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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 196*
134th General Assembly

Occupational Regulation Report

[Click here for H.B. 196's Bill Analysis/Fiscal Note](#)

Primary Sponsors: Reps. Kelly and Carruthers

Impacted Profession: Surgical Assistants

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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

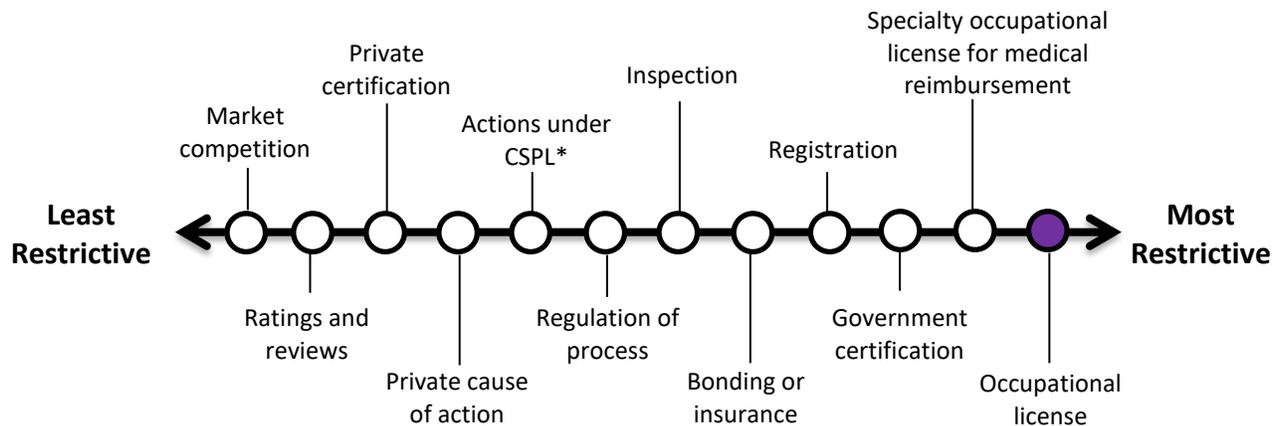
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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 H.B. 196. 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

Necessity of regulations

Representative Kelly and Representative Carruthers, the sponsors of H.B. 196, testified that licensure of surgical assistants is necessary to ensure patient safety and quality care in the operating room. The testimony asserts that training and credentialing of surgical assistants is critical because of the wide variety of tasks they perform and the dramatic impact of these tasks on the success of surgical procedures. According to the sponsors, the bill assures high quality patient care without adding a burden to workers or the healthcare industry.³

Restrictiveness of regulations

Licensure is the most restrictive of all regulatory options identified within the state's general policy on occupational regulations. Accordingly, the policy prescribes a narrow range of situations in which it is appropriate. Specifically, when all of the following circumstances are present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) 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.⁴

Ohio law does not currently require registration, certification, or licensure of surgical assistants but the State Medical Board does prescribe general standards for surgical procedures and those standards apply to the actions of surgical assistants in the operating room.⁵ Additional state and federal regulations apply to surgery providers that seek Medicaid reimbursement.⁶

³ Rep. Brigid Kelly, [H.B. 196 Sponsor Testimony \(PDF\)](#), and Rep. Sara Carruthers, [H.B. 196 Sponsor Testimony \(PDF\)](#), both available on the General Assembly's website: legislature.ohio.gov.

⁴ R.C. 4798.02, not in the bill.

⁵ See, for example, Ohio Administrative Code (O.A.C.) 4731-25-08.

⁶ O.A.C. 5160-4-22; 42 Code of Federal Regulations 482.51.

The bill does not allow individuals licensed in other states and territories to practice in Ohio but the two primary pathways to licensure – through credentialing by the National Board of Surgical Technology and Surgical Assistants (NBSTSA) or National Commission for Certification of Surgical Assistants (NCCSA) or by completing surgical assistant training through the United States armed forces – involve national organizations. These national pathways seemingly enhance the likelihood that an out-of-state practitioner can relocate to Ohio without completing additional training. Whereas, a state-specific curriculum would more likely result in duplicative training requirements for those individuals.

Although there are national organizations that provide credentialing services for surgical technicians, most states do not require such a credential to engage in the profession. Only eight states currently require licensure, registration, or certification of surgical assistants. Accordingly, the bill's licensing proposal would make Ohio's regulations in that field more restrictive than most other states. The bill does include a few exceptions that appear to mitigate the restrictiveness of the licensure requirement to some extent. For example, an individual who practices as a surgical assistant at any point in the six months preceding the bill's effective date need not complete additional training or education to obtain a license. They need only demonstrate that they are 18 years of age and have attained a high school degree or equivalent. Furthermore, the Board is permitted to waive the licensure requirement entirely for individuals practicing in areas with special health problems or physician shortages.

Surgical assistants routinely perform complex tasks such as maintaining hemostasis, manipulating or removing tissue, implanting surgical devices or drains, suctioning surgical sites, placing catheters, and clamping or cauterizing vessels.⁷ Some of these tasks require a significant amount of knowledge and skill and, if conducted improperly, patient safety in the operating room can be compromised. Whether the need to protect public safety justifies the adoption of a licensure requirement in this field is a policy determination.

IMPACT STATEMENT

Opportunities for employment

The bill requires licensure of surgical assistants. Individuals who do not have the personal qualifications required for licensure would generally be prohibited from engaging in the profession – thus, limiting employment opportunities for those individuals.

The bill prescribes two notable exceptions: (1) for individuals who work as a surgical assistant in Ohio at any time during the six months preceding the bill's effective date and (2) for individuals who practice in areas with special health problems or physician shortages. Therefore, it appears that most individuals currently working as surgical assistants in this state could apply for and obtain a license under the bill regardless of whether they meet requisite personal qualifications. Alternatively, those wishing to practice without a license could seek employment

⁷ R.C. 4785.05.

at a hospital or facility that has received a waiver from the Board. These exceptions appear to diminish, somewhat, the bill's potential to decrease employment opportunities.

Additionally, establishing minimum standards for who is able to practice as a surgical assistant could establish title protection, which sometimes enhances employment prospects for qualified individuals. Requiring a license to practice as a surgical assistant could also escalate awareness of this position and, as a result, increase the number of individuals entering the profession.

Consumer choice, market competition, and cost

In areas where the Board grants waivers due to special health problems or physician shortages, costs are unlikely to significantly change. However, in areas that do not receive such a waiver, the restrictions in the bill could reduce consumer choice and market competition, and therefore place an upward pressure on prices. Conversely, establishing title protection and raising awareness of this profession could eventually lead to more individuals seeking to practice as a surgical assistant, which could provide for more consumer choice and market competition. This could have an offsetting effect on the upward pressure on price, although the extent of this offset is not known.

Cost to government

The Board will experience start-up and ongoing costs to license surgical assistants. Start-up costs include eLicense system updates, as well as rule promulgation costs. Ongoing costs will include processing applications and renewals and investigating complaints. However, some of these costs may be offset by a gain in registration fee revenue. Any revenue collected will be deposited into the State Medical Board Operating Fund (Fund 5C60). The amount deposited will depend on the initial and renewal fee amounts established by the Board in rule, as well as the number of registrations. The bill exempts individuals practicing in areas with special health problems or physician shortages, from the registration requirements. It also exempts certain individuals licensed as other health care professionals from this requirement. Government-owned hospitals that seek a waiver may have some administrative costs. For those government-owned hospitals that do not seek a waiver, there may be costs associated with this, such as ensuring that those employees required to register do so.

SUMMARY OF PROPOSED REGULATIONS

License

The bill generally requires licensure to practice as a surgical assistant.⁸ A licensed surgical assistant may assist a physician during a surgical procedure by providing exposure, maintaining hemostasis, making incisions, closing or suturing surgical sites, manipulating or removing tissue, implanting surgical devices or drains, suctioning surgical sites, placing catheters, clamping or

⁸ R.C. 4785.02; conforming changes in R.C. 4731.07, 4731.071, and 4731.10.

cauterizing vessels or tissues, applying dressings to surgical sites, and other physician-directed tasks.⁹ Individuals who knowingly practice as a surgical assistant without a license are subject to a civil penalty.¹⁰

Qualifications

To obtain licensure, an individual must apply to the State Medical Board and demonstrate the following qualifications:

- At least 18 years of age;
- High school degree or equivalent; and
- One of the following:
 - Credentialed as a surgical assistant by NBSTSA or NCCSA;
 - Practiced as a surgical assistant at a hospital or ambulatory surgical facility in Ohio during any part of the six months prior to the bill's effective date; or
 - Completed a training program for surgical assistants operated by a branch of the United States armed forces.¹¹

The license is valid for two years, unless revoked or suspended, and may be renewed in accordance with rules adopted by the Board.¹²

Exceptions

Physicians, podiatrists, physician assistants, licensed practical nurses, registered nurses, and advanced practice registered nurses may perform the duties of a surgical assistant without obtaining a surgical assistant's license. Unlicensed individuals may practice as a surgical assistant at a hospital or ambulatory facility that has been granted a waiver by the Board. To be eligible for such a waiver, the hospital or facility must be located in an area that experiences special health problems and physician practice patterns that limit access to surgical care.¹³

Rules

The bill requires the State Medical Board to adopt rules establishing the following:

- Application and renewal procedures;
- Fees;
- Continuing education requirements;

⁹ R.C. 4785.05.

¹⁰ R.C. 4785.02(C).

¹¹ R.C. 4785.03.

¹² R.C. 4785.04.

¹³ R.C. 4785.02 and 4785.06.

- Reasons a license may be suspended or revoked;
- Reasons renewal of a license may be denied;
- Disqualifying criminal offenses;
- Civil penalty for practicing without a license;
- Procedures for waiver applications;
- Conditions for reinstatement of an expired or inactive license;
- Procedures for reporting misconduct; and
- Procedures for disciplinary investigations.

The Board is permitted to adopt any other rules it considers necessary to implement and administer the license.¹⁴

¹⁴ R.C. 4785.08.

COMPARISON TO OTHER STATES

According to the National Surgical Assistant Association (NSAA), eight states and the District of Columbia require licensure, registration, or certification of surgical assistants. Kentucky is the only state bordering Ohio that imposes such a regulation.¹⁵ The table below compares the qualifications to practice as a surgical assistant under the bill to the qualifications in Kentucky, Nebraska, Illinois, Virginia, and Texas.

Surgical Assistant Regulations						
	Education	Work Experience	National Credential	Examination	Renewal	Exceptions
Ohio (license, under the bill)	All applicants must obtain high school degree or equivalent. One pathway to licensure is completion of a surgical assistant training program by the United States armed forces. (<i>R.C. 4785.03.</i>)	Another pathway to licensure is to practice as a surgical assistant at a hospital or ambulatory surgical facility in the state during any part of the six months prior to the bill's effective date (<i>R.C. 4785.03.</i>)	Another pathway to licensure is to obtain a credential from NCCSA or NBSTSA (<i>R.C. 4785.03.</i>)	Not required by state law but both national certifying organizations require applicants to pass an examination.	Biennial (<i>R.C. 4785.04.</i>)	License requirement does not apply to physicians, podiatrists, physician assistants, licensed practical nurses, registered nurses, or advanced practice registered nurses. Persons working in a hospital or ambulatory facility that has been granted a waiver by the Board are also exempt from the license requirement. (<i>R.C. 4785.02.</i>)

¹⁵ NSAA, [Regulated States](#).

Surgical Assistant Regulations						
	Education	Work Experience	National Credential	Examination	Renewal	Exceptions
Kentucky (license, but referred to as a certificate under state law)	Must graduate from a program approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or graduate from a United States military program emphasizing surgical assisting (Ky. Rev. Stat. 311.878(2)(b)).	Must assist with surgical procedures under direct supervision of a physician for 800 hours in the preceding three years (Ky. Rev. Stat. 311.878(2)(c)).	Must be credentialed by NCCSA or NBSTSA (Ky. Rev. Stat. 311.878(2)(a)).	Not required by state law but both national certifying organizations require applicants to pass an examination.	Annual (Ky. Rev. Stat. 31.886).	License requirement does not apply to students enrolled at a surgical assistant education program, federal government employees, licensed healthcare workers, or hospital employees working under direct supervision of a registered nurse (Ky. Rev. Stat. 31.866(1)).
Illinois (certification, but referred to as a registration under state law)	Must graduate from a program approved by the Department of Financial and Professional Regulation or graduate from a United States military program emphasizing surgical assisting (225 Ill. Comp. Stat. 130/45).	Education may be substituted with three consecutive years of experience with at least 750 hours per year or two full years of experience during the last four years with 350 documented surgical cases (68 Ill. Adm. Code 1485.10).	Must hold and maintain a certification from NCCSA, NBSTSA, or the American Board of Surgical Assistants (ABSA) (225 Ill. Comp. Stat. 130/45).	Must pass an exam from NSAA, the Liaison Council on Certification for Surgical Technologists, or ABSA (225 Ill. Comp. Stat. 13/45; 68 Ill. Adm. Code 1485.10).	Biennial (68 Ill. Adm. Code 1485.50).	N/A

Surgical Assistant Regulations						
	Education	Work Experience	National Credential	Examination	Renewal	Exceptions
Nebraska (license)	Must obtain high school degree or equivalent. Must also complete a surgical assistant education program approved CAAHEP or the Accrediting Bureau of Health Education Schools, or other training approved by the Board of Medicine and Surgery. <i>(Neb. Rev. Stat. 38-3505 and 3512.)</i>	N/A	Must hold and maintain a surgical assistant certification from a national organization approved by the Board of Medicine and Surgery <i>(Neb. Rev. Stat. 38-3504 and 3512).</i>	Must pass a nationally recognized surgical assistant exam <i>(Neb. Rev. Stat. 38-3512).</i>	Biennial <i>(Neb. Rev. Stat. 38-142).</i>	N/A
Virginia (license)	One pathway to licensure is to complete a surgical assistant training program during the person's service as a member of the United States armed forces <i>(Va. Code Ann. 54.1-2956.13(B)(2)).</i>	Another pathway to licensure is to have worked as a surgical assistance in the six months preceding July 1, 2020 <i>(Va. Code Ann. 54.1-2956.13(B)(3)).</i>	Another pathway to licensure is a credential from NBSTSA, NSAA, or NCCSA <i>(Va. Code Ann. 54.1-2956.13(B)(1)).</i>	Not required by state law but both national certifying organizations require applicants to pass an examination.	Biennial <i>(Va. Code Ann. 54.1-2904).</i>	N/A

Surgical Assistant Regulations						
	Education	Work Experience	National Credential	Examination	Renewal	Exceptions
Texas (license)	Must hold at least an associate's degree from a program substantially equivalent to the education required for a registered nurse or physician assistant who specializes in surgical assisting (<i>Tex. Occ. Code 206.203</i>).	At least 2,000 hours working as a surgical assistant in the three years prior to applying for licensure (<i>Tex. Occ. Code 206.203</i>).	Must hold and maintain a certification from ABSA, NBSTSA, or NSAA (<i>Tex. Occ. Code 206.203</i>).	Must pass an exam from ABSA, NBSTSA, or NSAA (<i>Tex. Occ. Code 206.203 and 206.204</i>).	Biennial (<i>Texas Medical Board, Surgical Assistants Registration/Renewal</i>).	Credit given for equivalent military service, training, or education (<i>22 Tex. Admin. Code 184.4</i>).