

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 Health Policy

BILL: CS/SB 352

INTRODUCER: Health Policy Committee and Senator Rodriguez

SUBJECT: Massage Therapy

DATE: February 4, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

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:

- Exchanges the term “massage therapy” in place of “massage” 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;
- Revises the legislative purpose of ch. 480, F.S.;
- 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

¹ Section 20.43, F.S.

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 DOH.³

Massage

The term “massage” is defined as 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.⁴

Chapter 480, F.S., entitled the “Massage Practice Act,” governs the practice of massage in Florida. Section 480.035, F.S., establishes the Board of Massage Therapy (BMT) within the DOH to license and regulate the practice of massage. A massage therapist is a health care practitioner licensed under ch. 480, F.S.⁵

Massage Therapy Schools

A person seeking licensure as a massage therapist may complete a course of study at a BMT-approved massage school. The BMT requires the course of study to comprise at least 500 classroom hours and be completed at a rate of no more than six hours per day and no more than 30 classroom hours per calendar week.⁶ Classroom education must include:⁷

- 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.

A massage therapy student may also complete a course of study in colonic training in addition to the training described above. Such course of study must include a minimum of 100 classroom hours, consisting of 50 hours in theory, anatomy, physiology, pathology of the colon and digestive system and principles of colon hygiene, 45 hours of clinical practicum that includes procedure, history, clinical records, indications and contraindication, 20 treatments, and five hours in sterilization techniques and equipment training.⁸

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 480.033, F.S.

⁵ Section 456.001(4), F.S.

⁶ Fla. Admin. R. 64B7-32.003

⁷ *Id.*

⁸ Fla. Admin. R. 64B7-32.005

Massage Licensure

Individuals seeking an initial Florida massage license currently have three options:

- They can meet the educational requirements by attending a BMT-approved school with a massage program and taking an examination;
- For persons issued a massage apprentice license before July 1, 2020, they may continue that apprenticeship and perform massage as authorized under that license until it expires. Upon completion of the apprenticeship, which must occur before July 1, 2023, they may apply to the BMT for full licensure and be granted a license if all other applicable licensure requirements are met;^{9,10} or
- They may obtain a license by endorsement, if the applicant:
 - Holds an active license in another state with licensing requirements equivalent to, or exceeding, those required for a Florida license; and
 - Has 10 hours of Florida Laws and Rules as part of their BMT-approved massage education program or with an approved continuing education (CE) provider.¹¹

The general requirements for a person to obtain a Florida license to practice as a massage therapist are as follows:

- Submit an application and fee;
- Be at least 18 years of age;
- Have a high school diploma or high school equivalency diploma;
- Submit to background screening;
- Have completed a course of study at a BMT-approved massage school or have completed a massage apprenticeship program by July 1, 2023, that meets BMT-approved standards;
- Receive a passing grade on a national examination approved by the BMT;¹² and
- Complete 10 hours of Florida Laws and Rules as part of their BMT-approved massage education program or with an approved CE provider.¹³

The DOH no longer offers or administers a massage therapy licensure exam.¹⁴ Florida Administrative Code Rule 64B7-25.001(3) lists five national exams that are approved by the BMT.

⁹ See ss. 480.033(5) and 480.041(8), F.S., (2020). After June 30, 2020, massage apprenticeships licenses were no longer available from the DOH.

¹⁰ Fla. Admin. R. 64B7-29.003 (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, five hours of hygiene, 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 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 attending 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 by 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).

¹² Section 480.041, F.S.

¹³ *Supra*, note 11.

¹⁴ 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 Jan. 26, 2021).

The BMT also specifies the licensing procedures for practitioners who desire to practice in Florida and have practiced and hold active licenses in other states, territories, or jurisdictions, or a foreign national jurisdiction, which have licensing standards substantially similar, equivalent to, or more stringent than Florida's standards.¹⁵

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 apprentices licensed under the Florida apprenticeship program.¹⁶

Colonic Irrigation

In 2020, the Legislature redefined the term "apprentice" in the Massage Practice Act to include only licensed massage therapists approved by the BMT to study colonic irrigation under the instruction of another licensed massage therapist practicing colonic irrigation.¹⁷ "Colonic irrigation" is a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water.¹⁸ The BMT is required to adopt rules to:

- Establishing the minimum training program for colonic irrigation apprentices; and
- Provide educational standards, examinations, and certifications for the practice of colonic irrigation by licensed massage therapists.¹⁹

The BMT licenses apprentices in colonic irrigation. These individuals are either attending a massage therapy school that does not offer colonic training or are licensed massage therapists who are seeking to add colonic irrigation to their practice. Since there are few schools in the state that offer a colonic irrigation program, apprenticeships are the primary method of training for this service. The BMT is currently accepting The National Board for Colon Hydrotherapy Examination administered by the National Board of Colon Hydrotherapy for certification.²⁰

Health Coverage and Billing for Massage Services

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

¹⁵ Section 480.041(5)(c), F.S.

¹⁶ 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 Jan. 26, 2021).

¹⁷ Section 480.033(5), F.S.

¹⁸ Section 480.033(6), F.S.

¹⁹ Section 480.041(5)(a) and (b), F.S.

²⁰ Department of Health, Board of Massage Therapy, Application for Colonic Irrigation Certification, *Examination*, available at <https://floridasmassagetherapy.gov/licensing/colonic-irrigation-upgrade-to-massage-therapist-license/> (last visited Jan. 29, 2021).

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 Codes 97010 Hot/Cold Packs; and
- CPT Codes 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

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 Jan. 28, 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*, available at <https://www.ama-assn.org/practice-management/cpt/cpt-overview-and-code-approval> (last visited Jan. 28, 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?* available at https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCS_Coding_Questions (last visited Jan. 28, 2021).

²⁷*Id.*

²⁸ *Supra*, note 25.

²⁹ American Massage Therapy Association, Insurance Reimbursement, *What Are CPT Codes and Who Develops Them?* available at <https://www.amtamassage.org/resources/business-financial-tools/insurance-reimbursement/> (last visited Jan. 28, 2021).

³⁰ Massage Therapy, *CPT Codes* (Sept. 2, 2020), available at <https://www.massagetoday.com/articles/12049/CPT-Codes> (last visited Jan. 28, 2021).

³¹ American Massage Therapy Association, *Insurance Reimbursement*, available at <https://www.amtamassage.org/resources/business-financial-tools/insurance-reimbursement/> (last visited Jan. 28, 2021).

codes 99201 through 99215 depending on whether the patient is a new or established patient and 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*, available at <http://www.whatismedicalinsurancebilling.org/p/cpt-99201-99202-99203-99204-99205-which.html> (last visited Jan. 29, 2021).

³³ National Correct Coding Initiative Policy Manual for Medicare Services, Current Procedural Terminology (CPT) Codes, Descriptions and Other Data Copyright 2020 American Medical Association, published by the Centers for Medicare and Medicaid Services, Jan. 1, 2021, Ch. 11, available at <https://www.cms.gov/Medicare/Coding/NationalCorrectCodInitEd> (last visited Jan. 29, 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. Some are informational and some can enhance the amount of reimbursement as much as 110 percent to 150 percent.³⁴ 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:

- Exchanges the term “massage therapy” in place of “massage” throughout ch. 480, F.S.;
- Renames ch. 480, F.S., to “Massage Therapy Practice” instead of “Massage Practice;”
- Revises the short title of the act to “Massage Therapy Practice Act” instead of “Massage Practice Act;”
- 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;
 - Authorization for a massage therapist to make “massage therapy assessments,” defined as the determination of the course of a patient’s massage therapy treatment, for compensation; and
- Amends multiple other statutes to make technical and conforming changes.

Insurance and Health Maintenance Coverage of Massage Therapy

The bill amends the Florida Insurance Code to change occurrences of “massage” to “massage therapy.” 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.

³⁴ *Id.*

³⁵ Center for Medicare and Medicaid Services, Medicare, Coding, HCPCS Coding Questions, *Do You Have A Coding Question? available at* https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCS_Coding_Questions (last visited Jan. 28, 2021).

³⁶ Massage Therapy, *CPT Codes* (Sept. 2, 2020), *available at* <https://www.massagetoday.com/articles/12049/CPT-Codes> (last visited Jan. 28, 2021).

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 patents.

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 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

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

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.

infection, for the treatment of peripheral neuropathy or severe neuromuscular pain and lymphedema. *See* 2018-2023 Model Health Plan Contract (Oct. 1, 2020), pg. 21, *available at* https://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2020-10-01/Exhibit_II_A_MMA-2020-10-01.pdf (last visited Feb. 2, 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. *available at* https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/EB_by_Plan_October_2019.pdf (last visited Feb. 2, 2021).