COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

RESPIRATORY THERAPISTS

1995 SUNRISE REVIEW

Joint Legislative Sunrise/Sunset Review Committee
1995-1996 Members

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, Colorado 80203

Dear Senator Mutzebaugh:

We have completed our evaluation of the sunrise application for licensure of **respiratory therapists** and are pleased to submit this written report which will be the basis for my office's oral testimony before the Sunrise and Sunset Review Committee. The report is submitted pursuant to §24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and, whether the public can be adequately protected by other means in a more cost effective manner.

Sincerely,

Joseph A. Garcia
Executive Director

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INTRODUCTION

The Colorado Society of Respiratory Care (CSRC) submitted an application for certification with the Joint Legislative Sunrise Sunset Review Committee for the fourth time. The CSRC is seeking state certification of respiratory care practitioners who practice therapy, management, rehabilitation, and support services for patients with breathing deficiencies and abnormalities. These practitioners provide care in hospitals, medical centers, physicians' offices, retirement homes, skilled nursing facilities, and patients' homes.

The CSRC submitted applications in 1986, 1987 and 1993 and has had two hearings before the committee. The 1987 application was withdrawn prior to the hearing date. In 1986, both the committee and DORA recommended against certification. While DORA recommended against certification in 1993, the committee voted to recommend a bill in the 1994 legislative session. House Bill 94-1016 failed in the House Committee on Appropriations, and another bill for certification was introduced during the 1995 legislative session.

Senate Bill 95-41, provided for the state certification of persons who practice respiratory care. As passed by the Senate the bill provided that the Board of Medical Examiners would issue certification to respiratory care practitioners. The practitioners would be required to pass a written examination and hold credentials conferred by the National Board of Respiratory Care, or be licensed or certified in another state, territory or country. Other major provisions of the bill provided a definition of the practice of respiratory care, provided grounds for actions and disciplinary proceeding against practitioners, and prohibited the practice of medicine by practitioners.

The bill passed the Senate, but the House Committee on Appropriations postponed the bill indefinitely. The proponents of the bill consulted with the Division of Registrations on the technical aspects of the certification program. This cooperation should not be construed to mean that the division supported certification of respiratory care practitioners, but rather that the division provided technical assistance to assure consistency with other certification programs in the event the bill was enacted. Therefore, if the Sunrise/Sunset Committee determines that regulation is necessary, the substance of SB 95-41, representing collaboration and consensus among all interested parties should be used as a basis for new legislation.

As a result of the failure of SB 95-41, the CSRC resubmitted an application for licensure. The 1995 application does not provide any new information, therefore, the Office of Policy and Research maintains its previous recommendation not to license, certify, register, or otherwise regulate respiratory care technicians. Provided below is a summary of the *Sunrise Review on Respiratory Therapists*, submitted by the Colorado Department of Regulatory Agencies, Office of Policy and Research, June 1993. This review is quite exhaustive and since no new information was provided by the CSRC, the department believes that the information in this review is still relevant.

BACKGROUND

Summary of Sunrise Review on Respiratory Therapists, submitted by the Colorado Department of Regulatory Agencies, Office of Policy and Research, June 1993

The Colorado Society for Respiratory Care has approximately 780 members. This state organization is a local chapter of the American Association for Respiratory Care, which boasts a national membership of more than 30,000. The Colorado chapter estimated that approximately 720 respiratory practitioners in Colorado are not members of the state or national organizations.

Individuals who practice in the respiratory therapy field function either as a technician or a therapist. These categories are distinguished by different levels of education and technical expertise. Technicians must have a minimum of one year of formal education and clinical training, while therapists must have a minimum of two years of formal educational and clinical training. Once students comply with these educational and training requirements by graduating from AMA-approved programs, they are eligible to become credentialed as registered respiratory technicians or therapists by passing examinations given by the nationally recognized credentialing organization, the National Board for Respiratory Care.

The practice of respiratory care embraces a wide range of duties, including the administration of therapy prescribed by physicians upon patients with lung disorder such as asthma, emphysema, pneumonia, and bronchitis. The practice of respiratory care also involves highly invasive procedures, including the use of ventilating equipment which mechanically breathes or assists with the breathing of a patient. Patients are intubated for purposes of performing therapeutic and diagnostic bronchoscopy, thoracentesis and histamine and methacholine challenge stress testing. Practitioners are also expected to draw arterial blood gasses for diagnostic testing, to monitor the operation of sophisticated equipment and the progress of patients who rely upon the application and maintenance of this equipment and to administer drugs to patients upon the order of a supervising physician.

The applicants argue that state regulation of respiratory therapists in Colorado is necessary to protect the health, safety, and welfare of the public for the following reasons:

1. The applicants fear the lack of uniform guidelines regarding minimum educational and competency levels places the public at risk of incurring harm.

2. Even though practitioners perform their duties upon the order of a physician, most of these duties are performed independently without benefit of a physician's direct supervision. Hence, the risk of harm occurring to a patient increases when these duties are performed by unauthorized and/or unskilled respiratory therapists.

3. Colorado, as one of the 15 states which does not require state regulation, is in the process of becoming a "dumping ground" for practitioners who have lost their license, or who have otherwise encountered employment difficulty in other states.

4. The growth of home care respiratory therapy may harm the public if unqualified and unskilled personnel are employed by home care or medical equipment companies to administer or deliver respiratory home care.

5. As is true of other health care professionals, respiratory therapists work in an environment in which drugs are accessible. Moreover, health care facilities are full of patients who are neither self-sufficient nor strong enough to ward off improper conduct in which certain health care providers may engage. Given this setting, the public is subject to the possibility of harm resulting from drug and alcohol abuse, as well as from sexual abuse.

In response to the applicant's concerns and after thorough research of background information and complaint activity, the findings of the Office of Policy and Research are as follows:

1. Respiratory care practitioners perform duties and lifesaving procedures upon patients which are extremely technical in nature and sometimes highly invasive. More over, these practitioners often utilize sophisticated medical equipment requiring a high degree of operation knowledge and skill.

2. Respiratory care practitioners perform their duties in a variety of settings, but always under the supervision or order of a qualified medical director or attending physician. However, because other medical professionals do not possess the level of expertise necessary to perform specialized respiratory care duties and techniques, physicians and nurses typically rely upon respiratory care practitioners to perform these functions.

3. Theoretically, the risk of harm to the public increases when respiratory care services are administered in a home setting which is removed from a health care facility. Nevertheless, the applicants have not presented evidence that home respiratory care therapy has resulted in harm to Colorado citizens.

4. This profession is overwhelmingly practiced by individuals who have graduated from approved educational programs and who are board-certified, having passed private examination administered by the one national credentialing association for respiratory care practitioners.

5. Although thirty-five states and Puerto Rico currently regulate respiratory care practitioners through licensure or registration/certification, all states but two report that they typically receive few complaints and engage in even fewer disciplinary actions. Moreover, these states report that most complaints relate to criminal conduct rather than to the quality of care administered by the practitioner.

6. This profession is privately regulated by a web of private agencies which promulgate standards of practice and care for the profession, accredit the health care institutions in which they practice, and certify their competence as practitioners through an examination and credentialing process. In addition, the credentialing organizations are authorized through its Judicial and Ethics Committee to prosecute disciplinary actions against its members upon their conviction of criminal or negligent conduct relating to the practice of respiratory care.

7. Regulation of respiratory care practitioners is duplicative inasmuch as the profession already operates under uniform guidelines promulgated by private organization. Moreover, state licensing or registration requirements mirror those to which practitioners adhere voluntarily, i.e., graduation from an approved education institution and possession of NBRC credentials.

CONCLUSION

1. There is clearly a potential for harm resulting from the unregulated practice of respiratory care which in many instances, is highly invasive, is predicated upon complex scientific principles and the operation of sophisticated medical machinery and, sometimes, is delivered in the home. Nevertheless, the respiratory care profession comprises highly skilled and dedicated individuals who typically adhere to or exceed those educational, credentialing and professional standards of care with which they would have to comply under state licensure laws. Therefore, in light of the profession's voluntary compliance with private occupational standards, the public will not benefit from state regulation. The applicants have not met the burden of proving that regulation of respiratory care practitioners is necessary in Colorado under the criteria set out in the Sunrise Act and, accordingly, the Department of Regulatory Agencies recommends that respiratory care practitioners not be licensed, certified, registered, or otherwise regulated by the state of Colorado.

2. This profession is already privately regulated by recognized and effective private organizations, including a national voluntary certification authority, national and state-affiliated professional organizations, and a national health care accreditation program. These entities should increase their policing and monitoring activities of the profession by either establishing themselves or expanding their role as repositories of information regarding instate respiratory therapists to whom the public and health care facilities can turn to inquire about the education, skill level, and experience of individual respiratory therapists. These organizations should also accept complaints from the public and health care facilities regarding practitioners and refer those complaints regarding criminal or substandard conduct to law enforcement or other appropriate governmental authorities to ensure that the public is protected from other, or further, occurrences of harm.

APPENDICES

Senate Bill 95-41

Senate Bill 94-1016