

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 November 9, 2015.

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 October 26, 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. Telehealth expands access to services to underserved and rural communities and provides greater modern day flexibility and convenience 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 amend and clarify California Code of Regulations section 4172(b) regarding a reference to “informed consent” in the language. It has come to the attention of the Board that some employers and health care providers may interpret “informed consent” as meaning a health care professional must obtain consent from a patient/client each time/instance in which occupational therapy services are being provided. The purpose of this action is to clarify that an occupational therapist does not need to obtain a patient’s/client’s consent for subsequent telehealth services once the patient/client initially consents to receive occupational therapy services via telehealth. Therefore, the Board is proposing to delete “informed” from the language and otherwise reconstruct the language in the subsection to make it read better and be consistent with BPC section 2290.5.

BENEFIT OF PROPOSED REGULATIONS

This regulatory action is designed to eliminate confusion or misinterpretation on the part of employers and practitioners regarding the frequency that an occupational therapist must obtain consent from a patient/client that receiving occupational therapy services via telehealth is acceptable. It will provide clarity on professional standards for obtaining consent from a client when occupational therapy services may be delivered via telehealth. It will eliminate the redundant and duplicative task of a practitioner seeking and a patient providing consent to receive services via telehealth each and every time treatment and/or services are sought. It will provide incremental time and cost savings to employers and practitioners that have construed “informed consent” to mean a therapist must obtain a patient’s or client’s consent before each and every treatment session subsequent to the consumer’s initial consent to receive services via telehealth.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board has conducted a review of any related regulations and has determined that this proposed action is consistent and compatible with existing state regulations.

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 this proposed 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.

This proposed action is designed to clarify an occupational therapy practitioner is not required to obtain consent from a patient or client each time services are provided via telehealth subsequent to the patient’s/client’s initial consent to receiving services by this method.

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.

“The proposed regulation will have benefits to the health and welfare of California residents. As mentioned above (under the Informative Digest/Policy Statement

Overview), this regulatory action will improve the accessibility of telehealth services from occupational therapists to patients by reducing burdensome and redundant consent requirements.”

Cost Impact on Representative Private Person or Business:

This proposed regulatory action would save time and money to representative private persons or businesses that deliver occupational therapy services via telehealth. This proposed regulatory action is intended to clarify the existing reference to “informed consent” was not meant to be construed as requiring an occupational therapy practitioner to obtain consent from a patient/client before each and every treatment session once the patient/client initially consents to receiving services via telehealth.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that this proposed regulation would have a very small time and cost savings element afforded to private practices or small business that provide telehealth services as described in the “Cost Impact on Representative Private Person or Business” above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation 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.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations within the timeframes identified in this Notice, or at a hearing in the event that such a request is made by the public.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, any document incorporated by reference, and the initial statement of reasons, 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:

Jeff Hanson
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

OR

Heather Martin
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

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 TEXT

Proposed amendments are shown by strikeout for deleted text and underlined for new text.

Amend Title 16, Division 39, Article 8, California Code of Regulations to read as follows:

§ 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 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 shall ~~obtain informed consent from~~ inform the patient or client ~~prior to delivering about~~ occupational therapy services via telehealth and obtain consent prior to delivering those services. consistent with Section 2290.5 of the Code.

(c) Prior to providing occupational therapy services via telehealth:

(1) an occupational therapist shall determine whether an in-person evaluation is necessary and ensure that a therapist must be available if an onsite visit is required and;

(2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined that in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.

(d) In making the determination whether an in-person evaluation or in-person interventions are necessary, 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) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

(2) Provide services consistent with section 2570.2(k) of the Code; and

(3) 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.

(f) Failure to comply with these regulations shall be considered unprofessional conduct as set forth in the Occupational Therapy Practice Act.

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 this proposed regulatory action is to amend and clarify California Code of Regulations section 4172(b) regarding its reference to "informed consent". It has come to the attention of the Board that some employers and health care providers may interpret "informed consent" as meaning a health care professional must obtain consent from a patient/client prior to each and every session that health care services are being delivered. This proposed action is intended to clarify that it is not the intent of the Board to require an occupational therapist to obtain consent from a patient/client for each and every occupational therapy session that is being delivered via telehealth after the patient/client initially consents to receive services via telehealth. In an effort to clarify this matter the Board is proposing to delete "informed" from the language and otherwise amend the language in the subsection to make it read better.

Factual Basis/Rationale

Section 4172(b) is intended to establish that an occupational therapist shall inform a patient or client about the nature of occupational therapy services that can be delivered via telehealth and obtain the patient's or client's consent to receive occupational therapy services via telehealth prior to the delivery of those services.

The Board is proposing to delete "informed" from existing language in Section 4172(b) in an effort to eliminate confusion surrounding the nature and frequency a therapist must obtain consent from a patient or client that the use of telehealth is an acceptable mode of delivering occupational therapy services. The amendment that is being proposed is designed to clarify that a therapist must obtain consent from a patient or client, in its simplest form, prior to the delivery of telehealth services. Thus a therapist would not be required to obtain consent from a patient or client continuously for each and every treatment session subsequent to the patient's or client's initial consent that telehealth is an acceptable mode of delivery of occupational therapy services.

BENEFIT OF THE PROPOSED REGULATION

- Employers, practitioners, and consumers will benefit from this proposed action as they will not be required to perform the redundant and duplicative task of obtaining and providing consent prior to each and every treatment session delivered via telehealth once consent to receive telehealth services is provided by the consumer.
- Practitioners and the industry benefit from the proposed action as it provides clarity on the professional standards for obtaining consent from the patient when delivery of occupational therapy services via telehealth is being considered.
- Amends language that can and has been misconstrued or misinterpreted by practitioners and their employers regarding the nature and frequency that consent must be obtained from a patient or client.

This proposed action does not contain any benefit toward worker safety or the state's environment.

UNDERLYING DATA:

None

BUSINESS IMPACT:

The Board has determined this regulatory action will not have a significant adverse economic impact on business because the elimination of 'informed' from the consent process provides clarity to both practitioners and patients. Moreover, by not providing consent at each treatment, there could ultimately be a time-savings to both patients and practitioners; the time-savings could allow for more treatment time rather than using the treatment time to (1) repeatedly and redundantly advise the patient of the possible use of telehealth and (2) treat the patient.

ECONOMIC IMPACT ANALYSIS

The Board has determined that this proposed action will provide incremental time and cost savings to occupational therapy private practices and businesses that have interpreted the meaning of "informed consent" to require a therapist to obtain consent from a patient or client before each and every treatment session in which services are being provided via telehealth.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

The regulations are designed to provide clarity to practitioners and patients by eliminating duplicative consent and advisement of the possible use of telehealth. Therefore, the Board has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

The regulations are designed to provide clarity and maximize the practitioner's time with the patient(s), which is neither relevant to nor adverse to the expansion of businesses in California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The anticipated benefits to this regulation are clarify and elimination of duplication without compromising consumer protections. This proposal benefits both consumers of occupational therapy services and practitioners; this proposal has no adverse impact to the state's environment.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This proposed regulatory action does not require the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either 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 proposed regulations.

Alternative 1:

The Board considered doing nothing and leaving the provisions as they are written. This alternative was rejected because it does not address employer and practitioner concerns regarding the interpretation of the meaning of "informed consent" in existing language.