

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 with the CBOT'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:

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

Impact on Jobs/New Businesses:

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 deployment of new 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. Adoption of the proposed regulatory action is consistent with the Board's mandate to coordinate, administer, and 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 > **Laws and Regulations** > **Proposed Regulations**.

California Board of Occupational Therapy
Department of Consumer Affairs
Title 16, Division 39, California Code of Regulations

PROPOSED LANGUAGE

ARTICLE 8. Ethical Standards of Practice

Add section 4172 - Standards of Practice for Telehealth

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant in this State or providing services to a patient or client in this State must have a valid and current license issued by the Board.

(b) An occupational therapist or occupational therapy assistant must exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services.

(c) An occupational therapist shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth, and shall include documentation of that consent statement in the patient's or client's health record.

(d) Prior to providing occupational therapy services via telehealth, an occupational therapist shall determine:

(1) whether an in-person evaluation is necessary; and

(2) whether in-person interventions are necessary.

The obligations of an occupational therapist continue during the course of treatment to determine whether an in-person evaluation or intervention is necessary. In making these determinations, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

(e) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Provide services consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code; and

(2) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2290.5 and 2570.20.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Standards of Practice for Telehealth

Section Affected: Title 16, Division 39, California Code of Regulations, Section 4172

Introduction

The California Board of Occupational Therapy (Board) is the state agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of the public. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

The purpose of the proposed regulatory language is to implement and clarify existing law, Business and Professions Code (BPC) section 2290.5, pertaining to services provided via "telehealth." Telehealth is not a separate form of practice; it's 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 a different site and location from where the treating health care professional is located. 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 establish standards for occupational therapy practitioners providing services via telehealth and identify and clarify the factors that occupational therapy practitioners must consider prior to providing services via telehealth. This language is intended to facilitate the administration, coordination, and enforcement of the laws and regulations that occupational therapy practitioners must abide by while promoting public health, safety, and awareness.

Factual Basis/Rationale

Section 4172(a) establishes that occupational therapy practitioners providing services via telehealth to patients or clients in California must possess a valid and current license issued by the Board to provide these services.

The reason and rationale for the regulatory language proposed in section 4172(a) is to implement and clarify statutory language set forth in BPC section 2290.5(3) requiring that the occupational therapy practitioner providing telehealth services must be licensed by the Board.

Section 4172(b) proposes to establish that the same standard of care exists for services provided via telehealth as there would for any other mode in delivering occupational therapy services.

The reason and rationale for the regulatory language proposed in section 4172(b) is to implement BPC section 2290.5(d) and clarify that, regardless of the mode of delivery of services, the occupational therapy practitioner must exercise an established standard of care.

Section 4127(c) proposes to require occupational therapists to obtain a client's or patient's consent, prior to delivering telehealth services. The section also would require the occupational therapist to document the client's or patient's consent in the medical record.

The reason and rationale for the regulatory language proposed in section 4127(c) is to implement BPC section 2290.5(b) requiring occupational therapy practitioners to obtain the client's or patient's consent prior to the delivering telehealth services, and maintain documentation of that consent.

Section 4127(d) would establish that prior to providing telehealth services an occupational therapist shall determine whether an in-person evaluation is necessary or if in-person intervention (treatment) is necessary based on the complexity of the patient's/client's condition; the practitioner's own skills and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

The reason and rationale for the regulatory language proposed in section 4127(d) is to implement BPC section 2290.5(d) by establishing standards an occupational therapy practitioners must follow when prior to providing services via telehealth.

Section 4127(e)(1) and (2) would clarify and establish that when occupational therapy practitioners provide services via telehealth, they must provide services consistent with the scope of practice defined in BPC Section 2570.2(k) and comply with the ethical standards of practice and any other applicable laws.

The reason and rationale for the regulatory language proposed in section 4127(e)(1) is to implement BPC section 2290.5(d) by requiring occupational therapy practitioners provide services within their scope of practice.

The reason and rationale for the regulatory language proposed in section 4127(e)(2) is to implement BPC section 2290.5(d) by clarifying that occupational therapy practitioners must adhere to the same laws and regulations governing the practice of occupational therapy, even when services are provided via telehealth.

UNDERLYING DATA:

None

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business.

In all likelihood this proposed regulation will promote expanded opportunities for hospitals, health care and rehabilitation businesses, and information technology companies.

ECONOMIC IMPACT ANALYSIS

The proposed regulatory action will establish rules and practice standards for occupational therapists delivering services via telecommunication.

The Board anticipates the proposed regulatory action will increase job opportunities for occupational therapy practitioners and in technology/ telecommunications communities to meet confidentiality requirements inherent in health care records management. It is anticipated that the demand for occupational therapy practitioners will increase in order to meet the unmet need of remote, rural or underserved communities or to provide services to those with limited mobility or transportation issues, who will all benefit from increased access to occupational therapy services.

The Board anticipates the proposed regulatory action will promote new business and will not result in the elimination of existing business. Health care entities, private practices, hospitals, rehabilitation companies, etc., will be afforded new opportunities to expand their business by providing access to services to consumers in remote or rural areas.

Not all services will be appropriate for delivery via telehealth; services will be based on the nature and complexity of client's condition. Businesses that choose not to purchase telecommunication equipment will still be competitive and viable since the majority of services would still be provided traditionally, via face-to-face evaluation and intervention.

The proposed regulatory action will 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. The proposed regulatory language set forth rules and requirements that are designed to protect the public in the delivery of this emerging and modern way of providing services.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation would mandate the use of specific technologies or equipment that would maintain the confidentiality of a patient's medical information.

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 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.