

## STATE ACTS AND REGULATIONS ON IMAGING: MASSACHUSETTS

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### Introduction

APTA supports the ability of physical therapists to order appropriate tests as part of their diagnostic process. This includes ordering imaging studies that are performed and interpreted by other health professionals, as well as performing or interpreting selected imaging or other studies. One aspect of achieving this goal is at the state level, under jurisdictional scope of practice. This includes not only the physical therapist scope of practice, but other provider and facility laws that may come into play. To help identify potential hurdles, APTA conducted an environmental scan of 25 selected states. The purpose is to identify any statutory considerations, as well case law and attorney general opinions that may impact the ability of APTA chapters to pursue legislative efforts on this issue.

### Summary

The Massachusetts General Laws appear to be silent on the scope of practice of physical therapists regarding imaging. Massachusetts law does provide that physical therapy includes “the performance and interpretation of tests as an aid to the diagnosis or planning of treatment programs.” Massachusetts General Laws require that a person performing diagnostic radiology imaging be certified as a radiation technologist. The Massachusetts Code governing the scope of practice of chiropractors allows chiropractors to order, perform, and interpret radiology. The Massachusetts Code governing reimbursement of the Massachusetts Medicaid Program, MassHealth, mandates that only treating clinicians can provide prior authorization of radiology and order diagnostic radiological tests.

### Physical Therapy Practice Act and Regulations

Massachusetts states: “[p]hysical therapy’ [is] a health profession that utilizes the application of scientific principles for the identification, prevention, remediation and rehabilitation of acute or prolonged physical dysfunction thereby promoting optimal health and function. Physical therapy practice is evaluation, treatment and instruction related to neuromuscular, musculoskeletal, cardiovascular and respiratory functions. Such evaluation shall include but is not limited to performance and interpretation of tests

as an aid to the diagnosis or planning of treatment programs. Such treatment shall include but is not limited to the use of therapeutic exercise, physical activities, mobilization, functional and endurance training, traction, bronchopulmonary hygiene postural drainage, temporary splinting and bracing, massage, heat, cold, water, radiant energy, electricity or sound. Such instruction shall include teaching both patient and family physical therapy procedures as part of a patient's ongoing program. Physical therapy also shall include the delegating of selective forms of treatment to physical therapist assistants and physical therapy aides; provided, however, that the physical therapist so delegating shall assume the responsibility for the care of the patient and the supervision of the physical therapist assistant or physical therapy aide." *MGLA ch 112 § 23A (LexisNexis 2005)*

It further states: "[n]othing in this section shall be construed as authorizing an athletic trainer, occupational therapist, occupational therapy assistant, physical therapist, or physical therapist assistant to practice medicine or any other form or method of healing not specified in said section." *MGLA ch 112 § 23L (LexisNexis 2005)*

### **Non-Physical Therapist Practice Acts and Regulations**

The Massachusetts Regulations of the Board of Registration in Medicine (243 CMR 2.01) state: "[t]he Practice of Medicine means the following conduct, the purpose or reasonably foreseeable effect of which is to encourage the reliance of another person upon an individual's knowledge or skill in the maintenance of human health by the prevention, alleviation, or cure of disease, and involving or reasonably thought to involve an assumption of responsibility for the other person's physical or mental well-being: diagnosis, treatment, use of instruments or other devices, or the prescribing, administering, dispensing or distributing of drugs for the relief of diseases or adverse physical or mental conditions. (a) A person who holds himself or herself out to the public as a physician or surgeon, or with the initials "M.D." or "D.O." in connection with his or her name, and who also assumes responsibility for another person's physical or mental well-being, is engaged in the practice of medicine. (b) The Practice of Medicine includes the following: 1. Telemedicine, as defined in 243 CMR 2.01: Telemedicine; and 2. Providing an independent medical examination or a disability evaluation. (c) The practice of medicine does not mean the following: 1. Conduct lawfully engaged in by persons licensed by other boards of registration with authority to regulate such conduct; or 2. Assistance rendered in emergency situations by persons other than licensees." *243 CMR § 2.01 (4) (LexisNexis 2012)*

The Massachusetts Regulations for the Control of Radiation state: "Healing Arts Screening means the testing of human beings using x-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized by the

Commonwealth of Massachusetts to prescribe such x-ray tests for the purpose of diagnosis or treatment.” *105 CMR 120.402 (LexisNexis 2016)*

The regulations further state: “Any person proposing to conduct a healing arts screening program shall not initiate such a program without prior approval of the Radiation Control Program. When requesting such approval, that person shall submit the information outlined in 105 CMR 120.421: *Appendix B*. If any information submitted to the Radiation Control Program becomes invalid or outdated, the Radiation Control Program shall be immediately notified.” *105 CMR § 120.403(A)(7) (LexisNexis 2016)*

Additionally, the regulations provide that “[t]he registrant shall be responsible for directing the operation of the x-ray system(s) under his administrative control. The registrant or the registrant's agent shall assure that the requirements of 105 CMR 120.403(A)(1) are met in the operation of the x-ray system(s)...(b) Individuals who shall be operating the x-ray systems shall meet the requirements of 105 CMR 125.000: Licensing of Radiologic Technologists. *105 CMR § 120.403 (A) (1) (b) (LexisNexis 2016)*

The Massachusetts Radiation Technologist Licensure Act states: “[t]o practice Radiologic Technology in the Commonwealth of Massachusetts, an individual must: (1) Be currently certified or registered by a Board recognized by the Department, as specified in 105 CMR 125.005(C); and (2) obtain a Radiologic Technologist license from the Department. (B) An applicant for a license shall submit to the Department by hand delivery or by mail: (1) A completed application on a form provided by the Department; (2) a copy of the current Board certification or registration; and (3) the appropriate fee established by the Executive Office of Administration and Finance. (C) The following national or international certifying boards are recognized by the Department: American Registry of Radiologic Technologists[,] American Society of Clinical Pathologists[,] Australian Institute of Radiography[,] British College of Radiographers[,] Canadian Association of Medical Radiologic Technologists[,] Certification Board for Radiology Practitioner Assistants[,] Nuclear Medicine Technologists Certification Board or other such boards recognized by the Department.” *105 CMR 125.005 (LexisNexis 2016)*

The standards of practice and professional conduct of the Board of Registration of Chiropractors states: “[a] chiropractor who is duly registered with the Board may perform any and all procedures, functions and services which are included within the definition of ‘Chiropractic’ as set forth in MGL c 112, § 89. Such procedures, functions and services include: (a) Examining, evaluating, and diagnosing patients of all ages for the purpose of determining the presence or absence of illnesses, injuries, conditions or disorders including, but not limited to, the vertebral subluxation complex/segmental and somatic dysfunction; (b) Ordering, performing and/or interpreting laboratory, radiological, electrodiagnostic or any other diagnostic studies for which the chiropractor has been appropriately trained by a college of Chiropractic which is accredited by the

Council on Chiropractic Education, or its equivalent, as defined in 233 CMR 2.01...” 233  
*CMR 4.01 (1)(a-b) (LexisNexis 2017)*

The Massachusetts Nurse Practice Act states: “A nurse practitioner or psychiatric nurse mental health clinical specialist may issue written prescriptions and order tests and therapeutics pursuant to guidelines mutually developed and agreed upon by the nurse and the supervising physician in accordance with regulations promulgated jointly by the Board and the Board of Registration in Medicine after consultation with the Board of Registration in Pharmacy. A prescription made by a nurse practitioner or psychiatric nurse mental health clinical specialist shall include the name of the physician with whom such nurse has developed and signed mutually agreed upon guidelines approved by said Board and said Board of Registration in Medicine pursuant to section eighty B.”  
*MGLA ch112 § 80(E) (LexisNexis 1992)*

### **Attorney General Opinions**

No attorney general opinions on point were identified.

### **Case Law**

No jurisdictional case law on point was identified.

### **Acts and Regulations Relating to the Governance of Hospitals**

The MassHealth Provider Regulations for Independent Diagnostic Testing Facilities (IDTF) provides that “[t]he member’s treating clinician must order all diagnostic tests. The supervising physician for the IDTF, whether or not for a mobile unit, may not order tests to be performed by the IDTF, unless the supervising physician is the member’s treating physician and is not otherwise prohibited from referring to the IDTF. The supervising physician is the member’s treating physician if he or she furnishes a consultation or treats the member for a specific medical problem and uses the test results in the management of the member’s medical problem. (A) Order Requirements. (1) a testing facility that furnishes a diagnostic test ordered by the treating clinician may not change the diagnostic test or perform an additional diagnostic test without a new order. (2) an order is a communication from the treating clinician requesting that a diagnostic test be performed for a member. The order may conditionally request an additional diagnostic test for a particular member if the result of the initial diagnostic test ordered yields to a certain value determined by the treating clinician (e.g., if test X is negative, then perform test Y). An order may include the following forms of communication: (a) a written document signed by the treating clinician, which is hand-

delivered, mailed, or faxed to the testing facility; or (b) a telephone call by the treating clinician to the testing facility. (B) If the order is communicated via telephone or electronic message, the treating clinician and the testing facility must document the telephone call or electronic message in their respective copies of the member's medical records." *130 CMR 431.409 (LexisNexis 2006)*

The regulations further state: "[An] Independent Diagnostic Testing Facility (IDTF) [is] a Medicare-certified diagnostic imaging center, freestanding MRI center, portable X-ray provider, sleep center, or mammography van, in a fixed location or mobile entity, that is physically and financially independent of a hospital or physician's office, and performs diagnostic tests. These tests must be performed by a physician or by licensed, certified nonphysician personnel under appropriate physician supervision and comply with the applicable laws of any state in which it operates." *130 CMR 431.402 (LexisNexis 2006)*

The regulations also provide that "[a] Treating Clinician [is] a physician (as defined in 42 U.S.C. 1395x(r)) or nurse practitioner, clinical nurse specialist, or physician assistant (as defined in 42 U.S.C. 1395x(s)(2)(K)) who furnishes a consultation or treats a member for a specific medical problem, and who uses the result of a diagnostic test in the management of the member's specific medical problem." *130 CMR 431.402 (LexisNexis 2006)*