

1 SB302
2 211039-1
3 By Senator McClendon
4 RFD: Healthcare
5 First Read: 04-MAR-21

SYNOPSIS: This bill would authorize the Alabama State Board of Occupational Therapy to establish an impaired practitioner program for occupational therapists and occupational therapy assistants.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama State Board of Occupational Therapy; to amend Sections 34-39-3 and 34-39-7, Code of Alabama 1975, and to add Section 34-39-12.1 to the Code of Alabama 1975; to authorize the board to establish an impaired practitioner program for occupational therapists and occupational therapy assistants.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-39-3 and 34-39-7 of the Code of Alabama 1975, are amended to read as follows:

"§34-39-3.

1 "In this chapter, the following terms shall have the
2 respective meanings provided in this section unless the
3 context clearly requires a different meaning:

4 "(1) ASSOCIATION. The Alabama Occupational Therapy
5 Association.

6 "(2) BOARD. The Alabama State Board of Occupational
7 Therapy.

8 "(3) IMPAIRED. The inability of an occupational
9 therapist or occupational therapy assistant to practice
10 occupational therapy with reasonable skill and safety to
11 patients by reason of illness, inebriation, excessive use of
12 drugs, narcotics, alcohol, chemicals, or other substances, or
13 as a result of any physical or mental condition.

14 ~~"(3)(4) LICENSE. A valid and current certificate of~~
15 ~~registration issued by the Alabama State Board of Occupational~~
16 ~~Therapy board.~~

17 ~~"(4)(5) OCCUPATIONAL THERAPY.~~

18 "a. The practice of occupational therapy means the
19 therapeutic use of occupations, including everyday life
20 activities with individuals, groups, populations, or
21 organizations to support participation, performance, and
22 function in roles and situations in home, school, workplace,
23 community, and other settings. Occupational therapy services
24 are provided for habilitation, rehabilitation, and the
25 promotion of health and wellness to those who have or are at
26 risk for developing an illness, injury, disease, disorder,
27 condition, impairment, disability, activity limitation, or

1 participation restriction. Occupational therapy addresses the
2 physical, cognitive, psychosocial, sensory-perceptual, and
3 other aspects of performance in a variety of contexts and
4 environments to support engagement in occupations that affect
5 physical and mental health, well-being, and quality of life.
6 The practice of occupational therapy includes:

7 "1. Evaluation of factors affecting activities of
8 daily living (ADL), instrumental activities of daily living
9 (IADL), rest and sleep, education, work, play, leisure, and
10 social participation including all of the following:

11 "(i) Client factors, including body functions, such
12 as neuromusculoskeletal, sensory-perceptual, visual, mental,
13 cognitive, and pain factors; body structures such as
14 cardiovascular, digestive, nervous, integumentary,
15 genitourinary systems, and structures related to movement;
16 values, beliefs, and spirituality.

17 "(ii) Habits, routines, roles, rituals, and behavior
18 patterns.

19 "(iii) Physical and social environments, cultural,
20 personal, temporal, and virtual contexts, and activity demands
21 that affect performance.

22 "(iv) Performance skills, including motor and
23 praxis, sensory-perceptual, emotional regulation, cognitive,
24 communication, and social skills.

25 "2. Methods or approaches selected to direct the
26 process of interventions such as:

1 "(i) Establishment, remediation, or restoration of a
2 skill or ability that has not yet developed, is impaired, or
3 is in decline.

4 "(ii) Compensation, modification, or adaptation of
5 activity or environment to enhance performance, or to prevent
6 injuries, disorders, or other conditions.

7 "(iii) Retention and enhancement of skills or
8 abilities without which performance in everyday life
9 activities would decline.

10 "(iv) Promotion of health and wellness, including
11 the use of self-management strategies, to enable or enhance
12 performance in everyday life activities.

13 "(v) Prevention of barriers to performance and
14 participation, including injury and disability prevention.

15 "3. Interventions and procedures to promote or
16 enhance safety and performance in activities of daily living
17 (ADL), instrumental activities of daily living (IADL), rest
18 and sleep, education, work, play, leisure, and social
19 participation including all of the following:

20 "(i) Therapeutic use of occupations, exercises, and
21 activities.

22 "(ii) Training in self-care, self-management, health
23 management and maintenance, home management, community/work
24 reintegration, and school activities and work performance.

25 "(iii) Development, remediation, or compensation of
26 neuromusculoskeletal, sensory-perceptual, visual, mental, and

1 cognitive functions, pain tolerance and management, and
2 behavioral skills.

3 "(iv) Therapeutic use of self, including one's
4 personality, insights, perceptions, and judgments, as part of
5 the therapeutic process.

6 "(v) Education and training of individuals,
7 including family members, caregivers, groups, populations, and
8 others.

9 "(vi) Care coordination, case management, and
10 transition services.

11 "(vii) Consultative services to groups, programs,
12 organizations, or communities.

13 "(viii) Modification of environments, including
14 home, work, school, or community, and adaptation of processes,
15 including the application of ergonomic principles.

16 "(ix) Assessment, design, fabrication, application,
17 fitting, and training in seating and positioning, assistive
18 technology, adaptive devices, training in the use of
19 prosthetic devices, orthotic devices, and the design,
20 fabrication, and application of selected splints or orthotics.

21 "(x) Assessment, recommendation, and training in
22 techniques to enhance functional mobility, including
23 management of wheelchairs and other mobility devices.

24 "(xi) Low vision rehabilitation when the patient or
25 client is referred by a licensed optometrist, a licensed
26 ophthalmologist, a licensed physician, a licensed assistant to
27 physician acting pursuant to a valid supervisory agreement, or

1 a licensed certified registered nurse practitioner in a
2 collaborative practice agreement with a licensed physician.

3 "(xii) Driver rehabilitation and community mobility.

4 "(xiii) Management of feeding, eating, and
5 swallowing to enable eating and feeding performance.

6 "(xiv) Application of physical agent modalities, and
7 use of a range of specific therapeutic procedures such as
8 wound care management, interventions to enhance
9 sensory-perceptual and cognitive processing, and manual
10 therapy, all to enhance performance skills.

11 "(xv) Facilitating the occupational performance of
12 groups, populations, or organizations through the modification
13 of environments and the adaptation of processes.

14 "b. An occupational therapist or occupational
15 therapy assistant is qualified to perform the above activities
16 for which they have received training and any other activities
17 for which appropriate training or education, or both, has been
18 received. Notwithstanding any other provision of this chapter,
19 no occupational therapy treatment programs to be rendered by
20 an occupational therapist, occupational therapy assistant, or
21 occupational therapy aide shall be initiated without the
22 referral of a licensed physician, a licensed chiropractor, a
23 licensed optometrist, a licensed assistant to a physician
24 acting pursuant to a valid supervisory agreement, a licensed
25 certified registered nurse practitioner in a collaborative
26 practice agreement with a licensed physician, a licensed
27 psychologist, or a licensed dentist who shall establish a

1 diagnosis of the condition for which the individual will
2 receive occupational therapy services. In cases of long-term
3 or chronic disease, disability, or dysfunction, or any
4 combination of the foregoing, requiring continued occupational
5 therapy services, the person receiving occupational therapy
6 services shall be reevaluated by a licensed physician, a
7 licensed chiropractor, a licensed optometrist, a licensed
8 assistant to a physician acting pursuant to a valid
9 supervisory agreement, a licensed certified registered nurse
10 practitioner in a collaborative practice agreement with a
11 licensed physician, a licensed psychologist, or a licensed
12 dentist at least annually for confirmation or modification of
13 the diagnosis. Occupational therapists performing services
14 that are not related to injury, disease, or illness that are
15 performed in a wellness or community setting for the purposes
16 of enhancing performance in everyday activities are exempt
17 from this referral requirement. Occupational therapists
18 employed by state agencies and those employed by the public
19 schools and colleges of this state who provide screening and
20 rehabilitation services for the educationally related needs of
21 the students are exempt from this referral requirement.

22 "c. Nothing in this chapter shall be construed as
23 giving occupational therapists the authority to examine or
24 diagnose patients or clients for departures from the normal of
25 human eyes, visual systems or their adjacent structures, or to
26 prescribe or modify ophthalmic materials including, but not

1 limited to, spectacles, contacts, or spectacle-mounted low
2 vision devices.

3 "~~(5)~~(6) OCCUPATIONAL THERAPIST. A person licensed to
4 practice occupational therapy whose license is in good
5 standing.

6 "~~(6)~~(7) OCCUPATIONAL THERAPY ASSISTANT. A person
7 licensed to assist in the practices of occupational therapy
8 under the supervision of, or with the consultation of, a
9 licensed occupational therapist whose license is in good
10 standing.

11 "~~(7)~~(8) OCCUPATIONAL THERAPY AIDE. A person who
12 assists in the delivery of occupational therapy, who works
13 under direct on-site supervision of an occupational therapist
14 or occupational therapy assistant, or both, and whose
15 activities require an understanding of occupational therapy
16 but do not require professional or advanced training in the
17 basic anatomical, biological, psychological, and social
18 sciences involved in the practice of occupational therapy. No
19 activity listed under paragraph a. of subdivision ~~(4)~~ (5) may
20 be performed by an occupational therapy aide.

21 "~~(8)~~(9) PERSON. A human person only, not a legal
22 entity.

23 "~~(9)~~(10) WITH THE CONSULTATION OF. The collaboration
24 of two or more persons on a regularly scheduled basis for the
25 purpose of planning, review, or evaluation of occupational
26 therapy services.

27 "§34-39-7.

1 "(a) The board shall administer, coordinate, and
2 enforce this chapter.

3 "(b) The board ~~shall~~, within 90 days of the time at
4 which it is appointed, shall notify all current practitioners
5 of occupational therapy in the state, as identified by the
6 American Occupational Therapy Certification Board, of the
7 enactment of this chapter and its otherwise becoming a law.

8 "(c) The board shall adopt and publish rules ~~and~~
9 ~~regulations~~ relating to the professional conduct to carry out
10 the policies of this chapter, including, but not limited to,
11 ~~regulations~~ rules relating to professional licensure,
12 registration, and the establishment of ethical standards of
13 practice. The State Board of Medical Examiners and the Alabama
14 State Board of Occupational Therapy ~~must~~ shall jointly approve
15 any rule, ~~regulation,~~ or policy that interprets, explains, or
16 enumerates the permissible acts, functions, or services
17 rendered by an occupational therapist, occupational therapy
18 assistant, or occupational therapy aide as those acts,
19 functions, and services are defined in Section 34-39-3. Any
20 rule, ~~regulation,~~ or policy adopted in violation of this
21 requirement is invalid.

22 "(d) The board shall evaluate the qualifications of
23 all applicants for licensure under this chapter and shall
24 maintain a register of all persons holding a license and a
25 record of all inspections made.

26 "(e) The board shall approve all examinations of
27 applicants for licensure at least twice a year, shall

1 determine the qualifications and authorize the issuance of
2 licenses to qualified occupational therapists and occupational
3 therapy assistants, and shall renew, suspend, or revoke the
4 licenses in the manner provided.

5 "(f) The board may investigate complaints and
6 allegations concerning the violation of this chapter and may
7 examine witnesses, issue subpoenas, and administer oaths in
8 connection with these investigations. Hearings may be
9 conducted, provided reasonable public notice is given and
10 records and minutes are kept in accordance with the rules ~~and~~
11 ~~regulations~~ of the board.

12 "(g) The board shall make an annual report to the
13 Governor which shall contain an account of duties performed,
14 actions taken, and appropriate recommendations.

15 "(h) The board shall establish a budget in
16 accordance with the requirements of the state.

17 "(i) The board may establish and publish reasonable
18 fees as established in Section 34-39-14.

19 "(j) The board may employ and discharge an executive
20 director and any officers and employees as may be necessary,
21 and shall determine their duties and fix their compensation in
22 accordance with applicable state statutes. The board shall
23 hire and establish the responsibilities and salary of all
24 employees.

25 "(k) The board shall establish an impaired
26 practitioner program beginning January 1, 2022, pursuant to
27 Section 34-39-12.1."

1 Section 2. Section 34-39-12.1 is added to the Code
2 of Alabama 1975, to read as follows:

3 §34-39-12.1.

4 (a) The board shall promote the early
5 identification, intervention, treatment, and rehabilitation of
6 occupational therapists or occupational therapy assistants who
7 may be impaired.

8 (b) To accomplish this obligation, the board may
9 contract with any nonprofit corporation or medical
10 professional association to create, support, and maintain an
11 Alabama Occupational Therapy Wellness Committee. The committee
12 shall be selected in a manner prescribed by the board. The
13 board may expend available funds as necessary to adequately
14 provide for the operational expenses of the committee
15 including, but not limited to, the actual cost of travel,
16 office overhead, and personnel expense. The expenditure of
17 funds provided by the board for operating expenses of the
18 committee are not subject to state competitive bid laws.

19 (c) The board may enter into an agreement with a
20 nonprofit corporation or medical professional association for
21 the committee to undertake those functions and
22 responsibilities specified in the agreement, which may include
23 any or all of the following:

24 (1) Contracting with providers of treatment
25 programs.

26 (2) Receiving and evaluating reports of suspected
27 impairment from any source.

1 (3) Intervening in cases of verified impairment.

2 (4) Referring impaired occupational therapists or
3 occupational therapy assistants to treatment programs.

4 (5) Monitoring the treatment and rehabilitation of
5 impaired occupational therapists or occupational therapy
6 assistants.

7 (6) Providing post-treatment monitoring and support
8 of rehabilitated impaired occupational therapists or
9 occupational therapy assistants.

10 (7) Performing other activities as agreed by the
11 board and the committee.

12 (d) The committee shall develop procedures in
13 consultation with the board for all of the following:

14 (1) Periodic reporting of statistical information
15 regarding impaired practitioner program activity.

16 (2) Periodic disclosure and joint review of all
17 information the board deems appropriate regarding reports
18 received, contracts or investigations made, and the
19 disposition of each report. The committee may not disclose any
20 personally identifiable information except as otherwise
21 provided in this chapter.

22 (e) Any person appointed to serve as a member of the
23 committee and any auxiliary personnel, consultant, attorney,
24 or other volunteer or employee of the committee taking any
25 action authorized by this chapter, engaging in the performance
26 of any duties on behalf of the committee, or participating in
27 any administrative or judicial proceeding resulting therefrom,

1 in the performance and operation thereof, shall be immune from
2 any liability, civil or criminal, that might otherwise be
3 incurred or imposed. Any nonprofit corporation or medical
4 professional association or other entity that contracts with
5 or receives funds from the board for the creation, support,
6 and operation of the committee, in so doing, shall be immune
7 from any liability, civil or criminal, that might otherwise be
8 incurred or imposed.

9 (f) All information, interviews, reports,
10 statements, memoranda, or other documents furnished to or
11 produced by the committee and any findings, conclusions,
12 recommendations, or reports resulting from any investigation,
13 intervention, treatment, or rehabilitation, or other
14 proceeding of the committee is privileged and confidential.
15 All records and proceedings of the committee pertaining to an
16 impaired occupational therapist or occupational therapy
17 assistant are confidential and shall be used by the committee
18 and the members of the committee only in the exercise of the
19 proper function of the committee and shall not be public
20 record nor available for court subpoena or for discovery
21 proceedings. In the event of a breach of contract between the
22 committee and the impaired occupational therapist or
23 occupational therapy assistant, all records pertaining to the
24 conduct determined to cause the breach of contract shall be
25 disclosed to the board upon its request for disciplinary
26 purposes only. Nothing contained in this subsection shall
27 apply to records made in the regular course of business of an

1 occupational therapist or occupational therapy assistant and
2 any information, document, or record otherwise available from
3 an original source may not be construed as immune from
4 discovery or use in any civil proceeding merely because it is
5 presented or considered during proceedings of the committee.

6 (g) The committee shall render an annual report to
7 the board concerning the operations and proceedings of the
8 committee for the preceding year. The committee shall report
9 to the board any occupational therapist or occupational
10 therapy assistant who the committee determines is impaired,
11 when it appears that the occupational therapist or
12 occupational therapy assistant is currently in need of
13 intervention, treatment, or rehabilitation and the
14 occupational therapist or occupational therapy assistant has
15 failed or refused to participate in any program of treatment
16 or rehabilitation recommended by the committee. A report to
17 the committee shall be deemed a report to the board for the
18 purposes of any mandated reporting of occupational therapy
19 licensee impairment or occupational therapy assistance
20 licensee impairment otherwise provided for by law.

21 (h) If the board has reasonable cause to believe
22 that an occupational therapist or occupational therapy
23 assistant is impaired, the board may cause an evaluation of
24 the occupational therapist or occupational therapy assistant
25 to be conducted by the committee for the purpose of
26 determining if there is an impairment. The committee shall
27 report the findings of its evaluation to the board.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.