

Laws & Regulations Governing CRNA Practice in Massachusetts

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AANA defines CRNA Scope of Practice to include, but not limited to...



- performing a comprehensive history and physical
- conducting a pre-anesthesia evaluation
- obtaining informed consent for anesthesia
- selecting, ordering, prescribing and administering drugs and controlled substances
- provide acute, chronic and interventional pain management services critical care and resuscitation services
- order and evaluate diagnostic tests; request consultations; and perform point-of-care testing
- plan and initiate anesthetic techniques, including general, regional, local, and sedation
- facilitate emergence and recovery from anesthesia; and provide post-anesthesia care, including **medication management**, conducting a post-anesthesia evaluation, and discharge from the post-anesthesia care area or facility



AANA describes CRNA Scope of Practice determined by...



- Experience
- Education
- Board Certification
- State and Federal Law (licensure)
- Facility Policy

CRNA Practice in Massachusetts is Governed and Regulated by

1. Statute

- Massachusetts General Laws (MGLs)
 - Laws are passed by the Massachusetts Legislature



2. Code of Massachusetts Regulations (CMRs)

- Based on MGLs, the Department of Public Health (DPH) and Board of Registration ensures public health, safety and welfare by issuing and regulating all licensed disciplines





CRNA Practice Laws and Regulations in Massachusetts at a glance



Nurse Practice Act

- 1. Statute: Massachusetts General Laws**
 - MGL 112 Section 80B
 - MGL 112 Section 80H
- 2. Board of Registration in Nursing (BORN)**
 - APRN (CRNAs are licensed as APRNs in MA) regulations are found in the Code of Massachusetts Regulations at **244 CMR 4.00**

Chapter 94C: The Controlled Substance Act & Department of Public Health (DPH)

MGL 94C (Controlled Substance Act)

- A law that regulates the safe prescribing and dispensing of controlled substances
- All prescription medications are considered controlled substances in Massachusetts
- CRNAs who want to write orders/prescriptions are required to register as a prescribing practitioner in order to distribute, dispense, administer controlled substances

Department of Public Health (DPH)

- Regulations for safe handling of prescription medications and requirements for prescriptive practice are found at **105 CMR 7.00**



Nurse Practice Act

1) Statute: Massachusetts General Laws



- **MGL 112 Section 80B**
 - Defines the requirements to practice as a nurse (including advanced practice) in Massachusetts
 - **Massachusetts licenses 5 categories of advanced practice registered nurses (APRNs)**
 - **CRNAs**, Nurse Practitioners, Nurse Midwives, Psychiatric Clinical Nurse Specialists, Certified Nurse Specialists
 - Requires advanced practice nursing regulations which govern the ordering of tests, therapeutics and prescribing of medications be promulgated by the BORN in conjunction with the board of registration in medicine (BORiM)
 - This means that the BORN is required to develop regulations for APRNs to write orders/prescriptions together with the Board of Registration in Medicine (BORiM)
 - Has resulted in the **requirement of physician supervision of APRN prescriptive authority** (<http://www.masscrna.com/?page=PrescriptivePractice> for more information of Prescriptive Practice

This law does not require supervision of APRN Practice, just prescriptive authority

Nurse Practice Act

1) Statute: Massachusetts General Laws (cont'd)

- **MGL 112 Section 80H**

- Like the other APRN groups, CRNAs may issue written prescriptions/medication orders and order tests and therapeutics for the immediate perioperative care of a patient
- However, in addition to physician supervision of prescriptive authority, CRNA prescriptive authority is further restricted to the immediate perioperative care of the patient
- “The immediate perioperative care of a patient shall be defined as the period commencing on the day prior to surgery and ending upon discharge of the patient from post-anesthesia care.”
- “The administration of anesthesia by a nurse anesthetist directly to a patient shall not require a written prescription.”

Take note: this law does not require physician supervision of CRNAs to administer anesthesia; it only requires supervision of CRNA prescriptive practice

Nurse Practice Act

2) Board of Registration in Nursing (BORN)

- Pursuant to MGLs, regulations for all licensed disciplines in the state are defined in the Code of Massachusetts Regulations (CMRs)
- Massachusetts BORN is the agency authorized to regulate nursing education, licensing and practice in the state.
- APRNs (which includes CRNAs) regulations are listed in 244 CMR 4.00





Chapter 94C: The Controlled Substance Act and DPH Regulations



- Regulate the safe prescribing and dispensing of controlled substances (ALL prescription medications are considered controlled substances in the state of Massachusetts)
- Extremely complicated and difficult to understand
- **A likely cause of prescriptive authority confusion**
- To briefly summarize:
 - The Controlled Substance Act and DPH regulations identifies the following items that require registration as a “practitioner”:
 1. Issuing a written prescription
 2. Issuing a oral (verbal) prescription
 3. **Writing medication orders** (the most common form of prescriptive practice that CRNAs are engaged in)
 - All practitioners who engage in prescriptive practice must register with the Department of Public Health (DPH) – Drug Control Program (DCP) and the Drug Enforcement Agency (DEA)



Summary: Massachusetts Laws and Regulations Governing CRNA Practice

- **Nurse Practice Act:** Comprised of MGLs and MA BORN
 - **MGL 112 Section 80B** – definition of nursing in Massachusetts, BORiM oversight of BORN for APRN (including CRNAs) prescriptive practice
 - **MGL 112 Section 80H** – in addition to requiring physician supervision of prescriptive practice, CRNA prescriptive authority is *further* restricted to the immediate 24-hour peri-operative period, specifies that CRNAs do not need a prescription to administer anesthesia
 - **BORN Regulations 244 CMR 4.00**
- **Chapter 94C: Controlled Substance Act and DPH** – regulates safe prescribing and dispensing of controlled substances

There are NO Massachusetts laws that require physician supervision of CRNAs to administer anesthesia

What about “Medical Direction” and “Medical Supervision”?

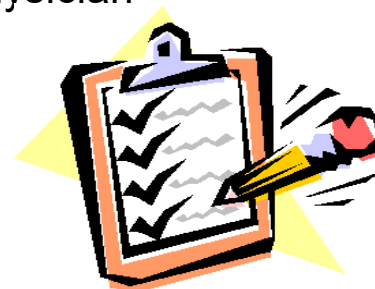
- Medicare requires physician supervision of CRNAs to submit claims for payment. The “physician” DOES NOT have to be an anesthesiologist
- **“The medical direction requirements are not quality of care standards”** Federal Register Vol. 63, No. 211, page 58843
- “The term medical direction is used for *payment purposes only.*”- 130 CMR 433.434 (C)
- **These *billing terms* are often confused and/or falsely represented as practice laws or regulations**
- Set forth in the **Code of Federal Regulations (CFRs)** and published in the **Centers for Medicare & Medicaid Services (CMS) Manual**
- These **FEDERAL Medicare billing terms** define the requirements for anesthesia providers to submit claims (get paid) for anesthesia services and utilize a set of billing code modifiers that indicate what type of provider was involved in the anesthesia care of the patient and are often utilized by commercial and private insurance companies



What about “Medical Direction” and “Medical Supervision”?

Anesthesia Billing Modifiers: the functions of these modifiers are to determine 1) whether the allowed service can be billed at the medical direction rate based on the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requirements 2) case concurrency 3) **allocation of the percent of reimbursement for an allowed service based on provider type**

- **AA:** anesthesia services performed personally by the anesthesiologist
- **AD:** medical supervision by a physician; more than 4 concurrent anesthesia procedures
- **QK:** medical direction of 2, 3, or 4 concurrent anesthesia procedures involving qualified individuals
- **QY:** medical direction of 1 CRNA by an anesthesiologist
- **QX:** CRNA service with medical direction by a physician
- **QZ:** CRNA service without medical direction by a physician



Centers for Medicare & Medicaid Services (CMS) **BASIC** billing for Anesthesia services provided by Anesthesiologists and Certified Registered Nurse Anesthetists (CRNAs)

- CMS utilizes a series of billing terms and associated billing modifiers as a means to submit claims for reimbursement
- CMS requires physician supervision under Medicare Part A, Conditions of Participation (COP) in order to submit claims for reimbursement – this supervision **DOES NOT have to be an anesthesiologist**
- “The medical direction requirements **are not quality of care standards.**” - Federal Register Vol. 63, No. 211, page 58843
- “The term medical direction is used for **payment purposes only.**” - Massachusetts Code of Regulations at 130 CMR 433.434 (C)
- TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) – developed to close tax loopholes to reduce budget gap
- QZ modifier DOES NOT prevent anesthesia providers from working within an anesthesia care team. It simply relieves MD anesthesiologists from having to meet TEFRA requirements, allows utilization of all anesthesia providers in the most cost-efficient manner without compromising safe patient care, decreases Medicare fraud, DOES NOT change provider liability

Medical Direction

Billing Modifiers

MD: QK 50%
CRNA: QX 50%

IF Anesthesiologist is supervisor
Max ratio: 1 Anesthesiologist ≤ 4 CRNAs

Anesthesiologist must document TEFRA 7 points of “Medical Direction”

1. perform a pre-anesthetic exam and evaluation
2. Prescribe the anesthesia plan
3. Personally participate in the most demanding procedures in the anesthesia plan, including, if applicable, induction and emergence
4. Ensures that any procedures in the anesthesia plan are performed by a qualified anesthetist
5. Monitors the course of anesthesia administration at frequent intervals
6. Remains physically present and available for immediate diagnosis and treatment of emergencies
7. Provides indicated post-anesthesia care

Medical Supervision

Billing Modifiers

MD: AD 30%
CRNA: QX 50%

May be ratio of EITHER
A) Anesthesiologist OR
B) Operating Practitioner ≥ 5 CRNAs

Not recognized in Massachusetts for MassHealth/Medicaid

Non-Medically Directed

Billing Modifiers

MD: none 0%
CRNA: QZ 100%

- **No ratios required**
- **Allows CRNAs & Anesthesiologists and/or operating practitioners to work as a team without the TEFRA restrictions of Medical Direction**
- **Enables facilities to use their workforce in the most productive and cost-efficient manner possible**
- **NO LEGAL IMPEDIMENT IN MASSACHUSETTS**
- *****MOST COST-EFFECTIVE BILLING OPTION*****

Anesthesiologist Personally Performing Anesthesia Alone

Billing Modifiers

MD: AA 100%
CRNA: none 0%

Direction of 1 CRNA by an Anesthesiologist

Billing Modifiers

MD: QY 50%
CRNA: QX 50%

Opt-Out

- refers to the 2001 decision made by CMS to allow states to opt out of the Federal Supervision requirement for CRNAs under Medicare Part A, COP
- As of 2018, there are 17 states that have exercised their right to opt out.

Billing Modifiers

MD: none 0%
CRNA: QZ 100%

- | | | |
|------------------|-----------------|------------------|
| 1. Iowa | 7. Kansas | 13. South Dakota |
| 2. Nebraska | 8. North Dakota | 14. Wisconsin |
| 3. Idaho | 9. Washington | 15. California |
| 4. Minnesota | 10. Alaska | 16. Colorado |
| 5. New Hampshire | 11. Oregon | 17. Kentucky |
| 6. New Mexico | 12. Montana | |



10/2018





Let's put it all together...



CRNA Practice in MA

Current Laws & Regulations

VS

Federal Medicare **Billing Rules** For Anesthesia Provided by CRNAs

MGL 112 Section 80B

- Defines nursing practice in Massachusetts
- Requires regulations of APRN Prescriptive Authority be promulgated by the BORN in conjunction with BORiM (physician supervision of APRN prescriptive practice)

MGL 112 Section 80H

- Further restricts CRNAs prescriptive authority to immediate post op period in addition to requiring physician supervision
- specifies that CRNAs do not need a prescription to administer anesthesia

Chapter 94C: The Controlled Substance Act and DPH regulations

- Ensures safe handling of controlled substances
- Inconsistent terminology with the Nurse Practice Act
- Requirements for practitioners to register as prescribers

Board of Registration in Nursing

- Agency authorized to enforce the MGLs associated with nursing
- **Section 244 CMR 4.00:** Regulations for advanced practice nursing

- Billing terms provide a means to submit claims to Medicare for reimbursement.
- Requires physician supervision; **does not have to be an anesthesiologist**
- **If** an anesthesiologist is supervisor, billing modifiers are used to determine reimbursement amount, case concurrency, allocation of reimbursement funds
- Often confused and/or **falsely represented** as CRNA practice laws or regulations

- Hospitals/Facilities may develop their own practice policies
- **There are no MA state or Federal laws that require supervision of CRNA practice**

Facility policy to Medically Direct/Supervise CRNA practice

- Regardless of state and federal law, hospitals/facilities are free to adopt their own practice guidelines
- Guidelines cannot be less restrictive than laws, but they CAN be more restrictive
- A common facility guideline in Massachusetts requires supervision of CRNA practice; CRNAs usually agree to this by signing a collaborative agreement during the credentialing process
- If APRNs (includes CRNAs) are going to write prescriptions/orders, per Massachusetts laws and regulations previously discussed, supervising physicians and CRNAs are required to **jointly** develop additional guidelines for APRNs to engage in prescriptive practice
- CRNAs who write prescriptions/orders are required to have prescriptive authority guidelines in place and must register with the Massachusetts Controlled Drug Program and obtain a DEA number

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Please visit the www.masscrna.com for more information about Massachusetts Laws and Regulations for CRNA practice and a step-by-step guide with supporting information for CRNA prescriptive authority

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