

Pursuant to the authority vested in the Commissioner of Health by sections 3504, 3507(2), 3507(7), and 3510(1)(g) of the Public Health Law, Part 89 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register to read as follows:

Paragraph (4) of subdivision (a) of section 89.1 is amended to read as follows:

(4) [*Board* means the department's Radiologic Technologist Advisory Board]

Reserved

Subdivision (a) of section 89.2 is amended to read as follows:

- (a) The practice of radiography includes, but is not limited to, the following activities performed under the supervision of a licensed practitioner:
- (1) measuring and positioning patients;
 - (2) selecting and setting up exposure factors on X-ray equipment;
 - (3) making X-ray exposures;
 - (4) using fluoroscopy for localization purposes prior to taking a spot film of a mobile organ such as the gall bladder or the duodenal cap;

- (5) operating fluoroscopy equipment under the personal supervision of a physician, except where direct supervision is required by this part;
- (6) administering non-intravenous contrast media pursuant to a physician's order;
- (7) performing quality control tests; [and]
- (8) for individuals certified under section 89.40 of this Part, the intravascular administration of contrast media under the direct supervision when such administration is an integral part of an X-ray or imaging procedure; and
- (9) performing manual air insufflation as a required component of an imaging procedure, such as a virtual colonoscopy procedure or a barium enema procedure, under the supervision of a physician as follows:
 - (i) initial insertion of the tip of the balloon tube and inflating the balloon at the end of the tube under the direct supervision of a physician; and
 - (ii) insufflating air into the colon under the personal supervision of a physician.

Paragraph (5) of subdivision (a) of section 89.10 is amended, subdivision (b) is repealed and subdivisions (c) and (d) are re-lettered to be subdivisions (b) and (c) to read as follows:

(a) To qualify for a license to practice as a radiologic technologist, an applicant shall fulfill the following requirements in a manner acceptable to the department:

- (1) file an application on a form prescribed by the department along with a nonrefundable license fee of \$120;
- (2) submit documentation that the applicant has successfully completed an education program in radiologic technology that is registered with the

department, the State Education Department, or an accrediting organization approved by the department;

(3) submit evidence that the applicant has passed an examination administered by an accrediting organization approved by the department with a passing grade, as determined by the department;

(4) be at least 18 years of age; and

(5) be of good moral character. In accordance with Correction Law Article 23-A,

a person previously convicted of one or more criminal offenses shall not be

found to lack good moral character based upon these conviction(s) unless (i)

there is a direct relationship between one or more of the previous criminal

offenses and the duties required of the license or (ii) licensing the applicant

would involve an unreasonable risk to property or the safety or welfare of a

specific individual or the general public. In determining these questions, the

department will look at all the factors listed under New York State Correction

Law section 753. [Any person who has been convicted of one or more

criminal offenses involving a threat or use of physical violence, sexual

behavior, illegal possession or use of drugs, theft or fraud, shall be deemed to

not be of good moral character unless the department determines that

sufficient mitigating factors exist to warrant a finding of good moral character.

In making such a determination, the department shall consider the following

factors:

(i) the number and seriousness of the underlying offenses of such conviction;

(ii) the time that has elapsed since such conviction;

(iii) the age of the applicant when the underlying offenses occurred; and
(iv) evidence of rehabilitation and good conduct since such convictions, including the issuance to the applicant of a certificate of relief from disability or a certificate of good conduct.

(b) No person shall be licensed pursuant to this Part who has been convicted of a crime consistent with the provisions of article 23-A of the Corrections Law.]

[(c)] (b) Nothing in this Part shall be construed to apply to the practice of nuclear medicine technology prior to January 1, 2009.

[(d)] (c) Notwithstanding any provision herein to the contrary, any individual practicing as a nuclear medicine technologist prior to July 26, 2007 may be licensed to practice nuclear medicine technology provided that he or she has completed an education program in nuclear medicine technology acceptable to the department and has five years of verifiable and satisfactory employment within the previous 10 years as a nuclear medicine technologist, or possesses certification by the Nuclear Medicine Technology Certifying Board or registration with the American Registry of Radiologic Technology in nuclear medicine technology.

Subdivision (a) of section 89.11 is amended to read as follows:

(a) If the department determines that an applicant is ineligible for licensure pursuant to this Part, the department shall [proved] provide written notice to the applicant of the determination, the reasons therefor and information regarding his/her rights to petition.

Section 89.20 is amended to read as follows:

(a) Each person licensed pursuant to this Part must obtain a certificate of registration from the department prior to practicing radiology in this State. The department shall register each licensee who submits a completed registration application on a form supplied by the department, pays a fee of \$20 per year, and provides evidence of completion of any continuing education requirements required by this section. Every practicing radiologic technologist shall have available for review by the department or other interested parties at all places of employment a copy of his/her current certificate of registration.

(b) Each registration shall authorize a licensee to practice radiologic technology for a period of up to four years and terminate on the registrant's birth date [on either the next ensuing odd-numbered or the next ensuing even-numbered year, depending upon whether the registrant was born in an odd-numbered or even-numbered year, respectively].

(c) Beginning January 1, 2010, each radiologic technologist, when applying to register pursuant to subdivision (a) of this section, must provide evidence of continuing education equivalent to 12 credit hours for each year of the registration cycle or 48 credit hours for a four year registration period. The 48 credits may be completed any time during the 48 months preceding the start of the renewal period.

[12 credits hours per year according to the following schedule:

- (1) individuals registering in the year 2010 must have 12 credits within the previous 12 months;

- (2) individuals registering in the year 2011 must have 24 credits within the previous 24 months;
- (3) individuals registering in the year 2012 must have 36 credits within the previous 36 months; and
- (4) individuals registering in the year 2013 must have 48 credits within the previous 48 months.

(d) Thereafter to reregister, the radiologic technologist must provide evidence of the equivalent of 12 credit hours per year for every year since the previous registration period.]

[(e)](d) Notwithstanding any provision herein to the contrary, the department may waive the continuing education requirement of a licensee who has recently completed an education program in radiologic technology pursuant to section 89.10(a)(2) of this Part, and is applying for registration for the first time. Thereafter, to reregister the radiologic technologist must provide evidence of the [equivalent of 12 credit hours per year for each succeeding year] continuing education credits in accordance with subdivision (c) of this section.

[(f)](e) All continuing education credits must be approved by an accrediting organization approved by the department.

[(g)](f) A copy of a current certificate of registration from an accrediting organization approved by the department is acceptable evidence to meet the continuing education requirement.

(g) The department may issue a conditional registration to a registrant who does not meet the continuing education requirements of this section provided that such

applicant agrees to correct the deficiency within the conditional registration period, in addition to their regular continuing education to be applied to the next registration cycle.

(1) Conditional registrations shall be for no more than 180 days and shall not be renewable.

(2) Failure to complete the required continuing education credits may be considered unethical conduct by the department.

Paragraph (1) of subdivision (a) of section 89.30 is amended to read as follows:

(a) Dental assistants.

(1) A person acting as a dental assistant shall be exempt from licensure as a radiologic technologist when operating the following equipment under the supervision of a dentist for the sole purpose of routine oral radiography in which the X-ray beam is limited to the patient's head:

(i) conventional radiographic dental equipment in which the diameter of the X-ray beam at the patient's face is limited to not more than three inches; [and]

(ii) panoramic radiographic dental equipment;[.] and

(iii) conebeam computed tomography equipment after demonstrating satisfactory completion of a training program approved by the department or one provided by the equipment manufacturer. Conebeam computed tomography equipment must be performed under the direct supervision of a dentist.

REVISED REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 3504 of the Public Health Law (PHL) authorizes the Commissioner of Health to make rules and regulations, not inconsistent with the law, as may be necessary to carry out the provisions of Article 35 of the PHL that govern the practice of radiologic technology. PHL § 3510(1)(g) authorizes the Commissioner to define in regulations unethical conduct regarding the licensure of radiological technicians. PHL § 3507(2) requires the Commissioner to promulgate regulations necessary to effectuate the registration process of radiological technicians. PHL § 3507(7) provides that the Commissioner may create regulations regarding continuing education credits for radiological technicians.

Legislative Objectives:

Article 35 of the PHL expresses the legislative intent that only individuals with the appropriate education, training, and experience shall be allowed to expose human beings to ionizing radiation as part of the performance of diagnostic x-ray, nuclear medicine and therapy procedures. Nuclear medicine technology and the intravenous injection of contrast material by radiographers were added to PHL Article 35 pursuant to Chapter 175 of the Laws of 2006.

Needs and Benefits:

The Department's proposal seeks to modify the regulations governing the practice of radiologic technology. These changes include performing air insufflation as a required component of an imaging procedure, under direct or personal supervision of a physician as required, implementing changes required by Correction Law and other clarifications and corrections. The imaging procedure is part of the technologists training program and competency requirement and are performed by licensed technologists in the majority of states that license this profession. By allowing the technologist to perform this function the radiologist can devote more of their time to higher priority patient care functions.

The amendment also clarifies the continuing education requirements for the practice of radiologic technology. The proposed regulation requires a technologist to complete 48 credit hours of continuing education over a 48 month period and allows the department to issue a conditional registration to technologists to allow additional time to meet the continuing education requirements. The proposal also ensures that the licensing process comports with Article 23-A of the Correction Law related to licensure of individuals who have been previously convicted of one or more criminal offenses.

Costs:**Costs to State Government:**

The proposed rule does not impose any new costs on state government.

Costs to Local Governments:

The proposed rule does not impose any new costs on local government.

Costs to Private Regulated Parties:

The proposed rule does not impose any new costs on private regulated parties.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

This regulation does not mandate any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

This regulation does not increase the documentation or paperwork for any individual or organization.

Duplication:

This regulation does not duplicate any other State or Federal law or regulation.

Alternatives:

Changes were made to the proposal as a result of alternatives provided by the regulated parties. The current “personal” physician supervision standard will be retained to ensure that patients are not exposed to increased levels of unsafe radiation. The language of the air insufflation component includes specific components of the process with different supervision levels required. Dental assistants who operate Conebeam computed tomography equipment must be performed under the direct supervision of a dentist.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the Federal government.

Compliance Schedule:

The proposed rule change will become effective upon publication of a Notice of Adoption in the *State Register*.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect on Small Business:

The rule would be applicable to approximately 20,000 licensed radiologic technologists and the businesses that employ them. This rule clarifies several tasks of radiological technologists and continuing education requirements and should have no negative impact on small businesses.

Compliance Requirements:

Licensees and applicants will need to become familiar with the new requirements and modify their quality assurance policies and procedures accordingly.

Professional Services:

There should be no impact on professional services.

Capital Costs and Annual Costs of Compliance:

There are no capital costs associated with this regulation.

Economic and Technology Feasibility:

It is economically and technologically feasible to comply with this amended rule.

Minimizing Adverse Impact:

No adverse impact has been identified.

Small Business Input:

A copy of the draft proposed rule was sent via e-mail to several professional societies for input concerning the tasks of radiological technicians and registration process for licensed radiological technicians. These groups represented radiologists, physicists and technologists, but not specifically those employed in small or large practices. There are no costs associated with this rule change; therefore, it is not anticipated that small business will be impacted.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

Affected facilities are located in 27 rural areas (18 counties with < 200,000 population and 9 counties with certain townships with a population density < 150 persons for square mile).

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There are no new reporting requirements contained in the proposed regulations. No additional professional service costs are anticipated.

Cost:

There are no costs associated with this rule change.

Minimizing Adverse Impact:

Staff held multiple discussions with representatives from professional organizations. The Department determined that there are no adverse impacts associated with these proposed requirements.

Rural Area Participation:

A copy of the draft proposed rule was sent via e-mail to several professional societies.

These groups represented radiologists, physicists and technologists in both urban and rural facilities.

JOB IMPACT STATEMENT

Nature of Impact:

It is anticipated that no persons will be adversely affected. Facility staff will need to become familiar with the new requirements. The proposed rule does not change any training or experience requirements.

Categories and Numbers Affected:

This rule affects registered radiologic technologists.

Regions of Adverse Impact:

No rural areas will be adversely affected.

Minimizing Adverse Impact:

No adverse impact was identified; therefore, there are no alternatives to the proposed regulations.

ASSESSMENT OF PUBLIC COMMENT

Public comments were submitted to the NYS Department of Health (DOH) in response to the regulation. This was published in the New York State Register on July 29, 2015. The public comment period for this regulation ended on September 14, 2015. The Department received comments on behalf of the New York State Radiologic Society (NYSRS) and the Medical Society of the State of New York. The comments addressed three points and the Department will incorporate them into the regulations

COMMENT: The first comment recommends that the current “personal” physician supervision standard be retained to ensure that patients are not exposed to increased levels of unsafe radiation. Under the proposed “direct” supervision standard, a physician may not be readily available if the RT has difficulty operating the equipment or other patient safety issues arise. A PA or NP who inserts a PICC line does not have the adequate training and education to lead a fluoroscopy procedure and protect a patient from harmful levels of radiation.

RESPONSE: The Department will remove the change to direct supervision from the scope of practice update.

COMMENT: A second comment indicated that the language of the air insufflation component should include specific components of the process with different supervision levels required.

RESPONSE: The Department will incorporate the recommended changes with respect to air insufflation.

COMMENT: The final comment was that if authority is granted to dental assistants to operate a CBCT the level of supervision by the dentist should be personal or direct because of the potentially significant doses of radiation that the CBCT emits, particularly since many patients are children. Cone beam CT's produce much higher radiation doses than panoramic imaging.

RESPONSE: The Department agrees with recommendation and will amend the exemption listed in 89.30 to require direct supervision.