

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 990

INTRODUCER: Senator Bradley

SUBJECT: Occupational Therapy

DATE: March 9, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	<b>Pre-meeting</b>
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

**I. Summary:**

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 to support participation, performance, and functionality in multiple settings;
  - The providing of habilitation, rehabilitation, and health and wellness services to clients with disability and non-disability-related needs; and
  - The support of occupational performance in persons who have, or are at risk of experiencing, a range of developmental, physical, cognitive, behavioral, mental health, and other disorders and disabilities.
- Deletes a list of “occupational therapy services” from current law;
- Defines the practice of occupational therapy to include:
  - The evaluation of factors affecting client’s activities of daily living, instrumental activities of daily living, health management, rest and sleep, education, work, play, leisure, and social participation.
  - The use of selected methods to direct the process of interventions; and
  - The interventions directed toward developing:
    - Daily living skills;
    - Work readiness or work performance;
    - Play skills or leisure capacities; or
    - Enhancing educational performance skills.
- Defines terms utilized in the practice of occupational therapy, including:
  - “Activities of daily living;”
  - “Behavioral health services;”

- “Health management;”
- “Instrumental activities of daily living;”
- “Mental health services;”
- “Occupations;” and
- “Occupational performance.”

The bill provides an effective date of July 1, 2021.

## II. Present Situation:

### The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.<sup>1</sup> The DOH 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 boards<sup>2</sup> and professions within the DOH.<sup>3</sup>

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

Occupational therapy is performed by licensed occupational therapists (OTs), licensed occupational therapy assistants (OTAs) who work under the responsible supervision and control<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

Occupational therapy services include, but are not limited to:

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<sup>1</sup> Section 20.43, F.S.

<sup>2</sup> 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 DOH or, in some cases, within the DOH, MQA.

<sup>3</sup> Section 20.43, F.S.

<sup>4</sup> Section 468.203(4), F.S.

<sup>5</sup> 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.

<sup>6</sup> Section 468.203, F.S.

<sup>7</sup> Section 468.225, F.S.

- 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 regulation<sup>8</sup> 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.<sup>9</sup>

These services require skilled assessment<sup>10</sup> 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;
- 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), which is the certifying arm of the American Occupational Therapy Association (AOTA), as follows:

- The Doctoral-Degree-Level Occupational Therapist (Ph.D.);<sup>11</sup>
- Master's-Degree-Level Occupational Therapist (OTR);

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<sup>8</sup> 21 C.F.R. s. 801.109, references devices, which, 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.

<sup>9</sup> Fla. Admin. Code R. 64B11-4.001(2020).

<sup>10</sup> 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.

<sup>11</sup> 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 which is an in-depth exposure to a concentrated area, which 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.

- Baccalaureate-Degree-Level Occupational Therapy Assistant (certified occupational therapy assistant or COTA); and
- Associate-Degree-Level Occupational Therapy Assistant (also a COTA).<sup>12</sup>

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;<sup>13</sup>
  - Orthoses and Prosthetic Devices;<sup>14</sup>
  - Functional Mobility;<sup>15</sup>
  - Community Mobility;<sup>16</sup>
  - Technology in Practice;<sup>17</sup>
  - Dysphagia<sup>18</sup> 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;

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<sup>12</sup> *Id.* at p. 1.

<sup>13</sup> *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.

<sup>14</sup> *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.

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

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

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

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

- Standardized patients;
- Faculty practice;
- Faculty-led site visits; and
- 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.<sup>19</sup>

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).<sup>20</sup>

### *Licensure*

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

- Apply to the DOH and pay appropriate fees;<sup>21</sup>
- Be of good moral character;
- 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 NBCOT<sup>22</sup> for occupational therapists.<sup>23, 24</sup>

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.<sup>25</sup>

<sup>19</sup> *Supra* note 11, p. 41.

<sup>20</sup> *Supra* note 11.

<sup>21</sup> Section 468.219, F.S.

<sup>22</sup> 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.

<sup>23</sup> Section 468.209(1), F.S.

<sup>24</sup> Section 468.209(1), F.S.

<sup>25</sup> Section 468.209(2), F.S.

Endorsement is yet another path to licensure for an occupational therapist, or occupational therapist assistant, in which 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 which requires standards for licensure determined by the Board to be equivalent to the requirements for Florida licensure.<sup>26</sup>

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.<sup>27</sup>

The DOH, 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.<sup>28</sup>

### III. Effect of Proposed Changes:

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, in conjunction with others, to support participation, performance, and function in roles and situations in the home, school, workplace, community, and in other settings.
  - The provision of services for clients with disability and non-disability-related needs in the areas of habilitation, rehabilitation, and the promotion of health and wellness including the acquisition and preservation of occupational identity for clients who are at risk; and
  - Supporting a client’s occupational performance in persons who have, or are at risk of experiencing, a range of developmental, physical, cognitive, behavioral, mental health, and other disorders and disabilities through engagement in everyday activities.
- Deletes a list of “occupational therapy services” from current law;

<sup>26</sup> Section 468.213, F.S.

<sup>27</sup> Sections 468.215 and 468.223, F.S.

<sup>28</sup> 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).

- Amends the definition of “occupational therapy” to include:
  - The evaluation of factors that affect:
    - Activities of daily living;
    - Instrumental activities of daily living;
    - Health management;
    - Rest and sleep;
    - Education;
    - Work;
    - Play;
    - Leisure; and
    - Social participation including context, performance patterns, performance skills, and client factors.
  - The methods or approaches selected to direct the process of interventions, including, but not limited to:
    - The establishment, remediation, or restoration a skill or ability that has not yet developed, is impaired, or is declining;
    - Compensation, modification, or adaptation of activities to improve or enhance performance;
    - Maintenance of capabilities without which everyday life occupations would decline;
    - Promotion of health and wellness, including the use of self-management strategies, to enable or enhance performance in everyday life activities and quality of life;
    - Prevention of barriers to performance and participation, including injury and disability prevention, and occupational deprivation;
    - Interventions directed toward developing:
      - Daily living skills;
      - Work readiness or work performance;
      - Play skills or leisure capacities; or
      - Enhancing educational performance skills.
  - The interventions and procedures to promote or enhance safety and performance in:
    - Activities of daily living;
    - Instrumental activities of daily living;
    - Health management;
    - Rest and sleep;
    - Education;
    - Work;
    - Play;
    - Leisure; and
    - Social participation, including, but not limited to:
      - Therapeutic use of occupations, exercises, and activities;
      - Training in self-care, self-management, health management and maintenance, home management, community or work reintegration, and school activities and work performance;
      - Identification, development, remediation, or compensation of neuro-musculoskeletal, sensory-perceptual, emotional regulation, visual, mental, and

- cognitive functions, pain tolerance and management, mental and behavioral health, praxis, developmental skills, and behavioral skills;
  - Education and training of individuals, including family members, caregivers, groups, and other populations;
  - Care coordination, case management, transition services, and consultative services to individuals, groups, or populations, along with their families and communities or organizations;
  - Group interventions facilitating learning, skills acquisition, and occupational performance of groups, populations, or organizations across the life course;
  - Mental health services and behavioral health services for the promotion of occupational performance and participation;
  - Facilitating occupational performance of individuals, groups, or populations through modification of contexts and adaptation of processes, including the application of ergonomic principles;
  - Assessment, design, fabrication, application, fitting, and training in seating and positioning of assistive technology, adaptive devices, orthotic devices, and custom orthoses, and training in the use of prosthetic devices;
  - Assessment, recommendation, and training in techniques to enhance functional mobility, including management of wheelchairs and other mobility devices;
  - Remediation and compensation of visual deficits including low rehabilitation;
  - Driving skills rehabilitation and community mobility;
  - Management of feeding, eating, and swallowing to enable eating and feeding performance;
  - Application of physical agent and mechanical modalities and use of a range of therapeutic procedures to enhance performance skills; and
  - Efforts directed toward promoting occupational justice and empowering clients to seek and obtain resources to fully participate in occupations.
- Defines terms utilized in the practice of occupational therapy, including:
  - “Activities of daily living” which are functions and tasks for self-care performed on a daily or routine basis, including:
    - Functional mobility;
    - Bathing;
    - Dressing;
    - Eating and swallowing;
    - Personal hygiene and grooming;
    - Toileting; and
    - Other similar tasks.
  - “Behavioral health services” are services provided for the promotion of occupational performance and participation to support, facilitate, prevent, treat, manage and recover from mental health and substance abuse disorders, including:
    - Support positive mental health;
    - Prevention of mental health disorders; and
    - Direct individual and group interventions.
  - “Health management” includes 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” are daily or routine activities a person must perform to live independently within the home and community;
- “Mental health services” promote occupational performance and participation related to mental health, coping, resilience, and well-being. These services include providing treatment for mental health and substance abuse disorders to individuals, groups, and to those at risk of, experiencing, or in recovery from, these conditions, along with their families and communities;
- “Occupations” are meaningful and purposeful everyday activities performed and engaged in by individuals, groups, populations, families, or communities which occur in context and over time, being broadly categorized as:
  - Activities of daily living;
  - Instrumental activities of daily living;
  - Health management;
  - Rest and sleep;
  - Education;
  - Work;
  - Play;
  - Leisure; and
  - Social participation.
- “Occupational performance” is the ability to perceive, desire, recall, plan, and carry out roles, routines, tasks, and subtasks for the purpose of self-maintenance, self-preservation, productivity, leisure, and rest, for oneself or others, in response to internal or external demands of occupations and contexts.
- Amends the list of titles, and letters, that a person may not use indicating one’s 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 provides an effective date of 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:

The bill might result in increased costs borne by private health insurers and HMOs that cover occupational therapy services.

C. Government Sector Impact:

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:**

SB 990 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.<sup>29</sup> The physical therapy practice acts already exempts its application to occupational therapy,<sup>30</sup> 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.<sup>31</sup>

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<sup>29</sup> 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.

<sup>30</sup> Section 486.161, F.S.

<sup>31</sup> Section 468.225, F.S.

School speech and language providers,<sup>32</sup> clinical social workers, marriage and family therapists, mental health counselors,<sup>33</sup> orthotics, prosthetics, and pedorthics<sup>34</sup> use similar practice skills and dynamics as set out in the bill's expanded scope of practice for occupational therapists, and the occupational therapy assistants and 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 them to allegations of practicing marriage and family therapy, mental health counseling, psychotherapy services,<sup>35</sup> clinical psychology,<sup>36</sup> orthotics, prosthetics, pedorthics,<sup>37</sup> speech-language pathology, and audiology,<sup>38</sup> 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, 468.225, 1002.385, and 1002.66.

#### **IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>32</sup> See s. 1012.44, F.S.

<sup>33</sup> See ch. 491, F.S.

<sup>34</sup> See ch. 468, Part. XIV, F.S.

<sup>35</sup> 490.014, F.S.

<sup>36</sup> 491.014, F.S.

<sup>37</sup> 468.812, F.S.

<sup>38</sup> 468.1115, F.S.