OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

S.B. 115*
135th General Assembly

Occupational Regulation Report

Click here for S.B. 115's Bill Analysis / Fiscal Note

Primary Sponsor: Sen. Schuring

Impacted Profession: Dental providers

Christopher Edwards, Attorney

LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.[1]

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

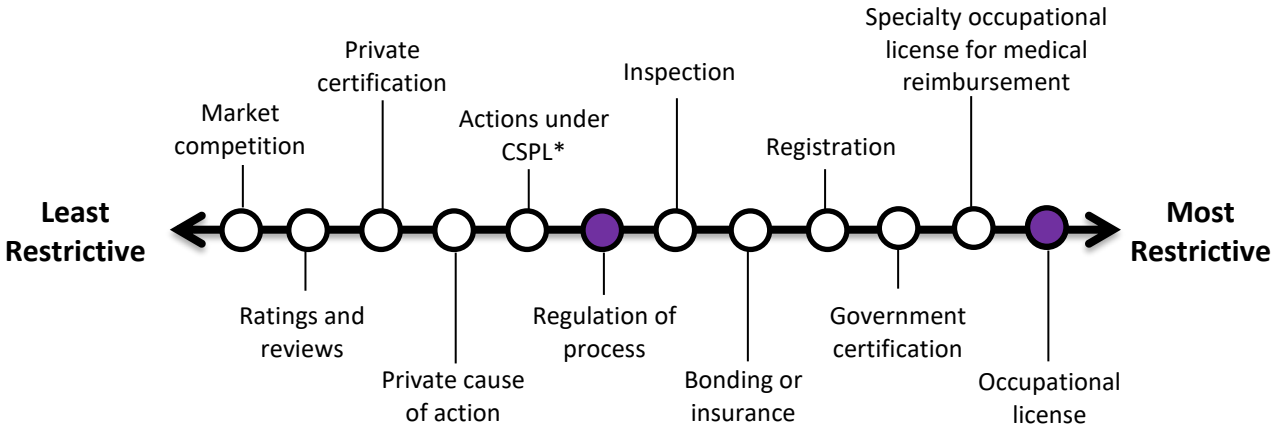
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."[2]

The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

* This report addresses the "As Introduced" version of S.B. 115. It does not account for changes that may have been adopted after the bill's introduction.

[1] R.C. 103.26, not in the bill.

[2] R.C. 4798.01 and 4798.02, neither in the bill.



*CSPL – The Consumer Sales Practices Law

The bill requires a dentist who chooses not to accept fee amounts set by a dental insurer for noncovered dental services to provide a patient seeking a noncovered service with certain pricing information. The dentist also must post a notice regarding fees charged for noncovered services. For a violation of these requirements, the State Dental Board may take disciplinary action against the dentist.[3]

Necessity of regulations

The bill's sponsor, Senator Schuring, testified that the bill allows a patient to decide if the fee charged by the patient's dentist and the information explaining it is fair. According to the sponsor, it is a free market principle that allows the patient to make informed choices regarding what is in the patient's best interest.[4]

Restrictiveness of regulations

Licensing provisions

Licensure is the most restrictive of all regulatory options identified within the state's continuum of regulations. Accordingly, the state's policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present:

- The occupation involves providing a service regulated by both state and federal law;
- The licensing framework allows individuals licensed in other states and territories to practice in Ohio; and

[3] R.C. 3963.02(F) and 4715.30.

[4] Archived video footage of Senate Insurance Committee Meeting, recorded May 10, 2023, which is available by selecting the "Senate Insurance" link on the Ohio Channel website, ohiochannel.org, and selecting the "Ohio Senate Insurance Committee - 5-10-2023" link.

- The licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.[5]

Licensure of dentists under continuing law unchanged by the bill appears to satisfy the state policy's first criterion. A license to practice dentistry authorizes the licensee to prescribe controlled substances, a service that is regulated by both state law and the Federal Comprehensive Drug Abuse Prevention and Control Act.[6]

The state policy's second criterion regarding licensure of out-of-state individuals appears to be satisfied by continuing law unchanged by the bill. Currently, the State Dental Board may issue licenses to out-of-state applicants. And, beginning December 29, 2023, the State Dental Board must grant a license to an applicant in accordance with the Occupational License Reciprocity Law if either of the following applies:

- The applicant holds a license to practice dentistry in another state; or
- The applicant has satisfactory work experience, a government certification, or a private certification as described in the Occupational License Reciprocity Law as a dentist in a state that does not issue a license to practice dentistry.[7]

As for the state policy's third criterion, it is not clear whether continuing law unchanged by the bill satisfies it. According to the American Dental Association, with regard to licensure requirements for dentists, "[a]lthough requirements vary from state to state, all dental licensure applicants must meet three basic requirements: educational, written examination, and clinical examination."[8]

The bill does not impose any new licensure requirements or extend the reach of existing licenses. It does, however, establish new grounds for disciplinary action involving licensure of dentists.

Disciplinary action

The bill appears to increase restrictiveness by adding a new reason the State Dental Board may take disciplinary action against a dentist. The Board may do so if a dentist engages in a pattern of continuous or repeated violations of the bill's disclosure requirements, discussed below. Examples of disciplinary actions the Board may take include limiting, revoking, or suspending a license to practice dentistry or reprimanding or placing on probation a dentist.[9]

---

[5] R.C. 4798.02, not in the bill.

[6] R.C. 4715.302, not in the bill; 21 United States Code 801 *et seq*.

[7] R.C. 4715.10, not in the bill; R.C. Chapter 4796.

[8] Dental Licensure, which may be accessed by conducting a keyword "dental licensure" search on the American Dental Association (ADA) website: ada.org.

[9] R.C. 4715.30.

Regulation of process

The state's general policy does not specify when regulation of process is the appropriate means of protecting consumers. The policy suggests a process regulation is preferred when market competition, ratings and reviews, private certifications, private lawsuits, and actions under the Consumer Sales Practices Law[10] are not sufficient to achieve the regulation's intent.[11] As noted above, the regulation's intent, according to the bill's sponsor, is to provide consumers with pricing information for noncovered dental services so the patient can make informed decisions.[12] It is difficult to project the extent to which the bill will ensure dental patients are better informed about fees charged for noncovered dental services. As outlined below, it does not appear the bill's process regulations significantly increase the restrictiveness of the regulatory systems that apply to dentists under continuing law.

Currently, Ohio dentists who enter into a health care contract with a dental insurer may be required under the contract to charge only the insurer's set fee for dental services not covered by the insurer (i.e., not reimbursable to the dentist).[13] The bill prohibits a contract between a dental insurer and a dentist from requiring the dentist to accept a payment amount set by the insurer for dental services provided to a patient unless the services are covered. This prohibition potentially could be seen as decreasing restrictiveness with respect to the fee amounts a dentist may charge for noncovered services when compared to existing practices between dental insurers and dentists. In contrast, it appears the bill may increase restrictiveness by creating a new process regulation for a dentist who chooses not to accept a payment amount set by an insurer for noncovered services. Under the bill, such a dentist must do both of the following:

- Provide pricing and reimbursement information to a patient seeking noncovered services, such as the estimated fee the dentist charges for a noncovered service;
- Post, in a conspicuous place, a notice stating the dentist does not accept the fee schedule set by the patient's insurer for noncovered services and instead charges the dentist's normal fee for those services.[14]

Whether these disclosure requirements are the least restrictive means of protecting consumers, or outweigh the apparent decrease in restrictiveness as described above, is a policy question. Although the requirements place an additional administrative burden on dentists, they apply in limited circumstances and mirror or overlap with disclosure requirements that may exist

[10] R.C. Chapter 1345.

[11] R.C. 4798.01 and 4798.02, not in the bill.

[12] See archived video footage of Senate Insurance Committee Meeting.

[13] See Non-Covered and Non-Billable Services (PDF), which may be accessed by conducting a keyword "non-covered" search on the ADA website, ada.org, selecting the "Dental Insurance Frequently Asked Questions" link, and selecting the "Non-Covered and Non-Billable Services" PDF link under "Dental Insurance Guides."

[14] R.C. 3963.01(E) and 3963.02(F).

under continuing law. Although continuing law requires a dentist and other medical providers to provide a written, good-faith estimate of specified charges for all nonemergency services, it does not appear this requirement is currently enforced.[15]

IMPACT STATEMENT

Opportunities for employment

The bill's provisions would have no significant effect on opportunities for employment.

Consumer choice and market competition

The bill's prohibition regarding contract provisions may give dentists more discretion regarding pricing for some services, and thus may result in higher prices for those services being charged by some dental practices. Any such price increases would be limited by the extent of the current degree of competition for such services in any local market. This provision does not appear to affect the degree of competition present in any market, but in any market that has few dental providers, it may increase costs to consumers. The bill's notice requirements do ensure that consumers are fully informed of their alternatives, however. The notice requirements help to retain consumer choice, but for markets with few providers, the choice may be between paying higher prices and travelling significantly further to procure the services.

Cost to government

For costs of the bill to government, please see the LBO fiscal note (PDF).

SUMMARY OF PROPOSED REGULATIONS

Dental insurers

In addition to the bill's disclosure requirements described above, the bills requires dental insurers to explain to patients that they may incur out-of-pocket expenses for noncovered dental services. Insurers also must notify patients about fees a dentist may charge for noncovered services.[16] An insurer who violates these requirements may be subject to existing unfair and deceptive practice sanctions.[17] For more information regarding the bill's proposed regulations, see LSC's Bill Analysis (PDF)

COMPARISON TO OTHER STATES

Of the states surrounding Ohio, Indiana, Kentucky, Pennsylvania, and West Virginia have enacted legislation generally to prohibit a dental insurer from requiring a dentist to accept a fee

[15] R.C. 5162.80, not in the bill, and *Community Hosp. & Wellness Ctr. v. State,* 2020-Ohio-401 (6th Dist.).

[16] R.C. 1751.85(B) and 3923.86(B).

[17] R.C. 1751.85(C), 3901.21(BB), and 3923.86(C).

set by the insurer for noncovered services.[18] Michigan does not appear to have adopted similar legislation. None of these surrounding states require a dentist to disclose pricing information specifically for noncovered dental services if the dentist chooses not to accept a fee set by the dental insurer for noncovered services as required under the bill.

However, at least one other state – Connecticut – requires a dentist to post, in a conspicuous place, a notice stating noncovered services might not be offered at a discounted rate. Similar to the bill's prohibition, Connecticut prohibits dental insurers from including in a contract with a dentist a requirement that the dentist accept fee amounts set by the insurer for noncovered services.[19]

OR-135-0017/BB

[18] Ind. Code 27-7-17.5-7, Ky. Rev. Stat. 304.17C-085, 40 Pa. Stat. 1584.1, and W. Va. Code 33-6-39.

[19] Conn. Gen. Stat. 38a-472h.