

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JUNE 15, 2020 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **ENVIRONMENTAL PROTECTION**

### **AIR QUALITY, ENERGY, AND SUSTAINABILITY**

#### **DIVISION OF CLIMATE, CLEAN ENERGY AND RADIATION PROTECTION**

##### **COMMISSION ON RADIATION PROTECTION**

###### **Radiation Protection Programs**

**Adopted Repeal and New Rule: N.J.A.C. 7:28-19.16**

**Adopted Amendments: N.J.A.C. 7:28-1.6, 12.13, 19.1 through 19.9, 19.14, 19.17, 24.11, 61.1, 64.2, and 64.10**

**Adopted New Rule: N.J.A.C. 7:28-19.17**

Proposed: December 2, 2019, at 51 N.J.R. 1731(a).

Adopted: May 19, 2020, by Catherine R. McCabe, Commissioner, Department of Environmental Protection, and May 20, 2020, by Julie Timins, M.D., Chairman, Commission on Radiation Protection.

Filed: May 20, 2020, as R.2020 d.061, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq., 26:2D-1 et seq., 26:2D-25 et seq., and P.L. 2017, c. 281.

DEP Docket Number: 05-19-10

Effective Date: June 15, 2020.

Expiration Date: February 19, 2027.

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The New Jersey Department of Environmental Protection (Department) and the Commission on Radiation Protection (Commission) are adopting three general categories of amendments. The first category implements recent amendments to the Radiologic Technologist Act, N.J.S.A. 26:2D-24 et seq., which created a new license category of radiologist assistant for licensed diagnostic radiologic technologists. The adopted amendments to N.J.A.C. 7:28-19 establish the educational and licensing requirements and identify the scope of practice for this new license category and establish a fee schedule for initial and renewal licensing. The adopted rules also establish requirements for radiologist assistant schools that assign students to New Jersey clinical education centers. The second category relates to the fee schedule for nuclear medicine technologists and fusion imaging computed tomography technologists at N.J.A.C. 7:28-24. The third category relates to the Nuclear Regulatory Commission requirements for Agreement States. The Department and the Commission are adopting amendments to the provisions incorporating 10 CFR Part 35, Medical Use of Byproduct Material, and 10 CFR Part 71, Packaging and Transportation of Radioactive Materials; and to add general provisions that are applicable to all incorporations of the Federal regulations into the chapter by reference, and that otherwise make the State's rules consistent with the Agreement States' rules. The Department and the Commission are also clarifying and correcting the fee schedule, cross-references, terminology, and the previous incorporations of Federal regulations by reference.

This rule adoption can be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

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**Summary** of Public Comments and Agency Responses:

The Department and the Commission received written comments on the proposed amendments from the following persons:

1. Adrienne Ianora, Memorial Sloan Kettering Cancer Center
2. Maria LaGatta
3. Tashika Matthews
4. Gladys Montane, Rutgers University
5. Chirag Patel
6. Jerry Reid, The American Registry of Radiologic Technologists

A summary of the comments timely submitted, and the agency's responses follow. The number(s) in parentheses after each comment correspond to the commenter(s) listed above:

**General Comments**

1. COMMENT: The Department and the Commission are commended for establishing the license category of radiologist assistant in New Jersey. (1 through 6)
2. COMMENT: Licensure of radiologist assistants will help educational programs in New Jersey and other states by creating an opportunity for work in New Jersey. (5)
3. COMMENT: Radiologist assistants must complete a rigorous academic program including a nationally recognized curriculum, a radiologist-directed clinical preceptorship, and a mandatory

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national certification. They always practice under the direct supervision of a radiologist, thus ensuring the continuation of high-quality care. The advanced education and training of radiologist assistants enable them to perform assessments and procedures, but not to perform final interpretation of images, or prescribe medications or therapies. Radiologist assistants allow radiologists to focus on interpretations and complex cases, and to consult with referring physicians, thus enhancing patient safety and outcomes. The Department and the Commission are right to establish the educational and licensing requirements for these professionals. (6)

4. COMMENT: There is an increasing number of radiological procedures performed and reviewed by radiologists. Licensed radiologist assistants are needed to assist radiologists by performing invasive and non-invasive procedures. The use of radiologist assistants increases the productivity of radiologists, prevents physician burnout, and improves the workflow. (2, 3, and 5)

5. COMMENT: The recognition of the radiologist assistant program through the American Registry of Radiologic Technologists (ARRT) is an effective way to recognize and reduce redundancy and expense to school. (4)

RESPONSE TO COMMENTS 1 THROUGH 5: The Department and the Commission acknowledge the commenters' support for the proposed rules.

#### **N.J.A.C. 7:28-19.3 General provisions**

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6. COMMENT: The radiologist assistant rules are appropriate. The radiologist assistant should be able to practice under the American Registry of Radiologic Technologists (ARRT) license in New Jersey. (1)

RESPONSE: The Department and the Commission acknowledge the commenter's support for the proposed rules. Note, however, that the ARRT does not license radiologist assistants. The ARRT certifies individuals who are qualified to perform the role of a radiologist assistant, but individual states issue licenses to practice. Obtaining and maintaining ARRT certification (or certification by another national certification body approved by the Board) are among the requirements for licensure as a radiologist assistant, set forth at N.J.A.C. 7:28-19.3(a)3. The individual must also possess a valid license in diagnostic radiologic technology.

**N.J.A.C. 7:28-19.17 Radiologist assistant schools and Clinical Education Centers**

7. COMMENT: Proposed N.J.A.C. 7:28-19.17(e)5 requires radiologist assistant schools to inform the Department of the location where the radiologist assistant student will be assigned for clinical education. Please clarify whether the Department wants to be informed of radiologist assistant student clinical assignments that do not occur in New Jersey. (4)

RESPONSE: Proposed N.J.A.C. 7:28-17(a) requires a school that assigns a student to a New Jersey clinical education center to be Board-recognized. Proposed subsections (b), (c), (g), and (h) describe the process for a school to obtain and maintain Board recognition, and the relief that is available if recognition is denied. Under proposed subsection (i), the Department will make a list of Board-recognized schools. Board recognition is not required if a school sends

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students only to out-of-State clinical education centers. Out-of-State clinical education centers must comply with the requirements of the state in which they are located. The Department intended that proposed subsections (e) and (f) also apply only to those schools that assign students to clinical education centers in New Jersey, and to those clinical education centers. The Department and the Commission are modifying N.J.A.C. 7:28-19.17(e) and (f) on adoption to reflect that intent.

8. COMMENT: Proposed N.J.A.C. 7:28-19.17(e)6iii provides that once a student who is determined to be clinically competent in a given delegated fluoroscopic procedure, the student may perform the procedure without direct (in-room) supervision. This is an appropriate provision, because the students go through rigorous didactic training and are required by the program to observe, participate, and perform under direct supervision until the radiologist has deemed them competent. (4)

RESPONSE: The Department and the Commission acknowledge the commenter's support for the rule. Note, however, that the New Jersey Board of Medical Examiners (BME) has the authority to promulgate rules establishing the scope of practice of a radiologist assistant, including the degree of supervision required. Therefore, this lesser degree of supervision is permitted only if the rules of the BME allow it. If the BME's rules do not provide for indirect supervision, then all delegated fluoroscopic procedures must be performed under direct supervision, notwithstanding the competency level of the student.

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Also note that, as the Department stated in the notice of proposal, 51 N.J.R. at 1733, until the BME promulgates rules establishing the scope of practice and required level of supervision, the Department will not accept applications for radiologist assistant licenses.

### **Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The adopted new rules, amendments, and repeal at N.J.A.C. 7:28-19 and 24 are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Therefore, no further analysis is required.

Amendments to the Agreement State program, N.J.A.C. 7:28-1.6, 61.1, 64.2, and 64.10, are adopted in order to comply with Federal requirements for Agreement States. Therefore, they are consistent with, and do not exceed, Federal standards. No further analysis is required.

**Full text** of the adoption follows (additions to the proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

7:28-19.17 Radiologist assistant schools and clinical education centers

(a) – (d) (No change from proposal.)

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(e) Any radiologist assistant school that assigns radiologist assistant students to a clinical education center **\*in New Jersey\*** shall:

1. (No change from proposal.)
2. Ensure that **\*[all assigned students possess and maintain] \* \*each student assigned to New Jersey clinical education centers possesses and maintains\*** a valid diagnostic radiologic technology license issued by the Board;
3. Develop and implement a log to track fluoroscopic procedures that are performed by each radiologist assistant student **\*assigned to a New Jersey clinical education center\***. This log shall include, but not be limited to, the name of the student, the procedure performed, the name of the supervisor responsible for the procedure, the type of supervision provided, and the fluoroscopic time used. The school shall ensure that the log is reviewed at least weekly by the supervising radiologist. If a trend of unexplained high use of fluoroscopic time is identified, the school shall ensure that corrective action by the supervising radiologist is implemented and recorded in the student's file;
4. Develop and implement **\*for each student assigned to a clinical education center in New Jersey\*** an educational plan for competency-based clinical education, which shall include, but not be limited to, didactic and laboratory instruction, clinical practice, clinical competency testing, and remediation for failed competency evaluations. The school shall ensure that no person other than a radiologist determines clinical competency;
5. Prior to the start of the assignment **\*at a clinical education center in New Jersey\***, inform the Department of the location where the radiologist assistant student will be assigned



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for clinical education, the name of each supervising radiologist, and the length of the assignment;

6. Ensure that **\*[all assigned]\* \*each\* radiologist assistant student\*[s]\* \*assigned to a clinical education center in New Jersey\*** perform delegated fluoroscopic procedures, as prescribed below, under the appropriate level of supervision of a radiologist or a radiologist assistant:

i.-iii. (No change from proposal.)

7. Provide remedial instruction **\*to a radiologist assistant student assigned to a New Jersey clinical education center\*** for any procedure that is performed by a radiologist assistant student and found to be unacceptable by the supervising radiologist or radiologist assistant. If the student's performance of the procedure is determined to be unacceptable after a student has been determined to be clinically competent, the school shall ensure that the student's performance of the procedure is directly supervised as required pursuant to (e)6ii above until a radiologist determines that the student is clinically competent to perform that procedure. All remedial instruction shall be documented in the student's file.

(f) A clinical education center **\*in New Jersey\*** that provides clinical education to radiologist assistant students shall comply with (e)2 through 7 above. **\*An out-of-State clinical education center that provides clinical education to radiologist assistant students from a New Jersey radiologist assistant school shall comply with the requirements of the state in which it is located.\***

(g)-(j) (No change from proposal.)