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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 503*
133rd General Assembly

Occupational Regulation Report

[Click here for H.B. 503's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Rep. Lightbody

Impacted Professions: Health care professionals

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

SUMMARY OF PROPOSED REGULATIONS

The bill prohibits any licensed clinical nurse specialist, physician, psychologist, counselor, social worker, marriage and family therapist or chemical dependency counselor ("health care professional"), or any person who has applied for licensure as a health care professional, from practicing conversion therapy on minors. As defined in the bill, conversion therapy is the practice of attempting to change a person's sexual orientation or gender identity. It includes attempting to reduce or eliminate sexual or romantic attraction towards people of the same gender as well as attempting to change gender expression or behaviors associated with someone's sexual orientation or gender identity. The bill does not prohibit health care professionals from assisting in a patient-initiated gender transition; providing acceptance, support, and understanding; or facilitating coping skills, social support, or identity exploration

* This report addresses the "As Introduced" version of H.B. 503. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

and development. Health care professionals also may continue to address unlawful conduct or unsafe sex practices as long as the interventions are sexual orientation-neutral.²

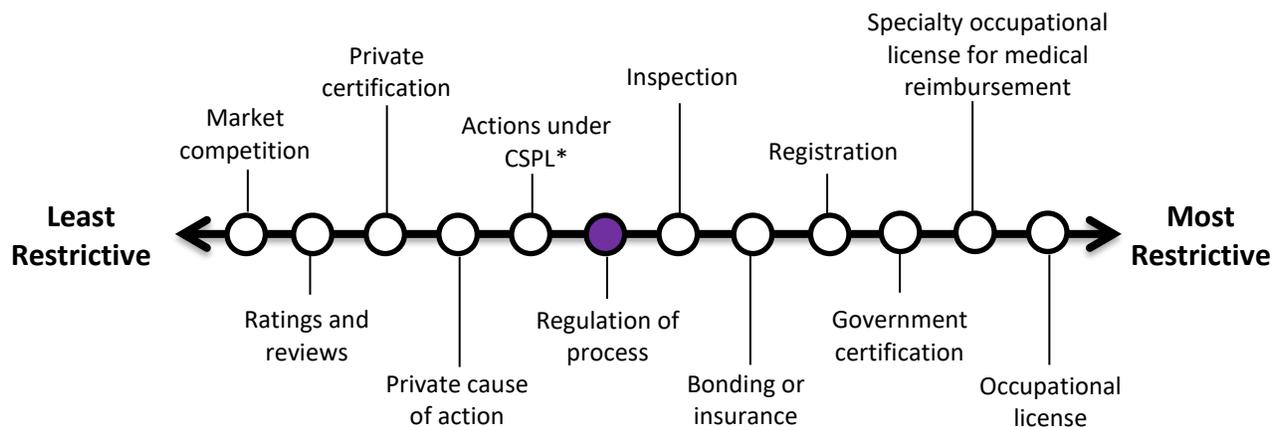
If a health professional performs conversion therapy on a minor, the bill requires the relevant licensing board to suspend, revoke, or refuse to issue or renew the professional's license or certificate of registration.³

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."⁴

The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:



*CSPL – The Consumer Sales Practices Law

By prohibiting a form of treatment for minor patients, H.B. 503 creates a new regulation of process for health care professionals.

² R.C. 4743.09(A)(2) and (C).

³ R.C. 4723.93, 4731.92, 4732.34, 4743.09(D), 4757.46, and 4758.73.

⁴ Section 3 of the bill; R.C. 4798.01 and 4798.02, neither in the bill.

Necessity of regulations

At the time this report was completed, H.B. 503 had not yet received a first hearing in the House Health Committee. Therefore, the bill's sponsor, Representative Lightbody, had not yet provided a direct statement as to her intent in proposing the regulation. Generally, it appears that the bill would decrease the likelihood of a minor patient receiving conversion therapy treatment from a health care professional.

Restrictiveness of regulations

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state's Consumer Sales Practices Law (CSPL) do not provide sufficient protection. The process regulation in H.B. 503 appears to be consistent with the state's policy.

Private remedies for a minor who alleges physical or mental distress as a result of conversion therapy appear to be limited. The most obvious recourse for such a minor is to seek damages through a malpractice lawsuit against the health care professional who administered the treatment. The outcome of malpractice cases depends on the specific facts and circumstances involved, but there does not appear to be precedent in Ohio case law establishing that the administration of conversion therapy, in itself, constitutes a failure to act with "ordinary skill, care, and diligence" as required by law.⁵ A large number of medical organizations – including the American Medical Association and the American Academy of Pediatrics – oppose the use of conversion therapy. Yet, opposition to conversion therapy is not universal.

The practicality of the malpractice remedy is further complicated by the time limit for bringing medical malpractice actions. Continuing law generally requires that such actions be commenced within one year of the event that caused damages. There are exceptions to the rule; for example, the time limit does not begin tolling until a minor plaintiff reaches the age of adulthood and it may be extended for up to an additional three years if the injury is not discovered immediately.⁶ Nonetheless, a malpractice action is not a suitable remedy for injuries that manifest themselves later in life.

It might also be relevant to this analysis that medical malpractice actions are reactionary in nature – they reimburse plaintiffs for harm that has already occurred. Conversely, the process regulations in H.B. 503 apply prospectively – they prohibit conduct that has yet to occur. If the goal is to shield all minors from conversion therapy treatments, a prospective

⁵ See, *Ault v. Hall*, 119 Ohio St. 422, 428 (1928).

⁶ R.C. 2305.113 and 2305.16, neither in the bill.

regulation is a more direct way to achieve it. Prospective regulations seek to prevent harm rather than reimbursing damages stemming from harm that a plaintiff has already incurred.

Other regulatory policies

H.B. 503 modifies established regulatory frameworks that apply to health care professionals who practice in Ohio. The law does not contain a general statement explaining the state's intent in regulating these particular professions.⁷

IMPACT STATEMENT

Opportunities for employment

The process regulations prescribed by the bill would reduce the scope of practice for health care professionals, however conversion therapy to minors is unlikely to be a significant portion of any health care practice.⁸ Conversion therapy for minors is already prohibited in some cities, including Athens, Cincinnati, Columbus, Dayton, Kent, Lakewood, and Toledo. In addition, some professional organizations discourage the practice of conversion therapy. For these reasons, this bill is unlikely to have a significant impact on employment.

Consumer choice

This bill would reduce consumer choice by eliminating conversion therapy as a treatment option for minor patients. Due to the small number of such patients, such restrictions are unlikely to significantly reduce the availability of health care professionals, or the availability of conversion therapy to adults.

Market competition

This bill would eliminate competition among licensed health care professionals who provide this conversion therapy to minors.

Cost to government

The bill prohibits requires certain licensing boards to sanction health professionals who practice conversion therapy on minors. The health professionals specifically enumerated in the bill include individuals licensed by the following: the State Medical Board of Ohio, the Ohio Board of Nursing, the State Board of Psychology, and the Ohio Counselor, Social Worker and Marriage and Family Therapist Board. As a result, it is possible that these boards could realize an increase in administrative costs to investigate any complaints or to sanction any individuals who violate the prohibition. Any increase is anticipated to be minimal, but will depend on the number of complaints.

⁷ See, e.g., R.C. Chapter 4723, 4731, 4732, 4757, and 4758.

⁸ The Williams Institute estimates in "Conversion Therapy and LGBT Youth" that, as of June 2019, in the 32 states that did not ban the practice approximately 16,000 LGBT youth will receive conversion therapy from a licensed professional before they reach the age of 18. This would equal approximately 500 LGBT youth in Ohio.

STATE-BY-STATE COMPARISON

None of the states surrounding Ohio have laws prohibiting conversion therapy for minors; however, 19 other states do. One additional state, North Carolina, restricts conversion therapy for minors by prohibiting the use of taxpayer dollars for conversion therapy practices.⁹ The table below summarizes the law in five of those states.

Conversion Therapy for Minors Prohibitions			
State	Professions impacted	Penalties	Additional stipulations
California ¹⁰	Mental health providers including: psychiatrists; psychologists; psychological assistants, interns, or trainees; licensed marriage and family therapists; registered associate marriage and family therapists; marriage and family therapist trainees; licensed educational psychologists; credentialed school psychologists; licensed clinical social workers; associate clinical social workers; licensed professional clinical counselors; registered associate clinical counselors; professional clinical counselor trainees; or any other person designated as a mental health professional under California statute or regulation.	Discipline by licensing board	None.

⁹ N.C. Exec. Order No. 97 (August 2, 2019).

¹⁰ California Business and Professional Code 865 to 865.2.

Conversion Therapy for Minors Prohibitions			
State	Professions impacted	Penalties	Additional stipulations
Illinois¹¹	Mental health providers including: clinical psychologists, school psychologists, psychiatrists, clinical social workers, social workers, marriage and family therapists, associate licensed marriage and family therapists, clinical professional counselors, professional counselors, or any students, interns, volunteers, or other persons assisting or acting under the direction or guidance of any of these licensed professionals. ¹²	Discipline by licensing board	No person or entity may advertise conversion therapy in a manner that represents homosexuality as a disease, disorder, or illness.
New York¹³	Mental health professionals including: physicians, psychologists, licensed master social workers, licensed clinical social workers, mental health counselors, marriage and family therapists, creative arts therapists, psychoanalysts, or any other person designated as a mental health professional by law, rule, or regulation.	Discipline by licensing board	None.
Oregon¹⁴	Mental health care or social health professionals, including: licensed psychologists, psychologist associates, occupational therapists, occupational therapy assistants, regulated social workers, licensed marriage and family therapists, licensed professional counselors, and students of those professions.	Discipline by licensing board	None.

¹¹ 405 Illinois Compiled Statutes Annotated 48/15 to 48/30.

¹² 405 Illinois Compiled Statutes Annotated 48/15.

¹³ New York Consolidated Laws Service Educ. Law 6509-e and 6531-a.

¹⁴ Oregon Revised Statutes 675.680.

Conversion Therapy for Minors Prohibitions			
State	Professions impacted	Penalties	Additional stipulations
Virginia ¹⁵	Any profession regulated by boards within the Department of Health that require counseling as part of training.	Discipline by licensing board	Prohibits the expenditure of state funds to conduct conversion therapy with a person under 18 years of age, refer a person under 18 years of age for conversion therapy, or extend health benefits coverage for conversion therapy with a person under 18 years of age.

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¹⁵ Code of Virginia 54.1-2409.5.