

1 ENGROSSED SENATE
2 BILL NO. 810

By: Nichols and Johnson
(Constance) of the Senate

3 and

4 Terrill of the House

5
6
7 [public health - Oklahoma Sleep Diagnostic Testing

8 Regulation Act - codification -

9 emergency]

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

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

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

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

20 The Oklahoma Legislature hereby finds that:

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

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

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

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

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

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

10 1. "Direct supervision" means the supervising physician is
11 present in the sleep diagnostic testing facility and immediately
12 available to furnish assistance and direction throughout the
13 performance of the sleep diagnostic testing. It does not require
14 that the supervising physician be present in the room when the sleep
15 diagnostic testing is performed;

16 2. a. "Sleep diagnostic testing facility" means a building
17 or place situated in a fixed location or a mobile
18 entity that is used to conduct sleep diagnostic tests.
19 Sleep diagnostic testing facility shall not include a
20 hospital-based facility that is used to conduct sleep
21 diagnostic tests. A facility is hospital-based if:
22 (1) the facility and hospital are subject to the
23 bylaws and operating decisions of a common
24 governing board. This governing board, which has

1 final administrative responsibility, approves all
2 personnel actions, appoints medical staff, and
3 carries out similar management functions,

4 (2) the facility director or administrator is under
5 the supervision of the hospital's chief executive
6 officer and reports through him or her to the
7 governing board,

8 (3) the facility personnel policies and practices
9 conform to those of the hospital,

10 (4) the administrative functions of the facility such
11 as records, billing, laundry, housekeeping and
12 purchasing are integrated with those of the
13 hospital, and

14 (5) the facility and hospital are financially
15 integrated, as evidenced by the cost report,
16 which reflects allocation of overhead to the
17 facility through the required step-down
18 methodology.

19 b. The following factors are not considered in the
20 determination of whether a facility conducting sleep
21 diagnostic tests is hospital-based:

22 (1) an agreement between a facility and a hospital
23 concerning patient referral,
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1 (2) a shared service arrangement between a facility
2 and a hospital, or

3 (3) the physical location of a facility on the
4 premises of a hospital;

5 3. "General supervision" means the sleep diagnostic testing is
6 furnished under the supervising physician's overall direction and
7 control, but the supervising physician is not necessarily required
8 during the performance of the sleep diagnostic testing;

9 4. "Interpreting physician" means a physician who determines
10 the meaning of or interprets results of sleep diagnostic tests. An
11 interpreting physician shall be board-certified in sleep medicine by
12 the American Board of Sleep Medicine (ABSM) or the American Board of
13 Medical Specialties or must have completed a one-year sleep medicine
14 fellowship accredited by the Accreditation Council for Graduate
15 Medical Education (ACGME);

16 5. "Personal supervision" means a supervising physician is
17 physically present in the sleep diagnostic testing room during the
18 performance of the sleep diagnostic testing;

19 6. "Physician" means a person licensed to practice:

20 a. allopathic medicine and surgery by the Oklahoma State
21 Board of Medical Licensure and Supervision pursuant to
22 the Oklahoma Allopathic Medical and Surgical Licensure
23 and Supervision Act, or
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1 b. osteopathic medicine by the State Board of Osteopathic
2 Examiners pursuant to the Oklahoma Osteopathic
3 Medicine Act;

4 7. "Sleep diagnostic test" means any technological recording
5 procedure used for the diagnosis of sleep related breathing
6 disorders or other disorders of sleep. Sleep diagnostic tests are
7 classified by level of intensity accordingly:

8 a. Level I or Type 1: Attended standard polysomnography
9 (PSG) performed in a sleep diagnostic testing
10 facility,

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

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

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

21 Sleep diagnostic test shall also mean Multiple Sleep
22 Latency Testing which measures physiologic sleepiness
23 and Maintenance of Wakefulness Testing which measures
24 manifest sleepiness; and

1 8. "Supervising physician" means a physician responsible for
2 the personal, direct or general supervision of the sleep diagnostic
3 testing performed, including, but not limited to, the quality of the
4 testing performed, the proper operation and calibration of the
5 equipment used to perform sleep diagnostic tests and the actions of
6 nonphysician personnel engaged in the performance of the sleep
7 diagnostic testing. A supervising physician shall be board-
8 certified in sleep medicine by the American Board of Sleep Medicine
9 (ABSM) or the American Board of Medical Specialties or shall have
10 completed a one-year sleep medicine fellowship accredited by the
11 Accreditation Council for Graduate Medical Education (ACGME).

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 A. Sleep diagnostic tests shall be ordered by a physician.

16 B. Sleep diagnostic tests shall be conducted:

17 1. At a sleep diagnostic testing facility;

18 2. At a patient's home under the general supervision of a
19 supervising physician and under the direction of nonphysician

20 personnel of sleep diagnostic testing facility; or

21 3. At a hospital-based facility.

22 C. Sleep diagnostic testing facilities shall meet the following
23 standards:

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1 1. Sleep diagnostic testing facilities shall be under the
2 direction of a supervising physician as defined by this act;

3 2. Sleep diagnostic testing facilities shall be accredited by
4 and comply with the standards set by the American Academy of Sleep
5 Medicine (AASM) or Joint Commission on the Accreditation of
6 Healthcare Organizations (JCAHO) or shall be affiliated through
7 majority ownership or management with a sleep diagnostic testing
8 facility that is accredited by the American Academy of Sleep
9 Medicine (AASM) or Joint Commission on the Accreditation of
10 Healthcare Organizations (JCAHO);

11 3. An interpreting physician as defined by this act shall
12 determine the results of sleep diagnostic tests conducted at a sleep
13 diagnostic testing facility or conducted at a patient's home; and

14 4. Nonphysician personnel conducting sleep diagnostic tests
15 shall practice under the general, direct or personal supervision of
16 the supervising physician.

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

20 A. It shall be unlawful for any facility or person to perform
21 sleep diagnostic tests without having first complied with this act
22 or as may otherwise be allowed by applicable law.

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

1 health and safety in performing sleep diagnostic tests and is
2 authorized to promulgate rules to implement the provisions of this
3 act.

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

8 Passed the Senate the 9th day of March, 2009.

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Presiding Officer of the Senate

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12 Passed the House of Representatives the ____ day of _____,
13 2009.

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Presiding Officer of the House
of Representatives

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