

1 SB302
2 211039-2
3 By Senator McClendon
4 RFD: Healthcare
5 First Read: 04-MAR-21

1 SB302

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4 ENROLLED, An Act,

5 Relating to the Alabama State Board of Occupational
6 Therapy; to amend Sections 34-39-3 and 34-39-7, Code of
7 Alabama 1975, and to add Section 34-39-12.1 to the Code of
8 Alabama 1975; to authorize the board to establish an impaired
9 practitioner program for occupational therapists and
10 occupational therapy assistants.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 34-39-3 and 34-39-7 of the Code
13 of Alabama 1975, are amended to read as follows:

14 "§34-39-3.

15 "In this chapter, the following terms shall have the
16 respective meanings provided in this section unless the
17 context clearly requires a different meaning:

18 "(1) ASSOCIATION. The Alabama Occupational Therapy
19 Association.

20 "(2) BOARD. The Alabama State Board of Occupational
21 Therapy.

22 "(3) IMPAIRED. The inability of an occupational
23 therapist or occupational therapy assistant to practice
24 occupational therapy with reasonable skill and safety to
25 patients by reason of illness, inebriation, excessive use of

1 drugs, narcotics, alcohol, chemicals, or other substances, or
2 as a result of any physical or mental condition.

3 "~~(3)~~(4) LICENSE. A valid and current certificate of
4 registration issued by the ~~Alabama State Board of Occupational~~
5 ~~Therapy~~ board.

6 "~~(4)~~(5) OCCUPATIONAL THERAPY.

7 "a. The practice of occupational therapy means the
8 therapeutic use of occupations, including everyday life
9 activities with individuals, groups, populations, or
10 organizations to support participation, performance, and
11 function in roles and situations in home, school, workplace,
12 community, and other settings. Occupational therapy services
13 are provided for habilitation, rehabilitation, and the
14 promotion of health and wellness to those who have or are at
15 risk for developing an illness, injury, disease, disorder,
16 condition, impairment, disability, activity limitation, or
17 participation restriction. Occupational therapy addresses the
18 physical, cognitive, psychosocial, sensory-perceptual, and
19 other aspects of performance in a variety of contexts and
20 environments to support engagement in occupations that affect
21 physical and mental health, well-being, and quality of life.
22 The practice of occupational therapy includes:

23 "1. Evaluation of factors affecting activities of
24 daily living (ADL), instrumental activities of daily living

1 (IADL), rest and sleep, education, work, play, leisure, and
2 social participation including all of the following:

3 "(i) Client factors, including body functions, such
4 as neuromusculoskeletal, sensory-perceptual, visual, mental,
5 cognitive, and pain factors; body structures such as
6 cardiovascular, digestive, nervous, integumentary,
7 genitourinary systems, and structures related to movement;
8 values, beliefs, and spirituality.

9 "(ii) Habits, routines, roles, rituals, and behavior
10 patterns.

11 "(iii) Physical and social environments, cultural,
12 personal, temporal, and virtual contexts, and activity demands
13 that affect performance.

14 "(iv) Performance skills, including motor and
15 praxis, sensory-perceptual, emotional regulation, cognitive,
16 communication, and social skills.

17 "2. Methods or approaches selected to direct the
18 process of interventions such as:

19 "(i) Establishment, remediation, or restoration of a
20 skill or ability that has not yet developed, is impaired, or
21 is in decline.

22 "(ii) Compensation, modification, or adaptation of
23 activity or environment to enhance performance, or to prevent
24 injuries, disorders, or other conditions.

1 "(iii) Retention and enhancement of skills or
2 abilities without which performance in everyday life
3 activities would decline.

4 "(iv) Promotion of health and wellness, including
5 the use of self-management strategies, to enable or enhance
6 performance in everyday life activities.

7 "(v) Prevention of barriers to performance and
8 participation, including injury and disability prevention.

9 "3. Interventions and procedures to promote or
10 enhance safety and performance in activities of daily living
11 (ADL), instrumental activities of daily living (IADL), rest
12 and sleep, education, work, play, leisure, and social
13 participation including all of the following:

14 "(i) Therapeutic use of occupations, exercises, and
15 activities.

16 "(ii) Training in self-care, self-management, health
17 management and maintenance, home management, community/work
18 reintegration, and school activities and work performance.

19 "(iii) Development, remediation, or compensation of
20 neuromusculoskeletal, sensory-perceptual, visual, mental, and
21 cognitive functions, pain tolerance and management, and
22 behavioral skills.

23 "(iv) Therapeutic use of self, including one's
24 personality, insights, perceptions, and judgments, as part of
25 the therapeutic process.

1 "(v) Education and training of individuals,
2 including family members, caregivers, groups, populations, and
3 others.

4 "(vi) Care coordination, case management, and
5 transition services.

6 "(vii) Consultative services to groups, programs,
7 organizations, or communities.

8 "(viii) Modification of environments, including
9 home, work, school, or community, and adaptation of processes,
10 including the application of ergonomic principles.

11 "(ix) Assessment, design, fabrication, application,
12 fitting, and training in seating and positioning, assistive
13 technology, adaptive devices, training in the use of
14 prosthetic devices, orthotic devices, and the design,
15 fabrication, and application of selected splints or orthotics.

16 "(x) Assessment, recommendation, and training in
17 techniques to enhance functional mobility, including
18 management of wheelchairs and other mobility devices.

19 "(xi) Low vision rehabilitation when the patient or
20 client is referred by a licensed optometrist, a licensed
21 ophthalmologist, a licensed physician, a licensed assistant to
22 physician acting pursuant to a valid supervisory agreement, or
23 a licensed certified registered nurse practitioner in a
24 collaborative practice agreement with a licensed physician.

25 "(xii) Driver rehabilitation and community mobility.

1 "(xiii) Management of feeding, eating, and
2 swallowing to enable eating and feeding performance.

3 "(xiv) Application of physical agent modalities, and
4 use of a range of specific therapeutic procedures such as
5 wound care management, interventions to enhance
6 sensory-perceptual and cognitive processing, and manual
7 therapy, all to enhance performance skills.

8 "(xv) Facilitating the occupational performance of
9 groups, populations, or organizations through the modification
10 of environments and the adaptation of processes.

11 "b. An occupational therapist or occupational
12 therapy assistant is qualified to perform the above activities
13 for which they have received training and any other activities
14 for which appropriate training or education, or both, has been
15 received. Notwithstanding any other provision of this chapter,
16 no occupational therapy treatment programs to be rendered by
17 an occupational therapist, occupational therapy assistant, or
18 occupational therapy aide shall be initiated without the
19 referral of a licensed physician, a licensed chiropractor, a
20 licensed optometrist, a licensed assistant to a physician
21 acting pursuant to a valid supervisory agreement, a licensed
22 certified registered nurse practitioner in a collaborative
23 practice agreement with a licensed physician, a licensed
24 psychologist, or a licensed dentist who shall establish a
25 diagnosis of the condition for which the individual will

1 receive occupational therapy services. In cases of long-term
2 or chronic disease, disability, or dysfunction, or any
3 combination of the foregoing, requiring continued occupational
4 therapy services, the person receiving occupational therapy
5 services shall be reevaluated by a licensed physician, a
6 licensed chiropractor, a licensed optometrist, a licensed
7 assistant to a physician acting pursuant to a valid
8 supervisory agreement, a licensed certified registered nurse
9 practitioner in a collaborative practice agreement with a
10 licensed physician, a licensed psychologist, or a licensed
11 dentist at least annually for confirmation or modification of
12 the diagnosis. Occupational therapists performing services
13 that are not related to injury, disease, or illness that are
14 performed in a wellness or community setting for the purposes
15 of enhancing performance in everyday activities are exempt
16 from this referral requirement. Occupational therapists
17 employed by state agencies and those employed by the public
18 schools and colleges of this state who provide screening and
19 rehabilitation services for the educationally related needs of
20 the students are exempt from this referral requirement.

21 "c. Nothing in this chapter shall be construed as
22 giving occupational therapists the authority to examine or
23 diagnose patients or clients for departures from the normal of
24 human eyes, visual systems or their adjacent structures, or to
25 prescribe or modify ophthalmic materials including, but not

1 limited to, spectacles, contacts, or spectacle-mounted low
2 vision devices.

3 "~~(5)~~ (6) OCCUPATIONAL THERAPIST. A person licensed to
4 practice occupational therapy whose license is in good
5 standing.

6 "~~(6)~~ (7) OCCUPATIONAL THERAPY ASSISTANT. A person
7 licensed to assist in the practices of occupational therapy
8 under the supervision of, or with the consultation of, a
9 licensed occupational therapist whose license is in good
10 standing.

11 "~~(7)~~ (8) OCCUPATIONAL THERAPY AIDE. A person who
12 assists in the delivery of occupational therapy, who works
13 under direct on-site supervision of an occupational therapist
14 or occupational therapy assistant, or both, and whose
15 activities require an understanding of occupational therapy
16 but do not require professional or advanced training in the
17 basic anatomical, biological, psychological, and social
18 sciences involved in the practice of occupational therapy. No
19 activity listed under paragraph a. of subdivision ~~(4)~~ (5) may
20 be performed by an occupational therapy aide.

21 "~~(8)~~ (9) PERSON. A human person only, not a legal
22 entity.

23 "~~(9)~~ (10) WITH THE CONSULTATION OF. The collaboration
24 of two or more persons on a regularly scheduled basis for the

1 purpose of planning, review, or evaluation of occupational
2 therapy services.

3 "§34-39-7.

4 "(a) The board shall administer, coordinate, and
5 enforce this chapter.

6 "(b) The board ~~shall~~, within 90 days of the time at
7 which it is appointed, shall notify all current practitioners
8 of occupational therapy in the state, as identified by the
9 American Occupational Therapy Certification Board, of the
10 enactment of this chapter and its otherwise becoming a law.

11 "(c) The board shall adopt and publish rules ~~and~~
12 ~~regulations~~ relating to the professional conduct to carry out
13 the policies of this chapter, including, but not limited to,
14 ~~regulations~~ rules relating to professional licensure,
15 registration, and the establishment of ethical standards of
16 practice. The State Board of Medical Examiners and the Alabama
17 State Board of Occupational Therapy ~~must~~ shall jointly approve
18 any rule, ~~regulation,~~ or policy that interprets, explains, or
19 enumerates the permissible acts, functions, or services
20 rendered by an occupational therapist, occupational therapy
21 assistant, or occupational therapy aide as those acts,
22 functions, and services are defined in Section 34-39-3. Any
23 rule, ~~regulation,~~ or policy adopted in violation of this
24 requirement is invalid.

1 "(d) The board shall evaluate the qualifications of
2 all applicants for licensure under this chapter and shall
3 maintain a register of all persons holding a license and a
4 record of all inspections made.

5 "(e) The board shall approve all examinations of
6 applicants for licensure at least twice a year, shall
7 determine the qualifications and authorize the issuance of
8 licenses to qualified occupational therapists and occupational
9 therapy assistants, and shall renew, suspend, or revoke the
10 licenses in the manner provided.

11 "(f) The board may investigate complaints and
12 allegations concerning the violation of this chapter and may
13 examine witnesses, issue subpoenas, and administer oaths in
14 connection with these investigations. Hearings may be
15 conducted, provided reasonable public notice is given and
16 records and minutes are kept in accordance with the rules ~~and~~
17 ~~regulations~~ of the board.

18 "(g) The board shall make an annual report to the
19 Governor which shall contain an account of duties performed,
20 actions taken, and appropriate recommendations.

21 "(h) The board shall establish a budget in
22 accordance with the requirements of the state.

23 "(i) The board may establish and publish reasonable
24 fees as established in Section 34-39-14.

1 "(j) The board may employ and discharge an executive
2 director and any officers and employees as may be necessary,
3 and shall determine their duties and fix their compensation in
4 accordance with applicable state statutes. The board shall
5 hire and establish the responsibilities and salary of all
6 employees.

7 "(k) The board shall establish an impaired
8 practitioner program beginning January 1, 2022, pursuant to
9 Section 34-39-12.1."

10 Section 2. Section 34-39-12.1 is added to the Code
11 of Alabama 1975, to read as follows:

12 §34-39-12.1.

13 (a) The board shall promote the early
14 identification, intervention, treatment, and rehabilitation of
15 occupational therapists or occupational therapy assistants who
16 may be impaired.

17 (b) To accomplish this obligation, the board may
18 contract with any nonprofit corporation or medical
19 professional association to create, support, and maintain an
20 Alabama Occupational Therapy Wellness Committee. The committee
21 shall be selected in a manner prescribed by the board. The
22 board may expend available funds as necessary to adequately
23 provide for the operational expenses of the committee
24 including, but not limited to, the actual cost of travel,
25 office overhead, and personnel expense. The expenditure of

1 funds provided by the board for operating expenses of the
2 committee are not subject to state competitive bid laws.

3 (c) The board may enter into an agreement with a
4 nonprofit corporation or medical professional association for
5 the committee to undertake those functions and
6 responsibilities specified in the agreement, which may include
7 any or all of the following:

8 (1) Contracting with providers of treatment
9 programs.

10 (2) Receiving and evaluating reports of suspected
11 impairment from any source.

12 (3) Intervening in cases of verified impairment.

13 (4) Referring impaired occupational therapists or
14 occupational therapy assistants to treatment programs.

15 (5) Monitoring the treatment and rehabilitation of
16 impaired occupational therapists or occupational therapy
17 assistants.

18 (6) Providing post-treatment monitoring and support
19 of rehabilitated impaired occupational therapists or
20 occupational therapy assistants.

21 (7) Performing other activities as agreed by the
22 board and the committee.

23 (d) The committee shall develop procedures in
24 consultation with the board for all of the following:

1 (1) Periodic reporting of statistical information
2 regarding impaired practitioner program activity.

3 (2) Periodic disclosure and joint review of all
4 information the board deems appropriate regarding reports
5 received, contracts or investigations made, and the
6 disposition of each report. The committee may not disclose any
7 personally identifiable information except as otherwise
8 provided in this chapter.

9 (e) Any person appointed to serve as a member of the
10 committee and any auxiliary personnel, consultant, attorney,
11 or other volunteer or employee of the committee taking any
12 action authorized by this chapter, engaging in the performance
13 of any duties on behalf of the committee, or participating in
14 any administrative or judicial proceeding resulting therefrom,
15 in the performance and operation thereof, shall be immune from
16 any liability, civil or criminal, that might otherwise be
17 incurred or imposed. Any nonprofit corporation or medical
18 professional association or other entity that contracts with
19 or receives funds from the board for the creation, support,
20 and operation of the committee, in so doing, shall be immune
21 from any liability, civil or criminal, that might otherwise be
22 incurred or imposed.

23 (f) All information, interviews, reports,
24 statements, memoranda, or other documents furnished to or
25 produced by the committee and any findings, conclusions,

1 recommendations, or reports resulting from any investigation,
2 intervention, treatment, or rehabilitation, or other
3 proceeding of the committee is privileged and confidential.
4 All records and proceedings of the committee pertaining to an
5 impaired occupational therapist or occupational therapy
6 assistant are confidential and shall be used by the committee
7 and the members of the committee only in the exercise of the
8 proper function of the committee and shall not be public
9 record nor available for court subpoena or for discovery
10 proceedings. In the event of a breach of contract between the
11 committee and the impaired occupational therapist or
12 occupational therapy assistant, all records pertaining to the
13 conduct determined to cause the breach of contract shall be
14 disclosed to the board upon its request for disciplinary
15 purposes only. Nothing contained in this subsection shall
16 apply to records made in the regular course of business of an
17 occupational therapist or occupational therapy assistant and
18 any information, document, or record otherwise available from
19 an original source may not be construed as immune from
20 discovery or use in any civil proceeding merely because it is
21 presented or considered during proceedings of the committee.

22 (g) The committee shall render an annual report to
23 the board concerning the operations and proceedings of the
24 committee for the preceding year. The committee shall report
25 to the board any occupational therapist or occupational

1 therapy assistant who the committee determines is impaired,
2 when it appears that the occupational therapist or
3 occupational therapy assistant is currently in need of
4 intervention, treatment, or rehabilitation and the
5 occupational therapist or occupational therapy assistant has
6 failed or refused to participate in any program of treatment
7 or rehabilitation recommended by the committee. A report to
8 the committee shall be deemed a report to the board for the
9 purposes of any mandated reporting of occupational therapy
10 licensee impairment or occupational therapy assistance
11 licensee impairment otherwise provided for by law.

12 (h) If the board has reasonable cause to believe
13 that an occupational therapist or occupational therapy
14 assistant is impaired, the board may cause an evaluation of
15 the occupational therapist or occupational therapy assistant
16 to be conducted by the committee for the purpose of
17 determining if there is an impairment. The committee shall
18 report the findings of its evaluation to the board.

19 Section 3. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB302

Senate 16-MAR-21

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 17-MAY-21

By: Senator McClendon