

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 810, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Jonathan Nichols

Nichols-LKS-FS-SB810
2/25/2009 3:19 PM

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 810

By: Nichols of the Senate

and

Terrill of the House

6
7
8
9 FLOOR SUBSTITUTE

10 [public health - Oklahoma Sleep Diagnostic Testing
11 Regulation Act - codification -
12 emergency]

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

23 The Oklahoma Legislature hereby finds that:
24

- 1 1. There is a growing need for sleep diagnostic testing in the
2 diagnosis and treatment of sleep disorders;
- 3 2. Sleep diagnostic testing is being performed in Oklahoma; and
- 4 3. Oklahoma law does not provide sufficient regulation of sleep
5 diagnostic testing to assure the protection of the public.

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

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

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

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

19 2. a. "Sleep diagnostic testing facility" means a building
20 or place situated in a fixed location or a mobile
21 entity that is used to conduct sleep diagnostic tests.
22 Sleep diagnostic testing facility shall not include a
23 hospital-based facility that is used to conduct sleep
24 diagnostic tests. A facility is hospital-based if:

- 1 (1) the facility and hospital are subject to the
2 bylaws and operating decisions of a common
3 governing board. This governing board, which has
4 final administrative responsibility, approves all
5 personnel actions, appoints medical staff, and
6 carries out similar management functions,
- 7 (2) the facility director or administrator is under
8 the supervision of the hospital's chief executive
9 officer and reports through him or her to the
10 governing board,
- 11 (3) the facility personnel policies and practices
12 conform to those of the hospital,
- 13 (4) the administrative functions of the facility such
14 as records, billing, laundry, housekeeping and
15 purchasing are integrated with those of the
16 hospital, and
- 17 (5) the facility and hospital are financially
18 integrated, as evidenced by the cost report,
19 which reflects allocation of overhead to the
20 facility through the required step-down
21 methodology.

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

- 1 (1) an agreement between a facility and a hospital
- 2 concerning patient referral,
- 3 (2) a shared service arrangement between a facility
- 4 and a hospital, or
- 5 (3) the physical location of a facility on the
- 6 premises of a hospital;

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

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

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

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

- 22 a. allopathic medicine and surgery by the Oklahoma State
- 23 Board of Medical Licensure and Supervision pursuant to

1 the Oklahoma Allopathic Medical and Surgical Licensure
2 and Supervision Act, or

- 3 b. osteopathic medicine by the State Board of Osteopathic
4 Examiners pursuant to the Oklahoma Osteopathic
5 Medicine Act;

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

- 10 a. Level I or Type 1: Attended standard polysomnography
11 (PSG) performed in a sleep diagnostic testing
12 facility,
- 13 b. Level II or Type 2: Home sleep test (HST) with type II
14 portable monitor, unattended; minimum of 7 channels:
15 EEG, EOG, EMG, ECG/heart rate, airflow, respiratory
16 effort and oxygen saturation,
- 17 c. Level III or Type 3: Home sleep test (HST) with type
18 III portable monitor, unattended; minimum of 4
19 channels: 2 respiratory movement/airflow, 1 ECG/heart
20 rate and 1 oxygen saturation, and
- 21 d. Level IV or Type 4: Home sleep test (HST) with type IV
22 portable monitor, unattended; minimum of 3 channels.
23 Sleep diagnostic test shall also mean Multiple Sleep
24 Latency Testing which measures physiologic sleepiness

1 and Maintenance of Wakefulness Testing which measures
2 manifest sleepiness; and

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

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

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

18 B. Sleep diagnostic tests shall be conducted:

19 1. At a sleep diagnostic testing facility;

20 2. At a patient's home under the general supervision of a
21 supervising physician and under the direction of nonphysician
22 personnel of sleep diagnostic testing facility; or

23 3. At a hospital-based facility.
24

1 C. Sleep diagnostic testing facilities shall meet the following
2 standards:

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

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

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

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

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

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

1 B. The State Department of Health is designated as the official
2 agency of this state for all regulatory activities pertaining to
3 health and safety in performing sleep diagnostic tests and is
4 authorized to promulgate rules to implement the provisions of this
5 act.

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

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