

SB 228 - AS AMENDED BY THE SENATE

03/17/2022 0821s

2022 SESSION

22-2955

11/08

SENATE BILL

228

AN ACT

relative to the regulation and practice of physician assistants.

SPONSORS:

Sen. Bradley, Dist 3; Sen. Hennessey, Dist 1; Sen. Carson, Dist 14; Sen. Giuda, Dist 2; Sen. Sherman, Dist 24; Sen. Whitley, Dist 15; Sen. Ricciardi, Dist 9; Sen. Cavanaugh, Dist 16; Sen. Avard, Dist 12; Sen. Prentiss, Dist 5; Sen. Gray, Dist 6; Sen. Reagan, Dist 17; Rep. Knirk, Carr. 3

COMMITTEE:

Executive Departments and Administration

ANALYSIS

This bill modifies the regulation of physician assistants.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the regulation and practice of physician assistants.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Physician Assistants; Definitions. Amend RSA 328-D:1 to read as follows:

2 328-D:1 Definitions. In this chapter:

3 I. "Applicant" means a physician assistant who has submitted an application for licensure.

4 ***I-a. "Approved continuing medical education activity" means a continuing***
5 ***education activity certified for American Academy of Physician Assistants (AAPA)***
6 ***Category 1 credit, American Medical Association (AMA) Category 1 PRA credit, American***
7 ***Osteopathic Association (AOA) Category 1-A credit, American Academy of Family***
8 ***Physicians (AAFP) Prescribed credit, or any other board-approved activity.***

9 II. "Board" means the board of medicine.

10 ***II-a. "Collaboration" means a physician assistant's consultation with or referral to***
11 ***an appropriate physician or other health care professional as indicated based on the***
12 ***patient's condition, the physician assistant's education, training, and experience, and the***
13 ***applicable standards of care.***

14 ***II-b. "Collaboration agreement" means an agreement that meets the requirements of***
15 ***RSA 328-D:3-b.***

16 ***II-c. "Participating physician" means a physician practicing as a sole practitioner,***
17 ***a physician designated by a group of physicians to represent their physician group, or a***
18 ***physician designated by a health care facility to represent that facility, who enters into a***
19 ***collaboration agreement with a physician assistant in accordance with this chapter.***

20 III. "Physician assistant" or "P.A." means a person qualified both by academic and practical
21 training [~~in a program approved by the board~~] to provide patient services [~~under the supervision and~~
22 ~~direction of a licensed physician in a variety of medical care settings~~] ***in collaboration with one or***
23 ***more physicians pursuant to the requirements of this chapter.***

24 2 Physician Assistants; License Required. Amend RSA 328-D:2, II to read as follows:

25 II. This section shall not be construed to prohibit students enrolled in physician assistant
26 training programs [~~approved by the board~~], from performing work incidental to their respective
27 courses of study or supervised clinical work while under the supervision of a designated preceptor.

28 3 Physician Assistants; Manchester Veterans Administration Medical Center. Amend RSA 328-
29 D:2-a, I-II to read as follows:

30 I. New Hampshire state licensure laws, rules, and regulations for physician assistants are
31 hereby suspended for those physician assistants licensed by another state or territory of the United

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1 States or another country who are employed by the United States Department of Veterans Affairs
2 and who are offering medical services to patients offered through the Veterans Administration
3 Medical Center (VAMC), provided that such physician assistants are acting within the scope of their
4 employment at the VAMC and possess a current license in good standing in their respective state,
5 territory, or country of licensure. Physician assistants who are employed by the United States
6 Department of Veterans Affairs and who are offering medical services to patients of the Veterans
7 Administration Medical Center (VAMC) and requesting licensure in New Hampshire may ~~be~~
8 ~~supervised by~~ **collaborate with** physicians licensed in any state or territory of the United States
9 provided the ~~[supervising]~~ **participating** physician possesses a current license in good standing in
10 their respective state or territory of the United States.

11 II. The acting director of the Manchester VAMC shall submit to the executive director of the
12 New Hampshire office of professional licensure and certification, or designee, a list of all out-of-state
13 or out-of-country licensed physician assistants offering services in the state of New Hampshire and
14 out-of-state licensed physicians~~[-accepting supervisory responsibility of]~~ **collaborating with**
15 physician assistants.

16 4 Physician Assistants; Conditions for Licensure. Amend RSA 328-D:3, I to read as follows:

17 I. To apply for licensure by the board as a physician assistant, an applicant shall file a
18 written application on forms provided by the office of professional licensure and certification and pay
19 an application fee. The applicant to be licensed shall:

20 (a) Have ~~[graduated from a physician assistant training program approved by the~~
21 ~~Committee on Allied Health Education and Accreditation or other board approved accrediting~~
22 ~~agency]~~ **successfully completed an educational program for physician assistants accredited**
23 **by the Accreditation Review Commission on Education for the Physician Assistant, or prior**
24 **to 2001, either by the Committee on Allied Health Education and Accreditation, or the**
25 **Commission on Accreditation of Allied Health Education Programs.**

26 (b) Have passed a national proficiency examination, as designated by the board.

27 (c) ~~[Maintain current national certification if required by a national certifying body.~~

28 ~~(d)]~~ Demonstrate that the applicant has good character.

29 ~~[(e)]~~ **(d)** Submit a complete set of fingerprints and a criminal history record release form
30 pursuant to RSA 328-D:3-a.

31 5 New Section; Physician Assistants; Scope of Practice. Amend RSA 328-D by inserting after
32 section 3-a the following new section:

33 328-D:3-b Physician Assistant Scope of Practice.

34 I. Except as provided in RSA 328-D:15, III and RSA 328-D:16, III, a physician assistant
35 shall engage in practice as a physician assistant in this state only if the physician assistant has
36 entered into a written collaboration agreement with a sole practice physician or a physician
37 representing a group or health system so long as the sole practitioner or at least one physician in the

1 group or health system practices in a similar area of medicine as the physician assistant, and is a
2 licensed New Hampshire physician.

3 II. A collaboration agreement shall include all of the following:

4 (a) Processes for collaboration and consultation with the appropriate physician and other
5 health care professional as indicated based on the patient's condition; the physician assistant's
6 education, training, and experience, and the applicable standards of care.

7 (b) An acknowledgment that the physician assistant's scope of practice shall be limited
8 to medical care that is within the physician assistant's education, training, and experience as
9 outlined in VII-XVIII below.

10 (c) A statement that although collaboration occurs between the physician assistant and
11 physicians and other health care professionals, a physician shall be accessible for consultation in
12 person, by telephone, or electronic means at all times when a physician assistant is practicing.

13 (d) The signatures of the physician assistant and the participating physician. No other
14 signatures shall be required.

15 III. The collaboration agreement shall be updated as necessary.

16 IV. In the event of the unanticipated unavailability of a participating physician practicing as
17 a sole practitioner due to serious illness or death, a physician assistant may continue to practice for
18 not more than a 30-day period without entering into a new collaboration agreement with another
19 participating physician.

20 V. The collaboration agreement shall be kept on file at the practice and made available to
21 the board upon request. The board shall not request or require any modifications to the
22 collaboration agreement.

23 VI. A participating physician shall not be required to submit a written acceptance of
24 collaboration to the board.

25 VII. Physician assistants may provide any legal medical service for which they have been
26 prepared by their education, training, and experience and are competent to perform. Medical and
27 surgical services provided by physician assistants include, but are not limited to:

28 (a) Obtaining and performing comprehensive health histories and physical
29 examinations;

30 (b) Evaluating, diagnosing, managing, and providing medical treatment;

31 (c) Ordering, performing, and interpreting diagnostic studies and therapeutic
32 procedures;

33 (d) Educating patients on health promotion and disease prevention;

34 (e) Providing consultation upon request;

35 (f) Writing medical orders;

36 VIII. Physician assistants may provide services in healthcare facilities or programs
37 including but not limited to hospitals, nursing facilities, assisted living facilities, and hospices.

1 IX. Physician assistants may obtain informed consent.

2 X. Physician assistants may supervise, delegate and assign therapeutic and diagnostic
3 measures to licensed or unlicensed personnel.

4 XI. Consistent with the scope of practice, physician assistants may certify the health or
5 disability of a patient as required by any local, state, or federal program.

6 XII. Physician assistants may authenticate any document with their signature, certification,
7 stamp, verification, affidavit, or endorsement if it may be so authenticated by the signature,
8 certification, stamp, verification, affidavit, or endorsement of a physician.

9 XIII. A physician assistant may prescribe, dispense, order, administer, and procure drugs
10 and medical devices. Physician assistants may plan and initiate a therapeutic regimen that includes
11 ordering and prescribing non pharmacological interventions, including but not limited to durable
12 medical equipment, nutrition, blood and blood products, and diagnostic support services including
13 but not limited to home healthcare, hospice, and physical and occupational therapy.

14 XIV. The prescribing and dispensing of drugs shall :

15 (a) Comply with the requirements of RSA 318, federal and state regulations;

16 (b) Occur when pharmacy services are not reasonably available, or when it is in the best
17 interests of the patient, or when it is an emergency; and

18 (c) Include any medications that may be dispensed by a physician.

19 XV. Physician assistants may request, receive, and sign for professional samples, and may
20 distribute professional samples to patients.

21 XVI. Physician assistants who prescribe and/or dispense controlled substances shall register
22 with the United States Drug Enforcement Administration and any applicable state controlled
23 substance regulatory authority.

24 XVII. Physician assistants shall collaborate with, consult with, and/or refer to the
25 appropriate member(s) of the healthcare team as indicated by the patient's condition, the education,
26 experience, and competencies of the physician assistant, and the standard of care. The degree of
27 collaboration should be outlined in the collaboration agreement. Physician assistants are solely
28 responsible for the care they provide.

29 XVIII. The scope of practice of a physician assistant shall be determined at the practice level
30 based on the education, training, and experience of the physician assistant. Practice settings may
31 include, but are not limited to, a physician employer setting, group practice setting, independent
32 private practice setting, or in a health care facility setting governed by a system of credentialing
33 and/or granting of privileges.

34 6 Physician Assistants; Renewal of Licenses. Amend RSA 328-D:5 to read as follows:

35 328-D:5 Renewal of Licenses. Every person licensed to practice under this chapter shall apply
36 to the board for biennial renewal of license on forms provided by the office of professional licensure
37 and certification and shall pay a renewal fee as established by the office of professional licensure and

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certification. Applications for renewal shall be filed no later than December 31 of every other year [and shall include proof of the applicant's current national certification]. A license issued under this chapter shall not expire until the board has taken final action upon the application for renewal.

7 Physician Assistants; Grounds for Discipline. Amend RSA 328-D:6, V to read as follows:

V. Has undertaken to practice [~~independent of the referral or prescription, direction, or supervision of a physician licensed under RSA 329~~] ***outside of the collaboration agreement required pursuant to RSA 328-D:3-b.***

8 Physician Assistants; Physician Liability. RSA 328-D:12 is repealed and reenacted to read as follows:

328-D:12 Physician Liability. A physician assistant is responsible for his or her own medical decision making. A participating physician included in a collaboration agreement with a physician assistant shall not, by the existence of the collaboration agreement alone, be legally liable for the actions or inactions of the physician assistant; provided, however, that this shall not otherwise limit the liability of the participating physician.

9 New Subparagraph; Rulemaking; Liability Insurance Coverage. Amend RSA 328-D:10, I by inserting after subparagraph (k) the following new subparagraph:

(l) The definition of adequate liability insurance coverage under RSA 328-D:18.

10 New Sections; Physician Assistants; Disaster Care, Emergency Care, and Coverage of Services. Amend RSA 328-D by inserting after section 14 the following new sections:

328-D:15 Participation in Disaster and Emergency Care.

I. A physician assistant licensed in this state or licensed or authorized to practice in any other U.S. jurisdiction or who is credentialed as a physician assistant by a federal employer who is responding to a need for medical care created by an emergency or a state or local disaster may render such care that they are able to provide, provided that a state or local disaster shall not include an emergency situation that occurs in the place of the physician assistant's employment.

II. A physician assistant so responding who voluntarily and gratuitously, and other than in the ordinary course of employment or practice, renders emergency medical assistance shall not be liable for civil damages for any personal injuries that result from acts or omissions which may constitute ordinary negligence. The immunity granted by this section shall not apply to acts or omissions constituting gross, willful or wanton negligence.

III. A physician assistant licensed in this state or licensed or authorized to practice in any other U.S. jurisdiction or credentialed as a physician assistant by a federal employer shall not be required to have a collaboration agreement when responding to a need for medical care created by a disaster or emergency.

328-D:16 Participation in Volunteer Care.

I. A physician assistant licensed in this state, or licensed or authorized to practice in any other U.S. jurisdiction, or who is credentialed by a federal employer or meets the licensure

1 requirements of his or her requisite federal agency as a physician assistant may volunteer to render
2 such care that he or she is able to provide at a children's summer camp or for a public or community
3 event or in a licensed ambulatory health center providing free care. Such care must be rendered
4 without compensation or remuneration.

5 II. A physician assistant licensed in this state, or licensed or authorized to practice in any
6 other U.S. jurisdiction, or credentialed as a physician assistant by a federal employer shall not be
7 required to have a collaboration agreement when participating in volunteer care.

8 328-D:17 Coverage of Services.

9 I. Health insurers and, to the extent permitted under federal law, Medicaid and Medicare
10 shall reimburse a participating provider who is a physician assistant for any medical and surgical
11 service delivered by the physician assistant if the same service would be covered if delivered by a
12 physician. Physician assistants are authorized to bill for and receive direct payment for the
13 medically necessary services they deliver.

14 II. To provide accountability and transparency for patients, payers, and health care systems,
15 the physician assistant, when appropriate, shall be identified as the treating provider in the billing
16 and claims processes when the physician assistant delivered the medical services to the patient.

17 III. A health insurer shall not impose any practice, education, or collaboration requirement
18 for a physician assistant that is inconsistent with or more restrictive than the provisions of this
19 chapter.

20 IV. Nothing in this chapter shall be construed to preclude a health carrier from exercising
21 its rights and responsibilities set forth in RSA 420-J:4.

22 328-D:18 Professional Liability Insurance Coverage. Physician assistants actively engaged in
23 providing medical care shall have adequate, current, and valid professional liability insurance
24 coverage.

25 11 Physicians and Surgeons; Disciplinary Action. Amend RSA 329:17, VII-a to read as follows:

26 VII-a. The board may issue a nondisciplinary confidential letter of concern to a licensee
27 advising that while there is insufficient evidence to support disciplinary action, the board believes
28 the physician or physician assistant should modify or eliminate certain practices, and that
29 continuation of the activities which led to the information being submitted to the board may result in
30 action against the licensee's license. This letter shall not be released to the public or any other
31 licensing authority, except that the letter may be used as evidence in subsequent disciplinary
32 proceedings by the board, and shall be sent to a physician assistant's ~~[supervising physician]~~
33 **employer, if applicable.**

34 12 Physicians and Surgeons; Persons Excepted. Amend RSA 329:21, XIII-XVI to read as
35 follows:

36 XIII. No ~~[physician's]~~ **physician** assistants or other paramedical personnel shall engage in
37 the practice of optometry as defined in RSA 327:1 or perform any service rendered by an optician.

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1 XIV. To such emergency medical services personnel as are approved and licensed by the
2 commissioner of the department of safety under RSA 153-A.

3 XV. Midwives certified pursuant to RSA 326-D and practicing midwifery pursuant to RSA
4 326-D:2, V.

5 ~~[XVI. To such physician assistants as have been approved and certified by the board while~~
6 ~~under the supervision and control of a physician licensed in this state, but only if such person:~~

7 ~~(a) Is a student in an established program which has been approved by the board; or~~

8 ~~(b) Is a graduate of such a program and has passed, or has received temporary~~
9 ~~certification for the period pending the results of any examination for physician assistants required~~
10 ~~by the board.]~~

11 13 Repeal. The following are repealed:

12 I. RSA 328-D:10, I(a), relative to rulemaking authority of the board of medicine over the
13 scope of practice for physician assistants.

14 II. RSA 328-D:10, I(e), relative to rulemaking authority of the board of medicine over the
15 standards for physician assistant education and training.

16 III. RSA 328-D:10, I(f), relative to rulemaking authority of the board of medicine over the
17 supervision of physician assistants.

18 IV. RSA 328-D:10, I(h), relative to rulemaking authority of the board of medicine over the
19 definition of supervision relative to physician assistants.

20 V. RSA 328-D:10, II, relative to rulemaking authority of the board of medicine and
21 pharmacy board over prescriptions issued by physician assistants.

22 14 Effective Date. This act shall take effect 60 days after its passage.