AGENDA ITEM 7

DISCUSSION AND CONSIDERATION OF ADOPTING PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4170, ETHICAL STANDARDS OF PRACTICE.

The following are attached for review:

- Notice
- Original Proposed text
- Initial Statement of Reasons
- *Proposed* Modified text

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (CBOT) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email 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 February 3, 2014.

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 CBOT office not later than 5:00 pm on January 20, 2014.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal 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 proposal.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.28, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest

Existing regulations contained in section 4170 of Division 39 of Title 16 of the California Code Regulations identify Ethical Standards of Practice that have been adopted by the Board. Any violation of the adopted standards would constitute grounds for the CBOT to take an enforcement action against a licensee. This proposed action provides more detail and clarity regarding the Board's existing professional standards to better serve the profession and public on expected standards and otherwise assist in identifying potential ethical dilemmas.

Policy Statement/Anticipated Benefits of Proposal

Pursuant to BPC section 2570.25, protection of the public shall be the highest priority of the CBOT in exercising its licensing, regulatory, and disciplinary functions. The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

Consistency with Existing State Regulations

The Board has conducted a review of any related regulations and has determined that these are the only regulations dealing with Ethical Standards of Practice for Occupational Therapists. Therefore, this regulatory proposal 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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: This regulation will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with business in other states.

RESULTS OF 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.

Benefits of the Proposed Regulation

The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

Cost Impact on Affected Private Persons:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business:

The Board has determined that compliance with proposed regulations would not affect small business. Individual occupational therapy practitioners are required to comply with regulations that have been adopted by the Board which are necessary for public protection. The Board acknowledges the potential exists that the owner or an employee of a small occupational therapy business might subject their license to an enforcement action for violating professional and ethical standards. The Board does not anticipate a significant number of small businesses would be affected and any detrimental impact or hardship that might be incurred would be outweighed by the Board's mandate to protect the health, safety, and welfare of California consumers.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered 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 the 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, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained 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
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(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
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:

Article 8. ~~Ethical Standards of Practice~~ Service Delivery Standards

§ 4170. Ethical Standards of Practice

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, ~~certificate or~~ a limited permit issued by the board, or is practicing on a license issued by another state pursuant to section 2570.4 of the Code, shall comply with the following ethical standards of practice:
(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.
(1) An occupational therapy practitioner's services shall reflect an understanding of how those services can be affected by socio-economic factors such as economic status, age, ethnicity, race, disability, marital status, sexual orientation, gender, gender identity, religion, residence, culture, political affiliation, and insurance coverage.
(2) An occupational therapist offering free or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services as for full fee services.
(b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.
(1) Occupational therapy practitioners shall not exploit ~~clients in any manner~~ or harm recipients of occupational therapy services, students, research participants, or employees.
(2) Occupational therapy practitioners shall, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer and within six (6) months of termination of occupational therapy services, avoid relationships or associations that include, but are not limited to emotional, physical, psychological, financial, social, or activities that interfere with professional judgment and objectivity ,including avoiding:
(A) Any sexual relationship or activity, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, and
(B) Bartering for services or establishing any relationship to further one's own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, or the potential for exploitation and conflict of interest.
(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.
(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.

(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.
(3) Occupational therapy practitioners shall respect the client's right to refuse services ~~or involvement in research or educational activities~~.
(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.
(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so~~.~~
~~(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.~~
~~(2) Occupational therapy practitioners~~ and shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation ~~should~~ shall be done in collaboration with the client.
(e) Occupational therapy practitioners shall, through completion of professional development activities required for license renewal or in other ways assure continued competence with respect to his or her own current practice and technology.
(f) Occupational therapy practitioners shall report to the Board any acts committed by another occupational therapy practitioner that they have reason to believe are unethical or illegal in practice, education, research, billing, or documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be allowed by law .
(g) Occupational therapy practitioners shall make all other mandatory reporting to the appropriate authorities as required by law.
~~(e)~~ (h) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws~~.~~, and shall comply with the following:
(1) Practice occupational therapy only when holding a current and valid license issued by the Board, and appropriate national, state, or other requisite credentials for the services they provide; and
(2) Practice occupational therapy within his or her own level of competence and scope of practice.
~~(f)~~ (i) Occupational therapy practitioners shall provide accurate information about occupational therapy services~~.~~
~~(1) Occupational therapy practitioners~~ and shall accurately represent their credentials, qualifications, education, experience, training, and competence.
~~(2)~~(j) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.
~~(3)~~(k) Occupational therapy practitioners shall ~~refrain from using~~ not use or ~~participating~~ participate in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.
~~(g)~~(l) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2570.4, 2570.20 and 2570.36.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Ethical Standards of Practice

Section Affected: Title 16, Division 39, California Code of Regulations (CCR), Section 4170

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 California consumers. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

Existing regulations identify and provide practice standards that occupational therapy practitioners must abide by in providing services to the public. Any violation of these standards serves as grounds for disciplinary action against a licensee. This proposed action enhances and removes ambiguity regarding several aspects of existing ethical standards by providing more detail and clarity regarding the requirements.

Factual Basis/Rationale

Amend Title of Article 8

The existing title of Article 8 is 'Ethical Standards of Practice.' This proposed action will amend the title to read "Service Delivery Standards".

The Board is seeking this amendment because 16 CCR Section 4170 titled 'Ethical Standards of Practice,' and 16 CCR Section 4175 titled 'Minimum Standards for Infection Control' are incorporated under this Article. A pending regulatory action (2013-1119-04S) regarding 16 CCR Section 4172 pertaining to 'Standards of Practice for Telehealth,' if approved by the Office of Administrative Law, will also be incorporated into this Article.

Thus the existing title is too specific and not representative of all language that is, and potentially might be, incorporated into the Article. The proposed new title "Service Delivery Standards" is broader than the existing title and describes the various standards affecting practice that are incorporated under this Article. The proposed action promotes clarity.

First Paragraph of 16 CCR Section 4170

The first paragraph of existing Section 4170 establishes the section applies to licensees and limited permit holders. The paragraph has been amended, deleting reference to "certificate" and adds new language "or is practicing on a license issued in another state."

The Board is seeking this modification since occupational therapy assistants are now "licensed" as opposed to "certified" (SB 821, Committee on Business, Professions and Economic Development, Chapter 307, Statutes 2009); it is no longer necessary for "certificate" to be referenced in the regulation. Since existing statutes and regulations provide for license exemptions in certain circumstances and conditions, the Board feels it is necessary to adopt language that clarifies that these ethical standards also apply to out-of-state practitioners providing or rendering services under licensing exemptions established in Business and Professions Code Section 2570.4 and Title 16 CCR Section 4116.

16 CCR Section 4170(a)

Existing language establishes occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination. The Board is proposing to expand and clarify the meaning of existing 16 CCR Section 4170(a) by adding subsection (1) to clarify that practitioners must take into account various factors, when providing services and subsection (2) to establish that practitioners offering free or reduced-fee services shall exercise the same standard of care as full-fee services.

The Board is seeking these amendments to establish and clarify there are many factors that must be considered when rendering services to different populations. The Board also feels it is necessary to establish and clarify that in the event a practitioner decides to provide free or reduced fee services, the practitioner shall not construe that to mean, in any way, the services can be provided in a substandard manner.

16 CCR Section 4170(b)(1)

Existing language established occupational therapy practitioners must take reasonable precautions to avoid imposing or inflecting harm to a client or to his or her property. The Board is proposing to expand this ethical standard to establish that a practitioner shall not exploit or harm a recipient of occupational therapy services (client), but also shall not harm any students, research participants, or employees.

The Board is seeking this amendment because existing language is too limited in only specifying clients and wishes to clarify that the meaning of 'harm' in this section also applies to other relationships that a practitioner might be involved in, including relationships with students, research participants, or employees.

16 CCR Section 4170(b)(2)

Existing language establishes that it is an ethical violation to enter into a relationship or activity that interferes with professional judgment and objectivity. The Board is proposing to expand and clarify the meaning of this section by establishing that while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer, and within six (6) months of termination of occupational therapy services, practitioners must avoid relationships which may include emotional, physical, psychological, financial, or social relationships that interfere with professional judgment and objectivity.

The Board is seeking this amendment because existing language would benefit by clarifying the various roles and types of relationships or activities that would fall within the meaning and intent of this section. The Board believes it is necessary to establish a time period, in this case six (6) months, from when a professional relationship terminates to when it would be allowable by parties to explore or pursue a prohibited relationship without committing a violation this section.

The Board is proposing further modification to 16 CCR Section 4170(b)(2) by adding additional subsections (A) and (B) pertaining to sexual relationships and bartering for services. Proposed Section 16 CCR 4170(b)(2)(A) would establish and clarify that it is an ethical violation to enter into a sexual relationship (either consensual or nonconsensual) with any recipient of services, any family member or significant other of the recipient of services, any student, any research participant, or anny employee. Proposed 16 CCR Section 4170(b)(2)(B) would establish and clarify that it is an ethical violation for bartering for services or any relationship established as an occupational therapy practitioner to further one's own interests at the expense of, or exploitation of, or in a conflict of interest, with the recipient of services.

The Board is seeking these amendments because regulations make no specific reference to sexual relationships or sexual bartering for services. The Board feels it is beneficial and in the best interests of the public and profession to make specific reference to these issues and dispel any notion these standards would not apply if a sexual relationship or activity is consensual or that they only apply to the recipient of services.

16 CCR Section 4170(c)(3)

Existing language establishes it is an ethical violation if a practitioner does not respect a client's right to refuse professional services or involvement in research or educational activities. The Board is proposing to amend the language to delete "or involvement in research or educational activities.

The Board seeks this amendment for brevity and conciseness. Elimination of the language does not change the meaning or intent of this subsection. A client has the right to refuse <u>any and all</u> services in any and all situations. The Board feels it is not necessary to draw any distinction to research or educational activities in the meaning of this subsection.

16 CCR Section 4170(d)

Existing language establishes "Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so." The Board proposes to eliminate existing 16 CCR Section 4170(d)(1), "Occupational therapy practitioners shall hold appropriate credentials for the services they provide" and moves it to a new section, Section 4170(h)(1). This amendment will also deleting reference to 16 CCR Section 4170(d)(2) but maintains the language in Section 4170(d). The Board is amending language "Such referral or consultation should be done in collaboration with the client," by deleting "should" and replacing it with "shall."

The Board is seeking these amendments to make the language clearer and formatted in a manner that is better for the section. Modification to the language "Such referral or

consultation shall be done in collaboration with the client" was necessary for clarity because existing language appears to makes it an option, where replacing it with "shall" makes it a requirement which is the Board's intent. This correction is consistent with the standards and core values of the profession.

16 CCR Section 4170(e)

The Board is proposing to establish new language in 16 CCR Section 4170(e) requiring practitioners to maintain competence in their own practice area(s) through course work and activities that are specific to the practitioner's own area(s) of practice and/or use of practice-specific technology.

The Board is seeking this new language because it feels it is necessary to clarify the intent of its continuing competence requirement which is for practitioners stay current and aware of emerging trends and technologies in their practice areas. This will result in better and safer services provided to the public.

{Existing language in 16 CCR Section 4170(e) is being moved to Section 4170(h)}

16 CCR Section 4170(f)

The Board is proposing to establish new language in 16 CCR Section 4170(f) to define and clarify Business and Professions Code section 2570.36, which requires practitioners to report to the Board any acts committed by an applicant or another occupational therapy practitioner that they believe violates any law or regulation administered by the Board or is illegal. The reporting practitioner is also responsible for cooperating with the Board by providing information, documentation, declarations, or assistance as may be allowed law.

The Board is seeking this new language to define, clarify, administer, and implement the statute. Implementation of this proposed regulation will foster principles supported by the profession, establish and clarify expected standards of conduct for practitioners, and otherwise help resolve ethical dilemmas. The Board must be notified when a practitioner behaves unethically or performs in a negligent or incompetent manner in order for it to fulfill its mandate to protect the public.

{Existing language in 16 CCR Section 4170(f) is being moved to Section 4170(i)}

16 CCR Section 4170(g)

The Board is proposing to establish new language in 16 CCR Section 4170(g) establishing "Occupational therapy practitioners shall make all mandatory reporting to appropriate authorities as required by law." As an example, occupational therapy practitioners are mandated to report known or reasonably suspected incidents of child abuse or neglect pursuant to Penal Code Section 11166, and elder abuse pursuant to Welfare and Institutions Code section 15630.

The Board seeks this new language to define and clarify the expectations placed on occupational therapy practitioners to make mandated reports as required by law. Adoption

of this language will enhance the Board's ability to take administrative disciplinary action for these violations.

Existing language in 16 CCR Section 4170(e) is being moved to subsection (h)

Existing language establishes occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws. The Board is proposing to add new language in subsection (1) that will establish and clarify occupational therapy practitioners may only practice when they hold a current and active license issued by the Board or other requisite credentials for the services they provide, and subsection (2) that will establish and clarify that occupational therapy practitioners provide services within his or her own competence level and scope of practice.

The Board is seeking the new language to provide clarification to practitioners that practicing on an expired license is a violation of law; just because they have been issued a license, does not mean they are authorized to provide services once the license expires. Practitioners should not provide services unless they possess the level of knowledge, skill, and ability (e.g., education and experience) consistent with best practices and regard for client safety. Implementation of this proposed language will clarify and establish principles and standards that practitioners should already be following, but will now be more easily held accountable should they fail to abide by these standards.

Existing language in 16 CCR Section 4170(f) is being moved to subsection (i).

Existing language establishes occupational therapy practitioners shall provide accurate information about occupational therapy services. The Board is proposing to delete reference to existing subsection (1) but maintains and integrates the language "and shall accurately represent their credentials, qualifications, education, experience, training, and competence" into 16 CCR Section 4170(i).

The Board is seeking this amendment because the language contained in subsection (1) can be easily integrated into the section. This change is technical and formatting in nature. It does not change the meaning and intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(2) is being moved to subsection (j)

Existing language establishes occupational therapy practitioners shall disclose conflicts of interest with those whom they may establish a professional, contractual, or working relationship. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(3) is being moved to subsection (k)

Existing language establishes an occupational therapy practitioner shall refrain from using or participating in the use of any communication that is false, fraudulent, deceptive

statements or claims. The Board is proposing to delete language "refrain from" and replace it with "not use".

The Board is seeking these amendments to make the language specific and more direct as opposed to a passive suggestion. This amendment also makes minor technical formatting changes to place this language in its own subsection.

Existing language in 16 CCR Section 4170(g) is being moved to Section 4170(l)

Existing language establishes occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Business and Professions Code section 2570.8. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Amend Authorities and Reference

The Board is proposing a technical edit by adding Business and Professions Code sections '2570.4' and '2570.36' in the reference section for the note of authorities and references.
BUSINESS IMPACT:

This regulation will not have an adverse economic impact on business.

ECONOMIC IMPACT ANALYSIS

Background
The purpose of the proposed regulatory action is to establish and expand existing regulations relating to ethical standards of practice for occupational therapy practitioners. The proposed regulatory action will enhance and foster the Board's role in administering, regulating, and taking disciplinary action against occupational therapy practitioners who violate these principals.

Creation or Elimination of Jobs Within California
The Board has determined the proposed regulatory action will not create or eliminate jobs within California for reasonable compliance with the proposed action. The proposed regulatory action expands, defines, and clarifies standards and principles held by the profession in delivering occupational therapy services to the public and do not have a direct correlation on creation or elimination of jobs for reasonable compliance.

Creation of New Business or Elimination of Existing Business Within California
The Board has determined the proposed regulatory action will not create new business or eliminate existing business within California for reasonable compliance with the proposed action. The Board does not anticipate that any healthcare or rehabilitation businesses seeking to establish itself in California, or that currently does business in California, would decline opening a business or close an existing business based on implementation of professional standards that are widely held, and nationally recognized.

Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California. The proposed regulatory action expands, defines, and clarifies standards and principles for the delivery of occupational therapy services to California consumers and does not contain any inducement for expansion of business.

Benefits of Regulations

This proposed regulatory change serves to:

- Identify and describe principles and standards accepted and supported by the occupational therapy profession.
- Inform the public of established principles and standards to which occupational therapy practitioners should adhere and will be held accountable.
- Make transparent and clear the standards of conduct expected of occupational therapy practitioners.
- Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.
- Enhance and facilitate the Board's regulatory role in enforcing and regulating the profession to ensure public protection.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate 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 the Board's existing ethical standards do not contain the detail and definition that is contained in this proposed action. Without providing the level of detail contained in this action the Board's ability to take disciplinary action against a licensee may prove to be more difficult or hindered. The level of detail contained in this action will better help practitioners avoid ethical violations and assist the public in identifying and/or avoiding ethical dilemmas with their occupational therapy practitioner.

Alternative 2:

The Board considered incorporating the American Occupational Therapy Association's 'Occupational Therapy Code of Ethics and Ethical Standards' by reference into the Board's ethical standards regulatory language. This alternative was rejected because they standards were developed by a professional organization as opposed to a regulatory agency and the standards were written in a manner that would be difficult to enforce or regulate.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
Title 16, Division 39, California Code of Regulations

Proposed Modified 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:

Article 8. ~~Ethical Standards of Practice~~ Service Delivery Standards

§ 4170. Ethical Standards of Practice

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, ~~certificate or~~ a limited permit issued by the board, or is practicing on a license issued by another state pursuant to section 2570.4 of the Code, shall comply with the following ethical standards of practice:
(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.
(1) An occupational therapy practitioner ~~practitioner's services shall reflect an understanding of how those services can be affected by socio-economic factors such as~~ shall provide ~~services that shall not discriminate nor show prejudice against~~ consider how a client's or patient's economic status, age, ethnicity, race, disability, ~~marital status,~~ sexual orientation, gender, gender identity, religion, ~~residence,~~ or culture, ~~political affiliation, and~~ or ~~insurance coverage~~ impact health care practices and incorporate these considerations into the provision of his or her services.
(2) An occupational therapist offering free or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services as for full fee services.
(b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.
(1) Occupational therapy practitioners shall not exploit ~~clients in any manner~~ or harm recipients of occupational therapy services, students, research participants, or employees.
(2) Occupational therapy practitioners shall, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer and within six (6) months of termination of occupational therapy services, avoid relationships or associations that include, but are not limited to emotional, physical, psychological, financial, social, or activities that interfere with professional judgment and objectivity ,including avoiding:
(A) Any sexual relationship or activity, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, and
(B) Bartering for services or establishing any relationship to further one's own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, or the potential for exploitation and conflict of interest.
(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.
(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.

(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.
(3) Occupational therapy practitioners shall respect the client's right to refuse services ~~or involvement in research or educational activities~~.
(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.
(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so~~.~~
~~(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.~~
~~(2) Occupational therapy practitioners~~ and shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation ~~should~~ shall be done in collaboration with the client.
(e) Occupational therapy practitioners shall, through completion of professional development activities required for license renewal or in other ways assure continued competence with respect to his or her own current practice and technology.
(f) Occupational therapy practitioners shall report to the Board any acts committed by another occupational therapy practitioner that they have reason to believe are unethical or illegal in practice, education, research, billing, or documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be allowed by law .
(g) Occupational therapy practitioners shall make all other mandatory reporting to the appropriate authorities as required by law.
~~(e)~~ (h) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws~~.~~, and shall comply with the following:
(1) Practice occupational therapy only when holding a current and valid license issued by the Board, and appropriate national, state, or other requisite credentials for the services they provide; and
(2) Practice occupational therapy within his or her own level of competence and scope of practice.
~~(f)~~ (i) Occupational therapy practitioners shall provide accurate information about occupational therapy services~~.~~
~~(1) Occupational therapy practitioners~~ and shall accurately represent their credentials, qualifications, education, experience, training, and competence.
~~(2)~~(j) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.
~~(3)~~(k) Occupational therapy practitioners shall ~~refrain from using~~ not use or ~~participating~~ participate in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.
~~(g)~~(l) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2570.4, 2570.20 and 2570.36.

AGENDA ITEM 8

DISCUSSION AND CONSIDERATION OF AMENDING TITLE 16, CCR SECTION 4172, STANDARDS OF PRACTICE FOR TELEHEALTH.

The following are attached for review:

- Section 4172, current regulatory language
- BPC section 2290.5, current statute
- Letter requesting clarification regarding existing language
- Assembly Bill 809, amending BPC 2290.5
- Rulemaking calendar

§ 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 the patient or client prior to delivering occupational therapy services via telehealth 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.

BPC section 2290.5

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(h) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(Amended by Stats. 2014, Ch. 404, Sec. 1. Effective September 18, 2014.)

HansonBridgett

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April 15, 2014

Heather Martin
Executive Officer
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2250
Sacramento, CA 95815-5400

Re: Consent for Occupational Therapy Telehealth Services

Dear Ms. Martin:

This will follow on my March 24 telephone conversation with Jeff Hanson of your office regarding the recently revised telehealth regulations for occupational therapy. It concerns the use of the term "informed consent" in the regulations and a perceived conflict with a provision in the California Business and Professions Code that they cite. Mr. Hanson suggested that I present the matter to the Board in writing so that it can analyze the issues and provide guidance with respect to them.

My questions center on the requirement that an OT "obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth consistent with Section 2290.5 of the [California Business and Professions] Code" [16 C.C.R. §4172(c)]. This is a clear reference to an OT at a distant site who is providing services to a patient at a separate originating site.

Informed Consent

The use of the term "informed consent" has raised questions about the obligations that the Board intended to place on OTs providing telehealth services. That term usually refers to what a physician must obtain prior to undertaking a complex procedure with significant risks and side effects. In that case, the physician must provide a full explanation of the patient's condition, the nature of the proposed procedure, the risks, complications, and expected benefits, as well as any alternatives, together with their risks and benefits. On the other hand, it is not necessary to obtain informed consent for procedures that are simple and common, that are readily understood by the typical patient, and that do not involve significant risks. In that case, the treating practitioner can obtain simple "consent," meaning the patient's agreement to, or acquiescence in, the procedure after having been informed about what is contemplated [see *Truman v. Thomas*, 27 Cal. 3d 285 (1980)].

The question is whether the term "informed consent" is used in the regulations in the same way as it is used in the cases setting forth the obligations of physicians with respect to complex procedures. We suspect that the Board did not intend to require OTs to engage in a full discussion with the patient prior to each and every telehealth interaction regarding the patient's

condition, the nature of the procedure, the risks, complications, expected benefits, and alternatives. In its Initial Statement of Reasons, the Board proposed to require OTs "to obtain a client's or patient's consent, prior to delivering telehealth services." The reason was to "implement BPC section 2290.5(b) requiring occupational therapy practitioners to obtain the client's or patient's consent prior to delivering telehealth services, and maintain documentation of that consent." Neither of these formulations used the phrase "informed consent." The focus was on making certain that the patient was agreeable to having the interaction occur via telehealth rather than in person, involving consent of the kind given for common straightforward procedures involving no significant risk.

The phrasing of the new regulations suggests that the Board wanted to make certain that the OT obtained the patient's consent to the use of telehealth in the interaction. According to the regulations, the OT must obtain the patient's informed consent "consistent with" Section 2290.5. The intent apparently is to make certain that the process conforms to the requirements in Section 2290.5 governing all telehealth interactions. These center on getting the patient's verbal consent to the use of telehealth, rather than on obtaining the patient's informed consent to the underlying medical care or treatment. Viewed in this way, the regulations should not be read as requiring the OT to complete a full informed consent discussion before each and every telehealth encounter.

We would appreciate receiving the Board's opinion regarding this issue, so that OTs will have full information about the type of consent that they are expected to obtain prior to each telehealth interaction.

Health Care Provider at Originating Site

Our second question arises from an apparent inconsistency between the new regulations and Section 2290.5 about who is expected to obtain the patient's consent to the telehealth interaction. As noted, the new regulations place the obligation on the OT at the distant site. Section 2290.5 places it on "the health care provider at the originating site" [Cal. Bus. & Prof. Code §2290.5(b)]. Put together, these provisions raise two questions. First, they suggest that the patient must be attended by a health care provider at the originating site. Second, they appear to require that the patient's consent be obtained by both the treating OT at the distant site and the health care provider at the originating site.

The original draft of the new regulations made no reference to Section 2290.5, but rather stated simply that the OT at the distant site had to include documentation of the consent in the patient's health record. In its Final Statement of Reasons, the Board explained that it wished "to establish and clarify [that] a record must exist that the consumer has consented to receiving services via telehealth." The intention was to require that "the practitioner document in the record that he or she obtained a verbal consent to receive services via telehealth from the consumer. This is consistent with the Business and Professions Code (BPC) Section 2290.5(b)." The focus was on the obligation of the treating OT at the distant site to obtain and document the patient's consent to the telehealth interaction. The Board apparently was not anticipating that the reference to Section 2290.5 might create dual consent obligations, let alone limit the use of telehealth in occupational therapy to situations where the patient was in the presence of a health care provider.

Despite the apparent conflict, it should be possible to reconcile the new regulations with the Business and Professions Code provision. The reference in the Code to a health care provider can be taken as applying only where the originating site is a health facility or practitioner's office. This is likely to occur where the telehealth interaction involves complex diagnostic or telecommunications equipment that requires the patient to be attended by a health care professional of some kind. This is doubtless the norm with many telehealth interactions. However, it is unlikely to be the case with occupational therapy, which typically involves a simple audio-visual connection. If that is correct, there will be no health care professional in attendance with the patient, with the result that only the distant-site OT will be in a position to obtain the patient's agreement to the use of telehealth. In cases where there is a health care professional at the originating site, that individual also should obtain the patient's agreement to the use of telehealth before the interaction begins and then document it in the medical record.

We believe that the above interpretation will serve to implement the consent provision in the new regulations, while remaining faithful to the reference in the Business and Professions Code to obtaining consent at the originating site. We would appreciate receiving the views of the Board on this matter as well as on the first question.

Please let me know if I can provide any further information regarding our inquiries.

Very truly yours,

Allan D. Jergesen

ADJ:gxn

cc: Jeff Hanson

AB-809 Healing arts: telehealth. (2013-2014)

Assembly Bill No. 809

CHAPTER 404

An act to amend Section 2290.5 of the Business and Professions Code, relating to telehealth, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 2014. Filed with Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 809, Logue. Healing arts: telehealth.

Existing law requires a health care provider, as defined, prior to the delivery of health care services via telehealth, as defined, to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Existing law also provides that failure to comply with this requirement constitutes unprofessional conduct.

This bill would require the health care provider initiating the use of telehealth to obtain verbal or written consent from the patient for the use of telehealth, as specified. The bill would require that health care provider to document the consent.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2290.5 of the Business and Professions Code is amended to read:

2290.5. (a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and

caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(h) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve

credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the health and safety of the public due to a lack of access to health care providers in rural and urban medically underserved areas of California, the increasing strain on existing providers that occurred with the implementation of the federal Patient Protection and Affordable Care Act, and the assistance that further implementation of telehealth can provide to help relieve these burdens, it is necessary for this act to take effect immediately.

DATE TO OAL	PUBLICATION DATE	Minimum 45-day comment period/ public hearing date
September 2, 2014	September 12, 2014	October 27, 2014
September 9, 2014	September 19, 2014	November 3, 2014
September 16, 2014	September 26, 2014	November 10, 2014
September 23, 2014	October 3, 2014	November 17, 2014
September 30, 2014	October 10, 2014	November 24, 2014
October 7, 2014	October 17, 2014	December 1, 2014
October 14, 2014	October 24, 2014	December 8, 2014
October 21, 2014	October 31, 2014	December 15, 2014
October 28, 2014	November 7, 2014	December 22, 2014
November 4, 2014	November 14, 2014	December 29, 2014
November 11, 2014	November 21, 2014	January 5, 2015
November 18, 2014	November 28, 2014	January 12, 2015
November 25, 2014	December 5, 2014	January 19, 2015
December 2, 2014	December 12, 2014	January 26, 2015
December 9, 2014	December 19, 2014	February 2, 2015
December 16, 2014	December 26, 2014	February 9, 2015
December 23, 2014	January 2, 2015	February 16, 2015
December 30, 2014	January 9, 2015	February 23, 2015
January 6, 2015	January 16, 2015	March 2, 2015
January 13, 2015	January 23, 2015	March 9, 2015
January 20, 2015	January 30, 2015	March 16, 2015
January 27, 2015	February 6, 2015	March 23, 2015
February 3, 2015	February 13, 2015	March 30, 2015
February 10, 2015	February 20, 2015	April 6, 2015
February 17, 2015	February 27, 2015	April 13, 2015
February 24, 2015	March 6, 2015	April 20, 2015
March 3, 2015	March 13, 2015	April 27, 2015
March 10, 2015	March 20, 2015	May 4, 2015
March 17, 2015	March 27, 2015	May 11, 2015
March 24, 2015	April 3, 2015	May 18, 2015
March 31, 2015	April 10, 2015	May 25, 2015

TELEREHABILITATION PUBLIC POLICY

GARY CAPISTRANT

AMERICAN TELEMEDICINE ASSOCIATION

20TH ANNUAL STATE REGULATORY CONFERENCE

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PUBLIC POLICY GOALS

Knock down government barriers

Promote "value" innovative payment and service models

Address care delivery problems

- **Cost, access, outcome, productivity**

American Telemedicine Association
Connected to Care

SOME PROBLEMS ADDRESSED

Barriers of time and distance

Professional shortages

Disparities in access to care

Quality of care

Hospital readmits, ER overuse

Costs of delivery

Convenience and patient choice

American Telemedicine Association
Connected to Care

MAJOR GOVERNMENT ROLES

Rendering

Reimbursement

Regulation

Research

Resources

Readiness and recovery

American Telemedicine Association
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INNOVATIVE PAY MODELS

Tweaks

- Value-based purchasing
- Pay for performance

Reforms

- Bundling (services, time)
- Case-mix
- Sharing (risk, savings, gains)
- Salary-based
- Reference pricing, indemnity

American Telemedicine Association
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MEDICARE TODAY

36.6M in fee-for-service

15.7M in Medicare Advantage

1.9M in Special Needs Plans (SNPs)

American Telemedicine Association
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MEDICARE FFS BARRIERS

Limited live video

- **Only rural counties (20% of beneficiaries)**
- **Limited originating sites**
- **Limited providers**
- **Only specific procedures**

No store & forward

No remote patient monitoring

American Telemedicine Association
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MEDICARE BILLS

S. 2662 (Thad Cochran) / H.R. 3306 (Gregg Harper) Telehealth Enhancement Act

H.R. 5380 (Mike Thompson) Medicare Telehealth Parity Act

American Telemedicine Association
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CONSENSUS PRIORITIES FOR CONGRESS

Expand Medicare coverage—

- **all ACOs**
- **bundled payments of acute & post-acute episodes**
- **all FQHCs**
- **all CAHs**
- **remote patient monitoring starting with CHF, COPD and diabetes**
- **home dialysis patients**

American Telemedicine Association
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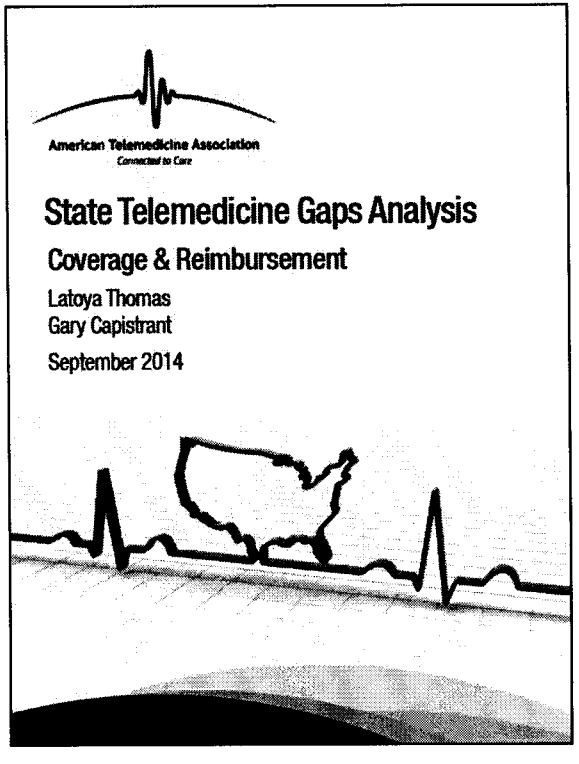
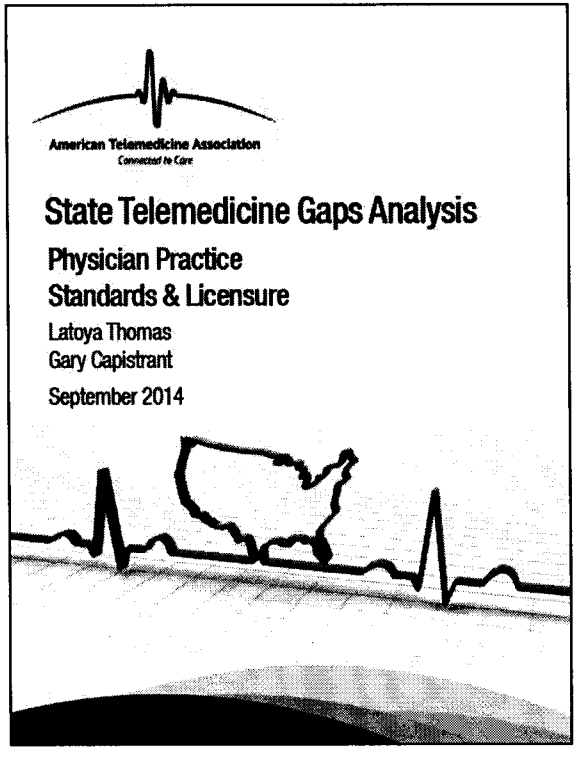
ATA STATE TELEMEDICINE GAPS ANALYSES





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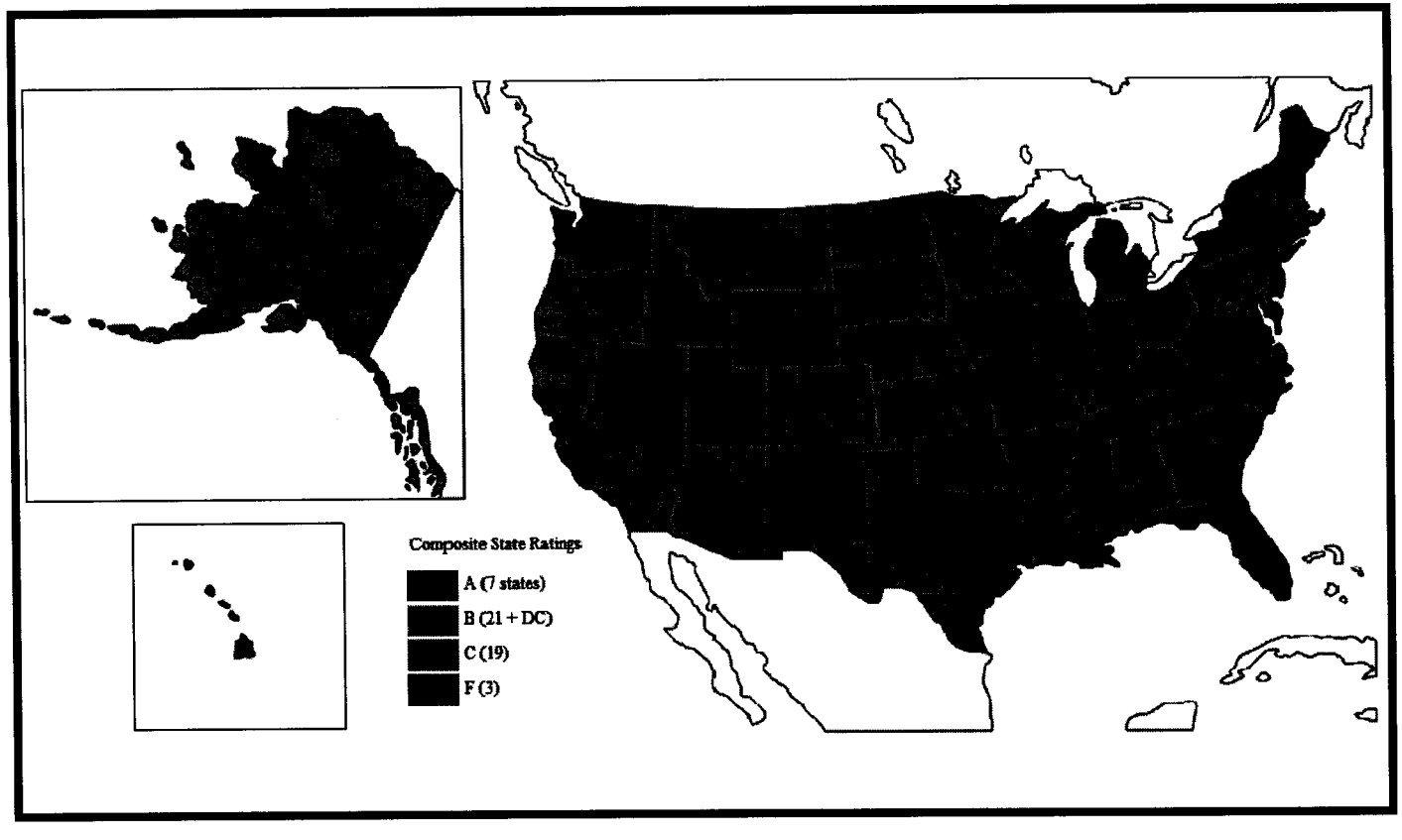
STATE COMPOSITE RATINGS FOR COVERAGE & REIMBURSEMENT



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50 STATE MEDICAIDS TODAY

- All cover imaging
- 47 states cover something
  - 46 telemental health (SC)
  - 21 home telehealth (SC)
  - 14 remote patient monitoring (SC)
  - 11 store-and-forward
- Comprehensive risk-based managed
  - 29.1M (51%)
  - 26 states with >50% of recipients

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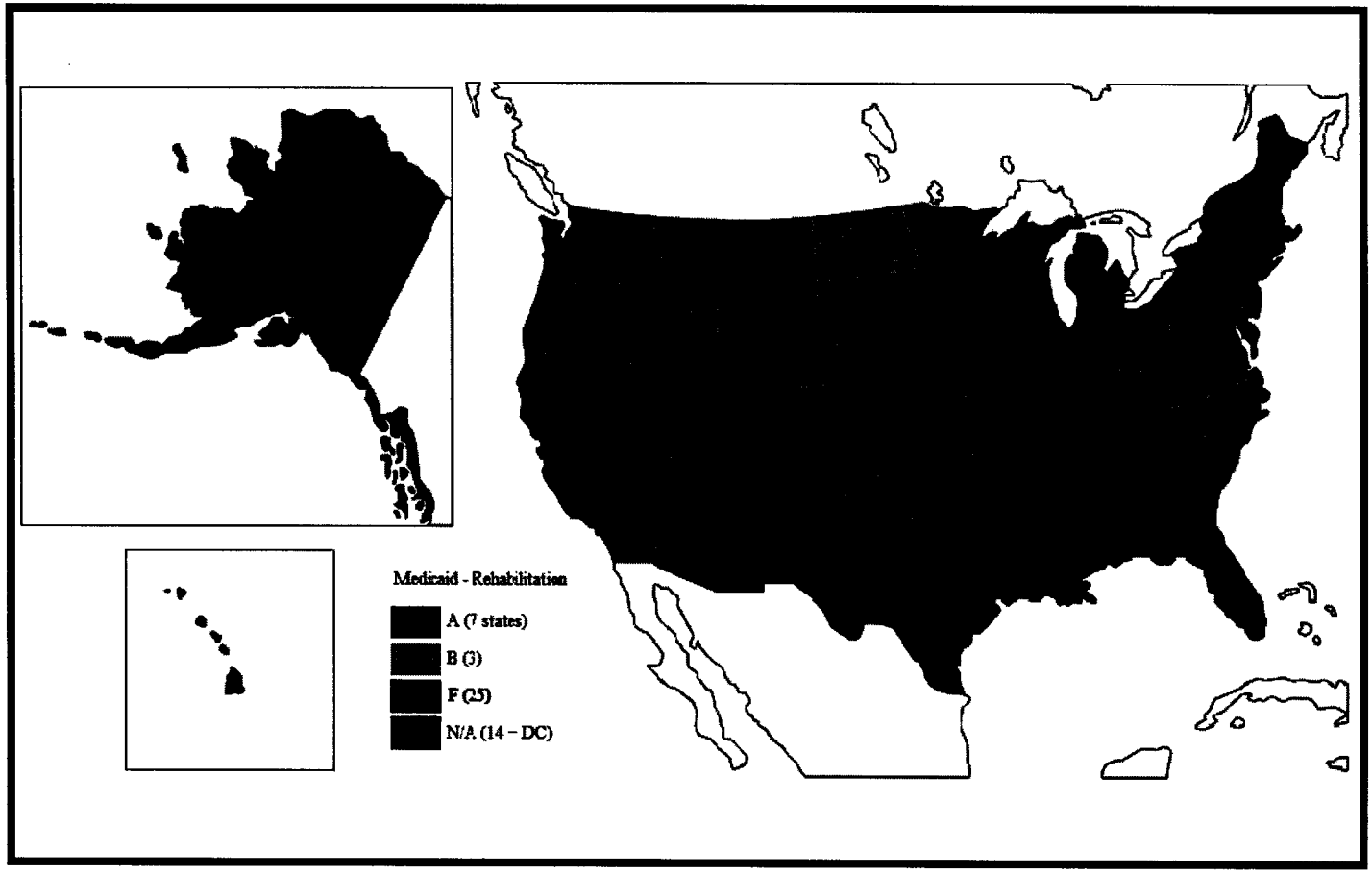
State Medicaid Best Practice

Telerehabilitation

January 2014

This document was made possible by Grant #G22RH25167-01-01 from the Office for the Advancement of Telehealth, Health Resources and Services Administration, DHHS.

MEDICAID - STATE RATINGS FOR TELEREHAB COVERAGE (2014)



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PRIVATE INSURANCE

Obamacare HIE parity

Today

21 states + DC w/parity

- **7 w/10+ years experience**

Many insurers choose to cover

Prospects

29 w/o parity

- **14 with 2014 proposals**

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FEDERAL INTERSTATE "ONE STATE LICENSE" MODEL

Defense -- STEP Act (H.R. 1832)

enacted December 2011

Pending

VA: VETS Act, H.R. 2001

Medicare: TELE-MED Act, H.R. 3077

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OTHER MAJOR REGULATORY

Federal

- FDA on medical devices and software
- FCC on universal services and net neutrality
- HIPAA privacy and security
- DEA for controlled substances prescribing
- ONC/CMS electronic health records and health information exchange

State

- Prof licensure & practice rules at both ends

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STATE TELEHEALTH LEGISLATION

OVERVIEW AND IMPLICATIONS FOR OCCUPATIONAL THERAPY

Chuck Willmarth
Director, Health Policy and State Affairs
American Occupational Therapy Association

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STATE TELEHEALTH ISSUES

- Overview of state legislative issues we are monitoring
- State OT statutes, regulations and position statements
- AOTA resources
- Licensure portability and telehealth

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STATE LEGISLATION

AOTA Chart – Pending, Enacted and Failed Legislation

2014 Telehealth Bills

STATE	YEAR	CHAMBER	BILL#	SPONSOR	TITLE	DISPOSITION	SUMMARY	LAST ACTION	BILL TEXT	NOTES ON INCLUSION OF OT
PENDING LEGISLATION										
CA	2013	A	1310	Bonta (D)	Medi-Cal: Telehealth	Pending	Relates to the Medi-Cal program. Requires a provider, in order for a provider outside of the State to meet specified conditions and criteria regarding providing telehealth services, including that the provider be enrolled and in good standing in the Medicaid program for the State where the provider is located, be enrolled in good standing in Medicare, or be enrolled in good standing in both programs, and that the provider not be located outside of the United States.	08/28/2014 - In ASSEMBLY Committee on HEALTH: Not heard.	http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1301-1350/ab_1310_bill_20140701_amended_sen_v96.pdf	NA
IL	2013	H	5313	Feigenholtz (D)	Telehealth Act	Pending	Creates the Telehealth Act, provides that telehealth services consist of the provision of services and the mode of delivering health care services, including, but not limited to, primary care, counseling, psychiatry, emergency care, and specialty care and public health services via information and communication technologies.	04/11/2014 - Rereferred to HOUSE Committee on RULES.	http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=85&GA=98&DocTypeId=HB&DocNum=5313&GAID=12&LegID=80086&SpecSess=&Session=	OT not included as a provider of telehealth. Practice and payment requirements.

Source: State Net Legislative Information Service – Used with Permission

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STATE LEGISLATION

- Payment and coverage
  - Medicaid
  - Private Insurance
- Practice standards/requirements
- Funding for telehealth research or infrastructure
- Creation of task forces, study committees and/or advisory bodies
- State Practice Acts

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STATE OT LAWS & POSITIONS

An Analysis of State Telehealth Laws and Regulations for Occupational Therapy and Physical Therapy

International Journal of Telerehabilitation
http://telerehab.pitt.edu/ojs/index.php/Telerehab/article/view/6141

doi: 10.5195/ijt.2014.6141

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STATE OT LAWS & POSITIONS

- AOTA State Affairs Group Survey – September 2014
  - Eight states referenced AOTA Position Paper
  - Seven states reported that the Board doesn't have a position on telehealth
  - One state reported that telehealth is not authorized

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STATE OT LAWS AND POSITIONS

Example from Ohio

Ann Ramsey, OTR/L: Ms. Ramsey asked the Section questions regarding using telepractice to provide consultative services to clients to support their home programming. **Reply:** Telerehabilitation is an emerging area of practice. The Section suggests you review the American Occupational Therapy Association's *Position Paper: Telerehabilitation* (AOTA, 2010) for additional guidance and resources regarding process and best practice for provision of occupational therapy remotely. It is the position of the Occupational Therapy Section that an occupational therapy practitioner is required to hold a valid, current license in the State of Ohio to serve any clients residing in Ohio. Therefore, out of state occupational therapy personnel must hold a valid Ohio license to treat clients in Ohio via telerehabilitation. If your client resides outside the state of Ohio, the Section recommends that you contact the occupational therapy board in that state to explore their specific requirements related to licensure and practice via telerehabilitation. It is not within the jurisdiction of the Occupational Therapy Section to render billing and reimbursement advice. The Section recommends that you refer to payer policies for any specific billing and reimbursement requirements in your setting. You might also contact the Ohio Occupational Therapy Association, or the Reimbursement Department of the American Occupational Therapy Association.

Ohio Occupational Therapy Section Minutes, March 7, 2013
http://otptat.ohio.gov/Portals/0/OTmins/OT%20Minutes%202013Mar.pdf

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AOTA RESOURCES

- AOTA Position Paper - Telehealth

  http://www.aota.org/-/media/Corporate/Files/Secure/Practice/OfficialDocs/Position/Telehealth-Position-2013.PDF

- AOTA Advisory Opinion for the Ethics Commission

  http://www.aota.org/-/media/Corporate/Files/Practice/Ethics/Advisory/telehealth-advisory.pdf

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TELEHEALTH AND LICENSURE

POLICY 5.3

Subject:	**Licensure**	Effective: **10/77** Revised: **4/78, 3/81, 4/96, 4/99, 5/02, 6/03**
Code:	**RA Resolution 400-74, 500-77 and 501-77 (Supersedes Resolution 376-74), RA Motion 2003M54**	BPPC Reviewed: **10/01, 1/02, 1/03, 1/04, 1/09** Rescinded:

PURPOSE: To state the Association's position regarding the licensure of occupational therapists and occupational therapy assistants.

IT SHALL BE THE POLICY OF THE ASSOCIATION THAT:

1. The Association supports licensure of qualified occupational therapists and occupational therapy assistants in order to protect consumers from services by unqualified practitioners and the right of qualified occupational therapists to provide occupational therapy services and the right of occupational therapy assistants to assist in the provision of occupational therapy services.

2. The Association respects the autonomy and rights of affiliated state occupational therapy associations and the authority of their respective election area legislatures.

3. The Association encourages the use of The Association Definition of Occupational Therapy Practice for State Regulation and The Association Model Occupational Therapy Practice Act to ensure state-by-state uniformity of standards of practice, scope of occupational therapy practice, supervision standards, entry-level licensing requirements, and consumer protection, as well as to facilitate geographical mobility of occupational therapists and occupational therapy assistants.

2013 AOTA Policy Manual - http://www.aota.org/-/media/Corporate/Files/AboutAOTA/Governance/2013-Policy-Manual.pdf

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AOTA CONTACT

Chuck Willmarth

Director, Health Policy and State Affairs

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240-482-4133

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National Board for Certification in Occupational Therapy

ALASKA

CREATED 4/12/2007
ADOPTED 6/30/2008

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National Board for Certification in Occupational Therapy

ALASKA REGULATION

- **12 AAC 54.825. STANDARDS FOR PRACTICE OF TELEREHABILITATION BY OCCUPATIONAL THERAPIST.** (a) The purpose of this section is to establish standards for the practice of telerehabilitation by means of an interactive telecommunication system by an occupational therapist licensed under AS 08.84 and this chapter in order to provide occupational therapy to patients who are located at distant sites in the state which are not in close proximity of an occupational therapist.
- (b) An occupational therapist licensed under AS 08.84 and this chapter conducting telerehabilitation by means of an interactive telecommunication system
- (1) must be physically present in the state while performing telerehabilitation under this section;
- (2) must interact with the patient maintaining the same ethical conduct and integrity required under 12 AAC 54.800;
- (3) must comply with the requirements of 12 AAC 54.810 for any licensed occupational therapist assistant providing services under this section;
- (4) may conduct one-on-one consultations, including initial evaluation, under this section; and
- (5) must provide and ensure appropriate client confidentiality and HIPAA compliance, establish secure connections, activate firewalls, and encrypt confidential information.
- **Authority:** AS 08.84.010

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SURVEY OF O.T. USING TELE-HEALTH

USING SURVEY MONKEY FOR A 6 QUESTION SURVEY

THIS WAS SENT OUT TO ALL MEMBERS OF ALASKA OT ASSOCIATION

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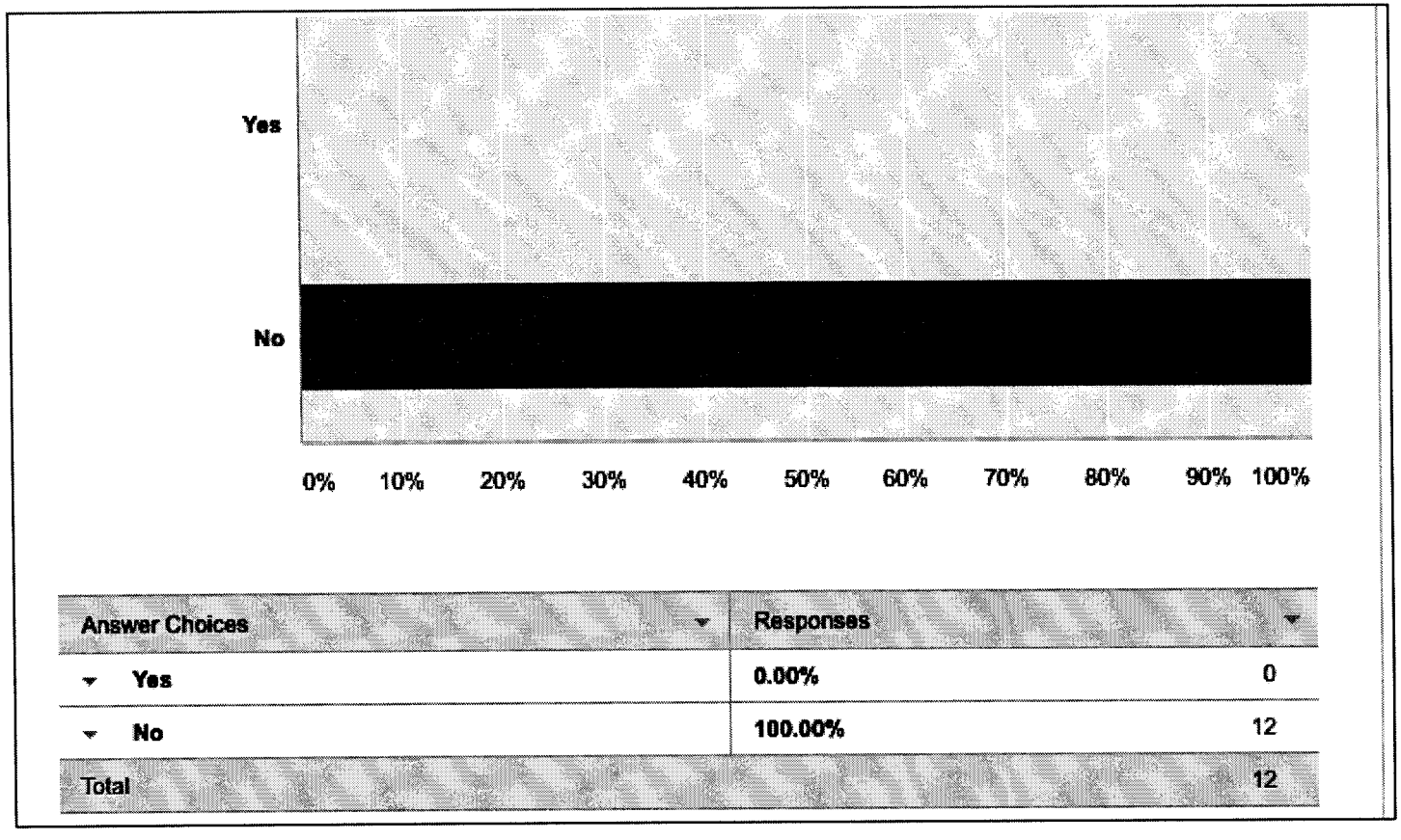
ARE YOU CURRENTLY USING TELE-REHABILIATION OR TELE-HEALTH IN ALASKA?



Answer Choices	Responses	
Yes	0.00%	0
No	100.00%	12
Total		12

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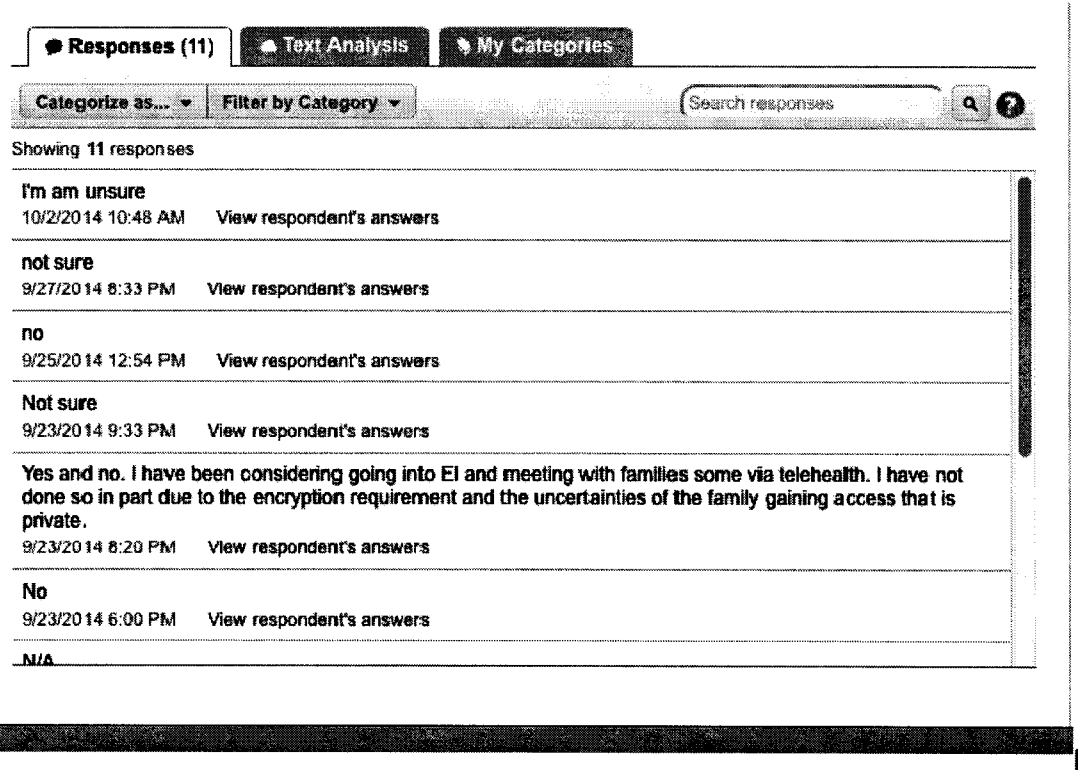
ARE THE CURRENT LAWS IMPACTING YOUR ABILITY TO USE TELE-HEALTH AS PART OF YOU SERVICE DELIVERY MODEL?



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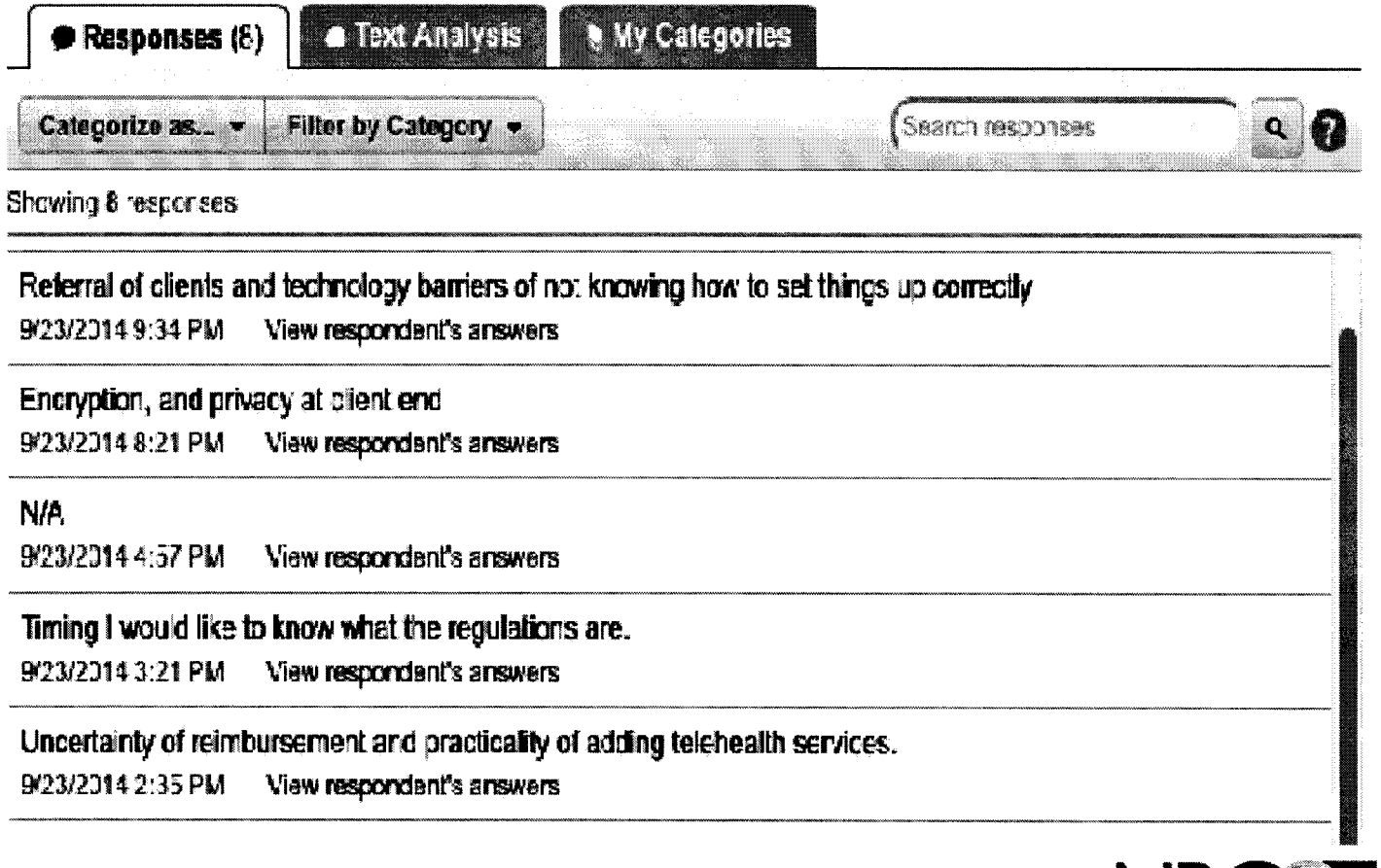
If you would like to include tele-health within your practice, what are some of the barriers that prevent you from doing so?



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For practitioners who use telehealth with clients, how are you reimbursed for services?

Answered: 0 Skipped: 12

⚠ No matching responses.

Answer Choices	Responses	
Private Insurance	0.00%	0
Medicare/medicaid	0.00%	0
Client pays directly	0.00%	0
Total Respondents: 0		

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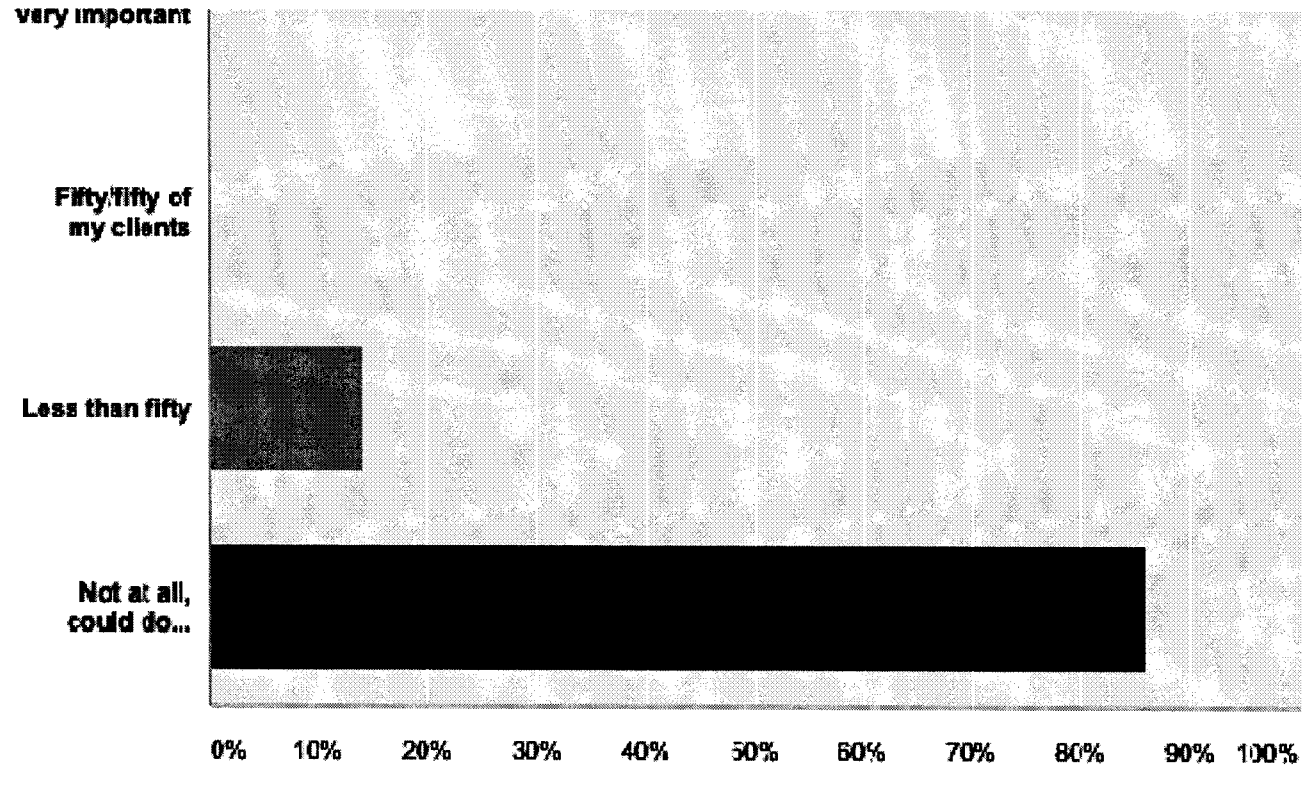
RANK THE USE TELEHEALTH AS PART OF YOUR PRACTICE?



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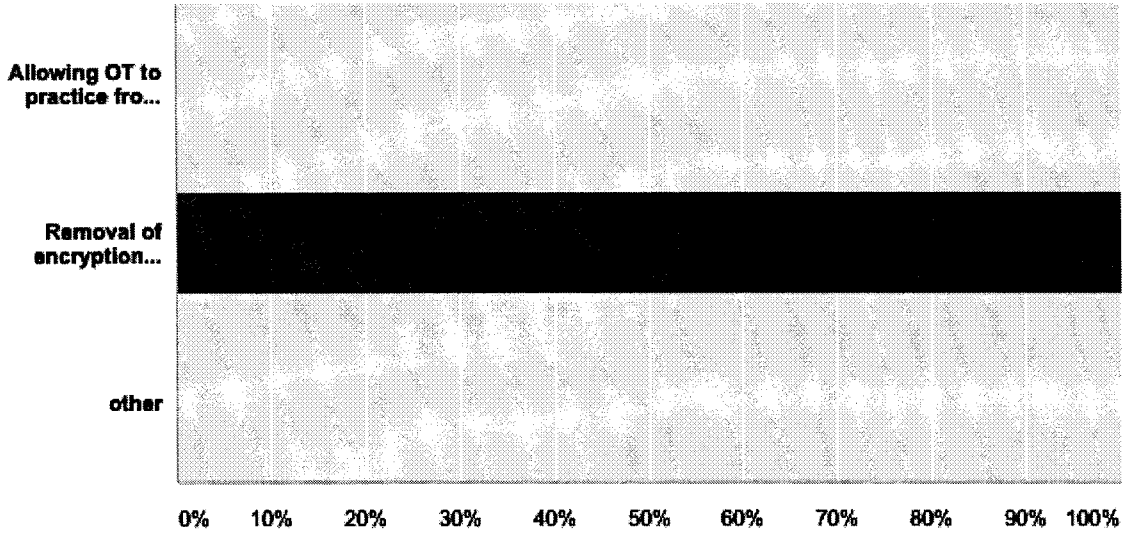
WHAT CHANGES WOULD ALLOW YOU TO BETTER UTILIZE TELE-HEALTH IN YOUR PRACTICE?



Answer Choices	Responses	
Allowing OT to practice from outside the state of Alaska	0.00%	0
Removal of encryption requirement	100.00%	2
other	0.00%	0
Total Respondents: 2		

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OREGON PROPOSED TELEHEALTH RULE

A committee looked at other state rules, many national issues and wording and this language was what the committee members decided needed to be addressed.

DEFINITION

OAR 339-010-0006
Standards of Practice for Telehealth:

1. "Telehealth" is defined as the use of interactive audio and video, in real time telecommunication technology or store-and-forward technology, to deliver health care services when the occupational therapist and patient/client are not at the same location. Its uses include diagnosis, consultation, treatment, prevention, transfer of health or medical data and continuing education.

There were several drafts considered including AOTA.

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"TELEPRACTICE" SAME AS "TELEHEALTH" ?

We may need to add language clarifying Telehealth versus Telepractice…

Telehealth is considered the same as Telepractice for Occupational Therapists working in education settings; and Telerehab in other settings.

This was added to help allow Medicaid payments

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LICENSING

2. In order to provide occupational therapy services via telehealth to a **patient/client in Oregon**, the occupational therapist providing services to a patent/client must have a valid and current license issued by the Oregon OT licensing board.

(a) Oregon licensed occupational therapists using telehealth technology with a **patient/client in another state** may also be required to be licensed in the state in which the patient/client receives those services and must adhere to those state licensure laws.

The language requires following licensing laws in both states. For example, if Alaska does not allow telehealth outside their state, an Oregon OT cannot do telehealth with a patient in Alaska.

INFORMED CONSENT

3. Occupational therapists shall obtain informed consent of the delivery via telehealth from the patient/client prior to initiation of occupational therapy services via telehealth and maintain documentation in the patient's or client's health record.

Others had great concerns about informed consent but our committee thought it was important to include this.

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CONFIDENTIALITY

4. Occupational therapists shall secure and maintain the confidentiality of medical information for the patient/client as required by HIPPA and state and federal law.

No issues.

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IN-PERSON EVALUATION

5. Prior to providing occupational therapy services via telehealth, an occupational therapist shall determine whether an in-person evaluation is necessary and ensure that a local therapist is available if an on-site visit is required.

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

(b) The obligation of the occupational therapist to determine whether an in-person re-evaluation or intervention is necessary continued ruing the course of treatment.

Others had great concerns because this means patients might not be able to get services.

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IN-PERSON REQUIRED

6. In making the determination whether an in-person evaluation or intervention are necessary, an occupational therapist shall consider at a minimum:

(a) the complexity of the patient/client's condition

(b) his or her own knowledge, skills and abilities

(c) the patient's/client's context and environment

(d) the nature and complexity of the intervention

(e) the pragmatic requirement of the practice setting; and

(f) the capacity and quality of the technological interface

Others had great concern that these are new standards.

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STANDARD OF CARE

7. An occupational therapists or occupational therapy assistant providing occupational therapy services via telehealth must:

(a) Exercise the **same** standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

(b) Provide services consistent with AOTA Code of Ethics and Ethical Standards of Practice; and comply with provisions of the Occupational Therapy practice Act and its regulations.

No issues, this is a mode of delivery

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ADEQUATELY TRAINED PERSON

8. When an Occupational Therapist has determined that telehealth is an appropriate delivery of services, the therapist must ensure that, if required, there is an adequately trained person available to set up and help with hands on delivery of services to the patient/client and who works under the direction of the therapist.

This is controversial. The committee's concern was that aides not provide OTA treatment.

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SUPERVISION

9. Supervision of an Occupational Therapy Assistant under 339-010-0035 for routine and general supervision, can be done through telehealth, but cannot be done when close supervision, as defined in 339-010-0005, is required. The same considerations in (6)(a) through (f) must be considered in determining whether telehealth should be used.

AOTA rules allow supervision by telehealth and this is added to make it clear in Oregon.

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FIELDWORK SUPERVISON

10. An Occupational Therapist who is supervising a fieldwork student must follow the ACOTE standards and other accreditation requirements.

    The committee wanted to acknowledge that telehealth can be used by schools for fieldwork students.

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UNPROFESSIONAL CONDUCT

11. Failure to comply with these regulations shall be considered unprofessional conduct under OAR 339-010-0020.

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OREGON CONTACT INFO.

Felicia Holgate, Executive Director
Oregon OT Licensing Board
800 NE Oregon St. Suite 407
Portland, Oregon 97232
971-673-0198
Felicia.M.Holgate@state.or.us

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AGENDA ITEM 9

DISCUSSION AND CONSIDERATION OF REQUEST TO PROVIDE FAQS ON BOARD'S WEBSITE REGARDING PROVIDING SERVICES VIA TELEHEALTH.

Suggested FAQs provided by the Occupational Therapy Association of California are attached for review.

11/3/2014 draft

Telehealth – Frequently Asked Questions

The Board receives numerous questions from occupational therapists and occupational therapy assistants regarding telehealth. Listed below are some of the most frequently asked questions we hope will be helpful. We will update this section on a regular basis as questions are received. If you have a specific question, you may e-mail the Board at cbot@dca.ca.gov.

Q. What is telehealth?

A. Telehealth, as defined by Business and Professions Code 2290.5 (a)(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

Q. What are the Standards of Practice for Telehealth?

A. An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must exercise the same standards of care and same ethical standards (as set forth in Section 4170) as with any other mode of delivery of occupational services and consistent with Section 2570.2(k) of the Code.

Q. When did the Standards of Practice for Telehealth go into effect?

A. April 1, 2014

Q. What is required to provide occupational therapy services via telehealth in California?

A. An occupational therapist or occupational therapy assistant providing occupational therapy services via teleheath to a client in California must have a valid and current license issued by the Board.

Q. I am from out of state. Do I need a California license to provide occupational therapy services to a client in California?

Yes.

Q, Do I need to reside within the state of California in order to provide telehealth services to a client who resides in California?

A. No, you are not required to reside in California but you are required to have a California license and follow all the provisions of California Occupational Therapy Licensure and Regulations (Title 19, Division 39),

Q. What is an "informed consent"?

A. Informed consent is the process (and document) by which the occupational therapist discloses appropriate information to a competent client so that the client may make a voluntary choice to accept or refuse treatment. It originates from the legal and ethical right the patient has to direct what happens to his or her body and from the ethical duty of the occupational therapist or to involve the patient in her health care.

Q. What are the requirements for informed consent?
A. Before delivering occupational therapy services, an occupational therapist shall obtain an informed consent from a patient or client, consistent with Section 2290.5 of the Code. This section provides: (b) Prior to the delivery of health care via telehealth, the health care provider at the originating site (where the client is located) shall verbally inform the client that telehealth may be used and obtain verbal consent from the client for this use. The verbal consent shall be documented in the client's medical record.

Q. What else must be considered before providing occupational therapy services via telehealth?

A. Section 4172(c)(1) of the regulations requires the occupational therapist to determine whether an in-person evaluation is necessary and ensure thata therapist must be available if an onsite visit is required. However, Section 4172 ©(1) only requires an occupational therapist be onsite to conduct an evaluation *if considering the criteria set forth in Section 4172(d), an in-person evaluation is warranted and necessary.*

Likewise, Section 4172(c)(2) of the regulations requires that an occupational therapist or occupational therapy assistant provide interventions in-person only if, after considering the criteria set forth in Section 4172(d), it is determined that in-person interventions are necessary.
The regulations do not require an on-site occupational therapist.

Q. How does an occupational therapist determine if an in-person evaluation or in-person interventions are necessary?

A. Section 4172(d) of the regulations requires the occupational therapist to consider a variety of factors in making these decisions, including all of the following:

1. the complexity of the patient's/client's condition;
2. his or her own knowledge, skills and abilities;
3. the nature and complexity of the intervention;
4. the requirements of the practice setting; and
5. the patient's/client's context and environment.

Q. Do the requirements of Sections 4172(c) and 4172(d) effectively require that the evaluations and interventions take place in person?
A. No. Section 4172(c) *does not require* an occupational therapist to be present, with the client, unless A determination was made that an in-person evaluation or interventions arewarranted and necessary . Section 4172(c) requires the occupational therapist, consider the factors set forth in 4172(d) to determine whether services, including the evaluation or interventions can be (safely and appropriately) delivered via telehealth or whether the evaluation or interventions should be provided in-person. The individual responsible for making this determination is the occupational therapist that is considering rendering services, including provide ng an occupational therapy evaluation and interventions, via telehealth

Q. As stated above, section 4172(c)(1) of the regulations requires the occupational therapist to determine whether an in-person evaluation is necessary and states that a therapist must be available if an onsite visit is required. What if a therapist is not available to perform an onsite evaluation?

A. While clients receiving services via telehealth may experience an increased access to care, that

care cannot be at the risk of a patient's safety. Thus, the rationale for the requirement that the occupational therapist determine before providing services whether services, the evaluation, or inter ventions can be (safely and appropriately) delivered via telehealth or whether services , the evaluation or interventions must be provided in-person

Q. As state above, section 4172(c)(2) of the regulations requires the occupational therapist to determine whether in-person interventions are necessary and states that if in-person interventions are necessary, that an on-site occupational therapist or occupational therapy assistant provide the appropriate interventions. What if a therapist or therapy assistant is not available to provide the interventions?

A. While clients receiving services via telehealth may experience an increased access to care, that care cannot be at the risk of a patient's safety. Thus, the rationale for the requirement that the occupational therapist determine before providing services whether services, the evaluation, or interventions can be (safely and appropriately) delivered via telehealth or whether services , the evaluation or interventions must be provided in-person.

Q. What else must an occupational therapist or occupational therapy assistant consider when providing services via telehealth?

A. Section 4172(e) requires OTs and OTAs to:
Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

1. Provide services consistent with section 2570.2(k) of the code (???what is this)
2. Comply with all other provisions of the OT practice act and regulations, including ethical standards set forth in section 4170 as well as any other applicable provisions of the law.

Q. What is Section 4170 and how does that impact OT services provided via telehealth?

A. Section 4170, the ethical standards of practice, are designed to ensure consumer protection in setting forth certain responsibilities of occupational therapists and occupational therapy assistants to, among ot her things: take reasonable precautions to avoid imposing or inflicting harm upon the client , not exploit clients in any manner, avoid relationships or activities that interfere with professional judgment and objectivity, shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process, fully inform the client of the nature, risks, and potential outcomes of any interventions, obtain informed consent, respect the client's right to refuse professional services or involvement in research or educational activities, maintain patient confidentiality, perform occupational therapy services only when they are qualified by education, training, and experience to do so, and comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws. Section 4172(e)(3) reiterates that Section 4170 applies to services provided via telehealth.

Q. Does the Occupational Therapy Association of California (OTAC) have resources regarding telehealth?
A. OTAC can be contacted via their website at www.otaconline.org, or by telephone at (916) 567-7000

Q. Does the American Occupational Therapy Association (AOTA) have resources regarding telehealth?
A. AOTA provides additional information and resources regarding telehealth at: at www.aota., http://www.aota.org/Practice/Rehabilitation-Disability/Emerging-Niche/Telehealth.aspx or by telephone at (301) 652-2682.

Q. What guidance is there for supervision of students, occupational therapy assistants, and therapy aides with the application of telehealth ?

A. The Occupational Therapy Practice Act 2570.2 and Article 9. Supervision Standards (4180-4187) if the California Code of Regulations for Occupational Therapy provide guidance regarding supervision. These standards and guidelines should be followed regardless of method of delivery, such as telehealth.

Q. Are there additional qualifications needed to provide telehealth services?
A. As with all provisions of the OT practice act and regulations, including ethical standards set forth in section 4170, it is the responsibility of the occupational therapist or assistant to obtain and maintain appropriate educational and professional development in services provided to patient populations and across practice settings.

AGENDA ITEM 10

DISCUSSION AND CONSIDERATION OF REQUEST FROM CA OT FIELDWORK COUNSEL TO INCREASE THE NUMBER OF PDUS EARNED WHEN SUPERVISING A STUDENT COMPLETING THEIR LEVEL II FIELDWORK.

The following are attached for review:

- Section 4161, current PDU language
- Section 4161, with edits adopted in February (estimated effective date: 4/2015)
- Letter from California OT Fieldwork Council

§ 4161. Continuing Competency

(a) Effective January 1, 2006, each occupational therapy practitioner renewing a license or certificate under Section 2570.10 of the Code shall submit evidence of meeting continuing competency requirements by having completed, during the preceding renewal period, twelve (12) PDUs for each twelve month period, acquired through participation in professional development activities.
(1) One (1) hour of participation in a professional development activity qualifies for one PDU;
(2) One (1) academic credit equals 10 PDUs;
(3) One (1) Continuing Education Unit (CEU) equals 10 PDUs.
(b) Professional development activities acceptable to the board include, but are not limited to, programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Occupational Therapy Association of California; post-professional coursework completed through any approved or accredited educational institution that is not part of a course of study leading to an academic degree; or otherwise meet all of the following criteria:
(1) The program or activity contributes directly to professional knowledge, skill, and ability;
(2) The program or activity relates directly to the practice of occupational therapy; and
(3) The program or activity must be objectively measurable in terms of the hours involved.
(c) PDUs may also be obtained through any or a combination of the following:
(1) Involvement in structured special interest or study groups with a minimum of three (3) participants. Three (3) hours of participation equals one (1) PDU.
(2) Structured mentoring with an individual skilled in a particular area. For each 20 hours of being mentored, the practitioner will receive three (3) PDUs.
(3) Structured mentoring of a colleague to improve his/her skills. Twenty (20) hours of mentoring equals three (3) PDUs.
(4) Supervising the fieldwork of Level II occupational therapist and occupational therapy assistant students. For each 60 hours of supervision, the practitioner will receive .5 PDU.
(5) Publication of an article in a non-peer reviewed publication. Each article equals five (5) PDUs.
(6) Publication of an article in a peer-reviewed professional publication. Each article equals 10 PDUs.
(7) Publication of chapter(s) in occupational therapy or related professional textbook. Each chapter equals 10 PDUs.
(8) Making professional presentations at workshops, seminars and conferences. For each hour, the practitioner will receive two (2) PDUs.
(9) Attending a meeting of the California Board of Occupational Therapy. Each meeting attended equals two (2) PDUs, with a maximum of six (6) PDUs earned per renewal period.
(10) Attending board outreach activities. Each presentation attended equals two (2) PDUs, with a maximum of four (4) PDUs earned per renewal period.
(d) Partial credit will not be given for the professional development activities listed in subsection (c).
(e) This section shall not apply to the first license or certificate renewal following issuance of the initial license or certificate.
(f) Of the total number of PDUs required for each renewal period, a minimum of one half of the units must be directly related to the delivery of occupational therapy services.
(1) The delivery of occupational therapy services may include: models, theories or frameworks that relate to client/patient care in preventing or minimizing impairment, enabling function within the person/environment or community context. Other activities may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to one's practice.
(g) Applicants who have not been actively engaged in the practice of occupational therapy within the past five years completing continuing competency pursuant to section 2570.14(a) of the Code to qualify for licensure/certification shall submit evidence of meeting the continuing competency requirements by having completed, during the two year period immediately preceding the date the application was received, forty (40) PDUs that meet the requirements of subsection (b). The forty PDUs shall include:
(1) Thirty-seven (37) PDUs directly related to the delivery of occupational therapy services;
(2) One (1) PDU related to occupational therapy scope of practice;
(3) One (1) PDU related to occupational therapy framework;
(4) One (1) PDU related to ethical standards of practice for an occupational therapist.

§ 4161. Continuing Competency

(a) Effective January 1, 2006, each licensee renewing a license under Section 2570.10 of the Code shall submit evidence of meeting continuing competency requirements by having completed twenty-four (24) professional development units (PDUs) during the preceding renewal period, or in the case of a license delinquently renewed, within the two years immediately preceding the renewal, acquired through participation in professional development activities.
(1) One (1) hour of participation in a professional development activity qualifies for one PDU;
(2) One (1) academic credit equals 10 PDUs;
(3) One (1) Continuing Education Unit (CEU) equals 10 PDUs.
(b) Topics and subject matter shall be pertinent to the practice of occupational therapy and course material must have a relevance or direct application to a consumer of occupational therapy services. Except as provided in subdivision (c), professional development activities acceptable to the board include programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Occupational Therapy Association of California; post-professional coursework completed through any approved or accredited educational institution, or otherwise meets all of the following criteria:
(1) The program or activity contributes directly to professional knowledge, skill, and ability; and
(2) The program or activity must be objectively measurable in terms of the hours involved.
(c) PDUs may also be obtained through any or a combination of the following:
(1) Involvement in structured special interest or study groups with a minimum of three (3) participants. Three (3) hours of participation equals one (1) PDU, with a maximum of six (6) PDUs credited per renewal period.
(2) Structured mentoring with an individual skilled in a particular area. For each 20 hours of being mentored, the practitioner will receive three (3) PDUs, with a maximum of six (6) PDUs credited per renewal period.
(3) Structured mentoring of a colleague to improve his/her skills. Twenty (20) hours of mentoring equals three (3) PDUs, with a maximum of six (6) PDUs credited per renewal period.
(4) Supervising the fieldwork of Level II occupational therapist and occupational therapy assistant students. For each 60 hours of supervision, the practitioner will receive .5 PDU, with a maximum of twelve (12) PDUs credited per renewal period.
(5) Publication of an article in a non-peer reviewed publication. Each article equals five (5) PDUs, with a maximum of ten (10) PDUs credited per renewal period.
(6) Publication of an article in a peer-reviewed professional publication. Each article equals10 PDUs, with a maximum of ten (10) PDUs credited per renewal period .
(7) Publication of chapter(s) in occupational therapy or related professional textbook. Each chapter equals 10 PDUs, with a maximum of ten (10) PDUs credited per renewal period.
(8) Making professional presentations at workshops, seminars and conferences. For each hour presenting, the practitioner will receive two (2) PDUs, with a maximum of six (6) PDUs credited per renewal period.
(9) Attending a meeting of the California Board of Occupational Therapy. Each meeting attended equals two (2) PDUs, with a maximum of six (6) PDUs credited per renewal period.
(10) Attending board outreach activities. Each presentation attended equals two (2) PDUs, with a maximum of four (4) PDUs credited per renewal period.

(d) Partial credit will not be given for the professional development activities listed in subsection (c) and a maximum of twelve (12) PDUs may be credited for the activities listed in subsection (c).
(e) This section shall not apply to the first license renewal following issuance of the initial license.
(f) Of the total number of PDUs required for each renewal period, a minimum of one half of the units must be directly related to the delivery of occupational therapy services, which may include: models, theories or frameworks that relate to client/patient care in preventing or minimizing impairment, enabling function within the person/environment or community context. Other activities may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to one's practice.
(g) Applicants who have not been actively engaged in the practice of occupational therapy within the past five years completing continuing competency pursuant to section 2570.14(a) of the Code to qualify for licensure shall submit evidence of meeting the continuing competency requirements by having completed, during the two year period immediately preceding the date the application was received, forty (40) PDUs that meet the requirements of subsection (b). The forty PDUs shall include:
(1) Thirty-seven (37) PDUs directly related to the delivery of occupational therapy services, which may include the scope of practice for occupational therapy practitioners or the occupational therapy practice framework;
(2) Three (3) PDUs related to ethical standards of practice ~~for an occupational therapist~~ in occupational therapy.

The CALIFORNIA OT FIELDWORK COUNCIL (CAOTFC)

August 7, 2014

Correspondence to:
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2250
Sacramento, CA 95815

The California OT Fieldwork Council is calling for an action item to be discussed by the CBOT Board members. Upon review of the California Code of Regulations for CBOT, Article 7 Section 4161 the continuing competency (4) Supervising the fieldwork of level II OT and OTA students states: Currently, for each 60 hours of supervision, the practitioner receives .5 PDUs. Under this competency regulation, the Fieldwork Educator(FE) is awarded a total of 4 PDUs for 12 weeks of full time supervision.

Medicare has changed their requirements mandating that a FE may not be engaged in any other activity or treatment while their student is treating patients. NBCOT has recognized this requirement and has responded by allowing 1 unit per 1 week of supervision for Level II fieldwork; allowing for a maximum of 12 PDUs total. California Code of Regulations for CBOT Article 7, Section 4161 of Continuing Competency (2) allows for structured mentoring with an individual skilled in a particular area: For each 20 hours of being mentored, the practitioner receives three (3) PDUs. In addition, ACOTE standards for off-site supervision of a student in a site without an on-site occupational therapist, require a minimum of 8 hours of direct supervision of the student per week of fieldwork experience. Based on the structured mentoring formula of three (3) PDUs per 60 hours of mentorship, a fieldwork educator providing off-site supervision should receive (1.2) PDU per week!

Whether you apply the NBCOT, structured skilled mentoring, or off-site formulas to calculate PDUs for fieldwork supervision, a minimum of one (1) PDU per 40 hours of direct supervision is a reasonable award for all the time, effort, and expertise provided. The current (.5) per 60 hours of mentorship hardly makes it worthwhile for a practitioner to consider taking an OT fieldwork student! And, in fact, we are facing an ever increasing resistance from fieldwork sites

and individual practitioners to provide fieldwork supervision to our students, especially when facing productivity requirements of 90% or more in traditional medical model sites, which have been the core providers of fieldwork education for our students. Finally, why should a practitioner consider taking a student and receive four(4) PDUs for 12 weeks of active, engaged effort, when they can sign up for an all day educational seminar (often passive reception of information) and receive at least five (5) PDUs!!

We look forward to your response.

Sincerely,

The California OT Fieldwork Council

Please respond to:
Diane Mayfield, Ed.D., OTR/L,AFWC –Chair of the CAOTFC
Fieldwork Office: (310) 243-2694
Cell: (714) 943-5741 Fax: (310) 516-3542