

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 440

As Recommended by Senate Committee on
Public Health and Welfare

Brief*

SB 440 would authorize occupational therapists to provide limited services to patients without referral from a health care provider and amend the Occupational Therapy Practice Act (Act).

Occupational Therapists and Referrals

The bill would allow occupational therapists to evaluate and initiate occupational therapy treatment on a patient without referral from a health care practitioner.

The bill would create conditions under which an occupational therapist would be required to obtain a referral from an appropriate health care practitioner. An occupational therapist who is treating a patient without a referral from a health care practitioner would be required to obtain a referral from an appropriate health care practitioner prior to continuing treatment if the patient:

- Is not progressing toward documented treatment goals as demonstrated by objective, measurable, or functional improvement after 10 patient visits or in a period of 30 calendar days from the initial treatment visits following the initial evaluation visit; or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Within one year from the initial treatment visit following the initial evaluation visit, returns to the occupational therapist seeking treatment for the same conditions or injury.

The bill would allow occupational therapists to provide services without a referral to:

- Employees solely for the purpose of education and instruction related to workplace injury prevention;
- The public for the purpose of health promotion, education, and functional independence in activities of daily living; or
- Special education students who need occupational therapy services to fulfill the provisions of their individualized education plan (IEP) or individualized family service plan (IFSP).

The bill would not prevent a hospital or ambulatory surgical center from requiring a physician to order or make a referral for occupational therapy services for a patient currently being treated in such a facility.

The bill would require an occupational therapist to provide written notice to a self-referring patient, prior to commencing treatment, stating that an occupational therapy diagnosis is not a medical diagnosis by a physician.

The bill would clarify that occupational therapists may perform wound care management services only after approval by a person licensed to practice medicine and surgery.

The bill would define “healthcare practitioner” to mean:

- A person licensed by the State Board of Healing Arts (BOHA) to practice medicine and surgery, osteopathic medicine and surgery or chiropractic;

- A “mid-level practitioner” as already defined in statute; or
- A licensed dentist or licensed optometrist in appropriately related cases.

Liability Insurance

The bill would require licensed occupational therapists actively practicing in the state to maintain professional liability insurance coverage as a condition of rendering professional occupational therapy services. The bill would require BOHA to determine the minimum level of coverage for such insurance through rules and regulations.

Amendments to Occupational Therapy Practice Act

The bill would remove sections of the Act that pertain to referral or supervision from a licensed health care practitioner and add language specifying that the “practice of occupational therapy” does not include the practice of any branch of the healing arts or making a medical diagnosis.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of a representative of the Kansas Occupational Therapy Association (KOTA).

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, a representative of KOTA provided **proponent** testimony, stating that the bill would allow occupational therapists to offer services without a referral from a licensed physician while maintaining appropriate safeguards for patient care.

Neutral testimony was provided by representatives of the Kansas Medical Society (KMS) and BOHA. The representative of BOHA noted that KOTA worked collaboratively with BOHA on the bill to determine that a referral should be required when a patient is returning to the occupational therapist for the same treatment and that the patient's primary physician should be notified in the event of a self-referral to an occupational therapist. The representative of KMS stated that the bill is appropriately limited and does recognize the difference between occupational therapy and medicine.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, BOHA states enactment of the bill could lead to a slight increase in complaints received that could be actionable for occupational therapists that treat patients with no referral. BOHA indicates this could increase investigations and disciplinary actions. The agency cannot estimate the increase but notes that any increase could be absorbed within existing resources. BOHA also states that enactment of the bill would not generate any additional revenues.

The Health Care Stabilization Fund Board of Governors states that the bill would not have a fiscal effect. Any fiscal effect associated with SB 440 is not reflected in *The FY 2023 Governor's Budget Report*.

Occupational therapy; health professions; Occupational Therapy Practice Act