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REGULATE RESPIRATORY THERAPISTS

House Bill 4085 (Substitute H-3) First Analysis (10-19-99)

Sponsor: Rep. Gerald Law
Committee: Health Policy

THE APPARENT PROBLEM:

Respiratory therapists are an important part of the health care delivery system. According to information supplied by the Michigan Society for Respiratory Care, respiratory therapists are responsible for managing patient life support functions, performing cardiopulmonary resuscitation, and running ventilators, among other things. Though respiratory therapists have been recognized as one of the health professionals subject to the Michigan Do-Not-Resuscitate Procedures Act (MCL 333.1061), “respiratory therapist” is not defined in statute. 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. However, respiratory therapists are the only direct patient care providers that are not regulated under state law.

Respiratory care generally falls into two levels of care, with an entry level position (technician) providing basic care and data-gathering tasks and a professional level or advanced practice level that provides skilled care and supervision of the respiratory technicians. National registration is voluntary. The National Board for Respiratory Care administers a national exam developed by the Educational Testing Service and offers accreditation for certified technicians and registered respiratory therapists. Criteria for the accreditation includes completion of a one-year technical program (or on-the-job training) and passing a certification exam for certified respiratory technicians, and a two-year Associate’s Degree and passing a stringent two-part examination that includes patient case scenarios for accreditation as a registered respiratory therapist.

Reportedly, the industry standard is for registered respiratory therapists to run life support machines, operate ventilators, and provide other skilled services along with supervising certified respiratory technicians, who provide basic respiratory care for patients. 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 technicians 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.

Michigan is one of only eight states that does not regulate respiratory therapists. Forty-two states, along with the District of Columbia and Puerto Rico, currently require registration or licensure for respiratory therapists. Many people feel that protection to consumers could be increased if Michigan provided a system of registration for respiratory therapists. Legislation has been proposed to establish a system of state registration for respiratory therapists.

THE CONTENT OF THE BILL:

House Bill 4085 would amend the Public Health Code by creating Part 186, entitled “Respiratory Care”, to place a definition of respiratory therapist in statute and to establish a system of registration under the code. A “respiratory therapist” (R.T.) would be defined as an individual who was responsible for providing respiratory care services and who was registered under the code as a registered respiratory therapist. “Respiratory care services” would mean the provision of preventative services, diagnostic services, therapeutic services, and rehabilitative services under the prescription of a physician to an individual with a disorder, disease, or abnormality of the cardiopulmonary system.

Under the bill, the Department of Consumer and Industry Services (CIS) would function as a professional board. The bill would adopt by reference a document entitled “American Association for

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Respiratory Care and Clinical Practice Guidelines” that was issued by the American Association for Respiratory Care in December, 1994, and also issued by the Michigan Society for Respiratory Care that is within the Michigan State Medical Society. The department would be required to use the standards and guidelines to promulgate rules and when undertaking any action in its function as a board. The rule-making process could be used to amend, update, or supplement the standards and guidelines that were adopted by reference.

The department would also be responsible for promulgating rules to establish registration requirements. The following requirements would have to be adopted:

Registration as a respiratory therapist (professional).

*Successful completion of an accredited R.T. training program or full-time R.T. clinical experience program that was approved by the department.

*Having at least a two-year associate’s degree or a minimum of 62 credit hours from an accredited college or university approved by the department.

*Being credentialed by the National Board for Respiratory Care, or its successor organization, as a registered respiratory therapist.

Registration as a respiratory therapist (technical).

*Successful completion of an accredited respiratory therapy training program approved by the department.

*Being credentialed by the National Board for Respiratory Care, or its successor organization, as a certified respiratory therapist.

The department would have to prescribe, by rule, continuing education requirements as a condition for registration renewal for both levels of respiratory therapists. In addition, a registration as a registered therapist (professional) would have to be issued to an individual who had been credentialed as a registered R.T. by the national organization on or before September 1, 1970, and to a person who had been credentialed as a registered therapist (technical) on or before July 1, 1977 as long as application for registration under the bill was made within one year of the bill’s effective date. Further, if an individual who was a registered R.T. in Canada applied for registration under the bill, 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 that was in effect on the bill’s effective date.

After the rules promulgated by the board took effect, no one could use the titles “respiratory therapist”, respiratory therapist (professional or technical), “respiratory care practitioner”, “R.T.”, “R.T. (P.)”, “R.T.(T.)”, and “R.C.P.” or similar words unless that person was registered under the bill as a respiratory therapist. The application processing fee for registration would be set at \$20 with an annual registration fee of \$75.

Further, the bill would not require new or additional third party reimbursement for services rendered by a respiratory therapist registered under the bill.

MCL 333.16186 et al.

BACKGROUND INFORMATION:

A similar bill, House Bill 5986, was passed by both houses in the 1997-1998 legislative session, but was not ordered enrolled.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the Department of Consumer and Industry Services would incur increased costs related to the administration of the registration requirements. However, the initial registration application fee of \$20 and the annual renewal fee of \$75 would increase state revenue by an indeterminate amount depending on the number of applicants for registration. (10-15-99)

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. 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 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.

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 not limit or deny entry into the profession of respiratory care. Those therapists who are providing respiratory care but who have not sought a certified technician certification or registered respiratory therapist credential from the National Board for

Respiratory Care could still perform basic level respiratory care services. The bill would clarify, however, the educational and training requirements for health care workers with the title of respiratory therapist. Since respiratory therapist professionals provide supervision for R.T. technicians, develop care plans, assess patients, and, along with the technicians, perform other highly skilled respiratory care services, it is imperative that minimal standards for education and competency be established for both levels of 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:

The last few years have seen 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 entire issue of occupational licensing and regulation should be looked at by the legislature. 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 administration duties imposed by the bill.

Response:

According to the Michigan Society for Respiratory Care, wages for respiratory therapists are currently market driven, and should not be affected by registration since the bill would not restrict entry into the profession or create an artificial shortage of

practitioners. As to the bill increasing costs to taxpayer, quite the opposite could happen. The application and annual renewal fees for registration should offset any administration 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. In addition, the society has proposed that the department contract with it to administer the registration process. The department already contracts with the Michigan Public Health Institute to operate long-term care facilities in the state, and such an alliance would fit in with the department's policy to privatize regulatory functions. Passage of the bill would afford an opportunity to create a model program for the department to transition regulatory boards to the private sector.

POSITIONS:

The Michigan Society for Respiratory Care supports the bill. (10-14-99)

The Department of Consumer and Industry Services opposes the bill. (10-14-99)

Analyst: 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.