

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunrise Analysis of a Proposal to Regulate Respiratory Care Practitioners

Summary

We analyzed whether respiratory care practitioners should be regulated as proposed in House Bill No. 2240 introduced during the 1995 Regular Session. We conclude that regulation is not warranted and the proposed legislation is flawed.

Respiratory care practitioners specialize in the evaluation, treatment, and care of people with breathing disorders. They work with a wide variety of patients who suffer from conditions resulting from asthma, emphysema, heart failure, stroke, drowning, shock, and other causes.

House Bill No. 2240 proposes to regulate respiratory care practitioners with a seven-member licensing board in the Department of Commerce and Consumer Affairs. With some exceptions, unless licensed by the State, no one could lawfully practice respiratory care or use the title "respiratory care practitioner" (or the abbreviation "R.C.P.").

The Sunset Law states that professions and vocations should be regulated only when reasonably necessary to protect the health, safety, and welfare of consumers. In assessing the need for regulation, the Auditor is to give great weight to evidence of abuse. Other considerations include whether consumers are at a disadvantage in choosing or relying on providers, whether alternatives provide sufficient protection to consumers, and whether the benefits of regulation outweigh the costs.

The regulation of respiratory care practitioners is not warranted. If improperly performed, respiratory care can cause harm. However, regulation is not necessary because sufficient protections already exist. Practitioners work under the medical direction of physicians and are employed by knowledgeable health providers. Moreover, practitioners work within a framework of standards provided by several national organizations including the National Board for Respiratory Care and the American Association for Respiratory Care. Criminal laws provide additional protection.

Moreover, regulation would be costly. A start-up appropriation of nearly \$60,000 would be needed and application/license fees to support the program could run between \$500 and \$650 per person every two years. The State should not allocate its limited resources to establish regulation of respiratory care practitioners when

current protections are sufficient, regulation is duplicative, and its benefits are so uncertain. Moreover, charging fees to cover the State's costs could restrict entry into the occupation.

We presented similar arguments against regulation in our 1986 *Sunrise Analysis of a Proposal to Regulate the Practice of Respiratory Care*, Report No. 86-10. The occupation has not changed sufficiently since our previous report to justify regulation. Arguments that new technology and growth of home care justify regulation are not convincing.

House Bill No. 2240 is also flawed because the licensing board lacks a sufficient number of public members and certain licensing provisions are questionable. Furthermore, the bill would authorize the licensing board to investigate and hold hearings on violations. This conflicts with Section 26-9, HRS, under which the Department of Commerce and Consumer Affairs has these responsibilities.

Recommendation and Response

We recommend that House Bill No. 2240 not be enacted.

The Department of Commerce and Consumer Affairs agrees with our findings which conclude that regulation of respiratory care practitioners is not warranted. In addition, the department raises concerns about the bill's impact on other health care professionals, its grandfather provision, and its allusions to continuing education, accreditation of educational programs, and recovery fund assessment.

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