

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 632

INTRODUCER: Health Policy Committee and Senator Bradley

SUBJECT: Occupational Therapy

DATE: January 18, 2022 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Howard	Money	AHS	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 632 significantly expands the scope of practice of the occupational therapist and the occupational therapy assistant.

The bill replaces the current definition of “occupational therapy” with a new definition that introduces the concepts of the therapeutic use of occupations with individuals, groups, or populations, along with their families or organizations, to support participation, performance, and function in the home, school, workplace, community, and other settings for clients who have, or are at risk of developing, an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction.

The bill creates new terms and definitions for occupational therapy.

The bill deletes a list of “occupational therapy services” from current law, makes reference to “the practice of occupational therapy” instead of “occupational therapy,” and adds the following services to the practice of occupational therapy:

- The assessment, treatment, and education of or consultation with individuals, groups, and populations whose abilities to participate safely in occupations, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, are impaired or have been identified as being at risk for impairment due to issues related to, but not limited to, developmental deficiencies, the aging process,

learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, or psychological and social disabilities;

- Methods or approaches to determine abilities and limitations related to performance of occupations, including, but not limited to, the identification of physical, sensory, cognitive, emotional, or social deficiencies; and
- Specific occupational therapy techniques used for treatment which include, but are not limited to, training in activities of daily living; environmental modification; assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities.

The bill exempts clinical social workers, marriage and family therapists, and mental health counselors from the application of the Occupational Therapy Practice Act and exempts occupational therapists and occupational therapy assistants from the application of the Psychological Services Act in ch. 490, F.S., and the Clinical, Counseling, and Psychotherapy Act in 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 requirements of the Occupational Therapy Practice Act if he or she registers with the Department of Health (department) before commencing the capstone experience.

The bill authorizes a licensed occupational therapist to use the title “occupational therapist doctorate” or “O.T.D.” if the occupational therapist has earned a doctoral degree.

The bill is projected to have an insignificant negative fiscal impact on the department; however, the agency can absorb this impact within existing resources. See section V of this analysis.

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

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (department) to protect and promote the health of all residents and visitors in the state.¹ The department is charged with the regulation of health 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 department.³

¹ Section 20.43, F.S.

² Under s. 456.001(1), F.S., “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 department or, in some cases, within the MQA.

³ Section 20.43, F.S.

Occupational Therapy

Current law defines occupational therapy as “the use of purposeful activity or interventions to achieve functional outcomes.”⁴

Occupational therapy is performed by licensed occupational therapists (OTs), licensed occupational therapy assistants (OTAs) 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 licensed OTA.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:

- The assessment,⁸ 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; and
- Providing for the development of: sensory-motor, perceptual, or neuromuscular functioning; range of motion; or emotional, motivational, cognitive, or psychosocial components of performance.⁹

These services may require an assessment to determine the need for the use of the following interventions:

- 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

⁴ Section 468.203(4), F.S.

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)a.2., F.S., defines “assessment” to mean 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.

⁹ Section 468.203(4), F.S.; Fla. Admin. Code R. 64B11-4.001 (2021).

- The promotion of health and wellness.¹⁰

Occupational Therapists and Occupational Therapy Assistants

Education

There are four levels of educational programs available to individuals desiring to enter the profession of occupational therapy in an institution accredited by the Accreditation Council for Occupational Therapy Education (ACOTE), which is the certifying arm of the American Occupational Therapy Association (AOTA), as follows:

- The Doctoral-Degree-Level Occupational Therapist (Ph.D.);¹¹
- Master's-Degree-Level Occupational Therapist (OTR);
- Baccalaureate-Degree-Level Occupational Therapy Assistant (certified occupational therapy assistant or COTA); and
- Associate-Degree-Level Occupational Therapy Assistant (also a COTA).¹²

The 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 some 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
 - 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

¹⁰ *Id.*

¹¹ National Board of Certification in Occupational Therapy (NBCOT), 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, available at <https://acoteonline.org/wp-content/uploads/2020/10/2018-ACOTE-Standards.pdf> (last visited Nov. 15, 2021). The Ph.D. in occupational therapy requires a minimum of six years of full time academic education and a Doctoral 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.

¹² *Id.* at p. 1.

¹³ *Supra* note 11, 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 11, 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.

- 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.

Fieldwork education required for ACOTE accreditation must include traditional and non-traditional subject matter, as well as emerging settings to strengthen the ties between didactic and fieldwork education, and at two levels:

- Level I Fieldwork: required for Ph.D., OTR, and COTA candidates, could be met through one or more of the following instructional methods:
 - Simulated environments;
 - Standardized patients;
 - Faculty practice;
 - Faculty-led site visits; and
 - Supervision by a fieldworker instructor.
- Level II Fieldwork:
 - Ph.D. and Masters Candidates - require a minimum of 24 weeks of full-time Level II fieldwork. Level II fieldwork can be completed in one setting if reflective of more than one practice area, or in a maximum of four different settings.
 - Bachelors and Associates Candidates - require a minimum of 16 weeks full-time Level II fieldwork. Level II fieldwork may be completed in one setting if reflective of more than one practice area, or in a maximum of three different settings.¹⁹

The ACOTE also requires for accreditation that schools maintain an average passage rate of 80 percent or higher (regardless of the number of attempts) on the National Board for Certification in Occupational Therapy (NBCOT) examination, over the three most recent calendar years, for graduates attempting the national certification exam within 12 months of graduation from the program.²⁰

The Doctoral Capstone for a Ph.D. in Occupational Therapy

According to the ACOTE standards, the doctoral capstone is a required element of an occupational therapy Ph.D. curriculum. The goal of the doctoral capstone is to provide an in-depth exposure to one or more of the following: clinical practice skills, research skills,

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

¹⁷ *Supra* note 11, 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 11, p. 41.

²⁰ *Supra* note 11.

administration, leadership, program and policy development, advocacy, education, and theory development.

The doctoral capstone consists of two parts:

- **Capstone project** is completed by the Ph.D. candidate who demonstrates his or her ability to relate theory to practice and to synthesize in-depth knowledge in a practice area that relates to the capstone experience.
- **Capstone experience** is a 14-week, full-time, in-depth exposure in a concentrated area that may include on-site and off-site activities that meets developed goals and objectives of the doctoral capstone.

The candidate begins his or her capstone experience after the completion of all coursework and Level II fieldwork and after the preparation of a complete literature review, needs assessment, goals/objectives, and an evaluation plan aligning with the curriculum design and sequence of the doctoral capstone experience.

The Ph.D. candidate's capstone project must demonstrate the synthesis and application of the knowledge he or she has gained. The doctoral capstone experience must be a minimum of 14 weeks (560 hours). It may be completed on a part-time basis but must be consistent with the individualized specific objectives of the capstone project. No more than 20 percent of the 560 hours may be completed off site from the mentored practice setting(s), to ensure a concentrated experience in the designated area of interest. Time spent off-site may include independent study activities such as research and writing. Prior fieldwork or work experience may not be substituted for this doctoral capstone experience.

Every doctoral capstone project must have a valid written memorandum of understanding, signed by all parties to the doctoral capstone experience which, at a minimum, includes individualized specific objectives, plans for supervision or mentoring, and responsibilities of all parties. The capstone project must provide for verification that the student is mentored by an individual with expertise consistent with the student's area of focus prior to the onset of the doctoral capstone experience. The mentor does not have to be an occupational therapist.²¹

Licensure

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

- Apply to the department and pay appropriate fees;²²
- 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

²¹ See note 11, pp. 44-46.

²² Section 468.219, F.S.

- Have passed an examination approved by the NBCOT²³ for occupational therapists.²⁴

An additional path to licensure as an occupational therapist is also available to 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. 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.²⁵

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

- 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.²⁶

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

The MQA Annual Report and Long Range Plan for Fiscal Year 2020-2021 indicates that there are 9,298 active licensed occupational therapists and 6,247 active licensed occupational therapy assistants currently in Florida.²⁸

²³ The examination is not offered by the Florida Board of Occupational Therapy Practice. Applicants must contact the NBCOT directly for the exam application and deadline information.

²⁴ Section 468.209(1), F.S.

²⁵ Section 468.209(2), F.S.

²⁶ Section 468.213, F.S.

²⁷ Sections 468.215 and 468.223, F.S.

²⁸ Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan for 2020-2021*, p. 19, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/2020-2021-annual-report.pdf> (last visited Nov. 15, 2021).

III. Effect of Proposed Changes:

Scope of Practice of Occupational Therapy

The bill expands the scope of practice of the occupational therapist and the occupational therapy assistant. The bill replaces the current-law definition of occupational therapy, which is “the use of purposeful activity or interventions to achieve functional outcomes,” with:

[T]he therapeutic use of occupations through habilitation, rehabilitation, and the promotion of health and wellness with individuals, groups, or populations, along with their families or organizations, to support participation, performance, and function in the home, at school, in the workplace, in the community, and in other settings for clients who have, or are at risk of developing, an illness, an injury, a disease, a disorder, a condition, an impairment, a disability, an activity limitation, or a participation restriction.

The bill further expands the scope of practice for occupational therapy practitioners by defining the term “occupation” to include meaningful and purposeful everyday activities performed and engaged in by individuals, groups, populations, families, or communities which occur in contexts and over time, such as:

- Activities of daily living;
- Instrumental activities of daily living;
- Health management;
- Rest;
- Sleep;
- Education;
- Work;
- Play;
- Leisure; and
- Social participation.

The bill specifies that the term “activities of daily living” includes functions and tasks for self-care which are performed on a daily or routine basis, including functional mobility, bathing, dressing, eating, swallowing, personal hygiene and grooming, toileting, and other similar tasks.

The bill defines “instrumental activities of daily living” as daily or routine activities a person must perform to live independently within the home and community.

The bill describes “health management” as therapeutic services designed to develop, manage, and maintain health and wellness routines, including self-management, performed with the goal of improving or maintaining health to support participation in occupations.

Occupational Therapy Licensure

Section 468.209(2), F.S., provides that an occupational therapy license applicant who has practiced as a state-licensed or American Occupational Therapy Association-certified occupational therapy assistant for four years and who, prior to January 24, 1988, completed a

minimum of six months of supervised occupational-therapist-level fieldwork experience, may take the licensure examination without meeting the education requirements set out in s. 468.209(1)(b), F.S.

The bill reduces the minimum required weeks of supervised occupational-therapist-level fieldwork experience for applicants attempting to utilize this licensure path from six months (approximately 26 weeks) to 24 weeks.

Occupational Therapy Services

The bill replaces current law's list of services that may be included in occupational therapy with a provision specifying that the practice of occupational therapy includes, but is not limited to:

- Assessment, treatment, and education of or consultation with individuals, groups, and populations whose abilities to participate safely in occupations, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, are impaired or have been identified as being at risk of impairment due to issues related to, but not limited to, developmental deficiencies, the aging process, learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, or psychological and social disabilities;
- Methods or approaches used to determine abilities and limitations related to performance of occupations, including, but not limited to, the identification of physical, sensory, cognitive, emotional, or social deficiencies; and
- Specific occupational therapy techniques used for treatment which include, but are not limited to, training in activities of daily living; environmental modification; assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities; therapeutic exercises; manual techniques; physical agent modalities; and occupational therapy services in mental health.

Occupational Therapist Titles

Under current law, any person who is issued a license as an occupational therapist may use the titles "occupational therapist," "licensed occupational therapist," or "occupational therapist registered," or he or she may use the letters "O.T.," "L.O.T.," or "O.T.R.," in connection with his or her name or place of business to denote his or her registration.

There are four different educational levels for persons registered under Florida Law as occupational therapists: an associate degree, a bachelor degree, a master's degree, or a Ph.D. The bill would permit any licensed occupational therapist to use "occupational therapist doctorate" or "O.T.D." if the occupational therapist has earned a doctoral degree.

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 and exempts occupational therapists and occupational therapy assistants from the application of the

Psychological Services Act in ch. 490, F.S., and the Clinical, Counseling, and Psychotherapy Act in 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 he or she registers with the Department of Health (department) before commencing the capstone experience.

Other Provisions

The bill reenacts certain statutes relating to psychological services in ch. 490, F.S., and the Clinical, Counseling, and Psychotherapy Act in ch. 491, F.S., for the purpose of incorporating the bill's amendments.

The bill reenacts the Family Empowerment Scholarship Program and the Voluntary Prekindergarten Education Program for the purpose of incorporating the bill's amendments to s. 468.203, F.S., into those programs. Occupational therapy services are considered specialized services that may be provided under both programs.

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

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:

Because CS/SB 632 provides that licensed occupational therapists may provide additional services, the bill might result in increased costs to private health insurers and health maintenance organizations that cover occupational therapy services.

C. Government Sector Impact:

The Department of Health's Division of Medical Quality Assurance may experience an increase in workload associated with additional complaints and non-recurring costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, and board website to update the licensing requirements for occupational therapists to reflect changes made to the statute; however, such costs may be absorbed within existing resources.

The bill might result in increased costs for occupational therapy services under state group health insurance, Medicaid, the Family Empowerment Scholarship Program, and the Voluntary Prekindergarten Education Program to the extent that occupational therapy is covered and provided under those respective benefit packages and programs. The fiscal impact is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill expands the scope of practice of the occupational therapist and the occupational therapy assistant to include areas of practice that might be construed as overlapping with other licensed professions. This is not unusual, as many licensed health care practitioners have scopes of practice that often overlap, and many of the professions' practice acts have created exemptions to the application of their respective practice acts for other licensees whose scope of practice overlaps theirs.²⁹ The physical therapy practice act already exempts its application to occupational therapy,³⁰ and occupational therapy exempts physical therapy as well as medicine, nursing, osteopathy, clinical psychology, speech-language pathology, and audiology from the practice of occupational therapy.³¹

School speech and language providers³² and orthotics, prosthetics, and pedorthics³³ use similar practice skills, techniques, and dynamics as set out in the bill's expanded scope of practice for occupational therapists and occupational therapy assistants, and those practitioners could be found to be practicing occupational therapy without a license under the bill.

²⁹ See ss. 460.402, 461.402, 464.022, 465.027, 467.207, 486.161, 468.812, 468.1115, 480.035, 486.161, 490.014, and 491.014, F.S.

³⁰ Section 486.161, F.S.

³¹ Section 468.225, F.S.

³² See s. 1012.44, F.S.

³³ See ch. 468, Part. XIV, F.S.

Similarly, the bill's expanded scope of practice for occupational therapists and occupational therapy assistants in providing occupation-based interventions and services into designing, fabricating, and application of orthotics or orthotic devices could expose occupational therapists to allegations of practicing orthotics, prosthetics, or pedorthics³⁴ without a license.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 468.203, 468.209, 468.215, 468.223, 468.225, 490.014, and 491.014.

The bill reenacts portions of the following sections of the Florida Statutes: 490.012, 1002.394, and 1002.66.

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 December 2, 2021:

The CS:

- Clarifies that only occupational therapists with a doctorate degree can use the title “occupational therapy doctorate” or “O.T.D.;
- Requires that, in order to qualify for an exemption from Florida’s occupational therapy regulation and licensure requirements, a person fulfilling an occupational therapy doctoral capstone experience involving clinical practice or projects must first register with Department of Health;
- Exempts clinical social workers, marriage and family therapists, and mental health counselors from the application of the Occupational Therapy Practice Act;
- Exempts occupational therapists and occupational therapy assistants from the application of the Psychological Services Act and the Clinical, Counseling, and Psychotherapy Act; and
- Makes technical changes.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³⁴ Section 468.812, F.S.