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# OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 356\***  
**135<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 356's Bill Analysis / Fiscal Note](#)

**Primary Sponsor:** Rep. Carruthers

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

Jill Rowland, Attorney

Brandon T. Minster, 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.<sup>1</sup>

## LEAST RESTRICTIVE REGULATION COMPARISON

### Ohio's general regulatory policy

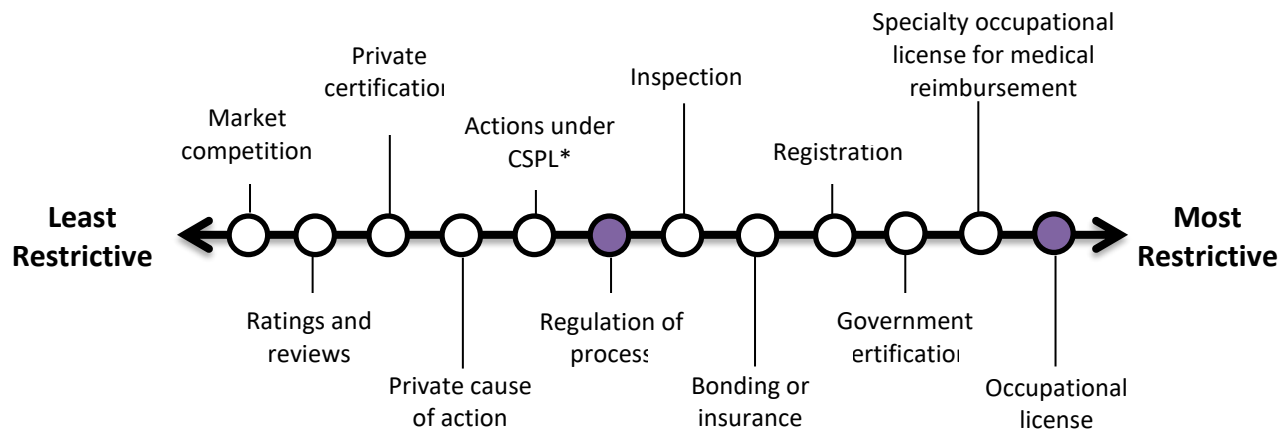
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect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

\* This report addresses the "As Introduced" version of H.B. 356. 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.

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

H.B. 356, the “Healthy Cardiac Monitoring Act,”<sup>3</sup> establishes requirements for physicians, advanced practice registered nurses (APRNs) designated as clinical nurse specialists or certified nurse practitioners, and physician assistants (PAs) who perform either of the following:

- Annual physicals on individuals age 19 or younger;
- Preparticipation physicals that the bill requires for all student and youth athletes.

For purposes of this occupational report, these physicians, APRNs, and PAs are referred to as “health care providers.”

The bill requires the health care providers to complete an evaluation form for each such physical, annually make related reports to the Ohio Department of Health (ODH), and quadrennially complete specified professional development regarding childhood cardiac screening and sudden cardiac arrest.<sup>4</sup>

Under the bill, a health care provider who fails to comply with these requirements may face license suspension, revocation, or other restriction. For failure to comply with the professional development requirements, the bill establishes additional consequences that may include fines, criminal penalties, and lack of Medicaid reimbursement.<sup>5</sup>

<sup>3</sup> Section 3.

<sup>4</sup> R.C. 4723.484(A), 4730.46(A), and 4731.89(B).

<sup>5</sup> R.C. 4723.28(B), 4723.99(C), 4730.25(B), 4730.99(C), 4731.22(B), 4731.99(G), and 5164.21.

## Necessity of regulations

The bill's sponsor, Representative Sara Carruthers, testified that an average of six out of every 100,000 children die of sudden cardiac arrest per year and that about 25% of those deaths occur on an athletic field.

Representative Carruthers stated that the intent behind the bill is to decrease the occurrence of sudden cardiac arrests by implementing a process to screen specifically for cardiomyopathy, which affects one in every 200 to 500 people in the general population. She said that including the screening in student athlete physicals will greatly increase the chance of identifying cardiomyopathy early. She asserted that early detection will enable a minor not only to get the care needed to live a high quality life but also to potentially continue in sports. Furthermore, she stated that this will give parents a sense of peace that their child can be healthy and well.<sup>6</sup>

## Restrictiveness of regulations

### Licensure

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>7</sup>

The health care providers regulated by the bill must be licensed to practice under continuing law.<sup>8</sup> 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.<sup>9</sup> Another example involves federal law governing the Veterans Health Administration, which requires

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<sup>6</sup> See [Representative Sara P. Carruthers Sponsor Testimony \(PDF\)](#), available on the General Assembly's website, [legislature.ohio.gov](http://legislature.ohio.gov), by searching for "HB 356" and looking under the "Committee Activity" tab.

<sup>7</sup> R.C. 4798.02, not in the bill.

<sup>8</sup> R.C. Chapters 4723, 4730, and 4731.

<sup>9</sup> 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.

physicians appointed to a position with the Administration to satisfy specified educational requirements and to be licensed to practice in a state.<sup>10</sup>

As for the state policy's second criterion, the licensed occupations regulated by the bill appear to satisfy it. The state's Occupational Licenses for Out-of-State Applicants Law generally requires the Board of Nursing and the State Medical Board to issue licenses to applicants who hold analogous out-of-state occupational licenses.<sup>11</sup>

It does not appear that the licensed occupations regulated under the bill satisfy the state policy's third criterion, and the bill does not bring them into alignment with it. The applicable licensing requirements generally are established in state laws rather than being based on uniform national laws, practices, and examinations.

### **New process regulations and licensure discipline for noncompliance**

The bill appears to increase restrictiveness by establishing new process regulations for health care providers who perform certain physicals and by authorizing license suspension, revocation, denial, or other restriction for noncompliance. These new process regulations require the health care providers to complete forms, reports, and professional development related to cardiac screening and sudden cardiac arrest.

#### ***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.<sup>12</sup>

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.

#### ***Professional development***

The bill's new process regulations, beginning one year after its effective date, apply to health care providers who perform annual physicals on individuals age 19 or younger or preparticipation physicals for student athletes. These process regulations require such a health care provider to do all of the following every four years:

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<sup>10</sup> 38 U.S.C. 7402.

<sup>11</sup> R.C. 4796.03, not in the bill.

<sup>12</sup> R.C. 4798.01, not in the bill.

- Complete a professional development module on childhood cardiac screening that ODH, in consultation with the Department of Education (ODE) must adopt under the bill;
- Retain at the health provider's primary place of practice a hard copy of the certificate of the module's completion and make it available on request to the health care provider's licensing board (i.e., the Board of Nursing for APRNs and the State Medical Board for physicians and PAs); and
- Read a pamphlet on sudden cardiac arrest that ODH, in consultation with ODE, must develop under the bill.<sup>13</sup>

The bill requires license renewal applications to include a check box via which an applicant can certify compliance with these requirements.<sup>14</sup>

The bill specifies that health care providers who fail to comply with the requirements are subject to potential disciplinary actions by their applicable licensing board. These disciplinary actions may include license denial, revocation, suspension, or restriction. In addition, they may include a reprimand or other discipline and, in the case of APRNs, potential imposition of a fine of not more than \$500 per violation.<sup>15</sup>

#### ***Fines, criminal penalties, and prohibited Medicaid reimbursement***

In addition to disciplinary action by the applicable licensing board, the bill establishes other consequences for noncompliance with its professional development requirements, thus increasing restrictiveness.

A health care provider who fails, on request of the provider's licensing board, to produce a copy of the certificate of completion of the childhood cardiac screening professional development module may be fined \$5,000, plus an additional \$1,000 for each individual the provider is found to have examined without completing the module.<sup>16</sup>

In addition, a health care provider who knowingly falsely certifies completion of the module or reading the pamphlet is guilty of a first degree misdemeanor.<sup>17</sup>

Finally, a health care provider who fails to complete the module or read the pamphlet as required by the bill, and who is a Medicaid provider, is prohibited from seeking payment from the Medicaid program for any examination to which the failure applies. The provider is also prohibited from collecting or billing the Medicaid recipient for such an examination.<sup>18</sup>

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<sup>13</sup> R.C. 4723.484(A), 4730.46(A), and 4731.89(B).

<sup>14</sup> R.C. 4723.24(A), 4730.14(A), and 4731.281(A).

<sup>15</sup> R.C. 4723.28(B)(38), 4730.25(B)(30), and 4731.22(B)(55).

<sup>16</sup> R.C. 4723.484(B), 4730.46(B), and 4731.89(C).

<sup>17</sup> R.C. 4723.484(C), 4723.99(C), 4730.46(C), 4730.99(C), 4731.89(D), and 4731.99(G).

<sup>18</sup> R.C. 5164.21.

### ***Forms and reports regarding physicals***

The bill's new process regulations establish requirements involving forms and reports. Health care providers who fail to comply are subject to discipline, including potential license suspension or revocation, by their licensing board.<sup>19</sup>

Specifically, beginning one year after the bill's effective date, health care providers who perform annual physicals on individuals age 19 or younger or preparticipation physicals for student athletes must do both of the following:

- Complete, for each physical, a preparticipation physical evaluation form that the bill requires ODH to create; and
- Annually report to ODH the total number of preparticipation physical evaluation forms completed and the total number of cardiology referrals resulting from those physicals.<sup>20</sup>

### **Authority to conduct clearance exams**

The bill appears to increase restrictiveness for certified nurse midwives by slightly reducing their scope of practice. Specifically, the bill eliminates their current authorization in Lindsay's Law to conduct clearance examinations that allow an athlete to play sports after not being allowed due to specified risk factors for sudden cardiac arrest.

The bill adds authority for PAs to conduct those clearance examinations with respect to youth athletes (those who participate in athletics organized by a youth sports organization). PAs currently may conduct those examinations for student athletes. By doing so, the bill decreases restrictiveness for PAs by slightly expanding their scope of practice.<sup>21</sup>

These changes conform with the bill's provisions indicating that physicians, APRNs designated as clinical nurse specialists or certified nurse practitioners, and PAs are to conduct preparticipation physicals for student and youth athletes.

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## **IMPACT STATEMENT**

### **Opportunities for employment**

The bill has no direct impact on opportunities for employment in Ohio because it creates no new requirements for an applicant to any position related to youth sports. Indirect impacts are its reduction of the scope of practice for certified nurse midwives (CNMs), and expansion of the scope of practice for PAs. There are approximately 4,770 PAs and 300 CNMs in Ohio. Another indirect impact is the suspension or revocation of licenses from healthcare providers who fail to comply with the training or reporting requirements. This impact is indirect because it comes not from the bill's provisions but later from any provider noncompliance.

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<sup>19</sup> R.C. 4723.28(B)(16), 4730.25(B)(2), and 4731.22(B)(20).

<sup>20</sup> R.C. 4723.484(A), 4730.46(A), and 4731.89(B).

<sup>21</sup> R.C. 3313.5310(F) and 3707.58(F).

## Consumer choice

The bill respects the principle of consumer choice by allowing student athletes to receive a medical review from the appropriate professional of their choice.

## Market competition

The bill allows for market competition between medical professionals making their services available to student athletes. The bill requires departments of state government to produce a pamphlet about sudden cardiac arrest, but this does not appear to compete with any proprietary information that could be seen as a destruction of a market through government involvement.

## Cost to government

For the costs to government, please see the [LBO fiscal note \(PDF\)](#), which states that ODH will experience costs to establish the professional development module, while other state and local governments may incur minimal costs.

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## SUMMARY OF PROPOSED REGULATIONS

In addition to the changes described above, the bill prohibits a student or youth athlete from participating in an athletic activity unless the athlete has a physical performed within a specified prior time period by a physician, an APRN designated as a clinical nurse specialist or certified nurse practitioner, or a PA.<sup>22</sup>

The bill also requires ODH, in consultation with ODE, to develop, within one year of its effective date, a pamphlet explaining sudden cardiac arrest in children and adults (which ODE must distribute to schools free of charge) and a preparticipation physical evaluation form for use by health care providers who evaluate student and youth athletes under the bill.

ODH also must complete an annual report on outcomes related to the professional development module and health care provider reports required under the bill. ODH must post the report on its website and provide a copy to the public on request.<sup>23</sup>

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

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<sup>22</sup> R.C. 3313.5310(E) and 3707.58(E).

<sup>23</sup> R.C. 3707.59 and 3707.591.

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## COMPARISON TO OTHER STATES

Unlike the bill, none of the states surrounding Ohio require preparticipation physicals for student or youth athletes or establish related duties for health care providers.

However, New Jersey requires preparticipation physicals for student (but not youth) athletes within one year before participation in extracurricular sports.<sup>24</sup> Physicians, APRNs, and PAs must do both of the following before conducting any such physicals:

- Complete a professional development module on cardiac screening that includes specified information about sudden cardiac arrest;
- Sign a certification statement on a student's preparticipation physical evaluation form attesting to completion of the module.<sup>25</sup>

In addition, contracts between a school district and a school physician in New Jersey must include a statement of assurance that the school physician has completed the module and has read a specified pamphlet on sudden cardiac arrest.<sup>26</sup>

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<sup>24</sup> N.J. Rev. Stat. 18A:40-41.7.

<sup>25</sup> N.J. Rev. Stat. 18A:40-41d.

<sup>26</sup> N.J. Rev. Stat. 18A:40-1.1.