FNPN 2017
APNs Building on Successes and Going Forward

Professor Barbara Safriet, JD, LLM

APN Successes

- Nurses always
- Midwives and nurse midwives
- Nurses providing anesthesia
- Frontier Nursing Service
- **In the beginning…..**
- Community Health nurses
- Public Health nurses

APN Successes

- Then, in response to patient needs,
- Nurse Practitioners
- Certified Nurse Specialists
- Expanded education and clinical abilities for all
- **First, you weren't, and now you are- how did that happen?**

APN Successes

- As a rather famous man in a loin cloth said:

  First, they ignore you

  Then, they laugh at you

  Then, they attack you, and

  Then, you (and your patients) win

APN Successes

- **Begrudging initial Authority**
  - Supervision by a physician, with written agreement
  - Written protocols, with great specificity
  - No prescribing “privileges”, or only from a formulary, and often co-signing required
  - No direct payment, and reduced fees
  - Practice Site restrictions
    - Geographic limitations
    - Non- or For- profit settings

APN Successes

- **NOW – For Many**
  - Rx authority on own license, for most schedules
  - Diagnose and treat
  - Order and interpret tests and labs
  - Admitting privileges to hospitals
  - Certification of death, disability, workers' comp, alcohol and drug treatment involuntary commitment, sports and school physicals, etc.
  - Refer for respiratory therapy, OT, PT, etc.
  - Direct payment at 100% of physician schedule

APN Successes

- **AMAZING CLINICAL EVIDENCE AND POLICY SUPPORT RECOGNIZING THE DEMONSTRATED VALUE OF APNs**

- ACCESS – underserved, primary care, geographic
- QUALITY- same or better than physicians for many services; emphasis on coordination
- COSTS- individual and global, often less

SEE ANNOTATED LIST OF RESOURCES AT END

APN Successes

EVIDENCE SUPPORTING CONTINUED RESTRICTIONS ON APN PRACTICE?

NONE for better care from restricted states

MUCH for equal or better quality, more accessible and cost-effective care from full practice states

APN Successes

DESPITE ALL THE EVIDENCE AND "REALITY"

- Still opposition from national and state medical organizations
  - *Legislative advocacy includes opposing legislation to expand the scope of practice of nonphysician clinicians, particularly independent practice, independent prescriptive authority, and reimbursement parity"* (AAP Committee on Pediatric Workforce, 2003—reaffirmed January 2006). [Same for AMA, and ASA]

APN Successes

EVEN WHEN THEY ACKNOWLEDGE THERE IS NO PROBLEM

"While state laws have, in specific instances allowed such independent practice, it continues to be uncommon. Further, ***there are no validated data in sufficient volume to conclude that there are inferior outcomes from the medical care provided by those relatively few nonphysician health care professionals who do practice independently***. (Emphasis added.)

- *See AMA* REPORTS OF COUNCIL ON MEDICAL EDUCATION – (presented by Richard Allen, MD, Chair): 1. PHYSICIAN AND NONPHYSICIAN LICENSURE AND SCOPE OF PRACTICE. December 2000.

APN Successes

SCOPE OF PRACTICE

It's all about:

CAN – ability

MAY – authority

PAY- sustaining a quality practice

APN Successes

- Louisiana State Board of Medical Examiners, *Pain-management Statement of Position*

The Board's opinion is not and cannot be altered by representations that a particular CRNA [Certified Registered Nurse Anesthetist] has received postdoctoral training in such areas or has performed such activities in this or another state. A non-physician may have education, training, and, indeed, expertise in such an area but expertise cannot, in and of itself, supply authority under law to practice medicine (emphasis added).[June 2006]

APN Successes

How to move forward for you and your patients

- Call out and refute the "physicians only" tropes

- Keep Informed, using your associations

- Visit with your state elected officials, and payers, emphasizing the need for and availability of qualified providers practicing to the full scope of their clinical education, training and abilities

- Keep the faith that your patients need you and will benefit from your efforts to rationalize SoP laws and regulations

Barbara Safriet --Resources

The Case for Removing Barriers to APRN Practice - Robert Wood Johnson Foundation. March 2017
http://www.rwjf.org/en/library/research/2017/03/the-case-for-removing-barriers-to-aprn-practice.html

Key Findings

- Federal, state, and institutional limits on APRN practice create delays in care, raise the cost of care, and can make it difficult for many patients to locate primary care and other services.
- A growing body of research suggests that removing practice restrictions on NPs and other APRNs has the potential to reduce costs and improve access to care without compromising the quality of that care.
- Physician oversight of APRN practice is often spelled out in "collaborative practice agreements," which can be financially burdensome to APRNs, problematic for physicians, and confusing for policymakers and members of the public, who mistakenly think the agreements facilitate true collaborative care.
- Progress toward full practice authority is uneven across states, with some maintaining burdensome restrictions, others adopting compromise legislation that allows APRNs to apply for full practice authority after completing a set number of supervised practice hours, and others granting APRNs full practice authority outright.

Resources

McMichael BJ, Safriet B, Buerhaus P. The Extraregulatory Effect of Nurse Practitioner Scope-Of Practice Laws on Physician Malpractice Rates. Medical Care Research and Review. Pp.1-14, 2017.

Abstract

Patients can hold physicians directly or vicariously liable for the malpractice of nurse practitioners under their supervision. Restrictive scope-of-practice laws governing nurse practitioners can ease patients' legal burdens in establishing physician liability. We analyze the effect of restrictive scope-of-practice laws on the number of malpractice payments made on behalf of physicians between 1999 and 2012. Enacting less restrictive scope-of-practice laws decreases the number of payments made by physicians by as much as 31%, suggesting that restrictive scope-of-practice laws have a salient extraregulatory effect on physician malpractice rates. The effect of enacting less restrictive laws varies depending on the medical malpractice reforms that are in place, with the largest decrease in physician malpractice rates occurring in states that have enacted fewer malpractice reforms. Relaxing scope-of-practice laws could mitigate the adverse extraregulatory effect on physicians identified in this study and could also lead to improvements in access to care.

RESOURCES FOR APNs

Nurse-managed health centers and patient-centered medical homes could mitigate expected primary care physician shortage.

Auerbach DI, Chen PG, Friedberg MW, Reid R, Lau C, Buerhaus PI, Mehrotra A. Health Aff (Millwood). 2013 Nov;32(11):1933-41. doi: 10.1377/hlthaff.2013.0596. PMID:24191083

Comparing the Cost of Care Provided to Medicare Beneficiaries Assigned to Primary Care Nurse Practitioners and Physicians.

Perloff J, DesRoches CM, Buerhaus P.
Health Serv Res. 2015 Dec 27. doi: 10.1111/1475-6773.12425. [Epub ahead of print] PMID:26707840

> *Principle Finding: After adjusting for demographic characteristics, geography, comorbidities, and the propensity to see an NP, Medicare evaluation and management payments for beneficiaries assigned to an NP were $207, or 29 percent, less than PCMD assigned beneficiaries. The same pattern was observed for inpatient and total office visit paid amounts, with 11 and 18 percent less for NP assigned beneficiaries, respectively. Results are similar for the work component of relative value units as well.*

RESOURCES

- Buerhaus, Peter I., et al. **"Practice characteristics of primary care nurse practitioners and physicians."** *Nursing outlook* 63.2 (2015): 144-153.
- http://neactioncoalition.org/wp-content/uploads/2014/10/PCNP-Practice-Characteristics.pdf

Discussion

- *PCNPs are more likely than PCMDs to practice in urban and rural areas, provide care in a wider range of community settings, and treat Medicaid recipients and other vulnerable populations. Not only do most PCNPs work with PCMDs, but also the majority of both clinicians believe that increasing the supply of PCNPs will result in greater collaboration and team practice.*

RESOURCES

- **Role of Geography and Nurse Practitioner Scope-of-Practice in Efforts to Expand Primary Care System Capacity: Health Reform and the Primary Care Workforce**

Graves, John A. PhD; Mishra, Pranita MPP; Dittus, Robert S. MD, MPH; Parikh, Ravi MD, MPH; Perloff, Jennifer PhD; Buerhaus, Peter I. PhD, RN, FAAN

Medical Care: January 2016 - Volume 54 - Issue 1 - p 81–89
doi: 10.1097/MLR.0000000000000454

RESOURCES

Federal Trade Commission Staff Comment to the Senate of West Virginia Concerning the Competitive Impact of WV Senate Bill 516 on the Regulation of Certain Advanced Practice Registered Nurses (APRNs). (February 2016)
https://www.ftc.gov/policy/policy-actions/advocacy-filings/2016/02/ftc-staff-comment-senate-west-virginia-concerning

> *The bill would permit some APRNs, under limited conditions, to write prescriptions without a formal agreement with a particular supervising physician. The bill would also place the regulation of certain APRNs under the authority of the West Virginia Board of Medicine or Board of Osteopathy. Although the comment noted potential patient benefits if APRNs were able to engage in some independent prescribing, the comment emphasized that undue regulatory restrictions on APRN practice, including mandatory physician oversight, can impose significant competitive costs on patients and third-party payors, and may frustrate the development of innovative and effective models of team-based health care. The comment also noted that because the bill "would assign regulatory authority over APRN prescribing to the Boards of Medicine and Osteopathy, it raises concerns about potential biases and conflicts of interest." The comment urged the legislature to consider whether these proposed requirements are necessary to assure patient safety, noting that removing unnecessary and burdensome requirements may benefit West Virginia consumers by increasing competition among health care providers. (emphasis added)*

RESOURSES

- **FEDERAL TRADE COMMISSION STAFF, *POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES* (2014), www.ftc.gov/.../140307aprnpolicypaper.pdf**

- *When faced with proposals to narrow APRN scope of practice via inflexible physician supervision and collaboration requirements, legislators are encouraged to apply a competition based analytical framework and carefully scrutinize purported health and safety justifications. In many instances, legislators may well discover that there is little or no substantiation for claims of patient harm. (emphasis added)*

RESOURSES

- **INSTITUTE OF MEDICINE, NATIONAL ACADEMY OF SCIENCES, *THE FUTURE OF NURSING: LEADING CHANGE, ADVANCING HEALTH* (The National Academies Press, 2011)**

See especially *Chapter 3- Transforming Practice-*

Key message # 1:

Nurses Should Practice to the Full Extent of Their Education and Training

RESOURSES

Letter from FTC Staff to the Hon. Kay Khan, Massachusetts House of Representatives (Jan. 17, 2014), (regarding supervisory requirements for nurse practitioners and nurse anesthetists)
https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staffcomment-massachusetts-house-representatives-regarding-house-bill-6-h.2009-concerning-supervisory-requirementsnurse-practitioners-nurse-anesthetists/140123massachusettnursesletter.pdf

> *[W]e urge the legislature to examine carefully any purported safety justifications for the Commonwealth's current NP and NA supervision requirements, evaluate whether these justifications are well-founded, and consider whether less restrictive alternatives would protect patients without unduly burdening competition. To that end, it may be particularly useful to look at APRN practice in states that do not require supervision, and to consider the available evidence regarding patient benefits and harms in those states, including the findings of the IOM, the NGA, and other experts in the field. If there are not good grounds to impose across-the-board supervision restrictions on all services performed by NPs and NAs, removing these restrictions in whole or part may offer significant benefits to Massachusetts health care consumers and payors. (emphasis added)*

RESOURSES

- **NATIONAL GOVERNORS ASSOCIATION POLICY PAPER: *THE ROLE OF NURSE PRACTITIONERS IN MEETING INCREASING DEMAND FOR PRIMARY CARE* (2012) http://www.nga.org/files/live/sites/NGA/files/pdf/1212NursePractitionersPaper.pdf.**

Conclusion*: None of the studies in NGA's literature review raise concerns about the quality of care offered by NPs. Most studies showed that NP-provided care is comparable to physician-provided care on several process and outcome measures. Moreover, the studies suggest that NPs may provide improved access to care….. In light of the research evidence, states might consider changing scope of practice restrictions and assuring adequate reimbursement for their services as a way of encouraging and incentivizing greater NP involvement in the provision of primary health care.*

Resources

ROBERT WOOD JOHNSON FOUNDATION, *HOW NURSES ARE SOLVING SOME OF PRIMARY CARE'S MOST PRESSING CHALLENGES* (2012)
http://www.rwjf.org/content/dam/files/rwjf-webfiles/Resources/2/cnf20120810.pdf

Resources

Daniel J. Gilman and Julie Fairman, *Antitrust and the Future of Nursing: Federal Competition Policy and the Scope of Practice* 24 HEALTH MATRIX 143 (2014).

FTC "advocacy comments … have asked that state policy makers account for competitive costs when considering scope of practice restrictions, and they have recommended that substantial competitive costs – especially those associated with diminished access to basic health care services – not be imposed on the public absent an evidence-based promise of countervailing consumer protection benefits. They have done so in cases where the evidentiary basis for regulatory costs imposed on health care consumers appears to be inadequate."

Resources

Barbara J. Safriet*, Federal Options for Maximizing the Value of Advanced Practice Nurses in Providing Quality, Cost-Effective Health Care*, Appendix H in the IOM FUTURE OF NURSING REPORT
http://www.nap.edu/catalog/12956.html

[T]*he restrictions faced by APNs in some states are the product of politics rather than sound policy. Competence does not change with jurisdictional boundaries: the only thing that changes is legal authority.*

Even though APNs, like all health professionals, have continued to develop and expand their knowledge and capabilities, the state-based licensure framework … has impeded their efforts to utilize these ever-evolving skills. or historical reasons …, virtually all states still base their licensure frameworks on the persistent, underlying principle that the practice of medicine encompasses both the ability and the legal authority to treat all possible human conditions. That being so, the scopes of practice for APNs (and other health professionals) are exercises in legislative exception making, a "carving out" of small, politically achievable spheres of practice authority from the universal domain of medicine. Given this process, it is not surprising that APNs are often subjected to unnecessary restrictions …. The net result is a distressing catalog of dysfunctions with their attendant costs.

Resources

Barbara J. Safriet*, Federal Options for Maximizing the Value of Advanced Practice Nurses in Providing Quality, Cost-Effective Health Care*, Appendix H in the IOM FUTURE OF NURSING REPORT ttp://www.nap.edu/catalog/12956.html

[T]he fundamental flaws in the regulatory framework that I have described are real, and they rob us as a nation of the full range of care options that our health care providers are capable of offering. This is particularly true of APNs, who have a proven track record of providing needed care across a range of patient populations and practice settings—and this in spite of the regulatory obstacles with which they have had to contend. Freeing APNs from the unnecessary constraints I have identified (which are at bottom nothing more than the historical artifacts of medical preemption) will achieve two important objectives. First, it will better enable Americans, wherever they are situated, to receive much need health services at a cost they can afford. Second, it will begin to remedy the systemic unfairness that has distorted many aspects of the healthcare delivery system, and will serve as a model for comprehensive reform of our entire regulatory framework by focusing on the evolving ability and competence of all providers rather than on rigid proprietary prerogatives.

Resources

Occupational Licensing: A Framework for Policymakers – July 2015
The White House: Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor
http://r.search.yahoo.com/_ylt=AwrTccS2xgJXfX4ApiwnnIlQ;_ylu=X3oDMTByb2lvbXVuBGNvbG8DZ3ExBHBvcwMxBHZ0aWQDBHNlYwNzcg--/RV=2/RE=1459828535/RO=10/RU=https%3a%2f%2fwww.whitehouse.gov%2fsites%2fdefault%2ffiles%2fdocs%2flicensing_report_final_nonembargo.pdf/RK=0/RS=14PK19fx8_ANqLvGxBUGz7NH7L0-

Current scope of practice laws for advanced practice registered nurses—nurses such as nurse practitioners (NPs) with master's degrees or more—vary dramatically by State, both in terms of their substantive content and the level of specificity that they provide. But State-level evidence suggests that easing scope of practice laws for APRNs represents a viable means of increasing access to certain primary care services. Research finds that APRNs can provide a range of primary care services to patients as effectively as physicians.