



**House
Legislative
Analysis
Section**

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**RESPIRATORY THERAPISTS:
REQUIRE REGISTRATION**

**House Bill 4236 as introduced
First Analysis (4-2-03)**

**Sponsor: Rep. Stephen Ehardt
Committee: Health Policy**

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 for respiratory therapists. 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 to consumers needs to be increased and could be increased if Michigan provided a system of registration for respiratory therapists that included the establishment of minimum levels of education and training. Once again, legislation has been introduced

House Bill 4236 (4-2-03)

to require that respiratory therapists be registered 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 registered, to restrict various titles used by respiratory therapists, to implement application and registration fees, and to create a board of respiratory care in the Department of Consumer and Industry Services.

Restricted titles. The bill would restrict the titles (and initials) "respiratory therapist" ("R.T.") and "respiratory care practitioner" ("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 registered under the bill as a respiratory therapist after the rules promulgated by the proposed Michigan Board of Respiratory Care took effect.

Definitions. The bill would define "respiratory therapist" to mean an individual who was responsible for providing patient care services under the prescription of a physician to individuals with disorders and diseases of the cardiopulmonary system, including, but not limited to, life support and cardiopulmonary resuscitation, and who was registered under the bill as a respiratory therapist.

Michigan Board of Respiratory Care. The Public Health Code (MCL 333.16126) requires a registration board to have a majority of members registered in the profession that the board registers 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 Consumer 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.

(Note: it appears that the board's four "respiratory therapist" members would be required to be registered as respiratory therapists within three years of the bill's effective date but not before then.)

Rules promulgation. The bill would require the proposed board, 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.

Also, the bill would require the department to prescribe by rule continuing education requirements as a condition for registration renewal.

Temporary registration. The department could issue a temporary registration as a registered respiratory therapist to an applicant who did not meet all of the registration requirements that the bill would require be promulgated in department rules for registrants, if the applicant did all of the following:

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

Fees. The bill would establish a \$20 application processing fee, an annual \$75 registration fee for individuals registered or seeking registration as respiratory therapists, and an annual \$75 temporary registration 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 (and 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, last 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.

FISCAL IMPLICATIONS:

According to information supplied by the Department of Consumer and Industry Services, the bill contains fees to support annual regulatory activity; however, it does not provide funding necessary to implement a new regulatory program – specifically, it does not provide upfront money needed to fund information technology-related costs and systems changes needed to add a new professional category to those already administered by the Bureau of Health Services. At one time, it was estimated that these IT costs would be \$80,000 to \$100,000. In light of the current budget shortages, the department may not be able to absorb such a cost. Further, early retirements have reduced staff needed to oversee such a program; therefore, existing duties and new duties – such as verifying continuing education (which can be labor intensive) – could be burdensome considering current staffing levels. (4-1-03)

ARGUMENTS:**For:**

The bill would establish a system of registration 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 registration structure could provide a mechanism for employers to screen potential employees for past incompetence, criminal behavior, or licensure 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 from a respirator who was brain-dead 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.

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).

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 physicians assistants is included) are regulated under the health code. Even some nonmedical professions, such as mental health

professionals, must be registered or licensed. Even 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.

Against:

Licensure and registration laws are usually 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 apart from a compelling reason to change, should be left as it is.

Response:

The bill is basically a title bill that 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, 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 registration since the bill would not create an artificial shortage of practitioners. A study published by the University of Alabama at the Birmingham School of Health Related Professions demonstrated that state regulation has little impact on hourly wages, and regulation has cannot be 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 application and annual renewal fees for registration should offset any administrative costs incurred by the Department of Consumer and Industry Services. 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 that the annual gross revenue to the state for the first year of implementation could be \$300,000; with an annual \$9,500 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 even licensing of respiratory therapists, so obviously registration 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 who 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. This must be stopped. Since Michigan does not currently have any registration requirements for respiratory therapists, anyone can call him- or herself a "respiratory therapist" even if totally unqualified for the kinds of work respiratory therapists are called on to do. Registration, 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 as respiratory therapists.

POSITIONS:

The Michigan Society for Respiratory Care supports the bill. (4-1-03)

A representative of the Respiratory Department/Lapeer Regional Hospital indicated support for the bill. (4-1-03)

A representative of the Mott Community College Respiratory Therapy Project indicated support for the bill. (4-1-03)

A representative of the Service Employees International Union indicated support for the bill. (4-1-03)

The Department of Consumer and Industry Services is neutral on the bill. (4-1-03)

The Michigan Health and Hospital Association opposes the bill. (4-1-03)

Analyst: J. Caver/S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.