College of Occupational Therapists of Ontario
Regulator of occupational therapists in Ontario

Working With Third Party Payers

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Introduction

As occupational therapy practice evolves, occupational therapists are asked to provide their professional opinions or offer clinical services on behalf of third parties. When the party requesting and paying for the occupational therapy services is different from the client, the occupational therapist often faces competing priorities and demands. From the volume of practice questions and complaints against occupational therapists received by the College, many occupational therapists evidently struggle to balance these competing priorities. In some cases, these pressures increase in response to occupational therapists working independently or in isolation or being new to this sector. Often, occupational therapy colleagues can offer little or no support in the practice area of working with third party payers, which tends to be litigious.

Third party payer refers to an individual or organization who is not the client but provides funding for occupational therapy services for the client. Some examples of third parties that occupational therapists routinely work with include insurance providers, lawyers, the Workplace Safety and Insurance Board and employers of clients. **Publicly funded healthcare or educational services are not considered third party payers for the purpose of this guidance.**

The *Competencies for Occupational Therapists in Canada* (2021) describes clients as “people of any age, along with their families, caregivers and substitute decision makers. Therapists may also work with collectives such as families, groups, communities and the public at large” (p. 19). The term “clients” applies to people and organizations that occupational therapists work with in both clinical and non-clinical settings. Although titles other than “client,” such as “claimant,” “examinee,” or “employee,” may describe the individual in different settings, the College uses the term "client." Occupational therapists are expected to be transparent, fair and impartial when providing occupational therapy services regardless of their relationship (treating or non-treating) with the client.

In this document, “health record” and “client record” are used synonymously. For example, an occupational therapist may use “health record” in a hospital, while in the community, the therapist may use “client record.”

This document addresses frequently asked questions related to third party referrals and funding sources and outlines considerations for occupational therapists. This guidance will be used with the College Standards of Practice, College regulations and applicable legislation to enable occupational therapists to provide safe, competent and ethical care.

Quick Links to College Resources

In working with third party payers, occupational therapists must follow the expectations outlined in relevant College documents:

- Code of Ethics
- Privacy Legislation and Occupational Therapy Practice
- Standard for Assessment and Intervention
- Standard for Consent

- Standard for the Prevention and Management of Conflicts of Interest
- Standard for Professional Boundaries and the Prevention of Sexual Abuse
- Standard for Record Keeping

Overview

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1. Providing Ethical and Competent Client Care

Identifying the client is central to delivering ethical occupational therapy services. The client is the person for whom the healthcare opinion, assessment, or treatment applies regardless of who pays for the service. Although third party payers are interested parties in the assessment outcome, the payer is not the client. An occupational therapist must understand who their client is and be able to define this for the client and the interested third party.

When deciding about requirements for client care, occupational therapists should demonstrate an ethical approach and make recommendations and decisions that are transparent, fair and impartial. Occupational therapists must ensure that recommendations and decisions are not biased in favour of the referral source, the payer, or the client. This expectation applies to all interactions (direct client care, one-time assessments and paper reviews). Being client focused does not imply that occupational therapists should provide or recommend everything clients request. Occupational therapists must follow the Standard for Assessment and Intervention and use their clinical judgement to make accurate and evidence-informed decisions about the most appropriate service for the client.

The Decision-Making Framework is a helpful tool to assist occupational therapists in problem-solving through challenging ethical or clinical situations. This framework involves working through five steps to make a sound decision by considering relevant factors and available options.

Another foundational document to guide practice is the *Competencies for Occupational Therapists in Canada* (2021). These competencies describe the skills, knowledge and judgement required of all occupational therapists practising in clinical or non-clinical roles across Canada.

Questions to ask:

- Who is the client?
- Are the clinical decisions and recommendations transparent, fair and impartial regardless of other opinions (for example, lawyers, insurance adjusters and healthcare providers)? With no external influence or pressure, would another occupational therapist arrive at a similar opinion?
- Was the appropriate assessment approach used? Are the clinical decisions evidence-informed and being made using sound professional judgement?
- Has communication with the client about initial findings been transparent and aligned with what the client can expect to see in the occupational therapy report? Is the report clear from misleading communication about the assessment outcome?

2. Defining the Occupational Therapist Role and Setting Expectations

Occupational therapists providing services for third party payers should be mindful of what the referral for occupational therapy services entails and clarify the occupational therapist's scope of practice and role before initiating services. Occupational therapists should further clarify expectations of clients, third party payers and other interested parties. Additionally, occupational therapists must be clear about the scope for the client to understand the services provided, including the frequency and duration, fees charged and limitations. Finally, disclosing the contractual obligations to all interested parties is essential if the occupational therapist has signed and negotiated a contract for their services.

Every occupational therapist is expected to demonstrate the competencies for occupational therapy practice regardless of their area of practice, practice setting, or relationship to the funding source. Occupational therapists must have the necessary training to perform standardized assessments, formal testing, or evaluations within their scope of practice in accordance with the Standard for Assessment and Intervention to deliver safe, ethical and competent care.

Further, occupational therapists are expected to understand the limits of their competency when determining the appropriateness of accepting a referral, considering their knowledge, skills and experience. Occupational therapists should accept referrals for services only when they have the knowledge and experience to manage the referral safely and effectively.

When conducting an assessment on behalf of a third party payer, the occupational therapist may realize that providing treatment to the client is not within their role. If, however, in the context of the assessment, the occupational therapist discovers a finding or symptom which raises a significant concern or requires intervention, they should advise the client of this concern and to seek intervention. The College recommends that the occupational therapist apply the applicable privacy legislation and seek the client's consent to share the results with the client's treating healthcare provider.

If an occupational therapist is requested to conduct an assessment by the courts or another legal proceeding, the occupational therapist should seek their own legal advice to understand their obligations before disclosing or sharing information about the client.

Questions to ask:

- Are all interested parties aware of the scope of the occupational therapy referral and the occupational therapist's level of involvement in the client's case before initiating services?
- Does the client or their representative understand the expectations for occupational therapy services and what will be provided (for example, explaining occupational therapy's role generally, the occupational therapist's role specific to the client and the occupational therapist's role where third parties are involved)?
- Does the occupational therapist have the knowledge, competencies and experience to effectively address the referral within this area of practice and regarding the client's specific injuries or stated disabilities?

3. Obtaining Consent

Occupational therapists providing services to third party payers or working as consultants must obtain the appropriate consent from their clients for all occupational therapy services, including assessment,

treatment and consultation. Although many individuals and organizations use consent forms, a consent form is **not** a substitute for the consent process. Occupational therapists must follow the Standard for Consent, including documenting that the appropriate consent has been obtained as outlined in the Standard.

Clients must be allowed to receive answers from occupational therapists to questions about the proposed occupational therapy services. Clients must be informed of their right to withdraw consent at any time.

During the assessment process or at any time during occupational therapy service delivery, a client may withdraw their consent or not participate in some or all portions of the assessment or treatment. The occupational therapist should document the relevant information for the portions of the assessment completed and note where client consent has been withdrawn, along with any rationale provided by the client for the withdrawal. The occupational therapist should explain to the client any risks and consequences of withdrawing consent and document the discussion.

Occupational therapists must also obtain consent for collecting, using and disclosing personal information and personal health information. For more guidance, refer to the document Privacy Legislation and Occupational Therapy Practice.

Often, clients seeking access to insurance benefits may be instructed by the insurance company to participate in certain activities, including occupational therapy, in order to be eligible for benefits. However, occupational therapists remain responsible for following the Standard for Consent by obtaining informed consent for starting occupational therapy services; knowledgeable consent for collecting, using and disclosing information; and ongoing consent for continuing services.

In some areas of practice, a situation may occur where one healthcare professional may obtain consent on behalf of the other healthcare professionals involved with the client; this is called “third party consent.” In this situation, the occupational therapist should ensure that the third party who obtained consent did so using an informed consent process. The occupational therapist should document the name or role of the individual who received the informed consent from the client.

An occupational therapist may sometimes become involved in a client’s case through a legal representative. In these cases, the legal representative may be the one who communicates the occupational therapist’s involvement in the case and seeks informed consent to engage the therapist. Despite the consent obtained from the client’s representative, the occupational therapist is advised to do the following to ensure that informed consent has been obtained: review their role and scope of practice with the client, explain the process that will be occurring, discuss any treatment specifics and address any questions the client may have.

Occupational therapists providing their services to third party payers or working as consultants often complete reports or forms as part of their practice. When a client withdraws consent for submitting an assessment or treatment report before the report is complete, the occupational therapist should discuss with the client the reasons for the withdrawal of consent and the implications of the withdrawal and document this discussion in the client record. The occupational therapist should not complete or submit the report if consent for the disclosure has been withdrawn by the client or their representative unless the occupational therapist is legally required to do so (such as in the case of a subpoena). The occupational therapist can submit any portions of the report that the client consented to and reference the fact that information is missing because consent was withdrawn. A client cannot withdraw consent for the collection, use, or disclosure of information retroactively, meaning that the occupational therapist cannot retract the report if it has already been submitted.

In some cases, occupational therapists will be required to submit their reports in draft format for review and editing. Although having reports reviewed is acceptable practice, the onus is on the occupational

therapist to ensure that the content of the final report accurately reflects the therapist's assessment and professional opinion. By signing the report, the occupational therapist confirms that the report is accurate, complete and truthful and does not contain statements that the therapist knows or ought to know are false, misleading, or otherwise improper. The occupational therapist should agree to sign a revised document only if the content reflects the therapist's professional opinion.

Occupational therapists may be asked to review additional information, such as surveillance material or reports from other health professionals, or complete additional paperwork, such as rebuttals or addenda. If an occupational therapist has already completed the in-person client assessment, they must obtain the client's consent before reviewing the additional information or completing the additional paperwork.

The sections of the Standard for Consent relevant to additional information and paperwork state:

2.4 Explain each component of the plan and obtain ongoing consent when moving from one component of services to another.

2.8 Apply an informed consent process to third party referrals (for example, independent examinations or expert reports). Explain that the services are at the request of the third party payer. Describe the nature and scope of the occupational therapist's role and reporting responsibilities.

3.4 For third party referrals (for example, independent examinations or expert reports):

a. Obtain consent for the disclosure of assessment results, reports and intervention plans to third party payers, other professionals, partners and interested parties unless exceptions to this disclosure apply under privacy legislation

b. Obtain consent before reviewing any additional client health information that was provided by the third party after the original assessment services were completed (for example, other medical reports or surveillance material).

The occupational therapist is required to obtain consent because the additional information or paperwork was not included in the initial consent obtained from the client for the collection, use and disclosure of information. In addition, reviewing the material with the client will allow the client to provide context. For more information on surveillance material, see the Surveillance Q&A resource.

If a file or paper review is requested and the occupational therapist has had no prior contact with the client, they do not need to obtain consent. In this case, because the occupational therapist is not directly involved with the client, the therapist is not required to obtain informed consent for services.

Questions to ask:

- Have all the requirements to obtain informed consent been addressed for occupational therapy services, including assessment, treatment and consultation?
- Are the appropriate consents documented?
- If a third party obtained consent, was the appropriate consent process followed?
- Has knowledgeable consent been obtained from the client to communicate with everyone involved in the client's case, including for submitting reports to third parties? If additional information is obtained after the assessment, was the appropriate consent obtained to review the information?
- Does the occupational therapist have a clear understanding of the responsibilities for privacy and confidentiality if the client or their representative withdraws consent before completing occupational therapy services or before the occupational therapist submits any reports?

4. Record Keeping

Occupational therapists providing services to third party payers must understand their own role in managing health records. Under the *Personal Health Information Protection Act, 2004* (PHIPA), an occupational therapist must know whether they are the health information custodian or agent of the health information custodian before delivering occupational therapy services. These roles determine who will maintain and store the client records and release them to clients or their representatives.

Health Information Custodian

As defined in PHIPA (s. 3 [1]), a “health information custodian” is an individual or organization listed in PHIPA that has “custody or control of personal health information” by virtue of their professional role and/or responsibilities.

Occupational therapists are health information custodians for health records generated in their independent practices. However, when occupational therapists are employed or contracted by an organization (such as a hospital, long-term care home, or family health team), the organization is usually the custodian. If occupational therapists are working in a group practice, the group may be the custodian.

Occupational therapists must determine who the custodian is in the context of their work. A health information custodian remains accountable for the personal health information under its control and for the actions of its agents.

Agent of a Health Information Custodian

Under PHIPA, “an agent” is a person who is authorized to perform services or activities on behalf of a health information custodian. An agent can be a person or organization that contracts with, is employed by, is a student of, or volunteers for a custodian.

An agent is required to follow the custodian’s policies for storing, safeguarding, retaining, destroying and responding to access and correction requests regarding the health records. For example, an agent could be an occupational therapist who is contracted by a long-term care home where the home is the health information custodian. The occupational therapist must comply with PHIPA and follow the information practices of the long-term care home.

For more information about the roles and responsibilities of the health information custodian and agent, see Privacy Legislation and Occupational Therapy Practice.

Responsibilities of Occupational Therapists

Occupational therapists providing services to third party payers must follow the Standard for Record Keeping. Any documentation completed by an occupational therapist must be signed using their title, signature and the designation "OT Reg. (Ont.)." In addition to following the Standard, occupational therapists must ensure that their contact and employment information are valid and up to date.

Before delivering occupational therapy services, occupational therapists must understand the distinction between the client record (which captures all events, decisions, interventions and plans made during an occupational therapist–client relationship) and a specific report generated by an occupational therapist for the third party payer.

With advances in technology and the use of electronic client records to submit and communicate information, occupational therapists working with third party payers should take measures to ensure that the electronic systems used are secure and meet the requirements for privacy and confidentiality. If discrepancies in record keeping expectations are noted, occupational therapists should discuss any concerns with the appropriate organization to resolve the discrepancies.

Questions to ask:

- Who is the health information custodian or the agent of the health information custodian?
- Does relevant legislation guide the privacy and security of the client's personal health information in the specific practice setting?
- Is the Standard for Record Keeping followed in documentation practices?
- Is the client aware of how they can obtain a copy of their client record?
- Does the electronic documentation system used by the occupational therapist, employer, or organization meet the minimum expectations of the Standard for Record Keeping?

5. Conflicts of Interest

Providing services for third party payers presents unique challenges for occupational therapists related to conflicts of interest. Occupational therapists are required to be proactive in preventing, recognizing and managing conflicts of interest in their practice. They must not exploit the client-therapist relationship for any form of direct or indirect benefit. They must ensure that clients' interests and well-being are prioritized. To review the expectations of practice, see the Standard for the Prevention and Management of Conflicts of Interest.

For occupational therapists working with third party payers, conflicts may arise due to a variety of reasons.

Competing interests of clients and third party payers

For example, a client may wish to access all the funding and resources possible to address a disability related to a motor vehicle accident. At the same time, the insurer may want to provide the minimum entitlement to remain sustainable or profitable as a business. In this case, the occupational therapist is often placed in the middle of the competing interests and must remain ethical to arrive at a fair and impartial outcome. The occupational therapist must not advocate for either position but must provide an accurate and unbiased report.

Conflicting standards of the College and third party payers

For example, as regulated health professionals, occupational therapists are accountable to legislation and standards, such as obtaining the necessary consents, to which non-health professionals (such as lawyers) or companies (such as insurers) are not held. A third party may have to be made aware of the need for the occupational therapist to obtain consent, because the third party may assume that their own practices regarding client consent are sufficient.

Conflicting opinions between occupational therapists

For example, it is common in auto insurance claims for the insurer or lawyers to request a review by an independent occupational therapist of a report submitted by a treating occupational therapist. In some cases, the independent review results in differences in clinical opinion between the two occupational therapists. This variation in opinion can result in the perception that both occupational therapists are not being fair and impartial. In turn, this discrepancy can call into question the integrity of occupational

therapists and reliability of the profession to provide occupational therapy services to the insurance industry. Maintaining an unbiased approach to the assessment and analysis of clients may reduce the discrepancy in findings between occupational therapists.

Personal conflicts of interest related to future income opportunities from third party payers

For example, an occupational therapist may be concerned that if their professional opinion is unfavourable for the third party payer, the therapist may no longer receive referrals from the third party.

Personal conflicts of interests or pressures related to referrals to and from other professionals

For example, an occupational therapist may feel pressure, related to the potential for financial compensation or employer encouragement, to refer clients internally within their company or to a select group of providers. This pressure may occur even if the occupational therapist does not feel the service is needed or that the provider recommended may not be the most appropriate choice. The occupational therapist must resist this pressure.

Although each scenario presents complex decisions, occupational therapists practising in Ontario are expected to uphold ethical practice. Proceeding with service delivery while in a conflict of interest can compromise professional ethics and lead the client to distrust the occupational therapist, the organization that is contracting their services to the therapist and the profession. Practising the profession while in a conflict of interest is considered professional misconduct under *Ontario Regulation 95/07: Professional Misconduct*.

As autonomous, regulated health professionals, occupational therapists are responsible for their professional decisions. A frequent question the College receives pertains to whether a conflict of interest is present in a request to have a treating occupational therapist or other interested party present at an assessment done by an occupational therapist serving as an independent evaluator. If the client or another interested party requests the presence of another individual, the independent evaluator occupational therapist should confirm expectations regarding the observer's role before proceeding. The presence of a treating occupational therapist should not influence the assessment, recommendations, or outcome of the independent evaluation. The treating occupational therapist must also understand why their presence has been requested and consider the appropriateness of their participation as an observer. Any requests by any observer to audio or video record occupational therapy services, including independent evaluations, should be discussed in advance and agreed upon by all parties before proceeding.

Another common question relates to whether an occupational therapist can assess or treat clients associated with each other—for example, a husband and wife involved in the same motor vehicle accident. In this example, the occupational therapist should examine whether they can remain unbiased and neutral in assessing the other family members while following relevant confidentiality and privacy legislation requirements.

In any situation, occupational therapists should stop and self-reflect when faced with complex circumstances leaving them with uneasiness. Transparency with all relevant parties is a critical factor in preventing and managing conflicts of interest.

Questions to ask:

- Are any inherent risks for a conflict of interest present (for example, dual relationships with vendors or other providers or incentives for referrals or to make certain decisions)?
- Are policies in place to prevent and manage conflicts of interest?
- Are support or mentoring networks in place to discuss complex issues to help with decisions about managing conflict?

- Would this situation alter the client's or third party payer's perception of the occupational therapist's professionalism? What would a colleague think? How would a neutral observer react? How would this information be perceived if this situation became public knowledge or was reported to the College?

6. Professional Boundaries

The client-therapist relationship is based on trust and respect. A boundary crossing can directly impact the therapeutic relationship and the client's trust in the occupational therapist. Occupational therapists must be aware of these situations and take the necessary steps to identify, prevent and manage them proactively as outlined in the Standard for Professional Boundaries and the Prevention of Sexual Abuse. Occupational therapists should have a plan or response to address potential boundary crossings, such as requests from clients to maintain a friendship after occupational therapy services are complete, requests to befriend a client or former client on social media, or gifts from clients or families.

Occupational therapists must be equally mindful of professional boundaries in relationships with third party payers. Occupational therapists must not enter service agreements and must avoid referral situations involving personal relationships, such as those with relatives or friends, because this may impact an occupational therapist's ability to be unbiased. In addition, occupational therapists should avoid developing personal relationships with third party payers and should never accept or offer monetary or non-monetary incentives related to client referrals for service provision. Professional boundary crossings or violations can result in conflicts of interest and present risks for client outcomes.

Questions to ask:

- Is the relationship with the client, their support system, or the third party payer starting to exceed the parameters of the therapeutic relationship and become more personal?
- Will this situation affect the occupational therapist's ability to be impartial in the professional relationship with the client?

7. Use of Title

Occupational therapists providing services to third party payers, such as auto insurance organizations, may have job titles other than Occupational Therapist, such as Case Manager or Life Care Planner. Job titles can be used in conjunction with the protected title "occupational therapist" or the designation "OT Reg. (Ont.)" to provide clarification to the public. The title "occupational therapist" or "OT Reg. (Ont.)" is protected in legislation in the *Regulated Health Professions Act, 1991* and the *Occupational Therapy Act, 1991*. Only those registered with the College can use the title or variations of the title in Ontario. If an occupational therapist resigns their certificate of registration with the College, they can no longer use the title or hold themselves out to be an occupational therapist. Regardless of job title, when practising within the scope of the profession and signing documentation, occupational therapists must meet the Standards of Practice set out by the College.

The Standard for Use of Title provides valuable information for those using job titles other than Occupational Therapist or those who have questions about representing specific continuing education credentials such as certifications or specific training in a particular practice area.

Occupational therapists should review the Standard for Use of Title to ensure that their business communications, website content, email signature and signature in client records are displayed appropriately and follow College guidance.

Questions to ask:

- How are job titles other than Occupational Therapist displayed or communicated?
- How are additional training or skills communicated?
- Is it clear to the client and the third party payer that the registered occupational therapist is accountable to the College for delivering safe, ethical and competent care?

Summary

As occupational therapy roles evolve, the College remains committed to discussing recent changes and challenges to identify ways to support delivering ethical, high-quality care for clients receiving occupational therapy services.

However, this guidance cannot address all circumstances that may exist. Occupational therapists are expected to stay informed of changes to relevant legislation, regulations, Standards of Practice and policies and procedures. Occupational therapists are welcome and encouraged to use the College as a resource to ensure that they continue to practise safely, ethically and competently.

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