

HEALTH AND HUMAN SERVICES COMMITTEE OF THE NEBRASKA LEGISLATURE

Report as required by Neb. Rev. Stat. 84-948

Committee Members

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Senator Brain Hardin, Vice-Chairperson, District 48

Senator Lynne Walz, District 16

Senator Machaela Cavanaugh, District 6

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Occupational Board Reform Act

The Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920) with an operative date of July 1, 2019. The act requires that:

“Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.” (Neb. Rev. Stat. § 84-948)

Committee Findings

Neb. Rev. Stat. 84-948 requires the report to include the following with answers in bold:

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations.

Board of Respiratory Care; Respiratory Care Practitioner, Temporary Respiratory Care Practitioner (for military spouses only)

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

Neb. Rev. Stat. 38-167, 38-3203, 38-3209, and 38-121

(c) The number of members of the occupational board and how the members are appointed;

4 members appointed by the Governor

(d) The qualifications for membership on the occupational board;

Two respiratory care practitioners, one physician, and one public member

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

Required FY 2024-2023:	1
Held FY 2024-2023:	4
Required FY 2023-2022:	1
Held FY 2023-2022:	3
Required FY 2022-2021:	1
Held FY 2022-2021:	3
Required FY 2021-2020:	1

Held FY 2021-2020:	3
Required FY 2020-2019:	1
Held FY 2020-2019:	2

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

Cash licensure fees are deposited in the Professional and Occupational Credentialing Cash Fund. There is not a Board-specific budget; however, the Cash Fund allows for payment of all the applicable Boards' expenses, as well as the DHHS Licensure Unit's related expenses, to be paid out of the Fund. Spending authority for the Fund is established each biennium in the budget bill.

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoke, denied, or

assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, other penalties.

Government Certificate Issued:

Respiratory Care Practitioner: 595

Temporary Respiratory Care Practitioner: 0 (no revocations, denials or penalties)

Revocations:

Respiratory Care Practitioner: 2

Reasons: unprofessional conduct, failure to report convictions, and failure to file mandated reports

Denials:

Respiratory Care Practitioner: 37

Reasons: application closed without issuance of a license due to applicant not completing the application

Penalties Against:

Respiratory Care Practitioner: 11

Description: censure, civil penalty, probation, revocation, suspension

(h) A review of the basic assumptions underlying the creation of the occupational regulations;
See Neb. Rev. Stat. 38-3201 through 38-3216.

(i) A statement from the occupational board on the effectiveness of the occupational regulations

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.”

(j) A comparison of whether and how other states regulate the occupation;

49 states and the District of Columbia require licensure for the Respiratory Care Practitioner occupation.

Please also see the National Board for Respiratory Care and American Association for Respiratory Care.

<https://www.nbrc.org/>

<https://www.aarc.org/>

(4) Subject to subsection)5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for meeting such policies:

The regulations (Title 172, Chapter 162) appear to be consistent with the statutes.

- (a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services:

N/A

- (b) If the need is to protect consumers unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

N/A

- (c) If the need is protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded:

N/A

- (d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

N/A

(e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

N/A

(f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

N/A

(g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

N/A

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

N/A

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

NA

Conclusion

The licenses, certifications, and registrations overseen by the Board of Respiratory and DHHS are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of respiratory care practitioner occupation by licensure is appropriate and balanced and does not need modification at this time.