

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 810

6 By: Nichols

7 COMMITTEE SUBSTITUTE

8 An Act relating to public health; creating the  
9 Oklahoma Sleep Diagnostic Testing Regulation Act;  
10 providing short title; stating legislative findings;  
11 defining terms; requiring certain testing to be  
12 ordered by a physician and conducted in certain  
13 facilities meeting certain standards; making certain  
14 testing unlawful under certain circumstances;  
15 designating the State Department of Health the  
16 official agency for the regulation of certain  
17 activities; authorizing the Department to promulgate  
18 certain rules; providing for a certain board  
19 certified physician to be used by the Department for  
20 certain purposes; providing for codification; and  
21 declaring an emergency.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. NEW LAW A new section of law to be codified  
24 in the Oklahoma Statutes as Section 7200.1 of Title 63, unless there  
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Sleep  
Diagnostic Testing Regulation Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 7200.2 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The legislature hereby finds that:

5 1. There is a growing need for sleep diagnostic testing in the  
6 diagnosis and treatment of sleep disorders;

7 2. Sleep diagnostic testing is being performed in Oklahoma; and

8 3. Oklahoma law does not provide sufficient regulation of sleep  
9 diagnostic testing to assure the protection of the public.

10 Therefore, there is a need to provide legislation to enable the  
11 appropriate entities to regulate persons performing sleep diagnostic  
12 testing on the citizens of this state.

13 SECTION 3. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 7200.3 of Title 63, unless there  
15 is created a duplication in numbering, reads as follows:

16 As used in the Oklahoma Sleep Diagnostic Testing Regulation Act:

17 1. "Direct supervision" means the supervising physician is  
18 present in the sleep diagnostic testing facility and immediately  
19 available to furnish assistance and direction throughout the  
20 performance of the sleep diagnostic testing. It does not require  
21 that the supervising physician be present in the room when the sleep  
22 diagnostic testing is performed.

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1           2. "Sleep diagnostic testing facility" means a building or  
2 place situated in a fixed location or a mobile facility that is used  
3 for sleep diagnostic tests, provided:

4           a. a sleep diagnostic testing facility shall not include  
5 a hospital-based facility that is used for sleep  
6 diagnostic tests. A facility is hospital-based if:

7           (1) the facility and hospital are subject to the  
8 bylaws and operating decisions of a common  
9 governing board. This governing board, which has  
10 final administrative responsibility, approves all  
11 personnel actions, appoints medical staff and  
12 carries out similar management functions,

13           (2) the facility director or administrator is under  
14 the supervision of the hospital's chief executive  
15 officer and reports through him or her to the  
16 governing board,

17           (3) the facility personnel policies and practices  
18 conform to those of the hospital,

19           (4) the administrative functions of the facility such  
20 as records, billing, laundry, housekeeping and  
21 purchasing are integrated with those of the  
22 hospital, and

23           (5) the facility and hospital are financially  
24 integrated, as evidenced by the cost report,

1                   which reflects allocation of overhead to the  
2                   facility through the required step-down  
3                   methodology, and

4           b.    the following factors are not considered in the  
5           determination of whether a facility conducting sleep  
6           diagnostic tests is hospital-based:

7           (1)   an agreement between a facility and a hospital  
8           concerning patient referral,

9           (2)   a shared service arrangement between a facility  
10          and a hospital, or

11          (3)   the physical location of a facility on the  
12          premises of a hospital.

13          3.    "General supervision" means the sleep diagnostic testing is  
14          furnished under the supervising physician's overall direction and  
15          control, but the supervising physician is not necessarily required  
16          during the performance of the sleep diagnostic testing.

17          4.    "Interpreting physician" means a physician who determines  
18          the meaning of sleep diagnostic test results conducted at or under  
19          the control of the sleep diagnostic testing facility.

20          5.    "Personal supervision" means a supervising physician is  
21          physically present in the sleep diagnostic testing room during the  
22          performance of the sleep diagnostic testing.

23          6.    "Physician" means a person licensed to practice:  
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1 a. allopathic medicine and surgery by the Oklahoma State  
2 Board of Medical Licensure and Supervision pursuant to  
3 the Oklahoma Allopathic Medical and Surgical Licensure  
4 and Supervision Act, or

5 b. osteopathic medicine by the State Board of Osteopathic  
6 Examiners pursuant to the Oklahoma Osteopathic  
7 Medicine Act.

8 7. "Sleep diagnostic test" means any technological recording  
9 procedure used for the diagnosis of sleep related breathing  
10 disorders. Sleep diagnostic test shall also mean Multiple Sleep  
11 Latency Testing which measures physiologic sleepiness and  
12 Maintenance of Wakefulness Testing which measures manifest  
13 sleepiness. Sleep diagnostic tests are classified by level of  
14 intensity accordingly:

15 a. Level I or Type 1: Attended standard polysomnography  
16 (PSG) performed in a sleep diagnostic testing  
17 facility,

18 b. Level II or Type 2: Home sleep test (HST) with type II  
19 portable monitor, unattended; minimum of 7 channels:  
20 EEG, EOG, EMG, ECG/heart rate, airflow, respiratory  
21 effort and oxygen saturation,

22 c. Level III or Type 3: Home sleep test (HST) with type  
23 III portable monitor, unattended; minimum of 4  
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1 channels: 2 respiratory movement/airflow, 1 ECG/heart  
2 rate and loxygen saturation, and

3 d. Level IV or Type 4: Home sleep test (HST) with type IV  
4 portable monitor, unattended; minimum of 3 channels.

5 8. "Supervising physician" means a physician responsible for  
6 the personal, direct or general supervision of the sleep diagnostic  
7 testing performed, including but not limited to, the quality of the  
8 testing performed, the proper operation and calibration of the  
9 equipment used to perform sleep diagnostic tests and the actions of  
10 non-physician personnel engaged in the performance of the sleep  
11 diagnostic testing.

12 SECTION 4. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 7200.4 of Title 63, unless there  
14 is created a duplication in numbering, reads as follows:

15 Sleep diagnostic tests whether conducted in a sleep diagnostic  
16 testing facility or home-based shall be ordered by a physician and  
17 conducted in or under the direction of personnel of a sleep  
18 diagnostic testing facility that meets the following standards:

19 1. Sleep diagnostic testing facilities conducting sleep  
20 diagnostic tests shall be under the direction of a supervising  
21 physician;

22 2. A supervising physician of a sleep diagnostic testing  
23 facility shall be board certified in Sleep Medicine by the American  
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1 Board of Sleep Medicine (ABSM) or the American Board of Medical  
2 Specialties;

3 3. Results of sleep diagnostic tests conducted by a sleep  
4 diagnostic testing facility shall be interpreted by an interpreting  
5 physician;

6 4. An interpreting physician shall be board certified in Sleep  
7 Medicine by the American Board of Sleep Medicine (ABSM) or the  
8 American Board of Medical Specialties; and

9 5. Sleep technicians conducting sleep diagnostic tests must  
10 practice under the general, direct or personal supervision of the  
11 supervising physician and must be Registered Polysomnographic  
12 Technicians (RPSGT) or Registered Respiratory Therapists (RRT) who  
13 have taken and successfully passed the separate sleep credentialing  
14 examination administered by the National Board of Respiratory  
15 Therapy or the Associated Professional Sleep Societies.

16 SECTION 5. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 7200.5 of Title 63, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. It shall be unlawful for any facility or person to perform  
20 sleep diagnostic tests unless the facility has first obtained a  
21 license to perform sleep diagnostic tests in compliance with this  
22 act or as may otherwise be allowed by applicable law.

23 B. The State Department of Health is hereby designated as the  
24 official agency of this state for all regulatory activities

1 pertaining to health and safety in performing sleep diagnostic  
2 tests. The State Board of Health may promulgate rules to implement  
3 the provisions of the Oklahoma Sleep Diagnostic Testing Regulation  
4 Act, including, but not limited to, application and licensure  
5 requirements, procedures for inspection, monitoring and  
6 investigation of complaints, standards for suspension and revocation  
7 of license and imposition of fees.

8 C. A physician board certified in sleep medicine by the  
9 American Board of Sleep Medicine or the American Board of Medical  
10 Specialties, who is not in competition with a facility, shall be  
11 used by the State Department of Health to assure compliance with  
12 this act including, but not limited to, conducting surveys of  
13 facilities and inspecting, monitoring and investigating complaints.

14 SECTION 6. It being immediately necessary for the preservation  
15 of the public peace, health and safety, an emergency is hereby  
16 declared to exist, by reason whereof this act shall take effect and  
17 be in full force from and after its passage and approval.

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