

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: August 16, 2022
 ATTENTION: Members, Medical Board of California
 SUBJECT: Discussion and Possible Action Related to AB 890
 Regulations
 STAFF CONTACT: Aaron Bone, Chief of Legislation and Public Affairs

REQUESTED ACTION:

Review the draft AB 890 regulations and decide whether to direct staff to provide formal comment to the Board of Registered Nursing (BRN) regarding the proposed regulations.

Background:

[AB 890 \(Chapter 265 of 2020\)](#) was signed into law by the Governor on September 29, 2020. The bill creates a two-tiered framework in statute to authorize nurse practitioners (NPs) to practice without the supervision of a physician and surgeon if they meet certain educational, training, and examination requirements. Pursuant to the separate statutes that created a pathway for NPs to practice independently, the BRN has created two additional subcategories of NPs that are referred to as “103 NPs” and “104 NPs.”

In general, the key difference between a 103 NP and a 104 NP is that a 104 NP may practice in any setting that is consistent with their national certification without physician oversight or the use of standardized procedures, but a 103 NP is limited to certain types of settings specified in AB 890. The [online license search tool](#) will provide consumers a brief explanation of the different NP license types.

For more information about the new scope of practice for each type of NP, see Business and Professions Code (BPC) section [2837.103](#) and [2837.104](#), respectively, and the AB 890 analysis from November 2020 at the bottom of this document.

The registered nurse (RN) scope of practice is defined as functions, including basic healthcare, that help people cope with or treat difficulties in daily living that are associated with their actual or potential health or illness problems, and that require a substantial amount of scientific knowledge or technical skill. Prior to AB 890, in California, NPs were RNs for purposes of licensure, their statutory scope was essentially the same, except for clinical competency and skill gained through additional preparation and advanced education and required physician oversight and the use of standardized procedures.

Previously, both RNs and all types of NPs provided additional medical procedures beyond their nursing scope using standardized procedures. Now, only RNs and NPs who do not meet the requirements of the 103 NP or 104 NP will need to use this process. Standardized procedures are developed collectively by nurses, physicians,

and the administration of an organized health care system and codify the procedures nurses may provide beyond the ordinary nursing scope.

Discussion:

To implement the licensing requirements and scope of practice changes for 103 NPs and 104 NPs, BRN must update their regulations. A summary of each section to be amended or added to their regulations is included below, followed by the language. Regulatory language proposed to be added is shown in underline and language proposed to be deleted is shown in ~~strikeout~~.

Section 1480. Definitions

Summary: The proposed changes simply state that the 103 NPs and 104 NPs may practice in the locations established by AB 890:

- A clinic, as defined in Section 1200 of the Health and Safety Code.
- A health facility, as defined in Section 1250 of the Health and Safety Code, except for (i) a correctional treatment center, as defined in Section 1250(j)(1) of the Health and Safety Code or (ii) a state hospital, as defined in Section 4100 of the Welfare and Institutions Code.
- A facility described in Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.
- A medical group practice, including a professional medical corporation, as defined in Section 2406 of the code, another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians and surgeons that provides health care services.
- A home health agency, as defined in Section 1727 of the Health and Safety Code.
- A hospice facility licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code.

Draft Language: (k) ~~reserved~~ “Group setting” means one of the settings or organizations set forth in Section 2837.103(a)(2) of the code in which one or more physicians and surgeons practice with a nurse practitioner without standardized procedures.

Section 1481. Categories and Scope of Practice of Nurse Practitioners.

Summary: The existing language in this section states the areas in which non-103/104 NPs may specialize. BRN proposes to add subdivision (b) to this section to reference the scope of practice for 103 NPs and 104 NPs in the settings discussed in Section 1480. The proposed additions merely reflect the new law established by AB 890. The current subdivision (b) would be changed to (c) and updated to include non-gendered terms.

Draft Language: (a) Categories of nurse practitioners include:

- (1) Family/individual across the lifespan;
- (2) Adult-gerontology, primary care or acute care;
- (3) Neonatal;
- (4) Pediatrics, primary care or acute care;
- (5) Women's health/gender-related;
- (6) Psychiatric-Mental Health across the lifespan.

(b) Nurse Practitioners who have met the additional training and experience requirements can apply for expanded scope of practice, and work without standardized procedures, under these two categories:

(1) A nurse practitioner practicing pursuant to Section 2837.103 of the code may perform the functions listed in Section 2387.103(c) of the code without standardized procedures only in a group setting and in the category listed in subsection (a) of this regulation in which the applicant is certified as a nurse practitioner pursuant to Section 2837.103 of the code.

(2) A nurse practitioner practicing pursuant to Section 2837.104 of the code may perform the functions listed in section 2387.104(c) of the code without standardized procedures, inside or outside of a group setting, only in the category listed in subsection (a) of this regulation in which the applicant is certified as a nurse practitioner pursuant to Section 2837.104 of the code.

~~(b)~~ (c) A registered nurse who has been certified by the board as a nurse practitioner may use the title, “advanced practice registered nurse” and/or “certified nurse practitioner” and may place the letters APRN-CNP after ~~his or her~~ their name or in combination with other letters or words that identify the category.

Section 1482.3 Requirements for a Nurse Practitioner Pursuant to Business and Professions Code Section 2837.103.

Summary: This new section establishes the requirements for licensure as a 103 NP. These provisions are necessary to process the application and meet the requirements of AB 890.

BRN's proposed definition of the "transition to practice" requirements are included within (a)(13). AB 890 requires a 103 NP and 104 NP to complete a transition to practice of a minimum of three full-time equivalent years or 4,600 hours of work experience as an NP.

BRN proposes to require that the work experience be completed in California within five years prior to the date of application as a 103 NP. Further, this experience must be after their certification by BRN as an NP and in direct patient care in one of the six categories stated in subdivision (a) of this section.

The transition to practice documentation must be attested to by a physician, a 103 NP, or a 104 NP who specializes in the same area as the applicant and must not have a financial or familial relationship with the applicant.

Draft Language: (a) To obtain certification as a nurse practitioner pursuant to Section 2837.103 of the code, an applicant shall hold a valid and active certification as a nurse practitioner in California and submit a completed application that includes the following:

- (1) Applicant's full legal name ((Last Name) (First Name) (Middle Name) and/or (Suffix)).
- (2) Other name(s) applicant has used or has been known by,
- (3) Applicant's physical address,
- (4) Applicant's mailing address, if different than the applicant's physical address. The mailing address may be a post office box number or other alternate address,
- (5) Email address, if any,
- (6) Applicant's telephone number,
- (7) Applicant's Social Security Number or Individual Taxpayer Identification Number,
- (8) Applicant's birthdate (month, day, and year),
- (9) California registered nurse license number issued by the Board,

(10) California nurse practitioner certification number issued by the Board,

(11) Date of passage of the Board's national nurse practitioner board certification examination. Verification of this passage shall be provided directly to the board by the organization that administered the examination,

(12) Proof of holding a certification as nurse practitioner by a national certification organization accredited by the National Commission for Certifying Agencies or the American Board of Nursing Specialties as a nurse practitioner in the category listed in Section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to Section 2837.103 of the code. Verification of this certification shall be provided directly to the board by the issuing organization,

(13) Proof of completion of a transition to practice by submitting to the board one or more attestations of a physician or surgeon, a nurse practitioner practicing pursuant to Section 2837.103 of the code, or a nurse practitioner practicing pursuant to Section 2837.104 of the code. Any physician or surgeon, a nurse practitioner practicing pursuant to Section 2837.103 of the code, or a nurse practitioner practicing pursuant to Section 2837.104 of the code submitting an attestation must specialize in the same specialty area or category listed in Section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to Section 2837.103 of the code and must not have a familial or financial relationship with the applicant.

(A) For purposes of this subsection, "transition to practice" means 4600 hours or three full-time equivalent years of clinical practice experience and mentorship that are all of the following:

(i) Completed in California.

(ii) Completed within five years prior to the date the applicant applies for certification as a nurse practitioner pursuant to Section 2837.103 of the code.

(iii) Completed after certification by the Board of Registered Nursing as a nurse practitioner.

(iv) Completed in direct patient care in the role of a nurse practitioner in the category listed in Section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to Section 2837.103 of the code.

(B) For purposes of this subsection "financial interest" shall have the same meaning as in Section 650.01(b)(2) of the code, and "familial" shall include the members of "immediate family" as used in Section 650.01(b)(3) of the code.

(14) A statement signed under penalty of perjury by the applicant that all statements made in the application are true and correct.

Section 1482.4 Requirements for Certification as a Nurse Practitioner Pursuant to Business and Professions Code Section 2837.104.

Summary: This new section establishes the requirements for licensure as a 104 NP. These provisions are necessary to process the application and meet the requirements of AB 890.

The “transition to practice” requirement for a 104 NP is the same as for a 103 NP. In addition, AB 890 requires a 104 NP to also have completed three years, or 4,600 hours, of practice as a 103 NP in good standing. Applicants with a Doctorate of Nursing Practice degree have alternative direct patient care requirements, as specified in (a)(14)(B).

Draft Language: (a) To obtain certification as a nurse practitioner pursuant to Section 2837.104 of the code, an applicant must hold a valid and active certification as a nurse practitioner pursuant to Section 2837.103 of the code and submit a completed application with all of the following information:

(1) Applicant’s full legal name ((Last Name) (First Name) (Middle Name) and/or (Suffix)),

(2) Other name(s) applicant has used or has been known by,

(3) Applicant’s physical address,

(4) Applicant’s mailing address, if different than the applicant’s physical address. The mailing address may be a post office box number or other alternate address,

(5) Email address, if any,

(6) Applicant’s telephone number,

(7) Applicant’s Social Security Number or Individual Taxpayer Identification Number,

(8) Applicant’s birthdate (month, day, and year),

(9) California registered nurse license number issued by the Board,

(10) California nurse practitioner certification number issued by the Board,

(11) Date of passage of the Board’s national nurse practitioner board certification examination. Verification of this passage shall be provided directly to the board

by the organization that administered the examination.

(12) Proof of holding a certification as nurse practitioner by a national certification organization accredited by the National Commission for Certifying Agencies or the American Board of Nursing Specialties as a nurse practitioner in the category listed in Section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to Section 2837.103 of the code. Verification of this certification shall be provided directly to the board by the issuing organization.

(13) Proof of completion of a transition to practice by submitting to the board one or more attestations of a physician or surgeon, a nurse practitioner practicing pursuant to Section 2837.103 of the code, or a nurse practitioner practicing pursuant to Section 2837.104 of the code. Any physician or surgeon, a nurse practitioner practicing pursuant to Section 2837.103 of the code, or a nurse practitioner practicing pursuant to Section 2837.104 of the code submitting an attestation must specialize in the same specialty area or category listed in Section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to Section 2837.104 of the code and must not have a familial or financial relationship with the applicant.

(A) For purposes of this subsection, “transition to practice” means 4600 hours or three full-time equivalent years of clinical practice experience and mentorship that are all of the following:

(i) Completed in California.

(ii) Completed within five years prior to the date the applicant applies for certification as a nurse practitioner pursuant to Section 2837.104 of the code.

(iii) Completed after certification by the Board of Registered Nursing as a nurse practitioner.

(iv) Completed in direct patient care in the role of a nurse practitioner in the category listed in Section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to Section 2837.104 of the code.

(B) For purposes of this subsection “financial interest” shall have the same meaning as in Section 650.01(b)(2) of the code, and “familial” shall include the members of “immediate family” as used in Section 650.01(b)(3) of the code.

(14) Proof of practice as a nurse practitioner pursuant to Section 2837.103 of the code in good standing for at least three full-time equivalent years or 4600 hours in direct patient care.

(A) For purposes of this subsection, “practice as a nurse practitioner pursuant to Section 2837.103 of the code in good standing” means practice conducted under a current, active, and unrestricted license. “Unrestricted” means the applicant was not subject to a disciplinary action by the board, including probation, suspension or public reproof.

(B) For an applicant who holds a Doctorate of Nursing Practice degree (DNP), “practice as a nurse practitioner pursuant Section 2837.103 of the code in good standing” also includes any hours of direct patient care that the applicant provided in the course of their doctoral education so long as the direct patient care is both (i) in the applicant’s area of National Certification specified in subsection (a)(12) and (ii) provided during the doctoral part of the applicant’s doctoral education and not credited towards the applicant’s master’s degree.

(15) A statement signed under penalty of perjury by the applicant that all statements made in the application are true and correct.

(b) Within 90 days of certification by the Board of Registered Nursing, a nurse practitioner practicing pursuant to Section 2837.104 of the code shall have a protocol for consultation and a written plan for referrals, pursuant to Section 2837.104(c) of the code, and shall make that referral plan available to patient include that individual’s acknowledgment and consent to the referrals.

Section 1487 Notice to Consumers.

Summary: This language requires all NPs to post a notice in the facility where they practice, except for correctional facilities, to inform consumers that NPs are regulated by BRN and provide BRN’s contact information. The section also requires an NP to verbally inform patients that the NP is not a physician, that patients have the right to see a physician upon request, and when the NP must refer the patient to a physician.

Draft Language: Except when working in facilities under the Department of Corrections and Rehabilitation, a nurse practitioner engaged in providing healthcare services shall do all of the following:

(a) Prominently post a notice, in at least 48-point Arial font, in a conspicuous location accessible to public view on the premises where the nurse practitioner provides the healthcare services, containing the following information:

NOTICE

Nurse practitioners are licensed and regulated

by the Board of Registered Nursing

(916) 322-3350

www.rn.ca.gov

(b) Verbally inform all new patients in a language understandable to the patient that a nurse practitioner is not a physician and surgeon. For purposes of Spanish language speakers, the nurse practitioner shall use the standardized phrases “enfermera especializada” or “enfermero especializado.”

(c) Advise patients that they have the right to see a physician and surgeon on request and the circumstances when they must be referred to see a physician and surgeon.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 890
AUTHOR: Wood
CHAPTER: Chaptered, #265
BILL DATE: August 28, 2020, Amended
SUBJECT: Nurse practitioners: scope of practice: practice
without standardized procedures

DESCRIPTION OF LEGISLATION:

Creates two pathways for nurse practitioners (NP) licensed by the Board of Registered Nursing (BRN) to practice without the supervision of a physician and surgeon, as specified. Establishes the Nurse Practitioner Advisory Committee (Committee) to advise BRN on all matters related to NPs, including on disciplinary matters.

BACKGROUND:

Existing law provides for the regulation and licensure of the practice of nursing by BRN under the Nursing Practice Act (Act). Existing law defines the nursing scope of practice, in general, as functions, including basic healthcare, that help people cope with or treat difficulties in daily living that are associated with their actual or potential health problems or illness, and that require a substantial amount of scientific knowledge or technical skill.

Existing law defines “standardized procedures” as either of the following: policies and protocols developed by a licensed health facility through collaboration among administrators and health professionals including physicians and nurses; and policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system that is not a licensed health facility.

Existing law provides for the additional certification of registered nurses as NPs and specifies requirements and conditions of the certification.

ANALYSIS:

This bill would create a two-tier framework in statute to authorize NPs to practice without the supervision of a physician and surgeon if they meet certain educational, training, or examination requirements.

The first tier authorizes an NP to practice independently (referred to in this analysis as an “independent NP”) in specified settings if they meet certain requirements. The second tier would require BRN to license an NP (referred to in this analysis as an APNP) to practice outside those settings, if they meet additional requirements.

Independent NPs and APNPs shall maintain professional liability insurance appropriate for their practice setting. The bill prevents facilities from interfering with, controlling, or directing the professional judgment of these professionals and extends certain statutes to them that ban the corporate practice of medicine.

In addition, they shall refer a patient to a physician or other licensed health care provider if a situation or condition of a patient is beyond the scope of their education and training. APNPs may not practice beyond their scope of clinical and professional education and training, within the limits of their knowledge, experience, and national certification.

The bill extends the peer review requirements in Business and Professions Code sections 805 and 805.5 to NPs, as specified.

Requirements to be an Independent NP

To transition to practice as an independent NP, NPs would have to meet certain clinical experience and mentorship requirements, as established by BRN regulations, including the following:

- Pass a national NP board certification exam and hold an NP certification from a national body accredited by the National Commission for Certifying Agencies or the American Board of Nursing Specialties and recognized by BRN
- Provide documentation that their education and training was consistent with BRN's established clinical practice requirements.
- Complete three years of full-time practice or 4600 hours that includes managing a panel of patients, working in a complex health care setting, interpersonal communication, team-based care, professionalism, and business management of a practice.

Authorized Services and Functions for Independent NPs

In addition to other practices authorized by law, an independent NP may do the following without standardized procedures (in the settings discussed below) in accordance with their education and training:

- Conduct an advanced assessment
- Order, perform, and interpret diagnostic procedures, as specified
- Establish primary and differential diagnoses
- Prescribe, order, administer, dispense, and furnish therapeutic measures, as specified
- Certify disability, following a physical examination
- Delegate tasks to a medical assistant

Practice Settings for Independent NPs

Independent NPs who meets the above requirements may practice without standardized procedures in the following settings or organizations in which one or more physicians or surgeons are practicing:

- Outpatient clinics
- Various locations including hospital, skilled nursing, county medical, hospice, and congregant care facilities (except for correctional treatment centers or state hospitals), as specified
- Medical group practices and home health agencies

Licensure of APNPs

Beginning January 1, 2023, BRN would be required to issue a certification to an NP to practice as an APNP outside of the settings and organizations discussed previously in this analysis, if the NP meets the following additional requirements:

- Holds a valid and active registered nurse license by BRN and a master's degree in nursing or in a clinical field related to nursing or a doctoral degree in nursing (DNP).
- Has practiced as an NP in good standing for at least three years, as specified. BRN may lower this requirement for an NP holding a DNP.

APNPs shall consult with a physician under the following circumstances:

- Emergent conditions requiring prompt medical intervention
- Acute decompensation of patient situation
- Problems not resolving as anticipated
- History, physical, or lab findings inconsistent with the clinical perspective
- Upon request of patient

APNPs shall establish a plan for referral of complex medical cases and emergencies to a physician or other provider that address the following:

- Situations beyond the competence, scope of practice, or experience of the NP
- Patient conditions failing to respond to the management plan as anticipated
- Patients with acute decomposition or rare conditions
- Patient conditions that do not fit the commonly accepted diagnostic pattern for a disease or disorder
- All emergency situations after initial stabilizing care has been started

BRN shall conduct an occupational analysis by January 1, 2023 and consider whether a supplemental examination is necessary assess the competencies of independent NPs and APNPs, as specified.

ATTACHMENT: [AB 890, as amended, Wood. Nurse Practitioners: Scope of Practice: Practice Without Standardized Procedures.](#)
Version: 09/29/20 – Chaptered