A Roadmap for Success: The 2006 Maryland Polysomnography Act

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In March and April, the Maryland Legislature unanimously passed House Bill 957, the Maryland Polysomnography Act, securing a bright future for the profession of polysomnographic (PSG) technology in the state. The bill licenses PSG technologists under the Maryland Board of Physicians, clearly defines the scope of practice for sleep technologists and sets specific educational requirements for respiratory therapists and electroneuro-diagnostic (END) technologists to be able to earn licensure as a sleep technologist. The bill also waives the licensure requirements for PSG technologists who pass the Registered Polysomnographic Technologist (RPSGT) Examination and earn certification from the Board of Registered Polysomnographic Technologists (BRPT) by September 30, 2009.

Developing, revising and ensuring the passage of a favorable bill required persistence and unwavering determination. Through grassroots activism, political lobbying, and the support and involvement of a broad-based coalition of professional societies and organizations, months of hard work came to fruition. Although our successful efforts in Maryland represent a positive step for our successful efforts in Maryland, respiratory therapists known to have a special interest in sleep technology, and about twenty Maryland hospitals.

We also invited representatives of the Maryland – District of Columbia (MD/DC) Society for Respiratory Care, a non-profit, chartered affiliate of the American Association for Respiratory Care. Based on prior legislative acts, PSG technology duties fell within the scope of practice of respiratory therapists. The MD/DC Society for Respiratory Care wanted to ensure that new licensed professionals met the highest educational and training standards.

All of these interested parties were invited to an organizing meeting of the MSC in 2004 and to other periodic meetings during the remainder of the political campaign, although the majority of the MSC’s work was done by fewer than 10 members. All MSC members paid their own travel expenses when attending meetings at the state capital.

Throughout this process we kept current with changes in national educational and testing opportunities, maintained regular communication with legislators, and helped individuals find and contact their representatives. We kept our members informed regularly by e-mail, telephone and a biannual meeting with our core group members. Overall, MSC members remained focused on achieving our common goal, as sleep center managers, physicians and technologists worked together on the bill even while they competed in some geographic areas for patient referrals.

The MSC also hired a licensed lobbyist to communicate with state legislators on its behalf; her efforts and expertise were critical to our success. Lobbying costs, however, were significant for
three years. Because we were unsuccessful at soliciting personal donations to defray these expenses, the costs were paid for by our organizations. Although one other member did offer a donation, it did not justify the cost of establishing a lobbying fund.

Going in the Right Direction

Together we had to determine what specific goals we wanted the legislation to accomplish. One potential strategy was to have sleep technicians, working under a physician’s general supervision, exempt from laws regulating respiratory therapists. Instead, we chose to establish sleep technology as an independent health profession. We decided that this would contribute the most to the future growth of PSG technology and to sleep medicine as a whole.

The MSC came to a consensus on the following legislative goals:
• To ensure patient access to polysomnography by allowing PSG technologists to continue to practice their profession
• To improve patient safety by enhancing and standardizing the requirements for a background check, and establishing academic and performance standards
• To define the technologist’s scope of practice to include all those services that the profession expertly provides and to limit it to only those services
• To speed the development of in-state sleep technologist training and work opportunities
• To provide a formal means for expert technologists from other states to enter Maryland practice

In 2004 we introduced a bill to the Maryland legislature that would establish PSG technology as an independent health profession, but it was sent to “summer session” for revision. During the 2005 legislative session, the bill was again introduced and defeated. The sleep medicine community, however, did convince members of the Maryland Legislature that regulation was needed.

The Maryland Legislature is in session for only 90 days, from January through mid-April. During the summer and fall of each year interim work is done with an eye toward developing legislation for the upcoming session. The MSC participated in interim sessions in 2004, and the MSC, MD/DC Society for Respiratory Care, the Maryland Board of Physicians, and other groups participated in interim efforts with legislators in 2005.

Jerome Barrett, executive director of the AASM, testified in favor of the bill that was introduced in 2005. Richard S. Rosenberg, PhD, director of professional education and training for the AASM, also participated in work done over the legislative interim. The legislators and Board of Physicians were particularly interested in the newly approved CAAHEP curriculum and in other AASM efforts to standardize technician training. Marietta Bellamy-Bibbs, RPSGT, represented the BRPT during these work sessions.

Throughout the 2005 legislative interim, state and national technologists and sleep physicians, respiratory therapists, Maryland hospitals and the Maryland Board of Physicians worked together to revise the detailed language regarding the licensure of PSG technologists.

Overcoming Roadblocks

From 2004 to 2006, agreements and compromises had to be brokered among multiple parties to achieve consensus support for the bill. From the beginning, the AASM monitored our proposed legislation and advised the MSC on many of the key components. The AASM opposed an earlier version of the Maryland bill during the 2006 legislative session, insisting that respiratory therapists and END technologists must also meet CAAHEP educational requirements in sleep technology to be licensed. The AASM’s intervention contributed to an improved Act that better accomplishes the MSC’s original goals.

The Board of Physicians accepted the RPSGT Exam as a national standard for demonstration of competence, but the Board of Physicians also noted that the BRPT does not require candidates to complete a standardized educational program to qualify for the exam. Requiring licensed technologists to complete a CAAHEP-approved educational program and also to pass the RPSGT Exam, the bill meets the national standards of both educational background and demonstrated competence that are required for the Board of Physicians to define and regulate a new profession.

The Maryland State Medical Society (MedChi) opposed the bill for two years. They were concerned that it would establish an independent health profession that might function without physician supervision in future years. A Medicare requirement, however, is that sleep technologists operate under the general supervision of a physician. Because the bill clearly adopted this requirement, MedChi’s opposition was withdrawn in 2006.

The Maryland State Dental Association (MSDA) identified its concerns with the bill when we refined the sleep technologist’s scope of practice to include adjusting oral appliances for sleep apnea during testing. The MSDA wanted to ensure that dental appliances would not be fabricated by technologists. They also wanted us to consider whether dentists should order, and be responsible for, PSG testing with a dental appliance in place. This discussion led to an agreement that the bill would not require a dentist to order or supervise a sleep test. The Act allows the sleep technologist to test a patient who is using an oral appliance for sleep apnea, but it prohibits the sleep technologist from fabricating such a treatment device.

A change in leadership among the MD/DC Society for Respiratory Care, who elected new officers in late 2005, was also a challenge. In areas of contention such as how clinical trainees might be supervised under the new bill, we were able to advance agreements by using language similar to that of other licensed health professions, such as respiratory therapy and nursing.

Another question that arose involved the number of sleep technician classes that should be licensed. In our first bill, we defined and requested state licensure for three classes of personnel: trainees, technicians and technologists. The APT and the AASM collaborated to prepare job descriptions, educational standards and training standards for all three positions. During drafting sessions in late 2005, the Board of Medicine would not support the licensure of trainees or technicians, since there is no nationally accepted educational or competency requirement for these positions. As a result, the 2006 law licenses only technologists.

We may revisit this area as national standards develop for technicians. Under the Act, trainees and technicians may develop their professional skills while enrolled in a CAAHEP-accredited program, while under the direct supervision of a licensed technologist and while under the general supervision of a physician. This requirement is similar to the Maryland requirement for trainees in respiratory therapy or nursing.
The bill received strong support in all stages from the Maryland Hospital Association and from lobbyists for individual hospital associations. They recognized that the bill would lead to improvements in patient care. Edward Grandi, executive director of the American Sleep Apnea Association, also spoke in favor of the Act in the Maryland House of Delegates. Some registered PSG technologists disagreed with the suggestions of the MSC and were represented separately in legislative negotiating sessions in 2005.

**The Road Ahead**

There was no opposition to the final draft of the bill that was submitted to the legislature in 2006, and this version of the bill was unanimously passed by the assembly on March 21 and the state senate on April 5. It awaits final signature by Governor Robert L. Ehrlich, Jr. Key to our success was the MSC’s ability to demonstrate the need for regulation during the 2006 legislative session and the legislation sponsor’s sincere commitment to seeing the bill through to enactment.

The Act includes a comprehensive description of the scope of service for PSG technologists, who perform duties that overlap in some areas with those of respiratory therapists, END technologists and dental hygienists. The scope of service protects sleep technologists as they properly perform duties in which they are trained and have expertise. The scope of service also restricts technologists from performing duties for which they are unqualified. Because the Act was designed to focus solely on professional standards for technologists, it does not address two issues of importance that remain for the profession to consider: The accreditation of facilities and questions concerning site of service, such as home testing.

Beginning in October 2009, all technologists will need to complete a sleep technology curriculum approved by CAAHEP and pass the RPSGT Examination in order to be licensed in Maryland. Until September 20, 2009, technologists can be licensed in Maryland if they pass the exam and receive certification from the BRPT.

We now have a little over three years to help our current technicians prepare for and pass the RPSGT Exam. We have about two years to establish and implement CAAHEP-approved educational and training programs. The support that the AASM provides to individual states has matured nicely during times of crisis, and we expect to draw on their support in the coming years. We also need to prepare for an increase in our single biggest expense: salaries. We will have to pay for the better-trained and more capable technologists who will provide improved patient care in Maryland. We think it’s a fair opportunity.

**Abbreviations**

Act: Maryland Polysomnography Act  
AASM: American Academy of Sleep Medicine  
APT: Association of Polysomnographic Technologists  
Bill: House Bill 957, the Maryland Polysomnography Act  
Board of Medicine: Maryland Board of Medicine  
BRPT: Board of Registered Polysomnographic Technologists  
CAAHEP: Commission on Accreditation of Allied Health Education Programs  
END: Electroneuro-diagnostic  
MSC: Maryland Sleep Consortium  
MD/DC Society for Respiratory Care: Maryland/District of Columbia Society for Respiratory Care Inc.  
PSG: Polysomnographic  
RPSGT™: Registered Polysomnographic Technologist