HEALTH CARE LEGISLATIVE UPDATE: Winds of Change Impact Mid-Level Providers

Significant Differences Remain Between Physician Assistants and Nurse Practitioners

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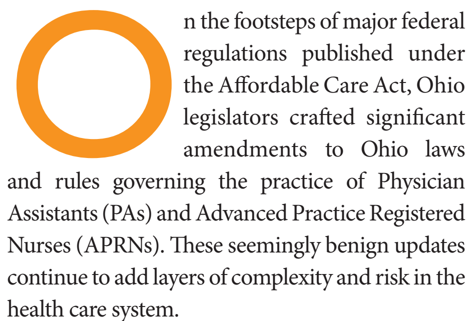

On the footsteps of major federal regulations published under the Affordable Care Act, Ohio legislators crafted significant amendments to Ohio laws and rules governing the practice of Physician Assistants (PAs) and Advanced Practice Registered Nurses (APRNs). These seemingly benign updates continue to add layers of complexity and risk in the health care system.

Although commonly referred to collectively as mid-level providers, non-physician providers (NPPs), or physician extenders, PAs and APRNs represent two discrete professions that fall under the jurisdiction of separate regulating bodies, the State Medical Board (the "Board) and the Board of Nursing respectively. PAs and APRNs must comply with separate laws and regulations in terms of education, training, licensing, scope of practice, prescriptive authority, physician supervision/collaboration, professional liability, and billing. Health care providers should carefully monitor legislative changes and assess compliance separately for PAs and APRNs. As the market for NPPs heats up amidst a primary care physician shortage, employers who best understand similarities and differences between PAs and APRNs will be able to strategically staff and retain NPPs to best fit their needs and budgets.

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Senate Bill 110, Effective October 15, 2015

The most significant piece of legislation affecting NPPs is Senate Bill 110 (S.B. 110" or the "Bill). Signed into law by Governor Kasich on July 16, 2015 and effective as of October 15, 2015, the Bill enacts five new sections of the Ohio Revised Code, repeals over a dozen sections, and amends not less than fifty other sections. The two most important aspects of S.B. 110 are the modernization of Chapter 4730 of the Ohio Revised Code, which governs all PAs, and the new delegation rules for PAs and NPs with prescriptive authority. NPPs, employers, hospitals, and payors should closely follow these developments to avoid any potential issues with billing, credentialing, and risk management. Further, industry stakeholders such as laboratories, hospitals, physicians, and payors should take notice that S.B. 110 does not only affect NPPs: it contains important prohibitions pertaining to billing for anatomic pathology services rendered by physicians (*See R.C. 4731.72*).

Physician Assistants – Chapter 4730, A Momentous Makeover

Ohio laws pertaining to PAs received a major facelift with S.B. 110. The changes are broad and detailed – employers and facilities should examine all sections of Chapter 4730 and immediately update their credentialing processes. Some of the most impactful changes under S.B. 110 affect PAs' autonomy. Although PAs must continue to work under the supervision of a physician(s), supervising physicians no longer have to regularly review the condition of patients treated by PAs. PAs no longer have to clearly identify the supervising physician on medical orders.

Supervising physicians must still file a *supervision agreement* with the Board but such filing is free and automatically takes effect on the fifth day after submission unless the Board notifies the supervising physician that the agreement is defective. Once in effect, the supervision agreement is valid for two years, unless amended or rescinded by the supervising physician. Physicians may supervise up to three PAs (up from two). The physician is liable for maintaining the supervision agreement and may face a civil penalty of up to $1,000 for non-compliance. If the PA practices in a health care facility, the supervising agreement must stipulate that the PA is to comply with all facility policies. PAs practicing outside health care facilities no longer have to file a Board-approved *supervisory plan*; the supervision agreement suffices, provided it contains the following elements: a description of the physician's responsibilities; a description of the PA's responsibilities when performing services under the supervising physician and any limitations thereof; circumstances requiring the PA to refer a patient to the supervising physician; and

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the names, business addresses, and telephone numbers of any alternate supervising physicians the supervising physician desires to designate.

S.B. 110 replaces the PAs' certificate to practice with a license and eliminates the certificate to prescribe in favor of a prescriber number issued by the State Medical Board. PAs with a valid prescriber number may exercise physician-delegated prescriptive authority, with one limitation: the physician must exercise on-site supervision for the first 500 hours, unless the PA practiced with prescriptive authority in another jurisdiction for at least 1,000 hours. The supervising physician is liable for maintaining logs and records of the supervised hours.

Mid-Level Providers – Variations in Scope of Practice

Employers and facilities should ensure they understand the scope of practice of each NPP. Failure to properly delineate the NPP's scope of practice may trigger licensing issues for the NPP, as well as accreditation, billing, and liability problems for the employer or facility. For instance, an employer may have to self-disclose and repay Medicaid if an NPP provided services to young children but was only authorized to see adults and adolescents.

The range of services PAs and APRNs respectively provide considerably overlaps. Yet, direct comparisons of their scope of practice are difficult and risky, in part due to differences in educational background, training, licensing, and specializations, but mainly due to the foundational philosophies behind each of the professions. PAs are medical professionals who always work under the supervision of one or several physicians. They are by nature physician extenders. APRNs on the other hand merely collaborate with one or several physicians. They are Registered Nurses (RNs) with a master's degree or doctorate in advanced practice nursing who can work and bill independently from physicians. Unlike PAs, APRNs can be self-employed.

S.B. 110 revamps the scope of practice of PAs. They can perform a pre-defined list of services if such services are part of the normal course of practice and expertise of their supervising physician: (1) ordering diagnostic, therapeutic, and other medical services; (2) prescribing physical therapy or occupational therapy, or referring a patient to a physical therapist or occupational therapist; (3) taking any action that may be taken by an attending physician regarding Do-Not Resuscitate (DNR) Identification and Orders; (4) determining and pronouncing death; (5) assisting in surgery; (6) ordering, prescribing, personally furnishing, and administering drugs and medical devices if the PA has physician-delegated prescriptive authority; (7) administering local anesthesia; (8) delegating tasks to implement a patient's plan of care if certain conditions are met; (9) delegating drug administration; (10) ordering and supervising respiratory care; and (11) performing any other services that are part of the supervising physician's normal course of practice and expertise — a convenient "catch-all" category, which significantly broadens the scope of services PAs may perform and eliminates the requirement to obtain Board approval to provide services not specifically listed.

S.B. 110 does not affect the scope of practice of APRNs. Unlike with PAs, Ohio law does not list the services APRNs may perform but rather places the burden on APRNs and employers to determine whether a service falls within the scope of practice based on education, certification, training, experience, and the standard care arrangement with the collaborating physician(s).

New Delegation Rules for Certain Tasks and Medication Administration.

S.B. 110 significantly broadens the delegation powers of NPPs. The Bill allows PAs to delegate tasks to implement a patient's plan of care to any person, including unlicensed individuals, if the following three conditions apply: the PA is physically present onsite; the task is appropriate for the patient; and the person to whom the delegation is to be made may safely perform the task.

S.B. 110 adds PAs to the list of individuals who may direct a Licensed Practical Nurse (LPN) to perform nursing care. This noteworthy addition allows PAs to direct LPNs to administer IV therapy, a privilege previously reserved to physicians, dentists, optometrists, podiatrists, and RNs.

Further, S.B. 110 allows PAs with prescriptive authority to delegate drug administration to any person, including unlicensed individuals, *in outpatient non-emergency settings*, if the above three conditions are met and the drug is listed on the State formulary, is not a controlled substance, and will not be administered intravenously (*See R.C. 4730.203*). The Bill provides similar delegation authority to APRNs with prescriptive authority under certain conditions (*See R.C. 4723.48*).

Liability of Supervising Physicians – PAs Only

S.B. 110 reaffirms the vicarious liability of supervising physicians for PAs, and only PAs. This is a key difference between PAs and APRNs. A physician, who *supervises* a PA is legally responsible for the acts or omissions of the PA and assumes legal liability for the services provided by the PA. Ohio law requires that such legal responsibility and assumption of liability be expressly stated in each supervision agreement. This is not the case with APRNs, whose *collaborating* physicians do not assume any vicarious liability for the acts or omissions of the APRN.

S.B. 110 is a major piece of legislation that highlights the need for employers and facilities to better understand the duties and responsibilities associated with NPPs. Other changes are on the horizon at the state and federal level, particularly in the area of telemedicine. PAs and APRNs cannot be lumped under one category for credentialing and compliance purposes. Providers should weigh all factors, including but not limited to scope of practice, training, specialty, billing, liability, etc. before making hiring decisions.

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