



October 22, 2020

AB 890 Allows Nurse Practitioners Greater Independence

Assembly Bill (AB) 890 (Wood, D-Santa Rosa), which was signed into law on Sept. 29, will authorize a nurse practitioner who meets certain requirements to practice without physician supervision. This will improve access to health care by allowing nurse practitioners greater freedom and flexibility to practice in communities with insufficient primary care services.

AB 890 creates two new subcategories of NPs who are not required to be supervised by physicians or subject to standardized procedures. NPs who choose to continue to practice under these requirements remain free to do so, but AB 890 creates a new baseline scope of practice free of these constraints for NPs who qualify for and choose to avail themselves of the options provided by AB 890.

The first subcategory created by the bill (which will be in Business and Professions Code § 2837.103) will allow NPs meeting specified requirements to practice autonomously (without standardized procedures or physician supervision) in six specified health care settings. The required education and training includes:

- Passing a national board certification examination and any supplemental examination required by the Office of Professional Examination Services of California's Department of Consumer Affairs
- Maintaining an NP certificate from a national certifying body
- Proof of educational training consistent with Board of Registered Nursing (BRN) standards and any applicable regulations specifically relating to requirements for clinical practice hours
- Completing a "transition to practice" in California of three full-time employee years of practice or 4,600 hours

NPs in this category will be authorized to practice in six health care settings in which one or more physicians also practice: hospitals and other health facilities (with the exception of correctional treatment centers and state hospitals), clinics, medical group practices, county medical facilities, home health agencies, and hospices. AB 890 expressly prohibits these entities from interfering with, controlling, or otherwise directing the professional judgment of these NPs in a manner prohibited by Business and Professions Code section 2400 or any other law.

With respect to health care agencies that have governing bodies, such as hospitals, NPs practicing under this section will be required to adhere to all applicable bylaws and will be eligible to serve on medical staff and hospital committees. They will also be eligible to serve on medical staff and hospital committees and to attend meetings of the department to which they are assigned. However, these NPs will not be allowed to vote at department, division, or other meetings unless the vote is regarding the determination of NP privileges with the organization, peer review of NP clinical practice, whether a licensee's employment is in the best interest of the communities served by a hospital, or the vote is otherwise allowed by the bylaws (Business and Professions Code §§ 2401, 2041).

NPs practicing under section 2837.103 will be permitted to perform specified functions beyond the ordinary nursing scope. This includes:

- Conducting an advanced assessment
- Ordering, performing, and interpreting diagnostic procedures
- Establishing primary and differential diagnoses
- Diagnosing, prescribing, and instituting therapy or referrals of patients
- Prescribing, administering, dispensing, and furnishing pharmacological agents, including controlled substances
- Planning and initiating a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions
- Certifying disability under the Unemployment Insurance Code
- Delegating tasks to a medical assistant

These NPs are required to refer a patient to a physician or other licensed health care provider if a patient's situation or condition is beyond the scope of the NP's education and training.

Starting Jan. 1, 2023, AB 890 will create a second subcategory of NPs who can practice outside the six settings listed above. In what will be Business and Professions Code section 2837.104, the bill will authorize certification of NPs to practice autonomously and perform the functions described above in settings where physicians do not practice. Having such a certificate would allow NP entrepreneurs to establish their own individual or group practices without physician ownership, control, or supervision.

To be eligible for such certification, in addition to meeting the training and certification requirements outlined above, the NP must also have a master's degree in nursing or a related clinical field or a doctoral degree in nursing, and have an additional three years of licensed practice. Such NPs, consistent with applicable standards of care, shall not practice beyond the scope of their clinical and professional education and training, including specific areas of concentration, and shall only practice within the limits of their knowledge, experience, and national certification. They must also consult and collaborate with other healing arts practitioners based on the clinical condition of the patient. These NPs must also establish a plan for referring complex cases and emergencies to a physician or other appropriate healing arts practitioner and have an identified referral plan that meets specified criteria.

NPs practicing under section 2837.104 shall be eligible for membership in an organized medical staff and to vote at meetings of the department to which NPs are assigned (subject to any applicable conflict of interest policies).

Both subcategories of NPs practicing under AB 890 must meet certain patient notification and other disclosure requirements and maintain professional liability insurance. They (along with certified nurse-midwives) are also added to the list of professionals subject to California's self-referral law. See Business and Professions Code sec. 650.01(b)(4)(B)-(C). The bill also extends to NPs practicing under it the reporting requirements under Business and Professions Code section 805 when actions are taken against a their privileges for a "medical disciplinary cause or reason" or when the NP takes certain actions (resignation, withdrawal of application for privileges, etc.) while under investigation for a medical disciplinary cause or reason. However, AB 890 does not extend to these NPs any hearing rights under Business and Professions Code sections 809 et seq.

Finally, AB 890 imposes certain changes and duties on the BRN. These include:

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- Establishing a Nurse Practitioner Advisory Committee to advise and make recommendations to the BRN on all matters relating to NPs, including education, appropriate care standards, and guidance on disciplinary action considered against an NP. This committee will be composed of four NPs, two physicians and surgeons with experience working with NPs, and one public member.
 - Defining minimum standards and requirements for the “transition to practice” clinical experience required for NPs under the bill, which may include experience obtained before Jan. 1, 2021, if it meets the requirements established by the BRN.
 - Requiring that it request the Office of Professional Examination Services (or an equivalent organization) to perform an occupational analysis of NPs performing certain functions and would require the BRN to identify and assess the alignment of the competencies tested in the national NP certification examination with this occupational analysis. If appropriate, the BRN shall identify and develop a supplemental exam that properly validates identified competencies.