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Sequence Number: 06-31-10
Rule ID(s): 4786
File Date (effective date): 06-30-10
End Effective Date: 12/27/2010

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission: Board of Respiratory Care
Division:
Contact Person: Anthony Czerniak
Assistant General Counsel
Address: 220 Athens Way, Suite 210
Nashville, Tennessee
Zip: 37243
Phone: (615) 741-1611
Email: Anthony.K.Czerniak@tn.gov

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to T.C.A. § 4-5-208, the Board of Respiratory Care is authorized to promulgate emergency rules in the event that the rules are required by an enactment of the General Assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Pursuant to T.C.A. § 63-31-106, on or after July 1, 2010 it shall be unlawful to engage in the practice of polysomnography without being duly licensed in accordance with the licensure provisions as set forth in the chapter. Chapter 421 of the Public Acts of 2009 provides that respiratory therapists (certified respiratory therapists and registered respiratory therapists) either engaged in or wishing to engage in the practice of polysomnography after July 1, 2010, are exempt from the licensing requirement as set forth in T.C.A. § 63-31-106 provided that they comply with one of the three mechanisms as codified under T.C.A. § 63-31-107(a)(5). The first mechanism requires that the respiratory therapist be credentialed as a registered polysomnographic technologist by the board of polysomnographic technologists. The second mechanism requires that the respiratory therapist be credentialed as a sleep disorder specialist by the national board of respiratory care. The Act also authorized the development by the Board of Respiratory Care with consultation with the Tennessee Board of Medical Examiners in developing a third, standardized uniform mechanism for respiratory therapists who provide polysomnographic services or wish to do so after July 1, 2010.

The Act became effective on July 1, 2009, and the Board of Respiratory Care held multiple meetings to determine the standard for the uniform mechanism, and also consulted with the Board of Medical Examiners, and this third, uniform mechanism was subsequently developed and approved by the Board of Respiratory Care in February of 2010. The Board had planned to conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules, however due to the flood of 2010; no such hearing could take place prior to the deadline date of July 1, 2010.

Due to the length of time necessary to develop the third pathway, the flood of 2010, and the lack of availability to complete the rulemaking process pursuant to T.C.A. § 4-5-203, these emergency rules are required for the Board to begin implementation of this endorsement process in order to comply with the enactment of the General Assembly.

For a copy of these emergency rules contact: Marva Swann, Executive Director, 227 French Landing, Suite 300, Heritage Place MetroCenter, Nashville, Tennessee 37243 at (615) 532-5163.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	Rule Title
1330-01-.24	Endorsement of Respiratory Therapists to Provide Polysomnographic Services

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1330-01
General Rules and Regulations Governing Respiratory Care Practitioners

New Rule

1330-01-.24 Endorsement of Respiratory Therapists to Provide Polysomnographic Services

- (1) In order for a licensee of this Board to practice polysomnography without obtaining licensure from the Polysomnographic Professional Standards Committee, the licensee must obtain an endorsement from this Board. In order to obtain an endorsement, a licensee shall provide this Board with the following:
- (a) A completed and signed polysomnographic services endorsement form, as approved by this Board; and
 - (b) Proof of possessing a valid, active, and unrestricted license as a Registered Respiratory Therapist or Certified Respiratory Therapist, issued by this Board; and
 - (c) One of the following:
 - 1. Certification by the National Board of Registered Polysomnographic Technologists as a registered polysomnographic technologist; or
 - 2. Certification by the National Board of Respiratory Care as a sleep disorder specialist; or
 - 3. Proof of completion of the sleep center/sleep lab competency checklist, as approved by this Board, signed by both the director of the sleep center or sleep lab and medical director from a current employing facility, verifying a minimum of one hundred (100) hours in a sleep center or sleep lab, and outlining competency relative to the following topics, which include, but are not limited to:
 - (i) Patient safety, rapport, preparation, education and confidentiality;
 - (ii) Setup, function, calibration, operation and maintenance of all relative equipment;
 - (iii) Monitoring, recording, and analysis of physiologic data as defined under T.C.A. §63-31-101(9)(a)(i);
 - (iv) Appropriate corrective and emergency procedures as appropriate, according to the sleep center or sleep lab policies; and
 - (v) Implementation of the applicable treatment procedures according to the sleep center or sleep lab policy and procedure.

Authority: T.C.A. §§ 63-31-107 and 63-27-104

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Theresa Dudley Hatcher	X				
Colleen Schabacker, R.R.T.	X				
Jeffrey Paul McCartney, M.D.	X				
Gene Gantt, R.R.T.	X				
Vacant					
Candace Partee, R.R.T.	X				
Rodger M. Major, R.R.T.				X	
Delmar Mack, R.R.T.	X				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: June 25, 2010
 Signature: [Signature]
 Name of Officer: Anthony K. Czerniak
 Assistant General Counsel
 Title of Officer: Department of Health

Subscribed and sworn to before me on: June 25, 2010
 Notary Public Signature: [Signature]
 My commission expires on: 1/14/2018



All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
6-30-10
 Date

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Filed with the Department of State on: 6/30/10
 Effective for: 180 *days
 Effective through: 12/27/10

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

[Signature]
 Tre Hargett
 Secretary of State

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 1330-01-.24 (1) outlines the three mechanisms that certified and registered respiratory therapists may utilize to gain endorsement by the Board of Respiratory Care to provide polysomnographic services pursuant to T.C.A. §63-31-107(a)(5). The first mechanism requires that the respiratory therapist be credentialed as a registered polysomnographic technologist by the board of polysomnographic technologists. The second mechanism requires that the respiratory therapist be credentialed as a sleep disorder specialist by the national board of respiratory care. The third mechanism requires that the respiratory therapist provide proof of completion of a minimum of one hundred (100) hours in a sleep lab, and submit a board approved Sleep Center or Lab Competency Checklist documenting the required hours and competency relative to polysomnography.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The new rule was promulgated to implement Public Chapter 421 of the 2009 Public Acts codified in T.C.A. §§ 63-31-107(a)(5).

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Relative to the Board Respiratory Care, the persons affected by the rule are certified and registered Respiratory therapists, licensed in the State Tennessee who wish to provide polysomnographic services on or after July 1, 2010.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

I am unaware of any opinion of the Attorney General or any judicial ruling which directly relates to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The new rule will have neither a positive nor a negative fiscal impact.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Marva Swann, Executive Director and I possess substantial knowledge and understanding of the new rule.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Marva Swann, Executive Director and I will explain the new rule at a scheduled meeting of the Committee.

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

I may be reached at the Department of Health, Office of General Counsel, Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee 37243 ((615) 741-1611). Marva Swann may be reached at the Department of

Health, Health Related Boards, 227 French Landing, Suite 300, Nashville, Tennessee 37243 ((615) 532-5163).

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

I, as well as the Executive Director, Marva Swann will provide any additional information requested by the Committee relative to the new rule.

Addendum

Regulatory Flexibility Analysis

Pursuant to the regulatory Flexibility Act of 2007, 2007 Pub. Acts, c. 464, § 4, eff. June 21, 2007, the Department of Health submits the following regulatory flexibility analysis:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rule does not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rule exhibits clarity, conciseness, and lack of ambiguity in the rule.

- (3) The establishment of flexible compliance and reporting requirements for small businesses:

The proposed rule does not create an ongoing reporting requirement and allows for flexible mechanisms for initial compliance.

- (4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

There are no reporting requirements contained in the proposed rule.

- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

There are no reporting requirements contained in the proposed rule.

- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The proposed rule does not establish design or operational standards.

- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rule creates no entry barriers or other effects that would stifle entrepreneurial activity, curb innovation, or increase cost.

Addendum

Economic Impact Statement

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

Medical offices providing sleep services as well as sleep centers.

- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed rule would require no new reporting or record keeping costs. There will be a small fee to obtain the initial certification.

- (3) A statement of the probable effect on impacted small businesses and consumers:

The proposed rule should not adversely impact small businesses and consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

This proposed rule should not have an economic impact on small businesses

- (5) A comparison of the proposed rule with any federal or state counterparts:

Federal: The Board is not aware of any Federal Counterparts:

State: The Board is not aware of any State counterparts.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

It is not possible to exempt the impacted small businesses from all or any part of the requirements contained in the proposed rule because the impacted small businesses are the board's licensees and applicants. If there were to be an exemption, the proposed rules would have no actual effect.