

# Scope it Out: Scope of Practice Essentials and Analyses

**2025 OHA Annual Meeting & Education Summit**

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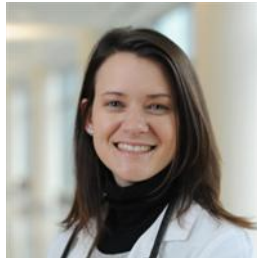
# Presented by



## **Kimberly Parks, Esq.**

Senior Counsel, Epstein Becker & Green, P.C.

[KParks@ebglaw.com](mailto:KParks@ebglaw.com)



## **Amanda Rumpke DNP, APRN-CNP**

System Director Advanced Practice, Bon Secours Mercy Health  
President, Ohio Association of Advanced Practice Nurses (OAAPN)

[AXRumpke@mercy.com](mailto:AXRumpke@mercy.com)



## **Avery Schumacher, Esq., MHA**

Member of the Firm, Epstein Becker & Green, P.C.

[ASchumacher@ebglaw.com](mailto:ASchumacher@ebglaw.com)

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**The presenters have no real or perceived conflicts of interest related to this presentation.**

# What We Will Cover

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Real World Examples

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# Introduction/Foundational Background

# Professional Licensure is Regulated by the States

➤ There are 1,790+ different state occupational licensing boards across the U.S.

➤ There are interstate licensure compacts – but no true national license to practice a regulated profession

➤ States apply varying standards by profession, and activity. Common variations include:

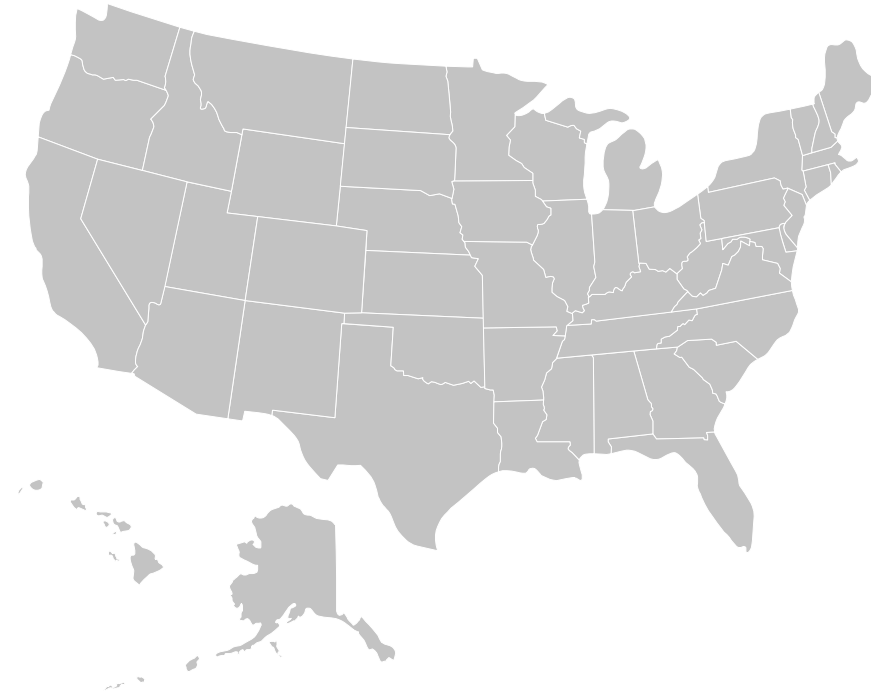
- ✔ Titles and terminology
- ✔ Education, training, and certification requirements
- ✔ Scope of practice
- ✔ Practice authority for nurse practitioners (NPs) (i.e., full, reduced, restricted)
- ✔ Prescribing authority
- ✔ Physician supervision/collaboration requirements for APPs:
  - Supervision/collaboration ratios
  - Written agreement requirement
  - Remote supervision/collaboration permissibility
  - Proximity requirements
  - Chart review and co-signature obligations

# Professional Licensure is Regulated by the States

Licensure is state granted authority to practice a profession and involves validation of credentials (*e.g.*, education, training, certifications, etc.).

Certification is recognition by a non-governmental body (often national) that a professional has met certain qualifications.

Scope of practice refers to those activities that licensed persons are deemed competent to perform and permitted to undertake in their state of licensure.



*Health care professionals who provide services via telehealth modalities are generally subject to the licensure rules of: (1) the state(s) in which their patients are physically located; and (2) the state(s) in which they (the professionals) are practicing.*

*See, SOM Appendix A, IG for 42 CFR 482.11 (A-0023).*

# SOP – Key Terms / Terms of Art

These are “terms of art” that are often specifically and differently defined by state and federal laws, accreditation standards, professional licensure rules, reimbursement requirements, and organization specific policies



**Delegation:** Refers to the process by which a licensed provider authorizes another individual—often with less training or a different license—to perform a specific task or function within the delegating provider’s SOP

- Task must be appropriate for the skill level of the person receiving the task
- Delegating provider retains ultimate responsibility for the outcome



**Supervision:** Supervision involves the oversight of a healthcare provider or professional’s work by a more senior or differently licensed provider

- Can range from direct (on-site, immediate availability) to indirect (off-site, available by phone)
- Often required for APPs (*e.g.*, PAs, APRNs) and certain allied health roles

# SOP – Key Terms / Terms of Art

**NOTE – THESE ARE GENERALIZATIONS;** specifics vary by state and particular profession

	Advanced Practice Providers (APPs)	Allied Health Professionals
Typical Roles	PAs, APRNs (NPs, CRNAs, CNSs, CNMs)	PTs, OTs, RTs, radiology techs, speech pathologists, surgical assistants, dietitians, etc.
Education	Graduate-level (Master’s or Doctorate)	Varies (GED to Master’s level)
National Certification	Often tied to licensure; required in most roles	Common; may be optional, or in lieu of state licensure
Clinical Functions	Diagnose, treat, prescribe	Supportive/therapeutic care; typically no prescribing
Licensure Authority	State boards of nursing or medicine	Varies widely (sometimes N/A) - state licensing boards, departments of health, statutory certification, registration
Scope of Practice	Broad; may include independent practice	Focused/specialized; typically not independent
Hospital Privileges	<b>Must be credentialed and granted clinical privileges, similar to physicians in order to practice</b>	<b>Usually do not hold clinical privileges</b>
Practice Independence	May be independent, collaborative, or supervised (state-based)	Practice under supervision or within a defined department scope

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# Scope of Practice & Delegation Analysis

# State Licensure and SOP

## Common Inquiries

- ✓ Can an unlicensed person perform the proposed activity?
- ✓ What is the lowest level of professional licensure required to perform a proposed activity?
- ✓ Can a [INSERT PROFESSION, *e.g.*, nurse, PT, dietitian] perform the proposed activity?

# SOP – General Frameworks for Analyses



## Unlicensed Persons / Lowest Level of Licensure

- How does the state define the practice of medicine?  
*Usually broadly. Check state law, licensure rules, and guidance. The IMLC defines it as “clinical prevention, diagnosis, or treatment of human disease, injury, or condition.”*
- Do the proposed activities fall under the definition of the practice of medicine?  
*If not, licensure may not be required but check definitions for other license types depending on the proposed activities.*
- If so, are there applicable carveouts or exceptions to that definition that allow individuals to engage in the activity without being a licensed physician?  
*Often there are carveouts for other licensed professions, delegated services, or specific activities. If another profession is indicated, then repeat the outlined steps (replacing the “practice of medicine”, with the “practice of [indicated profession]”).*



## Specific Level of Licensure

- How does the state define the practice in question?  
*Check state law, licensure rules, and guidance.*
- Do the proposed activities fall under the definition?  
*If yes, identify any limitations around supervision.*
- If not, are there applicable carveouts or exceptions to that definition that allow individuals to engage in the activity?  
*Often there are carveouts for other licensed professions, delegated services, or specific activities.*



## Other Things to Consider

- **Accreditation Requirements:** Do relevant accreditation requirements require a different level of licensure or supervision?  
*These are generally not state specific.*
- **Reimbursement Requirements:** Is a different level of licensure or supervision required for reimbursement purposes? CMS is federal, Medicaid is state specific, and for private insurers, it depends.  
*Check Medicare conditions of payment, and the description of the CPT code, or other relevant coverage resources.*
- **Delegation Opportunities:** If the activity requires licensure, are licensees permitted to delegate to unlicensed individuals? What are the requirements for delegation?

# SOP Analyses – Radiographer Administration of IV Contrast

## Question:

In Ohio, can a hospital-based radiographer perform a CT scan with contrast?

What level of supervision is required?

**Licensure (State Law):** The Ohio Department of Health (ODH) licenses radiographers in Ohio, pursuant to the authority granted at ORC 4773.08. ODH rules governing radiation handlers provide:

- OAC 3701-72-01(Z): Radiographer means “an individual who operates ionizing radiation-generating equipment, administers contrast, and determines procedure positioning and the dosage of ionizing radiation in order to perform a comprehensive scope of radiology procedures on human beings.”
- OAC 3701-72-04(B): “Radiographers . . . shall work under general supervision” of a “licensed practitioner”, defined by OAC 3701-72-01(J) as a physician, chiropractor, podiatrist, or mechanotherapist.
- General supervision requires that the licensed practitioner be readily available to consult with the radiographer while performing a procedure but does not require in-person presence.

**Accreditation (Federal):** American College of Radiology (ACR) requires on site presence of either (i) a physician, OR (ii) other qualified person acting under the general supervision of a physician, which individual must have specific training, certification, and qualifications. *See, ACR Interpreting Physician: CT, Accreditation Support.*

**Reimbursement (Federal):** CMS requires a radiographer to work under the direct supervision of either (i) a physician, or (ii) an APP. Direct supervision requires “immediate availability,” which can be met through real-time audio and visual technology at least through Dec. 31, 2025 (as extended by the 2025 MPFS Final Rule). *See, 42 CFR 410.32(b); CMS Pub. 100-02, Transmittal 11901; 2025 Medicare Physician Fee Schedule (MPFS) Final Rule.*

# SOP Analyses – Surgical Assistants

## Non-Physician Surgical Assistant (Ohio)

### Question:

In Ohio, what tasks can a Non-Physician SA perform?  
What level of supervision is required?

**Non-Physician SA Licensure & SOP:** Non-physician SAs are unlicensed in Ohio and have no statutory SOP. Accordingly, they function solely under delegation authority (physician or other licensees).

**Permitted Tasks (via Delegation):** Under SMBO delegation rule (OAC 4731-23-02), SA may perform surgical tasks delegated by a surgeon, where the surgeon determines:

- That the task is within that physician’s authority;
- That the task is indicated for the patient;
- The appropriate level of supervision;
- That no law prohibits the delegation;
- That the person to whom the task will be delegated is competent to perform that task; and
- That the task itself is one that is appropriate for delegation based on the following factors:
  - That the task can be performed without requiring the exercise of judgment based on medical knowledge;
  - That results of the task are reasonably predictable;
  - That the task can safely be performed according to exact, unchanging directions;
  - That the task can be performed without a need for complex observations or critical decisions;
  - That the task can be performed without repeated medical assessments; and
  - That the task, if performed improperly, would not present life-threatening consequences or the danger of immediate and serious harm to the patient.

# SOP Analyses – Surgical Assistants

## Non-Physician Surgical Assistant (Ohio)



**Examples of Permitted Delegated Tasks:** SMBO FAQ on Delegation of Medical Tasks (Q8) provides that “an unlicensed person may complete [the following] tasks under the direct supervision of a physician, so long as the physician is **fully participating in the surgery and actively supervising the unlicensed person, who is acting as another set of hands and** the physician meets all the requirements of [OAC 4731-23-02(B)]”:

- Pressing a drill trigger after the surgeon initiates pin placement
- Tapping bone cutting instruments per surgeon’s manual guidance
- Advancing orthopedic tools under surgeon’s positioning



### **Limitations Around Administration of Drugs**

- Physician must generally provide onsite supervision to delegate administration of drugs.
- Physician cannot delegate administration of anesthesia, controlled substances, or IV drugs, to an unlicensed person (OAC 4731-23-03(F)).

# SOP Analyses – Surgical Assistants

## Registered Nurse First Assistant (RNFA) (Ohio)

### Question:

In Ohio, what tasks can a RNFA perform?

What level of supervision is required?

**RNFA Licensure:** An RNFA is a RN that assists the surgeon during procedures. RNFAs must hold an active Ohio RN license and are often required or expected by employers to complete an RNFA program meeting AORN standards (didactic + clinical) and obtain CNOR certification.

**RNFA SOP:** RNFAs do not have a separate SOP under Ohio law or OBN rules.

- RNFAs perform nursing tasks within the RN SOP (ORC 4723.01 / OAC 4723-4)
- May perform medical/surgical tasks outside RN scope only if:
  - Properly trained on the task
  - Delegation is not prohibited by law or SMBO rules
  - Delegation is by a surgeon following required determination under OAC 4731-23-02

In such cases, the RNFA is considered **an unlicensed person**.

# Research Tips and Options for SOP Analyses

Check the relevant licensing board's website

Review licensing board meeting minutes and disciplinary records

Think critically before reaching out *directly* to the board on a gray area – what will you do with the answer?

Firm attorneys – consider an anonymous informal inquiry

In-house counsel – consider having outside counsel send the inquiry anonymously

Send more formal correspondence explaining the SOP position

# Research Tips and Options for SOP Analyses

Review licensure and/or certification exam content outlines and study guides, and program curricula

Review clinical practice standards and national professional association materials

Consult publicly available 50-state surveys, *but* double check conclusions and citations

Pay attention to federal rules and accreditation standards that interact with state SOP laws

Use legislative tracking tools

Consider undertaking state lobbying efforts

# Advanced Practice Provider Training & Certification

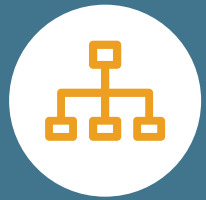
## Advanced Practice Provider (APP) Training

- Physician Assistants (PAs)
  - STEM undergraduate degree
  - Master's or Doctoral preparation using a medical model to support
  - Develop general competency for care delivery across the lifespan / care continuum
- Advanced Practice Registered Nurses (APRNs)
  - Registered nurses
  - Master's or Doctoral preparation prepares the APRN to provide competent care for a specific population
    - Certified Nurse Midwife (CNM), Certified Nurse Practitioner (CNP), Certified Registered Nurse Anesthetist (CRNA), Clinical Nurse Specialist (CNS)

## APP National Certification

- Certifying body varies by APP clinical discipline and is required for Ohio licensure
  - PA: NCCPA
  - APRN: AANBC, ANCC, AACN\*
- Recertification requires minimum continuing education hours +/- retesting

# How APC Training Differs from Physician Training



## Physician

Undergraduate Degree

Medical School

IM/Family/Peds/Surgical  
Residency

+/- Specialty Fellowship

## APRN

Undergraduate  
Nursing

Generalist Core  
MSN/DNP  
Program

Population  
Focused Clinical  
Experiences

## PA

Undergraduate  
Degree + Healthcare  
Experience\*

PA Program (Masters)

Clinical Experiences  
Spanning the  
Continuum from Birth  
- Death

# APP Scope of Practice Continued



State law and licensing board rules govern scope

- OH law specifies APP scope cannot exceed that of collaborative/supervising physician

Federal law, rules, payer requirements and facility rules also guide health care practice

- Many hospitals have rules more rigid than state and federal law requires

Scope of practice for the CNP disciplines is not setting specific but driven by patient need, age or both

- CNPs with acute training can work in the office
- CNPs with primary care training can work in the hospital

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# APP Delineation of Privileges

# APP Privilege Best Practices



## General

- Hospital privileges detail hospital scope of practice for APPs
- APPs must be privilege and undergo ongoing professional performance evaluation (OPPE) and focused professional performance evaluation (FPPE)
- Should align with national certification rather than practicing specialty



## Core

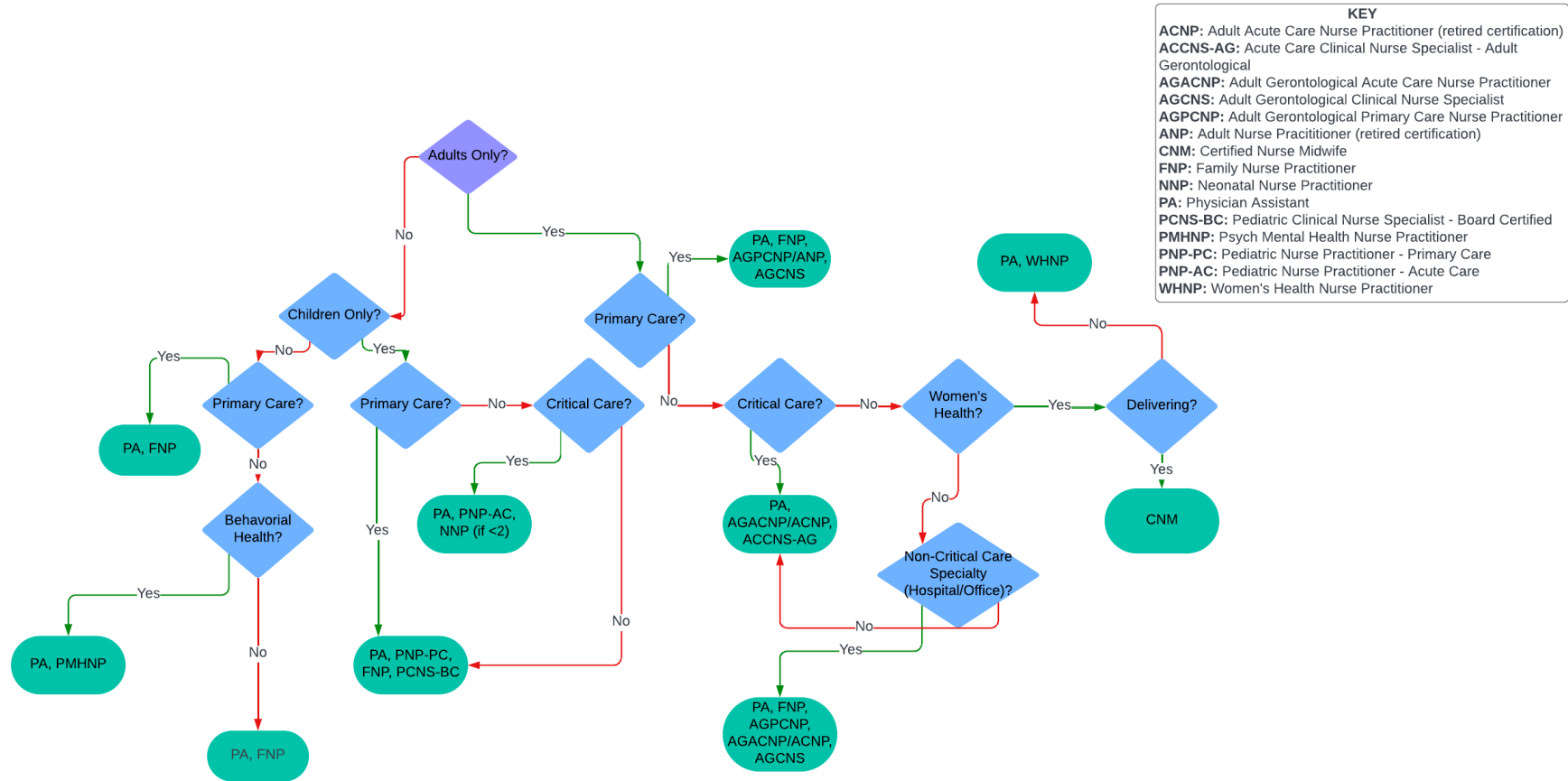
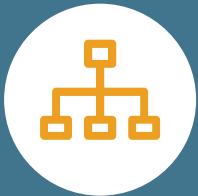
- Should speak to the work APPs are being asked to perform in the hospital setting based on formal training:
- Admission, discharge, consult, daily rounding, prescribing, diagnostic monitoring/ordering
  - Procedures included in formal training
  - Avoid including items that non-privileged clinicians can perform



## Specials

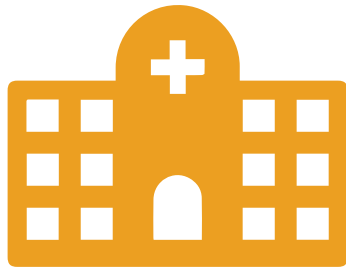
- Often align with practicing specialty
- Training occurs post formal APP education
- Competency can be obtained in a variety of ways but should align with physician requirements

# Clinical Discipline Appropriateness Based on Practicing Specialty



# APP Privilege Best Practices

Continued



## APP Privilege Considerations

### How are appropriate privileges determined?

- White papers for APPs are limited
- Whether or not APP scope of practice can be broadened with post training CME is nuanced
- Consider inclusion APPs as voting members on credentials committees +/- MEC

### How is competency demonstrated?

- Set standards for all clinicians and follow your process
  - Didactic learning vs sim / cadaver / case logs vs proctoring

# APP Privilege Best Practices

## Continued

### Often more restrictive than State and Federal law

- Pittman et al (2018) find state scope of practices laws do not correlate with APP hospital privileges

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### Review bylaws, rules & regulations and policies to check for APP prohibitions

- Supervision & medical staff membership
  - Direct vs non-direct
- Hospital admission / discharge
- Physician co-signature requirements



### Consider process for APP privilege denial and potential implications

- Potential for delayed patient care
- Fair hearing implications
- Antitrust considerations (FTC, 2014)
- CMS CoP 482.12 (7)

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### Consider process for proctoring

- Must grant privilege before proctoring begins (FPPE)

# APP Ability to Admit, Discharge and Attend Hospitalized Patients



APPs are trained to take evaluate and treat patients that are acutely ill

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The state of Ohio (ORC 3727.06) allows PAs and APRNs to admit patients to the hospital if:

- Supervisory / collaborative agreement with a physician or podiatrist who is a member of the medical staff
  - The patient will be under supervision of a physician or podiatrist
  - The APP has privileges to admit
  - Physician is notified of the admission
- 

CMS CoP 482.12 (C)1(i) states:

- Every Medicare patient is under the care of a doctor of medicine or osteopathy
- Should not limit the authority of a physician to delegate tasks to other qualified health care personnel

# Physician Co-Signature Requirements



Payers allow participating APPs to bill for services independently to include critical care if qualified

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No Ohio law requires physician counter-signature

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The Joint Commission does not require physician counter-signature but will cite a facility for not following their rules

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Federal rules require co-signature in limited circumstances

- Discharge summaries conducted within critical access hospitals
- APC-certified EMTALA transfer
- Given the CMS CoP requiring physician certification of admission, some facilities require co-signature of admission and/or discharge order

# Hospital Employment of APPs



## Hospitals sometimes employ APPs to support the care of patients

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### Increasing scrutiny of such arrangements:

- CMS split/shared rule (MLN, 2024)
  - Physician and APC must be a part of the same group
  - “FS” modifier used to denote visits that are “shared”
- Facility and professional billing malalignment
  - APC inclusion in cost report
- Stark and kickback violation concerns
  - Remuneration in the form of services
- Christiana Care settlement
  - Delaware-based, Christiana Care agreed to pay more than \$40 million for kickback and Stark violations stemming from a qui tam lawsuit alleging the company employed APPs to increase referrals from non-hospital employed physicians (DOJ, 2024)s

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# Considerations for Medical Staff Documents

# Medical Staff Appointment and Clinical Privileges (Privileges)

## Medical Staff Appointment

## Clinical Privileges

Medical Staff membership



Not Medical Staff membership

Governed by the Medical Staff category to which appointed (e.g., active, courtesy)



Not appointed to a Medical Staff category

May or may not also be granted Clinical Privileges



Authorizes a provider to exercise the Clinical Privileges granted (*i.e.*, to provide clinical care, treatment, and/or services) pursuant to a Delineation of Privileges (*i.e.*, Privilege set).

# APP Considerations in the Medical Staff Bylaws

Use defined terms appropriately ...



## Are there issues with this provision?

- **Practitioner** means, unless otherwise expressly provided, a Physician, Dentist, Podiatrist, Psychologist, APRN, or PA.
- To qualify for appointment to the active Medical Staff category with Privileges, a **Practitioner** must:
  - Meet the baseline/threshold qualifications set forth in Section ... of the Bylaws
  - Have not less than 60 Patient Encounters at the Hospital within each three (3) year appointment and Privilege period and provide for continuous care of their patients.

# Letters Regarding Medical Staff Appointment and/or Privileges



## Are there issues with this letter?

*Dear Physician Assistant,*

*Upon the recommendation of the Executive Committee of the Medical Staff of ABC Hospital your appointment to the Medical Staff was approved on \_\_\_\_\_.*

*Your membership is effective from \_\_\_\_\_ to \_\_\_\_\_ in the affiliate without Privileges category of the Medical Staff.*

# APP Considerations in Medical Staff Policies



## Medical Staff Credentials Policy

- Sets forth details with respect to credentialing, appointment, and privileging of Practitioners (usually Physicians, Dentists, Podiatrists and Psychologists).
- The process for credentialing and privileging APPs is usually set forth in an APP Policy.



## Medical Staff Organization Policy

- Sets forth information regarding Medical Staff Departments/Sections, standing Medical Staff committees, and meeting logistics.
- Are APPs permitted to serve on standing Medical Staff committees such as the Credentials Committee, the Multidisciplinary Peer Review Committee, the Conduct/Impairment Committee if not a Medical Staff Member?
- Can APPs vote if they are a member of a standing Medical Staff committee?



## Medical Staff Hearing/Appeal Policy

- Sets forth the Medical Staff hearing and appeal process.
- Are APPs included in the Medical Staff hearing and appeal process?

# APP Considerations in Medical Staff Policies



## Conduct and Impairment Policies

- Sets forth the Medical Staff procedure for addressing unprofessional conduct.
- Sets forth the Medical Staff procedure for addressing impairment.
- Are APPs subject to the Medical Staff conduct and impairment policies?



## Medical Staff Peer Review and Initial FPPE/OPPE Policies

- Sets forth the “peer” case review process for providers granted clinical privileges.
- Should APPs be subject to the Medical Staff Peer Review Policy?
- Is initial FPPE applicable to APPs?
- Is OPPE applicable to APPs?

# Privileged APPs and Non-Privileged AHPs

## Privileged APPs

Determine APPs eligible to be granted Privileges

Applies to the hospital and provider-based locations (HOPD)

Requirement for Privileges applies regardless of whether the APP is employed directly by the hospital, contracted, or coming into the hospital/HOPD from an outside practice location

## Non-Privileged AHPs

Identify the non-Privileged AHPs who provide services at the Hospital.

Applies to the hospital and provider-based locations

Source of credentialing/authorization for non-privileged AHPs:

- \*Coming into the hospital/HOPD from an outside practice location.
- \*Employed by the Hospital directly.
- \*Providing contracted services at the Hospital.



# Considerations in the APP Policy



## Advanced Practice Provider Policy

- Sets forth details with respect to credentialing and privileging of APPs.
- Applicable to APRNs (4 types), Physician Assistants, and other types of APPs (as specified in the APP Policy) who are eligible for Privileges and who must apply for and be granted Privileges prior to providing care, treatment, and/or services at the hospital or a provider-based location.
- How do you decide who to Privilege?
- Can an unlicensed individual be granted Privileges?
- The APP Policy is based upon:
  - Select provisions from the Medical Staff Bylaws and Credentials Policy modified, as applicable, for APPs.
    - Additional baseline qualifications for APPs
    - Additional grounds for automatic suspension/automatic termination
    - Alternative form of procedural due process
  - The APC Policy does not address clinical issues.

# Considerations in a Non-Privileged AHP Policy



## Non-Privileged AHP Policy

- Sets forth information regarding the process to credential and authorize non-Privileged AHPs to provide designated services in the Hospital
- Note TJC HR.01.01.01 (EP.7):
  - “Before providing care, treatment, and services, the hospital confirms that nonemployees who are brought into the hospital by a physician or other licensed practitioner to provide care, treatment, or services have the same qualifications and competencies required of employed individuals performing the same or similar services at the hospital. ...”
- Non-Privileged AHP considerations include:
  - Preparation of applicable Scope of Service or Position Description that addresses qualifications, authorized tasks/services to be provided, and supervision
  - Application, credentialing, and authorization process
  - How competency assessment/performance evaluation will be managed

# Considerations in the Medical Staff Rules & Regulations



## Are the Medical Staff Rules & Regulations current?

- Do the Rules and Regulations accurately reflect what APPs can/cannot do clinically at the hospital (or a provider-based location thereof) pursuant to the applicable Delineation of Privileges and in accordance with applicable laws, rules, regulations, and System/Hospital policies/procedures?
  - Who can **admit** patients to the hospital (make and document the admission decision)?
  - Who can **discharge** patients from the hospital?
  - Who can prepare a **discharge summary**?
  - Who can **issue orders** for patient care, treatment, and/or services?
  - Who can **prescribe/issue medication orders**?
  - Who can perform/document a **medical history and physical (H&P), H&P update, or outpatient assessment**?
  - Who can perform/document a **consultation**?
  - Who can be listed on the **ED call list**; can the on-call physician send an APP to the ED?
- Is terminology clear? General reference to APP may not work in the Rules & Regulations if the task is limited to a certain type of APRN (*e.g.*, a CNP) or a Physician Assistant (but not other types of APPs).



## Do the Medical Staff Rules & Regulations conflict with system/hospital clinical policies and procedures?

# Considerations in the Medical Staff Rules & Regulations



## Is countersignature required? If so, what is the rationale? Example:

- H&P (Critical Access Hospital): “All or part of the history and physical exam (H & P) may be delegated to other practitioners in accordance with State law and CAH policy, but the MD/DO must sign the H & P and assume full responsibility for the H & P. This means that a nurse practitioner or a physician assistant meeting these criteria may perform the H & P.” [CAH interpretive guidelines to 42 CFR 485.638 (a)(4)(ii)] ... and ...
- “A complete history and physical must be conducted in accordance with acceptable standards of practice, and the written document placed on the medical record, prior to surgery. All or part of the H & P may be delegated to other practitioners in accordance with State law and CAH policy, but the surgeon must sign the H & P and assume full responsibility for the H & P. This means that a nurse practitioner or a physician assistant, meeting these criteria, may perform the H & P.” [CAH interpretive guidelines to 42 CFR 485.639]



## Is there inconsistency in what is written and what actually happens in practice? For example, what issues do the following provisions create?

- An APP may enter and sign orders for medications, diagnostic tests, and discharge orders within their scope of practice under Ohio law, **only after direct communication with the Supervising/Collaborating Practitioner.** Interaction with the Supervising/Collaborating Practitioner must be reflected in the progress note.
- The **Admitting Physician, or their covering Physician,** is responsible for the history and physical examination, orders, progress notes, summary, *etc.*

# Additional considerations in APP Delineations of Privileges



## Qualifications

- Do not repeat qualifications set forth in the APP Policy.
- Use terminology correctly.
- Don't require an APP to have a supervising Physician if not required by state law.
- Don't require an APP to have additional documents not otherwise required by state law to practice.



## Privilege List

- Confirm that the Privileges listed on the DOP are consistent with the APP's state scope of practice.
- Do not include Privileges on a DOP "just in case" the hospital wants to offer in the future.
- Establish a consistent process for addressing Privileges on the DOP that are only available at certain locations.
- Recognize the limitations of using purchased/template DOPs (*e.g.*, based on ICD 10 codes). Template products don't account for state law issues.