OCCUPATIONAL THERAPISTS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: Carol Spackman Moss

LONG TITLE

General Description:
This bill modifies the Occupational Therapy Practice Act and related provisions.

Highlighted Provisions:
This bill:
- defines terms, including the "practice of occupational therapy";
- modifies the qualifications for an individual to get a license as an occupational therapist or as an occupational therapy assistant;
- modifies the supervision requirements of an occupational therapist when supervising an occupational therapy assistant;
- modifies who may engage in the practice of occupational therapy without a license;
- describes what is unlawful and unprofessional conduct under the act;
- extends the sunset date of the Occupational Therapy Practice Act; and
- makes technical changes.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:

58-42a-102, as last amended by Laws of Utah 2005, Chapter 71
58-42a-201, as enacted by Laws of Utah 1994, Chapter 240
58-42a-302, as last amended by Laws of Utah 2009, Chapter 183
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 58-42a-102 is amended to read:


In addition to the definitions in Section 58-1-102, as used in this chapter:

[(1) "Assessment" means the use of skilled observation or evaluation by administering and interpreting standardized or nonstandardized tests and measurements to identify areas for occupational therapy services.]

[(2)] (1) "Board" means the [Occupational Therapy] Board of Occupational Therapy created in Section 58-42a-201.

[(3) "Certified occupational therapy assistant" or "COTA" means a person certified as a certified occupational therapy assistant by the National Board for Certification in Occupational Therapy.]

(2) (a) "Individual treatment plan" means a written record composed for each client by a person licensed under this chapter to engage in the practice of occupational therapy.

[(4)] (b) "Individual treatment plan" includes:

[(5)] (i) planning and directing specific exercises and programs to improve sensory
integration and motor functioning at the level of performance neurologically appropriate for the individual's stage of development;

[(b)] (ii) establishing a program of instruction to teach a [patient in] client skills, behaviors, and attitudes necessary for the [patient's] client's independent productive, emotional, and social functioning;

[(c)] (iii) analyzing, selecting, and adapting functional exercises to achieve and maintain the [patient's] client's optimal functioning in activities of daily living [tasks] and to prevent further disability; and

[(d)] (iv) planning and directing specific programs to evaluate and enhance perceptual, motor, and cognitive skills.

[(5)] (3) "Occupational therapist" [or "OT"] means a person licensed [in the state] under this chapter to practice occupational therapy.

[(6) "Occupational therapist registered" or "OTR" means a person certified as an occupational therapist registered by the National Board for Certification in Occupational Therapy.]

[(7) "Occupational therapy" means the use of purposeful activity or occupational therapy interventions to develop or restore the highest possible level of independence of an individual who is limited by a physical injury or illness, a dysfunctional condition, a cognitive impairment, a psychosocial dysfunction, a mental illness, a developmental or learning disability, or an adverse environmental condition.]

(4) "Occupational therapy aide" means a person who is not licensed under this chapter but who provides supportive services under the supervision of an occupational therapist or occupational therapy assistant.

[(8)] (5) "Occupational therapy assistant" [or "OTA"] means a person licensed [in the state] under this chapter to practice occupational therapy under the supervision of an occupational therapist as [set forth] described in [Section] Sections 58-42a-305 and 58-42a-306.

[(9) "Occupational therapy services" include:]
[(a) assessing, treating, educating, or consulting with an individual, family, or other persons;]
[(b) developing, improving, or restoring an individual's daily living skills, work readiness, work performance, play skills, or leisure capacities, or enhancing an individual's educational performance skills;]
[(c) developing, improving, or restoring an individual's sensory-motor, oral-motor, perceptual, or neuromuscular functioning, or the individual's range of motion;]
[(d) developing, improving, or restoring the individual's emotional, motivational, cognitive, or psychosocial components of performance;]
[(e) assessing the need for and recommending, developing, adapting, designing, or fabricating splints or assistive technology devices for individuals;]
[(f) training individuals in the use of rehabilitative or assistive technology devices such as selected orthotic or prosthetic devices;]
[(g) applying physical agent modalities as an adjunct to or in preparation for purposeful activity;]
[(h) applying the use of ergonomic principles; and]
[(i) adapting or modifying environments and processes to enhance or promote the functional performance, health, and wellness of individuals.]
[(10) "Practice of occupational therapy" means rendering or offering to render occupational therapy services to individuals, groups, agencies, organizations, industries, or the public:]
(6) (a) "Practice of occupational therapy" means the therapeutic use of everyday life activities with an individual:
(i) that has or is at risk of developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction; and
(ii) to develop or restore the individual's ability to engage in everyday life activities by addressing physical, cognitive, psychosocial, sensory, or other aspects of the individual's performance.
(b) "Practice of occupational therapy" includes:

(i) establishing, remediating, or restoring an undeveloped or impaired skill or ability of an individual;

(ii) modifying or adapting an activity or environment to enhance an individual's performance;

(iii) maintaining and improving an individual's capabilities to avoid declining performance in everyday life activities;

(iv) promoting health and wellness to develop or improve an individual's performance in everyday life activities;

(v) performance-barrier prevention for an individual, including disability prevention;

(vi) evaluating factors that affect an individual's activities of daily living in educational, work, play, leisure, and social situations, including:

(A) body functions and structures;

(B) habits, routines, roles, and behavioral patterns;

(C) cultural, physical, environmental, social, virtual, and spiritual contexts and activity demands that affect performance; and

(D) motor, process, communication, interaction, and other performance skills;

(vii) providing interventions and procedures to promote or enhance an individual's safety and performance in activities of daily living in educational, work, and social situations, including:

(A) the therapeutic use of occupations and exercises;

(B) training in self-care, self-management, home-management, and community and work reintegration;

(C) the development, remediation, or compensation of behavioral skills and physical, cognitive, neuromuscular, and sensory functions;

(D) the education and training of an individual's family members and caregivers;

(E) care coordination, case management, and transition services;

(F) providing consulting services to groups, programs, organizations, or communities,
modifying the environment and adapting processes, including the application of ergonomic principles;

(H) assessing, designing, fabricating, applying, fitting, and providing training in assistive technology, adaptive devices, orthotic devices, and prosthetic devices;

(I) assessing, recommending, and training an individual in techniques to enhance functional mobility, including wheelchair management;

(J) driver rehabilitation and community mobility;

(K) enhancing eating and feeding performance; and

(L) applying physical agent modalities, managing wound care, and using manual therapy techniques to enhance an individual's performance skills, if the occupational therapist has received the necessary training as determined by division rule in collaboration with the board.

(7) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-42a-501.

[(H)] (8) "Unprofessional conduct" [is as defined in Section 58-42a-501] means the same as that term is defined in Sections 58-1-501 and 58-42a-502.

Section 2. Section 58-42A-103 is enacted to read:


When exercising rulemaking authority under this chapter, the division shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 3. Section 58-42a-201 is amended to read:

58-42a-201. Board.

(1) There is created the Board of Occupational Therapy consisting of three licensed occupational therapists, one licensed occupational therapy assistant, and one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203[; and in addition, the].
(4) The board shall designate one of its members on a permanent or rotating basis to:
(a) assist the division in reviewing complaints concerning the unlawful or unprofessional practice of a licensee; and to
(b) advise the division in its investigation of these complaints; and
[(b) disqualify any member of the board from participating as a member of the board in its capacity as a presiding officer in any administrative procedure in which that member has reviewed the complaint or advised the division.]

(5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may not participate with the board while the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Section 4. Section 58-42a-302 is amended to read:


(1) An applicant for licensure as an occupational therapist shall:
(a) submit an application in a form as prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) be of good moral character as it relates to the functions and responsibilities of the practice of occupational therapy;
(d) graduate with a bachelor's or graduate degree in occupational therapy from an education program accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or an equivalent organization as determined by division rule;
(e) [be certified by the National Board for Certification in Occupational Therapy as an occupational therapist registered;] if applying for licensure on or after July 1, 2015, complete a minimum of 24 weeks of supervised fieldwork experience; and
(f) pass an examination approved by the division in consultation with the board and administered by the National Board for Certification in Occupational Therapy, or by another
nationally recognized credentialing body as approved by division rule, to demonstrate
knowledge of the practice, skills, theory, and professional ethics related to occupational
therapy.

(2) All applicants for licensure as an occupational therapy assistant shall:
(a) submit an application in a form as prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) be of good moral character as it relates to the functions and responsibilities of the
practice of occupational therapy;
(d) [graduate with a two-year associate degree in occupational therapy from a program
accredited by the Accreditation Council for Occupational Therapy Education; and] graduate
from an educational program for the practice of occupational therapy as an occupational
therapy assistant that is accredited by the American Occupational Therapy Association's
Accreditation Council for Occupational Therapy Education, a predecessor organization, or an
equivalent organization as determined by division rule;
(e) if applying for licensure on or after July 1, 2015, complete a minimum of 16 weeks
of supervised fieldwork experience; and
(f) pass an examination approved by the division in consultation with the board and
administered by the National Board for Certification in Occupational Therapy, or by another
nationally recognized credentialing body as approved by division rule, to demonstrate
knowledge of the practice, skills, theory, and professional ethics related to occupational
therapy.

(3) Notwithstanding the other requirements of this section, the division may issue a
license as an occupational therapist or as an occupational therapy assistant to an applicant who:
(a) meets the requirements of receiving a license by endorsement under Section
58-1-302; or
(b) has been licensed in a state, district, or territory of the United States, or in a foreign
country, where the education, experience, or examination requirements are not substantially
equal to the requirements of this state, if the applicant passes the applicable examination
described in Subsection (1)(f) or (2)(f).

Section 5. Section 58-42a-303 is amended to read:

(1) The division shall issue each license under this chapter in accordance with a
two-year renewal cycle established by division rule.
(2) The division may by rule extend or shorten a renewal period by as much as one year
to stagger the renewal cycles it administers.
(3) Each license automatically expires on the expiration date shown on the license
unless the licensee renews it in accordance with Section 58-1-308.

Section 6. Section 58-42a-303.5 is enacted to read:

58-42a-303.5. Continuing education.
(1) As a condition for renewal of a license under this chapter, a licensee shall complete
24 hours of qualified continuing professional education, in accordance with standards defined
by division rule in collaboration with the board, during each two-year licensure cycle.
(2) If a renewal cycle is extended or shortened under Subsection (1), the continuing
education hours required for license renewal under this section shall be increased or decreased
proportionally.

Section 7. Section 58-42a-304 is amended to read:

58-42a-304. Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307, [a person who
performs activities that are repetitive and routine in nature and that do not require specific
skills or knowledge may engage in acts or practices included within the definition of the
practice of occupational therapy under general supervision of an occupational therapist as
defined by rule, without being licensed under this chapter.] the following may engage in the
stated limited acts or practices without being licensed under this chapter:
(1) a person licensed in the state who is engaging in the practice of the person's
profession or occupation as defined in statute under which the person is licensed;

(2) a person pursuing a course of study leading to a degree for the practice of
occupational therapy at an accredited education program, if that person is acting under
appropriate supervision and is designated by a title that clearly indicates the person's status as a
student; and

(3) a person fulfilling the supervised fieldwork experience requirements for licensure
described in Section 58-42a-302, if the person is acting under appropriate supervision and is
designated by a title that clearly indicates the person is performing supervised fieldwork
experience to qualify for a license under this chapter.

Section 8. Section 58-42a-305 is amended to read:

58-42a-305. Limitation upon occupational therapy services provided by an
occupational therapy assistant and an occupational therapy aide.

(1) An occupational therapy assistant shall:

(a) may only perform occupational therapy services under the supervision of an
occupational therapist as described in Section 58-42a-306;

(b) may not write an individual treatment plan;

(c) may not approve or cosign modifications to an individual treatment plan; and

(d) may contribute to and maintain an individual treatment plan.

(2) An occupational therapy aide:

(a) may only perform occupational therapy services under the direct supervision of an
occupational therapist or an occupational therapy assistant;

(b) may not write, modify, contribute, or maintain an individual treatment plan; and

(c) may only perform tasks that are repetitive and routine for which the aide has been
trained and has demonstrated competence.

Section 9. Section 58-42a-306 is amended to read:

58-42a-306. Supervision requirements.
An occupational therapist who is supervising an occupational therapy assistant shall perform the following functions:

1. Write or contribute to an individual treatment plan before referring a client to a supervised occupational therapy assistant for treatment;
2. Approve and cosign on all modifications to the individual treatment plan;
3. Perform an assessment of the patient before referring the patient to a supervised occupational therapy assistant for treatment;
4. Meet face to face with the supervised occupational therapy assistant as often as necessary but at least once every two weeks in person or by video conference, and at least one time every month in person, to adequately provide consultation, advice, training, and direction to the occupational therapy assistant;
5. Meet with each patient who has been referred to a supervised occupational therapy assistant at least once each month, unless otherwise approved by the division in collaboration with the board, to further assess the patient, evaluate the treatment, and modify the individual's treatment plan, except that if the interval of client care occurs one time per month or less, the occupational therapist shall meet with the client at least once every four visits;
6. Supervise no more than two full-time occupational therapy assistants at one time, or four part-time occupational therapy assistants if the combined work hours of the assistants do not exceed 40 hours per week, unless otherwise approved by the division in collaboration with the board; and
7. Remain responsible for patient treatment provided by the occupational therapy assistant; and
8. Fulfill any other supervisory responsibilities as determined by division rule.

Section 10. Section 58-42a-501 is repealed and reenacted to read:

Part 5. Unlawful and Unprofessional Conduct

58-42a-501. Unlawful conduct.

"Unlawful conduct," as defined in Section 58-1-501 and as may be further defined by
division rule, includes:

(1) engaging or offering to engage in the practice of occupational therapy unless licensed under this chapter or exempted from licensure under Section 58-1-307 or 58-42a-304;

(2) using the title occupational therapist or occupational therapy assistant unless licensed under this chapter;

(3) employing or aiding and abetting an unqualified or unlicensed person to engage or offer to engage in the practice of occupational therapy unless the person is exempted from licensure under Section 58-1-307 or 58-42a-304; and

(4) obtaining a license under this chapter by means of fraud, misrepresentation, or concealment of a material fact.

Section 11. Section 58-42a-502 is enacted to read:


"Unprofessional conduct," as defined in Section 58-1-501 and as may be further defined by division rule, includes:

(1) being convicted of a crime in any court except for minor offenses;

(2) violating a lawful order, rule, or regulation adopted by the division in consultation with the board;

(3) providing substandard care as an occupational therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the client is established;

(4) providing substandard care as an occupational therapy assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising occupational therapist, regardless of whether actual injury to the client is established;

(5) knowingly delegating responsibilities related to the practice of occupational therapy to an individual, including an occupational therapy aide, who does not have the knowledge, skills, or abilities to perform those responsibilities;

(6) failing to provide appropriate supervision in accordance with this chapter to an occupational therapy assistant or occupational therapy aide;
(7) practicing as an occupational therapist or occupational therapy assistant when physical or mental impairment of the occupational therapist or occupational therapy assistant prevents the provision of competent services to clients;

(8) having had an occupational therapist, occupational therapy assistant, or equivalent license or application refused, revoked, suspended, or other disciplinary action taken in another state, United States territory, or country;

(9) engaging in sexual misconduct, including:

(a) engaging in or soliciting a sexual relationship with a client;

(b) making a sexual advance, requesting a sexual favor, or engaging in physical contact of a sexual nature with a client; and

(c) engaging in verbal or physical conduct of a sexual nature in the presence of a client; and

(10) abandoning or neglecting a client in need of immediate professional care without making reasonable arrangements for the continuation of care.

Section 12. Section 63I-1-258 is amended to read:

63I-1-258. Repeal dates, Title 58.

(1) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2016.

(2) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.

(3) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2018.

(4) Section 58-37-4.3 is repealed July 1, 2016.

(5) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.

(6) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is repealed July 1, 2019.

(7) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2025.

(8) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2023.
(9) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2024.

(10) Section 58-69-302.5 is repealed on July 1, 2015.

(11) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.