6-7) N/A
 - For incorporated material that is not CFR, USC, Fed. Reg., Stat.:
 - 1. Verify the proposed rule includes a reference note identifying the publication by title, date of publication, author, version/edition and where and at what cost the publication may be obtained. N/A
 - 2. Verify there is a statement attached to the material that includes the agency’s name, the section number of the rule that incorporates the material, and the date the proposed rule was served on the LRC. N/A
 - iv. Verify the proposed rule does not incorporate or reiterate any statutory language other than definitions, and that the agency is not publishing or distributing statutory material. ([SDCL 1-26-6.1](#)) JRM
 - v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. ([SDCL 1-26-6.10](#)) JRM
 - vi. If the rule increases a fee, verify the agency provided information regarding financial resources available to the agency: beginning fund balance, receipts, disbursements, and ending fund balance for each of the last two fiscal years, as well as beginning fund balance, projected receipts, projected disbursements, and ending balance for current and next fiscal years. ([SDCL 1-26-4.8](#)) N/A
 - vii. If the rule increases a fee by a licensing board or commission, verify the fee increase is “reasonable and necessary” in accordance with [SDCL 1-26-6.9](#). N/A
 - viii. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ [23\(9\)](#), [26](#)) JRM
 - ix. Verify the rule does not allow the agency to circumvent the SDCL ch. 1-26 rulemaking process (e.g., authorizing it to make its own rules). (See SDCL [1-26-4](#), [1-26-6.5](#), [1-26-6.6](#), [1-26-38\(2\)](#)) JRM
 - x. Verify the rule does not contain the agency's internal processes or policy (e.g., personnel policies) or other matter that is not defined as a rule per [SDCL 1-26-1\(8\)](#). JRM
 - xi. Verify the rule does not incorporate a future rule or regulation, or incorporate future amendments to an existing rule or regulation, of

another state or the federal government. (State v. Johnson, 84 S.D. 556, 173 N.W.2d 894 (1970))	<u>JRM</u>
xii. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. (Manual , pgs. 8-9)	<u>JRM*</u>
6. Review the Fiscal Note (SDCL 1-26-4.2):	
a. Verify the Fiscal Note states whether the proposed rule will have any effect on the revenues, expenditures, or fiscal liability of the state, agencies, and subdivisions:	<u>JK</u>
i. If there is an effect, verify the Fiscal Note includes an explanation of how the effect was computed?	<u>N/A</u>
ii. If there is an effect on subdivisions, is that effect described?	<u>N/A</u>
7. Review Small Business Impact Statement (SDCL 1-26-2.1):	
a. Verify if the rule change has any small business impact based on readily available info:	<u>JK</u>
i. If only INDIRECT, verify that a brief description of the impact is included.	<u>N/A</u>
ii. If DIRECT, review 7.b through 7.h:	
b. Verify the Impact Statement includes a narrative explanation in plain, easy-to-read language.	<u>N/A</u>
c. Verify the narrative explanation discusses the effect of the proposed rule on small business, including the basis for the rule's enactment and why the rule is needed.	<u>N/A</u>
d. Verify the narrative explanation includes an identification and estimated number of small businesses subject to the proposed rule.	<u>N/A</u>
e. Verify the Impact Statement includes the projected reporting and record-keeping required for compliance with the proposed rule.	<u>N/A</u>
f. Verify the Impact Statement includes the types of professional skills necessary for preparation of required reports or records.	<u>N/A</u>
g. Verify the Impact Statement includes a statement of the probable effect on impacted small business.	<u>N/A</u>
h. Verify the Impact Statement includes a description of any less intrusive or less costly alternative methods of achieving the proposed rule's purpose.	<u>N/A</u>
8. Review Notice of Public Hearing (SDCL 1-26-4.1):	
a. Verify the LRC received the proposed rules at least 20 days prior to the scheduled public hearing.	<u>JRM</u>
b. Verify the notice contains a narrative description of the effect of the proposed rule.	<u>JRM</u>

- | | |
|---|-----------------|
| c. Verify the notice contains the reason for adopting the proposed rule. | <u>JRM</u> |
| d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing. | <u>JRM*</u> |
| e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented. | <u>JRM*</u> |
| f. Verify the notice contains a deadline for submission of comments. | <u>JRM</u> |
| i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. (SDCL 1-26-4(6)) | <u> </u> |
| ii. If the authority promulgating the rule is a part-time citizen board, Commission, committee, or task force, ensure the deadline is at least 72 hours before the public hearing (not including hearing day). (SDCL 1-26-4(6)). | <u>JRM*</u> |
| g. Verify the notice contains information for how the public may obtain copies of the proposed rules. | <u>JRM</u> |
| 9. For any proposed rule regarding professional or regulatory examination or licensing that is to be published in pamphlet form, review the pamphlet for style, form, and clarity in accordance with the Administrative Rules Drafting Manual. (SDCL 1-26-11) | <u>N/A</u> |

Reviewed by Code Counsel on JRM, 2/23/2022

CHAPTER 20:64:01

DEFINITIONS

Section

20:64:01:01 Definitions

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Source: 14 SDR 72, effective November 23, 1987.

General Authority: SDCL 36-31-13.

Law Implemented: SDCL 36-31-1, 36-31-4, 36-31-5, 36-31-6, 36-31-13, 36-31-14.

Commented [JM1]: Legality/Clarity – It's unclear what responsibility is being shared here. Supervision implies oversight, not the sharing of responsibilities. This definition seems contrary to the plain meaning of the word "supervision."

Could it be rewritten as follows:

"the treatment of a patient by an occupational therapist assistant in the presence of an occupational therapist. For purposes of this subdivision, "presence" means in-person presence or presence by telecommunications."

Commented [JM2]: I would suggest adding SDCL 36-31-13 as Law Implemented, as this rule section implements "licensure" and "supervision."

ARTICLE 20:84

MEDICAL ASSISTANTS

(Repealed)

Chapter

20:84:01 Definitions, Repealed.

20:84:02 Contents of application, Repealed.

20:84:03 Qualifications of applicants, Repealed.

20:84:04 Approval of education programs, Repealed.

20:84:05 Renewal of registration, Repealed.

Commented [JM3]: I've made several form changes to the repealed chapters. These form changes are intended to conform to the drafting standards as provided in the Drafting Manual.

The catchlines; article, chapter, and section numbers; and the source notes should be preserved.

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CHAPTER 20:84:01

DEFINITIONS

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— (2) "Direct supervision," the physician, physician assistant, certified nurse practitioner, or certified nurse midwife are physically present or available by means of electronic

communication Repealed.

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— **General Authority:** SDCL 36-9B-7.

— **Law Implemented:** SDCL 36-9B-1, 36-9B-4.

CHAPTER 20:84:02

CONTENTS OF APPLICATION

(Repealed)

Section

20:84:02:01 Contents of application, Repealed.

20:84:02:02 Medical assistant supervision, Repealed.

20:84:02:01. Contents of application. ~~An applicant for medical assistant registration shall apply for registration on a form approved by the board~~Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 7, effective July 1, 2018.

— **General Authority:** SDCL 36-9B-7.

— **Law Implemented:** SDCL 36-9B-4.

20:84:02:02. Medical assistant supervision. ~~A registered medical assistant shall submit with the application a supervision registration form. The supervision registration form shall be submitted on a form approved by the board~~Repealed.

Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 8, effective July 1, 2018.

— **General Authority:** SDCL 36-9B-7.

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— ~~Law Implemented:~~ SDCL 36-9B-1, 36-9B-2.

CHAPTER 20:84:03

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QUALIFICATIONS OF APPLICANTS

~~(Repealed)~~

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Section

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20:84:03:01 Qualifications of applicants, ~~Repealed~~.

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20:84:03:01. Qualifications of applicants. ~~An applicant for registration shall provide:~~

— (1) ~~Proof of graduation from a medical assistant program or completion of a training program approved by the board;~~

— (2) ~~Proof of good moral character;~~

— (3) ~~Proof the applicant has graduated from high school or passed a standard equivalency test;~~

— (4) ~~Documentation showing the applicant is at least 18 years of age; and~~

— (5) ~~Proof of having passed a national certifying exam approved by the board~~ ~~Repealed~~.

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~~Source:~~ 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 9, effective July 1, 2018; 45 SDR 9, effective August 1, 2018.

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— ~~General Authority:~~ SDCL 36-9B-7.

— ~~Law Implemented:~~ SDCL 36-9B-4.

CHAPTER 20:84:04

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APPROVAL OF EDUCATION PROGRAMS

~~(Repealed)~~

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Section

20:84:04:01 Approved education programs, ~~Repealed~~

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20:84:04:01. Approved education programs. A medical assistant training program shall be approved by the board or accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or a similar accrediting institution approved by the United States Department of Education. Approved programs must provide classroom, laboratory, and clinical learning experiences that provide for student attainment of entry-level competence as a registered medical assistant ~~Repealed~~

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~~Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 10, effective July 1, 2018; 45 SDR 9, effective August 1, 2018.~~

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~~General Authority: SDCL 36-9B-7.~~

~~Law Implemented: SDCL 36-9B-5.~~

CHAPTER 20:84:05

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RENEWAL OF REGISTRATION

~~(Repealed)~~

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Section

20:84:05:01 Medical assistant registration renewal, ~~Repealed~~

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20:84:05:02 Reinstatement of lapsed registration, ~~Repealed~~

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20:84:05:01. Medical assistant registration renewal. A registered medical assistant shall renew the registration biennially on an application form approved by the board. The application shall be accompanied by the registration renewal fee. If a registered medical assistant does not submit a registration renewal form by December 31 of the year of the registration's expiration, the registration is lapsed ~~Repealed~~.

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~~Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 11, effective July 1, 2018.~~

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— ~~General Authority: SDCL 36-9B-7.~~

— ~~Law Implemented: SDCL 36-9B-4.~~

20:84:05:02. Reinstatement of lapsed registration. Any person whose registration has lapsed may have it reinstated by making written application on a form approved by the board and paying the biennial renewal fee ~~Repealed~~.

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~~Source: 43 SDR 57, effective October 20, 2016; SL 2018, ch 229, § 12, effective July 1, 2018.~~

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— ~~General Authority: SDCL 36-9B-7.~~

— ~~Law Implemented: SDCL 36-9B-4.~~

CHAPTER 20:61:01

LICENSURE

Section

20:61:01:02 Application for license.

20:61:01:02. Application for license. Any person seeking a license as an emergency medical technician-student status, as an emergency medical ~~technician-special skills, technician-intermediate/99~~ or as an emergency medical technician-paramedic in South Dakota shall apply to the State Board of Medical and Osteopathic Examiners at the principal office of the board. The application shall be on applications provided by the board.

Source: 5 SDR 68, effective February 15, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-4B-35.

Law Implemented: SDCL 36-4B-13.

Commented [JM4]: Legality - This is no longer included in SDCL 36-4B-1. See SL 2003, ch 198, § 1 to verify that the correct term is added.

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AUTHORIZATION TO PROCEED

Pursuant to SDCL subdivision 1-26-4(2), I, Joan Adam, Interim Secretary of the Department of Health, authorize the Board of Medical and Osteopathic Examiners to proceed with the promulgation of the proposed rules §§20:64:01:01; 20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01; 20:84:05:02; 20:61:01:02.

Dated this 7 day of February, 2022.



Joan Adam
Interim Secretary of Health

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE


Personal service of

(1) the Board of Medical and Osteopathic Examiners proposed rules

§§20:64:01:01; 20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01;
20:84:05:02; 20:61:01:02

(2) all materials incorporated by reference

is admitted at Pierre, South Dakota, this 7 day of February, 2022.



Joan Adam
Interim Secretary of Health


IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Medical and Osteopathic Examiners proposed rules §§20:64:01:01;
20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01;
20:84:05:02; 20:61:01:02.
- (2) the notice of hearing,
- (3) the fiscal note,
- (4) the Small Business Impact Statement, and
- (5) all materials incorporated by reference

is admitted at Pierre, South Dakota, this 8th day of February, 2022.


Legislative Research Council

For these rules, the Agency contact person is: Brooke Blaaid

Phone Number: 605-367-7781

Email Address: brooke.blaaid@state.sd.us

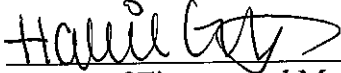
IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Medical and Osteopathic Examiners proposed rules §§20:64:01:01;
20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01;
20:84:05:02; 20:61:01:02.
- (2) the notice of hearing,
- (3) the fiscal note, and
- (4) the Small Business Impact Statement Form

is hereby admitted at Pierre, South Dakota, this 9 day of February 2022.


Bureau of Finance and Management

FORM 5, BFM 50.10

(NOTE: A copy of this form may be obtained from the Bureau of Finance and Management. If your rules have a negative fiscal impact on a local government, such as a county or a school district, you must direct the Bureau of Finance and Management to send a copy of its fiscal note to the organizations listed in SDCL 1-26-4.2.)

**ADMINISTRATIVE PROCEDURES ACT
FISCAL NOTE
Prepared by Submitting Agency**

	CODE	NAME
DEPARTMENT	09	Health
DIVISION	20	Boards
PROGRAM	500	Board of Medical and Osteopathic Examiners

PROPOSED RULE: §§20:64:01:01; 20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01; 20:84:05:02; 20:61:01:02.

Hearing Date: March 10, 2022

FISCAL IMPACT STATEMENT:

Pursuant to 1-26-4.2, these rules have minimal impact to all entities. No additional staffing or resources are needed

FISCAL NOTE SUMMARY:

The proposed rules provide administrative procedures and clarifications. No governmental subdivisions will be impacted

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
TOTAL	\$0	\$0
Local Subdivisions:		
TOTAL	\$0	\$0
Small Business Increases (Decreases)		
TOTAL	\$0	\$0

REVENUE INCREASES (DECREASES)

Revenue Increases (Decreases) State, Local & Small Business :		
TOTAL	\$0	\$0

APPROVED Margaret B. Hansen DATE 2/11/2022
Signature Department Secretary of Board or Commission Chairman

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made, and 5) small business impact statement

SMALL BUSINESS IMPACT STATEMENT FORM

1. Our agency has determined that the rule/s we are proposing have the following type of impact on small businesses:
 - Direct impact *(please complete remainder of form)*
 - Indirect impact *(please provide a brief explanation, then sign, date, and submit form. Questions 2 through 8 do not need to be answered)*
 - No impact *(please provide a brief explanation, sign, date, and submit form - Questions 2 through 8 do not need to be answered)*

The proposed rules focus on administrative procedures and do not create or change any requirements related to small businesses.

2. A general narrative and overview of the effect of the rule(s) on small business - written in plain, easy to read language:

3. What is the basis for the enactment of the rules(s)?

- Required to meet changes in federal law
- Required to meet changes in state law
- Required solely due to changes in date (i.e. must be changed annually)

Other: _____

4. Why is the rule(s) needed?

5. What small businesses or types of small businesses would be subject to the rule?

6. Estimate the number of small businesses that would be subject to the rule.

1-99 100-499 500-999 1,000-4,999 More than 5,000

Unknown - please explain _____

7. Are small businesses required to file or maintain any reports or records under this rule?

Yes No

- a. If "yes," how many reports must a small business submit to the state on an annual basis?

b. If "yes," how much ongoing recordkeeping within the business is necessary?

c. If "yes," what type of professional skills would be necessary to prepare the reports or records?

- The average owner of a small business should be able to complete the reports and/or records with no assistance
- It is likely that a bookkeeper for a small business should be able to complete the reports and/or records
- It is likely that a small business person would need the assistance of a CPA to complete the reports and/or records
- It is likely that a small business person would need the assistance of an attorney to complete the reports and/or records
- Other _____
- Unknown - please explain _____

8. Are there any less intrusive or less costly methods to achieve the purpose of the rule (i.e. fewer reports, less recordkeeping, lower penalties)?

- No - please explain _____
- Yes - please explain _____

2/1/2022
Dated

Margaret B. Hansen
Authorized Signature

SD Board of Medical and
Name of Agency Osteopathic Examiners

*** Proof of Publication ***

STATE OF SOUTH DAKOTA)

Feb 11 42642

Board of Medical and Osteopathic Examiners Notice of Public Hearing to Adopt Rules

A public hearing will be held at 101 N. Main Ave., in the First Dakota National Bank building in room 306, Sioux Falls, South Dakota on March 10, 2022 at 10:00 AM to consider the adoption of proposed rules numbered: §§20:64:01:01; 20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01; 20:84:05:02; 20:61:01:02. The public hearing will also be accessible via the Dakota Digital Network (DDN) at the following locations: CAP A, 500 E. Capitol, Pierre, SD and the Rapid City SDSM&T Public Room 501 East Saint Joseph St., EEP Building Room 144, Rapid City, 57701.

The effect of §20:64:01:01 is to clarify the definition of supervision between an occupational therapist and occupational therapy assistant.

The reason for adopting §20:64:01:01 is to allow for supervision of an occupational therapy assistant via telecommunication.

The effect of 20:84:01:01; 20:84:02:01; 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01; 20:84:05:02 is to repeal Article 20:85 related to the regulation of medical assistants.

The reason for the repeal is to reflect the repeal of the registration requirement for medical assistants.

The effect of §20:61:01:02 is to remove the reference to EMT-student status. The reason for adopting §20:64:01:01 is to reflect the repeal of the license requirement for EMT-student status.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Board of Medical and Osteopathic Examiners, 101 N. Main Ave., Suite 301, Sioux Falls, SD 57104 or by email to SDBMOE@state.sd.us. Material sent by mail or email must reach the Board by March 7, 2022 to be considered.

After the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Board at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 367-7781.

Proposed rules text is available on the following websites: www.sdbmoe.gov and www.rules.sd.gov. Copies of the proposed rules may be obtained without charge from the following address.

South Dakota Board of Medical and Osteopathic Examiners 101 N. Main Ave. Ste.301 Sioux Falls, South Dakota 57104

(Published once at the total approximate cost of \$51.41)

County of Pennington)

SS:

SD Board of Medical and Osteopathic Examiners

101 N MAIN AVE STE 301

SIOUX FALLS SD 57104

ORDER NUMBER 42642

The undersigned, being duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, a clerk of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published for at least one year prior to the first date of the published notice.

This affidavit is a true and corrected copy of notice which appeared

in said newspaper once each day for one successive day, the first publication there of being on the 11th day of February, 2022.

[Signature]

Section: Legal

Category: 0072 Public Notices

PUBLISHED ON: 02/11/2022

TOTAL AD COST: 51.41

FILED ON: 2/11/2022

Subscribed and sworn to before me this

11th day of February, 2022

[Signature] Notary Public

My commission expires

01/17, 2025



PROOF OF PUBLICATION

Sd Board Of Medical And Osteopat
Sd Board Of Medical And Osteopathic Exam
101 N MAIN AVE SUITE 301
Sioux Falls SD 57104

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

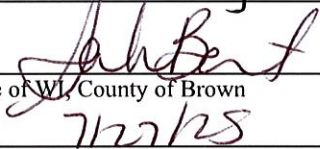
The AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, and has been such a newspaper during the times hereinafter mentioned; and personal knowledge of the facts herein state that the notice hereto annexed was Published in said newspapers in the issue dated:

02/12/2022

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper.
Sworn to and subscribed before on 02/12/2022



Legal Clerk



Notary, State of WI, County of Brown

7/22/25

My commision expires

Publication Cost: \$36.36

Order No: 6907032

of Copies:

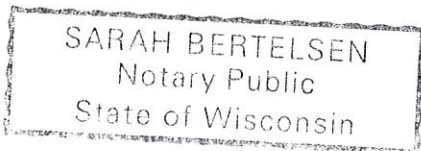
Customer No: 545601

1

PO #:

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.



Board of Medical and
Osteopathic Examiners
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to Adopt Rules

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South Dakota Board of
Medical and Osteopathic
Examiners
101 N. Main Ave. Ste.301
Sioux Falls,
South Dakota 57104

Published at the approxi-
mate cost of \$36.36.
Feb. 12, 2022 # 6907032

Argus Leader

P.O. Box 677349, Dallas, TX 75267-7349

Account No.: SFA-078461

Ad No.: 0005126289

PO #: hearing 3/10

Lines : 110

Ad Total: \$38.52

SD BOARD OF MEDICAL & OSTEO EX
101 N MAIN AVE STE 301
SIOUX FALLS, SD 57104

This is not an invoice

of Affidavits 1

Account No.: SFA-078461

Ad No.: 0005126289

Argus Leader AFFIDAVIT OF PUBLICATION

State of Wisconsin

County of Brown

I being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper issue(s) :

Friday, February 18, 2022

Sworn to and subscribed before me this 18 day of February, 2022.

Maria Jacobs
Legal Clerk

Amy Kokott
Notary Public, State of Wisconsin, County of Brown

6/30/2025
My Commission expires

AMY KOKOTT
Notary Public
State of Wisconsin

Board of Medical and
Osteopathic Examiners
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South Dakota Board of
Medical and Osteopathic
Examiners
101 N. Main Ave. Ste.301
Sioux Falls,
South Dakota 57104

Published at the approximate cost of \$38.52.
5126289 Feb 18, 2022

From: [Mary Menard](#)
To: [SDBMOE](#)
Subject: [EXT] Comments in Support of Proposed Rule Change to Clarify Definition of OT and OTA
Date: Monday, March 7, 2022 7:24:26 PM
Attachments: [image001.png](#)
[image002.png](#)

Dear Board Member:

I agree with and appreciate the proposed change to the definition of "Supervision" in Section 20:64:01:01: (3). I agree with changing the definition of "Supervision," by removing the statement "the physical presence of an occupational therapist on the premises where a patient is being cared for by an occupational therapy assistant" and adding "shared responsibility between an occupational therapist and an occupational therapy assistant to occur in person or by telecommunications while the occupational therapist assistant is treating patients." This change clears the conflict between the definition in 20:64:01:01 (3) and the description of supervision of occupational therapy assistant in 20:65:03:02 which reads in part, "The frequency and manner of supervision is determined by the supervising licensed occupational therapist based on the condition of the patient or client," and clearly allows for supervision by telehealth, which in South Dakota is particularly important to address access to care issues as well as staffing of occupational therapists throughout the State. Thank you for the proposed change to the definition of Occupational Therapy Supervision, and for the opportunity to comment. We know this will greatly improve access to care.

Respectfully,

Mary M. Menard, RN, MPH, CHC, CHPC
Vice President of Regulatory Compliance, Privacy Officer
CHS Therapy

mmenard@continuinghcpartners.com

P: 205-910-3813

EthicsPoint Hotline: 844-478-0796

cultureofcompliance.ethicspoint.com



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From: [karissa.lutz](#)
To: [SDBMOE](#)
Subject: [EXT] South Dakoto OT Telecommunication Supervision proposed changes
Date: Monday, March 7, 2022 6:39:04 PM

Hello,

I agree with, and appreciate the proposed change to the definition of “Supervision” in Section 20:64:01:01: (3). I agree with changing the definition of "Supervision," by removing the statement “the physical presence of an occupational therapist on the premises where a patient is being cared for by an occupational therapy assistant” and allowing this shared responsibility between an occupational therapist and an occupational therapy assistant to occur in person or by telecommunications while the occupational therapist assistant is treating patients. This change clears the conflict between the definition in 20:64:01:01 (3) and the description of supervision of occupational therapy assistant in 20:65:03:02 which reads in part, “The frequency and manner of supervision is determined by the supervising licensed occupational therapist based on the condition of the patient or client,” and clearly allows for supervision by telehealth, which in South Dakota is particularly important to address access to care issues as well as staffing of occupational therapists throughout the State.

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Respectfully,

Karissa A. Lutz, COTA/L
QA & Audit Manager
Adaptive Rehab