

LAW ALERT

HEALTH CARE

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New Change in New York Nurse Practitioner Law

New York State has enacted a new law called the “Nurse Practitioner Modernization Act” (the “NPMA”), that went into effect on January 1, 2015. [1]

The NPMA eliminates the onerous requirement of a written collaborative practice agreement (“Collaborative Agreement”) for “experienced” Nurse Practitioners (“NPs”). Previously, a Collaborative Agreement was required to be executed by all NPs with one or more collaborating physicians in order to legally perform services as a NP in New York State. A new attestation form, Form “NP-CR” [available at the website of the New York State Education Department (the “Department”) by clicking here,] will be required to be completed and maintained by the experienced NPs if they choose to practice without a Collaborative Agreement.

Prior Law

Under prior law, all NPs were required to enter into a Collaborative Agreement, to be maintained at the NP’s practice site, with at least one collaborating physician who was qualified in the NP’s specialty area of practice and licensed to practice medicine in New York State. The collaborating physician had to agree to be available to the NP for consultation either on site or by phone, fax, or e-mail, and for coverage in the event of the NP’s absence. The Collaborative Agreement had to contain certain requirements established by the Department, including the identification of specific approved practice protocols within the NP’s specialty area of practice (“Practice Protocols”) that would be used by the NP in the course of the NP’s practice. Such Practice Protocols were to be selected from a list of approved protocol texts maintained by the Department, and had to reflect current, accepted medical and nursing practice. If a NP wished to use a different Practice Protocol that was not found on such list, the NP had to submit it to the Department for review and approval.

The collaborating physician was required to review a representative sample of the NP’s patient records at least every three (3) months to confirm that the NP’s practice was consistent with the identified Practice Protocols. The NP had to maintain on file a written summarized result of such review, signed by both the NP and the collaborating physician, for possible review by the Department upon request. The NP had to obtain written consent from patients who were the subject of such review if the collaborating physician was not the patient’s physician.

The Collaborative Agreement also had to provide for the resolution of a disagreement between the NP and the collaborating physician regarding the management of a patient’s health problem. In the event a disagreement could not be resolved, the law required that the collaborating physician’s opinion would prevail. Similarly, in a disagreement between a non-collaborating physician and the NP over a health care management issue, the opinion of the collaborating physician would prevail. The Collaborative Agreement had to be reviewed annually by the parties, and could be amended as needed by a writing signed by both parties.

A special "Form 4 NP" entitled the "Verification of Collaborative Agreement and Practice Protocol" had to be filed with the Department by each new NP within ninety (90) days of commencement of the NP's practice in New York State, attesting that the NP had entered into a Collaborative Agreement and selected a Practice Protocol. A copy of the NP's initial Collaborative Agreement had to be filed with the Department. Future similar agreements did not need to be submitted to the Department, but only kept on file by the NP.

Although NPs could pay a collaborative physician the fair-market-value of the physician's services for providing consultation and chart review, certain financial arrangements were and continue to be prohibited, including fee-splitting, kick-backs and paying for the referral of patients. There was no requirement, however, that a collaborative arrangement between a NP and a physician include a payment provision.

All of the foregoing continues to be required under the NPMA for all NPs, unless they are deemed to be "experienced" NPs, as discussed below.

The New Law

The new NPMA law removes the requirement of maintaining a Collaborative Agreement for "experienced" NPs, i.e., NPs with more than 3,600 hours of practice experience (approximately 2 years full-time), regardless of the NP's specialty (Adult, OB/GYN, Pediatrics, Family Practice, etc.). The experienced NP will also not be required to identify any specific Practice Protocol in any writing or in the NP-CR Form, or to have charts reviewed by the collaborating physician, but must, nevertheless, maintain a collaborative relationship with a physician qualified in the NP's practice area. The new law is intended to relieve seasoned NPs from the ongoing difficulty of locating a physician willing to sign a collaborative agreement and perform chart reviews, but who is nonetheless prepared to maintain the collaborative relationship with the NP.

The NP, under the new law, will be required to maintain some evidence of the collaborative relationship, which may include documentation in the patient's medical record. The NP will also be required to maintain a completed NP-CR attestation form in the NP's files attesting to the existence of the collaborative relationship with the identified physician(s), and make such form and other documentation evidencing the collaborative relationships available to the Department upon request, but need not file the form with the Department.

The new NPMA, like the requirements under prior law, are applicable to NPs who are employed by physician practices, or who work in a health care facility licensed by the New York State Department of Health. Such employment relationships do not exempt any NP from the requirement of a collaborative relationship, the supportive documentation, or the Collaborative Agreement for the non-experienced NP.

Under the new law, a licensed NP with less than 3,600 hours of practice will continue to be subject to the prior requirements, including maintaining a Collaborative Agreement with a physician in the NP's practice area, identifying Practice Protocols, and the chart reviews by the physician.

NPs and their collaborating physicians should consult with knowledgeable healthcare counsel to confirm their compliance with applicable legal requirements.

[1] The NPMA is codified as part of §6902(3) of the New York Education Law, which is effective from January 1, 2015 until June 30, 2021, when it will sunset unless further changes in the law are enacted. Corresponding regulations are expected to be found in Part 64 of Title 8 of the NYCRR.

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