

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 Committee on Commerce and Tourism

BILL: CS/SB 352

INTRODUCER: Health Policy Committee and Senator Rodriguez

SUBJECT: Massage Therapy

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	Fav/CS
2.	Harmsen	McKay	CM	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 352 makes multiple changes to the regulation of the practice of massage. The bill:

- Replaces the term “massage” with “massage therapy” throughout ch. 480, F.S., and revises the chapter title from “Massage Practice” to “Massage Therapy Practice;”
- Specifies that massage therapy is a therapeutic health care practice;
- Amends the definitions of “massage” and “massage therapist” to expand the scope of practice of massage therapists; and
- Defines “massage therapy assessment” and includes the performance of such assessment, for compensation, in the scope of practice of massage therapy.

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.¹ The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of

¹ Section 20.43, F.S.

Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

Section 480.035, F.S., establishes the Board of Massage Therapy (BMT) within the DOH to license and regulate the practice of massage. The BMT also specifies the licensing procedures for practitioners who desire to practice in Florida.⁴

Massage

“Massage” is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not the manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.⁵

Chapter 480, F.S., the “Massage Practice Act,” governs the practice of massage in Florida. A massage therapist is a health care practitioner licensed under ch. 480, F.S.⁶ According to the DOH, there are 176 approved, licensed massage schools in Florida. In Fiscal Year 2019-2020, there were 32,435 in-state, active licensed massage therapists and 96 licensed massage apprentices licensed under the Florida apprenticeship program.⁷

Massage Licensure

An individual who seeks licensure to practice massage in Florida must:⁸

- Submit an application and fee to the DOH;
- Be at least 18 years of age or have a high school diploma or high school equivalency diploma;
- Submit to background screening, and be found to not have been convicted or found guilty of, or to have pled nolo contendere to specific crimes and felonies; and
- Meet specific training and education requirements, as discussed below.

Education and Training Requirements

Individuals may meet their education and training requirements to earn their Florida massage license in one of three manners:

² Under s. 456.001(1), F.S., the term “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 MQA.

³ Section 20.43, F.S.

⁴ Section 480.041(5)(c), F.S.

⁵ Section 480.033, F.S.

⁶ Section 456.001(4), F.S.

⁷ Florida Department of Health, Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, pg. 14 available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/2019-2020-annual-report.pdf> (last visited Mar. 8, 2021).

⁸ Section 480.041, F.S. *See also*, Rule 64B7-25, F.A.C

- Attend a BMT-approved massage school and pass a BMT-approved examination;⁹
- Complete a BMT-approved massage apprenticeship program by July 1, 2023, and pass a BMT-approved examination.¹⁰ This option is only available to those who had a massage apprentice license before July 1, 2020;¹¹ or
- Obtain a license by endorsement, if the applicant is currently licensed in a different state and meets additional requirements.¹²

Massage Therapy Schools

The BMT requires applicants for licensure to practice massage therapy to complete at least 500 classroom hours, which the student must complete at a rate of no more than six hours per day and no more than 30 classroom hours per calendar week.¹³ Classroom education must include:¹⁴

- 150 hours of anatomy and physiology;
- 100 hours of basic massage theory and history;
- 125 hours of clinical practicum;
- 76 hours of allied modalities;
- 15 hours of business;
- 15 hours of theory and practice of hydrotherapy;
- 10 hours of Florida laws and rules;
- 4 hours of professional ethics;
- 3 hours of HIV/AIDS education; and
- 2 hours on reducing medical errors.

Apprenticeships

Previously, individuals could complete a massage apprenticeship in lieu of attending and graduating from a BMT-approved massage therapy school.¹⁵ In 2020, however, the Legislature removed this path to licensure by redefining the term “apprentice” in the Massage Practice Act.^{16,17} Only individuals who were issued a license as a massage apprentice before July 1, 2020, are permitted to continue under their apprenticeship until it expires. If the individual chooses to

⁹ Rule 64B7-25.001, F.A.C. *See also*, Florida Board of Massage Therapy, Requirements for all Applicants, *Additional Requirements for Examination Applicants*, available at <https://floridasmassagetherapy.gov/licensing/licensed-massage-therapist-lmt/> (last visited Mar. 8, 2021).

¹⁰ Rule 64B7-29.003, F.A.C. (2020). During the apprenticeship, the sponsor is required to file quarterly reports and the apprentice must complete the following courses of study: 300 hours of physiology, 300 hours of anatomy, 20 hours of theory and history of massage, 50 hours of theory and practice of hydro-therapy, 25 hours of statutes and rules of massage practice, 50 hours of introduction to allied modalities, 700 hours of practical massage, and three hours of BMP-approved HIV/AIDS instruction.

¹¹ *See* ss. 480.033(5) and 480.041(8), F.S., (2020). After June 30, 2020, the DOH no longer issues massage apprentice licenses.

¹² Section 480.041(5)(c), F.S.

¹³ Rule 64B7-32.003, F.A.C.

¹⁴ *Id.*

¹⁵ Section 480.041(1)(b), F.S. (2019).

¹⁶ Section 480.033(5), F.S.

¹⁷ Chapter 2020-133, s. 38, Laws of Fla., CS/CS/CS/HB 713 (2020) was signed into law on June 29, 2020, and took effect on July 1, 2020.

apply for licensure to practice massage in Florida, he or she may do so before July 1, 2023, and be granted a license, if he or she meets all other licensing requirements, e.g., exam passage.¹⁸

Apprenticeship training must be conducted by a fully-licensed sponsor at a qualified massage establishment. The apprentice must complete his or her training within a 12-month period, and the training must include:¹⁹

- 300 hours of anatomy;
- 300 hours of physiology;
- 20 hours of basic massage theory and history;
- 50 hours of theory and practice of hydrotherapy;
- 25 hours of Florida laws and rules regulating the practice of massage therapy;
- 50 hours of allied modalities;
- 700 hours of clinical practicum; and
- 3 hours of HIV/AIDS instruction.

Apprentices are also required to successfully complete an approved exam, and meet the other general licensure requirements found in s. 480.041, F.S. (2019), to become fully licensed massage practitioners.

Licensure by Endorsement

Individuals who hold an active license in another state that has licensing requirements that are equivalent to, or that exceed, Florida's licensing requirements are eligible to receive a Florida massage practitioner license if he or she has also completed 10 hours of Florida Laws and Rules as part of their BMT-approved massage education program or with an approved continuing education (CE) provider.²⁰

Health Coverage and Billing for Massage Services

The Florida Insurance Code²¹ requires any health insurance policy or health maintenance organization (HMO) contract that provides coverage for massage to also cover the services of a licensed massage therapist in cases where an allopathic, osteopathic, chiropractic, or podiatric physician has prescribed massage as medically necessary, and the prescription specifies the number of treatments.²² Medical benefits under personal injury protection coverage, however, specifically exclude massage.²³

¹⁸ Section 480.041(8), F.S.

¹⁹ Rule 64B7-29.003, F.A.C.

²⁰ Rule 64B7-25.004, F.A.C. Florida-approved Massage Therapy programs are required to have 10 hours of Florida laws and rules as a part of their curriculum. Graduates from out of state programs must show that they have met the same course requirements as students who attend Florida schools. Out-of-state programs do not typically teach Florida laws and rules. By including a course as a separate requirement in the board's checklist, the board has reduced confusion among out-of-state applicants and given them notice that if they did not take this class during their schooling they will need to take it before they are licensed. *See* e-mail of Kama Monroe, Executive Director, Department of Health, Division of Medical Quality Assurance, Bureau of Health Care Practitioner Regulation, Board of Massage Therapy (Jan. 27, 2021) (on file with the Senate Health Policy Committee).

²¹ *See* s. 624.01, F.S.

²² Sections 627.6407, 627.6619, and 641.31(37), F.S.

²³ Section 627.736(1)(a)5., F.S.

All medical billing by health care practitioners in the United States is done using standardized diagnosis ICD-10 codes²⁴ and standardized procedure CPT codes²⁵ or HCPCS codes,²⁶ with or without modifiers.” The CPT codes are generally preferred for office and outpatient setting, as well as for Medicare, Medicaid, and by private insurers.²⁷ The CPT codes are evidence-based codes that have been created by the American Medical Association (AMA) and designated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) as the national coding set for physicians and other health care professional services. The 2021 CPT codes were released September 1, 2020.²⁸

Massage therapists, like other health care practitioners, bill Medicare, Medicaid, private insurers or private-pay patients for the procedures and services they provide. At the AMA's invitation, the American Massage Therapy Association (AMTA) is part of the Physical Medicine and Rehabilitation workgroup that was tasked to develop language that appropriately describes the services of massage therapists across the country.²⁹ Massage therapists may not use any CPT codes from any area of the CPT code manual outside of the physical medicine and rehabilitation pages.³⁰ According to the AMTA, the following are some of the more common CPT codes currently billed by massage therapists that are paid by Medicare, Medicaid, and private insurers:³¹

- CPT Code 97124 Massage Therapy;
- CPT Code 97140 Manual Therapy;
- CPT Code 97112 Neuromuscular Re-education;
- CPT Code 97010 Hot/Cold Packs; and
- CPT Code 97110 Therapeutic Exercise.

Typically, health care providers who provide medical evaluations and management (E/M) services also bill Medicare, Medicaid, and private insurers for the initial office visit using CPT codes 99201 through 99215 depending on whether the patient is a new or established patient and

²⁴ ICD-10 codes refers to the 77,000 diagnosis codes listed in the 10th edition of the International Statistical Classification of Diseases and Related Health Problems, a medical classification list produced by the World Health Organization. World Health Organization, International Statistical Classification of Diseases and Related Health Problems (ICD), *ICD-11*, available at <https://www.who.int/standards/classifications/classification-of-diseases> (last visited Mar. 8, 2021). (Note: ICD-11 was adopted by the 72 World Health Assembly, May, 2019, and comes into effect on January 1, 2022.)

²⁵ CPT codes refer to the Current Procedural Terminology (CPT) codes, and are produced by the American Medical Association (AMA), Board of Trustees, CPT® Editorial Panel. American Medical Association, *CPT® overview and code approval*, <https://www.ama-assn.org/practice-management/cpt/cpt-overview-and-code-approval> (last visited Mar. 8, 2021).

²⁶ HCPCS codes refer to Healthcare Common Procedure Coding System (HCPCS) codes, developed by Centers for Medicare and Medicaid Services and maintained by the AMA. Both CPT and HCPCS codes are the primary medical language used by health care providers to bill for the procedures and services they provide. Center for Medicare and Medicaid Services, Medicare, Coding, HCPCS Coding Questions, *Do You Have A Coding Question?* https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCS_Coding_Questions (last visited Mar. 8, 2021).

²⁷ *Id.*

²⁸ *Supra*, note 25.

²⁹ American Massage Therapy Association, *Insurance Reimbursement: What Are CPT Codes and Who Develops Them?*, <https://www.amtamassage.org/resources/business-financial-tools/insurance-reimbursement/> (last visited Mar. 8, 2021).

³⁰ Ed Denning, *CPT Codes*, MassageToday.com (Sept. 2, 2020), <https://www.massagetoday.com/articles/12049/CPT-Codes> (last visited Mar. 8, 2021).

³¹ American Massage Therapy Association, *Insurance Reimbursement*, <https://www.amtamassage.org/resources/business-financial-tools/insurance-reimbursement/> (last visited Mar. 8, 2021).

the complexity of the visit. The practitioner would follow the E/M documentation guidelines in the CPT manual for all E/M services. The E/M CPT code requirements and average reimbursement rates for a new patient office visit are as follows:³²

CPT Code	Description	Services Provided	Average Fee
99201	10 Minute - Problem Focused Exam & Plan	Requires Problem Focused: <ul style="list-style-type: none"> • History; • Examination; and • Straightforward Decision Making. 	\$30-\$40
99202	20 Minute - Expanded Problem Focused Exam & Plan	Requires Expanded Problem Focused: <ul style="list-style-type: none"> • History; • Examination; and • Straightforward Decision Making. 	\$70-\$80
99203	30 Minute - Detailed Exam & Plan	Requires Detailed: <ul style="list-style-type: none"> • History; • Examination; and • Decision Making of Low Complexity. 	\$80-\$110
99204	45 Minute - Exam of Moderate Complexity & Plan	Requires Comprehensive: <ul style="list-style-type: none"> • History; • Examination; and • Decision Making of Moderate Complexity. 	\$130-\$170
99205	60 Minutes - Exam of High Complexity & Plan	Requires Comprehensive: <ul style="list-style-type: none"> •History; •Examination; and •Decision Making of High Complexity. 	\$180-\$210

Currently the scope of practice of a massage therapist in Florida does not include the patient evaluation and management required for the utilization of the CPT codes 99201 through 99215, and massage therapists are not currently reimbursed by Medicare, Medicaid, or private insurers for those services.³³

The CPT code modifiers (also called Level I modifiers) are two-digit numeric codes used to supplement information and adjust care descriptions to provide extra details concerning a

³² Medical Billing, *CPT Code 99201, 99202, 99203, 99204, 99205 - Which code to USE*, <http://www.whatismedicalinsurancebilling.org/p/cpt-99201-99202-99203-99204-99205-which.html> (last visited Mar. 8, 2021).

³³ Centers for Medicare and Medicaid Services *National Correct Coding Initiative Policy Manual for Medicare Services, Current Procedural Terminology (CPT) Codes, Descriptions and Other Data: Ch. 11- CPT Codes 90000-99999*, (Rev'd Jan. 1, 2021), available at <https://www.cms.gov/Medicare/Coding/NationalCorrectCodInitEd> (last visited Mar. 8, 2021). E/M services for specific non-physician practitioners, i.e. nurse practitioner (NP), clinical nurse specialist (CNS) and certified nurse midwife (CNM) whose Medicare benefit permits them to bill these services. A physician assistant (PA) may also provide a physician service; however, the physician collaboration and general supervision rules as well as all billing rules, apply to all the above non-physician practitioners. The service provided must be medically necessary and the service must be within the scope of practice for a non-physician practitioner in the state in which he or she practices. Medicare, Medicaid, and most private insurers will not pay for CPT evaluation and management codes billed by massage therapists, physical therapists, or occupational therapists in independent practice.

procedure or service provided by a health care provider.³⁴ Some are informational and some can enhance the amount of reimbursement as much as 110 percent to 150 percent. The federal Centers for Medicare & Medicaid Services lists the following as some common billing modifiers:

- Modifier 25 = The medical provider performs a significant, separately identifiable evaluation and management service on the same day of a procedure or other service;
- Modifier 51 = Multiple procedures by the same provider at the same session; and
- Modifier 59 = Linked services by the medical provider; providing two wholly-separate and distinct services during the same treatment period.³⁵

Under the current definition of massage practice in Florida, the use of CPT code modifiers in billing Medicare, Medicaid, or private insurers for massage therapy is seldom necessary or appropriate.³⁶

III. Effect of Proposed Changes:

Massage Practice

CS/SB 352 makes multiple changes to statutes governing the practice of massage in Florida. The bill:

- Replaces the term “massage” with “massage therapy” throughout ch. 480, F.S.;
- Specifies that massage therapy is a therapeutic health care practice;
- Revises the legislative purpose for the necessity of regulating massage practice under ch. 480, F.S. Under current law, the Legislature recognizes the practice of massage as being potentially dangerous to the public. Under the bill, the Legislature recognizes that unregulated massage therapy poses a danger to the public;
- Expands the scope of practice of massage therapy to include:
 - Manipulation of the soft tissues of the human body with the knee; and
 - “Massage therapy assessments,” defined as the massage therapist’s determination of the course of a patient’s massage therapy treatment, for compensation; and
- Makes technical and conforming changes.

Insurance and Health Maintenance Coverage of Massage Therapy

The bill replaces the term “massage” with “massage therapy” in the Florida Insurance Code. Additionally, the bill provides an avenue for a massage therapist to bill health insurers and HMOs for massage-related services that are not applicable under current law.

The bill’s expansion of a massage therapist’s scope of practice to include massage therapy assessment, for compensation, for the determination of the course of a patient’s massage therapy treatment, could have the effect of increasing costs borne by health insurers and HMOs that cover massage therapy. Under the bill, massage therapists may seek payment from insurers and HMOs using CPT billing codes 99201 through 99215 for initial assessment of a new patient and for periodic reevaluation of preexisting patients.

³⁴ *Id.* at Ch. I-E.

³⁵ *Id.* See also, Center for Medicare and Medicaid Services, *HCPCS Coding Questions: Do You Have A Coding Question?* https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCS_Coding_Questions (last visited Mar. 8, 2021).

³⁶ Ed Denning, *supra* note 30.

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 identified.

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 massage therapy services.

C. Government Sector Impact:

The bill might result in increased costs for massage therapy services under state group health insurance, Medicaid,³⁷ and the Children's Health Insurance Program, to the extent

³⁷ Massage therapy is not specified in the Florida Statutes as a benefit that Medicaid managed care plans must cover. *See* s. 409.973(1), F.S. However, the Agency for Health Care Administration (AHCA) requires such plans to provide medical massage therapy services to enrollees diagnosed with AIDS, and who have had a history of an AIDS-related opportunistic infection, for the treatment of peripheral neuropathy or severe neuromuscular pain and lymphedema. *See*, Agency for Health Care Administration, *2018-2023 Model Health Plan Contract*, p. 21 (Oct. 1, 2020) available at https://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2020-10-01/Exhibit_II_A_MMA-2020-10-01.pdf (last visited Mar. 8, 2021). Medicaid managed care plans are also allowed to customize their benefit packages and offer additional services beyond the minimum they are required to cover. *See* s. 409.973(2), F.S., Massage therapy has been approved by the AHCA as an additional service that plans may offer, and, according to the AHCA, 14 Medicaid managed care plans are currently covering massage therapy. *See also*, Agency for Health Care Administration, *Florida Medicaid Health Plan*

massage therapy is covered and provided under those respective benefit packages. The fiscal impact is indeterminate at this time.

The Department of Health cites a need to amend a majority of the rules in ch. 64B7 of the Florida Administrative Code to update the term “massage” to “massage therapy,” in accordance with the term’s replacement by this bill. The Department states that it will be able to absorb any non-recurring cost associated with this rulemaking.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 480.031, 480.032, 480.033, 477.013, 477.0135, 477.0265, 480.034, 480.035, 480.041, 480.043, 480.046, 480.0465, 480.047, 480.052, 480.0535, 627.6407, 627.6619, 627.736, 641.31, and 823.05.

IX. Additional Information:

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

CS by Health Policy on February 4, 2021:

The CS removes from the underlying bill the authorization for a massage therapist to apply over-the-counter topical agents, or prescription topical agents prescribed by a third-party health care practitioner, to the body of a massage client. The CS reverts to current law regarding which substances may be applied to the human body by a massage therapist.

- B. **Amendments:**

None.

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

Expanded Benefits, available at
https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/EB_by_Plan_October_2019.pdf (last visited Mar. 8, 2021).

³⁸ Florida Department of Health, *SB 352 Agency Analysis* (Jan. 2021) (on file with the Senate Committee on Commerce and Tourism).