

## TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on October 8, 2012.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 pm. on September 24, 2012.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2290.5 and 2570.20, the Board is proposing changes to Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Codes (BPC) section 2290.5, defines and establishes "telehealth" as a mode of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health while the patient is at the originating site (where the patient is located at the time health care services are provided) and the health care provider is at a distant site (site where the health care provider who provides health care services is located while providing these services via telecommunication). This emerging method in delivering health care services is designed to expand access to underserved and rural communities and provide greater modern day flexibility to all consumers in scheduling appointments and reducing or eliminating the need for long trips or congested urban travel.

This proposed regulatory action is designed to implement and establish rules and protocols, and clarify occupational therapy practice standards relevant to occupational therapy practitioners who provide services via telehealth.

The proposed regulatory action seeks to clarify and establish that occupational therapy practitioners may provide occupational therapy services via telehealth to patients or clients in the State of California, when they possess a license issued by the Board. It proposes to establish the same standard of care must be exercised as compared to any other occupational therapy services. It proposes to require that an occupational therapist obtain a client's or patient's consent prior to delivering telehealth services, and the consent shall be documented in the client's or patient's medical record. It proposes to clarify and establish that an occupational therapist must make a determination whether an in-person evaluation and/or intervention(s) is/are

necessary based on the complexity of the patient's/client's condition and other factors. And it proposes to clarify that occupational therapy practitioners shall not deviate from their scope of practice in delivering telehealth services.

The purpose of the proposed regulatory action is to protect consumers and to establish and make clear standards and expectations associated with the delivery of occupational therapy services via information and communication technologies. The proposed regulatory action is consistent and compatible with the Board's mission in regulating the practice of occupational therapy and protecting the public's health, safety, and welfare.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Requires Reimbursement: None

Business Impact:

The Board has determined the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

It is anticipated the proposed regulations will promote new business opportunities and result in deployment of new advanced telecommunication technologies.

Results of the Economic Impact Analysis:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. It is anticipated the proposed regulations will promote new business, new jobs, and result in the increased use of advanced telecommunication technologies.

Cost Impact on Representative Private Person or Business:

There would be a cost impact to representative private persons or businesses who wish to provide the services (telehealth) described in this proposed regulatory action. Representative private persons or businesses would need to acquire telecommunication equipment and technologies that would protect and secure a consumers health care information and treatment.

Effect on Housing Costs: None

## EFFECT ON SMALL BUSINESS

The Board has determined that there would be fiscal impact to any private practice or small business that wished to provide the services described in this proposed regulatory action.

## CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Adoption of the proposed regulatory action is consistent with the Board's mandate to regulate the practice of occupational therapy.

## TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

## CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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Website Access: All materials regarding this proposal can be found on-line at **[www.bot.ca.gov](http://www.bot.ca.gov) > Laws and Regulations > Proposed Regulations.**