

Practice Requirements for Nurse Practitioners

I. Collaborative Practice

According to New York State Education Law § 6902, a nurse practitioner (NP) diagnoses illnesses and physical conditions and performs therapeutic and corrective measures within the specialty area of practice in which the NP is certified. New York certifies NPs to practice in the following specialty areas: Adult Health; Family Health; Gerontology; Neonatology; Obstetrics; Oncology; Pediatrics, Perinatology; Psychiatry; School Health; Women's Health; Holistic; and Palliative Care.

New York State Education Law holds NPs independently responsible for the diagnosis and treatment of their patients and does not require an NP to practice under physician supervision. As described in more detail below, this law requires each NP to practice in accordance with written practice protocols and a written practice agreement with a collaborating physician. However, starting on January 1, 2015, an NP with more than 3600 hours of qualifying NP practice experience can opt to:

- continue to practice pursuant to a written practice protocols and a written practice agreement with a collaborating physician, as described in Section II "Practicing in Accordance with a Written Practice Agreement with a Collaborating Physician", below; or,
- practice and have collaborative relationships with one or more qualified physicians or New York State Health Department licensed health care facility (i.e., hospital, nursing home, ambulatory surgery center, or diagnostic and treatment center), as described in Section III, "Collaborative Relationships", below.

II. Practicing in Accordance with a Written Practice Agreement with a Collaborating Physician

New York State Education Law requires all nurse practitioners (NPs) to practice in accordance with written practice protocols and a written practice agreement with a collaborating physician, unless the NP practices and has collaborative relationships as allowed by law and as described in more detail in Section III, "Collaborative Relationships", below.

This section describes the New York State Education Law specific requirements for practicing in accordance with written practice protocols and a written practice agreement with a collaborating physician. This law requires that the NP collaborate with a physician *who is qualified to collaborate in the NP's specialty area of practice*. The NP must practice in accordance with written practice protocols and a written practice agreement with the collaborating physician.

Written Practice Agreements

In order to practice, a nurse practitioner (NP) must enter into a written collaborative practice agreement with a physician qualified to practice in the NP's specialty area of practice. Written collaborative practice agreements include provisions addressing:

- Patient referral and consultation.
- Coverage for emergency absences of either the NP or the collaborating physician.
- Resolution of disagreements between the NP and the collaborating physician regarding diagnosis and treatment. If the agreement doesn't address this, the collaborating physician's diagnosis or treatment shall prevail.
- Peer review by the collaborating physician of patient records in a timely fashion, but no less often than every 3 months. New York Law does not specify the number of charts that must be reviewed by the collaborating physician. That decision is left to the judgment of the NP and collaborating physician, and may vary depending on such factors as: the NP's experience, the collaborating physician's knowledge of the NP's abilities, the population to be served and the practice setting.
- Identification of written practice protocols that the NP will use.
- Additional provisions as agreed to by the NP and the collaborating physician.

A copy of the collaborative practice agreement must be kept at the NP's practice setting(s) and made available for inspection by the New York State Education Department (SED). A copy can be found at www.op.nysed.gov/prof/nurse/np-sample-collaborative-agreement.pdf. You may use that as a model.

Many NPs work for 2 or more health care providers or at a facility with patients who are being cared for by several different physicians. The Education Law does not necessarily require that the NP to enter into multiple collaborative agreements in such situations. For example:

- If an OB-GYN NP works at an obstetrician's practice 3 days a week and at Planned Parenthood for 2 days a week, the NP could enter into a collaborative practice agreement with the obstetrician. The collaborative practice agreement could identify a physician (other than the obstetrician) at Planned Parenthood to review the charts of the NP's Planned Parenthood patients, or, alternatively, the obstetrician could review the NP's charts at Planned Parenthood. The NP is not required to enter into a second collaborative agreement.
- If an NP works in a nursing home, the medical director may serve as the collaborating physician. In case of a disagreement between the NP and an attending physician, the medical director could mediate the dispute and make the final treatment decision. The NP is not legally required to have written collaborative practice agreements with all of the attending physicians.

Written Practice Protocols

Nurse practitioners (NPs) are required to practice pursuant to written protocols reflecting the specialty area(s) of practice in which the NP is certified. The protocols must also reflect current, accepted medical and nursing practice. Additional protocols in subspecialty areas (i.e., hematology, orthopedics, dermatology) that are appropriate to the NP's practice may be used but need not be reflected in the collaborative practice agreement.

A list of many, but not all recommended Practice Protocols can be found at www.op.nysed.gov/prof/nurse/npapproved.htm.

Form 4NP "Verification of Collaborative Agreement and Practice Protocol"

A newly certified nurse practitioner (NP) is required file with the New York State Education Department (SED) *Form 4NP*- "Verification of Collaborative Agreement and Practice Protocol" within 90 days after starting professional practice. The NP is not required to file any additional *Form 4NP* with SED. A completed *Form 4NP* is not equivalent to a collaborative practice agreement. Copies of *Form 4NP* can be downloaded from SED's website at www.op.nysed.gov/prof/nurse/nurseformsnp.htm.

Note: The Education Law does not require physicians to supervise the NP or to co-sign the NP's orders or medical records. It does require the collaborating physician to review the NP's patient records at least every three months.

III. Collaborative Relationships (Effective January 1, 2015)

This section describes a new law, The Nurse Practitioners Modernization Act, which allows certain experienced nurse practitioners (NPs) to practice more autonomously. Starting on January 1, 2015, each NP with more than 3,600 hours of qualifying NP practice experience can opt to:

- practice in accordance with a written practice agreement with a collaborating physician, as described above in Section II "Practicing in Accordance with a Written Practice Agreement with a Collaborating Physician"; or,
- practice and have collaborative relationships with a qualified physician or a New York State Health Department licensed health care facility (i.e., hospital, nursing home, ambulatory surgery center, or diagnostic and treatment center), as described in more detail in this section.

The new law defines "**collaborative relationships**" as when an NP communicates, by phone, in person in writing or electronically with a physician qualified to collaborate in the specialty involved or in the case of a licensed health care facility, communicates with a physician qualified to collaborate in specialty involved who has privileges at such health care facility **for the purpose of exchanging information in order to provide comprehensive care or to make referrals, as necessary.**

The NP may practice and have collaborative relationships, provided that the following criteria below are met:

- The NP must have more than 3,600 hours of experience practicing as a licensed or certified NP pursuant to the laws of New York or another state or practicing as an NP while employed by the United States veteran's administration, the United States armed forces or the United States public health service.
- The NP must have collaborative relationships with one or more physicians qualified to collaborate in the specialty involved or with a New York State Health Department licensed health care facility (i.e., hospital, nursing home, ambulatory surgery center, or diagnostic and treatment center). The health care facility must provide services through physicians qualified to collaborate in the specialty involved and who have professional privileges at the health care facility.
- The NP has filled out and signed a "Collaborative Relationships Attestation Form" prepared by the State Education Department (SED), which describes the NP's current collaborative relationships. Visit www.op.nysed.gov/prof/nurse/np-npcr.pdf to download a copy of the form.
- The NP must maintain documentation in written or electronic form that supports his or her collaborative relationships. Such documentation may include, but is not limited to, the following:
 - ✓ documentation of an agreement or an arrangement with a hospital or physician practice, pursuant to which an NP may transfer or refer patients for care;
 - ✓ documentation of communication between the NP and a physician qualified to collaborate in the specialty involved relating to the care of the NP's patients or referral of the NP's patients;
 - ✓ documentation of an employment relationship between an NP and a physician practice or a hospital, hospice program, licensed home care services agency or licensed mental health care facility with a physician medical director; or,
 - ✓ documentation of a contractual relationship with a physician, physician practice or a hospital pursuant to which the NP provides professional services.
- The NP must make the "Collaborative Relationships Attestation Form" and documentation in support of collaborative relationships available to SED for inspection.

The new law does not require NPs who practice and have legally authorized collaborative relationships to:

- sign an agreement with a physician;
- practice in accordance with a written agreement or written practice protocols;
- be supervised by a physician; or,
- have a physician to co-sign or review any of the NP's orders, prescriptions, or other clinical records.

The new law does not prohibit NPs who practice and have legally authorized collaborative relationships from:

- practicing pursuant to clinical guidelines, policies or protocols;
- entering into agreements or other clinical or business arrangements;
- communicating with purveyors of health care services; or
- engaging in any quality assurance or other care related activities.

Newly certified NPs are NOT required file with the New York State Education Department (SED) Form 4NP- "Verification of Collaborative Agreement and Practice Protocol" if the NP opts to practice and have collaborative relationships consistent with the new law.

IV. Financial Arrangements between a Nurse Practitioner and a Collaborating Physician

A variety of New York and federal laws affect financial relationships between health care practitioners. Some types financial relationships between nurse practitioners (NPs) and collaborating physicians are prohibited by the Education Law or professional misconduct regulations (See, e.g., Education Law § 6513, 8 NYCRR § 29.1) or other state or federal laws.

New York State Education Law and professional misconduct regulations prohibit a collaborating physician and an NP from engaging in "fee-splitting" or "kick-backs". These legal prohibitions on "fee-splitting" and "kick backs" are designed to ensure that medical and nursing decisions are based on sound clinical judgment, uncompromised by economic or business considerations.

A "kick-back" typically occurs when a person gives or receives or agrees to give or receive money or other consideration to or from a third party in exchange for the referral of patient services. For example, if a physician pays a NP \$100 each and every time the NP refers a patient to the physician for medical care, then it is very likely that the physician is giving and the NP is receiving "kick-backs".

"Fee splitting" can occur if an NP shares his or her practice income or fees with a physician who is not the NP's employer. "Fee splitting" also includes arrangements or agreements in which the NP pays the collaborating physician an amount of money that constitutes a percentage of, or is otherwise dependent upon the income or receipts of the NP in exchange for the collaborating physician's services. For example, if an NP pays 20% of the NP's professional income to the collaborating physician (who works at a separate medical practice) in exchange for the collaborating physician's services, the NP and the physician are probably engaging in illegal "fee splitting".

The Education Laws prohibiting "fee-splitting" or "kick-backs" do not prohibit a NP from paying a collaborating physician the fair market value of the physician's personal services (i.e., chart review and consultation), unless:

- the payment includes remuneration for the referral of patient services;
- the NP is required to refer patients to the physician; or
- the payment is based on a percentage of or dependent on the NP's professional fees or income.

NPs may refer patients to their collaborating physicians when medically necessary, provided that the NP receives nothing in exchange for the referral. New York law does not require that a collaboration agreement include a payment provision.

Questions about collaborative relationships, collaborative practice agreements or practice protocols may be referred to the Nursing Board Office by e-mailing nursebd@nysed.gov or by calling 518-474-3817 ext. 120. It is not within the purview of the Nursing Board Office to interpret laws governing financial relationships between NPs and collaborating physicians.