

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 847 Occupational Therapy
SPONSOR(S): Koster
TIED BILLS: IDEN./SIM. BILLS: CS/SB 632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	15 Y, 0 N	Morris	McElroy
2) Health & Human Services Committee	20 Y, 0 N	Morris	Calamas

SUMMARY ANALYSIS

Occupational therapy is the use of purposeful activity or interventions to maximize independence and maintain health. The bill amends the statutes that regulate the practice of occupational therapy. Occupational Therapists are regulated under Part III of ch. 468, F.S., by the Board of Occupational Therapy within the Department of Health (DOH).

The bill amends the statutes that regulate the practice of occupational therapy. 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.

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, and prohibits the use of that title or initials by individuals not licensed as an occupational therapist.

The bill clarifies the fieldwork experience time requirement for licensure as an occupational therapist by referencing it in weeks, not months.

It is not uncommon for health care practitioner scopes of practice to overlap. Numerous practice acts have exemptions to avoid unlicensed practice allegations when the scope of two or more practices overlap. The bill provides an exemption from the application of the Occupational Therapy Practice Act to licensed mental health counselors, marriage and family therapists, and clinical social workers. The bill also provides an exemption to licensed occupational therapists and occupational therapy assistants from the application of the Psychological Services Act and the Clinical, Counseling, and Psychotherapy Act.

The bill has an indeterminate, insignificant, negative fiscal impact on DOH. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Therapy

Occupational Therapists are regulated under Part III of ch. 468, F.S., by the Board of Occupational Therapy within the Department of Health (DOH). 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.¹

Occupational therapy is the use of purposeful activity or interventions to achieve functional outcomes, meaning maximizing independence and maintaining health.² 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.³ Occupational therapy services routinely include:⁴

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

Occupational therapy services include, but are not limited to:⁸

- 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.

¹ Britannica, *Occupational Therapy*, <https://www.britannica.com/science/occupational-therapy> (last visited Jan. 13, 2022).

² Section 468.203(4), F.S.

³ Id.

⁴ American Occupational Therapy Association, *About Occupational Therapy – What is Occupational Therapy?*, <https://www.aota.org/about-occupational-therapy.aspx> (last visited Jan. 13, 2022).

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

⁶ Section 468.203, F.S.

⁷ Section 468.225, F.S.

⁸ Section 468.203(4)(b), F.S.

These services require skilled assessment to determine the need for use of interventions, including:⁹

- 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:¹⁰

- 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.

Occupational therapy candidates are required to complete two levels of fieldwork, the second of which depends on the degree level sought.¹¹ 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:¹²

- 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.¹³ Baccalaureate level and Associate degree level candidates are required to complete a minimum of 16 weeks full-time level II fieldwork which may

⁹ 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.

¹⁰ 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 Jan. 13, 2022). 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 maybe 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 cap stone project.

¹¹ *Supra* note 10, p. 39.

¹² *Id.*

¹³ *Id.* at p. 42.

be completed in one setting if reflective of more than one practice area, or in a maximum of three different settings.¹⁴

Licensure

To be licensed as an occupational therapist, or occupational therapy assistant, an individual must:¹⁵

- 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;
- 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 National Board of Certification in Occupational Therapy (NBCOT).

Current law allows applicants who have practiced as a state-licensed or AOTA-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 to 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.¹⁶ The NBCOT requires the same amount of fieldwork, but expresses it in weeks (24) not months, which may result in confusion.

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:¹⁷

- 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 2020-2021, there were 9,298 active licensed occupational therapists and 6,247 active licensed occupational therapy assistants in Florida.¹⁸

¹⁴ Id.

¹⁵ Section 468.209, F.S. and ch. 64B-11.2003, F.A.C.

¹⁶ Section 468.209(2), F.S.

¹⁷ Section 468.213, F.S.

¹⁸ Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan for 2020-2021*, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/2020-2021-annual-report.pdf> (last visited Jan. 13, 2022).

Exemptions

It is not uncommon for licensed health care practitioners' scopes of practice to overlap with other licensed health care practitioners' scopes of practice. For example, the psychology practice act provides an exemption to the application of its provisions to licensed allopathic and osteopathic physicians so long as such physicians do not hold themselves out to the public as psychologists.¹⁹ This is done to avoid unlicensed practice allegations when the scope of two or more practices overlap.

Currently, the provisions of the Occupational Therapy Practice Act do not apply to certain licensed health care practitioners, including:²⁰

- Allopathic and osteopathic physicians;
- Physicians assistants;
- Nurses;
- Physical therapists;
- Clinical psychologists;
- Speech language pathologists; and
- Audiologists.

Health care professions not exempt from the provisions of the Occupational Therapy Practice Act include:

- School speech and language providers;
- Clinical social workers;
- Marriage and family therapists;
- Mental health counselors; and
- Orthotists and prosthetists.

Title Regulation

Current law prohibits a person from using the titles, "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 the user 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.²¹

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;
- Injury;
- Disease;
- Disorder;
- Condition;

¹⁹ Section 490.014(1)(a), F.S.

²⁰ Section 468.225(2), F.S.

²¹ Sections 468.215 and 468.223, F.S. A second degree misdemeanor is punishable by a fine of up to \$500 and imprisonment of up to 60 days. See Sections 775.082(4) and 775.083(1)(e), F.S.

- 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 mental health services.

Education

The bill clarifies the length of time required for fieldwork by occupational therapy applicants who have practiced as a state-licensed or AOTA-certified occupational therapy assistant. The bill expresses the time as 24 weeks, rather than 6 months, to align with phrasing used by NBCOT.

Licensure Exemptions

The bill exempts clinical social workers, marriage and family therapists, and mental health counselors from the application of the Occupational Therapy Practice Act. It also exempts occupational therapists and occupational therapy assistants from the application of the Psychological Services Act under ch. 490, F.S., and the Clinical, Counseling, and Psychotherapy Act under ch. 491, F.S.

The bill also exempts any person fulfilling an occupational therapy doctoral capstone experience that involves clinical practice or projects, from the application of the Occupational Therapy Practice Act if the person registers with the DOH before commencing the capstone experience. This will allow Ph.D. candidates in occupational therapy to commence capstone projects without being subject to occupational therapy licensure requirements.

Title Regulation

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, 2022.

B. SECTION DIRECTORY:

- 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:** Amends s. 490.014, F.S., relating to exemptions.
- Section 7:** Amends s. 491.014, F.S., relating to exemptions.
- Section 8:** Amends s. 490.012, F.S., relating to violations; penalties; injunction.
- Section 9:** Amends s. 1002.394, F.S., relating to The Family Empowerment Scholarship Program.
- Section 10:** Reenacts s. 1002.66, F.S., relating to specialized instructional services for children with disabilities.
- Section 11:** Provides an effective date of July 1, 2022.

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 due to the bill's title and initial protection as well as scope expansion provisions, which current resources are adequate to absorb.

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:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Board of Occupational Therapy has sufficient rule-making authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES