Legislative Analysis

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OCCUPATIONAL THERAPIST LICENSURE

Senate Bill 921 (Substitute H-1)
Sponsor: Sen. Roger Kahn, M.D.
House Committee: Health Policy
Senate Committee: Health Policy

First Analysis (11-7-08)

BRIEF SUMMARY: The bill would license, rather than register, occupational therapists, establish minimum requirements for licensure, require continuing education courses or continuing competence as a condition for license renewal, require one Board of Occupational Therapists member to be a physician, and increase the annual license fee to $75 (from the current $60 for registration).

FISCAL IMPACT: The bill would have a modest fiscal impact to the state as discussed later.

THE APPARENT PROBLEM:

The profession of occupational therapy is almost 100 years old. According to the Michigan Occupational Therapy Association, practitioners utilize "everyday life activities (occupations) and specialized interventions with people for the purpose of helping them participate in meaningful roles at home, in school, the workplace, the community, and other settings." They often work with populations having serious illnesses, injuries, and disabilities. Currently, OTs must be certified by a national credentialing agency and registered with the state. Industry members feel that in a world of rapidly evolving medical advances, a system of registration does little to protect the safety of clients or ensure practitioners have the training and competency to deliver needed services. Registration is a weaker form of regulation that licensing; indeed, it primarily protects the use of titles related to occupational therapy and establishes the bare minimum of educational requirements. To date, 47 states, the District of Columbia, Guam, and Puerto Rico license OTs. Legislation has been offered to change the regulation of occupational therapists from a system of registration to a system of licensure.

THE CONTENT OF THE BILL:

The bill would amend Part 183 (Occupational Therapists) of the Public Health Code (MCL 333.16345 et al.) to provide for the licensure of occupational therapists, rather than the registration of certified occupational therapists. The bill would do the following:

- Prohibit an individual from engaging in the practice of occupational therapy or practicing as an OT assistant without being licensed or otherwise authorized, after rules for licensure were promulgated.

- Require the Michigan Board of Occupational Therapists to establish minimum standards for licensure as an occupational therapist or OT assistant.
- Require a licensee to meet continuing education or continuing competence requirements for license renewal, and allow the board to promulgate rules requiring a licensee to provide evidence of completion.
- Require one board member to be a physician.
- Replace the $60 annual registration fee with a $75 annual license fee.

Practice of Occupational Therapy

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

Instead, the bill would define "occupational therapist" as an individual licensed under Article 15 to engage in the practice of occupational therapy. "Practice as an occupational therapy assistant" would mean the practice of occupational therapy under the supervision of a licensed occupational therapist.

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

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

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

- Establishment, remediation, or restoration of a skill or ability that is impaired or not yet developed.
- Compensation, modification, or adaptation of a person, activity, or environment.

- Evaluation of factors that affect activities of daily living, instrumental activities of daily living, and other activities relating to education, work, play, leisure, and social participation.

These factors would include body functions, body structure, habits, routines, role performance, behavior patterns, sensory motor skills, and cultural, physical, psychosocial, spiritual, developmental, environmental, and socioeconomic contexts and activities that affect performance.

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

- Task analysis and therapeutic use of occupations, exercises, and activities.
- Training in self-care, self-management, home management, and community or work reintegration.
- Development remediation or compensation of client factors such as body functions and body structure.
- Education and training.
- Care coordination, case management, transition, and consultative services.
- Modification of environments and adaptation processes such as the application of ergonomic and safety principles.
- Assessment, 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.
- 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.
- Providing vision therapy services or low vision rehabilitation services under a physician's or optometrist's referral, prescription, or supervision or comanagement.

Protected Titles

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

The bill, instead, would prohibit an individual, after rules for licensure were promulgated, from using the following titles or similar words that indicated that he or she was licensed

as an occupational therapist or OT assistant unless the individual were licensed under Article 15: occupational therapist, o.t., occupational therapist licensed, o.t.l., occupational therapist registered, o.t.r., occupational therapist registered licensed, o.t.r.l., certified occupational therapy assistant, c.o.t.a., certified occupational therapy assistant licensed, c.o.t.a.l., occupational therapy assistant, o.t.a., occupational therapy assistant licensed, or o.t.a.l.

License Requirement

Currently, the Department of Community Health (DCH) must promulgate rules setting forth minimum standards for registration as a certified occupational therapist, and for registration as an occupational therapy assistant (though existing provisions grant rule-making authority to the Board of Occupational Therapists, in consultation with the department, an executive order issued by the previous administration established rule-making authority with the department rather than with individual boards).

The bill instead would require the Michigan Board of Occupational Therapists, in consultation with the DCH, to promulgate rules setting forth minimum standards for licensure as an occupational therapist and for licensure as an OT assistant.

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

Exemptions from Licensure

The bill would not prevent the following:

- Self-care by a patient or uncompensated care by a friend or family member who did not represent or hold himself or herself out to be a licensed OT or OT assistant.

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

- An orthotist or prosthetist from providing services consistent with his or her training in orthotics or prosthetics if he or she were certified by the American Board for Certification in orthotics, prosthetics, and pedorthics, and did not represent or hold himself or herself out to be a licensed OT or OT assistant.

- A certified parks and recreation professional or certified therapeutic recreation specialist providing services if he or she is directly employed by a local unit of government and did not represent or hold himself or herself out to be a licensed OT or OT assistant.

License Renewal

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

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

Board Members

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

License Fees

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

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

Reimbursement for Services

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

The bill is tie-barred to Senate Bill 493, which would establish a framework of licensure for speech-language pathologists.

HOUSE COMMITTEE ACTION:

The House Committee on Health Policy adopted an amendment to include the provision of vision therapy services or low vision rehabilitation services in the list of interventions and procedures that make up occupational therapy services. A second amendment exempted certified parks and recreation professionals and certified therapeutic recreation specialists meeting certain conditions from the licensing requirements.

FISCAL INFORMATION:

Senate Bill 921 (H-1) as reported by the House Committee on Health Policy will have a modest fiscal impact on the Department of Community Health's Bureau of Health Professions. The existing registration operations, board and violations process are in place for conversion to a licensing system. Some additional costs will be incurred by the Department to carry out related regulatory functions and continuing education verification.

The bill proposes to increase annual fees from $60 to $75. The additional revenue is estimated at $84,200 if all existing registered occupational therapists (4,463, according to the department) and occupational therapy assistants (1,150) apply for licensure. This may support one or more staff for the additional costs and responsibilities of the DCH.

In addition, the defined scope of practice for occupational therapists, as currently written, could potentially be interpreted to include direct care workers engaged in skill building, community living supports and training, and personal care services in local residential settings (group homes) administered by community mental health services programs (CMHSPs). If this interpretation is correct, this proposed legislation could result in CMHSPs and/or contracted providers being required to employ licensed occupational therapists who have master's degrees and command higher annual salaries than current staff in group homes.

Based on information from the U.S. Bureau of Labor Statistics, in May 2006, the average median annual earnings of occupational therapists working in home health care services, nursing care facilities, offices of physical, occupational and speech therapists, and audiologists, general medical and surgical hospitals, and elementary and secondary schools was $62,102. The average annual wage level for direct support staff working within the CMHSP system is $18,200 to $19,240 ($8.75 per hour to $9.25 per hour). For every 10 staff persons that may have to be replaced by CMHSPs to meet the scope of practice for occupational therapists, additional staff costs between $428,620 and $439,020 annually would be incurred.

ARGUMENTS:

For:

Occupational therapists and occupational therapy assistants work with a varied population that includes the elderly, stroke victims, and individuals with spinal cord injuries, mental illnesses, and developmental disabilities. They may teach a stroke victim to swallow, use electrical stimulation to assist in muscle movement, or help arthritis sufferers regain or maintain joint function, especially of the hands. There are many weaknesses in registering, rather than licensing, occupational therapists. Though registration does establish a minimum level of education to enter the profession, it does not ensure that practitioners maintain an acceptable level of competency as medical technology and practices advance.

Licensing, on the other hand, as the highest form of regulation, is better suited to protect the public in a field where advances in technology and research means treatment practices are evolving. According to practitioners who testified before the House Health Policy committee, there have been instances in which OTs have given or recommended the wrong treatment for a patient. Registration, therefore, is seen as being inadequate to ensure patients are receiving the type of care, and the quality of care, needed as it primarily prevents unregistered individuals from using certain protected titles.

The bill would address the concerns raised by occupational therapists by defining terms used in the practice of occupational therapy, defining a scope of practice, and requiring continuing education and evidence of competency as conditions of license renewal. Requiring continuing education courses or continuing competency activities will keep an OT's or OT assistant's knowledge and practice skills current.

The bill is similar in construction to licensure statutes in other states and so should not impede the practice of related health professions or occupations. It also would not increase reimbursement rates by health insurers. Further, since most states license OTs, doing the same in Michigan would create a more favorable climate to attract and retain occupational therapists; currently, many Michigan-educated and trained OTs seek employment in jurisdictions in which OTs are licensed because of the greater opportunities available to licensed practitioners. In short, by moving to a system of licensure, the bill would, according to the Michigan Occupational Therapy Association, "provide the public with some assurance that an Occupational Therapy practitioner working within their scope of practice is qualified and competent to perform those functions" they have been trained in.

Against:

Part of the challenge with drafting licensure statutes is that many allied health professions have overlapping scopes of practice. Without adequate exemptions, a licensing bill can inadvertently capture individuals who provide similar services, thus raising the concern that some may be prevented from continuing to work in their current employment unless they, too, are licensed as occupational therapists.

Senate Bill 921 remains problematic for the following reasons:

- The defined scope of practice for OTs and OTAs contained in the bill is overly broad and could encroach on such professions as activity therapists, life enrichment coordinators, music therapists, art therapists, and even chaplains.

- The bill does not exempt group home staff engaged in skill building, support and employment, and direct personnel care under an individual plan of service developed by community mental health programs for individuals living in the group home or for those who provide such support in the community. These workers are highly trained but are not currently licensed or registered under any other act; therefore, they would not fall under any of the provided exemptions.

- A House-committee amendment regarding certified parks and recreation professionals or certified therapeutic recreation specialists is not comprehensive enough. The amendment only exempts those individuals directly employed by municipal parks and recreation departments. Reportedly, however, the municipal programs often employ non-certified individuals and some municipalities are concerned that without further clarification, the non-certified employees could be viewed as illegally encroaching on the OT scope of practice. Further, providers of recreation therapy services work in many public and private settings, not just municipal parks and recreation programs. Recreation therapy grew out of occupational therapy and so some of the practice areas overlap. Recreation therapists are allied health professionals who work along with OTs and other health care providers in hospitals, nursing homes, clinics, prisons, and other settings. However, since the profession is not currently regulated under state law, the profession in general would fall outside of provided exemptions. Without a broader exemption, the 654 certified recreation therapist specialists in the state would be impacted. In addition, jobs that currently may be filled by either OTs or certified recreation therapists could, under the bill's definition of OT practices, be interpreted by employers as requiring licensure as an OT.

Response:

The scope of practice language contained in the bill is based on the model occupational therapist code and is similar in content to statutes enacted in 47 other states. There have been no reported problems in those other licensed jurisdictions. Therefore, the bill is not expected to result in the types of intrusions or restrictions raised above on the practice of other allied health professions.

Against:

Typically, new licensing acts "grandfather" in those professionals currently engaging in the profession. For example, when regulation of social workers changed from a system of registration to a system of licensure several years ago, the legislation contained a grandfather clause by which currently registered social workers could be automatically licensed if they applied for licensure within a short window of opportunity, after which time an applicant for licensure had to meet the new qualifications established in the legislation. As written, Senate Bill 921 does not contain a grandfather clause and so would appear to require all current registered certified occupational therapists to apply for licensure in the same manner as future applicants.

Response:

OTs and OTAs currently registered to practice in Michigan already must meet national standards for education and practice. Therefore, the change to a licensure system should not be burdensome for those applying for the new license. The bill would institute new requirements for continuing education and continuing competency for renewal of a license, but many licensed professions have similar continuing education requirements.

Against:

In the early part of the decade, an executive order placed rule-making authority with the Department of Community Health instead of individual health boards. The reasoning behind the change was that a neutral entity was better suited to developing rules

governing practitioners of a health profession than boards which, by statute, were mostly composed of members of that profession and who would be affected by whatever regulations were placed, or not placed, in the rules. Individual licensing or registration statutes were not amended at the time to reflect the change, but as new licensing or registration acts have been enacted, authority to promulgate rules has been given to the department. The bill, however, retains the old language that gives rule-making authority to the board and repeats this language in a new section pertaining to continuing education and continuing competency requirements. It is not clear if this was an oversight or a deliberate departure from having rule-making rest with the department.

POSITIONS:

The Michigan Occupational Therapy Association supports the bill. (9-25-08)

The City of Wyoming supports the bill. (11-6-08)

The Department of Community Health supports the bill in concept. (9-25-08)

The Economic Alliance of Michigan, although it has some concerns, is neutral. (9-25-08)

The Michigan Association of Community Health Boards cannot support the bill without an exemption for staff helping to build daily living skills and providing community support for individuals served by community mental health programs. (11-4-08)

Michigan Recreation and Parks Association would support the bill if amended to exempt both public and private sector recreation therapists. (10-30-08)

The Michigan Therapeutic Recreation Association opposes the committee-passed version of the bill but would support the bill if amended to exempt all certified recreation therapist specialists and not just those working for municipalities.

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