

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Analysis of a Proposal to Expand the Regulation of Occupational Therapists

Summary

We analyzed whether occupational therapy practitioners should be regulated and, if so, in what form. We conclude that regulation is not warranted and recent proposals to expand regulation should not be enacted. If regulation is deemed necessary, it should be minimal.

Occupational therapists and occupational therapy assistants help individuals who are disabled by mental, physical, developmental, or emotional conditions to develop, recover, or maintain the skills of daily living and work. Chapter 457G of the Hawaii Revised Statutes (HRS) requires persons who identify themselves as occupational therapists or occupational therapy assistants to meet certain private certification requirements. Hawaii's attorney general or the Office of Consumer Protection in the Department of Commerce and Consumer Affairs is authorized to bring proceedings to halt and fine any violations.

As requested in House Concurrent Resolution No. 49 of the 1997 legislative session, we assessed the need for regulating the practice of occupational therapy and considered House Bill No. 1099, House Draft 1 of 1997. The bill would expand regulation by establishing a licensing program for occupational therapists to be administered within the Department of Commerce and Consumer Affairs. We also considered other regulatory alternatives.

In our analysis, we applied the principles of the Hawaii Regulatory Licensing Reform Act, Chapter 26H, HRS. The law states that professions and vocations should be regulated only when reasonably necessary to protect the health, safety, and welfare of consumers. In assessing the need for regulation, the Auditor is to give great weight to evidence of abuse by providers. Other considerations include whether alternatives provide sufficient protection to consumers, and whether the benefits of regulation outweigh the costs.

We found that regulation of the practice of occupational therapy is not warranted. The practice poses little risk of serious harm to consumers. In Hawaii, we found no documented evidence of actual harm. Furthermore, adequate private protections for consumers are already in place. Occupational therapists work under orders from the patient's physician and are employed by knowledgeable health care providers. The American Occupational Therapy Association and the National Board for Certification in Occupational Therapy help ensure competent practice. Criminal laws provide additional protection.

Moreover, regulation could be costly. For example, if House Bill No. 1099, House Draft 1, were enacted, each occupational therapist could pay an initial licensing fee of at least \$659 and possibly more. The required fees could restrict entry into the profession.

We also found that if the Legislature considers it necessary to regulate occupational therapy, simple registration of occupational therapists should be sufficient. This would create a roster to inform the public of the nature of their services and enable the State to keep track of them. Occupational therapy assistants would not have to register because they work in controlled settings with monitoring by occupational therapists. An alternative would simply be to keep Chapter 457G on the books, because it has been implemented at little or no cost and with no apparent problems.

Recommendation and Response

We recommend that occupational therapy not be regulated and that Chapter 457G, HRS, be repealed. If the Legislature deems regulation necessary, simple registration of occupational therapists, or at most, continuing Chapter 457G for occupational therapists and occupational therapy assistants, should be sufficient. If retained, Chapter 457G should be amended to reflect the current name of the certifying organization, the National Board for Certification in Occupational Therapy.

The Department of Commerce and Consumer Affairs did not submit a response to a draft of this report.

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