Legislative Analysis

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LICENSE RESPIRATORY THERAPISTS

House Bill 4236 as enrolled
Public Act 3 of 2004
Sponsor: Rep. Stephen Ehardt
House Committee: Health Policy
Senate Committee: Health Policy

Second Analysis (8-9-05)

BRIEF SUMMARY: The bill would create a system of licensure for respiratory therapists, restrict various titles used by respiratory therapists to licensees, establish application and license fees, create a board of respiratory care, grant reciprocity to individuals licensed as respiratory therapists in Canada, and extend the eligibility period to 1/1/2007 for Canadian health care practitioners to apply to this state for licensure by endorsement and Canadian registered professional nurses to apply for a temporary RPN license.

FISCAL IMPACT: The bill would have no fiscal impact on local governments. Regarding state impact, the bill may generate approximately $300,000 to $350,000 annually in fee revenue, but additional staff could be necessary to administer the new licensing function. Annual expenses could range from as low as $80,000 for 1.0 FTE and miscellaneous start-up costs to 5 FTEs at a cost of $300,000.

THE APPARENT PROBLEM:

Respiratory therapists are an important part of the health care delivery system. They work in a variety of settings, including acute care settings in hospitals, where they provide critical care services after major surgeries and in intensive care units. According to information supplied by the Michigan Society for Respiratory Care, respiratory therapists are responsible for managing patient life support functions, performing cardiopulmonary resuscitation, operating ventilators, and providing other skilled services. They are even recognized as one of the health professionals subject to the Michigan Do-Not-Resuscitate Procedures Act (MCL 333.1061). Respiratory therapists work directly with patients, and though they work under the medical direction of physicians, the work of a therapist consists primarily of independent and unsupervised actions and discretionary judgment. For instance, respiratory therapists are authorized to assess the vital signs of a patient; if such signs are absent, and if there is a DNR order, the respiratory therapist is authorized to independently execute that DNR order and withhold CPR. Yet, respiratory therapists in Michigan are not subject to state oversight or regulation.

Michigan is one of only five states that does not regulate respiratory therapists. Forty-five states, along with the District of Columbia and Puerto Rico, currently require registration or licensure. Respiratory therapists have been seeking inclusion as health professionals under the Michigan Public Health Code at least since the 1978

recodification of the code. More recently, two of the bills to register respiratory therapists introduced in the last six years passed both chambers, but were not signed into law.

The impetus behind regulating respiratory therapists has been spurred by several high-profile cases in which respiratory therapists directly caused the death of a patient, by the increasing number of people living to an advanced age who may require the services of adequately trained therapists, the need for respiratory therapists in the advent of a serious terrorist attack with bio-weapons, and by the trend in many health professions to increase the minimum level of training and education (in part due to the ever increasing complexities in technological advances and emerging medical treatments).

The National Board for Respiratory Care, a voluntary health certifying board, provides credentialing examinations for certified respiratory therapists (CRT) and registered respiratory therapists (RRT). Eligibility to sit for the exams requires completion of at least an associate's degree from an approved program, thus providing a competent pool of appropriately trained professionals. Though the majority of health care facilities and agencies operate within industry standards, there are some facilities that allow undertrained people to perform tasks that are arguably more appropriately performed by certified or registered therapists. It is argued that the use of untrained or undertrained people to perform respiratory services is dangerous to the public, and can result in outcomes ranging from increased hospital stays, patient relapse, and ineffective treatment to permanent disability, coma, and death.

As the American Association of Respiratory Care explains on its web site, "[m]ost people take breathing for granted. It's second nature, an involuntary reflex. But for the thousands of Americans who suffer from breathing problems, each breath is a major accomplishment. Those people include patients with chronic lung problems, such as asthma, bronchitis, and emphysema, but they also include heart attack and accident victims; premature infants; and people with cystic fibrosis, lung cancer, or AIDS." Therefore, many people feel that protection for consumers needs to be increased and indeed could be increased if Michigan provided a system of licensure for respiratory therapists that included the establishment of minimum levels of education and training. Once again, legislation has been introduced to require that respiratory therapists be regulated under the Public Health Code.

THE CONTENT OF THE BILL:

The bill would add a new part to the Public Health Code (Part 187, "Respiratory Care") to require respiratory therapists to be licensed, restrict various titles used by respiratory therapists, implement application and license fees, create a board of respiratory care in the Department of Community Health, and grant reciprocity to Canadian licensed respiratory therapists.

The bill would also extend, until January 1, 2007, the ability of Canadians licensed as health care practitioners to apply for licensure in this state by endorsement and for a

Canadian licensed as a registered practical nurse who applied for licensure under the code to engage in the practice of nursing as an RPN to obtain a temporary RPN license. The bill would take effect July 1, 2004.

Under the bill, a person could not engage in the practice of respiratory care or provide or offer to provide such care unless licensed under Part 187, though the bill would provide several exceptions for certain activities, discussed later.

Restricted titles. The bill would restrict the titles (and initials) "respiratory therapist" ("R.T."), "respiratory care practitioner" ("R.C.P."), licensed respiratory therapist (l.r.t.), and licensed respiratory care practitioner (l.r.c.p.) to individuals registered under the bill as respiratory therapists. The bill also would prohibit an individual from using these titles (or similar words indicating that an individual was a respiratory therapist) unless he or she was licensed under the bill as a respiratory therapist after the bill took effect.

Definitions. The bill would define "respiratory therapist and respiratory care practitioner" to mean an individual engaged in the practice of respiratory care and who is responsible for providing respiratory care services and who is licensed under the code as respiratory therapist or respiratory care practitioner.

"Respiratory care services" would be defined to mean preventative, diagnostic, therapeutic, and rehabilitative services under the written, verbal, or telecommunicated order of a physician to an individual with a disorder, disease, or abnormality of the cardiopulmonary system as diagnosed by a physician. The bill specifies numerous services that would be included as respiratory care services, but would not restrict such services to those listed.

The practice of respiratory care services could be provided by an inpatient or outpatient service or department within a health facility, by a home care agency or durable medical equipment company, or by an educational program.

Exempted activity. The licensure requirement would not prevent any of the following as long as the restricted titles were not used:

- An individual licensed under any other part or act from performing activities requiring licensure as an r.t. if those activities are within the person's scope of practice.
- Performing activities considered respiratory care services while under the supervision of a licensed r.t. or l.r.c.p.
- Performing diagnostic services if the individual possessed a level of training approved by the Board of Respiratory Care, and successfully passed a board-approved credentialing examination.
- The practice of respiratory care that was part of a program of study by students enrolled in a board-approved educational program as long as the individuals were identified as students and provided the services while under the supervision of an l.r.t. or l.r.c.p.

Michigan Board of Respiratory Care. The Public Health Code (MCL 333.16126) requires a licensure board to have a majority of members registered in the profession that the board licenses and to include at least one public member. General requirements for health profession board members include being at least 18 years old, of good moral character, a resident of the state, and, for the board's professional members, currently licensed or registered in the state. In addition, the director of the department is an ex officio, non-voting member, of each board, though not for determining a quorum or for the constitutional requirement that a majority of the members of an appointed examining or licensing board of a profession be members of that profession (Article V, section 5).

The bill would create a seven-member Michigan Board of Respiratory Care in the Department of Community Health and Industry Services, each of whose members would have to meet the general requirements for health profession board members. The board would have to consist of a medical director and four members with special qualifications in respiratory therapy (described below) and two public members.

The medical director would have to be a licensed physician (either M.D. or D.O.) who was responsible for the quality, safety, appropriateness, and effectiveness of the respiratory care provided by a respiratory therapist; who assisted in quality monitoring, protocol development, and competency validation; and who met all of the following requirements:

- was the medical director of an inpatient or outpatient respiratory care service or department within a health facility, or of a home care agency, durable medical equipment company, or educational program;
- had special interest and knowledge in the diagnosis and treatment of cardiopulmonary disorders and diseases; and
- was qualified by training or experience, or both, in the management of acute and chronic cardiopulmonary disorders and diseases.

The four other members specializing in respiratory therapy would have to meet either or both of the following criteria:

- be certified or otherwise approved by a national organization that certified or otherwise approved individuals in respiratory therapy; and,
- have actively practiced respiratory therapy or have taught in an educational institution that prepared applicants for licensure or registration in respiratory therapy (or a combination of both) for not less than the two years preceding their appointment.

Rules promulgation. The bill would require the Department of Community Health to promulgate rules necessary or appropriate to fulfill its requirements under the bill and, in promulgating rules to establish requirements for registration, to require that registrants:

- have successfully completed an accredited respiratory therapist training program approved by the department;

- have at least a two-year associate's degree from an accredited college or university approved by the department; and
- have the credential conferred by the National Board for Respiratory Care (or its successor organization) as a respiratory therapist (or its successor credential), as approved by the department.

Grandfather clause. A person who had been credentialed as a CRT or an RRT by the National Board for Respiratory Care, or its predecessor organization, on or before the bill's effective date, and who applied for licensure within one year after the bill took effect, would have to be issued a license as a respiratory therapist by the department.

Reciprocity with Canada. If the department received an application for licensure under the bill from an individual licensed as a respiratory therapist in Canada, the department would have to consult the international reciprocity agreement executed by the National Board for Respiratory Care and the Canadian Society of Respiratory Therapists in effect on the bill's effective date. (Canadian RRTs are eligible to receive accreditation as an RRT by the National Board for Respiratory Care.)

Temporary registration. The department could issue a temporary license as a respiratory therapist to an applicant who did not meet all of the license requirements in department-promulgated rules, if the applicant did all of the following:

- applied to the department for a temporary license within one year after the bill's effective date;
- provided satisfactory proof to the department that he or she had been employed full-time as a respiratory therapist for the four years immediately preceding the date of application in a durable medical equipment company or home care agency, a respiratory care educational program, or an inpatient or outpatient respiratory care service or department within a licensed health facility; and
- provided the department with a letter of recommendation from his or her medical director at the time of application attesting to the applicant's clinical competence as a respiratory therapist; and
- paid the applicable fees.

A temporary license would expire within the same time period as a nontemporary registration. The holder of a temporary license could apply for renewal of the temporary license one or more times but could not hold a temporary license for longer than four years. The holder of a temporary license would be subject to Part 187 and the rules promulgated under it, except for the licensure requirements.

The DCH would have to issue a license to an individual holding a temporary license if the person applied for licensure prior to the expiration of the temporary license and provided proof to the department of successfully completing the national credentialing exam approved by the department.

Fees. The bill would establish a $20 application processing fee, an annual $75 license fee for individuals licensed or seeking licensure as respiratory therapists, and an annual $75 temporary license fee for applicants meeting the criteria for temporary applicants.

Third party reimbursement. The bill would specify that it would not require new or additional third party reimbursement or mandate worker's compensation benefits for services rendered by someone registered as a respiratory therapist under the bill.

MCL 333.16131 et al.

BACKGROUND INFORMATION:

Respiratory therapy and the Public Health Code. When the recodified Public Health Code was being written in the 1970s, attempts to add respiratory therapists to the code were rejected. Instead, the Health Occupations Council created under Public Act 368 of 1978 (later repealed by Public Act 79 of 1993) was directed to study various health occupations—including not only respiratory therapy, but also social work, audiology, speech language pathology, and myofunctional therapy—to determine the appropriateness of including them in the code. While social work eventually was moved from the Occupational Code to the Public Health Code (as a registered, not licensed, health profession), repeated legislative attempts to include respiratory therapy under the health code have been unsuccessful to date. For example, in the 2002-2003 session, House Bill 4647 was ordered enrolled by the legislature but was vetoed by the governor. During the 1999-2000 session, House Bill 4085 was reported from the House Committee on Health Policy, but died on second reading. And House Bill 5986 passed both houses of the legislature during the 1997-1998 session but was never enrolled.

National certification. Currently, the National Board for Respiratory Care administers a national exam developed by the Educational Testing Service and offers accreditation for certified and registered respiratory therapists. (National registration is voluntary.) Criteria for the entry level certified respiratory therapist (CRT) accreditation includes completion of an associate degree from an approved program. The advanced registered respiratory therapist (RRT) accreditation requires being a CRT and completion of an associates degree from an approved advanced level respiratory therapist educational program, or being a CRT with four years clinical experience and at least 62 semester hours of college credit in specified courses, or possessing a baccalaureate degree with courses in specified areas, or being a Canadian RRT. Further, the applicant must pass an examination for accreditation at either level.

ARGUMENTS:

For:

The bill would establish a system of licensure for respiratory care providers working under the job title of respiratory therapist. Respiratory therapists are the only direct care health professionals who are not regulated under the Public Health Code, and Michigan is one of only five states that does not regulate this profession. Yet, therapists work with an

extremely vulnerable and fragile population and often outside of direct supervision by other medical staff. Respiratory care delivered by untrained or undertrained personnel can have serious consequences. Mistakes can be deadly. For example, hooking up oxygen the wrong way can cause a patient to stop breathing, and drug interactions and reactions can have very serious consequences. The bill would increase protection to Michigan patients by mandating a minimal level of training, education, and clinical competence for those employed in the position of a respiratory therapist. Reportedly, studies done by the national Educational Testing Service have demonstrated that there is a high degree of predictive validity that a person who has passed the test process for national registration as a respiratory therapist will perform his or her job duties in an acceptable and competent manner.

Secondly, some feel that the licensure structure could provide a mechanism for employers to screen potential employees for past incompetence, criminal behavior, or license or registration sanctions received in Michigan or other states. Though the majority of practicing respiratory therapists are dedicated health professionals delivering a high level of care to patients, a few highly publicized cases have occurred in recent years in which respiratory therapists directly caused the death of a patient. In Florida, a therapist who was instructed to unhook a patient who was brain-dead from a respirator unhooked the wrong patient, resulting in that patient's death. In California, a respiratory therapist (referred to as the "Angel of Death") overtly caused the death of between thirty and fifty patients. Advocates of the bill point out that since the profession of respiratory therapist is not regulated in the state, either of these two individuals, as well as other persons who have a history of injuring patients (whether inadvertently or purposely), could come to Michigan and practice in the state's hospitals, clinics, and nursing homes. Though a regulatory system may not expose every incompetent or dangerous person, it would help to establish a system of checks that could increase safety to consumers.

For:

The bill would grandfather in those respiratory therapists who currently hold accreditation as a certified respiratory therapist (CRT) or registered respiratory therapist (RRT) from the National Board of Respiratory Care. However, they must apply for state licensure within one year of the bill's effective date. After that time, an applicant for licensure would have to comply with the rules for licensure that will be developed as required by the bill. Those currently working as RTs who have not been accredited by the national board can receive a temporary license for up to four years. This should provide adequate time for a person to complete any training program, college course of study, and examination that the rules would require for licensing. Rather than being unfair to those currently in the profession, these requirements would serve to weed out those who – though performing the services of an RT – may be incompetent or who pose a threat to the safety of patients.

Consider the state of Nevada, which recently moved from a system of registration/certification to licensure. According to the Michigan Society for Respiratory Care, during the initial review of applications from the then-current practitioners, 5.8 percent of the applicants were found to have significant ongoing behavioral issues such

as drug and alcohol abuse (most were then required to attend treatment or counseling as a condition for licensure) and another 1.5 percent were found to have felony convictions or outstanding warrants (and so were denied licensure).

The switch to a system of licensure may therefore identify those practitioners in the state who should not be allowed to continue in the profession, as well as identify those who need assistance, such as substance abuse treatment, to continue to be contributing members of a healthcare team.

For:

With increasing concern over inhalation exposure to biological and chemical weaponry and the recent outbreak of severe acute respiratory syndrome (SARS), the importance of respiratory therapists in protecting and promoting the public health, safety, and welfare is clear enough. If anything, such possible scenarios as large numbers of people being exposed to nerve agents or bio-toxins underscores the need for a highly educated and trained professionals to work with patients whose breathing has been severely compromised.

For:

Currently, 16 health professionals (17, if the "subfield" of physician assistants is included) are regulated under the health code. Even some nonmedical professions, such as mental health professionals, must be registered or licensed. Cosmetologists must be licensed, and cosmetology students must complete hundreds of hours of instruction before they are even allowed to wash the hair of a client. Considering the life-and-death nature of the duties of respiratory therapists, it seems ludicrous that respiratory therapists remain unregulated.

For:

The bill would recognize the reciprocity agreement between the US National Board of Respiratory Care and Canadian Society of Respiratory Therapists by requiring that the Department of Community Health consult the reciprocity agreement if an application for licensure is received from a Canadian registered therapist. By honoring that agreement, a Michigan licensed therapist could also seek employment in Canadian health facilities. Since Michigan borders Canada, this provision is beneficial to both Michigan and Canadian health facilities.

For:

To meet the growing shortage of qualified health care professionals in Michigan hospitals and health care facilities, Public Act 441 of 2002 (enrolled House Bill 4994) was enacted to allow applicants licensed as registered practical nurses and applicants licensed to practice a health profession in a province of Canada to apply for a temporary registered practical nurse license or licensure by endorsement, respectively, until January 1, 2004. The temporary registered practical nurse license allows qualified Canadian nurses to work as registered nurses within the state while completing the lengthy licensure process, which includes successful passage of an examination that is only offered a few times a year. The endorsement procedure requires an applicant to meet certain requirements and

standards, but streamlines the process so that Canadian-licensed health professionals can seek endorsement immediately and directly through the relevant professional board or task force. Michigan is still experiencing a shortage of nurses, pharmacists, radiologists, radiology technicians, and other health care professionals. The bill would extend by five years the provisions allowing licensed Canadian health care professionals to, through the endorsement procedure, be able to be licensed to work in the state and for Canadian registered practical nurses to engage in the practice of nursing while completing the lengthy licensure process.

Against:

Licensure and registration laws are typically an attempt to limit entry into a profession. Unless a clear threat to the public's health is demonstrated, there is no need for government interference into a profession. The field of respiratory therapy is already self-regulated by a national board, and therapists can be credentialed if they wish to be. The current system appears to be working, and without a compelling reason to change, should be left as it is.

Response:

The bill basically establishes minimal educational and clinical criteria for those providing respiratory care as respiratory therapists. The bill would establish the educational and training requirements for health care workers with the title of respiratory therapist. Since respiratory therapist professionals develop care plans, assess patients, and perform other highly skilled respiratory care services, it is imperative that minimal standards for education and competency be established for these health care practitioners.

As to there being a threat to the public safety, reportedly "mistakes" and adverse medical treatments by health professionals are often rolled into medical staff quality assurance, which then places the incidents under the protection of confidentiality laws. Therefore, with the exception of those high profile cases that make the news, it is hard to document the real threat to the public's safety. Further, it would be poor public policy to reject a bill based on a trend to reject all regulatory frameworks. There exists a compelling case to regulate respiratory therapists based on the type of medical services they perform. The bottom line is that the bill would add to the public's safety and increase the quality of respiratory care without restricting access to the profession of respiratory care or creating a burdensome regulatory structure.

Against:

During the last few years, there have been a number of bills introduced to create regulatory structures for currently unregulated professions within the health field as well as in other occupations. Instead of approaching each issue in a piecemeal fashion, perhaps the legislature should examine the entire issue of occupational licensing and regulation. An approach such as this would allow a thorough examination as to which types of professions need to be regulated in order to protect the public and which occupations could be self-regulated through professional organizations. Indeed, some may need no regulation at all.

Against:

The bill would result in increased health care costs, in part because regulating respiratory therapists would drive up wages. Further, the state could incur increased costs due to additional administrative duties imposed by the bill.

Response:

According to the Michigan Society for Respiratory Care (MSRC), wages for respiratory therapists are currently market driven, and should not be affected by licensure since the bill would not create an artificial shortage of practitioners. A study published by the University of Alabama at Birmingham (UAB) School of Health Related Professions has demonstrated that state regulation has little impact on hourly wages, and regulation has not been significantly associated with vacancies in respiratory therapy departments.

As to the possibility that the bill could increase costs to taxpayers, quite the opposite could happen. The license application and annual renewal fees should offset any administrative costs incurred by the Department of Community Health. With approximately 4,000 respiratory therapists eligible for annual renewal and about 100 new graduates entering the field each year, sufficient revenues should be generated to cover administrative costs. The MSRC estimates that the annual gross revenue to the state for the first year of implementation could be $300,000; with $9,500 in revenue annually from new applicants, there could be a total gross revenue of $309,500 for the second and subsequent years. In addition, an independent examination will not have to be developed, validated, or administered since the bill requires a person to have the credential (a CRT or RRT) conferred by the National Board for Respiratory Care.

Against:

There already is a national certification process for respiratory therapists, so the bill is unnecessary. Moreover, as allied health care workers, respiratory therapists practice under the direction of licensed physicians, who bear the ultimate responsibility and liability for the patient's care. This physician oversight, plus the option of national certification, is adequate to protect patients' health and safety. Furthermore, although problems with respiratory therapists have been reported in other states, the Michigan regulatory agency for health care workers has not received any reports of problems in Michigan. So, the bill is not needed to protect the safety of state citizens. And, the cases of injury and death due to errors or actions of respiratory therapists reported from other states involved states that require the registration or licensing of respiratory therapists, so obviously licensure will not prevent mistakes or even malevolent actions by some respiratory therapists.

Response:

It cannot be emphasized enough that the national certification available to respiratory therapists through the National Board for Respiratory Care is entirely voluntary, while the bill would make it mandatory. The vast majority of well-trained and clinically experienced respiratory therapists will seek such voluntary national certification. But the bill is not directed toward these respiratory therapists. Instead, it targets the undertrained or even untrained people some hospitals reportedly hire in their attempts to remain financially viable. Anecdotally, some hospitals have actually hired high school graduates and trained them on the job to act as respiratory therapists. Critics say this must be

stopped. Further, since Michigan does not currently have any regulatory requirements for respiratory therapists, anyone can call himself or herself a "respiratory therapist" even if totally unqualified for the kinds of work respiratory therapists are called on to do. Licensure, which the bill would require, both protects the titles of health care workers and requires minimum education and training standards. Thus the bill would prohibit untrained or undertrained people from calling themselves "respiratory therapists" and employers from hiring such people to work in the capacity as a respiratory therapist.

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