

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 5-6-21
To: Transportation Committee
From: Sam Prawer, Legislative Analyst

[LD 1398 – An Act To Change Driver's License Requirements for Obstructive Sleep Apnea](#) [LD 1359 – An Act To Change Driver's License Requirements Regarding Sleep Apnea](#)

SUMMARY:

These bills prohibit the Secretary of State from refusing to issue, refusing to renew or suspending a Class C driver's license for the medical reason of obstructive sleep apnea, including because the applicant or holder is nonresponsive or nonadherent to sleep apnea therapy, if the applicant or holder does not have a history of falling asleep while driving, a recorded accident or a near miss caused by excessive drowsiness or a traffic violation caused by excessive drowsiness.

These two bills contain identical language.

TESTIMONY:

Proponents: <i>Sen. Bennett, Rep. Wadsworth, David Lynch, Kenneth Capron, Denis Landry, Matt Marks</i>	Opponents: <i>Bureau of Motor Vehicles,</i>
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CURRENT STATUTE OR LAW:

- [Bureau of Motor Vehicles Rules](#)

INFORMATION FROM BMV:

Currently, Title 29A provides for a body of medical professionals that serve the Secretary of State in an advisory capacity and who are charged with developing written medical and vision standards related to operator's licensing. These standards are outlined in [Chapter 3, Physical, Emotional and Mental Competence to Operate a Motor Vehicle](#) and are referred to as the Functional Ability Profiles (FAP). These rules establish a reporting system that requires persons to submit medical information to the Secretary of State and provides medical professionals with guidance for the submission of such information. As noted in statute these standards may only be adopted by rule.

The most recent revisions (first since 1995) were made in 2016 to reflect current medical standards and recommendations for driving based on literature review and clinical expertise. The MAB is currently working on the next revision. The new draft will provide more clear guidance when reviewing individuals with complex or mixed sleep apneas, including central sleep apnea. The draft proposed changes will address some newer treatment modalities, require persons using dental devices to have periodic review to determine effectiveness of treatment, and lengthen the interval for review of persons who demonstrate effective treatment and adherence to treatment with no near miss or accidents of concern. For these individuals, the interval for review will be extended from one year to three years. The new rules will also allow clinicians to use some judgement when managing patients with an Apnea-Hypopnea Index (AHI) greater than 15. This group of drivers will require review each year. The sleep apnea

subcommittee is making a concerted effort to consider the least restrictive guidelines and allow driving for the greatest number of people, while still taking highway safety into consideration. This group consists of four physicians who specialize in sleep medicine and related fields.

TECHNICAL ISSUES:

- **The first paragraph of the bill would be more clear with the following changes:**
“The Secretary of State may not refuse to issue, refuse to renew or suspend a Class C license for the medical reason of obstructive sleep apnea, including because the license applicant or holder is nonresponsive or nonadherent to sleep apnea therapy, ~~if the applicant or holder does not have~~ unless the applicant has.”
- **Unclear term.** What does it mean to have “excessive drowsiness?” Who is it that makes this determination? How is this documented?

OTHER ISSUES:

- **Nonresponsive or nonadherent.** Who determines whether the person is nonresponsive or nonadherent to sleep apnea therapy? Are medical records submitted to the BMV?
- **History of falling asleep while driving.** Who makes this determination? How often must it have happened? How is this documented?

FISCAL IMPACT:

Fiscal impact not yet determined.