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SENATE BILL DRS45246-NB-128

Short Title: Respiratory Care Modernization Act.

(Public)

Sponsors: Senators Perry, Krawiec, and Burgin (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE GENERAL STATUTES OF NORTH CAROLINA GOVERNING
3 THE PRACTICE OF RESPIRATORY CARE TO BETTER REFLECT THE CHANGES IN
4 EDUCATION, EXPERIENCE, AND PRACTICE OF THE PROFESSION IN ORDER TO
5 ENHANCE THE HEALTH AND WELFARE OF NORTH CAROLINA CITIZENS.

6 Whereas, it is the intention of the North Carolina General Assembly to promote the
7 health and welfare of the citizens of this State; and

8 Whereas, the COVID-19 pandemic has placed increasing demands on all health care
9 professionals; and

10 Whereas, it is the intention of the North Carolina General Assembly that statutes
11 governing the profession of respiratory care reflect current practices, improvements, and other
12 developments that have occurred in the profession; and

13 Whereas, the current statutory language does not fully encompass current practices,
14 improvements, and other developments; Now, therefore,
15 The General Assembly of North Carolina enacts:

16 **SECTION 1.(a)** Article 38 of Chapter 90 of the General Statutes reads as rewritten:
17 "Article 38.

18 "Respiratory Care Practice Act.

19 ...

20 **"§ 90-648. Definitions.**

21 The following definitions apply in this Article:

22 (1) Advanced respiratory care practitioner (ARCP). – A person licensed in this
23 State who has gained additional specialized knowledge, skills, and experience
24 through a postgraduate advanced practice respiratory therapy program of
25 study as defined by the Board and is authorized to perform advanced
26 respiratory therapy practices under the supervision of a licensed physician in
27 accordance with Article 1 of this Chapter. The physician may delegate
28 medical services to the advanced respiratory care practitioner.

29 (1a) Advanced respiratory care procedures. – Procedures that require additional
30 competency training in accordance with rules adopted by the Board.

31 ~~(1b)~~ Board. – The North Carolina Respiratory Care Board.

32 (2) Diagnostic testing. – Cardiopulmonary procedures and tests performed on the
33 written order of a physician licensed under Article 1 of this Chapter that
34 provide information to the physician to formulate a diagnosis of the patient's
35 condition. The tests and procedures may include pulmonary function testing,
36 electrocardiograph testing, cardiac stress testing, and sleep related testing.



- (3) Direct supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.
- (3a) Endorsement. – A designation issued by the Board recognizing the person named on the endorsement as having met the requirements to perform advanced respiratory care procedures as defined by rules adopted by the Board.
- (4) Individual. – A human being.
- (5) License. – A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this ~~Article~~ Article as a respiratory care practitioner or advanced respiratory care practitioner.
- (6) Licensee. – A person who has been issued a license under this Article.
- (7) Medical director. – An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.
- (8) Person. – An individual, corporation, partnership, association, unit of government, or other legal entity.
- (9) Physician. – A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.
- (9a) Practice of advanced practice respiratory therapy. – The scope of practice as determined by the supervising physician and the advanced respiratory care practitioner at the practice level in any setting authorized by the supervising physician and the Board, including clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes, and other health care institutions. The advanced respiratory care practitioner may perform medical acts, tasks, or functions in any medical setting for which the physician is responsible, as follows:
- a. Related to the care of persons with problems affecting the cardiovascular and cardiopulmonary systems.
- b. Delegated by a supervising physician.
- c. Appropriate to the advanced respiratory care physician's education, training, experience, and level of competence.
- d. Related to the prescribing, ordering, procuring, dispensing, and administering of drugs, medical care, and medical devices related to the cardiovascular and cardiopulmonary systems within the limitations set forth in G.S. 90-18.8.
- (10) Practice of respiratory care. – As defined by the written order of a physician licensed under Article 1 of this ~~Chapter~~ Chapter, Chapter for respiratory care practitioners, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:
- a. Medical gases, humidity, and aerosols including the ~~maintenance-use~~ of associated ~~apparatus~~ respiratory care equipment, except for the purpose of anesthesia.

- b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.
- c. Mechanical or physiological ventilatory support.
- d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.
- e. Hyperbaric oxygen therapy.
- f. New and innovative respiratory care and related support activities in appropriately identified environments and under the training and practice guidelines established by the American Association of Respiratory Care.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

- (10a) Prescriptive and dispensing authorization. – The legal permission for the advanced respiratory care practitioner to prescribe, deliver, distribute, and dispense pharmacologic and nonpharmacologic agents to a patient in compliance with rules adopted by the Board and applicable federal and State laws, pursuant to Article 1 of Chapter 90 of the General Statutes and in accordance with the limitations set forth in G.S. 90-18.8.
- (11) Respiratory care. – As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.
- (12) Respiratory care practitioner. – A person who has been licensed by the Board to engage in the practice of respiratory care.
- (13) Support activities. – ~~Procedures-Tasks~~ that do not require formal academic training, including the delivery, setup, and routine maintenance and repair of apparatus-respiratory care equipment. The term also includes giving instructions on the use, fitting, and application of ~~apparatus-respiratory care equipment,~~ but does not include therapeutic evaluation and ~~assessment-assessment~~ for an individual patient as defined in rules adopted by the Board.

"§ 90-649. North Carolina Respiratory Care Board; creation.

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10 members as follows:

- (1) Two members shall be respiratory care practitioners.
- (2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.
- (3) One member shall represent the North Carolina Hospital Association.
- (4) One ~~member-member~~, who is a resident of this State, shall represent the ~~North Carolina Association of Atlantic Coast Medical Equipment Services~~. Services Association.
- (5) Two members shall represent the public at large.

...

"§ 90-650. Appointments and removal of Board members; terms and compensation.

(a) The members of the Board shall be appointed as follows:

...

- (7) ~~The North Carolina Association of Atlantic Coast Medical Equipment Services Association~~ shall appoint the member described in G.S. 90-649(a)(4).

...
"§ 90-652. Powers and duties of the Board.

The Board shall have the power and duty to:

- (1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure. The Board shall, in its discretion, investigate the background of an applicant to determine the applicant's qualifications with due regard given to the applicant's competency, honesty, truthfulness, and integrity. The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the ~~applicant, applicant and~~ any additional information required by the Department of ~~Public Safety, and~~ ~~a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories.~~ Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

- ...
(14) Establish and adopt rules defining the education and credential requirements for persons seeking endorsement under this Article.

"§ 90-652.1. Disasters and emergencies.

In the event of an occurrence which the Governor of the State of North Carolina has declared a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a), or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public.

"§ 90-653. Licensure requirements; examination.

(a) Each applicant for ~~licensure~~ a respiratory care practitioner license under this Article shall ~~meet the following requirements:~~ do all of the following:

- (1) Submit a completed application as required by the ~~Board~~ Board, which shall include a form signed by the applicant consenting to the check of the applicant's criminal record and to the use of the applicant's fingerprints and other identifying information required by the State and national repositories.
- (2) Submit any fees required by the Board.
- (3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the ~~minimal-entry-level degree~~ requirements of a respiratory care education program as approved by the Commission ~~for Accreditation of Allied Health Educational Programs, or the Canadian~~

~~Council on on Accreditation for Respiratory Therapy Education Care (CoARC) or its successor by arranging for the applicant's respiratory care education program to submit an official transcript confirming successful completion of the respiratory care education program directly to the Board.~~

(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association, the American Red Cross, or the American Safety and Health Institute.

(5) ~~Pass~~ Submit to the Board written evidence, verified by oath, that the ~~entry-level applicant~~ passed the examination requirements as defined by the rules adopted by the Board given by the National Board for Respiratory Care, ~~Inc.~~, or its successor for entry-level respiratory care practitioners.

(b) ~~At least three times each year, the Board shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Board. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article.~~

(c) Each applicant for an advanced respiratory care practitioner license under this Article shall do all of the following:

(1) Submit a completed application as required by the Board, including a form signed by the applicant consenting to the check of the applicant's criminal record and to the use of the applicant's fingerprints and other identifying information required by the State and national repositories.

(2) Submit any fees required by the Board.

(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the postgraduate degree requirements of respiratory care education for the advanced practice respiratory therapist as approved by the Commission on Accreditation for Respiratory Care (CoARC) or its successor by arranging for the applicant's respiratory care education program to submit an official transcript confirming successful completion of the advanced respiratory care education program directly to the Board.

(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association, the American Red Cross, and the American Safety and Health Institute.

(5) Submit to the Board written evidence, verified by oath, that the applicant passed the examination requirements as defined by Board rules pursuant to this Article given by the National Board for Respiratory Care, Inc., or its successor for advanced-level respiratory care practitioners and defined by Board rules pursuant to this Article.

(d) When issuing a license, the Board shall state the terms and conditions of use of the license to the licensee.

...

"§ 90-656. Provisional license.

The Board may grant a provisional license ~~for a period not exceeding 12 months~~ to any applicant who has successfully completed the education requirements under G.S. 90-653(a)(3) and has ~~made application to take~~ passed the written examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the direct supervision of a respiratory care practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires.

1 ...

2 **"§ 90-660. Expenses; fees.**

3 ...

4 (b) All monies received by the Board pursuant to this Article shall be deposited in an
5 account for the Board and shall be used for the administration and implementation of this Article.
6 The Board shall establish fees in amounts to cover the cost of services rendered for the following
7 purposes:

8 (1) For an initial application, a fee not to exceed fifty dollars (\$50.00).

9 (2) ~~For examination or reexamination, a fee not to exceed two hundred dollars~~
10 ~~(\$200.00).~~

11 ...

12 (6) ~~For a license with a provisional or temporary endorsement, a fee not to exceed~~
13 ~~fifty dollars (\$50.00).~~

14 ...

15 **"§ 90-661. Requirement of license.**

16 It shall be unlawful for any person who is not currently licensed under this Article to:

17 (1) Engage in the practice of respiratory care.

18 (2) Use the title "respiratory care ~~practitioner~~," practitioner or "advanced
19 respiratory care practitioner."

20 (3) Use the letters "RCP", "RTT", "RT", "ARCP", or any facsimile or
21 combination in any words, letters, abbreviations, or insignia.

22 (4) Imply orally or in writing or indicate in any way that the person is a respiratory
23 care ~~practitioner~~ practitioner, advanced respiratory care practitioner, or is
24 otherwise licensed under this Article.

25 (5) Employ or solicit for employment unlicensed persons to practice respiratory
26 care.

27 ...

28 ~~**"§ 90-665. Third-party reimbursement.**~~

29 ~~Nothing in this Article shall be construed to require direct third-party reimbursements to~~
30 ~~persons licensed under this Article.~~

31"

32 **SECTION 1.(b)** G.S. 90-652 is amended by adding a new subdivision to read:

33 "(15) Appoint and maintain a subcommittee of the Board consisting of four licensed
34 advanced respiratory care practitioners to work jointly with the subcommittee
35 of the North Carolina Medical Board to develop rules to govern the
36 performance of medical acts by advanced respiratory care practitioners. The
37 rules developed by this subcommittee shall govern the performance of
38 medical acts by advanced respiratory care practitioners. Rules recommended
39 by the subcommittee shall be adopted in accordance with Chapter 150B of the
40 General Statutes by both the North Carolina Medical Board and the North
41 Carolina Respiratory Care Board and shall be effective when they have been
42 adopted by both Boards."

43 **SECTION 1.(c)** Article 1 of Chapter 90 is amended by adding a new section to read:

44 **"§ 90-18.8. Limitations on advanced respiratory care practitioners.**

45 (a) Any advanced respiratory care practitioner who is licensed under the provisions of
46 G.S. 90-648(9a) to perform medical acts, tasks, and functions may use the title "advanced
47 respiratory care practitioner." Any other person who uses the title in any form or holds himself
48 or herself out to be an advanced respiratory care practitioner or to be so licensed, shall be deemed
49 to be in violation of this Article and Article 38 of this Chapter.

(b) Advanced respiratory care practitioners are authorized to practice advanced respiratory care, as defined in G.S. 90-648(9a), under the supervision of a physician under the following conditions:

(1) The North Carolina Medical Board and the North Carolina Respiratory Care Board have adopted rules developed by a joint subcommittee governing the approval of individual advanced respiratory care practitioners to practice advanced respiratory care with the limitations the Boards determine to be in the best interest of patient health and safety.

(2) The advanced respiratory care practitioner has current approval from both Boards.

(3) The North Carolina Medical Board has assigned an identification number to the advanced respiratory care practitioner which is shown on written prescriptions written by the advanced respiratory care practitioner.

(c) Advanced respiratory care practitioners that have prescriptive and dispensing authorization, as defined in G.S. 90-648(10a), may order medications, tests, and treatments under the following conditions:

(1) The North Carolina Medical Board and the North Carolina Respiratory Care Board have adopted rules governing the approval of individual advanced respiratory care practitioners to have prescriptive and dispensing authorization with the limitations the Boards determine to be in the best interest of patient health and safety.

(2) The advanced respiratory care practitioner has current approval from both Boards.

(3) The supervising physician has provided to the advanced respiratory care practitioner written instructions for ordering, procuring, dispensing, changing, or substituting drugs, or ordering tests with provision for review of the order by the physician within a reasonable time, as determined by the Boards, after the medication or tests are ordered.

(d) Any prescription written by an advanced respiratory care practitioner or order given by an advanced respiratory care practitioner shall be deemed to have been authorized by the physician approved by the Boards as the supervisor of the advanced respiratory care practitioner, and that supervising physician shall be responsible for authorizing that prescription or order.

(e) Any registered nurse or licensed practical nurse who receives an order from an advanced respiratory care practitioner for medications, tests, or treatments is authorized to perform that order in the same manner as if were received from a licensed physician."

SECTION 1.(d) G.S. 90-8.2 reads as rewritten:

"§ 90-8.2. Appointment of subcommittees.

...

(c) The North Carolina Medical Board shall appoint and maintain a subcommittee of four licensed physicians to work jointly with a subcommittee of the North Carolina Respiratory Care Board to develop rules to govern the performance of medical acts by advanced respiratory care practitioners. Rules recommended by the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by both the North Carolina Medical Board and the North Carolina Respiratory Care Board and shall not become effective until adopted by both Boards. The North Carolina Medical Board shall have responsibility for ensuring compliance with these rules."

SECTION 2. Section 1(a) becomes effective on October 1, 2022. Sections 1(b), 1(c), and 1(d) become effective October 1, 2021. The North Carolina Medical Board and the North Carolina Respiratory Care Board shall make appointments to the joint subcommittee authorized in this act no later than January 1, 2022. Notwithstanding G.S. 90-652(15) as enacted in Section 1(b) of this act, the initial appointees to the joint subcommittee from the North Carolina

1 Respiratory Care Board shall be licensed health care providers currently serving on that Board.
2 The joint subcommittee authorized in this act consisting of the North Carolina Medical Board
3 and the North Carolina Respiratory Care Board shall develop rules to implement the provisions
4 of this act, in accordance with Chapter 150B of the General Statutes, and the approval of the
5 North Carolina Medical Board and the North Carolina Respiratory Care Board.

6 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
7 law.