Laws & Regulations Governing CRNA Practice in Massachusetts

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AANA defines CRNA Scope of Practice to include, but not limited to…

- performing a comprehensive history and physical
- conducting a pre-anesthesia evaluation
- obtaining informed consent for anesthesia
- selecting, ordering, prescribing and administering drugs and controlled substances
- provide acute, chronic and interventional pain management services critical care and resuscitation services
- order and evaluate diagnostic tests; request consultations; and perform point-of-care testing
- plan and initiate anesthetic techniques, including general, regional, local, and sedation
- facilitate emergence and recovery from anesthesia; and provide post-anesthesia care, including **medication management**, conducting a post-anesthesia evaluation, and discharge from the post-anesthesia care area or facility

AANA describes CRNA Scope of Practice determined by…

- Experience
- Education
- Board Certification
- State and Federal Law (licensure)
- Facility Policy

CRNA Practice in Massachusetts is Governed and Regulated by

1. Statute
   - Massachusetts General Laws (MGLs)
     - Laws are passed by the Massachusetts Legislature

2. Code of Massachusetts Regulations (CMRs)
   - Based on MGLs, the Department of Public Health (DPH) and Board of Registration ensures public health, safety and welfare by issuing and regulating all licensed disciplines

CRNA Practice Laws and Regulations in Massachusetts at a glance

Nurse Practice Act

1. **Statute: Massachusetts General Laws related to APRN practice**
   - MGL 112 Section 80B
   - MGL 112 Section 80H

2. **Board of Registration in Nursing (BORN)**
   - APRN regulations are found in the Code of Massachusetts Regulations at **244 CMR 4.00**

Chapter 94C: The Controlled Substance Act & Department of Public Health (DPH)

MGL 94C (Controlled Substance Act)

- A law that regulates the safe prescribing and dispensing of controlled substances
- All prescription medications are considered controlled substances in Massachusetts
- CRNAs who want to write orders/prescriptions are required to register as a prescribing practitioner in order to distribute, dispense, administer controlled substances

Department of Public Health (DPH)

- Regulations for safe handling of prescription medications and requirements for prescriptive practice are found at **105 CMR 7.00**

The Acts of 2020 Chapter 260 Section 36 An Act Promoting a Resilient Health Care System that Puts Patients First

was passed and signed into law January 1, 2021

Major changes to APRN Prescriptive Authority

- In accordance with the new law, updates to APRN Prescriptive Practice regulations at 244 CMR 4.00 include:
    - Eligibility for independent prescriptive practice for APRNs with a minimum of two years of supervised prescriptive practice by a Qualified Healthcare Professional (QHP)
    - A definition of Qualified Healthcare Professional that included APRNs in addition to physicians as eligible to supervise APRNs with less than 2 years of prescriptive practice
    - Specific qualifications for physician and APRN QHPs. New minimum criteria for the mutually agreed upon guidelines which must be in place during the period of supervised prescriptive practice.

Nurse Practice Act
1) Statute: Massachusetts General Laws

- **MGL 112 Section 80B**
  - Defines the requirements to practice as a nurse (including advanced practice) in Massachusetts
  - **Massachusetts licenses 5 categories of advanced practice registered nurses (APRNs)**
    - **CRNAs**, Nurse Practitioners, Nurse Midwives, Psychiatric Clinical Nurse Specialists, Certified Nurse Specialists
  - Requires the BORN to promulgate advanced practice nursing regulations that govern the provision of advanced practice nursing services including prescriptive authority

There are NO Massachusetts laws that require physician supervision of CRNAs to administer anesthesia

Nurse Practice Act
1) Statute: Massachusetts General Laws (cont'd)

- **MGL 112 Section 80H**
  - **Describes the requirements for CRNA Prescriptive Authority**
    - CRNAs may issue written prescriptions and medication orders and order tests and therapeutics pursuant to guidelines mutually developed and agreed upon by the CRNA and a supervising CRNA with independent prescriptive practice authority or a supervising physician
    - CRNAs shall have independent prescriptive practice authority after 2 years of supervised prescriptive practice
    - Requires that supervising professionals must meet certain criteria
    - CRNAs are not required to obtain prescriptive authority to administer anesthesia

There are NO Massachusetts laws that require physician supervision of CRNAs to administer anesthesia

Nurse Practice Act
2) Board of Registration in Nursing (BORN)

- Pursuant to MGLs, regulations for all licensed disciplines in the state are defined in the Code of Massachusetts Regulations (CMRs)
- Massachusetts BORN is the agency authorized to regulate nursing education, licensing and practice in the state.
- APRNs (which includes CRNAs) regulations are listed in 244 CMR 4.00

Chapter 94C: The Controlled Substance Act and DPH Regulations

- Regulate the safe prescribing and dispensing of controlled substances (ALL prescription medications are considered controlled substances in the state of Massachusetts)
- Extremely complicated and difficult to understand
- **A likely cause of prescriptive authority confusion**
- To briefly summarize:
  - The Controlled Substance Act and DPH regulations identify the following items that require registration as a "practitioner":
    1. Issuing a written prescription
    2. Issuing an oral (verbal) prescription
    3. **Writing medication orders** in a patient chart/Electronic Medical Record (EMR)
  - All practitioners who engage in prescriptive practice must register with the Department of Public Heath (DPH) to obtain a Massachusetts Controlled Substance Registration (MCSR) and the Drug Enforcement Agency (DEA)

Summary: Massachusetts Laws and Regulations Governing CRNA Practice

- **Nurse Practice Act:** Comprised of MGLs and MA BORN
  - **MGL 112 Section 80B** – practice of nursing defined, Advanced Practice Nursing standards
  - **MGL 112 Section 80H** – Nurse Anesthetist, Power to Issue Prescriptions and Order Tests and Therapeutics
  - **BORN Regulations 244 CMR 4.00**
- **Chapter 94C: Controlled Substance Act and DPH** – regulates safe prescribing and dispensing of controlled substances

There are NO Massachusetts laws that require physician supervision of CRNAs to administer anesthesia

What about “Medical Direction” and “Medical Supervision”?

- These are **FEDERAL Medicare** billing terms that define the requirements for anesthesia providers to submit claims (get paid) for anesthesia services and utilize a set of billing code modifiers that indicate what type of provider was involved in the anesthesia care of the patient and are often utilized by commercial and private insurance companies

- Medicare requires physician supervision of CRNAs to submit claims for payment. The “physician” **DOES NOT** have to be a physician anesthesiologist

- **“The medical direction requirements are not quality of care standards”** Federal Register Vol. 63, No. 211, page 58843

- “The term medical direction is used for ***payment purposes only.”***- 130 CMR 433.434 (C)

- ***These billing terms are often confused and/or falsely represented as practice laws or regulations***

- Set forth in the Code of Federal Regulations (CFRs) and published in the Centers for Medicare & Medicaid Services (CMS) Manual

What about "Medical Direction" and "Medical Supervision"?

Anesthesia Billing Modifiers: the functions of these modifiers are to determine 1) whether the allowed service can be billed at the medical direction rate based on the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requirements 2) case concurrency **3) allocation of the percent of reimbursement for an allowed service based on provider type**

- AA: anesthesia services performed personally by the MD anesthesiologist
- AD: medical supervision by an MD anesthesiologist; more than 4 concurrent anesthesia procedures *(not recognizes in MA Medicaid (MassHealth)*
- QK: medical direction of 2, 3, or 4 concurrent anesthesia procedures involving qualified individuals
- QY: medical direction of 1 CRNA by an MD anesthesiologist
- QX: CRNA service with medical direction by a physician
- QZ: CRNA service without medical direction by a physician – *CAN BE UTILIZED* in non-opt out states

Let's put it all together…

CRNA Practice in MA Current Laws & Regulations	VS	Federal Medicare Billing Rules For Anesthesia Provided by CRNAs

MGL 112 Section 80B
- Practice of Nursing Defined
- Advanced Practice Nursing Standards

MGL 112 Section 80H
- Nurse Anesthetists; Power to Issue prescriptions and order tests and therapeutics
- No requirement to obtain prescriptive authority to administer anesthesia

Chapter 94C: The Controlled Substance Act and DPH regulations
- Ensures safe handling of controlled substances
- Inconsistent terminology with the Nurse Practice Act
- Requirements for practitioners to register as prescribers

Board of Registration in Nursing
- Agency authorized to enforce the MGLs associated with nursing
- **Section 244 CMR 4.00:** Regulations for advanced practice nursing

- Billing terms provide a means to submit claims to Medicare for reimbursement.
- Requires physician supervision; does not have to be an anesthesiologist
- **If** an MD *anesthesiologist* is supervisor, billing modifiers are used to determine reimbursement amount, case concurrency, allocation of reimbursement funds
- Often confused and/or falsely represented as CRNA practice laws or regulations

- **There are no MA state or Federal laws that require supervision of CRNA practice**
- Hospitals/Facilities may develop their own practice policies that are more restrictive than law.

Facility policy to Medically Direct/Supervise CRNA practice

- Regardless of state and federal law, hospitals/facilities are free to adopt their own practice guidelines
- Guidelines cannot be less restrictive than laws, but they CAN be *more* restrictive
- A common facility policy in Massachusetts *unnecessarily* requires supervision of CRNA practice; CRNAs usually agree to this during the credentialing process

Centers for Medicare & Medicaid Services (CMS) BASIC billing for Anesthesia services provided by Anesthesiologists and Certified Registered Nurse Anesthetists (CRNAs)

- CMS utilizes a series of billing terms and associated billing modifiers as a means to submit claims for reimbursement
- CMS requires physician supervision under Medicare Part A, Conditions of Participation (COP) in order to submit claims for reimbursement – this supervision **DOES NOT have to be by an MD anesthesiologist. In this context, "supervision" is defined as an** "Operating practitioner or of an anesthesiologist who is immediately available if needed" CFR, Title 42, Chapter IV, Subchapter G, § 482.52
- "The medical direction requirements ***are not quality of care standards.***" Federal Register Vol. 63, No. 211, page 58843
- "The term medical direction is used for ***payment purposes only.***" Massachusetts Code of Regulations at 130 CMR 433.434 (C)
- TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) – MD anesthesiologists must document 7 activities to be reimbursed for Medical Direction, intended to prevent MDAs from billing for services they did not provide (i.e.; CRNA services)
- **QZ modifier** DOES NOT prevent anesthesia providers from working within an anesthesia care team. It simply relieves MD anesthesiologists from having to meet TEFRA requirements, allows utilization of all anesthesia providers in the **most cost-efficient** manner without compromising safe patient care**, decreases Medicare fraud, DOES NOT change provider liability, is NOT EXCLUSIVE for Opt-Out states**

Medical Direction

Billing Modifiers
MD: QK 50%
CRNA: QX 50%

IF MD Anesthesiologist is supervisor
Max ratio: 1 MD Anesthesiologist : 4 CRNAs

MD Anesthesiologist must document TEFRA 7 points of "Medical Direction"

1. perform a pre-anesthetic exam and evaluation
2. Prescribe the anesthesia plan
3. Personally participate in the most demanding procedures in the anesthesia plan, including, if applicable, induction and emergence
4. Ensures that any procedures in the anesthesia plan are performed by a qualified anesthetist
5. Monitors the course of anesthesia administration at frequent intervals
6. Remains physically present and available for immediate diagnosis and treatment of emergencies
7. Provides indicated post-anesthesia care

Medical Supervision

Billing Modifiers
MD: AD 30%
CRNA: QX 50%

MD Anesthesiologist supervision > 4 CRNAs

Not recognized in Massachusetts for MassHealth/Medicaid

Non-Medically Directed

Billing Modifiers
MD: none 0%
CRNA: QZ 100%

(Also used in Opt-Out states)

- **No ratios required**
- **Allows CRNAs & MD Anesthesiologists and/or operating practitioners to work as a team without the TEFRA restrictions of Medical Direction**
- **Enables facilities to use anesthesia providers in the most productive and cost-efficient manner possible**

NO LEGAL IMPEDIMENT and is the MOST COST-EFFECTIVE BILLING OPTION in Massachusetts

MD Anesthesiologist Personally Performing Anesthesia Alone

Billing Modifiers
MD: AA 100%
CRNA: none 0%

Direction of 1 CRNA by an MD Anesthesiologist

Billing Modifiers
MD: QY 50%
CRNA: QX 50%

Opt-Out

- refers to the 2001 decision made by CMS to allow states to opt out of the Federal Supervision requirement for CRNAs under Medicare Part A, COP
- As of 2021, there are 19 states that have exercised their right to opt out

Billing Modifiers
MD: none 0%
CRNA: QZ 100%

1. Iowa
2. Nebraska
3. Idaho
4. Minnesota
5. New Hampshire
6. New Mexico
7. Kansas
8. North Dakota
9. Washington
10. Alaska
11. Oregon
12. Montana
13. South Dakota
14. Wisconsin
15. California
16. Colorado
17. Kentucky
18. Arizona
19. Oklahoma

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