

# Overview of Assembly Bill (AB) 890

(Wood, Reg. Sess. 2019-2020)

## Presentation to Board of Registered Nursing

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Undesignated statutory references are to the Business and Professions Code.

NP means “nurse practitioner.”

*Disclaimer:* This presentation is intended to present an overview; it is not intended to be exhaustive of the provisions in AB 890 nor the issues surrounding its implementation.



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# Scope of practice of NPs prior to AB 890\*

\*Note: this method of practice is still available to NPs after the passage of AB 890

NPs may practice pursuant to standardized procedures.

- “Standardized procedures” is defined at section 2725, subdivision (c); further clarification is found at California Code of Regulations, title 16, sections 1470-1474.

In addition to the full scope of authority of RNs under section 2725, NPs may, pursuant to standardized procedures and other statutory limitations,:

- Order durable medical equipment (§ 2835.7(a)(1))
- Certify disability (§ 2835.7(a)(2))
- Approve or modify a plan of treatment or plan of home health care (§ 2835.7(a)(3))
- Furnish drugs or devices “consistent with the practitioner’s educational preparation or for which clinical competency has been established and maintained,” under physician and surgeon supervision (§ 2836.1)
  - Supervision must include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.
- Furnish or order buprenorphine (in compliance with the Comprehensive Addiction Recovery Act) without physician and surgeon supervision (§ 2836.4)



# *What did AB 890 do?*

- Established Article 8.5 in the Nursing Practice Act, laying out statutory provisions that will allow NPs to practice without the use of standardized procedures (section 2837.103 and 2837.104)
- Established the Nurse Practitioner Advisory Committee within the Board of Registered Nursing to advise the board on matters relating to nurse practitioners, including disciplinary action against nurse practitioners
- Extended the prohibitions of section 650.01 to NPs practicing independently under section 2837.103 or 2837.104
  - Section 650.01 makes it a misdemeanor for specified healing arts practitioners to refer a patient to another practitioner/entity for certain services, if the licensee or their immediate family has a financial interest with the person/entity that receives the referral.
- Extended the requirement of section 805 to NPs practicing independently under section 2837.103 or 2837.104.
  - Section 805 requires certain peer review organizations to file an “805 report” with the applicable healing arts board, providing information about adverse actions taken against certain healing arts licensees for medical disciplinary cause.
- Directed the Board to work with the DCA Office of Professional Examination Services on an occupational analysis, an assessment of the competencies tested by the national NP exam, and a determination of whether a supplemental exam is necessary to validate competency for independent practice
- Delegated certain other tasks to the Board of Registered Nursing to carry out in order to clarify and implement the provisions of the bill.
  - Although AB 890 took effect January 1, 2021, the bill, by its own terms, required that the BRN take certain actions before NPs could begin to qualify for expanded practice authority.



# Scope of practice for NPs under sections 2837.103 & 2837.104

Section 2837.103 allows NPs to perform specified functions (§ 2837.103(c)), *in specified settings/ organizations* (§ 2837.103(a)(2)), if the NP meets certain requirements (§ 2837.103(a)(1)(A)-(C)).

Section 2837.104 allows NPs to perform specified functions (§ 2837.103(c)), *without regard to setting/organization*, if the NP possesses an active certification and meets certain requirements (§§

2837.103(a)(1)(A)-(C) & 2837.104(b)(1)(A)-(C)).

- Also allows certified NPs to be on the membership of an organized medical staff, and vote at meetings of the department to which they are assigned.





# Section 2837.103 (cont'd)

- (d) A nurse practitioner shall verbally inform all new patients in a language understandable to the patient that a nurse practitioner is not a physician and surgeon. For purposes of Spanish language speakers, the nurse practitioner shall use the standardized phrase “enfermera especializada.”
- (e) A nurse practitioner shall post a notice in a conspicuous location accessible to public view that the nurse practitioner is regulated by the Board of Registered Nursing. The notice shall include the board’s telephone number and the internet website where the nurse practitioner’s license may be checked and complaints against the nurse practitioner may be made.
- (f) A nurse practitioner shall refer a patient to a physician and surgeon or other licensed health care provider if a situation or condition of a patient is beyond the scope of the education and training of the nurse practitioner.
- (g) A nurse practitioner practicing under this section shall have professional liability insurance appropriate for the practice setting.
- (h) Any health care setting operated by the Department of Corrections and Rehabilitation is exempt from this section.



# Section 2837.103

(a)

(1) Notwithstanding any other law, a nurse practitioner may perform the functions specified in subdivision (c) pursuant to that subdivision, in a setting or organization specified in paragraph (2) pursuant to that paragraph, if the nurse practitioner has successfully satisfied the following requirements:

- (A) Passed a national nurse practitioner board certification examination and, if applicable, any supplemental examination developed pursuant to paragraph (3) of subdivision (a) of Section 2837.105.
- (B) Holds a certification as a nurse practitioner from a national certifying body accredited by the National Commission for Certifying Agencies or the American Board of Nursing Specialties and recognized by the board.
- (C) Provides documentation that educational training was consistent with standards established by the board pursuant to Section 2836 and any applicable regulations as they specifically relate to requirements for clinical practice hours. Online educational programs that do not include mandatory clinical hours shall not meet this requirement.
- (D) Has completed a transition to practice in California of a minimum of three full-time equivalent years of practice or 4600 hours.

*Requirements for 103 NPs*

(2) A nurse practitioner who meets all of the requirements of paragraph (1) may practice, including, but not limited to, performing the functions authorized pursuant to subdivision (c), in one of the following settings or organizations in which one or more physicians and surgeons practice with the nurse practitioner without standardized procedures:

- (A) A clinic, as defined in Section 1200 of the Health and Safety Code.
- (B) A health facility, as defined in Section 1250 of the Health and Safety Code, except for the following:
  - (i) A correctional treatment center, as defined in paragraph (1) of subdivision (j) of Section 1250 of the Health and Safety Code.
  - (ii) A state hospital, as defined in Section 4100 of the Welfare and Institutions Code.
- (C) A facility described in Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.
- (D) A medical group practice, including a professional medical corporation, as defined in Section 2406, another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians and surgeons that provides health care services.
- (E) A home health agency, as defined in Section 1727 of the Health and Safety Code.
- (F) A hospice facility licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code.

*Settings/ organizations in which 103 NPs may perform additional functions w/o standardized procedures*

(3) In health care agencies that have governing bodies, as defined in Division 5 of Title 22 of the California Code of Regulations, including, but not limited to, Sections 70701 and 70703 of Title 22 of the California Code of Regulations, the following apply:

- (A) A nurse practitioner shall adhere to all applicable bylaws.
- (B) A nurse practitioner shall be eligible to serve on medical staff and hospital committees.
- (C) A nurse practitioner shall be eligible to attend meetings of the department to which the nurse practitioner is assigned. A nurse practitioner shall not vote at department, division, or other meetings unless the vote is regarding the determination of nurse practitioner privileges with the organization, peer review of nurse practitioner clinical practice, whether a licensee's employment is in the best interest of the communities served by a hospital pursuant to Section 2401, or the vote is otherwise allowed by the applicable bylaws.

(b) An entity described in subparagraphs (A) to (F), inclusive, of paragraph (2) of subdivision (a) shall not interfere with, control, or otherwise direct the professional judgment of a nurse practitioner functioning pursuant to this section in a manner prohibited by Section 2400 or any other law.

(c) In addition to any other practices authorized by law, a nurse practitioner who meets the requirements of paragraph (1) of subdivision (a) may perform the following functions without standardized procedures in accordance with their education and training:

- (1) Conduct an advanced assessment.
- (2)
  - (A) Order, perform, and interpret diagnostic procedures.
  - (B) For radiologic procedures, a nurse practitioner can order diagnostic procedures and utilize the findings or results in treating the patient. A nurse practitioner may perform or interpret clinical laboratory procedures that they are permitted to perform under Section 1206 and under the federal Clinical Laboratory Improvement Act (CLIA).
- (3) Establish primary and differential diagnoses.
- (4) Prescribe, order, administer, dispense, procure, and furnish therapeutic measures, including, but not limited to, the following:
  - (A) Diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources.
  - (B) Prescribe, administer, dispense, and furnish pharmacological agents, including over-the-counter, legend, and controlled substances.
  - (C) Plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including, but not limited to, durable medical equipment, medical devices, nutrition, blood and blood products, and diagnostic and supportive services, including, but not limited to, home health care, hospice, and physical and occupational therapy.
- (5) After performing a physical examination, certify disability pursuant to Section 2708 of the Unemployment Insurance Code.
- (6) Delegate tasks to a medical assistant pursuant to Sections 1206.5, 2069, 2070, and 2071, and Article 2 (commencing with Section 1366) of Chapter 3 of Division 13 of Title 16 of the California Code of Regulations.

*Additional functions that NPs qualifying under either section 2837.103 or 2837.104 may perform w/o standardized procedures*





# Section 2837.104

*Add'l functions allowed under § 2837.104 w/o standardized procedures – relates back to § 2837.103; permissible “outside of the settings or organizations specified” in § 2837.103*

- (a) Beginning January 1, 2023, notwithstanding any other law, the following apply to a nurse practitioner who holds an active certification issued by the board pursuant to subdivision (b):
- (1) The nurse practitioner may perform the functions specified in subdivision (c) of Section 2837.103 pursuant to that subdivision outside of the settings or organizations specified under subparagraphs (A) to (F), inclusive, of paragraph (2) of subdivision (a) of Section 2837.103.
  - (2) Subject to subdivision (f) and any applicable conflict of interest policies of the bylaws, the nurse practitioner shall be eligible for membership of an organized medical staff.
  - (3) Subject to subdivision (f) and any applicable conflict of interest policies of the bylaws, a nurse practitioner member may vote at meetings of the department to which nurse practitioners are assigned.
- (b)
- (1) The board shall issue a certificate to perform the functions specified in subdivision (c) of Section 2837.103 pursuant to that subdivision outside of the settings and organizations specified under subparagraphs (A) to (F), inclusive, of paragraph (2) of subdivision (a) of Section 2837.103, if the nurse practitioner satisfies all of the following requirements:
    - (A) The nurse practitioner meets all of the requirements specified in paragraph (1) of subdivision (a) of Section 2837.103.
    - (B) Holds a valid and active license as a registered nurse in California and a master’s degree in nursing or in a clinical field related to nursing or a doctoral degree in nursing.
    - (C) Has practiced as a nurse practitioner in good standing for at least three years, not inclusive of the transition to practice required pursuant to subparagraph (D) of paragraph (1) of subdivision (a) of Section 2837.103. The board may, at its discretion, lower this requirement for a nurse practitioner holding a Doctorate of Nursing Practice degree (DNP) based on practice experience gained in the course of doctoral education experience.
  - (2) The board may charge a fee in an amount sufficient to cover the reasonable regulatory cost of issuing the certificate.
- (c) A nurse practitioner authorized to practice pursuant to this section shall comply with all of the following:
- (1) The nurse practitioner, consistent with applicable standards of care, shall not practice beyond the scope of their clinical and professional education and training, including specific areas of concentration and shall only practice within the limits of their knowledge and experience and national certification.
  - (2) The nurse practitioner shall consult and collaborate with other healing arts providers based on the clinical condition of the patient to whom health care is provided. Physician consultation shall be obtained as specified in the individual protocols and under the following circumstances:
    - (A) Emergent conditions requiring prompt medical intervention after initial stabilizing care has been started.
    - (B) Acute decompensation of patient situation.
    - (C) Problem which is not resolving as anticipated.
    - (D) History, physical, or lab findings inconsistent with the clinical perspective.
    - (E) Upon request of patient.
  - (3) The nurse practitioner shall establish a plan for referral of complex medical cases and emergencies to a physician and surgeon or other appropriate healing arts providers. The nurse practitioner shall have an identified referral plan specific to the practice area, that includes specific referral criteria. The referral plan shall address the following:
    - (A) Whenever situations arise which go beyond the competence, scope of practice, or experience of the nurse practitioner.
    - (B) Whenever patient conditions fail to respond to the management plan as anticipated.
    - (C) Any patient with acute decompensation or rare condition.
    - (D) Any patient conditions that do not fit the commonly accepted diagnostic pattern for a disease or disorder.
    - (E) All emergency situations after initial stabilizing care has been started.
- (d) A nurse practitioner shall verbally inform all new patients in a language understandable to the patient that a nurse practitioner is not a physician and surgeon. For purposes of Spanish language speakers, the nurse practitioner shall use the standardized phrase “enfermera especializada.”
- (e) A nurse practitioner shall post a notice in a conspicuous location accessible to public view that the nurse practitioner is regulated by the Board of Registered Nursing. The notice shall include the board’s telephone number and internet website where the nurse practitioner’s license may be checked and complaints against the nurse practitioner may be made.
- (f) A nurse practitioner practicing pursuant to this section shall maintain professional liability insurance appropriate for the practice setting.
- (g) For purposes of this section, corporations and other artificial legal entities shall have no professional rights, privileges, or powers.
- (h) Subdivision (g) shall not apply to a nurse practitioner if either of the following apply:
- (1) The certificate issued pursuant to this section is inactive, surrendered, revoked, or otherwise restricted by the board.
  - (2) The nurse practitioner is employed pursuant to the exemptions under Section 2401.

*Add'l requirements for 104 NPs  
(in addition to requirements at § 2837.103(a)(1)(A)-(D))*



# *General overview on scope of authority to develop regulations to implement statute*

The process for state agencies to promulgate regulations is outlined in the Administrative Procedure Act (APA), at Government Code section 11340, et seq.

A “regulation” is defined in the APA as:

every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

(Gov. Code, § 11342.600; emphasis added.)

State agencies pass regulations in order to “implement, interpret, or make specific” the statutes within the agency’s jurisdiction.

Regulations proposed by an agency must meet a “necessity” standard – the agency must demonstrate “the need for a regulation to effectuate the purpose of the statute...that the regulation implements, interprets, or makes specific.” (Gov. Code, §§ 11349, 11349.1.)

Three types of statutory provisions:

- self-executing (no discretion given to agency, does not need a regulation to interpret it)
- wholly-enabling (delegates discretion to the agency, needs a regulation to interpret it)
- susceptible to interpretation (the agency could pass a regulation to adopt a standard of general application; or alternatively, the statute possibly may be implemented without a regulation on a case by case basis)



# Regulations that may be needed to implement AB 890

- Define “transition to practice”

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] ( Division 2 enacted by Stats. 1937, Ch. 399. )

CHAPTER 6. Nursing [2700 - 2838.4] ( Chapter 6 repealed and added by Stats. 1939, Ch. 807. )

ARTICLE 8.5. Advanced Practice Registered Nurses [2837.100 - 2837.105] ( Article 8.5 added by Stats. 2020, Ch. 265, Sec. 4. )

2837.101. For purposes of this article, the following terms have the following meanings:

(a) “Committee” means the Nurse Practitioner Advisory Committee.

(b) “Standardized procedures” has the same meaning as that term is defined in Section 2725.

(c) “Transition to practice” means additional clinical experience and mentorship provided to prepare a nurse practitioner to practice independently. “Transition to practice” includes, but is not limited to, managing a panel of patients, working in a complex health care setting, interpersonal communication, interpersonal collaboration and team-based care, professionalism, and business management of a practice. **The board shall, by regulation, define minimum standards for transition to practice.** Clinical experience may include experience obtained before January 1, 2021, if the experience meets the requirements established by the board.

DEPARTMENT OF CONSUMER AFFAIRS



# *Regulations that may be needed to implement AB 890*

- Determine process for Nurse Practitioner Advisory Committee to advise the Board on disciplinary matters\*

\*Regulation may or may not be necessary, depending on process adopted.

## BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] ( Division 2 enacted by Stats. 1937, Ch. 399. )

CHAPTER 6. Nursing [2700 - 2838.4] ( Chapter 6 repealed and added by Stats. 1939, Ch. 807. )

ARTICLE 8.5. Advanced Practice Registered Nurses [2837.100 - 2837.105] ( Article 8.5 added by Stats. 2020, Ch. 265, Sec. 4. )

**2837.102.** (a) The board shall establish a Nurse Practitioner Advisory Committee to advise and make recommendations to the board on all matters relating to nurse practitioners, including, but not limited to, education, appropriate standard of care, and other matters specified by the board. **The committee shall provide recommendations or guidance to the board when the board is considering disciplinary action against a nurse practitioner.**

(b) The committee shall consist of four qualified nurse practitioners, two physicians and surgeons with demonstrated experience working with nurse practitioners, and one public member.







# Regulations that may be needed to implement AB 890

- Establish supplemental examination, if deemed necessary

## BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] ( Division 2 enacted by Stats. 1937, Ch. 399. )

CHAPTER 6. Nursing [2700 - 2838.4] ( Chapter 6 repealed and added by Stats. 1939, Ch. 807. )

ARTICLE 8.5. Advanced Practice Registered Nurses [2837.100 - 2837.105] ( Article 8.5 added by Stats. 2020, Ch. 265, Sec. 4. )

**2837.105.** (a) (1) The board shall request the department's Office of Professional Examination Services, or an equivalent organization, to perform an occupational analysis of nurse practitioners performing the functions specified in subdivision (c) of Section 2837.103 pursuant to that subdivision.

(2) The board, together with the Office of Professional Examination Services, shall assess the alignment of the competencies tested in the national nurse practitioner certification examination required by subparagraph (A) of paragraph (1) of subdivision (a) of Section 2837.103 with the occupational analysis performed according to paragraph (1).

(3) The occupational analysis shall be completed by January 1, 2023.

(4) If the assessment performed according to paragraph (2) identifies additional competencies necessary to perform the functions specified in subdivision (c) of Section 2837.103 pursuant to that subdivision that are not sufficiently validated by the national nurse practitioner board certification examination required by subparagraph (A) of paragraph (1) of subdivision (a) of Section 2837.103, the board shall identify and develop a supplemental exam that properly validates identified competencies.

(b) The examination process shall be regularly reviewed pursuant to Section 139.



# *Regulations that may be needed to implement AB 890*

The Board may consider whether other portions of AB 890 require a regulation in order to implement, interpret, or make specific any of the statutes in the bill.



# *What has the BRN done so far?*

- Rapidly established the Nurse Practitioner Advisory Committee (NPAC); the NPAC established subcommittees, which are actively meeting and developing substantive concepts and proposals for AB 890 implementation, for consideration by NPAC and the Board
- Conducted “interested parties” meeting to maximize stakeholder input prior to formal development of regulations
- Engaged OPES to begin the requisite occupational analysis; solicited applications for subject matter experts (SMEs) to work with OPES on the occupational analysis; scheduled workshops for SMEs to begin work
- Ongoing discussions between BRN regulatory staff, regulatory counsel, BRN management, and board counsel; ongoing engagement with stakeholders

