



AB 890 authorizes two newly created types of nurse practitioners (NPs) who would be allowed to perform certain functions without standardized procedures. The law, signed by Governor Newsom on September 28, 2020, specifies the education, training, testing, regulatory and governance requirements for these new NPs, including the circumstances in which an NP must consult with or refer patients to a physician. Significant provisions of AB 890 are ambiguous, necessitating additional clarification and guidance from regulators. Below is a summary of the central provisions of the new law, including some of the significant provisions that require further guidance to make them actionable.

New Category of Nurse Practitioner – "Section 103 Nurse Practitioner"

Under AB 890, NPs who meet certain educational and training requirements are authorized to perform specified functions without standardized procedures. (*Business & Professions Code §2837.103(a).*) The new law requires these "Section 103 NPs" ¹ to complete a "transition to practice" of at least three years or 4,600 hours and to practice in specified settings "in which one or more physicians and surgeons practice with the nurse practitioner without standardized procedures." (*Business & Professions Code §2837.103(a)(1)(D).*) The transition to practice clinical experience may include experience obtained before January 1, 2021, if the experience meets the requirements established by the Board of Registered Nursing (BRN). (*Business & Professions Code §2837.101(c).*) Section 103 NPs must pass a national nurse practitioner board certification as well as a supplemental examination, if such examination is required pursuant to Section 2837.105 of the Business & Professions Code. (*Business & Professions Code §2837.103(a)(1)(A).*)

New Category of Nurse Practitioner – "Section 104 Nurse Practitioner"

AB 890 authorizes a "Section 104 NP" to work in a setting without a practicing physician if they meet additional requirements, including a master's degree in nursing or in a related clinical field and three years of practice in good standing as a nurse practitioner in addition to the transition to practice three-

¹ For ease of reference, hereinafter, we refer to Section 103 NPs when discussing NPs authorized by Business & Professions Code §2837.103 as adopted by AB 890; and Section 104 NPs when discussing NPs authorized by Business & Professions Code §2837.104 as adopted by AB 890.

year requirement. (*Business & Professions Code §2837.104(a)&(b).*) The BRN, in its discretion, may lower the three years of practice requirement for Section 104 NPs "holding a Doctorate of Nursing Practice Degree (DNP) based on practice experience gained in the course of doctoral education experience." (*Business & Professions Code §2837.104(b)(1)(C).*) Like Section 103 NPs, Section 104 NPs must pass a national nurse practitioner board certification as well as a supplemental examination if such examination is required pursuant to section 2837.105 of the Business & Professions Code. (*Business & Professions Code §2837.104(b)(1)(A).*)

The framework of the law appears to authorize a Section 104 NP to practice as a Section 103 NP. A Section 103 NP, however, is not eligible to practice as a Section 104 NP unless the NP meets the Section 104 NP requirements.

Does Not Prohibit Supervision or Modify Operative NP Arrangements

AB 890 does not prohibit the supervision of NPs or otherwise seek to regulate or modify the operative law regarding the governance of NPs except for newly created Section 103 and Section 104 NPs.

(*Business & Professions Code §§2834-2837.*) Accordingly, current arrangements regarding the practice and supervision of NPs are not regulated or changed by AB 890.

Transition to Practice

A key component of AB 890 is the requirement that, to be eligible to perform certain functions without standardized procedures as specified, the NP must complete a "transition to practice." The new law directs the BRN to adopt by regulation minimum standards for the transition to practice. The transition to practice is a three-year period of additional clinical experience and mentorship "provided to prepare a nurse practitioner to practice independently," including, but 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." As noted above, clinical experience may include experience obtained prior to January 1, 2021, if the experience meets the transition to practice requirements established by the BRN. (*Business & Professions Code §2837.101(c).*)

Advisory Committee

AB 890 directs the BRN to create a Nurse Practitioner Advisory Committee to advise and make recommendations on matters relating to nurse practitioners, including education, appropriate standard of care and pending disciplinary actions. The new law specifies that the committee will have seven

members, two of whom must be physicians with demonstrated experience working with NPs, four qualified NPs, and one public member. (*Business & Professions Code §2837.102.*)

Scope and Obligations

AB 890 allows NPs who meet the Section 103 or Section 104 nurse practitioner requirements to do the following:

- + Conduct an advanced assessment;
- + Order, perform, and interpret diagnostic procedures, as specified with regard to radiologic and clinical laboratory procedures;
- + Establish primary and differential diagnoses;
- + Prescribe, order, administer, dispense, procure, and furnish therapeutic measures including referrals, pharmacological agents, and nonpharmacological interventions, as specified;
- + Certify disability for state disability benefits; and
- + Delegate tasks to a medical assistant.

(*Business & Professions Code §§2837.103(c) & 2837.104(b)(1).*)

AB 890 requires Section 103 and Section 104 NPs to do the following:

- + Verbally inform all new patients in a language understandable to the patient that the nurse practitioner is not a physician;
- + Post a notice in a conspicuous location accessible to public view that the nurse practitioner is regulated by the BRN, including information about how complaints can be made;
- + Practice only within the scope of their education and training;
- + Refer patients to a physician in specified circumstances; and
- + Carry professional liability insurance.

(*Business & Professions Code §§2837.103(d)-(g), 2837.104(c)(1),(3)&(d)-(f).*)

Section 103 NPs: Settings with a Practicing Physician

AB 890 authorizes Section 103 NPs to perform the functions specified above without standardized procedures in accordance with their education and training in the following settings where at least one physician practices:

- + A clinic;
- + A health facility, except for a correctional treatment center or state hospital;
- + A county medical facility;
- + A medical group practice;
- + A home health agency; and
- + A hospice facility.

(Business & Professions Code §2837.103(a)(2).)

Section 103 NPs are required to refer a patient to a physician or other licensed health care provider if the "situation or condition is beyond the scope of the education and training of the nurse practitioner."

(Business & Professions Code §2837.103(f).) As noted above, Section 104 NPs can probably practice as Section 103 NPs in the same settings that 103s are confined to; and would be subject to the same duties and obligations as a Section 103 NP for that setting. However, a Section 103 NP is limited to practicing in the specified settings.

While the law does not specify a date upon which Section 103 NPs can begin performing without standardized procedures in these settings, they cannot do so until the regulations and guidance required by AB 890 become operative, including the transition to practice regulations and supplemental exam requirements. *(Business & Professions Code §§2837.103(a)(1)(A); 2837.105).*

Section 104 NPs: Physician Consultation & Protocols

Beginning January 1, 2023, AB 890 authorizes Section 104 NPs to perform the services summarized above within the limits of their knowledge, experience, and national certification outside the settings and organizations that section 103 NPs are required to practice. *(Business & Professions Code §2837.104(a)-(c)(1).)* Section 104 NP also are authorized to practice in a setting without a practicing physician. Notably, however, AB 890 requires Section 104 NPs to consult with a physician pursuant to the "individual protocols" (*emphasis added*) and under the following circumstances:

- + Emergent conditions requiring prompt medical intervention after initial stabilizing care has been started;
- + Acute decompensation of patient situation;
- + Problem which is not resolving as anticipated;
- + History, physical, or lab findings inconsistent with the clinical perspective;
- + Upon patient request.

(Business & Professions Code §2837.104(c)(2))

The law also requires Section 104 NPs to establish a plan for referral of complex medical cases and emergencies to a physician. The referral plan must address the following:

- + Whenever situations arise which go beyond the competence, scope of practice, or experience of the nurse practitioner;
- + Whenever patient conditions fail to respond to the management plan as anticipated;
- + Any patient with acute decomposition or rare condition;
- + Any patient conditions that do not fit the commonly accepted diagnostic pattern for a disease or disorder;
- + All emergency situations after initial stabilizing care has been started.

(Business & Professions Code §2837.104(c)(3).)

The implementation of these provisions requires some level of physician involvement and, while not specified in the law, probably requires input and guidance from the Medical Board of California.

Occupational Analysis and Supplemental Exam

AB 890 requires the Department of Consumer Affairs to perform an occupational analysis by January 1, 2023, to determine, with the BRN, whether national nurse practitioner board certification is sufficient to determine competency of Section 103 and Section 104 NPs to perform the functions specified in the law. In the event these are insufficient, the law directs the BRN to identify and develop a supplemental exam. *(Business & Professions Code §2837.105.)*

Corporate Bar

AB 890 specifies that the corporate bar applies to Section 103 and Section 104 NPs. *(Business & Professions Code §§2837.103(b), 2837.104(g)&(h).)* Accordingly, lay entities may not hire, employ, or otherwise control the Section 103 and Section 104 NPs unless one of the existing exceptions to the corporate bar applies.

Medical Staff Membership, Discipline, and Privileging

AB 890 specifies that Section 103 NPs practicing in a setting listed in Business & Professions Code §2837.103 (generally, facilities and organized settings) that has a governing body shall adhere to all applicable bylaws and shall be eligible to serve on the medical staff and hospital committees but may

only vote on specified issues related to NPs. (*Business & Professions Code §2837.103(a)(3).*) Section 104 NPs practicing at a setting described in Business & Professions Code §2837.104 (generally, facilities exempted from Section 2837.103 and out-of-facility settings) are eligible for membership on the medical staff and may vote at meetings of the department to which they are assigned, subject to applicable conflict of interest policies of the bylaws. (*Business & Professions Code §2837.104(a).*) The law further specifies that Section 103 and Section 104 NPs must report certain events, including the removal or restriction on their privileges for a medical disciplinary cause or any 805 report, to the BRN. (*Business & Professions Code § 805.*) Prior to granting or renewing staff privileges, AB 890 requires the medical staff to request a report from the BRN to determine if any 805 report has been made concerning the NP. (*Business & Professions Code §805.5.*)

Prohibition Against Self-Referral

AB 890 makes the self-referral prohibition under the Physician Ownership & Referral Act (PORA) applicable to NPs. (*Business & Professions Code §650.01.*)

Physician Supervision

While the proponents of AB 890 have asserted that the new law removes physician supervision requirements, it does not prohibit physician supervision. Moreover, even if an NP who is authorized to practice as a Section 103 or 104 NP chooses to practice without standardized procedures, some degree of physician oversight or involvement is contemplated by AB 890. The requirement that a physician practice in settings where a Section 103 NP practices implies a physician oversight function. Further, the law requires that Section 104 NPs practicing outside of these settings consult with a physician pursuant to "individual protocols" under the circumstances specified. (*Business & Professions Code §2834.104(c)(2).*) Notably, a previous version of the bill specified that Section 103 and Section 104 nurse practitioners could practice "without supervision by a physician and surgeon" but this language was removed in the January 23, 2020 amendments, suggesting legislative intent to require some degree of physician oversight. Additional guidance from the BRN and/or the Medical Board is necessary to determine what degree of physician involvement is required.

Potential Physician Liability

Guidance from the Medical Board of California as to how it views the role of physicians under the AB 890 NP structure is necessary to better understand physicians' liability risks created by AB 890.