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BILL ANALYSIS



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Senate Bill 921 (as enacted)  
Sponsor: Senator Roger Kahn, M.D.  
Senate Committee: Health Policy  
House Committee: Health Policy

**PUBLIC ACT 523 of 2008**

Date Completed: 1-22-09

**RATIONALE**

Unlike the large majority of other states, Michigan did not previously license occupational therapists. Michigan law provided for the registration of certified occupational therapists, and prohibited the use of certain titles except by registrants. Minimum standards for registration as an occupational therapist or an occupational therapy (OT) assistant were set by the Michigan Board of Occupational Therapists, in the Department of Community Health. It was suggested that these provisions did not adequately protect the safety of consumers. This was 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 was 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 require licensure for these health care professionals.

- otherwise authorized, after rules for licensure are promulgated.**
- **Requires the Michigan Board of Occupational Therapists to establish minimum standards for licensure as an occupational therapist or OT assistant.**
  - **Requires a licensee to meet continuing education or continuing competence requirements for license renewal, and allows the Board to promulgate rules requiring a licensee to provide evidence of completion.**
  - **Requires one Board member to be a physician.**

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

The bill took effect on January 13, 2009, and was tie-barred to Senate Bill 493 (Public Act 524 of 2008). (That bill added Part 176 (Speech-Language Pathology) to the Public Health Code to prohibit a person from engaging in the practice of speech-language pathology.) A detailed description of Senate Bill 921 follows.

**CONTENT**

**The bill amended 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 does the following:**

- **Prohibits an individual from engaging in the practice of occupational therapy or practicing as an OT assistant without being licensed or**

Practice of Occupational Therapy

Part 183 previously defined "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 deleted this definition.

Under the bill, "occupational therapist" means an individual licensed under Article 15 to engage in the practice of occupational therapy, and "practice as an occupational therapy assistant" mean the practice of occupational therapy under the supervision of a licensed occupational therapist.

The bill defines "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 does 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.

The bill defines "occupational therapy services" as 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 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 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 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 does not include permanent orthotics.

Occupational therapy services also include the provision of vision therapy services or low vision rehabilitation services, if those services are provided pursuant to a referral or prescription from, or under the supervision or comanagement of, a licensed physician.

## Protected Titles

Part 183 prohibited an individual from using the following titles or similar words indicating that he or she was a certified occupational therapist or a certified OT assistant unless the person was 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, prohibits an individual, after rules for licensure are promulgated, from using the following titles or similar words that indicate that he or she is licensed as an occupational therapist or OT assistant unless the individual is 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

Previously, the Michigan Board of Occupational Therapists, in consultation with the Department of Community Health (DCH), had to promulgate rules setting forth minimum standards for registration as a certified occupational therapist, and for registration as an occupational therapy assistant. The bill instead requires 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 are promulgated, an individual may 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 does not prohibit self-care by a patient or uncompensated care by a friend or family member who does not represent or hold himself or herself out to be a licensed occupational therapist or OT assistant.

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

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

Further, the licensure requirement does not prohibit a parks and recreation professional from providing services if he or she is directly employed by a local unit of government or a therapeutic recreation specialist certified by the National Council for Therapeutic Recreation Certification, and does 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 will have to meet the bill's continuing education or competence requirements when renewing his or her license.

In consultation with the DCH, the Board may 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 previously consisted of five certified occupational therapists and four public members. Under the bill, the Board must consist of five licensed occupational therapists and four public members, including one licensed physician.

## License Fees

The Code previously set a \$60 annual registration fee for a person registered or seeking registration as a certified occupational therapist or a certified OT assistant.

The bill instead establishes 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.

The bill also retains a \$20 application processing fee.

## Reimbursement for Services

The bill specifies that Part 183 does 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 former OT regulatory scheme amounted to little more than title protection

and minimal educational requirements. It provided no guidelines for competence, did not authorize the State to take action against unqualified practitioners, contained no continuing education or professional development requirements, and did not address the supervision of OT assistants. Although occupational therapists must have a master's or doctorate degree and complete supervised clinical internships, there was little to prevent someone without these credentials from performing OT services or practicing outside the scope of his or her training. There also was little or no recourse if a registered OT delegated 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 will 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 will help ensure that licensees keep their skills and knowledge up to date with developments in the profession.

**Response:** The law 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

do 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 may help 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 has been 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 system of registration were adequate to regulate the OT profession. Further government involvement and another layer of bureaucracy were unnecessary without a clear threat to the public's health or a significant potential to improve quality.

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

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

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

Some portion of these costs will be offset by the increase in annual license fees for occupational therapists and occupational therapy assistants. The bill increases the annual fee from \$60 to \$75, which will result in increased State revenue. The Department of Community Health has estimated that approximately 4,500 occupational therapists and 1,150 occupational therapy assistants will be required to pay the increased licensure costs, suggesting that the State will 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.