Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4236 (Substitute S-1 as reported)
Sponsor: Representative Stephen Ehardt
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 7-17-03

RATIONALE

Respiratory therapists are responsible for providing patient care services under the prescription of a physician to individuals with disorders and diseases of the cardiopulmonary system. They manage life support functions for critically ill patients; operate mechanical ventilators for newborns, children, and adults; perform all cardiopulmonary resuscitation (CPR) in health care facilities; and perform patient assessments. Although qualified individuals may obtain certification through the National Board for Respiratory Care, certification is voluntary. Hospital accreditation and licensing do not specify clinical practice standards, minimum levels of clinical competence, or continuing education requirements for staff. According to the Michigan Society for Respiratory Care, Michigan is one of five states that do not provide for licensure or registration of respiratory therapists. Some people believe that a State licensure requirement would help protect the public from those with insufficient training.

CONTENT

The bill would amend the Public Health Code, and add Part 187 (Respiratory Care) to the Code, to do the following:

-- Prohibit a person from engaging in the practice of respiratory care or providing or offering to provide respiratory care services, and prohibit a person from using certain respiratory therapist titles, unless licensed under Part 187.
-- Establish an application processing fee of $20, and a license fee of $75 per year, for an individual licensed or seeking licensure as a respiratory therapist.
-- Create the Board of Respiratory Care and require it to promulgate rules establishing criteria for licensure.
-- Require the Department of Consumer and Industry Services (DCIS) to issue a license as a respiratory therapist to an individual who held a registration or certification from the National Board for Respiratory Care on or before the bill's effective date, and who applied within one year of that date.
-- Permit the DCIS to issue temporary licenses to individuals who applied within one year of the bill's effective date, had four years' full-time experience as a respiratory therapist, and paid a $75 annual fee.
-- Require the DCIS to prescribe continuing education requirements.

The bill states that Part 187 would not require new or additional third party reimbursement or mandated workers' compensation benefits for services rendered by an individual licensed as a respiratory therapist.

Part 187 would be created within Article 15 of the Code, which contains general and specific regulations for health occupations.

Restricted Titles; Required Licensure

An individual would be prohibited from using the title "respiratory therapist", "respiratory care practitioner", "licensed respiratory therapist", "licensed respiratory care practitioner", "R.T.", "R.C.P.", "L.R.T.", or "L.R.C.P.", or similar words that indicated the individual was a respiratory therapist, unless

that person was licensed under Article 15 as a respiratory therapist or respiratory care practitioner.

A person engaged in the practice of respiratory care, or providing or offering to provide respiratory care services, would have to be licensed under Part 187. This requirement would not prevent any of the following:

-- An individual licensed under any other part or act from performing activities that were considered respiratory care services, if those activities were within the individual's scope of practice, and if he or she did not use the titles protected under the bill.
-- An individual not licensed under Part 187 from performing activities that were considered respiratory care services while under the supervision of an individual who was licensed under Part 187 as a respiratory therapist or respiratory care practitioner, if the individual did not use the protected titles.
-- An individual not licensed under Part 187 from performing activities that were considered diagnostic services, if he or she possessed a level of training approved by the Board, had successfully passed a credentialing examination approved by the Board, and did not use the protected titles.
-- The practice of respiratory care as an integral part of a program of study by students enrolled in an accredited respiratory therapist educational program approved by the Board, provided that they were identified as students and provided respiratory care services only while under the supervision of a licensed respiratory therapist or respiratory care practitioner.
-- Self-care by a patient or uncompensated care by a friend or family member who did not represent or hold himself or herself out to be a licensed respiratory therapist or respiratory care practitioner.

"Respiratory care services" would mean preventative services, diagnostic services, therapeutic services, 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. Respiratory care services would involve, but would not be limited to, observing, assessing, and monitoring signs and symptoms, reactions, general behavior, and general physical response of individuals to respiratory care services, including determination of whether those signs, symptoms, reactions, behaviors, or general physical response exhibit abnormal characteristics; the administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care services; the collection of blood specimens and other bodily fluids and tissues for, and the performance of, cardiopulmonary diagnostic testing procedures including, but not limited to, blood gas analysis; development, implementation, and modification of respiratory care treatment plans based on assessed abnormalities of the cardiopulmonary system, respiratory care protocols, clinical pathways, referrals, and written, verbal, or telecommunicated orders of a physician; application, operation and management of mechanical ventilatory support and other means of life support; and the initiation of emergency procedures under the rules promulgated by the Board of Respiratory Care.

Licensure Requirements

The Board would have to require all of the following, in promulgating rules to establish criteria for licensure:

-- Successful completion of an accredited respiratory therapist training program approved by the Department.
-- At least a two-year Associate's degree from an accredited college or university approved by the DCIS.
-- 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 DCIS.

The DCIS could use the standards contained in the clinical practice guidelines issued by the American Association of Respiratory Care in effect on the bill's effective date as interim standards, which would be adopted by reference, until the Board promulgated rules for licensure.

An individual licensed or seeking licensure as a respiratory therapist would have to pay an application processing fee of $20 and an annual license fee of $75.

The DCIS would have to prescribe by rule continuing education requirements as a condition for renewal.

Temporary Licensure

The Department could issue a temporary license as a respiratory therapist to an applicant who did not meet all of the requirements established by the DCIS, if the applicant did all of the following:

-- Applied to the DCIS for a temporary license within one year after the bill's effective date.
-- Provided satisfactory proof to the DCIS that he or she had been employed full-time as a respiratory therapist for the four years immediately preceding the date of application in one of the following: an inpatient or outpatient respiratory care service or department within a licensed health facility; a durable medical equipment company or home care agency; or a respiratory care educational program.
-- Provided the DCIS 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.
-- Paid the applicable fees.

A temporary license would expire within the same time period as a nontemporary license issued by the Department. The holder of a temporary license could renew his or her license a number of times, but for not more than a total of four years.

The holder of a temporary license would be subject to Part 187, except for licensure requirements, and the rules promulgated under this part.

Board

The bill would create the Michigan Board of Respiratory Care in the DCIS. The Board would consist of seven members: one medical director; two public members; and four individuals who met the requirements of Section 16135(2) of the Code. (Section 16135(2) provides that a member of a health occupations board must 1) be certified or otherwise approved by a national organization that certifies or otherwise approves individuals in the profession, and 2) have actively practiced the profession, or taught in an educational institution that prepares applicants for licensure or registration in that profession, or combination of both, for at least two years immediately preceding appointment by the Governor.) Each member's term would expire four years after appointment on December 31.

A "medical director" would be a physician 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:

-- 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.
-- Was qualified by training or experience, or both, in the management of acute and chronic cardiopulmonary disorders and diseases.

The Board would have to promulgate rules as necessary or appropriate to fulfill its functions under Article 15.

Prior Registrants

The Department would have to issue a license as a respiratory therapist to an individual who had either of the credentials as a registered respiratory therapist or certified respiratory therapist, or their predecessor credentials, conferred by the National Board for Respiratory Care, or its predecessor organization, on or before the bill's effective date, and who applied for a license as a respiratory therapist within one year after that date.

Canadian Registrants

If the DCIS received an application for registration from an individual who was registered 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.

MCL 333.16131 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would help regulate respiratory therapists by requiring State licensure of individuals who wish to practice respiratory care in Michigan. Currently, there are no licensure or registration requirements to practice in this State. Essentially, individuals with little or no experience, education, or training may be able to establish themselves in Michigan as respiratory therapists. This lack of formal regulation might allow inexperienced or incompetent respiratory therapists to practice in Michigan without any review or screening process. The licensure of the profession would help protect patients' safety and health: Since respiratory care services are directly related to patient life support functions, the potential for harm from incompetent practitioners is significant. Death and permanent disability are among the possible outcomes of the failure of a respiratory therapist to perform competently. The procedures and tools used by respiratory therapists require sufficient knowledge, skills, and abilities to ensure public safety.

Opposing Argument

A State licensure program for respiratory therapists is unnecessary since the National Board for Respiratory Care already has an extensive credentialing system in place. Because national certification would be a requisite for State licensure, respiratory therapists would be required to pay twice for essentially the same credential. This process could limit the supply of qualified respiratory therapists, resulting in increased costs for services to the public and decreased efficiency and flexibility to the health care delivery system. Also, licensing respiratory therapists would not necessarily result in improved patient safety. The adoption and use of simple procedures in health care settings could prevent the sort of incidents, such as the mistaken disconnection a ventilator, cited by proponents of State licensure. Furthermore, as allied health professionals, respiratory therapists practice under the supervision and direction of licensed physicians who are responsible and liable for patient care. This oversight should provide adequate protection for patients. When a respiratory therapist performs incompetently, the affected person can complain to the DCIS using its complaint hotline.

Opposing Argument

The requirement that respiratory therapists earn continuing education credits for license renewal would be unnecessary. First, many claim that there is no evidence linking continuing education requirements with improved job performance or increased public protection. Next, specialization of health care professions and a competitive marketplace provide enough impetus for licensees to be competent. Those who want to advance in their careers will seek training on their own; those who are bored by their careers are unlikely to be stimulated by mandated continuing education, and will likely seek jobs that require less competency. If licensure truly works, then those who are incompetent will never be granted licenses, anyway. Further, continuing education requirements are costly to the State because the Department must provide for compliance monitoring.

Opposing Argument

The Bureau of Health Services, within the DCIS, does not have the resources to handle an additional profession. In the last few years, the Bureau has taken on the regulation of social workers, nursing home administrators, and emergency medical services personnel. At the same time, the Bureau has fewer employees due to hiring constraints and early retirements. According to the DCIS, most of the sections in the Bureau are at maximum capacity.

Legislative Analyst: Claire Layman

FISCAL IMPACT

According to the Department of Consumer and Industry Services, the fee structure that would be established in this bill would cover the operational costs of regulating this profession. There is, however, no funding available for the start-up costs associated with adding a new license category. These costs could total up to

$20,000 and include copying, postage, travel, and set up. Additionally, with the loss of staff due to early retirements, the Department estimates the need for four to five new employees to handle the applications, continuing education, and allegation and complaint investigations.

Fiscal Analyst: Maria Tyszkiewicz

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