

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: PCS/CS/SB 990 (686124)

INTRODUCER: Appropriations Subcommittee on Health and Human Services; Health Policy Committee; and Senator Bradley

SUBJECT: Occupational Therapy

DATE: March 26, 2021 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Howard	Kidd	AHS	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 990:

- Expands the scope of practice of the occupational therapist and the occupational therapy assistant;
- Provides that any person who is issued a license as an occupational therapist by the state of Florida may use the words “occupational therapist doctorate” to denote his or her registration;
- Amends the definition of “occupational therapy” to include the therapeutic use of occupations with individuals, groups, or populations, along with their families or organizations, to support participation, performance, and function in roles and situations in the home, school, workplace, community, and other settings for clients who have, or are at risk of developing, an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction;
- Defines the following terms:
 - Activities of daily living;
 - Behavioral health services;
 - Health Management;
 - Instrumental activities of daily living;
 - Mental health services;
 - Occupations; and

- Occupational Performance;
- Adds all of the following to the practice of occupational therapy:
 - Assessment, treatment, and education of, and consultation with, individuals, groups, and populations whose abilities to participate safely in various occupations are impaired or at risk for impairment due to issues related to, but not limited to, developmental deficiencies, the aging process, learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, and psychological and social disabilities.
 - Methods or approaches to determine abilities and limitations related to performance of occupations, including, but not limited to, the identification of physical, sensory, cognitive, emotional, or social deficiencies.
 - Specific techniques used for treatment that involve, but are not limited to, training in activities of daily living; environmental modification; assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities; therapeutic exercises; manual techniques; physical agent modalities; behavioral health services; and mental health services.
- Deletes a list of “occupational therapy services” from current law.

The Department of Health’s Division of Medical Quality Assurance may experience an increase in workload associated with additional complaints that can be absorbed within existing resources.

The bill takes effect on July 1, 2021.

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (department) to protect and promote the health of all residents and visitors in the state.¹ The department is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the department.³

Occupational Therapy

Current law defines occupational therapy as the use of purposeful activities or interventions to achieve functional outcomes. For individuals with a limiting physical injury or illness, a cognitive impairment, a psychosocial dysfunction, a mental illness, a developmental or learning

¹ Section 20.43, F.S.

² Under s. 456.001(1), F.S., “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the department or, in some cases, within the department, MQA.

³ Section 20.43, F.S.

disability, or an adverse environmental condition, achieving a functional outcome means to maximize their independence and maintain their health.⁴

Occupational therapy is performed by licensed occupational therapists (OTs), licensed occupational therapy assistants (OTAs) who work under the responsible supervision and control⁵ of a licensed OT, and occupational therapy aides who are not licensed but assist in the practice of occupational therapy under the direct supervision of a licensed OT or occupational therapy assistant.⁶ However, physicians, physician assistants, nurses, physical therapists, osteopathic physicians or surgeons, clinical psychologists, speech-language pathologists, and audiologists are permitted to use occupational therapy skills and techniques as part of their professions, when they practice their profession under their own practice acts.⁷

Occupational therapy services include, but are not limited to:

- The assessment, treatment, and education of, or consultation with, the individual, family, or other persons.
- Interventions directed toward developing daily living skills, work readiness or work performance, play skills or leisure capacities, or enhancing educational performance skills.
- Providing for the development of:
 - Sensory-motor, perceptual, or neuromuscular functioning;
 - Range of motion; or
 - Emotional, motivational, cognitive, or psychosocial components of performance.
- Using devices subject to federal regulation⁸ and identified by the Board of Occupational Therapy (Board) as expressly prohibited, except by an occupational therapist or occupational therapy assistant who has received Board-specified training.⁹

These services require skilled assessment¹⁰ to determine the need for use as interventions including:

- The design, development, adaptation, application, or training needed to use the assistive devices;
- The design, fabrication, or application of rehabilitative technology such as selected orthotic devices;
- Training in the use of assistive technology;
- Orthotic or prosthetic devices;
- The application of physical modalities as an adjunct to or in preparation for activity;

⁴ Section 468.203(4), F.S.

⁵ Section 468.203(8), F.S. Responsible supervision and control by the licensed OT includes providing both the initial direction in developing a plan of treatment and periodic inspection of the actual implementation of the plan. The plan of treatment must not be changed by the supervised individual without prior consultation and approval of the supervising OT. The supervising OT is not always required to be physically present or on the premises when the occupational therapy assistant is performing services; but, supervision requires the availability of the supervising occupational therapist for consultation with and direction of the supervised individual.

⁶ Section 468.203, F.S.

⁷ Section 468.225, F.S.

⁸ 21 C.F.R. s. 801.109, references devices, that because of their potential for harmful effect, or the method of their use, or the collateral measures necessary to the device, they are not safe to use except under the supervision of a practitioner.

⁹ Fla. Admin. Code R. 64B11-4.001 (2020).

¹⁰ Section 468.203(4)a.2., F.S., defines “assessment” to mean the use of skilled observation or the administration and interpretation of standardized or non-standardized tests and measurements to identify areas for occupational therapy services.

- The use of ergonomic principles;
- The adaptation of environments and processes to enhance functional performance; or
- The promotion of health and wellness.

Occupational Therapists and Occupational Therapy Assistants

Education

There are four levels of educational programs available to individuals desiring to enter the profession of occupational therapy in an institution accredited by the Accreditation Council for Occupational Therapy Education (ACOTE), that is the certifying arm of the American Occupational Therapy Association (AOTA), as follows:

- The Doctoral-Degree-Level Occupational Therapist (Ph.D.);¹¹
- Master's-Degree-Level Occupational Therapist (OTR);
- Baccalaureate-Degree-Level Occupational Therapy Assistant (certified occupational therapy assistant or COTA); and
- Associate-Degree-Level Occupational Therapy Assistant (also a COTA).¹²

The ACOTE requirements for accreditation for occupational therapy curriculum vary by degree levels, but all levels must include theory, basic tenets of occupational therapy, and supervised educational fieldwork for accreditation. Examples of some required theory and basic tenets for occupational therapy accreditation include:

- Theory
 - Preparation to Practice as a Generalist;
 - Preparation and Application of In-depth Knowledge;
 - Human Body, Development, and Behavior;
 - Sociocultural, Socioeconomic, Diversity Factors, and Lifestyle Choices; and
 - Social Determinants of Health.
- Basic Tenets
 - Therapeutic Use of Self;
 - Clinical Reasoning;
 - Behavioral Health and Social Factors;
 - Remediation and Compensation;¹³
 - Orthoses and Prosthetic Devices;¹⁴

¹¹ National Board of Certification in Occupational Therapy (NBCOT), 2018 Accreditation Council for Occupational Therapy Education (ACOTE®) *Standards and Interpretive Guide (effective July 31, 2020) August 2020 Interpretive Guide Version*, at pp. 20 and 49, available at <https://acoteonline.org/wp-content/uploads/2020/10/2018-ACOTE-Standards.pdf> (last visited Mar. 2, 2021). The Ph.D. in occupational therapy requires a minimum of six years of full time academic education and a Doctoral Capstone that is an in-depth exposure to a concentrated area that is an integral part of the program's curriculum design. This in-depth exposure may be in one or more of the following areas: clinical practice skills, research skills, scholarship, administration, leadership, program and policy development, advocacy, education, and theory development. The doctoral capstone consists of two parts: the capstone experience and the capstone project.

¹² *Id.* at p. 1.

¹³ *Supra* note 11, p. 31. *Remediation and Compensation* includes the design and implement intervention strategies to remediate and/or compensate for functional cognitive deficits, visual deficits, and psychosocial and behavioral health deficits that affect occupational performance.

¹⁴ *Supra* note 11, p. 30. *Orthoses and Prosthetic Devices* requires the assessment of the need for orthotics, and design, fabricate, apply, fit, and train in orthoses and devices used to enhance occupational performance and participation.

- Functional Mobility;¹⁵
- Community Mobility;¹⁶
- Technology in Practice;¹⁷
- Dysphagia¹⁸ and Feeding Disorders;
- Superficial Thermal, Deep Thermal, and Electrotherapeutic Agents and Mechanical Devices; and
- Effective Communication.

Fieldwork education required for ACOTE accreditation must include traditional and non-traditional subject matter, as well as emerging settings to strengthen the ties between didactic and fieldwork education, and at two levels:

- Level I Fieldwork: required for Ph.D., OTR, and COTA candidates and could be met through one or more of the following instructional methods:
 - Simulated environments.
 - Standardized patients.
 - Faculty practice.
 - Faculty-led site visits.
 - Supervision by a fieldworker instructor.
- Level II Fieldwork:
 - Ph.D. & Masters Candidates - require a minimum of 24 weeks of full-time Level II fieldwork. Level II fieldwork can be completed in one setting if reflective of more than one practice area, or in a maximum of four different settings.
 - BS & AA Candidates - require a minimum of 16 weeks full-time Level II fieldwork. Level II fieldwork may be completed in one setting if reflective of more than one practice area, or in a maximum of three different settings.¹⁹

The ACOTE also requires for accreditation that schools maintain an average passage rate on the National Board for Certification in Occupational Therapy (NBCOT) examination, over the three most recent calendar years, for graduates attempting the national certification exam within 12 months of graduation from the program, must be 80 percent or higher (regardless of the number of attempts).²⁰

Licensure

To be licensed as an occupational therapist, or occupational therapy assistant, an individual must:

- Apply to the department and pay appropriate fees;²¹
- Be of good moral character;

¹⁵ *Id. Functional Mobility*- provides recommendations and training in techniques to enhance functional mobility, including physical transfers, wheelchair management, and mobility devices.

¹⁶ *Supra* note 11, p. 30. *Community Mobility* designs programs that enhance community mobility, and implement transportation transitions, including driver rehabilitation and community access.

¹⁷ *Supra* note 11, p. 31. *Technology in Practice* requires the demonstration of knowledge of the use of technology in practice, that must include: Electronic documentation systems; virtual environments; and telehealth technology.

¹⁸ Tabor's Cyclopedia Medical Dictionary, 17th Edition, pub.1993, F.A. Davis and Co., *Dysphonia* is the inability to swallow or difficulty swallowing.

¹⁹ *Supra* note 11, p. 41.

²⁰ *Supra* note 11.

²¹ Section 468.219, F.S.

- Have graduated from an ACOTE/AOTA accredited occupational therapy program, or occupational therapy assistant program;
- Have completed a minimum of six months of supervised fieldwork experience for occupational therapists, and a minimum of two months for occupational therapy assistants, at a recognized educational institution or a training program approved by the education institution where you met the academic requirements; and
- Have passed an examination approved by the NBCOT²² for occupational therapists.^{23,24}

An additional path to licensure as an occupational therapist is also available to applicants who have practiced as a state-licensed or American Occupational Therapy Association-certified occupational therapy assistant for four years and who, prior to January 24, 1988, have completed a minimum of six months of supervised occupational-therapist-level fieldwork experience. Such individuals may take the examination approved by the NBCOT to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists to have graduated from a program accredited by the ACOTE/AOTA.²⁵

Endorsement is yet another path to licensure for an occupational therapist, or occupational therapist assistant, that the Board may waive the examination requirement and grant a license to any person who presents proof of:

- A current certification as an occupational therapist or occupational therapy assistant by a national certifying organization if the Board determines the requirements for such certification to be equivalent to the requirements for Florida licensure; or
- A current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or any territory or jurisdiction of the United States or foreign national jurisdiction that requires standards for licensure determined by the Board to be equivalent to the requirements for Florida licensure.²⁶

A person may not use the title, “occupational therapist,” “licensed occupational therapist,” “occupational therapist registered,” “occupational therapy assistant,” “licensed occupational therapy assistant,” “certified occupational therapy assistant,” or the letters “O.T.,” “L.O.T.,” “O.T.R.,” “O.T.A.,” “L.O.T.A.,” or “C.O.T.A.,” or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant, unless the person holds a valid license. Any person who does so commits a second degree misdemeanor.²⁷

²² The examination is not offered by the Florida Board of Occupational Therapy Practice. Applicants must contact the NBCOT directly for the exam application and deadline information.

²³ Section 468.209(1), F.S.

²⁴ Section 468.209(1), F.S.

²⁵ Section 468.209(2), F.S.

²⁶ Section 468.213, F.S.

²⁷ Sections 468.215 and 468.223, F.S.

The department, MQA, Annual Report and Long Range Plan for 2019-2020 indicates that there are 8,764 active licensed occupational therapists and 5,865 active licensed occupational therapy assistants currently in Florida.²⁸

III. Effect of Proposed Changes:

The bill:

- Expands the scope of practice of the occupational therapist and the occupational therapy assistant;
- Provides that any person who is issued a license as an occupational therapist by the state of Florida may use the words “occupational therapist doctorate” to denote his or her registration;
- Amends the definition of “occupational therapy” to include the therapeutic use of occupations with individuals, groups, or populations, along with their families or organizations, to support participation, performance, and function in roles and situations in the home, school, workplace, community, and other settings for clients who have, or are at risk of developing, an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction;
- Defines the following terms:
 - *Activities of daily living* that are functions and tasks for self-care performed on a daily or routine basis, including:
 - Functional mobility;
 - Bathing;
 - Dressing;
 - Eating;
 - Swallowing;
 - Personal hygiene;
 - Grooming;
 - Toileting; and
 - Other similar tasks.
 - *Behavioral health services* which is defined to mean the promotion of occupational performance through services to support positive mental health by providing direct individual and group interventions to improve the client’s participation in daily occupations;
 - *Health Management* which is defined to mean activities related to developing, managing, and maintaining health and wellness, including self-management, with the goal of improving or maintaining health to support participation in occupations;
 - *Instrumental activities of daily living* which is defined to mean daily or routine activities a person must perform to live independently within the home and community;
 - *Mental health services* which is defined to mean the promotion of occupational performance related to mental health, coping, resilience, and well-being by providing individual, group, and population level supports and services to improve the client’s

²⁸ Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan for 2019-2020*, p. 16, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/2019-2020-annual-report.pdf> (last visited Mar. 3, 2021).

- participation in daily occupations for those who are at risk of, experiencing, or in recovery from these conditions, along with their families and communities;
- *Occupations* which is defined to mean meaningful and purposeful everyday activities performed and engaged in by individuals, groups, populations, families, or communities that occur in contexts and over time, such as:
 - Activities of daily living;
 - Instrumental activities of daily living;
 - Health management;
 - Rest;
 - Sleep;
 - Education;
 - Work;
 - Play;
 - Leisure; and
 - Social participation.
 - *Occupations* includes more specific occupations and execution of multiple activities that are influenced by performance patterns, performance skills, and client factors.
 - *Occupational Performance* which is defined to mean the ability to perceive, desire, recall, plan, and carry out roles, routines, tasks, and subtasks for the purposes of self-maintenance, self-preservation, productivity, leisure, and rest, for oneself or others, in response to internal or external demands of occupations and contexts.
 - Adds the following to the practice of occupational therapy:
 - Assessment, treatment, and education of, and consultation with, individuals, groups, and populations whose abilities to participate safely in various occupations are impaired or at risk for impairment due to issues related to, but not limited to, developmental deficiencies, the aging process, learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, and psychological and social disabilities;
 - Methods or approaches to determine abilities and limitations related to performance of occupations, including, but not limited to, the identification of physical, sensory, cognitive, emotional, or social deficiencies; and
 - Specific techniques used for treatment that involve, but are not limited to, training in activities of daily living; environmental modification; assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities; therapeutic exercises; manual techniques; physical agent modalities; behavioral health services; and mental health services;
 - Deletes a list of “occupational therapy services” from current law;
 - Amends the list of titles and letters that a person may not use to indicate his or her title unless he or she is a licensed occupational therapist, to include “occupational therapist doctorate” and the letters “O.T.D.”
 - Exempts from the application of the Occupational Therapy Practice Act any person fulfilling an occupational therapy doctoral capstone experience that involves clinical practice or projects; and

- Reenacts certain statutes relating to the Gardiner Scholarship and voluntary pre-kindergarten for the purpose of incorporating the bill's amendments to s. 468.203, F.S., into those programs.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 990 might result in increased costs borne by private health insurers and HMOs that cover occupational therapy services.

C. Government Sector Impact:

The Department of Health's Division of Medical Quality Assurance may experience an increase in workload associated with additional complaints that can be absorbed within existing resources.

The bill might result in increased costs for occupational therapy services under state group health insurance, Medicaid, the Gardiner scholarship program, and voluntary pre-kindergarten to the extent that occupational therapy is covered and provided under those respective benefit packages and programs. The fiscal impact is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill expands the scope of practice of the occupational therapist and the occupational therapy assistant to include areas of practice that might be construed as overlapping with other licensed professions. This is not unusual, as many licensed healthcare practitioners scope of practice often overlap and many of the professions' practice acts have, by statute, created exemptions to the application of their respective practice acts for other licensees whose scope of practice overlaps theirs.²⁹ The physical therapy practice acts already exempts its application to occupational therapy,³⁰ and occupational therapy exempts physical therapy as well as medicine, nursing, osteopathy, clinical psychology, speech-language pathology, and audiology from the practice of occupational therapy.³¹

School speech and language providers,³² clinical social workers, marriage and family therapists, mental health counselors,³³ use similar practice skills, techniques, and dynamics as set out in the bill's expanded scope of practice for occupational therapists and occupational therapy assistants, and the latter practitioners could be found to be practicing occupational therapy without a license under the bill.

Similarly, the bill's expanded scope of practice for occupational therapists and occupational therapy assistants could expose those practitioners to allegations of practicing marriage and family therapy, mental health counseling, psychotherapy services,³⁴ clinical psychology,³⁵ speech-language pathology, and audiology,³⁶ without a license.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.203, 468.209, 468.215, 468.223, and 468.225.

This bill reenacts the following section of the Florida Statutes: 1002.385 and 1002.66.

²⁹ See ss. 460.402, 461.402, 464.022, 465.027, 467.207, 486.161, 468.812, 468.1115, 480.035, 486.161, 490.014, and 491.014, F.S.

³⁰ Section 486.161, F.S.

³¹ Section 468.225, F.S.

³² See s. 1012.44, F.S.

³³ See ch. 491, F.S.

³⁴ Section 490.014, F.S.

³⁵ Section 491.014, F.S.

³⁶ Section 468.1115, F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on March 24, 2021:

The CS deletes designing, fabrication, and application of orthotics or orthotic devices and manual therapy from the list of specific Occupational Therapists (OT) techniques an OT may use and amends this list to include the assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices and manual techniques.

CS by Health Policy on March 10, 2021:

The CS:

- Revises the underlying bill’s definition of “occupational therapy” to include the therapeutic use of occupations with persons and organizations to support participation, performance, and function in situations in various settings for clients who have, or are at risk of developing, an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction;
- Revises the underlying bill’s definition of *the practice of occupational therapy* to include:
 - Assessment, treatment, education and consultation of clients who are impaired or at risk for impairment;
 - Methods or approaches to determine abilities and limitations related to performance of occupations; and
 - Specific occupational therapy techniques and training used in treatment.
- Eliminates the underlying bill’s inclusion of “evaluation” from the scope of practice of occupational therapy and replaces that term with “assessment.”

- B. **Amendments:**

None.