

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 543 Occupational Therapy

SPONSOR(S): Professions & Public Health Subcommittee, Koster

TIED BILLS: **IDEN./SIM. BILLS:** SB 990

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	17 Y, 0 N, As CS	Morris	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The Division of Medical Quality Assurance (MQA) within the Department of Health (DOH), has general regulatory authority over health care practitioners. The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 40 health care professions, including occupational therapy.

Occupations are all the activities or tasks a person performs each day. Occupational therapy is the use of purposeful activity or interventions to maximize independence and maintain health. CS/HB 543 amends the statutes that regulate the practice of occupational therapy. Specifically, the bill:

- Revises the practice of occupational therapy by including:
 - Assessment, treatment, education of, and consultation with individuals whose abilities to participate safely in occupations are impaired or at risk for impairment;
 - Methods to determine abilities and limitations related to the performance of occupations; and
 - Specific occupational therapy techniques used for treatment.
- Revises the fieldwork experience requirement for licensure as an occupational therapist;
- Authorizes licensed occupational therapists to use the title “occupational therapist doctorate” or the initials “O.T.D.” in connection with his or her name or business;
- Prohibits the use of the title “occupational therapist doctorate” or the initials “O.T.D.” by individuals not licensed as an occupational therapist; and
- Makes conforming changes.

The bill has an indeterminate, insignificant, negative fiscal impact on DOH. The bill does not have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Health

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners.¹ MQA works in conjunction with 22 boards and 4 councils to license and regulate 7 types of health care facilities and more than 40 health care professions.² Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for MQA.

Occupational Therapy

Occupations are all the activities or tasks a person performs each day. Getting dressed, playing sports, taking a class, cooking, and working at a job are examples of occupations.³

Occupational therapy is the use of purposeful activity or interventions to achieve functional outcomes, meaning maximizing independence and maintaining health.⁴ Occupational therapy may be used by individuals with a limiting physical injury or illness, cognitive impairment, psychosocial dysfunction, mental illness, developmental or learning disability, or adverse environmental condition.⁵ Occupational therapy services routinely include:⁶

- An evaluation to determine the patient's goals;
- Intervention to improve the patient's ability to perform needed activities and reach goals; and
- An evaluation of outcomes to determine if goals are being achieved, and changing plans as necessary.

Occupational therapy is performed by licensed occupational therapists (OT), licensed occupational therapy assistants (OTA) who work under the responsible supervision and control⁷ 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.⁸ 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.⁹

¹ Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

² Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/2019-2020-annual-report.pdf> (last visited March 9, 2021).

³ Britannica, *Occupational Therapy*, <https://www.britannica.com/science/occupational-therapy> (last visited March 16, 2021).

⁴ Section 468.203(4), F.S.

⁵ Id.

⁶ Department of Health, Agency Analysis of 2021 House Bill 543, p. 2 (Feb. 5, 2021).

⁷ 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.

⁸ Section 468.203, F.S.

⁹ Section 468.225, F.S.

Occupational therapy services include, but are not limited to:¹⁰

- 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.

These services require skilled assessment to determine the need for use of interventions, including:¹¹

- 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.

Education

There are four degree level programs available to individuals seeking to enter the profession of occupational therapy:¹²

- The Doctoral-Degree-Level Occupational Therapist (Ph.D.);
- Master's-Degree-Level Occupational Therapist (O.T.R.);
- Baccalaureate-Degree-Level Occupational Therapy Assistant (certified occupational therapy assistant or C.O.T.A.); and
- Associate-Degree-Level Occupational Therapy Assistant (also a C.O.T.A.).

Such programs are available through institutions accredited by the Accreditation Council for Occupational Therapy Education (ACOTE), which is the certifying arm of the American Occupational Therapy Association (AOTA). 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 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

¹⁰ Section 468.203(4)(b), F.S.

¹¹ Section 468.203(4)a.2., F.S. "Assessment" means 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.

¹² National Board of Certification in Occupational Therapy, 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, <https://acoteonline.org/wp-content/uploads/2020/10/2018-ACOTE-Standards.pdf> (last visited March 16, 2021). The Ph.D. in occupational therapy requires a minimum of six years of full time academic education and a Doctorial 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.

- 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
 - 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.

Occupational therapy candidates are required to complete two levels of fieldwork, the second of which depends on the degree level sought.¹⁹ Level I fieldwork required for Ph.D., O.T.R., and C.O.T.A. candidates can be met through one or more of the following instructional methods:²⁰

- Simulated environments;
- Standardized patients;
- Faculty practice;
- Faculty-led site visits; and
- Supervision by a fieldwork instructor.

Level II fieldwork required for Doctorate level and Master's level candidates includes a minimum of 24 weeks of full-time level II fieldwork which may be completed in one setting if reflective of more than one practice area, or in a maximum of four different settings.²¹ Baccalaureate level and Associate degree level candidates are required to complete a minimum of 16 weeks full-time level II fieldwork which may be completed in one setting if reflective of more than one practice area, or in a maximum of three different settings.²²

Licensure

To be licensed as an occupational therapist, or occupational therapy assistant, an individual must:²³

- Submit the licensure application and required application fee of \$100;
- Be of good moral character;
- Have graduated from an ACOTE/AOTA accredited occupational therapy program or occupational therapy assistant program;

¹³ *Supra* note 12, p. 29. 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 12, 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.

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 12, p. 30. Community Mobility designs programs that enhance community mobility, and implement transportation transitions, including driver rehabilitation and community access.

¹⁷ *Supra* note 12, 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.

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 12, p. 39.

²⁰ *Id.*

²¹ *Id.* at p. 42.

²² *Id.*

²³ Section 468.209, F.S. and ch. 64B-11.2003, F.A.C.

- 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 NBCOT.

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 may also obtain licensure. 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.²⁴

Endorsement is another path to licensure for an occupational therapists, or occupational therapist assistants, in which the Board may waive the examination requirement and grant a license to any person who presents proof of:²⁵

- 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.

In fiscal year 2019-2020, there were 8,764 active licensed occupational therapists and 5,865 active licensed occupational therapy assistants in Florida.²⁶

Prohibitions

Currently, 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

Effect of Proposed Changes

Occupational Therapy

The bill revises 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. Under the bill, occupational therapy services are provided for clients who have or are at risk for developing an:

- Illness;

²⁴ Section 468.209(2), F.S.

²⁵ Section 468.213, F.S.

²⁶ Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan for 2019-2020*, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/2019-2020-annual-report.pdf> (last visited March 16, 2021).

²⁷ Sections 468.215 and 468.223, F.S.

- Injury;
- Disease;
- Disorder;
- Condition;
- Impairment;
- Disability;
- Activity limitation; or
- Participation restriction.

The bill specifies that occupational therapy supports occupational performance in persons with, or at risk of experiencing, a range of disorders and disabilities.

The bill revises the practice of occupational therapy to include:

- Assessment, treatment, education of, and consultation with individuals whose abilities to participate safely in occupations are impaired or at risk for impairment due to developmental deficiencies, aging, learning disabilities, environment, injury, disease, cognitive impairment, and disability;
- Methods to determine abilities and limitations related to the performance of occupations; and
- Specific occupational therapy techniques used for treatment involving training in activities of daily living, environment modification, assessment of the need for orthotics or orthotic devices, use of assistive technology and adaptive devices, cognitive activities, therapeutic exercises, manual therapy techniques, physical agent modalities, and behavioral and mental health services.

Education

The bill requires an occupational therapy applicant to complete a minimum of 24 weeks, instead of six months, of the fieldwork needed to obtain licensure because the fieldwork required to obtain a degree in occupational therapy is tracked by weeks, not months.

Prohibitions

The bill authorizes licensed occupational therapists to use the title “occupational therapist doctorate” or the initials “O.T.D.” in connection with his or her name or business. The bill also prohibits the use of the title “occupational therapist doctorate” or the initials “O.T.D.” by individuals not licensed as an occupational therapist.

The bill makes conforming changes.

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

B. SECTION DIRECTORY:

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| Section 1 | Amends s. 468.203, F.S., relating to definitions. |
| Section 2 | Amends s. 468.209, F.S., relating to requirements for licensure. |
| Section 3 | Amends s. 468.215, F.S., relating to issuance of license. |
| Section 4 | Amends s. 468.223, F.S., relating to prohibitions; penalties. |
| Section 5 | Amends s. 468.225, F.S., relating to exemptions. |
| Section 6 | Reenacts s. 1002.385, F.S., relating to the Gardiner Scholarship. |
| Section 7 | Reenacts s. 1002.66, F.S., relating to specialized instructional services for children with disabilities. |
| Section 8 | Provides an effective date of July 1, 2020. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, insignificant, negative fiscal impact on DOH. DOH may experience an increase in workload associated with additional complaints, which current resources are adequate to absorb.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. The bill does not appear to affect county of municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Board of Occupational Therapy has sufficient rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Professions and Public Health Subcommittee adopted an amendment and reported the bill favorable as a committee substitute. The amendment:

²⁸ Supra, note 6 at p. 5.

- Revises the definition of “occupational therapy” to include the therapeutic use of occupations for clients who have or are at risk of developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction; and
- Revises the practice of occupational therapy to include:
 - Assessment, treatment, education of, and consultation with individuals whose abilities to participate safely in occupations are impaired or at risk for impairment due to developmental deficiencies, aging, learning disabilities, environment, injury, disease, cognitive impairment, and disability;
 - Methods to determine abilities and limitations related to the performance of occupations; and
 - Specific occupational therapy techniques used for treatment involving training in activities of daily living, environment modification, assessment of the need for orthotics or orthotic devices, use of assistive technology and adaptive devices, cognitive activities, therapeutic exercises, manual therapy techniques, physical agent modalities, and behavioral and mental health services.

This analysis is drafted to the committee substitute as passed by the Professions and Public Health Subcommittee.