

---

# Sunset Evaluation: Occupational Therapy Practice

---

A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawaii

Report No. 02-17  
October 2002



**THE AUDITOR**  
STATE OF HAWAII

---

## Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds are existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



### THE AUDITOR

STATE OF HAWAII

Kekuanao'a Building  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813

# OVERVIEW

## *Sunset Evaluation: Occupational Therapy Practice*

Report No. 02-17, October 2002

---

### Summary

We evaluated the regulation of occupational therapy practice under Chapter 457G, Hawaii Revised Statutes (HRS), which is scheduled for repeal on December 31, 2003. Occupational therapists help people develop, recover, or maintain their daily living and working skills. They may work with individuals who are mentally, physically, developmentally, or emotionally disabled. The goal of occupational therapists is to help clients lead independent, productive, and satisfying lives.

In 1998, the Legislature found that full-scale regulation of occupational therapists was not warranted because the practice of occupational therapy posed little risk of actual harm to consumers. Therefore, the Legislature instituted a simple registration system under Chapter 457G (Occupational Therapy Practice), HRS. As of March 2002, the Department of Commerce and Consumer Affairs reported a total of 331 registered occupational therapists in Hawaii.

We found that the regulation of occupational therapy practice is not warranted. The scope of practice for occupational therapy has not changed significantly since our previous review of the profession in 1997, which recommended against continued regulation. We also found that since 1998, the Regulated Industries Complaints Office, Office of Consumer Protection, Ombudsman, and the National Board for Certification in Occupational Therapy have not registered any complaints against an occupational therapist practicing in Hawaii. Furthermore, we note that employers of occupational therapists provide a level of protection for consumers and that other states have recently attempted to deregulate occupational therapy practice.

However, if regulation of occupational therapy practice is continued, statutory amendments are needed. We found that the current law inappropriately equates registration with “licensure.” Additionally, references to occupational therapy assistants are confusing and the temporary permit provision is obsolete. We also suggest that the Legislature consider the potential benefits of including occupational therapists as qualified medical providers under Hawaii’s workers’ compensation law.

Finally, if regulation is continued, the Department of Commerce and Consumer Affairs can make minor improvements. Although we found that the department operates the program with relative effectiveness, improvements are needed in collecting more timely and accurate information from registrants.

---

## Recommendations and Response

We recommended that the Legislature allow Chapter 457G, HRS, to be repealed as scheduled. If regulation continues, we recommended that the Legislature amend Chapter 457G, HRS, to remove language equating registration with “licensure,” as well as requirements relating to occupational therapy assistants and temporary permit provisions. Also, if regulation continues, we recommended that the Department of Commerce and Consumer Affairs amend its initial application form to emphasize that registrants must notify the department of any change in employment within 30 days of the change. Finally, we recommended amendments to the re-registration form requiring registrants to identify their current business addresses.

Responding to a draft of our report, the Department of Commerce and Consumer Affairs generally agreed with all of our recommendations. The department indicated a willingness to work with the appropriate government agencies and industry organizations to facilitate recommended statutory changes. The department also reported that it will amend both its initial application and re-registration forms as recommended.

---

**Marion M. Higa**  
**State Auditor**  
**State of Hawaii**

Office of the Auditor  
465 South King Street, Room 500  
Honolulu, Hawaii 96813  
(808) 587-0800  
FAX (808) 587-0830

---

# Sunset Evaluation: Occupational Therapy Practice

---

A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawaii

Submitted by

**THE AUDITOR**  
STATE OF HAWAII

Report No. 02-17  
October 2002

---

## Foreword

This report evaluates the regulation of occupational therapy practice under Chapter 457G, Hawaii Revised Statutes (HRS), which Section 26H-4, HRS, schedules for repeal on December 31, 2003. The report presents our findings as to whether the regulatory program complies with policies in the sunset law and whether there is a reasonable need to regulate occupational therapy practice to protect the health, safety, and welfare of the public.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs and other organizations and individuals whom we contacted during the course of our evaluation.

Marion M. Higa  
State Auditor

---

# Table of Contents

## Chapter 1 Introduction

Background .....	1
Objectives of the Evaluation .....	5
Scope and Methodology .....	5

## Chapter 2 Regulation of Occupational Therapy Practice Should Be Repealed

Summary of Findings .....	7
Regulation of Occupational Therapy Practice Is Not Warranted .....	7
If Regulation Continues, Statutory Amendments Are Needed .....	11
If Regulation Continues, the Department Can Make Minor Improvements .....	15
Conclusion .....	17
Recommendations .....	18

<b>Notes</b> .....	19
--------------------	----

<b>Response of the Affected Agency</b> .....	21
--	----

## List of Exhibits

Exhibit 1.1	Occupational Therapy: State Regulation .....	4
Exhibit 1.2	Registered Occupational Therapists: FY1998-99 - FY2001-02 .....	5
Exhibit 2.1	Number of Complaints Filed Against Occupational Therapists, CY1998-2001 .....	9
Exhibit 2.2	Registration Program Costs and Fees .....	16

---

# Chapter 1

## Introduction

---

The Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes (HRS), establishes policies for occupational regulation and schedules the repeal of newly enacted occupational regulatory programs. The law directs the State Auditor to evaluate each board, commission, and regulatory program prior to its repeal date and determine whether it complies with the law's policies and whether public interest requires reenactment, modification, or repeal of the law establishing the program.

If the Auditor finds that the law establishing the regulatory program should be modified, the Auditor must include drafts of recommended legislation that would improve the policies, procedures, or practices of that program in the evaluation. Even if the Auditor finds that the law establishing the regulatory program should not be reenacted, the Auditor must still evaluate the effectiveness and efficiency of the program and make appropriate recommendations to improve its policies, procedures, and practices.

We evaluated the regulation of occupational therapy practice under Chapter 457G, HRS, which is scheduled for repeal on December 31, 2003.

---

## Background

Occupational therapists help people develop, recover, or maintain their daily living and working skills. They may work with individuals who are mentally, physically, developmentally, or emotionally disabled. The practice of occupational therapy has been regulated in Hawaii since 1978. In 1998, the Legislature found that full-scale regulation of occupational therapists was not warranted because the practice of occupational therapy posed little risk of actual harm to consumers. Therefore, the Legislature instituted a simple registration system under Chapter 457G (Occupational Therapy Practice), HRS.

### ***Occupational therapists help people improve their daily living and working skills***

The goal of occupational therapists is to help clients lead independent, productive, and satisfying lives. Specific occupational therapy services aimed at achieving this goal range from helping clients use a computer to assisting them with dressing, cooking, and eating. Occupational therapists also instruct clients who have permanent functional disabilities in how to use wheelchairs, splints, and other adaptive equipment or aids to assist them in eating and dressing. Occupational therapists who arrange employment and plan work activities for individuals whose

ability to function in a work environment has been impaired are known as industrial therapists. In schools, occupational therapists evaluate students' abilities to function in a classroom setting, participate in school programs and activities, recommend and provide therapy, and modify classroom equipment.

Nationally, occupational therapists held approximately 78,000 jobs in 2000. Employment is projected to increase faster than the average for all occupations through 2010, as rapid growth in the number of middle-aged and elderly individuals increases the demand for therapeutic services. Hospitals will continue to employ a large number of occupational therapists to service acutely ill inpatients and staff their outpatient rehabilitation programs. Employment growth in schools will result from expansion of the school-age population and extended services for disabled students.

The professional interests of occupational therapists are represented by two national organizations, the American Occupational Therapy Association (AOTA) and the National Board for Certification in Occupational Therapy, Inc. (NBCOT). AOTA is the nationally recognized professional association for over 50,000 occupational therapists and occupational therapy assistants. AOTA's mission is to advance the quality, availability, use, and support of occupational therapy. NBCOT is a not-for-profit credentialing agency that certifies professional occupational therapists. NBCOT also works with state regulatory authorities by providing credential, disciplinary, and regulatory information.

***All states currently regulate occupational therapy***

All states currently regulate occupational therapy. Professional regulation generally falls into three categories: licensing, certification, or registration.

*Licensing* gives persons who meet certain qualifications the legal right to deliver services—that is, to practice the profession.

*Certification* restricts the use of certain titles to persons who meet certain qualifications, but does not bar others who do not use the title from offering such services. This is sometimes called *title protection*. It should be noted that government certification is not to be confused with professional certification, or credentialing, by private organizations.

*Registration* involves practitioners signing up with a state's government so that a roster or registry can exist to inform the public of the nature of practitioners' services and to enable the State to track them. Registration can be mandatory or voluntary.

Almost all states require licensure of occupational therapists (46), while a minority require registration (2), certification (1), or trademark registration (1). Exhibit 1.1 provides a list of regulatory schemes and the states that adhere to each form of regulation.

***Occupational therapy practice has been regulated in Hawaii since 1978***

Act 146, Session Laws of Hawaii (SLH) 1978, established the regulation of occupational therapy practice. Regulation consisted of a “title protection” law, whereby individuals had to meet certain requirements if they wanted to represent themselves as occupational therapists or use the title of “occupational therapist.” However, these individuals were not required to obtain a credential or notify the State that they were qualified to use the title. Act 146 was codified as Chapter 457G, HRS.

In 1998 the Legislature amended Chapter 457G to its current status requiring registration. At present, no one may represent, advertise, or announce him or herself as an occupational therapist unless that person registers with the Department of Commerce and Consumer Affairs. In addition to registering with the department, occupational therapists must complete the educational requirements (graduation from an accredited occupational therapy educational program<sup>1</sup>) and the six to nine months of work experience required for NBCOT certification. Occupational therapists must also pass NBCOT’s national certification examination.

Chapter 457G also allows individuals who have completed the required education and experience, but have not yet passed the national certification examination, to obtain a temporary permit to perform occupational therapy services under the direct supervision of a registered occupational therapist.

The Department of Commerce and Consumer Affairs reports that there were 331 registered occupational therapists in Hawaii as of March 2002. The number of registered occupational therapists has increased from 1998 to the present, as shown in Exhibit 1.2.

***Our previous analysis found regulation unnecessary***

In 1997, our office issued an *Analysis of a Proposal to Expand the Regulation of Occupational Therapists*, Report No. 97-15. In it, we reported that regulation of the practice of occupational therapy was not warranted and recommended that the Legislature repeal Chapter 457G. In recommending against regulation, we noted that the risk of harm to consumers appeared low; other protections existed for consumers; occupational therapy practice differed from physical therapy and massage therapy; and regulation, if at all, should be minimal. We went on to conclude that if the Legislature deemed regulation necessary, simple registration of occupational therapists should be sufficient.

## Exhibit 1.1

### Occupational Therapy: State Regulation

---

#### States with Licensure Law (Year regulation was established)

Alabama	1990	Nevada	1991
Alaska	1987	New Hampshire	1977
Arizona	1989	New Jersey	1993
Arkansas	1977	New Mexico	1983
California	2000	New York	1975
Connecticut	1978	North Carolina	1984
Delaware	1985	North Dakota	1983
Florida	1975	Ohio	1976
Georgia	1976	Oklahoma	1984
Idaho	1987	Oregon	1977
Illinois	1983	Pennsylvania	1982
Iowa	1980	Rhode Island	1984
Kansas	2002	South Carolina	1977
Kentucky	1986	South Dakota	1986
Louisiana	1979	Tennessee	1983
Maine	1984	Texas	1983
Maryland	1977	Utah	1977
Massachusetts	1983	Vermont	2002
Minnesota	2000	Virginia	1998
Mississippi	1988	Washington	1984
Missouri	1997	West Virginia	1978
Montana	1985	Wisconsin	2000
Nebraska	1984	Wyoming	1991

---

#### States with Registration Law (Year regulation was established)

Hawaii	1998
Michigan	1988

---

#### State with Certification Law (Year regulation was established)

Indiana	1989
---------	------

---

#### State with Trademark Law (Year regulation was established)

Colorado	1996
----------	------

---

Source: The American Occupational Therapy Association, July 2002

**Exhibit 1.2**  
**Registered Occupational Therapists:**  
**FY1998-99 – FY2001-02**

FY	Number of registered OT's
1998-99	240
1999-00	280
2000-01	349
2001-02	331*

\* As of March 11, 2002

Source: Department of Commerce and Consumer Affairs

## Objectives of the Evaluation

1. Determine whether regulation of the practice of occupational therapy is warranted.
2. Determine whether the current regulatory requirements are appropriate.
3. Determine whether the regulatory program is being implemented effectively and efficiently.
4. Make recommendations as appropriate.

## Scope and Methodology

The scope of our evaluation spanned the timeframe from the publication of our previous report on occupational therapists in 1997 to August 2002.

To assess the need to regulate occupational therapy practice, we applied the regulation criteria set forth in Chapter 26H, HRS. The policies in Section 26H-2 were established by the Legislature to ensure that occupational regulation takes place only for the right reason, which is to protect consumers. Provisions in Section 26H-2 specify that:

1. Regulation in the form of licensure or other restrictions should be required only when reasonably necessary to protect the health, safety or welfare of consumers;
2. The purpose of regulation is to protect the public's welfare and not that of the profession or vocation;

3. Evidence of abuses by practitioners are to be given great weight in determining whether regulation is desirable;
4. Regulation should be avoided if it artificially increases the costs of goods and services to the consumer, unless such cost is exceeded by the potential danger to the consumer;
5. Regulation should be eliminated when it has no further benefit to the consumer;
6. Regulation should not unreasonably restrict qualified persons from entering the profession; and
7. Fees collected for regulation must fully cover the costs of administering the regulatory program.

We scrutinized the language of the existing regulatory statute, Chapter 457G, HRS, for appropriateness. We also assessed the effectiveness and efficiency of the regulatory program for occupational therapists, including reliability of the registration process and the Department of Commerce and Consumer Affairs' timeliness in approving applications.

We reviewed literature on occupational therapy practice and its regulation, including relevant federal regulation, regulation in other states, and Hawaii statutes and administrative rules. We reviewed complaints filed with national organizations, the State's Regulated Industries Complaints Office, Office of Consumer Protection, and Office of the Ombudsman, to determine harm to consumers. We also reviewed files, correspondence, and other documents pertaining to the regulatory operations of the department's Professional and Vocational Licensing Division.

We also interviewed officials from various state agencies, registered occupational therapists, representatives from various insurance companies, and others associated with the occupation.

Our work was performed from May 2002 through August 2002 in accordance with generally accepted government auditing standards.

---

# Chapter 2

## Regulation of Occupational Therapy Practice Should Be Repealed

---

In this chapter, we present the findings and recommendations of our evaluation of the regulation of occupational therapy practice under Chapter 457G, Hawaii Revised Statutes (HRS). This law is scheduled for repeal on December 31, 2003. We concluded that the regulation of occupational therapy practice is not warranted, and the Legislature should allow Chapter 457G to be repealed as scheduled. However, if regulation is continued, improvements are needed in the law and its administration.

---

### Summary of Findings

1. The regulation of occupational therapy practice is not warranted.
2. If regulation of occupational therapy practice is continued, statutory amendments are needed.
3. The Department of Commerce and Consumer Affairs operates the regulatory program efficiently. However, if regulation is continued, the department can make minor improvements.

---

### Regulation of Occupational Therapy Practice Is Not Warranted

We found little evidence to warrant the continued regulation of occupational therapy practice. The scope of practice for occupational therapists has not changed significantly since our last review of the profession in 1997. Additionally, we found no documented evidence of serious harm caused by occupational therapists and that employers provide a level of protection to consumers. We also found that other states have attempted to deregulate the occupational therapy practice. Finally, licensure is not a requirement to obtain third-party reimbursement in Hawaii.

### *The scope of occupational therapy practice has not changed significantly since our previous report*

In our previous report on occupational therapists, Report No. 97-15, we found that occupational therapy was a less hands-on or potentially dangerous profession than physical therapy or massage therapy, and did not warrant regulation. For example, physical therapists have hands-on contact with patients, some who have serious health conditions such as strokes or spinal cord injuries, and require technical knowledge to provide safe treatment. In contrast, occupational therapists work with patients who have much less severe health conditions and provide less

intensive therapy than physical or massage therapists. We did not find any changes to the scope of practice for occupational therapists since our previous report that might warrant continued regulation.

Occupational therapists we spoke with and department officials charged with regulating the practice of occupational therapy confirmed no significant change in the profession's scope of practice. Our review of literature on occupational therapy practice also found no new treatment practices or modalities that involved increased physical contact or body part manipulation that might pose a risk to consumers. In addition, although the profession is projected to grow and enter new areas of practice, such as consulting and low-vision services, there is no evidence that a significant change in the scope of occupational therapy practice will occur or that the new practice areas would necessarily pose a higher physical risk to consumers.

Finally, our previous report indicated that occupational therapists in Hawaii typically do not work as independent practitioners. This is due in large part to the fact that third-party payers do not reimburse for occupational therapy unless a doctor orders it. One occupational therapist we spoke with confirmed that few occupational therapists work in private practice and most continue to work with doctors to provide services.

***There is limited evidence of harm caused by occupational therapists***

We found no complaints against occupational therapists filed with the Regulated Industries Complaints Office since registration requirements for the profession were implemented in 1999. There have also been no complaints filed with the Office of Consumer Protection or the Ombudsman. In addition, NBCOT reports that it receives few complaints against occupational therapists nationwide and has not recorded any complaints against an occupational therapist in Hawaii between 1998 and 2001. Exhibit 2.1 illustrates the number of complaints filed with the NBCOT between 1998 and 2001.

Other states also confirmed a lack of documented cases of serious harm caused by occupational therapists. In September 2000, the Virginia Board of Health Professions issued a *Study on the Appropriate Level of Regulation for Certified Occupational Therapy Assistants*. The board surveyed a number of states to determine the number of complaints and disciplinary actions involving occupational therapists and occupational therapy assistants. The survey found only 113 complaints filed against the 32,706 licensed occupational therapists in the 28 responding states. Less than 25 percent of those complaints actually resulted in any disciplinary action.

In February 2000, the Minnesota Occupational Therapy Association submitted a questionnaire response relating to the practice of

**Exhibit 2.1**  
**Number of Complaints Filed Against Occupational Therapists, CY1998-2001**

Year	Hawaii	Nationally
1998	0	25
1999	0	17
2000	0	24
2001	0	20

Source: National Board for Certification in Occupational Therapy, Inc.

occupational therapy. At the time, Minnesota, like Hawaii, was one of three states that required registration of occupational therapists. In its response, the association found only four reported complaints over the previous five-year period. It should be noted, however, that employers or employees, not consumers, made those complaints. The report also reported that over the past five years, AOTA had not received any complaints or conducted investigations into consumer harm or unethical practice against a registered Minnesota occupational therapist.

The lack of complaints filed against occupational therapists in Hawaii, the relatively low number of complaints filed nationally, and the nature of the few complaints filed suggests that consumers are not exposed to great risk by occupational therapists.

***Private and public employers provide a measure of protection***

A large number of occupational therapists in Hawaii work for hospitals, rehabilitation facilities, or the State. Occupational therapists employed by private health facilities or the State are often subject to additional qualification standards and operating procedures imposed by their employer. Furthermore, instances of unsafe practices can be addressed through employers' existing policies.

For example, the State's Department of Education requires its occupational therapists to obtain NBCOT certification before practicing. To maintain this certificate, occupational therapists must obtain 36 hours of professional development units every three years. This certification from NBCOT exceeds the minimum standards required by Chapter 457G. In addition, complaints filed against occupational therapists who work for the department are addressed by respective school principals as internal school-related incidents.

Similarly, the Rehabilitation Hospital of the Pacific requires its occupational therapists to maintain the higher standard of NBCOT certification in addition to meeting state regulatory requirements.

Because most occupational therapists in Hawaii work for the State, private hospitals, or medical facilities, they are often subjected to qualification standards that exceed those established by Chapter 457G and must comply with additional internal operating policies and procedures.

***Other states have attempted to deregulate the practice of occupational therapy***

In 2000, the State of Minnesota enacted licensure requirements for occupational therapists. One year later, the governor recommended deregulating the state's 3,000 occupational therapists and two other regulated professions. Minnesota's health department estimated that eliminating these regulatory boards and their functions would save \$810,000. However, the rationale behind Minnesota's deregulation proposal was not that its government would save money, but that it would lower consumer prices, presumably because practitioners would cease to pass on the cost of licensing to their patients in the form of higher hourly fees.

The State of Florida also considered its health department's proposal to deregulate 7,500 occupational therapists and five other health professions in 2000. The proposal emerged as part of the governor's efforts to streamline government and reduce the health department's budget by 5 percent that year. The health department identified occupational therapists as candidates for deregulation because of the low volume of consumer complaints and the profession's national certification program.

In 1997, the General Assembly of Georgia also considered legislation that would have terminated 11 licensing boards and commissions, including the Board of Occupational Therapy.

While none of these deregulation proposals were successful, the fact that they were considered provides evidence that states which currently regulate occupational therapists have questioned the necessity of continued regulation.

***State licensure is not a requirement for obtaining third-party reimbursement***

Several occupational therapists we spoke with stated that licensure was a requirement for obtaining third-party reimbursement from some public and private payers in the state. However, we found that of the top three workers' compensation insurers in the state, only Hawaii Medical Services Association (HMSA) requires licensure as a prerequisite for reimbursement. Additionally, neither Medicare nor Medicaid requires licensure as a qualification for reimbursement.

HMSA requires, in some instances, that occupational therapists in Hawaii be licensed. According to an HMSA official, HMSA reimburses occupational therapy services for inpatient services under its Preferred Provider Plan (PPO) and inpatient and outpatient services under its Health Maintenance Organization (HMO) and 65C Plus plans. Under these programs, reimbursement is generally provided directly to the hospital or facility that treated the qualifying members. However, HMSA does not provide direct reimbursement to occupational therapists unless they are “licensed.”

According to HMSA, the company adopted guidelines that its service providers be “licensed” in order to qualify for reimbursement. However, this contradicts its 2002 professional credentialing specifications for occupational therapists, which requires either state licensure *or* registration. Despite references to licensure *or* registration in its credentialing requirements, an HMSA official stated that HMSA chose the higher standard of state licensure as a way of ensuring the “highest standard of care” for its members.

In addition, we found no evidence that federal regulations for Medicare reimbursement require state licensure. Instead, Medicare accepts whatever regulation is required by the individual state. For example, Medicare Part B will pay for outpatient occupational therapy services if the occupational therapists providing the services meet certain conditions. For occupational therapists in private practice, practitioners must be legally authorized (where applicable, licensed, certified, or registered) to engage in the private practice of occupational therapy by the state in which they practice, and practice only within the scope of their license, certification, or registration.

Similarly, the State’s Medicaid program under Med-QUEST does not require licensure as a basis for occupational therapy reimbursement. Rather, the Med-QUEST division seeks guidance from the Department of Commerce and Consumer Affairs in determining practitioner qualifications.

In essence, HMSA has adopted higher standards of qualification for occupational therapists than those provided by the State and accepted by Medicare, Medicaid and other private insurers.

---

**If Regulation  
Continues,  
Statutory  
Amendments Are  
Needed**

The current law regulating the practice of occupational therapy is a confusing mix of registration and licensure, which does little to protect consumers and fails to address the alleged problem of obtaining third-party reimbursement. The law also contains a contradictory provision relating to occupational therapy assistants and maintains an obsolete provision for temporary permits.

***The current law inappropriately equates registration with “licensure”***

Act 198, SLH 2001, made a significant change to the regulation of occupational therapy practice. The act amended Chapter 457G, HRS, to provide that:

A registration granted under this chapter shall mean that the person has met requirements that include minimum practice standards to provide protection to the public and is permitted to use the title and engage in the practice as an occupational therapist. In the granting of permission to engage in this profession, and consistent with section 436B-2, the definition for ‘license’ is inclusive of a registration issued under this chapter and, as such, an occupational therapist that holds a registration shall be similarly regarded as an occupational therapist that holds a license.

According to department officials and occupational therapists, this change in the law was necessary because HMSA was not reimbursing occupational therapy services, particularly for workers’ compensation claims. In one of its standing committee reports, the Legislature acknowledged that the amendment was needed to ensure third-party reimbursement for occupational therapists. However, as noted previously, we found that of the top three workers’ compensation insurers, HMSA is the only one that requires state licensure for reimbursement. Neither Hawaii Employers Mutual Insurance Company (HEMIC) nor First Insurance Company of Hawaii, Ltd. require licensure as a qualification for occupational therapy reimbursement.

Furthermore, despite the amendment equating registration with licensure, reimbursement for occupational therapy services from HMSA is still inconsistent. Although registration is now regarded as the same as licensure under Chapter 457G, HMSA has yet to recognize occupational therapy services. If reimbursement *is* approved, it is authorized as a service provided by a “physical therapist.” Physical therapists expressed concerns about occupational therapists receiving reimbursement under the guise of physical therapy, which is a completely different discipline.

According to an HMSA official, the company’s Executive Payment Policy Committee has yet to approve reimbursement for occupational therapy services for medical plans that previously did not reimburse those services because occupational therapists were not licensed. The official was unable to provide a date when reimbursement would be approved, if at all.

We believe that this change in the law violates Section 26H-2, HRS, which states that, “. . .the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.” Additionally, leading national publications caution legislators about enacting regulatory requirements that benefit practitioners instead of

consumers. One publication notes that legislators must determine whether a request to revise regulatory statutes provides greater protection for the public or merely serves the profession.<sup>1</sup> Another publication notes that the primary stakeholder of licensure activities is the public. Those who should not have a stake in licensure activities are members of the licensed profession, companies that provide resources to the profession, and any other group that has an interest in the practice of the profession other than public protection.<sup>2</sup>

Lastly, while equating registration with licensure may seem to be a matter of semantics, the differences in terminology and impact on consumers are quite substantial. A licensing law gives persons who meet certain qualifications the legal right to practice the profession. Penalties may be imposed on those who practice without a license. Licensing laws usually authorize a board, which includes members of the profession, to establish, implement, and monitor rules and practice standards. Licensing also establishes grounds for disciplinary actions and standards for licensure removal or limitation, renewal, continuing competence, and continuing education. A registration law like Chapter 457G simply requires practitioners to sign up with the State so that a roster or registry will exist to inform the public of the nature of their services and to enable the State to keep track of them.

We found that Act 198 violated the intent of regulation, in that the amendment was aimed to benefit the profession and not the consumers. Furthermore, it appears that the amendment to equate registration with licensure was enacted to address the discretionary policies of a single private insurer. By equating registration with licensure, Chapter 457G confuses the regulatory process and may give consumers the false impression that occupational therapists are truly licensed and that they meet and are held to the higher standards of licensing. Furthermore, the problem of reimbursement persists, despite the change in the law. We believe that if regulation is continued, Chapter 457G should be amended to delete language equating registration with licensure.

***References to occupational therapy assistants are confusing***

Chapter 457G originally included a regulatory scheme for occupational therapy practice and qualifications for both occupational therapists and occupational therapy assistants. In 1998, Section 457G-1 (later renumbered as Section 457G-1.5) was amended to state that “nothing in this chapter shall be construed to apply to occupational therapy assistants.” References to occupational therapy assistants and certified occupational therapy assistants, as well as the titles OTA and COTA, were deleted. However, Chapter 457G still specifies requirements for occupational therapy assistants in Section 457G-2:

Occupational therapists and occupational therapy assistants shall have completed the educational requirements and supervised

field work experience required for certification by the National Board for Certification in Occupational Therapy, and shall have passed a national certification examination administered by that association.

We recommend that the Legislature amend Section 457G-2 by removing the term “occupational therapy assistants.” We believe this will ensure compliance with the Legislature’s intent to exclude occupational therapy assistants from the regulatory scheme in Chapter 457G.

***Temporary permit provision is obsolete***

In 2001, Chapter 457G was amended to include a provision for a temporary permit allowing persons who have completed the required education and experience, but have not yet passed the national certification examination, to perform occupational therapy services under the direct supervision of a duly registered occupational therapist. According to the Department of Commerce and Consumer Affairs, the temporary permit provision was provided to assist occupational therapists who did not have timely access to NBCOT’s exam. At the time, exams were held only twice a year—once in May and again in December, to coincide with university graduation intervals. However, the gap between dates proved to be too long for many candidates who fulfilled all qualifications except the exam. The temporary permit was offered as an opportunity to allow candidates to work in the field under specific guidelines. To date, only one temporary permit has been issued.

We found that since the temporary permit provision was added to Chapter 457G, NBCOT has made significant changes to its examination program that have reduced the need for temporary permits. Prior to 2001, NBCOT administered a paper-and-pencil examination twice annually. NBCOT currently offers four computer examinations annually and, beginning in February 2003, the organization will move to an on-demand computer examination.

Provided the increase in frequency and ease in which NBCOT will soon offer examinations, and the single temporary permit issued by the department over the past two years, we believe that the temporary permit provision is no longer necessary and recommend that it be deleted from Chapter 457G.

***Workers’ compensation law does not recognize occupational therapists as qualified medical providers***

Chapter 386, HRS, is Hawaii’s workers’ compensation law. In it, “medical care,” “medical services,” and “medical supplies” are defined as care, services, or supplies rendered or furnished by a licensed or certified physician, dispensing optician, physical therapist assistant, nurse, advanced practice registered nurse, or masseur. The section does not recognize occupational therapists.

In 2002, the Legislature considered legislation to amend Chapter 386 to cover services rendered to employees by occupational therapists and occupational therapy assistants under the workers' compensation law. Occupational therapists and occupational therapy assistants would have been considered skilled health care providers who provide beneficial service or treatment to employees with a work-related injury. The legislation's intent was to facilitate access to treatment that helps injured workers return to the workplace in good health and without delay. The bill passed third reading in both chambers, but failed final passage.

As discussed earlier, occupational therapists and department officials expressed concerns about obtaining third-party reimbursement for occupational therapy services due to the lack of licensure, particularly in workers' compensation cases. In response to these concerns, Chapter 457G was amended to equate registration with licensure. We maintain that this amendment was inappropriate. However, including occupational therapists as recognized medical service providers under Chapter 386 may be a better means of addressing reimbursement concerns. By doing so, occupational therapists would likely be assured of third-party reimbursement and injured workers would maintain access to occupational therapy services.

---

## **If Regulation Continues, the Department Can Make Minor Improvements**

### ***The department processes applications in a timely manner***

We found that the department processes applications in a timely manner and generally operates the regulatory program for occupational therapy practice efficiently. However, improvements can be made, particularly in maintaining accurate information of registrants' employment.

We found that the department processes regulation applications in a timely manner. We reviewed a sample of 70 initial applications to determine the amount of time it took for the department's Professional and Vocational Licensing Division to process applications. More than two-thirds, or 47 of the 70 applications, were processed in seven days or fewer. The average processing time was about eight days. Generally, we found that delays were attributed to applicants not providing all necessary information with their original applications and requiring additional time to provide that information to comply with the requirements.

The efficiency of processing applications could be attributed to the internal checklist used by the division. Staff use a checklist to ensure that applications are filled out properly, appropriate fees are paid, and necessary documentation is enclosed. If an application is deemed deficient, a "Notice of Deficiency" is sent to the applicant specifying the

nature of the deficiency with a specific deadline to bring the application into compliance.

The timely processing of applications was confirmed by the various occupational therapists we interviewed during our fieldwork. These occupational therapists reported that they experienced little difficulty in registering with the department. They also agreed that forms were easy to fill out, instructions were clear, and department staff responded to inquiries promptly.

***Registration fees and program operating costs are much lower than expected***

In our 1997 analysis of occupational therapy practice, the department estimated the cost to operate a registration program for occupational therapists and the fees that would need to be charged in order to make the program self-sustaining. Exhibit 2.2 compares those estimates with the actual fees charged and revenues collected by the department. We found that the current program charges lower fees and collected less revenue than previously estimated.

**Exhibit 2.2  
Registration Program Costs and Fees**

Registration Program	Estimated (1997)	Actual (1998-2000)
First biennium program costs	\$69,884	\$22,746
Initial registration fee	\$269	\$85
Two-year renewal fee	\$217	\$85
Interim fee (if applying or renewing a registration after December 31 of the first year of the biennium)	No estimate	\$68
Temporary permit	No estimate	\$25

According to the department, initial projections were based on the possible need to hire additional staff to carry the workload of the proposed regulatory program. However, the simplicity of the registration program made it feasible for existing staff to absorb the workload. The department did not hire additional staff as anticipated. As a result, both the fees charged to registrants and the costs incurred by the department are much lower.

***The department is unable to maintain an accurate list of business addresses as required by law***

Chapter 457G requires that occupational therapists register their names and business addresses with the department. Additionally, the registration form states that an applicant must notify the department of any change in employment and mailing address in writing. However, the time period within which a registered occupational therapist must notify

the department about a change in employment is not specified on the application.

During our review of registration files, we found that the department has not maintained an accurate list of business addresses of occupational therapists. Our sample of 70 application files revealed that 37, or 53 percent, of the applicants' current business address did not match the business address on file with the department. We found only one instance where a registrant notified the department of a change in business address. Furthermore, none of the 26 occupational therapists who worked in the Department of Health prior to 2000 but who have since been transferred to the Department of Education, notified the Department of Commerce and Consumer Affairs of their change in employment. The department's registration list still indicates that the current employer of these 26 occupational therapists is the Department of Health.

Our review of the complete roster of registered occupational therapists found that 64 of the 327 registered occupational therapists did not indicate any business address as of March 1, 2002. While it is possible that these individuals were not employed as of that date, we were unable to confirm their employment status.

Since a business address is the only statutorily required contact information for registered occupational therapists, we believe it is important that the roster be as accurate as possible. Consumers inquiring about a registered occupational therapist should be given accurate information so that they may make informed decisions about their medical care and the practitioners who provide that care. Section 436B-17, HRS, stipulates the reporting requirements under the Uniform Professional and Vocational Licensing Act. This section requires that licensees notify their licensing authority, in writing, within 30 days of any change in the licensees' mailing, business, or residence address. We believe that this standard should be applied to registered occupational therapists.

---

## Conclusion

The Legislature should allow Chapter 457G, HRS, to be repealed as scheduled. If the Legislature chooses to continue the regulation of occupational therapy practice, we recommend that statutory changes be made. Finally, if regulation is continued, the Department of Commerce and Consumer Affairs should improve the effectiveness of its regulatory operations.

---

## Recommendations

1. The Legislature should allow Chapter 457G, HRS, to be repealed as scheduled.
2. If regulation continues, the Legislature should:
  - a. Amend Chapter 457G, HRS, to remove language equating registration with “licensure.”
  - b. Amend Chapter 457G, HRS, to remove language referencing requirements for occupational therapy assistants and provisions for temporary permits.
3. The Department of Commerce and Consumer Affairs should:
  - a. Amend its initial application form to emphasize that registrants must notify the department of any change in employment within 30 days of the change.
  - b. Amend its re-registration form by requiring registrants to identify their current business addresses.

---

## Notes

### Chapter 1

1. Institutions of higher learning in Hawaii do not offer accredited occupational therapy programs. The University of Hawaii's community college system offers a program for occupational therapy assistants only.

### Chapter 2

1. Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, 2nd ed., Lexington Kentucky, The Council on Licensure, Enforcement and Regulation, 1994, p. 24.
2. Craig G. Schoon and I. Leon Smith, *The Licensure and Certification Mission: Legal, Social, and Political Foundations*, New York, NY, Professional Examination Service, 2000, p. 220.

---

## Response of the Affected Agency

### Comments on Agency Response

We submitted a draft copy of this report to the Department of Commerce and Consumer Affairs on September 25, 2002. A copy of the transmittal letter to the department is included as Attachment 1. The department's response is included as Attachment 2.

The department generally agreed with all of our recommendations. Although the department deferred to the Legislature regarding repeal of Chapter 457G, HRS, it agreed with our recommended changes to Chapter 457G should the Legislature decide to continue regulation.

The department also commented that it agrees that including occupational therapists as recognized medical service providers under Chapter 386 (Workers' Compensation Law), HRS, may be appropriate. Although our report did not formally recommend such an amendment, we did acknowledge that including occupational therapists as recognized medical service providers under Chapter 386 may be a better means of addressing reimbursement concerns. Our report emphasizes that any decision to include occupational therapists in Chapter 386 or any other chapter should be considered in conjunction with the decision to continue regulation of occupational therapy practice.

Finally, the department is in the process of amending both its initial application and re-registration forms to comply with our recommendations regarding collection of business address information.

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



MARION M. HIGA  
State Auditor  
  
(808) 587-0800  
FAX: (808) 587-0830

September 17, 2002

**COPY**

The Honorable Kathryn S. Matayoshi  
Director  
Department of Commerce and Consumer Affairs  
Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii 96813

Dear Ms. Matayoshi:

Enclosed for your information are three copies, numbered 6 to 8 of our confidential draft report, *Sunset Evaluation: Occupational Therapy Practice*. We ask that you telephone us by Thursday, September 19, 2002, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, October 16, 2002.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa  
State Auditor

Enclosures

BENJAMIN J. CAYETANO

KATHRYN S. MATAYOSHI  
DIRECTORMAZIE K. HIRONO  
LT. GOVERNORNOE NOE TOM  
DEPUTY DIRECTOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
1010 RICHARDS STREET  
P.O. BOX 541  
HONOLULU, HAWAII 96809

October 15, 2002

The Honorable Marion Higa  
State Auditor  
Office of the Auditor  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917

RECEIVED  
Oct 16 9 12 AM '02  
OFFICE OF THE AUDITOR  
STATE OF HAWAII

Dear Ms. Higa:

The Department of Commerce and Consumer Affairs ("Department") would like to thank you for the evaluation conducted by your office regarding the registration of occupational therapists. The Department also appreciates the opportunity to respond to the recommendations contained in the report, which were as follows:

1. *The Legislature should allow Chapter 457G, HRS, to be repealed as scheduled.*

Although the Department defers to the Legislature on this matter, we generally support elimination of regulation when it is not warranted.

2. *If regulation continues, the Legislature should:*
  - a. *Amend Chapter 457G, HRS, to remove language equating registration with "licensure."*

Based on the findings cited in the report, the Department agrees that the language should be repealed.

The Department supported the 2001 legislative amendment because we believed that the amendment would have clarified that occupational therapy was, in fact, a regulated profession. We also believed that the clarification addressed issues regarding third-party reimbursement for occupational therapists.

Based on the information provided in this report that the problem of reimbursement persists, despite the law change, as well as the other concerns cited, the Department supports the recommendation that the language equating registration with "licensure" be repealed.

Further, the Department agrees that including occupational therapists as recognized medical service providers under Chapter 386 may be a better means of addressing reimbursement concerns. To that end, we are open to working with the appropriate government agencies and industry organizations to facilitate such amendments.

- b. *Amend Chapter 457G, HRS, to remove language referencing requirements for occupational therapy assistants and provisions for temporary permits.*

The Department agrees with both of these recommendations.

References to occupational therapy assistants in HRS Chapter 457G confuse the public. Therefore, we agree that references to occupational therapy assistants in Chapter 457G should be deleted.

Concerning the temporary permit provision, the Department agrees that the NBCOT has made significant changes to its examination program thereby eliminating the delays previously experienced by examination candidates and the concomitant need for temporary permits. Therefore, we agree that the temporary permit provision is no longer necessary and that it should be deleted from HRS Chapter 457G.

3. *The Department of Commerce and Consumer Affairs should:*

- a. *Amend its initial application form to emphasize that registrants must notify the department of any changes in employment within 30 days of the change.*

The Honorable Marion Higa  
State Auditor  
October 15, 2002  
Page 3

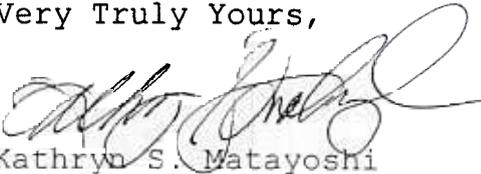
Although the application form currently instructs applicants that they must notify the Department about any change in their employment address, we agree with the recommendation that emphasis be placed on this requirement. Therefore, amendments are being made to the application form.

- b. *Amend its re-registration form by requiring registrants to identify their current business addresses.*

We agree with this recommendation and are making appropriate amendments to the application form for the December 31, 2002 re-registration period.

Once again, thank you for the opportunity to review your report and for the ability to offer our comments.

Very Truly Yours,



Kathryn S. Matayoshi  
Director

CR:cls