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# OHIO LEGISLATIVE SERVICE COMMISSION

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and Drafting

Legislative Budget  
Office

**H.B. 97\***  
**135<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 97's Bill Analysis / Fiscal Note](#)

**Primary Sponsor:** Rep. Pavliga

**Impacted Professions:** Certified mental health assistants and physicians

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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.<sup>1</sup>

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## 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."<sup>2</sup>

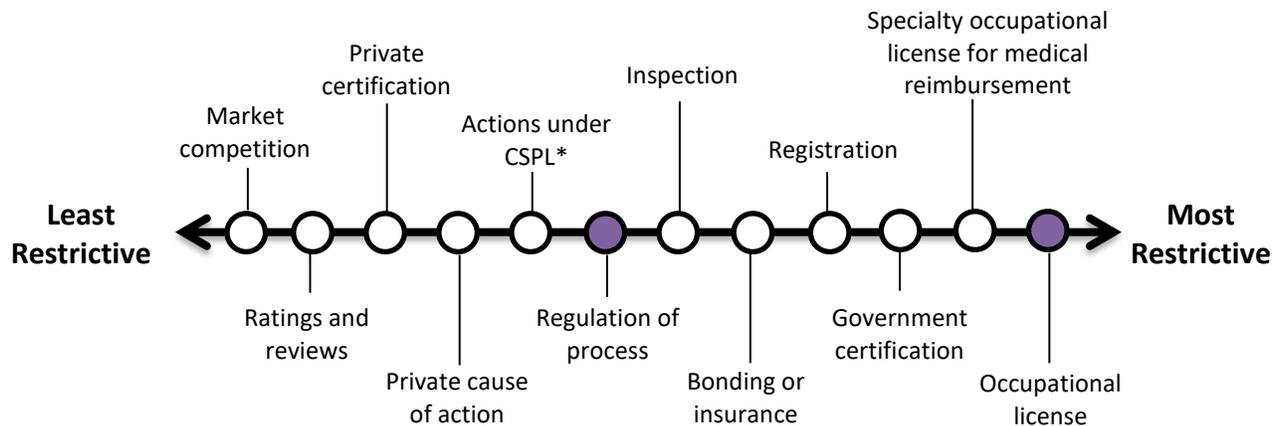
The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

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\* This report addresses the "As Introduced" version of H.B. 97. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> R.C. 4798.01 and 4798.02, neither in the bill.



\*CSPL – The Consumer Sales Practices Law

H.B. 97 creates an occupational license for a new type of mental health professional called a certified mental health assistant (CMHA). Under the bill, a CMHA is an individual who may provide specified mental health services under the supervision, control, and direction of a physician with whom the individual has entered into a supervision agreement.<sup>3</sup>

In addition, the bill regulates numerous aspects of the process of a CMHA's practice and of a physician's supervision of a CMHA. For example, it establishes requirements governing supervision agreements between a CMHA and a supervising physician.<sup>4</sup>

## Necessity of regulations

The bill's sponsor, Representative Gail Pavliga, testified that Ohio lacks enough mental health professionals to adequately handle citizens' behavioral health needs. She cited to U.S. Department of Labor statistics stating that Ohio has about 1,200 practicing adult psychiatrists, which equates to approximately one for every 10,000 people, and that more than half of those psychiatrists are over the age of 60. She asserted that without substantial changes, this lack of access to mental health professionals will only get worse.

To address the issue, Representative Pavliga stated that the bill creates a new licensed CMHA profession and that Ohio is the first state to propose this innovative solution. She said that the solution originated with the Northeast Ohio Medical School, which developed the idea to create a new physician extender pathway, similar to that of physician assistants (PAs), with an exclusive focus on mental health and substance use disorders.

Representative Pavliga explained that CMHA training would be similar to that of a PA or a medical student. She stated that the bill proposes a six-year pathway to certification as a CMHA that would include obtaining both a bachelor's degree and a two-year master's degree, with

<sup>3</sup> R.C. 4772.01(A) and 4772.09.

<sup>4</sup> R.C. Chapter 7772 (generally); R.C. 4772.10 and 4772.11 (supervision agreements).

clinical experience concentrated on behavioral health and primary care. She further testified that, like PAs, CMHAs would have the ability to prescribe medication to patients in need and would work under the direct supervision of a physician.<sup>5</sup>

## Restrictiveness of regulations

### Licensing provisions

Licensure is the most restrictive of all regulatory options identified within the state's continuum of regulations. Accordingly, the state's policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present:

- The occupation involves providing a service regulated by both state and federal law;
- The licensing framework allows individuals licensed in other states and territories to practice in Ohio; and
- The licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.<sup>6</sup>

The bill's creation of a CMHA licensure program appears to satisfy the state policy's first criterion because the occupation may involve prescribing certain controlled substances, which is a service that is regulated by both state and federal law. The bill authorizes CMHAs to prescribe and personally furnish drugs, including specified controlled substances, in the exercise of physician-delegated prescriptive authority.<sup>7</sup> The Federal Comprehensive Drug Abuse Prevention and Control Act<sup>8</sup> requires an individual who prescribes certain drugs to be a federal or state-authorized practitioner and regulates the process of making prescriptions and dispensing controlled substances.<sup>9</sup> Current Ohio law also regulates prescribing controlled substances. It confers such prescriptive authority on physicians and, with certain limitations, on PAs and advanced practice registered nurses (APRNs), as well as on dentists, optometrists, and veterinarians.<sup>10</sup>

Licensure of CMHAs does not appear to meet the state policy's second and third criteria. Because the bill's CMHA licensure program is the first of its kind, it is not based on uniform national laws, and no individuals in other states or territories are licensed as CMHAs.

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<sup>5</sup> See [Representative Gail Pavliga sponsor testimony \(PDF\)](#), House Health Provider Services Committee, May 23, 2023, which is available on the General Assembly's website, [legislature.ohio.gov](http://legislature.ohio.gov), by searching for "HB97" and looking under the "Community Activity" tab.

<sup>6</sup> R.C. 4798.02, not in the bill.

<sup>7</sup> R.C. 4772.12 and 4772.13.

<sup>8</sup> 21 United States Code (U.S.C.) 801 *et seq.*

<sup>9</sup> 21 U.S.C. 802(21) and 829.

<sup>10</sup> R.C. 3719.06 and 4729.01(I), and R.C. 3719.01(T), not in the bill.

By creating a new CMHA licensure program, it may appear that the bill increases the restrictiveness of occupational regulations. However, the services that a licensed CMHA may perform under the bill appear to fall within the current scope of practice of other licensed medical professionals, such as PAs and certain APRNs.<sup>11</sup> Notably, current Ohio law provides that a licensed APRN who is certified as a psychiatric-mental health clinical nurse specialist or as a psychiatric-mental health nurse practitioner by the American Nurses Credentialing Center may provide mental health services to a patient under a standard care arrangement with a collaborating (not supervising) physician.<sup>12</sup> In addition, a licensed PA may, under physician supervision, provide services similar to those that may be provided by a CMHA. PAs may obtain a certificate of added qualifications in psychiatry from the National Commission on Certification of Physician Assistants (NCCPA) to indicate psychiatric expertise.<sup>13</sup>

Thus, it appears that an individual who currently wishes to provide the services that a CMHA may provide under the bill would need to obtain a different type of existing license, such as that for a PA (who likewise must practice under physician supervision and may exercise physician-delegated prescriptive authority).<sup>14</sup> Therefore, the bill's creation of the CMHA licensure program, when viewed from that angle, potentially could be seen as decreasing restrictiveness by creating an additional pathway via which an individual may become credentialed to provide mental health services.

### **Authorized services and authority to delegate tasks**

The bill authorizes the holder of a valid CMHA license to perform specified mental health services under physician supervision. The authorized services include activities such as making diagnostic or therapeutic orders, prescribing drugs or medical devices, and making referrals to emergency medical services, inpatient psychiatric care, or substance use disorder treatment.<sup>15</sup> In addition, the bill authorizes a CMHA to delegate to any person the performance of a task to implement a patient's care plan and, if certain conditions are met, to delegate administration of a drug.<sup>16</sup>

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<sup>11</sup> R.C. Chapters 4723 (nurses) and 4730 (physician assistants).

<sup>12</sup> R.C. 4723.431(A)(2), not in the bill. See also the American Nurses Credentialing Center's (ANCC) credentialing information on [Psychiatric-Mental Health Nurse Practitioners](#), [Adult Psychiatric-Mental Health Nurse Practitioners](#), and [Child/Adolescent Psychiatric-Mental Health Clinical Nurse Specialists](#), which may be accessed by searching "mental health" on the ANCC website: [nursingworld.org/ancc](http://nursingworld.org/ancc).

<sup>13</sup> R.C. 4730.20, not in the bill. See also [NCCPA Certificate of Added Qualifications in Psychiatry](#), which may be accessed by searching "certificate of added qualifications" on the NCCPA's website: [nccpa.net](http://nccpa.net).

<sup>14</sup> R.C. 4730.02 and 4730.15, neither in the bill.

<sup>15</sup> R.C. 4772.09(C).

<sup>16</sup> R.C. 4772.092.

The bill prohibits a CMHA from making an initial diagnosis, treating a patient for a diagnosis or condition other than a recognized mental health condition, or engaging in specified interventions such as electroconvulsive therapy.<sup>17</sup>

### **Licensure requirements**

An individual seeking a CMHA license must apply to the State Medical Board and pay an application fee in an amount the Board specifies in rules.<sup>18</sup> To be eligible for a CMHA license, an applicant must be age 18 or older, pass a criminal records check, and hold one of the following:

- A master's degree or higher from an education program the Board approves under the bill; or
- A diploma from an accredited medical school or osteopathic medical school plus proof of completion of 12 months of coursework from an education program the Board approves under the bill.<sup>19</sup>

A CMHA license is valid for two years and may be renewed on payment of a renewal fee specified by the Board and on compliance with certain other requirements.<sup>20</sup> To be eligible for renewal, a CMHA that has physician-delegated prescriptive authority must complete 12 hours of specified, Board-approved continuing education and certify that the CMHA has access to the Pharmacy Board's drug database.<sup>21</sup>

### **License suspension or revocation, civil penalties, and other discipline**

The State Medical Board may take various disciplinary actions against CMHAs, including limiting, revoking, and suspending licenses, refusing to issue, renew, or reinstate them, and reprimanding license holders, and may impose up to \$20,000 in civil penalties against them. Grounds for discipline generally are similar to those for other health care professionals that the Board regulates. Generally, these disciplinary actions must be taken and civil penalties to be imposed pursuant to an adjudication under the Administrative Procedure Act.<sup>22</sup>

Specifically with respect to violations involving supervision agreements and related recordkeeping requirements, the State Medical Board may take disciplinary action against or impose a civil penalty of up to \$5,000 on a supervising physician or CMHA.<sup>23</sup>

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<sup>17</sup> R.C. 4772.09(D).

<sup>18</sup> R.C. 4772.04(A).

<sup>19</sup> R.C. 4772.04(B), 4772.041, and 4776.01; R.C. 4776.02 to 4776.04, not in the bill.

<sup>20</sup> R.C. 4772.06 and 4772.08(A) to (C).

<sup>21</sup> R.C. 4772.081.

<sup>22</sup> R.C. 4772.20 and 4772.203.

<sup>23</sup> R.C. 4772.10(E).

Regarding supervising physicians, the State Medical Board may take any of the disciplinary action authorized under current law against them for failure to maintain supervision of a CMHA as required under the bill.<sup>24</sup>

### **Regulation of process**

The state's general policy does not specify when a process regulation is the appropriate means of protecting consumers. Presumably, process regulations are preferred when market competition, ratings and reviews, private certifications, private causes of action, and actions under the Consumer Sales Practice Act are not sufficient to achieve the intent of the regulation.<sup>25</sup>

Whether these mechanisms are a sufficient means of protecting consumers is a policy decision. However, to protect the health and safety of patients, current Ohio law establishes many process regulations that govern the providing of medical services. For example, APRNs who are clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners must practice in collaboration with a licensed physician, and PAs must practice under physician supervision.<sup>26</sup>

### **Physician supervision of CMHAs**

The bill regulates process by requiring a physician to enter into a supervision agreement with each CMHA who will be supervised by the physician. A supervision agreement can apply to one or more CMHAs, but generally may not apply to more than one physician, unless the physician chooses to designate in the supervision agreement other physicians to act as alternate supervising physicians. While a physician may enter into supervision agreements with unlimited CMHAs, a physician may only supervise up to five CMHAs at one time.

The bill requires the supervision agreement to include specified terms, such as the supervising physician's responsibilities and the CMHA's responsibilities and limitations. It also must include a statement that the supervising physician is legally liable (while the supervision agreement is pending) for services that the CMHA provides.<sup>27</sup>

The supervising physician must initially diagnose a patient with a recognized mental health condition before a CMHA may provide services to the patient. In addition, the physician must review the CMHA's professional activities at least weekly and must reevaluate the patient under specified circumstances and at specified intervals.

A supervising physician can authorize a CMHA to perform a service only if the physician is satisfied that the CMHA is capable of competently performing the service. A supervising physician is prohibited from authorizing performance of any service that is beyond the physician's or CMHA's normal course of practice and expertise.

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<sup>24</sup> R.C. 4731.22(B)(55) and 4772.11.

<sup>25</sup> R.C. 4798.01, not in the bill.

<sup>26</sup> R.C. 4723.431 and 4730.02, neither in the bill.

<sup>27</sup> R.C. 4772.10 and 4772.11.

The physician also must ensure a specified quality assurance system is used for each supervised CMHA and must regularly perform other reviews of the CMHA as necessary. Supervising physicians and CMHAs must keep records of quality assurance activities and make them available to the State Medical Board on request.

The supervising physician generally must be continuously available to the CMHA for direct communication, either via physical presence or telecommunication. However, for the first 500 hours of the CMHA's practice, the physician must be physically present at the location (but not necessarily in the same room) where the CMHA is practicing.<sup>28</sup>

### **Physician-delegated prescriptive authority**

The bill authorizes a licensed CMHA to prescribe and personally furnish drugs and therapeutic devices, but only to the extent that the authority is delegated by the supervising physician. A CMHA must comply with all conditions placed on the prescriptive authority by the supervising physician, such as limits on dosage units and refills. The supervising physician must maintain a written record of those conditions and make it available to the State Medical Board on request.<sup>29</sup>

A CMHA's prescriptive authority may include prescribing very limited types of controlled substances in specified circumstances, such as prescribing buprenorphine for opioid use disorder treatment.<sup>30</sup> A CMHA who has prescriptive authority for controlled substances must register with the federal Drug Enforcement Administration and must comply with specified requirements (similar to those that apply to other prescribers). For example, before a CMHA initially prescribes a controlled substance for a patient, the CMHA must request a report from the Pharmacy Board's drug database about the patient's prescription history during the prior year.<sup>31</sup> Additionally, a CMHA who has physician-delegated prescriptive authority to prescribe a minor an opioid analgesic must comply with existing law that requires a discussion of risks and guardian consent.<sup>32</sup>

### **Criminal prohibitions and penalties**

The bill prohibits a nonlicensed person from holding themselves out as a CMHA. It also prohibits a CMHA from doing any of the following:

- Practicing as a CMHA without a supervision agreement or without the physician supervision required under it;
- Advertising CMHA services, except when seeking employment; and

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<sup>28</sup> R.C. 4772.11.

<sup>29</sup> R.C. 4772.12.

<sup>30</sup> R.C. 4772.13(A) and 3719.06(A)(4).

<sup>31</sup> R.C. 4772.12(B)(3), 4772.13(B), and 3719.06(A)(4).

<sup>32</sup> R.C. 4772.12(B)(4), citing R.C. 3719.061, not in the bill.

- Failing to wear identification as a CMHA while practicing.

The bill prohibits a supervising physician from authorizing a CMHA to perform services that are outside of the physician's normal course of practice and expertise or that are inconsistent with the supervision agreement.<sup>33</sup>

A violation of any of these prohibitions is a first degree misdemeanor on the first offense and a fourth degree felony for each subsequent offense.<sup>34</sup>

The bill also criminalizes failure of a CMHA or a physician to fulfill their duty to report a violation of the bill. The penalty for the violation is a minor misdemeanor on the first offense, and a fourth degree misdemeanor on subsequent offenses; however, an individual guilty of a subsequent offense is not subject to imprisonment, but is subject only to a fine of up to \$1,000 for each offense.<sup>35</sup>

### **Telehealth services**

The bill authorizes a CMHA to provide telehealth services.<sup>36</sup>

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## **IMPACT STATEMENT**

### **Opportunities for employment**

Under H.B. 97, employment opportunities for CMHAs would be restricted to individuals who obtain and maintain licensure. Thus, any individuals currently practicing who do not meet the requirements would be prohibited from providing services in this field. On the other hand, establishing licensure requirements could establish title protection, which would enhance employment prospects for qualified individuals.

### **Consumer choice**

If the bill results in services that are currently performed by unlicensed individuals being required to be performed by an individual holding a license, it may prevent these services from being offered until individuals are able to achieve licensure. This would temporarily eliminate consumer choice.

### **Market competition**

Again, if the bill results in access to services being eliminated until individuals achieve licensure, it could temporarily eliminate market competition for this occupation.

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<sup>33</sup> R.C. 4772.02.

<sup>34</sup> R.C. 4772.99(A).

<sup>35</sup> R.C. 4772.99(B) and 4772.23(A) to (D).

<sup>36</sup> R.C. 4772.091.

## Cost to government

For any potential costs to government, see [LBO fiscal note \(PDF\)](#).

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# SUMMARY OF PROPOSED REGULATIONS

## State Medical Board

The bill requires the State Medical Board to adopt rules in accordance with the Administrative Procedure Act that are related to the licensure of CMHAs and that govern certain aspects of their authority to prescribe controlled substances.<sup>37</sup>

In addition, the bill requires the Board to establish a process by which a person seeking to operate an education program for CMHAs can apply to the Board for approval. The bill establishes criteria that a program must meet to be eligible for Board approval and authorizes the Board to establish additional standards by rule.<sup>38</sup>

## Other provisions

The bill establishes other provisions related to CMHA licensure that are in addition to those discussed under “**Restrictiveness of regulations**,” “**Regulation of process**,” and “**State Medical Board**,” above. For a complete explanation of the bill, please see the [LSC bill analysis \(PDF\)](#).

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# COMPARISON TO OTHER STATES

No other states have a license that is comparable to that of a CMHA. However, in other states, as in Ohio, it appears that a licensed PA may function somewhat similarly to a CMHA by practicing under the supervision of a physician.<sup>39</sup>

In addition, a licensed PA may obtain a certificate of added qualifications in psychiatry from the NCCPA to indicate psychiatric expertise. To obtain the certificate, a PA must complete at least 75 continuing psychiatric education credits, log 2,000 or more hours of psychiatry experience, pass a psychiatry specialty examination, and fulfill certain other requirements.

A certificate is valid for ten years. To renew it, a PA must have logged at least 125 continuing psychiatry education credits during that time period, must pass the psychiatry specialty examination (again) before the current certificate expires, and must fulfill certain other requirements<sup>40</sup>

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<sup>37</sup> R.C. 4772.19 and 4772.13(D).

<sup>38</sup> R.C. 4772.05.

<sup>39</sup> See, for example, R.C. 4730.08, Ind. Code 25-27.5-5-2, Ky. Rev. Stat. 311.858, Mich. Comp. Laws 333.17548, 63 Pa. Stat. 422.13, and W. Va. Code 30-3E-11 and 30-3E-12.

<sup>40</sup> See [NCCPA Certificate of Added Qualifications in Psychiatry](#), which may be accessed by searching “certificate of added qualifications” on the NCCPA’s website: [nccpa.net](#).