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HOUSE BILL 192

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Deborah A. Armstrong

AN ACT

RELATING TO PROFESSIONAL LICENSURE; AMENDING SECTIONS OF THE
OCCUPATIONAL THERAPY ACT TO MAKE CHANGES TO THE SCOPE OF
PRACTICE OF PERSONS LICENSED OR CERTIFIED PURSUANT TO THAT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-12A-3 NMSA 1978 (being Laws 1996,
Chapter 55, Section 3, as amended) is amended to read:

"61-12A-3. DEFINITIONS.--As used in the Occupational
Therapy Act:

A. "activity of daily living" means an activity
that is oriented toward taking care of one's own body,
including but not limited to bathing, showering, bowel and
bladder management, dressing, eating, feeding, functional
mobility, personal device care, personal hygiene and grooming,
sexual activity, sleep, rest and toilet hygiene;

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1 B. "aide" means an unlicensed person who:

2 (1) provides supportive services to an
3 occupational therapist;

4 (2) works under direct the supervision of an
5 occupational therapist or occupational therapy assistant;

6 (3) functions only under the guidance,
7 responsibility and supervision of a licensed occupational
8 therapist or an occupational therapy assistant who is
9 supervised by an occupational therapist; and

10 (4) provides only specifically selected
11 client-related or non-client-related tasks for which the aide
12 has been trained and has demonstrated competence to the
13 supervising occupational therapist or occupational therapy
14 assistant;

15 ~~[A.]~~ C. "board" means the board of examiners for
16 occupational therapy;

17 ~~[B.]~~ D. "censure" means a formal expression of
18 disapproval that is publicly announced;

19 ~~[C.]~~ E. "denial of license" means that a person is
20 barred from becoming licensed to practice in accordance with
21 the provisions of the Occupational Therapy Act either
22 indefinitely or for a certain period;

23 F. "instrumental activity of daily living" means an
24 activity that:

25 (1) is oriented toward interacting with the

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1 environment and that may be complex;

2 (2) is generally optional in nature and may be
3 delegated to another person; and

4 (3) includes but is not limited to care of
5 others, care of pets, child-rearing, communication device use,
6 community mobility, financial management, health management and
7 maintenance, home establishment and management, meal
8 preparation and cleanup, safety procedures and emergency
9 responses, work and shopping;

10 ~~[D-]~~ G. "licensee" means an occupational therapist
11 or occupational therapy assistant, as appropriate;

12 H. "low-vision rehabilitation service" means the
13 evaluation, management and care of a low-vision client in
14 visual acuity and visual field as it affects the client's
15 occupational performance;

16 ~~[E-]~~ I. "occupational therapist" means a person who
17 holds an active license to practice occupational therapy in New
18 Mexico;

19 ~~[F-]~~ J. "occupational therapy" means the
20 therapeutic use of everyday life activities with persons or
21 groups to participate in roles and situations in home, school,
22 workplace, community and other settings to promote health and
23 wellness in clients who have or are at risk for developing an
24 illness, injury, disease, disorder, condition, impairment,
25 disability, activity limitation or participation restriction.

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1 "Occupational therapy" includes addressing the physical,
2 cognitive, psychosocial, sensory and other aspects of
3 performance in a variety of contexts to support a client's
4 engagement in everyday life activities that affect health,
5 well-being and quality of life;

6 ~~[G. "occupational therapy aide or technician" means~~
7 ~~an unlicensed person who assists in occupational therapy, who~~
8 ~~works under direct supervision of an occupational therapist or~~
9 ~~occupational therapy assistant;~~

10 H.] K. "occupational therapy assistant" means a
11 person having no less than an associate degree in occupational
12 therapy and holding an active license to practice occupational
13 therapy in New Mexico who assists ~~[an]~~ in the practice of
14 occupational [therapist] therapy under the supervision of the
15 occupational therapist;

16 ~~[F.]~~ L. "person" means an individual, association,
17 partnership, unincorporated organization or corporate body;

18 M. "practice of occupational therapy" means the
19 therapeutic use of occupations, including everyday life
20 activities with individuals or groups, that support health,
21 well-being, participation, performance and function in roles
22 and situations in home, school, workplace, community and other
23 settings. Occupational therapy includes the provision of
24 services for habilitation, rehabilitation and the promotion of
25 health and wellness to those who have or who are at risk of

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1 developing an illness, injury, disease, disorder, condition,
2 impairment, disability, activity limitation or participation
3 restriction. Occupational therapy also includes addressing the
4 physical, cognitive, psychosocial, sensory-perceptual and other
5 aspects of performance in a variety of contexts and
6 environments to support engagement in occupations that affect
7 physical and mental health, well-being and quality of life;

8 [J-] N. "probation" means continued licensure is
9 subject to fulfillment of specified conditions such as
10 monitoring, education, supervision or counseling;

11 [K-] O. "reprimand" means a formal expression of
12 disapproval that is retained in the licensee's file but not
13 publicly announced;

14 [L-] P. "revocation" means permanent loss of
15 licensure; and

16 [M-] Q. "suspension" means the loss of licensure
17 for a certain period, after which the person may be required to
18 apply for reinstatement."

19 **SECTION 2.** Section 61-12A-4 NMSA 1978 (being Laws 1996,
20 Chapter 55, Section 4, as amended) is amended to read:

21 "61-12A-4. OCCUPATIONAL THERAPY SERVICES.--Occupational
22 therapy services include:

23 A. selected strategies to direct the process of
24 interventions, such as:

25 (1) establishment, remediation or restoration

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1 of a skill or ability that has not yet developed, [~~or~~] is
2 impaired or is in decline;

3 (2) compensation, modification or adaptation
4 of activity or environment to enhance performance or prevent
5 injuries, disorders or other conditions;

6 (3) [~~maintenance~~] retention and enhancement of
7 capabilities without which performance in everyday life
8 activities would decline;

9 (4) health promotion and wellness, including
10 the use of self-management strategies, to enable enhanced
11 performance in everyday life activities; [~~and~~]

12 (5) prevention of barriers to performance and
13 participation, including injury and disability prevention; and

14 (6) therapeutic use of self, including the
15 planned use of collaboration, empathy, caring, therapeutic
16 communication, advocacy, encouragement, instructing and
17 problem-solving;

18 B. evaluation of factors affecting activities of
19 daily living, instrumental activities of daily living,
20 education, work, play, leisure and social participation,
21 including:

22 (1) client factors, including neuromuscular,
23 sensory, visual, perceptual and cognitive functions and
24 cardiovascular, digestive, integumentary and genitourinary
25 systems;

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1 (2) habits, routines, roles and behavior
2 patterns;

3 (3) cultural, physical, environmental, social
4 and spiritual contexts and activity demands that affect
5 performance; and

6 (4) performance skills, including motor,
7 process and communication and interaction skills; and

8 C. interventions and procedures to promote or
9 enhance safety and performance in activities of daily living,
10 instrumental activities of daily living, education, work, play,
11 leisure and social participation, including:

12 (1) therapeutic use of occupations, exercises
13 and activities;

14 (2) training in self-care, self-management,
15 health management and maintenance, home management, [~~and~~]
16 community-work reintegration, school activities and work
17 performance;

18 (3) development, remediation or compensation
19 of [~~physical, cognitive, neuromuscular and sensory functions~~
20 ~~and behavioral skills~~] neuromusculoskeletal, sensory
21 perceptual, visual, mental and cognitive functions and pain
22 tolerance and management;

23 [~~(4) therapeutic use of self, including one's~~
24 ~~personality, insights, perceptions and judgments, as part of~~
25 ~~the therapeutic process~~;

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1 ~~(5)~~ (4) education and training of persons,
2 including family members, caregivers and others;
3 ~~(6)~~ (5) care coordination, case management
4 and transition services;
5 ~~(7)~~ (6) consultative services to groups,
6 programs, organizations or communities;
7 ~~(8)~~ (7) modification of home, work, school
8 or community environments and adaptation ~~of~~ of processes,
9 including the application of ergonomic principles;
10 ~~(9)~~ (8) assessment, design, fabrication,
11 application, fitting and training in seating and positioning,
12 assistive technology, adaptive devices and orthotic devices and
13 training in the use of prosthetic devices;
14 ~~(10)~~ (9) assessment, recommendation and
15 training in techniques to enhance functional mobility,
16 including wheelchair management;
17 ~~(11)~~ (10) driver rehabilitation and
18 community mobility;
19 ~~(12)~~ (11) management of feeding, eating and
20 swallowing to enable eating and feeding performance; ~~and~~
21 ~~(13)~~ (12) application of physical agent
22 modalities and use of a range of specific therapeutic
23 procedures such as wound care management; techniques to enhance
24 sensory, perceptual and cognitive processing; and manual
25 therapy techniques to enhance performance skills;

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1 (13) low-vision rehabilitation, as related to
2 occupational performance;

3 (14) group interventions and consultative
4 services to groups, programs, populations, organizations or
5 communities to facilitate the occupational performance of the
6 groups, programs, populations, organizations or communities
7 through modification of environment, education and adaptation
8 of processes; and

9 (15) self-advocacy undertaken by the client
10 that the practitioner can promote and support."

11 SECTION 3. Section 61-12A-5 NMSA 1978 (being Laws 1996,
12 Chapter 55, Section 5, as amended) is amended to read:

13 "61-12A-5. SUPERVISION--REQUIRED--DEFINED.--

14 A. Occupational therapy shall not be performed by
15 an occupational therapy assistant [~~occupational therapy aide~~]
16 or technician or by any person practicing on a provisional
17 permit unless such therapy is supervised by an occupational
18 therapist. The board shall adopt rules defining supervision
19 [~~which definitions may include various categories such as~~
20 "~~close supervision~~", "~~routine supervision~~" and "~~general~~
21 "~~supervision~~"].

22 B. [~~An occupational therapy aide or technician is~~
23 ~~not a primary service provider of occupational therapy in any~~
24 ~~practice setting and, therefore, does not provide skilled~~
25 ~~occupational therapy services. An occupational therapy aide or~~

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1 ~~technician is trained by an occupational therapist or an~~
2 ~~occupational therapy assistant to perform specifically~~
3 ~~delegated tasks, and the occupational therapist is responsible~~
4 ~~for the overall use and actions of the occupational therapy~~
5 ~~aide or technician. An occupational therapy aide or technician~~
6 ~~must demonstrate competence to perform the assigned, delegated~~
7 ~~client and nonclient tasks.] An aide shall provide supportive~~
8 ~~services to an occupational therapist or occupational therapy~~
9 ~~assistant. The following provisions apply to the tasks that an~~
10 ~~aide performs:~~

11 (1) an aide:

12 (a) shall not provide skilled
13 occupational therapy services;

14 (b) shall be trained by an occupational
15 therapist or an occupational therapy assistant to perform
16 specifically delegated tasks;

17 (c) may perform routine tasks that
18 involve interaction with a client;

19 (d) may perform non-client-related tasks
20 that include clerical or maintenance activities or preparation
21 of a work area or equipment; and

22 (e) shall demonstrate competency before
23 performing a delegated task;

24 (2) a supervising occupational therapist:

25 (a) is responsible for the actions of an

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1 aide whom the occupational therapist supervises; and

2 (b) shall oversee the development,
3 documentation and implementation of a plan of supervision and
4 shall routinely assess the ability of the aide to carry out
5 non-client-related and client-related tasks; and

6 (3) an occupational therapy assistant may
7 supervise an aide."

8 SECTION 4. Section 61-12A-9 NMSA 1978 (being Laws 1996,
9 Chapter 55, Section 9, as amended) is amended to read:

10 "61-12A-9. BOARD--POWERS AND DUTIES.--

11 A. The board shall:

12 (1) adopt, file, amend or repeal rules and
13 regulations in accordance with the Uniform Licensing Act to
14 carry out the provisions of the Occupational Therapy Act;

15 (2) use funds for the purpose of meeting the
16 necessary expenses incurred in carrying out the provisions of
17 the Occupational Therapy Act;

18 (3) ~~[adopt a code of ethics]~~ enforce the
19 ethical practice of occupational therapy using an accepted
20 standard of ethics for the practice of occupational therapy in
21 the United States;

22 (4) enforce the provisions of the Occupational
23 Therapy Act to protect the public by conducting hearings on
24 charges relating to the discipline of licensees, including the
25 denial, suspension or revocation of a license;

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- 1 (5) establish and collect fees;
2 (6) provide for examination for and issuance,
3 renewal and reinstatement of licenses;
4 (7) establish, impose and collect fines for
5 violations of the Occupational Therapy Act;
6 (8) appoint a registrar to keep records and
7 minutes necessary to carry out the functions of the board; and
8 (9) obtain the legal assistance of the
9 attorney general.

10 B. The board may:

11 (1) issue investigative subpoenas for the
12 purpose of investigating complaints against licensees prior to
13 the issuance of a notice of contemplated action;

14 (2) hire or contract with an investigator to
15 investigate complaints that have been filed with the board.

16 The board shall set the compensation of the investigator to be
17 paid from the funds of the board;

18 (3) inspect establishments; and

19 (4) designate hearing officers."

20 SECTION 5. Section 61-12A-24 NMSA 1978 (being Laws 1996,
21 Chapter 55, Section 24, as amended by Laws 2005, Chapter 199,
22 Section 12 and by Laws 2005, Chapter 208, Section 7) is amended
23 to read:

24 "61-12A-24. TERMINATION OF AGENCY LIFE--DELAYED
25 REPEAL.--The board of examiners for occupational therapy is

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1 terminated on July 1, ~~[2015]~~ 2025 pursuant to the provisions of
2 the Sunset Act. The board shall continue to operate according
3 to the provisions of the Occupational Therapy Act until July 1,
4 ~~[2016]~~ 2026. Effective July 1, ~~[2016]~~ 2026, the Occupational
5 Therapy Act is repealed."

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