Laws & Regulations Governing CRNA Practice in Massachusetts

MANA
MASSACHUSETTS ASSOCIATION OF NURSE ANESTHETISTS

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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**
   - MGL 112 Section 80B
   - MGL 112 Section 80H
2. **Board of Registration in Nursing (BORN)**
   - APRN (CRNAs are licensed as APRNs in MA) 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**

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 advanced practice nursing regulations which govern the ordering of tests, therapeutics and prescribing of medications be promulgated by the BORN in conjunction with the board of registration in medicine (BORiM)
    - This means that the BORN is required to develop regulations for APRNs to write orders/prescriptions together with the Board of Registration in Medicine (BORiM)
      - Has resulted in the ***requirement of physician supervision of APRN prescriptive authority***
      - ***This law does not require supervision of APRN Practice, just prescriptive authority***

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

- **MGL 112 Section 80H**
  - Like the other APRN groups, CRNAs may issue written prescriptions/medication orders and order tests and therapeutics for the immediate perioperative care of a patient
  - However, in addition to physician supervision of prescriptive authority, CRNA prescriptive authority is further restricted to the immediate perioperative care of the patient
  - "The immediate perioperative care of a patient shall be defined as the period commencing on the day prior to surgery and ending upon discharge of the patient from post-anesthesia care."
  - "The administration of anesthesia by a nurse anesthetist directly to a patient shall not require a written prescription."

Take note: this law does not require physician supervision of CRNAs to administer anesthesia; it only requires supervision of CRNA prescriptive practice

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 identifies the following items that require registration as a "practitioner":
    1. Issuing a written prescription
    2. Issuing a oral (verbal) prescription
    3. **Writing medication orders** (the most common form of prescriptive practice that CRNAs are engaged in)
  - 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** – definition of nursing in Massachusetts, BORiM oversight of BORN for APRN (including CRNAs) prescriptive practice
  - **MGL 112 Section 80H** – in addition to requiring physician supervision of prescriptive practice, CRNA prescriptive authority is *further* restricted to the immediate 24-hour peri-operative period, specifies that CRNAs do not need a prescription to administer anesthesia
  - **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”?

- Medicare requires physician supervision of CRNAs to submit claims for payment. The “physician” **DOES NOT** have to be an MD 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
- These **FEDERAL Medicare** billing terms 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

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
- Defines nursing practice in Massachusetts
- Requires regulations of APRN Prescriptive Authority be promulgated by the BORN in conjunction with BORiM (physician supervision of APRN prescriptive practice)

MGL 112 Section 80H
- Further restricts CRNAs prescriptive authority to immediate post op period in addition to requiring physician supervision
- specifies that CRNAs do not need a prescription 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

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

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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 by signing a collaborative agreement during the credentialing process
- If APRNs (including CRNAs) are going to write prescriptions/orders in patient charts, per Massachusetts laws and regulations previously discussed, supervising physicians and CRNAs are required to **jointly** develop additional guidelines for APRNs to engage in prescriptive practice
- CRNAs who write prescriptions/orders in patient charts are required to have prescriptive authority guidelines in place and must register with the Massachusetts Controlled Drug Program to obtain a Massachusetts Controlled Substance Registration (MCSR) and obtain a DEA number

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

EXPENSIVE & UNNECESSARY

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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In December 2020 a new law, *The Patients First Act*, permanently removes MD supervision of APRN Prescriptive authority

- The Massachusetts legislature passed, and the Governor signed, *The Patients First Act*, a health care bill that recognizes the independence and skill of all CRNAs. This new law is similar to the current Executive Order (issued in March), removing physician supervision of APRN Prescriptive Authority
- Link to the Patients First Act (see section 80H)
- As of this writing, CRNAs may utilize Prescriptive Authority according to the provisions of the current Executive Order issued in March 2021 See the Executive Order here
- See the next slide for a chart to explain the Executive Order provisions
- The next step for the new law is promulgation (having the language written into regulations), by the Board of Registration in Nursing (BORN)

COVID-19 State of Emergency:
March 26, 2021, MA Executive Order to Authorize Independent Prescribing Practice for APRNs

Do you have 2 years of supervised prescriptive practice?	Do you have less than 2 years of supervised prescriptive practice?	Do you have less than 2 years supervised practice but already have an MCSR w/guidelines?	Will you have different physician supervision of prescriptive practice during the state of emergency?
• No action needed • Continue prescribing as usual • Physician Retrospective review of written orders/prescription is not required	• Obtain the license number of physician willing to "supervise" prescriptive authority • Take the following steps: 1) Apply for a MCSR using the same account that you use to renew your RN/APRN license: eGOV 2) WAIT to receive your MCSR number 3) Once you receive your MCSR number, apply for your DEA number: DEA application *See additional guidance below	• No action needed • Guidelines stay in place • Supervision law stays in place • No changes needed to MCSR	• Ensure the following: 1) The physician is in good standing with BORIM. 2) The CRNA is in good standing with BORN. 3) The collaboration between the physician and CRNA is to maximize health care provider during SoE. 4) The physician and CRNA both consent to the collaboration and to the supervision of the prescriptive practice. 5) The consent is memorialized in documentation.

*Those who have less than 2 years of supervised practice, or its equivalent, may engage in prescriptive practice with physician supervision of such prescriptive practice as currently required by law. HOWEVER, in the absence of written guidelines and provided that the prescriptive practice conforms to the parameters and requirements of the Commissioner's Order and this guidance:

1) BORIM will refrain from taking disciplinary action against the license of a physician who provides supervision of prescriptive practice of an APRN.
2) BORN will refrain from taking disciplinary action against the license of an APRN who engages in prescriptive practice.

See the Executive Order here

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