How Rules Are Changing For California Physician Assistants

By **David Balfour** (May 27, 2020)

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California Gov. Gavin Newsom's March 30 executive order authorized the Department of Consumer Affairs to issue waivers of certain laws and regulations pertaining to health care licensees. On April 14, the Department of Consumer Affairs issued Waiver Order 20-04, waiving certain key restrictions on physician assistants' supervision.

The waiver order "only applies if" a PA moves to a hospital or practice setting "to assist with the COVID-19 response"; or, if no supervising physician is available to supervise the PA pursuant to a practice agreement because of COVID-19.

4:1 Ratio of PAs Supervised Per Supervising Physician Waived

Under the department's order, the maximum ratio of four PAs for any one supervising physician is waived. Where the waiver order applies, there is no set limit on the number of PAs each physician can supervise.

This waiver is clearly intended to increase the availability of PAs in hospitals and other settings where the COVID surge taxes available resources. Rather than having an arbitrary limit to the number of PAs a physician may supervise, this waiver places the onus upon the PA and supervising physician to identify the reasonable limits of supervision.

More than a dozen other states had already allowed physicians to supervise an unlimited number of PAs before the COVID-19 emergency began.

Practice Agreement Requirement Waived

The order maintains the requirement that all PAs must be supervised by a physician, but the requirement for a practice agreement or a delegation of services agreement is waived. In explaining why it issued this order, the department noted in its guidance memorandum that the requirement for a PA to have a written agreement for supervision with a supervising physician "complicates and impedes where and how PAs can practice and prevents PAs, despite their competence to perform varied medical services, from stepping in urgently where they are needed most."

Prescribing Limits Reduced

The order also loosens the requirements in place for PAs to order or furnish drugs or devices; for those PAs subject to this order, they do not need to have a practice agreement in place with a supervising physician to be able to prescribe controlled substance medications. However, even under the order, a supervising physician must sign off on a patient-specific prescription for U.S. Drug Enforcement Administration scheduled II or III medications (which includes all opiate narcotics and most benzodiazepines/anti-anxiolytics).

Waivers Expand Recent Legislation's Loosening of Restrictions

Prompted by strong and effective lobbying from the California Association of Physician Assistants, California Senate Bill 697 was enacted and made sweeping changes to the

Physician Assistant Practice Act. The substantial changes to the permissible scope of practice for PAs became effective Jan. 1. Impressively, the bill had such strong support in the Legislature that it passed without a single nay vote during the legislative process.

The scope of practice and autonomy of physician assistants is controlled on a state-by-state basis throughout the U.S., with widely varying parameters. California's changes in PA law are consistent with the trend nationally to ease restrictions placed on PAs and to expand the scope of work handled by them.

In May 2016, the American Academy of Physician Assistants approved a new version of its "Guidelines for State Regulation of PAs." The AAPA's new guidelines "provide that PA scope of practice should consist of activities for which the PA is prepared by education and experience, do not tie PA scope of practice to a physician's, do not require physician delegation, replace references to physician "supervision" with "collaboration," and repeal the requirement that physicians should be responsible for PA-provided care." Under these new guidelines, state PA associations may also pursue "even more progressive provisions that would increase PA practice authority, should the opportunity arise."

Under prior California law, PAs were required to enter into a "delegation of services" agreement with a supervising physician, who would identify and delegate to the PA the authority to conduct certain duties. This delegation stemmed from the concept that PAs were agents of the supervising physicians, and could only perform acts within the physician's scope of practice that were specifically identified in the delegation of services agreement.

S.B. 697 discarded the concept of "delegation" altogether. Importantly, the PA's scope of practice is no longer curtailed by the scope of the supervising physician's practice area(s). Under S.B. 697, the scope of a PA's practice was broadened to allow the PA to perform any duties for which the PA is competent based upon the PA's education, training and experience.

Though a California PA still must be supervised by a supervising physician, the law specifically provides that the physician need not be physically present with the PA. Instead, supervision must take place as the agreement between them relating to supervision — which is now called a "practice agreement" — provides. The physician must be available by phone or other electronic media whenever the PA examines the patient. A practice agreement must address the types of medical procedures a physician assistant is authorized to perform, as well as policies and procedures to ensure adequate supervision, but the statute is written to clearly offer greater autonomy to the physician assistant. Moreover, the practice agreement is to be constructed through the collaboration between the physician and PA.

The proof of supervision a California PA and supervising physician were previously required to show has largely been eliminated. Supervising physicians are no longer required to co-sign any specific number or percentage of medical charts, nor to review the PA's documentation of any specific number or percentage of patient visits. The previous requirement that the supervising physician's name appear within the chart whenever a PA sees a patient has also been eliminated. Similarly, prescriptions written by PAs are no longer required to display the name of the supervising physician.

Will Physician Shortages and Health Crisis Lead To Future Changes for PAs?

The impetus for the unanimous passage of S.B. 697 was the clearly recognized need to

expand the ranks of primary care providers to address the a physician shortage and the resulting lack of access to affordable health care driven by an aging population, greater numbers of insured patients due to the Affordable Care Act, and a bottleneck limiting newly trained physicians.

California has the largest number of Health Professional Shortage Areas, as designated by the U.S. Health Resources and Services Administration, with the largest concentration of these areas in less populated central and eastern regions of the state. The need for more providers is a driving force for many of these changes. Any allegiances to the way things were as well as any concerns about quality of care due to reductions in physician supervision did not delay the passage of this bill or inhibit the scope of changes it made to the PA Act.

Most states still require some level of supervision by physicians of physician assistants, but many have been considering loosening these restrictions. In some states, PAs are permitted to practice independent of any physician supervision. Other states have considered permitting independent PA practice for PAs with specified higher levels of training, no disciplinary records, and malpractice coverage.

Historically, concerns about a lower quality of care have surfaced when legislative action is advanced to make physician assistant practices more independent from the supervising physician. Efforts to respond and alleviate these concerns have included requiring more training and higher liability insurance minimums. The increased sophistication of technology seemingly allows for enhanced remote supervision. The forced implementation of these technologies during the COVID-19 emergency will likely help to define whether the trend toward greater PA autonomy continues.

Obviously, the current expansions of the waiver orders were prompted by the urgent need to have sufficient providers to address the potential surge of patients requiring treatment for COVID-19 symptoms. In California, these two purposes have dovetailed to give PAs greater autonomy than ever before permitted by California law.

Lawmakers, policymakers and health care providers will undoubtedly be closely observing the impacts of the the loosening of restrictions with the waiver order and S.B. 697. It will be interesting to see if any further loosening of practice restrictions occurs following the experience gained during this period.

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