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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 229*
135th General Assembly

Occupational Regulation Report

[Click here for H.B. 229's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. Sweeney and Patton

Impacted Professions: Physicians, physician assistants, and certain advanced practice registered nurses

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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

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

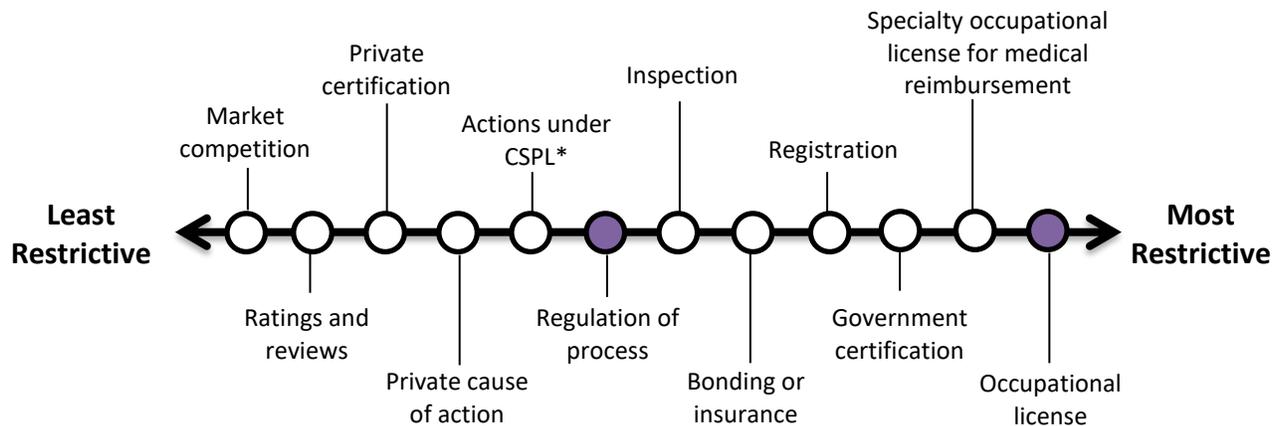
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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."²

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:

* This report addresses the "As Introduced" version of H.B. 229. 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.

² R.C. 4798.01 and 4798.02, neither in the bill.



*CSPL – The Consumer Sales Practices Law

H.B. 229 requires physicians, certain advanced practice registered nurses (APRNs), and physician assistants (PAs) to provide specified information to patients who are at risk for sudden unexpected death in epilepsy (SUDEP), a condition that can occur with or without evidence of a seizure.³ The bill also establishes consequences for failure to provide the required information.⁴ Under specified circumstances, these consequences potentially may include suspension or revocation of a health care practitioner's license.⁵

Necessity of regulations

The bill's primary sponsors, Representatives Bride Sweeney and Tom Patton, testified that SUDEP is the sudden, unexpected death of someone with epilepsy who was otherwise healthy. While stating that it is the leading cause of death in people with uncontrolled seizures, they explained that SUDEP occurs when the brain sends a faulty signal to the heart to stop beating or to the lungs to stop breathing. They further elaborated that it can happen with or without evidence of a seizure.

The bill is named the Brenna Brossard SUDEP Awareness Act.⁶ Representatives Sweeney and Patton relayed that Brenna was a healthy and active 25-year-old woman who suddenly passed away during an epileptic seizure. They stated that, despite over two decades of doctor visits with epilepsy specialists, neither she nor her parents ever had been informed about SUDEP or steps that can be taken to reduce the risk of its occurrence. The sponsors asserted that the bill

³ R.C. 3701.1311.

⁴ R.C. 3701.1311(E).

⁵ R.C. 4723.28 (advanced practice registered nurses (APRNs)), 4730.25 (physician assistants (PAs)), and 4731.22 (physicians), not in the bill.

⁶ Section 2.

will promote greater awareness of these issues and thus will help to save the lives of other at-risk Ohioans who are living with epilepsy.⁷

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.⁸

The health care practitioners regulated by the bill must be licensed to practice.⁹ These licenses appear to satisfy the state policy's first criterion because they provide services regulated by both state and federal law. For example, physicians, certain APRNs, and PAs are authorized to prescribe controlled substances, which is a service that is regulated by both state law and the Federal Comprehensive Drug Abuse Prevention and Control Act.¹⁰ Another example involves federal law governing the Veterans Health Administration, which requires physicians appointed to a position with the Administration to satisfy specified educational requirements and to be licensed to practice in a state.¹¹

As for the state policy's second criterion, the licensed occupations regulated by the bill appear to satisfy it. The state's recently enacted Licensure Reciprocity Law, effective December 29, 2023, generally requires the Board of Nursing and the State Medical Board to issue licenses to applicants who hold analogous out-of-state occupational licenses.¹²

It does not appear that the licensed occupations involved with the bill satisfy the state policy's third criterion, and the bill does not bring them into alignment with it. The applicable

⁷ See [Representatives Bride Rose Sweeney and Thomas F. Patton Sponsor Testimony](#), available on the General Assembly's website, legislature.ohio.gov, by searching for "HB 229" and looking under the "Committee Activity" tab.

⁸ R.C. 4798.02, not in the bill.

⁹ R.C. chapters 4723, 4730, and 4731.

¹⁰ 21 United States Code (U.S.C.) 801 *et seq*; R.C. 3719.01, 3719.06, 4723.481, and 4729.01, not in the bill.

¹¹ 38 U.S.C. 7402.

¹² R.C. 4796.03, not in the bill.

licensing requirements generally are established in state laws rather than being based on uniform national laws, practices, and examinations.

Licensing board discipline for violations

The bill requires specified information from the Director of Health to be provided to patients who are at risk for SUDEP. The information must be provided by the following health care practitioners who are licensed in Ohio:

- A physician authorized to practice medicine and surgery or osteopathic medicine and surgery;
- An APRN who is authorized to practice as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner; and
- A PA.¹³

Under the bill, a health care practitioner who fails to provide the information as required is subject to a warning from the Director of Health. If there is a subsequent violation or if the violation constitutes willful or wanton misconduct, the bill allows the health care practitioner's respective licensing board to impose discipline.¹⁴ Under continuing law, the boards' disciplinary authority includes limiting, suspending, or revoking a license.¹⁵

Process 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 do not provide sufficient protection.¹⁶

Whether these mechanisms are a sufficient means of protecting consumers of health care provided by health care practitioners regulated under the bill is unclear. To protect the health and safety of patients, current Ohio law establishes numerous process regulations that govern the providing of medical services. However, with respect to the bill, determining if its process regulations are appropriate to protect consumers is a policy decision.

¹³ R.C. 3701.1311(A).

¹⁴ R.C. 3701.1311(E).

¹⁵ R.C. 4723.28 (APRNs: Board of Nursing) and R.C. 4730.25 and 4731.22 (physicians and PAs: State Medical Board).

¹⁶ R.C. 4798.01, not in the bill.

Providing required SUDEP information to at-risk patients

Under the bill, specified health care practitioners who have the primary responsibility for an epileptic patient's (non-emergency) treatment or care must provide the patient with the following written information:

- Current, evidence-based information from the Director of Health about SUDEP risk factors and conditions; and
- Contact information for nonprofit organizations that provide epilepsy information and support services.

Health care practitioners providing treatment during emergency situations are exempt from this requirement.¹⁷

IMPACT STATEMENT

Opportunities for employment

While the bill may have some small impact on opportunities for employment for the physicians, APRNs, and PAs who are required to provide the information mandated by H.B. 229 to their patients who are at risk for SUDEP, this impact is not likely to be significant. The bill should not have an impact on opportunities for employment for physicians, APRNs, and PAs who are willing and able to comply with the bill's provisions or who may already be providing this information to patients despite the practice not being legally mandated. The bill would only affect physicians, APRNs, or PAs who violate the requirements of the bill and are subject to disciplinary action by their respective licensing boards. In such cases, their opportunities for employment may be diminished.

Consumer choice and market competition

For the same reasons the bill is not anticipated to have a significant impact on opportunities for employment for physicians, APRNs, and PAs, the bill is not likely to have an impact on consumer choice and market competition. Consumer choice and market competition would only be impacted if a significant number of physicians, APRNs, and/or PAs violate the bill's provisions and face disciplinary action from their respective licensing boards.

Cost to government

For information about costs to government, refer to [H.B. 229's Fiscal Note \(PDF\)](#).

SUMMARY OF PROPOSED REGULATIONS

Director of Health responsibilities

In addition to the provisions described above under "**Restrictiveness of regulation**," the bill establishes requirements that apply to the Director. Specifically, the

¹⁷ R.C. 3701.1311(B).

Director must provide health care practitioners with specified written information on SUDEP and must post the information on the Department of Health's website. The bill also requires the Director to provide guidance to health care practitioners to assist in determining if a patient is at an elevated risk for SUDEP.¹⁸

For a complete explanation of the bill, please see the [LSC Bill Analysis \(PDF\)](#).

¹⁸ R.C. 3701.1311(C) and (D).

COMPARISON TO OTHER STATES

New York is the only state that has enacted requirements involving SUDEP information that are similar to those in H.B. 229.

However, certain other states, including California, Florida, Illinois, Pennsylvania, and Texas, require information to be provided (generally by hospitals or birthing centers) to parents or guardians of newborns regarding sudden infant death syndrome (SIDS). SIDS is somewhat analogous to SUDEP because both are sudden unexpected death conditions.

The table below explains these provisions in greater detail.

Requirements to Provide Information on Sudden Unexpected Death Conditions to Patients or Their Parents		
State	SUDEP	SIDS
Ohio (under the bill)	Requires physicians, certain APRNs, and PAs to provide information from the Director of Health on SUDEP and related risk reduction to at-risk patients. <i>(R.C. 3701.1311)</i>	No clear equivalent in current law or the bill
California	No clear equivalent	Requires hospitals to provide free information on SIDS and related risk reduction (that reflects content in Health Department-approved materials) to parents or guardians of each newborn on discharge from the hospital. In the case of a home birth attended by a licensed midwife, requires the midwife to provide that information. <i>(Ca. Health and Safety Code 1254.6)</i>
Florida	No clear equivalent	Requires birth centers to provide clients and their families with education in newborn care, including safe sleep practices and the possible causes of SIDS. <i>(Fla. Stat. 383.311 and 383.318)</i>

Requirements to Provide Information on Sudden Unexpected Death Conditions to Patients or Their Parents		
State	SUDEP	SIDS
Illinois	No clear equivalent	<p>Requires a hospital to provide free information on SIDS and related risk reduction (developed by the American Academy of Pediatrics or a statewide or nationally recognized SIDS or medical association) to parents or guardians of each newborn on discharge from the hospital.</p> <p>Before discharge, requires a nurse or appropriate staff person to review the information with the newborn's parents or guardian and to discuss best practices to reduce the risk of SIDS as recommended by the American Academy of Pediatrics.</p> <p><i>(210 Ill Comp. Stat. 85/11.7)</i></p>
New York	<p>Similar to Ohio (penalty differs)</p> <p><i>(N.Y. Public Health Law 2995 and 2997-f-1)</i></p>	No clear equivalent
Pennsylvania	No clear equivalent	<p>Requires hospitals and birth centers to provide a parent of each newborn, on discharge, with educational materials that explain risk factors for SIDS and that emphasize safe sleeping practices.</p> <p>In the case of a birth in another setting, requires health care practitioners to do the same after the birth.</p> <p>Requires the parent to sign a statement acknowledging receipt of the materials, which the hospital, birth center, or health care practitioner must keep on file.</p> <p><i>(11 P.S. 877.3 and 877.5)</i></p>

Requirements to Provide Information on Sudden Unexpected Death Conditions to Patients or Their Parents		
State	SUDEP	SIDS
Texas	No clear equivalent	<p>Requires a hospital, birthing center, physician, nurse midwife, or midwife providing care to a pregnant woman during gestation or at delivery to provide the woman (and the infant’s father, if possible) or another adult caregiver of the infant with a pamphlet that includes information on SIDS, including current recommendations for infant sleeping conditions to decrease risk.</p> <p>Requires the woman’s receipt of the pamphlet to be documented in her medical records.</p> <p><i>(Tex. Health and Safety Code 161.501)</i></p>