

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 Committee on Banking and Insurance

BILL: CS/CS/SB 792

INTRODUCER: Banking and Insurance Committee; Health Policy Committee; and Senators Albritton and Harrell

SUBJECT: Physical Therapy

DATE: February 11, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Johnson	Knudson	BI	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 792 amends several provisions within the Physical Therapy Practice Act. The bill amends the definition of “physical therapy assessment” to alter the purpose of such assessments and the definition of “practice of physical therapy” to add modalities of treatment while removing provisions relating to a physical therapist’s performance of acupuncture, along with related restrictions and the Board of Medicine’s oversight of the criteria for such acupuncture. The bill adds definitions of “dry needling” and “myofascial trigger point.”

The bill excludes acupuncture from the practice of physical therapy. The bill requires the Board of Physical Therapy Practice (Board) to establish minimum standards of practice for physical therapy relating to dry needling with specific requirements to be included.

The bill has an effective date of July 1, 2020.

II. Present Situation:

The Practice of Physical Therapy in Florida

The Physical Therapy Practice Act is codified in ch. 486, F.S. Licensed physical therapists (PT) are regulated by the Board within the Department of Health (DOH).¹ A PT must practice physical therapy in accordance with the provisions of the practice act and Board rules.² Currently, 17,403 PTs hold active Florida licenses.³

The practice of physical therapy includes:

- The performance of physical therapy assessments;
- The treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto, by the use of:
 - The physical, chemical, and other properties of air;
 - Electricity;
 - Exercise;
 - Massage;
 - The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine⁴ when no penetration of the skin occurs;
 - Radiant energy, including ultraviolet, visible, and infrared rays;
 - Ultrasound;
 - Water; and
 - Apparatus and equipment as they relate to the application of the above;
- The performance of tests of neuromuscular functions to aid in the diagnosis or treatment of any human condition; or
- The performance of electromyography to aid in the diagnosis of any human condition only upon compliance with criteria set forth by the Board of Medicine.⁵

To be eligible for licensure as a PT, an applicant must:

- Be 18 years of age;
- Be of good moral character; and
- Satisfy the following educational requirements:
 - Have graduated from a school of physical therapy which has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the U.S. Department of Education at the time of her or his graduation and have passed, to the satisfaction of the Board, the American Registry Examination prior to 1971 or a national

¹ Section 486.023, F.S.

² Sections 486.031 and 486.102, F.S.

³ Number of active Florida licenses was calculated by adding “In State Active” practitioners and “Out of State Active” practitioners, and “Active Military” practitioners. See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2018-2019: Table 1 Summary of Licensed Practitioners*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/index.html> (last visited Jan. 16, 2020).

⁴ See s. 458.307, F.S., and <https://flboardofmedicine.gov/> (last visited Jan. 16, 2020)

⁵ Section 486.021(11), F.S.

- examination approved by the Board to determine her or his fitness for practice as a physical therapist;
- Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapists in this country, as recognized by the appropriate agency as identified by the Board, and have passed to the satisfaction of the Board an examination to determine her or his fitness for practice as a physical therapist; or
 - Be entitled to licensure without examination.⁶

The Board of Physical Therapy Practice

The Board is composed of seven members appointed by the Governor and subject to confirmation by the Senate. Five Board members must be licensed PTs in good standing who are residents of this state and who have been engaged in the practice of physical therapy for at least 4 years immediately prior to their appointment. One licensed PT Board member may be a full-time faculty member teaching in a physical therapy curriculum in an educational institution in this state. The two remaining members must be residents of this state who have never been licensed health care practitioners.⁷

The Board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties, establish or modify minimum standards of practice, and adopt rules to implement the provisions of ch. 486, F.S. The Board may also review the standing and reputability of any school or college that offers courses in physical therapy and whether the courses of such school or college meet the standards established by the appropriate accrediting agency. In determining the standing and reputability of any such school and whether the school and courses meet the standards, the Board may investigate and make a personal inspection.⁸

Physical Therapy Scope of Practice

A PT's professional responsibilities include, but are not limited to:

- Interpretation of a practitioner's referral;⁹
- Provision of a patient's initial physical therapy assessment;
- Initial identification and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long- and short-term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks; and
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan.¹⁰

⁶ Section 486.081, F.S.

⁷ Section 486.023, F.S.

⁸ Section 486.025, F.S.

⁹ Under s. 486.021(11)(a), F.S., a health care practitioner licensed under ch. 458, F.S., (medical practice), ch. 459, F.S., (osteopathic medicine), ch. 460, F.S., (chiropractic medicine), ch. 461, F.S., (podiatric medicine), or ch. 466, F.S., (dentistry) and engaged in active practice is eligible to serve as a physical therapy patient's practitioner of record. A practitioner of record or an advanced practice registered nurse may develop a patient's plan of physical therapy treatment and may refer a patient to a PT for such treatment.

¹⁰ Fla. Admin. Code R. 64B17-6.001(3), (2019).

A PT performs a physical therapy assessment for the purpose of making recommendations for treatment. The physical therapy assessment includes observational, verbal, and manual determinations of the function of the musculoskeletal or neuromuscular system relative to physical therapy. The assessment can include, but is not limited to, the following testing:

- Range of motion of a joint;
- Motor power;
- Postural attitudes;
- Biomechanical function;
- Locomotion; and
- Functional abilities.¹¹

Physical Therapy Treatment Plan and Referral for Treatment

A PT may implement a plan of treatment that he or she develops for a patient and may also implement a treatment plan provided for a patient by a practitioner of record or by an advance practice registered nurse.¹² However, a PT must refer a patient to, or consult with, the patient's practitioner of record if a patient's condition is found to be outside the scope of physical therapy.¹³

A PT may implement a treatment plan for a patient without a written order from a practitioner of record. However, if physical therapy treatment is required beyond 30 days for a condition not previously assessed by a patient's practitioner of record, the PT must obtain a review of the treatment plan by a practitioner of record, along with his or her signature on the plan. This requirement for review and signature does not apply if a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the PT is treating that condition.¹⁴

Dry Needling

What is dry needling?

Dry needling, sometimes referred to as trigger point dry needling, is a skilled intervention that uses a thin filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments. According to the American Physical Therapy Association, dry needling may be used to treat dysfunctions in skeletal muscle, fascia, and connective tissue, and to diminish persistent peripheral nociceptive input and reduce or restore impairments of body structure and function leading to improved activity and participation.¹⁵

¹¹ Section 486.021(10), F.S.

¹² Section 486.021(11)(a), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ American Physical Therapy Association, *Description of Dry Needling in Clinical Practice: An Educational Resource Paper*, (February 2013) available at <http://www.apta.org/StateIssues/DryNeedling/ClinicalPracticeResourcePaper/> (last visited Jan. 16, 2020).

Recent research has shown that the most common adverse event of dry needling is minor bleeding.¹⁶

Is Dry Needling Within the Scope of Practice of Physical Therapy?

The issue of whether the performance of dry needling should fall within the professional and legal scope of physical therapist practice continues to be a question posed to state regulatory boards, legislatures, and governmental agencies.¹⁷ The laws of 34 states and the District of Columbia permit PTs to perform dry needling.¹⁸ Seven states – California, Florida, Hawaii, New Jersey, New York, Oregon and Washington – prohibit PTs from performing dry needling.¹⁹

III. Effect of Proposed Changes:

Section 1 amends the definition of “physical therapy assessment” in s. 486.021(10), F.S., to provide that an assessment is for the purpose of “physical therapy treatment” instead of for the purpose of “making recommendations for treatment.” The definition is further amended to provide that an assessment relates to the function of the “movement system” instead of the “musculoskeletal or neuromuscular system” and includes motor control and posture as components of the former.

The bill also amends the definition of the “practice of physical therapy” in s. 486.021(11), F.S., to expand the scope of practice by providing that the practice of physical therapy may include alleviating impairments, functional movement limitations, and disabilities by designing, implementing, and modifying treatment interventions through:

- Therapeutic exercise;
- Functional movement training in self-management and in-home, community, or work integration or reintegration;
- Manual therapy;
- Massage;
- Airway clearance techniques;
- Maintaining and restoring integumentary integrity and wound care;
- Physical agents or modalities;
- Mechanical and electrotherapeutic modalities; and
- Patient-related instruction.

The bill does not define any of the terms and concepts listed above.

¹⁶ Brady, S., McEvoy, J., Dommerholt, J., Doody, C.: *Adverse events following trigger point dry needling: a prospective survey of chartered physiotherapists* (August 22, 2014), available at <https://www.ncbi.nlm.nih.gov/pubmed/25125935>.

¹⁷ American Physical Therapy Association, *Dry Needling in Physical Therapy*, (last updated November 7, 2019), available at <http://www.apta.org/StateIssues/DryNeedling/> (last visited Jan. 16, 2020).

¹⁸ American Physical Therapy Association, *State Laws and Regulations Governing Dry Needling Performed by Physical Therapists in the US*, available at http://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Dry_Needling/APTADryNeedlingLawsByState.pdf (last visited Jan. 16, 2020). The States that permit dry needling include: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming.

¹⁹ *Id.*

The bill also amends the definition of the “practice of physical therapy” to remove provisions that currently allow for physical therapy treatment by the use of:

- The physical, chemical, and other properties of air;
- Electricity;
- Exercise;
- Massage;
- The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine when no penetration of the skin occurs;
- Radiant energy, including ultraviolet, visible, and infrared rays;
- Ultrasound; and
- Water.

In several instances, the two lists above (one adding elements and the other removing elements) merely substitute a modality with a similar modality, e.g. when the use of “electricity” is replaced by “electrotherapeutic modalities.” Other elements being added are new to the definition altogether, such as airway clearance techniques and maintaining and restoring integumentary integrity and wound care.

One element in the list of modalities being removed under the bill is accompanied by substantive limitations on how that element may be employed and under what criteria. The bill removes acupuncture as a treatment that PTs may perform, and, in so doing, it also removes the restriction that such acupuncture may be performed only upon compliance with criteria set forth by the Board of Medicine and may not involve penetration of the skin. The bill goes on to specify that the practice of physical therapy does not authorize a PT to practice acupuncture.

The bill defines “dry needling” as a skilled technique based on western medical concepts using apparatus or equipment of filiform needles to stimulate a myofascial trigger point for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disabilities.

The bill further defines “myofascial trigger point” as an irritable section of tissue often associated with palpable taut bands of muscle fibers.

Section 2 amends s. 486.025, F.S., to authorize the Board to establish minimum standards for physical therapy, including, without limitation, standards of practice for the performance of dry needling by PTs, to include, at a minimum:

- Completion of 2 years of practice as a PT;
- Completion of 50 hours of face-to-face continuing education from an accredited entity on the topic of dry needling, which must include a determination by the PT instructor that the PT demonstrates the requisite psychomotor skills to safely perform dry needling;
- Continuing education requirements in all of the following areas:
 - Dry needling theory;
 - Selection and safe handling of needles, other apparatus, and equipment used in dry needling, including the proper handling of biohazardous waste;
 - Indications and contraindications for dry needling;
 - Psychomotor skills needed to perform dry needling;

- Post intervention care, including:
 - Adverse responses;
 - Adverse event recordkeeping; and
 - Reporting obligations.
- Completion of 25 patient sessions of dry needling performed:
 - Under the indirect supervision of a PT actively licensed to practice physical therapy in any state or the District of Columbia and who has actively practiced dry needling for at least 1 year; or
 - As a PT licensed in another state or in the United States Armed Forces.
- A requirement that dry needling may not be performed without patient consent, and patient consent must be part of the patient's documented care plan; and
- A requirement that dry needling may not be delegated to any person other than a PT who is authorized to engage in dry needling under Florida law.

The bill expands the scope of practice for physical therapy, since dry needling is not currently a treatment that PTs may perform. The bill gives no oversight to the Board of Medicine for physical therapists who perform dry needling the way current law provides for a PT's performance of acupuncture, which may be performed by a PT under current law only when no penetration of the skin occurs.

The bill further provides that the performance of dry needling in the practice of physical therapy under ch. 486, F.S., may not be construed to limit the scope of practice of any other licensed health care practitioners.

Section 3 provides an effective date of July 1, 2020.

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:

The expansion of the scope of practice for physical therapists could provide new avenues through which their services might be more in demand.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address the following:

- What constitutes the “psychomotor skills” that a PT must demonstrate to a PT instructor to safely perform dry needling;
- The definition of “indirect supervision” as used in the mandatory, minimum requirement that a PT complete 25 patient sessions of dry needling under the indirect supervision of a PT licensed in any state who has actively practiced dry needling for at least 1 year;
- The method or procedure the DOH is to follow to designate, certify or license, and track, a PT who has, or has not, met the minimum standards set by the Board to perform dry needling, to protect the public from PT’s who may be performing dry needling without meeting the minimum standards;
- Whether or not any of the 50 required face-to-face continuing education hours, from a college or university accredited by an accrediting agency approved by the United States Department of Education, may be counted toward the 24 hours of continuing education required for biennial license renewal under current law; and
- Whether or not, once a PT has initially demonstrated that he or she has satisfied the minimum required standards set by the Board to perform dry needling, any re-evaluation or further continuing education credits are require to maintain his or her status as a PT competent to perform dry needling.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 486.021 and 486.025.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Banking and Insurance on February 11, 2020:

The CS limits PT rehabilitation for a disability, injury, disease, or other health condition by alleviating impairments, to:

- Movement limitations, rather than functional, and modifying treatment interventions through therapeutic exercise;
- Functional movement training in self-management, rather than all functional training in self-care; and
- Removes the term “therapeutic” as a modifier for massage.

CS by Health Policy on January 21, 2020:

The CS:

- Defines “dry needling” and “myofascial trigger point”;
- Requires the Board to make rules to establish minimal standards of practice for providing dry needling and specifies certain items that those standards must include at a minimum; and
- Specifically excludes acupuncture from the practice of physical therapy.

- B. **Amendments:**

None.