

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Respiratory Care
Practitioner

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Respiratory Care Practitioner

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Respiratory Care Practice provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) Respiratory care means the health specialty responsible for the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care shall not be limited to a hospital setting and shall include the therapeutic and diagnostic use of medical gases, administering apparatus, humidification and aerosols, ventilatory assistance and ventilatory control, postural drainage, chest physiotherapy and breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, and maintenance of nasal or oral endotracheal tubes. Respiratory care shall also include the administration of aerosol and inhalant medications to the cardiorespiratory system and specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research.

The license was created to protect the public health, safety, and welfare.

IV. Number of Regulated Professionals in Nebraska

A) There are 1,503 licensed Respiratory Care Practitioners in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

I. Number of Members

A) There are four members of the Board of Respiratory Care Practice.

II. Who Appoints Members of the Board / Is Legislative Approval Required?

A) The Board of Health appoints the members of the Board of Respiratory Care Practice. Legislative approval is not required.

III. Term Length

A) The length of term for service on the Board of Respiratory Care Practice is up to two consecutive five year terms, on a rotating basis.

IV. Qualifications for Membership of the Board

A) The Board of Respiratory Care Practice is made up of three professional Chiropractors and one public member. The professional Chiropractors shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member.

V. The Number of Meetings Required Per Year / Meetings Actually Held

- A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 2.
- B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 1.
- C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 2.
- D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 2.
- E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 1.

VI. Annual Budget Information for the Previous Five Years

A) The Board of Respiratory Care Practice is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.

B) For FY 2014-2015: \$1,837

C) For FY 2015-2016: \$6,958

- D) For FY 2016-2017: \$54,394
- E) For FY 2017-2018: \$61,520
- F) For FY 2018-2019: \$58,131

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The Chair of the Board of Respiratory Care Practice stated “The Respiratory Care Practitioners Board oversees regulations regarding licensing requirements, continuing education, and unprofessional conduct of respiratory care practitioners. These regulations have been effective in maintaining a highly professional, educated, and compliant respiratory care workforce. Furthermore, the regulations allow for clear and direct handling of any non-compliance in an orderly and efficient manner.”

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Respiratory Care Practitioner occupation may be found in the Nebraska Revised Statutes, sections [38-3201](#) to [38-3216](#), which may be cited as the Respiratory Care Practice Act. For text of the Nebraska statutes relating to the Respiratory Care Practitioner occupation, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding Respiratory Care Practitioners may be found in the Nebraska Administrative Code [Title 172, Chapter 162](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 445 Respiratory Care Practitioner licenses issued in the past five years.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There were three Respiratory Care Practitioner licenses denied in the past five years.
- B) Grounds for denial include misrepresentation of material facts, failure to complete required examinations, failure to provide licensure fees, and immoral or dishonorable conduct, amongst other grounds.

III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years

- A) There were two Respiratory Care Practitioner licenses revoked in the past five years.
- B) The licenses were revoked for misrepresentation of material facts, failure to keep adequate records, and unprofessional conduct.

IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years

- A) There were 16 Respiratory Care Practitioner licenses penalized in the past five years.
- B) The penalties were civil penalties as a disciplinary measure or administrative penalties for practice without an active license.

V. Comparison of How Other States Regulate This Occupation

- A) 49 states and the District of Columbia require licensure for the Respiratory Care Practitioner occupation. The National Board for Respiratory Care maintains a [website](#) with a list of State licensure agencies. The American Association for Respiratory Care also maintains a [website](#) with State licensure information.

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) If the Respiratory Care Practitioner occupation is no longer licensed, certified, or regulated, it would be detrimental to the health, safety, and welfare of Nebraskans. Respiratory care practitioners oversee the management of pulmonary-related conditions. Their role ranges from supportive roles in patient transportation and diagnosis, providing cardiopulmonary resuscitation and advanced cardiac life support to critically ill patients, and to directly performing treatment plans including administration of inhaled drugs and medical gasses. Given these roles are highly technical and require advanced training, significant undue harm could be instilled on patients if the occupation became no longer licensed, certified, or regulated to remain within current compliance standards.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not

licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Respiratory Care Practice and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Respiratory Care Practitioner occupation by licensure is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE RESPIRATORY CARE PRACTICE ACT

38-3201. Act, how cited.

Sections 38-3201 to 38-3216 shall be known and may be cited as the Respiratory Care Practice Act.

Source: Laws 2007, LB463, § 1067.

38-3202. Definitions, where found.

For purposes of the Respiratory Care Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3203 to 38-3206 apply.

Source: Laws 2007, LB463, § 1068.

38-3203. Board, defined.

Board means the Board of Respiratory Care Practice.

Source: Laws 2007, LB463, § 1069.

38-3204. Medical director, defined.

Medical director means a licensed physician who has the qualifications as described in section 38-3214.

Source: Laws 2007, LB463, § 1070.

38-3205. Respiratory care, defined.

Respiratory care means the health specialty responsible for the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care shall not be limited to a hospital setting and shall include the therapeutic and diagnostic use of medical gases, administering apparatus, humidification and aerosols, ventilatory assistance and ventilatory control, postural drainage, chest physiotherapy and breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, and maintenance of nasal or oral endotracheal tubes. Respiratory care shall also include the administration of aerosol and inhalant medications to the cardiorespiratory system and specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research. Such techniques shall include, but not be limited to, measurement of ventilatory volumes, pressures, and flows, measurement of physiologic partial pressures, pulmonary function testing, and hemodynamic and other related physiological monitoring of the cardiopulmonary system.

Source: Laws 2007, LB463, § 1071.

38-3206. Respiratory care practitioner, defined.

Respiratory care practitioner means:

(1) Any person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care to patients of all ages with varied cardiopulmonary diseases and to patients in need of critical care and who is capable of serving as a resource to the physician and other health professionals in relation to the technical aspects of respiratory care including effective and safe methods for administering respiratory care; and

(2) A person capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.

Source: Laws 1986, LB 277, § 9; Laws 1999, LB 828, § 138; Laws 2003, LB 242, § 61; R.S.1943, (2003), § 71-1,227; Laws 2007, LB463, § 1072.

38-3207. Board; membership; qualifications.

Membership on the board shall consist of two respiratory care practitioners, one physician, and one public member.

Source: Laws 2007, LB463, § 1073.

38-3208. Practices not requiring licensure.

The Respiratory Care Practice Act shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional required to be licensed under the Uniform Credentialing Act when such practice is within the scope of practice for which that person is licensed to practice in this state;

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties;

(5) Techniques defined as pulmonary function testing and the administration of aerosol and inhalant medications to the cardiorespiratory system as it relates to pulmonary function technology administered by a registered pulmonary function technologist credentialed by the National Board for Respiratory Care or a certified pulmonary function technologist credentialed by the National Board for Respiratory Care; or

(6) The performance of oxygen therapy or the initiation of noninvasive positive pressure ventilation by a registered polysomnographic technologist relating to the study of sleep disorders if such procedures are performed or initiated under the supervision of a licensed physician at a facility accredited by the American Academy of Sleep Medicine.

Source: Laws 1986, LB 277, § 17; Laws 1997, LB 622, § 83; Laws 2003, LB 242, § 64; Laws 2003, LB 667, § 5; R.S.1943, (2003), § 71-1,235; Laws 2007, LB463, § 1074; Laws 2018, LB731, § 78.

38-3209. License; application; requirements.

(1) An applicant for a license to practice respiratory care shall submit to the department written evidence that the applicant has completed a respiratory care educational program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care or its successor or by an accrediting agency approved by the board.

(2) In order to be licensed, initial applicants shall pass an examination approved by the board.

Source: Laws 1986, LB 277, § 13; Laws 2002, LB 1062, § 38; R.S.1943, (2003), § 71-1,231; Laws 2007, LB463, § 1075.

Cross References

- **Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

38-3210. Practicing respiratory care practitioners; license issued; conditions.

The department, with the recommendation of the board, shall issue a license to perform respiratory care to an applicant who, on or before July 17, 1986, has passed the Certified Respiratory Therapy Technician or Registered Respiratory Therapist examination administered by the National Board for Respiratory Care or the appropriate accrediting agency acceptable to the board.

Source: Laws 1986, LB 277, § 15; Laws 1988, LB 1100, § 84; Laws 2003, LB 245, § 15; R.S.1943, (2003), § 71-1,233; Laws 2007, LB463, § 1076.

38-3211. Applicant for licensure; continuing competency requirements.

An applicant for licensure to practice respiratory care who has met the education and examination requirements in section 38-3209, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 1077.

38-3212. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice respiratory care who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 1078; Laws 2017, LB88, § 89.

38-3213. Fees.

The department shall establish and collect fees for credentialing under the Respiratory Care Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1079.

38-3214. Respiratory care service; requirements.

Any health care facility or home care agency providing inpatient or outpatient respiratory care service shall designate a medical director, who shall be a licensed physician who has special interest and knowledge in the diagnosis and treatment of respiratory problems. Such physician shall (1) be an active medical staff member of a licensed health care facility, (2) whenever possible be qualified by special training or experience in the management of acute and chronic respiratory disorders, and (3) be competent to monitor and assess the quality, safety, and appropriateness of the respiratory care services which are being provided. The medical director shall be accessible to and assure the competency of respiratory care practitioners and shall require that respiratory care be ordered by a licensed physician, a licensed physician assistant, a nurse practitioner as defined in section 38-2312, or a certified registered nurse anesthetist as defined in section 38-704, who has medical responsibility for any patient that needs such care.

Source: Laws 1986, LB 277, § 11; R.S.1943, (2003), § 71-1,229; Laws 2007, LB463, § 1080; Laws 2012, LB788, § 1.

38-3215. Practice of respiratory care; limitations.

The practice of respiratory care shall be performed only under the direction of a medical director and upon the order of a licensed physician, a licensed physician assistant, a nurse practitioner as defined in section 38-2312, or a certified registered nurse anesthetist as defined in section 38-704.

Source: Laws 1986, LB 277, § 12; R.S.1943, (2003), § 71-1,230; Laws 2007, LB463, § 1081; Laws 2012, LB788, § 2.

38-3216. Respiratory care practitioner; subject to facility rules and regulations; when.

In the event a respiratory care practitioner renders respiratory care in a hospital or health care facility, he or she shall be subject to the rules and regulations of that facility. Such rules and regulations may include, but not be limited to, reasonable requirements that the respiratory care practitioner maintain professional liability insurance with such coverage and limits as may be established by the hospital or other health care facility upon the recommendation of the medical staff.

Source: Laws 1986, LB 277, § 18; R.S.1943, (2003), § 71-1,236; Laws 2007, LB463, § 1082.

- 71-1,227. Transferred to section 38-3206.
- 71-1,228. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,229. Transferred to section 38-3214.
- 71-1,230. Transferred to section 38-3215.
- 71-1,231. Transferred to section 38-3209.
- 71-1,232. Repealed. Laws 2003, LB 245, s. 19.
- 71-1,233. Transferred to section 38-3210.
- 71-1,234. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,235. Transferred to section 38-3208.
- 71-1,236. Transferred to section 38-3216.
- 71-1,237. Repealed. Laws 2003, LB 242, s. 154.