



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 921 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Roger Kahn, M.D.
Committee: Health Policy

Date Completed: 10-20-08

RATIONALE

According to the Michigan Occupational Therapy Association, Michigan is one of only three states that do not license occupational therapists. Michigan provides for the registration of certified occupational therapists, and prohibits the use of certain titles except by registrants. The Michigan Board of Occupational Therapists exists in the Department of Community Health and is responsible for setting minimum standards for registration as an occupational therapist or an occupational therapy (OT) assistant. It has been suggested that these provisions do not adequately protect the safety of consumers. This is a particular concern in the case of patients who have serious illnesses or medically complex conditions and may be unable to assess whether they are receiving good care. It also has been pointed out that the delivery of OT services is expanding as advances in the medical field continue to develop. To ensure that occupational therapy is provided by adequately trained and qualified practitioners, who remain competent throughout their careers, many believe that Michigan should establish a licensure requirement for these health care professionals.

CONTENT

The bill would amend Part 183 (Occupational Therapists) of the Public Health Code to provide for the licensure of occupational therapists, rather than the registration of certified occupational therapists. The bill would do the following:

- **Prohibit an individual from engaging in the practice of occupational therapy or practicing as an OT assistant without being licensed or otherwise authorized, after rules for licensure were promulgated.**
- **Require the Michigan Board of Occupational Therapists to establish minimum standards for licensure as an occupational therapist or OT assistant.**
- **Require a licensee to meet continuing education or continuing competence requirements for license renewal, and allow the Board to promulgate rules requiring a licensee to provide evidence of completion.**
- **Require one Board member to be a physician.**

The bill also would amend the Code to replace the \$60 annual registration fee with a \$75 annual license fee.

Practice of Occupational Therapy

Part 183 defines "certified occupational therapist" as an individual who diminishes or corrects pathology in order to promote and maintain health through application of the art and science of directing purposeful activity designed to restore, reinforce, and enhance the performance of individuals, and who is registered in accordance with Article 15 of the Code (which governs health occupations). The bill would delete this definition.

The bill would define "occupational therapist" as an individual licensed under Article 15 to engage in the practice of

occupational therapy. "Practice as an occupational therapy assistant" would mean the practice of occupational therapy under the supervision of a licensed occupational therapist.

The bill would define "practice of occupational therapy" as the therapeutic use of everyday life occupations and occupational therapy services to aid individuals or groups to participate in meaningful roles and situations in the home, school, workplace, community, and other settings, to promote health and wellness through research and practice, and to serve those individuals or groups who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. The bill states that the practice of occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect a person's health, well-being, and quality of life throughout his or her life span.

The practice of occupational therapy would not include the practice of medicine or osteopathic medicine and surgery or medical diagnosis or treatment; the practice of physical therapy; or the practice of optometry.

"Occupational therapy services" would mean those services provided to promote health and wellness, prevent disability, preserve functional capabilities, prevent barriers, and enable or improve performance in everyday activities, including the following:

- Establishment, remediation, or restoration of a skill or ability that is impaired or not yet developed.
- Compensation, modification, or adaptation of a person, activity, or environment.
- Evaluation of factors that affect activities of daily living, instrumental activities of daily living, and other activities relating to education, work, play, leisure, and social participation.

These factors would include body functions, body structure, habits, routines, role performance, behavior patterns, sensory motor skills, and cultural, physical, psychosocial, spiritual, developmental,

environmental, and socioeconomic contexts and activities that affect performance.

Occupational therapy services also would include interventions and procedures, including any of the following:

- Task analysis and therapeutic use of occupations, exercises, and activities.
- Training in self-care, self-management, home management, and community or work reintegration.
- Development remediation, or compensation of client factors such as body functions and body structure.
- Education and training.
- Care coordination, case management, transition, and consultative services.
- Modification of environments and adaptation processes such as the application of ergonomic and safety principles.
- Assessment, recommendation, and training in techniques to enhance safety, functional mobility, and community mobility such as wheelchair management and mobility.
- Management of feeding, eating, and swallowing.
- Application of physical agent modalities and use of a range of specific therapeutic procedures, including techniques to enhance sensory-motor, perceptual, and cognitive processing, manual therapy techniques, and adjunctive and preparatory activities.

In addition, occupational therapy services would include assessment, design, fabrication, application, fitting, and training in rehabilitative and assistive technology, adaptive devices, and low-temperature orthotic devices, and training in the use of prosthetic devices. For this purpose, the design and fabrication of low-temperature orthotic devices would not include permanent orthotics.

Protected Titles

Part 183 prohibits an individual from using the following titles or similar words that indicate that he or she is a certified occupational therapist or a certified OT assistant unless the person is registered in accordance with Article 15: occupational therapist, o.t., occupational therapist registered, o.t.r., certified occupational therapist, c.o.t., certified occupational

therapy assistant, c.o.t.a., or occupational therapy assistant.

The bill, instead, would prohibit an individual, after rules for licensure were promulgated, from using the following titles or similar words that indicated that he or she was licensed as an occupational therapist or OT assistant unless the individual were licensed under Article 15: occupational therapist, o.t., occupational therapist licensed, o.t.l., occupational therapist registered, o.t.r., occupational therapist registered licensed, o.t.r.l., certified occupational therapy assistant, c.o.t.a., certified occupational therapy assistant licensed, c.o.t.a.l., occupational therapy assistant, o.t.a., occupational therapy assistant licensed, or o.t.a.l.

License Requirement

Currently, the Michigan Board of Occupational Therapists, in consultation with the Department of Community Health (DCH), must promulgate rules setting forth minimum standards for registration as a certified occupational therapist, and for registration as an occupational therapy assistant. The bill instead would require the Board, in consultation with the DCH, to promulgate rules setting forth minimum standards for licensure as an occupational therapist and for licensure as an OT assistant.

After the rules were promulgated, an individual could not engage in the practice of occupational therapy or the practice as an occupational therapy assistant unless licensed or otherwise authorized by Article 15.

The license requirement would not prohibit self-care by a patient or uncompensated care by a friend or family member who did not represent or hold himself or herself out to be a licensed occupational therapist or OT assistant.

The license requirement also would not prevent an individual licensed or registered under any other part or act from performing activities that were considered OT services, if those activities were within the individual's scope of practice and if the individual did not use the protected titles described above.

In addition, the licensure requirement would not prohibit an orthotist or prosthetist from providing services consistent with his or her training in orthotics or prosthetics if he or she were certified by the American Board for Certification in orthotics, prosthetics, and pedorthics, and did not represent or hold himself or herself out to be a licensed occupational therapist or OT assistant.

License Renewal

Beginning the license renewal cycle after the effective date of rules promulgated under Part 183, an individual licensed under Article 15 would have to meet the bill's continuing education or competence requirements when renewing his or her license.

In consultation with the DCH, the Board could promulgate rules to require a licensee seeking renewal to furnish evidence that, during the licensing period immediately preceding the renewal application, he or she completed an appropriate number of hours of continuing education courses or continuing competence activities related to the practice of occupational therapy and designed to educate further and maintain competence.

Board Members

The Michigan Board of Occupational Therapists currently must consist of five certified occupational therapists and four public members. Under the bill, the Board would have to consist of five licensed occupational therapists and four public members, including one licensed physician.

License Fees

The Code sets a \$20 application processing fee and a \$60 annual registration fee for a person registered or seeking registration as a certified occupational therapist or a certified OT assistant.

The bill would retain the \$20 application fee and establish a \$75 annual license fee for an individual licensed or seeking licensure to engage in the practice of occupational therapy, or to engage in practice as an OT assistant.

Reimbursement for Services

The bill specifies that Part 183 would not require new or additional third party reimbursement or mandated workers' compensation benefits for services rendered by an individual licensed as an occupational therapist or an occupational therapy assistant under Article 15.

MCL 333.16345 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Occupational therapists use everyday life activities (occupations) and specialized interventions to enable people with physical and cognitive difficulties to perform the activities of daily life, whether at home or in school, the workplace, or the community. The practice of OT may mean helping a child learn to swallow, crawl, or play; helping an adult learn how to dress or walk after a stroke or spinal cord injury; or helping a veteran who lost a limb to regain the ability to care for himself or herself. Occupational therapists work in a variety of settings, including schools, outpatient facilities, skilled nursing facilities, and hospitals. They also may be employed in home health care or private practice. What occupational therapists do can change the lives of their clients, enabling them to function at their highest possible level and become or remain employed members of society.

Michigan's current OT regulatory scheme amounts to little more than title protection and minimal educational requirements. It provides no guidelines for competence, does not authorize the State to take action against unqualified practitioners, contains no continuing education or professional development requirements, and does not address the supervision of OT assistants. Currently, occupational therapists must have a master's or doctorate degree and complete supervised clinical internships, but there is little to prevent someone without these credentials from performing OT services or practicing outside the scope of his or her training. There also is little or no recourse if a registered OT delegates functions to an unqualified technician.

Occupational therapists work extensively with vulnerable populations, who may have serious injuries, illnesses, or disabilities that make it difficult for them to assess whether they are receiving good care or to seek assistance when inadequate care is suspected. In addition, patients may be confused about what an occupational therapist's role is or what credentials a therapist should have. For these reasons, it is important to regulate occupational therapists in a manner that assures the highest level of consumer protection.

Furthermore, although requirements for entering the profession may be enough to assure entry-level competence, they do not guarantee competence after years of practice. Medical advances are continually evolving in order to provide comprehensive, state-of-the-art services to patients. At the same time, OT services are expanding into new and alternative service delivery systems.

By establishing licensure requirements for occupational therapists and OT assistants, and clearly delineating their scope of practice, the bill would protect consumers from inappropriate, inadequate, and unsafe treatment by unqualified practitioners. In addition, by requiring licensees to meet continuing education or competence requirements as a condition of license renewal, the bill would help ensure that licensees kept their skills and knowledge up to date with developments in the profession.

Response: The bill should contain an exemption for direct care staff who provide day-to-day assistance to clients under a plan of service, such as in a group home. Because these care-givers are paid for their work, and are not otherwise licensed, they would not fall under the bill's exemptions for individuals who provide uncompensated care or who are licensed or registered under another act.

Supporting Argument

A licensure requirement could keep current OT practitioners in Michigan and prevent new occupational therapists and OT assistants from seeking employment out of State. Because OT licensure is mandated in a majority of the other states, Michigan is at risk of losing practitioners to them. This State's hospital-based programs are experiencing significant shortages in the number of occupational therapists and OT

assistants, according to the Director of Occupational and Physical Therapy at the University of Michigan Health System. As the population ages, the demand for these professionals will continue to grow. Michigan residents cannot afford to have future OT practitioners move to other states that license the profession.

Opposing Argument

Oversight at the national level and Michigan's current system of registration are adequate to regulate the OT profession. Further government involvement and another layer of bureaucracy are unnecessary unless there is a clear threat to the public's health or a significant potential to improve quality through regulation.

Response: Although there are national groups that manage initial OT certification and provide guidelines for continued competence, neither group has mandatory participation or jurisdiction to protect consumers in Michigan. Rather than creating a new regulatory scheme, the bill would enhance what already is in place, which includes an existing board within the DCH.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would likely require the State to incur a minor increase in administrative costs associated with the proposed expanded licensure requirements. The Michigan Board of Occupational Therapists could be required to exercise greater oversight of licensed occupational therapists, and also would be charged with developing and maintaining more extensive licensure rules and requirements.

Some portion of these costs would be offset by the proposed increase in annual license fees for occupational therapists and occupational therapy assistants. The bill would increase the annual fee from \$60 to \$75, resulting in increased State revenue. The Department of Community Health estimates that approximately 4,500 occupational therapists and 1,150 occupational therapy assistants would be required to pay the increased licensure costs, suggesting that the State would collect between \$75,000 and \$90,000 in additional fee revenue.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.