California Releases “104 NP” Application: Nurse Practitioner Independent Practice and What Comes Next

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California has released the much-anticipated “104 NP” certification application, marking a major step in implementing independent practice for nurse practitioners (NPs). For health care organizations, 104 NP certification introduces new options for workforce and organizational structure. For qualifying NPs, it unlocks independent practice and new opportunities for entrepreneurship.

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Background: From Supervised Model to Full Practice Authority

AB 890 took effect on January 1, 2023 and established a two-step pathway towards independent practice for California nurse practitioners (see some of our prior articles on AB 890 here, here, and here):

- **103 NP** certification allows NPs to practice without standardized procedures within the population focus of their national certification, but only within a group setting that includes at least one physician. To qualify, an NP must complete a “transition to practice” period of at least 4,600 hours (~ 3 years) of clinical experience in California.
- **104 NP** certification removes the group setting requirement, allowing NPs to practice without standardized procedures within their national certification focus **in any setting**. To qualify, an NP must complete 3 years of practice as a 103 NP.

What Full Practice Authority Changes

104 certification eliminates the requirement for standardized procedures and the group setting requirement, but does **not** eliminate the requirement for an NP to work within their population focus. Consultation and collaboration with physicians and other providers therefore remain clinically relevant, and required in certain circumstances.

A 104 NP may:

- Practice without standardized procedures outside of a group setting
- Contract directly with commercial payors and governmental programs
- Structure employment relationships without physician supervision requirements
- Join the medical staff consistent with medical staff bylaws

Strategic Implications for Health Care Organizations

The availability of 104 NPs carries significant implications for health care organizations.

Workforce and Recruitment Strategy

Medical groups and health systems may see:

- Increased NP leverage in compensation negotiations
- More 104 NP requests for joint ventures, supervisory roles, and ownership participation
- 104 NP departures to independent practices and concierge models

Organizations should also evaluate whether existing employment agreements, policies, and compensation models require revisions to account for 104 NPs' independent practice authority.

Redesigning Models of Care

This new provider type also warrants a reassessment of existing models of care. Organizations should review their:

- Delegation and supervision frameworks
- Clinical governance structures
- Billing and reimbursement processes (*e.g.*, to account for reduced reimbursement resulting from NPs' direct billing)
- Expansion plans for outpatient clinics and services
- Medical staff governing documents (including bylaws, rules & regulations, and policies and procedures)

Risks and Uncertainties

The advent of 104 NP certification also brings risks and uncertainties related to existing legal frameworks that were not structured with 104 NPs in mind, such as:

- **Corporate Practice of Medicine Prohibition:** California law prohibits the practice of medicine by corporations and other non-professional (*i.e.*, lay) entities with certain exceptions (CPOM). As it relates to physician practice, the doctrine prohibits most lay individuals or entities from controlling the clinical practice or business operations of medical practices. *See, e.g.*, Business and Professions Code Section 2400 ("Corporations and other artificial legal entities shall have no professional rights, privileges, or powers."). Business and Professions Code Section 2837.104(h) contains very similar language with respect to 104 NPs: "For purposes of this section, corporations and other artificial legal entities shall have no professional rights, privileges, or powers."
- **Pre-Transaction Notices and Private Equity Restrictions:** The Office of Health Care Affordability's (OHCA) material change transaction notice statute and regulations (see one of our many write-ups here) and the recent SB 351 (which codifies limitations around the involvement of private equity groups and hedge funds in physician and dental practices) both do not include 104 NPs in their frameworks. This produces uncertainty, and opportunity, with respect to transactions and arrangements involving 104 NPs.
- **Risk-Bearing Organizations (RBOs):** RBOs contract directly with health care service plans for enrollees' professional services and receive compensation on a capitated or fixed periodic payment basis. Unless and until legislators take action, existing law appears to exclude 104 NP practices from obtaining an RBO designation and participating in capitation arrangements with health plans.

Strategic Implications for Nurse Practitioners

For NPs, obtaining 104 certification is not simply a scope of practice change – it's a business transition. Although many 104 NPs will decide to continue working for an existing health care organization, others will take the leap into starting their own practice. Key considerations for the latter group include:

- **Corporate Formation and Governance:** Because of the possible applicability of CPOM, 104 NPs starting their own practice will likely need to form a professional nursing corporation. Professional nursing corporations come with

naming requirements and restrict ownership, directorship, and officer appointments to certain licensed persons.

- **Funding:** Starting a practice comes with many expenses. 104 NPs should plan their budget and research funding options, such as small business loans, lines of credit, and investor-backed management services organizations (MSOs).
- **Management Arrangements:** Many independent practices partner with MSOs to create efficiencies and unlock investment opportunities. However, these PC-MSO arrangements should be carefully structured to avoid impermissible fee-splitting and corporate practice violations.
- **Payor Contracting and Enrollment:** New 104 NP practices planning to take insurance will need to negotiate and execute payor contracts, and consider participation in capitation or other risk-sharing arrangements (*but see* the uncertainty regarding risk-bearing organizations above).
- **HIPAA Compliance:** 104 NPs should also keep in mind that HIPAA applies to any practice that includes reimbursement from third-party payors. This means the practice should ensure it's well-versed in the HIPAA Privacy and Security Rules and should prepare business associate agreements and a notice of privacy practices.
- **Employment:** The right team makes all the difference. 104 NP practices will need to invest time in hiring the right people and in ensuring compliance with California's numerous employment laws.

The release of the 104 NP application marks a meaningful evolution in California's health care regulatory framework. For nurse practitioners, it creates new avenues for independence and growth; for health care organizations, it introduces both opportunity and structural complexity. Nurse practitioners and health care organizations that approach this transition strategically will be best positioned to capture its benefits while managing its legal and operational risks. Thoughtful planning now can prevent costly restructuring later.

RELATED CAPABILITIES

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Compliance

Hospital-Physician Integration

Medical Staff Operations and Disputes

Medicare, Medicaid, Other Governmental Reimbursement and Payment

Provider and Supplier Operations