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OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

Office of Research
and Drafting

Legislative Budget
Office

H.B. 102*
135th General Assembly

Occupational Regulation Report

[Click here for H.B. 102's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. Young, T. and John

Impacted Profession: Advanced practice respiratory therapists; respiratory therapists

Kelly Bomba, Attorney

Ryan Sherrock, Economist

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

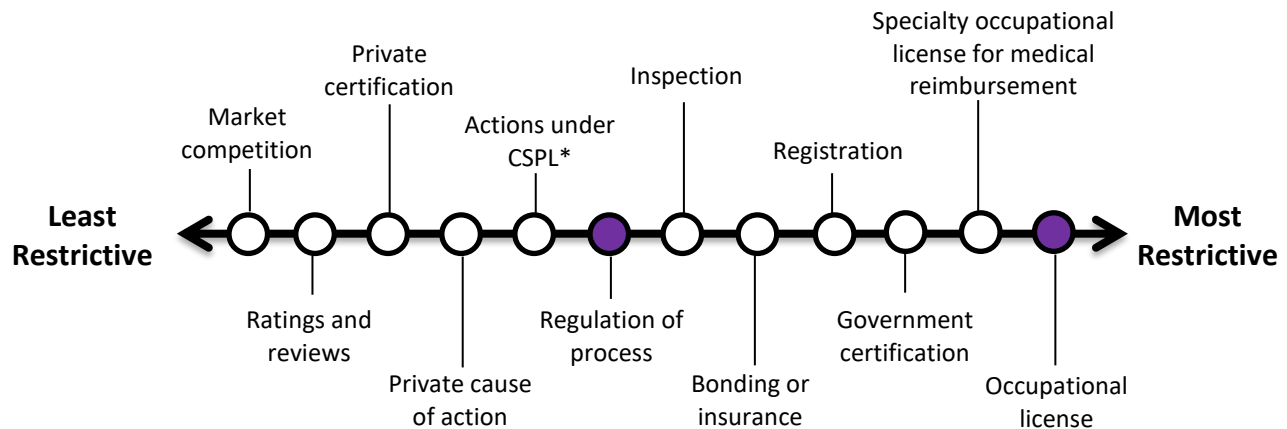
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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. 102. 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. 102 creates a new occupational licensing scheme to allow an individual who separately holds a respiratory care professional license to provide additional services under physician supervision. Under the bill, a licensed advanced practice respiratory therapist (APRT) may perform services delegated by a supervising physician in the diagnosis and treatment of patients with cardiopulmonary diseases or conditions, including prescribing, ordering, and administering drugs and medical devices.³

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

Lastly, the bill also expands the reasons for which a licensed respiratory therapist may be disciplined.⁵

Necessity of regulations

The bill's primary sponsors, Representative Tom Young and Representative Marilyn John, testified that the bill is necessary to improve access to cardiopulmonary care in Ohio. The representatives asserted that there is a gap between the availability of providers and the needs of citizens with cardiopulmonary disease in all clinical settings in the country. According to the representatives, 73% of pulmonologists are 55 years of age or older, indicating a rapid increase in this need in the coming years. The bill would help fill that gap by allowing licensed APRTs to

³ R.C. 4761.01(J) and 4761.30.

⁴ R.C. Chapter 4761 (generally); R.C. 4731.22, 4761.37, 4761.39, and 4761.45 (supervising physicians).

⁵ R.C. 4761.09.

perform services for the diagnosis and treatment of cardiopulmonary diseases or conditions under the supervision of a physician.⁶

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.⁷

The bill's creation of an APRT 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 APRTs to prescribe drugs and therapeutic devices, including controlled substances, in the exercise of physician-delegated prescriptive authority.⁸ The Federal Comprehensive Drug Abuse Prevention and Control Act⁹ 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.¹⁰ Current Ohio law also regulates prescribing controlled substances. It confers such prescriptive authority on physicians and, with certain limitations, on physician assistants (PAs) and advanced practice registered nurses (APRNs), as well as on dentists, optometrists, and veterinarians.¹¹

Licensure of APRTs does not appear to meet the state policy's second and third criteria. Because the bill's APRT 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 APRTs.

⁶ See [Representative Marilyn John and Representative Tom Young Sponsor Testimony](#), House Public Health Provider Services Committee, May 2, 2023, available on the General Assembly's website, legislature.ohio.gov, by searching for "HB 102" and looking under the "Committee Activity" tab.

⁷ R.C. 4798.02, not in the bill.

⁸ R.C. 3719.06, 4729.01, 4761.41, and 4761.44.

⁹ 21 United States Code (U.S.C.) 801 *et seq.*

¹⁰ 21 U.S.C. 802(21) and 829.

¹¹ R.C. 3719.06 and 4729.01(I); R.C. 3719.01(T), not in the bill.

By creating a new APRT licensure program, it may appear that the bill increases the restrictiveness of occupational regulations. However, the services that a licensed APRT may perform under the bill appear to fall within the current scope of practice of other licensed medical professionals, such as licensed physicians, PAs, and APRNs.¹² Thus, it appears that an individual who currently wishes to provide the services that an APRT may provide under the bill would need to obtain a different type of existing license. Therefore, the bill's creation of the APRT 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 advanced respiratory care services.

Authorized services and authority to delegate tasks

The bill allows the holder of an APRT license to perform certain services authorized by a supervising physician, which may include ordering, prescribing, and administering drugs and medical devices. An APRT must practice in accordance with a supervision agreement, as well as the policies of the health care facility in which the APRT is practicing.¹³

An APRT may order respiratory care services and delegate the performance of those services, including the administration of drugs, to another respiratory care professional. APRTs also may supervise respiratory care professionals.¹⁴ Further, the bill authorizes an APRT to delegate performance of a task or the administration of a drug to any other person if certain conditions are met.¹⁵

Licensure requirements

To be eligible for an APRT license, an individual must hold a license to practice as a respiratory care professional, have successfully completed the requirements of a master's or doctoral educational program approved by the State Medical Board, passed an examination approved by the Board, and hold an active qualification to practice advanced practice respiratory therapist care from a Board recognized organization.¹⁶

Penalties and discipline

Practicing as an APRT without a license, or holding oneself out as able to practice without holding a license, as well as engaging in certain activities without a license is a first degree misdemeanor on the first offense, and a fourth degree felony for subsequent offenses.¹⁷

¹² R.C. 4731.34(A)(3) and 4731.41 (the practice of medicine), not in the bill; R.C. Chapters 4723 (nurses) and 4730 (PAs), not in the bill.

¹³ R.C. 4761.01(J), 4761.36(A), and 4761.38(B).

¹⁴ R.C. 4761.17.

¹⁵ R.C. 4761.381.

¹⁶ R.C. 4761.30.

¹⁷ R.C. 4761.33 and 4761.99.

The bill generally applies the existing reasons and processes for discipline of respiratory care professionals to APRTs. However, the bill also expands the reasons for discipline for all respiratory care professionals to include the following:

- Failure to comply with the laws governing respiratory care (R.C. Chapter 4761) or other laws administered by the Medical Board (R.C. Chapter 4731), or any rules of the Medical Board;
- Violating or attempting to violating any provision of those laws or rules;
- Failure to practice in accordance with a supervision agreement, including any policies of a health care facility where the supervising physician and advanced practice respiratory therapist are practicing;
- Administering drugs for unauthorized purpose;
- Conviction for violating state or federal laws regulating drugs and drug trafficking;
- Willfully betraying a professional confidence;
- Failure to use universal blood and bodily fluid precautions established in rules;
- Having the individual's qualification to practice advanced practice respiratory care from a Board-recognized organization expire, lapse, or otherwise fail to be active.¹⁸

To the extent these changes impose more duties on a respiratory care professional, the bill may be more restrictive.

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.¹⁹

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.²⁰

H.B. 102 regulates process by requiring an APRT to practice only under the supervision, control, and direction of a physician with whom the APRT has entered into a supervision

¹⁸ R.C. 4761.09.

¹⁹ R.C. 4798.01, not in the bill.

²⁰ R.C. 4723.431 and 4730.19, not in the bill.

agreement as set forth in the bill. An APRT must practice in accordance with the supervision agreement, as well as the policies of the health care facility in which the APRT is practicing. An APRT who fails to practice in compliance with the bill is subject to discipline by the State Medical Board and possible criminal penalties.²¹

Additionally, a supervising physician must follow specified standards when supervising an APRT and establish specified quality assurance systems. The bill specifies that the supervising physician is legally responsible and assumes legal liability for services provided by an APRT that the physician is supervising. A supervising physician who fails to maintain supervision over an APRT in accordance with the bill is subject to discipline by the State Medical Board and criminal penalties (a first degree misdemeanor for a first offense; a fourth degree felony for subsequent offenses).²²

IMPACT STATEMENT

Opportunities for employment

Under H.B. 102, employment opportunities for APRTs 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. However, 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. However, establishing title protection and raising awareness of this field as a profession could eventually lead to individuals seeking to practice as an APRT. In addition, some public and private health systems may require licensure in order for an individual to receive reimbursement for services provided. This could provide for more 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. However, it could also lead to individuals seeking licensure, which would allow for market competition. In addition, typically individuals that obtain licensure are reimbursed at a higher rate to reflect their education and training endeavors.

Cost to government

For cost to government, please see the [LBO Fiscal Note \(PDF\)](#).

²¹ R.C. 4761.09, 4761.33(C), 4761.36, 4761.37, 4761.38, and 4761.99.

²² R.C. 4731.22, 4761.33(D), 4761.37, 4761.39, 4761.40, and 4761.99.

SUMMARY OF PROPOSED REGULATIONS

For a detailed explanation of the bill's APRT licensure requirements and the regulation of process regarding APRT practice and supervision by a licensed physician, please see the [LSC bill analysis \(PDF\)](#).

COMPARISON TO OTHER STATES

No other states appear to license APRTs. However, the concept of an APRT appears to be relatively new. The American Association for Respiratory Care released a definition for the scope of practice of an APRT in 2020.²³

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²³ American Association for Respiratory Care, [Advanced Practice Respiratory Therapist Frequently Asked Questions](#), which is available by searching for “advanced practice respiratory therapist” on the Associations’ website: aarc.org.