



**TO:** The Professional Practice Committee

**FROM:** Douglas E. Lentivech

**SUBJECT:** Proposed Amendment to the Regulations of the Commissioner of Education Relating to Polysomnographic Technology Services and the Authorization of Polysomnographic Technologists

**DATE:** July 9, 2012

**AUTHORIZATION(S):**

**SUMMARY**

**Issue for Decision**

Should the Board of Regents add section 52.41 and amend Subpart 79-4 of the Regulations of the Commissioner of Education relating to polysomnographic technologists?

**Reason(s) for Consideration**

Required by State Statute (Chapter 262 of the Laws of 2012).

**Proposed Handling**

The proposed amendment will be presented to the Professional Practice Committee for approval and to the Full Board for emergency action at the July 2012 Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

**Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on August 1, 2012 for a 45-day period of public comment. A copy of the proposed amendment is attached. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## **Background Information**

The proposed amendment adds a new section 52.42 to the Regulations of the Commissioner of Education and amends Subpart 79-4 of the Regulations of the Commissioner to implement the provisions of Chapter 262 of the Laws of 2011, which amended Education Law section 8505 to authorize the provision of polysomnographic technology services, as defined by the Commissioner, by individuals who meet standards promulgated by the Commissioner.

The diagnosis and treatment of sleep disorders has become a vital health care issue. In response to this need, there has been an emergence of sleep centers, sleep labs and hospitals using state-of-the-art equipment to monitor test and treat patients suffering from sleep disorders. These facilities rely upon a team of professionals including physicians specializing in sleep disorders, nurses, respiratory therapists, and polysomnographic technologists. As the diagnosis and treatment of sleep disorders has developed, polysomnographic technologists have played an integral role in patient care, including administering sleep tests and working with physicians to provide information needed for the accurate diagnosis and treatment of such disorders.

Because of the importance of this work and the potential impact on patient safety, it is essential that those providing such services be appropriately qualified. Since aspects of the scope of practice fall within the Respiratory Therapy scope, the Department urged passage of legislation to appropriately authorize such individuals. The Department, including the State Board for Respiratory Therapy, worked collaboratively with all key stakeholders to develop a solution that ensures patient safety. The resulting law created an exemption in the respiratory therapy law for the provision of polysomnographic technology services, as defined by the Commissioner, for individuals authorized by the Department. Unlike most licensure laws, this law requires the department to promulgate regulations to define the practice and set forth the requirements and procedures for professional authorization.

The proposed new section 52.42 of the Regulations of the Commissioner of Education outlines the coursework and clinical experience required for registration as a licensure-qualifying polysomnographic technology program.

The proposed amendment of the title of Subpart 79-4 of the Regulations of the Commissioner of Education adds the new profession of Polysomnographic Technologist. Proposed section 79-4.8 of the Regulations of the Commissioner defines the practice of polysomnographic technology.

Proposed section 79-4.9 of the Regulations of the Commissioner sets forth the general requirements and procedures for professional authorization. Proposed sections 79-4.10, 79-4.11, and 79-4.12 of the Regulations of the Commissioner establish the educational, experience, and examination requirements, respectively. Proposed section 79-4.13 of the Regulations of the Commissioner mandates that applicants shall be of good moral character, as determined by the Department.

Proposed section 79-4.14 of the Regulations of the Commissioner creates a student authorization to allow supervised students in an approved program to obtain clinical experience, while proposed section 79-4.15 of the Regulations creates a limited permit to allow a person who fulfills all requirements for authorization, except exam, to practice under supervision for one year. A limited permit could be renewed for one additional year.

Proposed section 79-4.16 of the Regulations of the Commissioner sets forth grandparenting provisions to enable those who began practicing in the field prior to the new law and regulations, to receive authorization to continue to practice if they meet specified requirements, including experience requirements. Individuals applying under these special provisions must meet the grandparenting requirements by February 3, 2014 or by such time as four licensure-qualifying programs in polysomnographic technology have been registered by the Department.

Finally, proposed section 79-4.17 of the Regulations of the Commissioner implements the statutory provision that polysomnographic technologists be subject to the full disciplinary and regulatory authority of the Board of Regents and the Department by designating the State Board for Respiratory Therapy as the responsible state board.

### **Recommendation**

VOTED: That new sections 52.42 and 79-4.8 through 79-4.17 of the Regulations of the Commissioner of Education be added and that the title of Subpart 79-4 of the Regulations of the Commissioner of Education be amended, all as submitted, effective August 3, 2012, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to establish requirements for the authorized practice of polysomnographic technology, and thereby ensure the timely implementation of Chapter 262 of the Laws of 2011.

### **Timetable for Implementation**

If adopted at the July 2012 Regents meeting, the emergency amendments will become effective on August 3, 2012, which is the effective date of Chapter 262 of the Laws of 2012. It is anticipated that the proposed amendments will be presented for permanent adoption at the October 2012 Regents meeting, after publication in the State Register and expiration of the 45-day public comment period.

## AMENDMENTS TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 6504, 6506, 6507, 6508, and 8505 of the Education Law and Chapter 262 of the Laws of 2011.

1. Section 52.42 of the Regulations of the Commissioner of Education is added, effective August 3, 2012, to read as follows:

§52.42 Polysomnographic technology.

(a) Definitions. As used in this section:

(1) Professional polysomnographic technology coursework shall mean didactic coursework and supervised clinical experiences. Such coursework and clinical experiences shall include, but shall not be limited to, the following curricular areas:

(i) polysomnographic procedures and protocols;

(ii) cardiopulmonary and neurological sciences, diagnostics, interpretation, and monitoring related to sleep disorders.

(iii) ethics of polysomnographic care;

(iv) infection control; and

(v) polysomnographic patient care and patient education related to sleep disorders;

(2) Equivalent shall mean substantially the same, as determined by the department.

(b) Program requirements. In addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to the authorization in polysomnographic technology which meets the requirements in section 79-4.2(a) of this chapter, it shall be a program in polysomnographic technology leading to an associate degree or higher degree and shall meet the following requirements.

(1) An associate degree program in polysomnographic technology shall contain at least 60 semester hours, or the equivalent, including a minimum of 30 semester hours in professional polysomnographic technology coursework, or the equivalent, and additional semester hours in appropriate related basic sciences and clinical sciences related to polysomnographic technology.

(2) A baccalaureate degree program in polysomnographic technology shall contain a minimum of 40 semester hours of professional polysomnographic technology coursework, or the equivalent, and additional semester hours in appropriate related basic sciences and clinical sciences related to polysomnographic technology.

(3) The required semester hours in professional polysomnographic technology content areas shall include supervised clinical experience.

(4) Clinical facilities. A written contract or agreement shall be executed between the educational institution conducting the polysomnographic technology program and the clinical facility or agency which is designated to cooperate in providing the clinical experience. Such contract or agreement shall set forth the responsibilities of each party and shall be signed by the responsible officer of each party.

2. The title of Subpart 79-4 of the Regulations of the Commissioner of Education is amended, effective August 3, 2012, as follows:

Respiratory Therapy, [and] Respiratory Therapy Technician, and Polysomnographic Technologist

3. Sections 79-4.8 through 79-4.17 of the Regulations of the Commissioner of Education are added, effective August 3, 2012, as follows:

§ 79-4.8 Definitions of the practice of polysomnographic technology and use of the title.

(a) Only a person authorized under this Subpart shall participate in the practice of polysomnographic technology as an authorized polysomnographic technologist, and only a person authorized under this Subpart shall use the title "authorized polysomnographic technologist."

(b) The term "practice of polysomnographic technology" shall mean the process of collecting, analyzing, scoring, monitoring and recording physiologic data during sleep and wakefulness to assist the supervising physician in the clinical assessment and diagnosis of sleep/wake disorders and other disorders, syndromes and dysfunctions that either are sleep related, manifest during sleep or disrupt normal sleep/wake cycles and activities. The practice of polysomnographic technology shall include the non-invasive monitoring, diagnostic testing, and initiation and delivery of treatments to determine therapeutic levels of inspiratory and expiratory pressures for individuals suffering from any sleep disorder, as listed in an authoritative classification of sleep disorders acceptable to the department, under the direction and supervision of a licensed physician who is available for consultation at all times during the provision of polysomnographic technology services in any setting. Such services shall not include the use of mechanical ventilators. Such services shall include, but shall not be limited to:

(1) application of electrodes and apparatus necessary to monitor and evaluate sleep disturbances, including application of devices that allow a physician to diagnose and treat sleep disorders, which disorders shall include, but shall not be limited to, insomnia, sleep breathing disorders, movement disorders, disorders of excessive somnolence, and parasomnias, provided, however, that such services shall include the use of oral appliances, but shall not include the use of any artificial airway or the drawing of arterial blood gasses;

(2) implementation of any type of physiologic non-invasive monitoring applicable to polysomnography, including monitoring the therapeutic and diagnostic use on non-ventilated patients of oxygen, continuous positive airway pressure (CPAP) and bi-level positive airway pressure;

(3) implementation of cardiopulmonary resuscitation, maintenance of patient's airway (which does not include endotracheal intubation), and transcription and implementation of physician orders pertaining to the practice of polysomnographic technology;

(4) implementation of non-invasive treatment changes and testing techniques, as described in paragraphs (1) and (2) of this subdivision, and as required for the application of polysomnographic protocols under the direction and supervision of a licensed physician; and

(5) education of patients, family and the public concerning the procedures and treatments used during polysomnographic technology or concerning any equipment or procedure used for the treatment of any sleep disorder.

#### § 79-4.9 Requirements and procedures for professional authorization.

To qualify for authorization as a polysomnographic technologist, an applicant shall be at least 18 years of age, file an application together with the applicable fees with the department, and meet the education, experience, examination and moral character requirements set forth in sections 79-4.10, 79-4.11, 79-4.12, and 79-4.13 of this Subpart, respectively.

#### § 79-4.10 Professional study of polysomnographic technology.

To meet the professional education requirement for authorization as a polysomnographic technologist in this State, the applicant shall present evidence of:

(a) completion of an associate or higher degree in polysomnographic technology;

(1) in a program registered by the department; or

(2) in a program determined by the department to be substantially equivalent to a registered program;

or

(b) completion of a course of study which is substantially equivalent to a program determined to be acceptable pursuant to subdivision (a) of this paragraph and which is satisfactory to the department.

§ 79-4.11 Experience requirements for polysomnographic technologist authorization.

To meet the professional experience requirement for authorization as a polysomnographic technologist in this State, the applicant shall complete such experience as is required in section 52.42 of this Title.

§ 79-4.12 Examination for authorization as a polysomnographic technologist.

(a) Each candidate for authorization as a polysomnographic technologist shall pass an examination that is determined by the department to measure the applicant's knowledge, judgment and skills concerning the practice of polysomnographic technology and such other matters of law and/or ethics as may be deemed appropriate by the department.

(b) Grade retention. The grade retention limitations of section 59.5(f) of this Title shall not be applicable to the examination for authorization to practice polysomnographic technology.

(c) Passing standard. The passing standard for the examination shall be determined by the State Board for Respiratory Therapy.

§ 79-4.13 Moral character for polysomnographic technologist authorization.

Applicants shall be of good moral character, as determined by the department.

§ 79-4.14 Student authorization. The practice of polysomnographic technology as an integral part of a program of study by students enrolled in a polysomnographic technology education program approved by the department shall not be prohibited. All such student practice shall be under the direction and supervision of a licensed physician and under the direct and immediate supervision of an authorized polysomnographic technologists or another health care provider licensed under Title VIII of the Education Law, provided that all tasks or responsibilities supervised by the health care provider are within the scope of his or her practice.

§ 79-4.15 Limited permit authorization. Authorizations limited as to eligibility, practice and duration shall be issued by the department to eligible applicants as follows:

(a) Eligibility. A person who fulfills all requirements for authorization as a polysomnographic technologist except that related to the examination shall be eligible for a limited permit.

(b) Limit of practice. All practice under a limited permit shall be under the direction and supervision of a licensed physician and under the direct and immediate supervision of a health care provider licensed under Title VIII of the Education Law, provided that all tasks or responsibilities supervised by the health care provider are within the scope of his or her practice.

(c) Duration. A limited permit shall be valid for one year and may be renewed for one additional year.

(d) An application for a limited permit in polysomnographic technology shall be submitted on a form provided by the Department and shall be accompanied by a fee of \$70.

§ 79-4.16 Special provisions for authorization for polysomnographic technologists.

Except as otherwise provided in subdivision (d) of this section, an individual who is at least 18 years of age shall be authorized to practice polysomnographic technology without satisfying the education, experience, and examination requirements set forth in sections 79-4.10, 79-4.11 and 79-4.12 of this Subpart; provided that no later than February 3, 2014, such individual shall meet the requirements of subdivisions (a), (b), and (c) of this section. In order to be authorized to practice polysomnographic technology pursuant to this section, the applicant shall:

(a) file an application and pay the appropriate fees to the department; and

(b) be of good moral character, as determined by the department; and

(c) (1) be certified by a national certifying or accrediting board for polysomnographic technology acceptable to the department, and have practiced polysomnographic technology under the direction and supervision of a licensed physician at least 21 clinical hours per week for not less than 18 months in the three years immediately preceding the receipt of his or her application; or

(2) have practiced polysomnographic technology under the direction and supervision of a licensed physician at least 21 clinical hours per week for not less than three years within the five years immediately preceding the receipt of his or her application.

(d) If at least four licensure qualifying programs in polysomnographic technology have not been registered by the department by February 3, 2014, the applicant shall meet the requirements of subdivisions (a), (b), and (c)(1) of this section prior to the date that a total of four such programs have been registered by the department.

§ 79-4.17 Disciplinary authority for polysomnographic technologists.

Authorized polysomnographic technologists shall be subject to the full disciplinary and regulatory authority of the Board of Regents and the department, as if

such authorization were a professional license. Authorized polysomnographic technologists shall be subject to all applicable provisions of the Education Law and of this Title relating to professional misconduct. For purposes of professional misconduct procedures relating to authorized polysomnographic technologists, the State Board for Respiratory Therapy shall serve as the state board responsible for all such procedures.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 262 of the Laws of 2011, which amended Education Law section 8505 to authorize the provision of polysomnographic technology services, as defined by the Commissioner of Education, by individuals who meet standards promulgated by the Commissioner.

Because the Board of Regents meets at fixed intervals, and generally does not meet in the month of August, the earliest the proposed amendment can be presented for adoption, after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the October 9-10, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 31, 2012, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 262 of the Laws of 2011 will become effective on August 3, 2012.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the State Education Department to establish requirements for the authorized practice of polysomnographic technology, and thereby ensure the timely implementation of Chapter 262 of the Laws of 2011.

It is anticipated that the proposed amendments will be presented for adoption as a permanent rule at the October 2012 meeting of the Board of Regents, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.