

Physician Assistant Academy of Vermont (PAAV)

PAAV Proposed Amendments to S.128 in Red

January 3, 2020

Text of 2019 physician assistant bill as introduced (H.116/S.128)

Sec. 1. 26 V.S.A. chapter 31 is amended to read:

CHAPTER 31. PHYSICIAN ASSISTANTS

§ 1731. POLICY AND PURPOSE

The ~~general assembly~~ General Assembly recognizes the need to provide means by which physician assistants ~~physicians~~ in this ~~state~~ State may increase the scope and efficiency of their practice in order to ensure that high-quality medical services are available to all Vermonters at reasonable cost. The General Assembly recognizes that physician assistants, with their education, training, and expertise in the field of medicine, are well-suited to provide these services to Vermonters. ~~often at a lower cost than if the same services were provided by a physician.~~

§ 1732. DEFINITIONS

As used in this chapter:

(1) “Accredited physician assistant program” means a physician assistant educational program that has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA), or, prior to 2001, by either the Committee on Allied Health Education and Accreditation (CAHEA), or the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

(2) “Board” means the ~~state board of medical practice~~ State Board of Medical Practice established by chapter 23 of this title.

(3) “Collaboration” means the physician assistant shall, as indicated by the patient’s condition, the education, competencies and experience of the physician assistant and the standards of care, consult with or refer to an appropriate physician or other health care professional. The degree of collaboration shall be determined by the practice, including the PA and participating physician, and may include the physician employer, physician group practice, and credentialing and privileging systems of a health care facility as applicable. A physician must be accessible by telephone or other electronic means for consultation at all times a physician assistant is practicing.

(4) “Disciplinary action” means any action taken against a physician assistant or an applicant by the ~~board~~ Board or on appeal therefrom, when that action suspends, revokes, limits, or conditions licensure in any way, and includes reprimands and administrative penalties. *(same definition as before, just moved to be alphabetical)*

(5) “Health care facility” means any facility defined in 18 V.S.A. §9402(6).

(6) “Participating physician” means a physician who practices as a sole practitioner, a physician designated by a group of physicians to represent that physician group, or a physician designated by a health care facility to represent that health care facility.

~~(3) “Delegation agreement” means a detailed description of the duties and scope of practice delegated by a primary supervising physician to a physician assistant that is signed by both the physician assistant and the supervising physicians. [Repealed.]~~

(7)(4) “Physician” means an individual licensed to practice medicine pursuant to chapter 23 or 33 of this title.

(8)(5) “Physician assistant” or “PA” means an individual licensed by the ~~state~~ State of Vermont who is qualified by education, training, experience, and personal character to

~~provide medical care with the direction and supervision of a Vermont licensed physician to practice medicine in collaboration with physicians pursuant to this chapter.~~

~~(9) “Physician group” means a medical practice that involves two or more physicians.~~

~~(10)(6) “Supervising physician” means an M.D. or D.O. licensed by the state of Vermont who oversees and accepts responsibility for the medical care provided by a physician assistant “Practice agreement” means an agreement that meets the requirements of section 1735a of this chapter.~~

~~(11)(7) “Supervision” means the direction and review by the supervising physician of the medical care provided by the physician assistant. The constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are or easily can be in contact with each other by telecommunication “Practice as a physician assistant” means the practice of medicine by a PA pursuant to a practice agreement with a participating physician practice-identified physician or a physician group, or, for a PA employed by a licensed hospital or federally qualified health center that grants privileges, the practice of medicine in accordance with the privileges granted.~~

~~(8) “Disciplinary action” means any action taken against a physician assistant or an applicant by the board Board or on appeal therefrom, when that action suspends, revokes, limits, or conditions licensure in any way, and includes reprimands and administrative penalties. (moved to (4) to be alphabetical)~~

§ 1733. LICENSURE

(a) ~~The state board of medical practice~~ State Board of Medical Practice is responsible for the licensure of physician assistants, and the ~~commissioner of health~~ Commissioner of Health

shall adopt, amend, or repeal rules regarding the training, practice, qualification, and discipline of physician assistants.

(b) ~~In order to practice, a licensed physician assistant shall have completed a delegation agreement as described in section 1735a of this title with a Vermont licensed physician signed by both the physician assistant and the supervising physician or physicians. The original shall be filed with the board and copies shall be kept on file at each of the physician assistant's practice sites. All applicants and licensees shall demonstrate that the requirements for licensure are met. [Repealed.]~~

(c), (d) ~~[Deleted.] [Repealed.]~~

§ 1734. ELIGIBILITY

(a) ~~The board~~ Board may grant a license to practice as a physician assistant to an applicant who meets all of the following requirements:

(1) ~~submits~~ Submits a completed application form provided by the ~~board;~~ Board.

(2) ~~pays~~ Pays the required application fee~~;~~

(3) ~~has~~ Has graduated from an accredited physician assistant program or has passed and maintained the certification examination by the National Commission on the Certification of Physician Assistants (NCCPA) prior to 1988~~;~~

(4) ~~has~~ Has passed the ~~certification examination given~~ Physician Assistant National Certifying Examination administered by the NCCPA~~;~~

(5) ~~is~~ Is mentally and physically able to engage safely in practice as a physician assistant~~;~~

(6) ~~does~~ Does not hold any license, certification, or registration as a physician assistant in another state or jurisdiction ~~which~~ that is under current disciplinary action, or has been

revoked, suspended, or placed on probation for cause resulting from the applicant's practice as a physician assistant, unless the ~~board~~ Board has considered the applicant's circumstances and determines that licensure is appropriate;

(7) ~~is~~ Is of good moral character;

(8) ~~submits~~ Submits to the ~~board~~ Board any other information that the ~~board~~ Board deems necessary to evaluate the applicant's qualifications; ~~and~~.

(9) ~~has~~ Has engaged in practice as a physician assistant within the last three years or has complied with the requirements for updating knowledge and skills as defined by ~~board~~ Board rules. This requirement shall not apply to applicants who have graduated from an accredited physician assistant program within the last three years.

(b), (c) ~~[Deleted.]~~ [Repealed.]

(d) When the ~~board~~ Board intends to deny an application for licensure, it shall send the applicant written notice of its decision by certified mail. The notice shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the ~~board~~ Board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that licensure should be granted. After the hearing, the ~~board~~ Board shall affirm or reverse its preliminary denial.

(e) Failure to maintain competence in the knowledge and skills of a physician assistant, as determined by the ~~board~~ Board, shall be cause for revocation of licensure.

§ 1734b. RENEWAL OF LICENSE

(a) Licenses shall be renewed every two years on payment of the required fee. At least one month prior to the date on which renewal is required, the ~~board~~ Board shall send to each licensee a license renewal application form and notice of the date on which the existing

license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The ~~board~~ Board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the ~~board~~ Board shall pay the license renewal fees into the ~~medical practice board~~ Medical Practice Board special fund. Any physician assistant while on extended active duty in the uniformed services of the United States or member of the ~~national guard, state guard, or reserve~~ National Guard, State Guard, or Reserve component who is licensed as a physician assistant at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician assistant's return from activation or deployment, provided the physician assistant notifies the ~~board~~ Board of ~~his or her~~ the activation or deployment prior to the expiration of the current license, and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) A licensee shall demonstrate that the requirements for licensure are met.

(c) A licensee for renewal of an active license to practice shall have practiced as a physician assistant within the last three years or have complied with the requirements for updating knowledge and skills as defined by ~~board~~ Board rules.

~~(d) A licensee shall promptly provide the board Board with new or changed information pertinent to the information in his or her the physician assistant's license and license renewal applications at the time he or she the licensee becomes aware of the new or changed information.~~

(e) A license ~~which~~ that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay renewal fees during periods when

the license was lapsed. However, if a license remains lapsed for a period of three years, the ~~board~~ Board may require the licensee to update ~~his or her~~ the licensee's knowledge and skills as defined by ~~board~~ Board rules.

§ 1734c. EXEMPTIONS

Nothing in this chapter shall be construed to require licensure under this chapter of any of the following:

(1) ~~a~~ A physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) ~~a~~ A physician assistant employed in the service of the U.S. Armed Forces or National Guard, including National Guard in state status, while performing duties incident to that employment;

(3) ~~a~~ A technician or other assistant or employee of a physician who performs physician-delegated tasks but who is not rendering services as a physician assistant or identifying ~~themselves~~ himself or herself as a physician assistant; ~~or~~.

(4) ~~a~~ A physician assistant who is duly licensed and in good standing in another state, territory, or jurisdiction of the United States or in Canada if the physician assistant is employed as or formally designated as the team physician assistant by an athletic team visiting Vermont for a specific sporting event and the physician assistant limits ~~his or her~~ the physician assistant's practice in this State to the treatment of the members, coaches, and staff of the sports team employing or designating the physician assistant.

(5) A physician assistant who is licensed in this State, ~~licensed or authorized to practice in any other jurisdiction of the United States,~~ or credentialed as a physician assistant

~~by a federal employer, who is responding to a need for medical care created by a “disaster or emergency” as defined in 20 V.S.A. §102(c)(1) shall not be required to have a practice agreement. an emergency or a State or local disaster, provided that this shall not include an emergency situation that occurs in the physician assistant’s place of employment. In a emergency or disaster response, a practice agreement with a physician or physician group shall not be required.~~

§ 1735a. ~~SUPERVISION~~ PRACTICE AGREEMENT, PRIVILEGES

~~GRANTED BY LICENSED FACILITY,~~ AND SCOPE OF

PRACTICE

(a) ~~It is the obligation of each team of physician and physician assistant to ensure that the physician assistant’s scope of practice is identified; that delegation of medical care is appropriate to the physician assistant’s level of competence; that the supervision, monitoring, documentation, and access to the supervising physician is defined; and that a process for evaluation of the physician assistant’s performance is established~~ A physician assistant who engages in practice as a physician assistant in this State shall either enter into a written practice agreement as set forth in subsection (b) of this section or have been granted privileges by a licensed hospital or by a federally qualified health center, or both. A physician assistant entering into a practice agreement with a physician who practices as a sole proprietor shall enter into an agreement only with a practice-identified participating physician with a similar area of specialty. A physician assistant may only enter into a practice agreement or with a participating physician on behalf of a physician group or a health care facility in which one or more physicians in the physician group or health care facility have a similar area of specialty.

(b) ~~The information required in subsection (a) of this section shall be included in a delegation agreement as required by the commissioner by rule. The delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, and a copy shall be kept on file at each of the physician assistant's practice sites and the original filed with the board.~~ A practice agreement shall include all of the following:

(1) ~~Processes between the physician assistant and the practice-identified physician or physician group~~ for physician communication, availability, decision-making, and periodic joint evaluation of services delivered when providing medical care to a patient.

(2) ~~An agreement between the physician assistant and the practice-identified physician or physician group~~ that the physician assistant's scope of practice shall be limited to medical care that is within the physician assistant's education, training, and experience. Specific restrictions, if any, on the physician assistant's practice shall be listed.

(3) ~~A plan for contacting other physicians for consultation in situations in which the practice-identified participating physician is a sole proprietor, or a physician in the physician group or at the health care facility,~~ is not available for consultation.

(4) ~~The signatures of the physician assistant and the participating physician, a representative of the practice or physician group.~~

(c) ~~A practice agreement may further define the degree of collaboration between the PA and physicians or other health care providers. The physician assistant's scope of practice shall be limited to medical care which is delegated to the physician assistant by the supervising physician and performed with the supervision of the supervising physician. The medical care shall be within the supervising physician's scope of practice and shall be care~~

which the supervising physician has determined that the physician assistant is qualified by education, training, and experience to provide

(d) The practice agreement shall be reviewed by the physician assistant and the participating physician a representative of the practice or physician group, at a minimum, at the time of the physician assistant's license renewal.

(de) In the event of the unanticipated unavailability of the participating physician who practices as a sole practitioner practice identified physician or physician group due to serious illness or death, a physician assistant may continue to practice for no more than a 14-day 30-day period without entering into a new practice agreement with another participating physician. practice identified physician or physician group or being granted privileges by a licensed hospital or by a federally qualified health center.

(ef) The practice agreement shall not be submitted to the Board for approval or filing but shall be maintained by the physician assistant and provided to the Board upon request.

(f) A practice agreement is not required for a physician assistant employed by a hospital licensed pursuant to 18 V.S.A. chapter 43 or by a federally qualified health center, provided that the hospital or federally qualified health center grants privileges. A physician assistant employed by and engaged in practice as a physician assistant in a hospital or federally qualified health center shall practice in accordance with the privileges granted.

(g) Nothing in this section shall be construed to require the physical presence of a physician at the time and place at which a physician assistant renders a medical service.

(h) A physician assistant's scope of practice shall be limited to medical care that is within the physician assistant's education, training, and experience.

(i) A physician assistant may prescribe, dispense, ~~and administer, and procure~~ drugs and medical devices to the same extent a physician can. ~~to the extent delegated by a supervising physician.~~ A physician assistant who is authorized by a supervising physician to prescribe prescribes controlled substances ~~must~~ shall register with the federal Drug Enforcement Administration.

~~(e) A supervising physician and physician assistant shall report to the board immediately upon an alteration or the termination of the delegation agreement.~~

§ 1735b. PHYSICIAN ASSISTANT AS PRIMARY CARE PROVIDER

Notwithstanding any provision of law to the contrary, a physician assistant shall be considered a primary care provider when the physician assistant practices in one or more of the medical specialties for which a physician would be considered to be a primary care provider.

§ 1736. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a licensed physician assistant shall constitute unprofessional conduct. ~~When;~~ when that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of licensure:

(1) fraud or misrepresentation in applying for or procuring a license or in applying for or procuring a periodic renewal of a license;

(2) occupational advertising ~~which~~ that is intended or has a tendency to deceive the public;

(3) exercising undue influence on or taking improper advantage of a person using the individual's services, or promoting the sale of professional goods or services in a manner ~~which~~ that exploits a person for the financial gain of the practitioner or of a third party;

(4) failing to comply with provisions of federal or ~~state~~ State statutes or rules governing the profession;

(5) conviction of a crime related to the profession; and

(6) conduct ~~which~~ that evidences unfitness to practice in the profession.

(b) Unprofessional conduct includes the following actions by a licensed physician assistant:

(1) ~~making~~ Making or filing false professional reports or records, impeding or obstructing the proper making or filing of professional reports or records, or failing to file ~~the~~ a proper professional report or record;

(2) ~~practicing~~ Practicing the profession when mentally or physically unfit to do so;

(3) ~~practicing the profession without having a delegation agreement meeting the requirements of this chapter on file at the primary location of the physician assistant's practice and the board;~~ Practicing as a physician assistant without a practice agreement meeting the requirements of section 1735a ~~except in cases referred to in section 1735a(d)e. or practicing as a physician assistant in a licensed hospital or federally qualified health center in a manner inconsistent with the privileges granted.~~

(4) ~~accepting~~ Accepting and performing responsibilities ~~which~~ that the individual knows or has reason to know ~~that he or she~~ the individual is not competent to perform;

(5) ~~making~~ Making any material misrepresentation in the practice of the profession, whether by commission or omission;

(6) ~~the~~ The act of holding one's self out as, or permitting one's self to be represented as, a licensed physician;

(7) ~~performing otherwise than at the direction and under the supervision of a physician licensed by the board or an osteopath licensed by the Vermont board of osteopathic physicians and surgeons; [Repealed.]~~

(8) ~~performing~~ Performing or offering to perform a task or tasks beyond the individual's ~~delegated~~ scope of practice;

(9) ~~administering~~ Administering, dispensing, procuring, or prescribing any controlled substance otherwise than as authorized by law;

(10) ~~habitual~~ Habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to provide medical services;

(11) ~~failure~~ Failure to practice competently by reason of any cause on a single occasion or on multiple occasions. Failure to practice competently includes, as determined by the ~~board~~ Board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice.

(c) A person aggrieved by a determination of the ~~board~~ Board may, within 30 days of the order, appeal that order to the Vermont ~~supreme court~~ Supreme Court on the basis of the record created before the ~~board~~ Board.

§ 1737. DISPOSITION OF COMPLAINTS

(a) Complaints and allegations of unprofessional conduct shall be processed in accordance with the rules of procedure of the ~~board of medical practice~~ Board of Medical Practice.

(b) Any person, firm, corporation, or public officer may submit a written complaint to the ~~board~~ Board alleging a physician assistant practicing in the ~~state~~ State committed unprofessional conduct, specifying the grounds. The ~~board~~ Board may initiate disciplinary action in any complaint against a physician assistant and may act without having received a complaint.

(c) After giving opportunity for hearing, the ~~board~~ Board shall take disciplinary action described in subsection 1361(b) of this title against a physician assistant or applicant found guilty of unprofessional conduct.

(d) The ~~board~~ Board may approve a negotiated agreement between the parties when it is in the best ~~interest~~ interests of the public health, safety, or welfare to do so. Such an agreement may include any of the following conditions or restrictions, which may be in addition to, or in lieu of, suspension:

- (1) ~~a~~ A requirement that the individual submit to care or counseling;
- (2) ~~a~~ A restriction that the individual practice only under supervision of a named person or a person with specified credentials;
- (3) ~~a~~ A requirement that the individual participate in continuing education in order to overcome specified practical deficiencies;
- (4) ~~a~~ A requirement that the scope of practice permitted be restricted to a specified extent;

(5) ~~an~~ An administrative penalty not to exceed \$1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the ~~board of medical practice regulatory fee fund~~ Board of Medical Practice Regulatory Fee Fund for the purpose of providing education and training for ~~board~~ Board members and the professions regulated by the ~~board~~ Board. The ~~commissioner~~ Commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(e) Upon application, the ~~board~~ Board may modify the terms of an order under this section and, if licensure has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 1738. USE OF TITLE

Any person who is licensed to practice as a physician assistant in this ~~state~~ State shall have the right to use the title “physician assistant” and the ~~abbreviation “P.A.”~~ abbreviations “PA” and “PA-C.” No other person may assume that title or use ~~that abbreviation,~~ those abbreviations or use any other words, letters, signs, or devices to indicate that the person using them is a physician assistant.

§ 1739. LEGAL LIABILITY

~~(a) The supervising physician delegating activities to a physician assistant shall be legally liable for such activities of the physician assistant, and the physician assistant shall in this relationship be the physician’s agent.~~

~~(b) Nothing in this chapter shall be construed as prohibiting a physician from delegating to the physician’s employees certain activities relating to medical care and treatment now being carried out by custom and usage when such activities are under the control of the~~

~~physician. The physician delegating activities to his or her employees shall be legally liable for such activities of such persons, and such person shall in this relationship be the physician's agent. Nothing contained in this chapter shall be construed to apply to nurses acting pursuant to chapter 28 of this title. Physician assistants are responsible for their medical decision-making. A participating physician practice identified physician or a physician group in a practice agreement with a physician assistant shall not, by the existence of the practice agreement alone, be legally liable for the actions or inactions of the physician assistant.~~

§ 1739a. ~~INAPPROPRIATE USE OF SERVICES BY PHYSICIAN;~~

~~UNPROFESSIONAL CONDUCT~~

~~Use of the services of a physician assistant by a physician in a manner which is inconsistent with the provisions of this chapter constitutes unprofessional conduct by the physician and such physician shall be subject to disciplinary action by the board in accordance with the provisions of chapter 23 or 33 of this title, as appropriate. [Repealed.]~~

§ 1740. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Original application for licensure, \$225.00; the Board shall use at least \$10.00 of this fee to support the cost of maintaining the Vermont Practitioner Recovery Network, which, for the protection of the public, monitors and evaluates, coordinates services for, and promotes rehabilitation of licensees who have or potentially have an impaired ability to practice medicine with reasonable skill and safety.

(2) Biennial renewal, \$215.00; the Board shall use at least \$10.00 of this fee to support the cost of maintaining the Vermont Practitioner Recovery Network, ~~which, for the~~

~~protection of the public, monitors and evaluates, coordinates services for, and promotes rehabilitation of licensees who have or potentially have an impaired ability to practice medicine with reasonable skill and safety described in subdivision (1) of this section.~~

~~§ 1741. NOTICE OF USE OF PHYSICIAN ASSISTANT TO BE POSTED~~

~~A physician, clinic, or hospital that utilizes the services of a physician assistant shall post a notice to that effect in a prominent place. [Repealed.]~~

§ 1742. PENALTY

(a) Any person who, not being licensed, holds himself or herself out to the public as being licensed under this chapter shall be liable for a fine of not more than \$10,000.00.

(b) In addition to the penalty provided in subsection (a) of this section, the ~~attorney general~~ Attorney General or a ~~state's attorney~~ State's Attorney may bring a civil action to restrain continuing violations of this section.

§ 1743. MEDICAID REIMBURSEMENT

The Secretary of Human Services shall, pursuant to 3 V.S.A. chapter 25, adopt rules providing for a fee schedule for reimbursement under Title XIX (Medicaid) of the Social Security Act and 33 V.S.A. chapter 19, ~~relating to medical assistance~~ that recognizes reasonable cost differences between services provided by physicians and those provided by physician assistants under this chapter.

§ 1743a. PAYMENT FOR MEDICAL SERVICES

(a) As used in this section:

(1) "Health insurer" has the same meaning as in 18 V.S.A. § 9402.

(2) "Participating provider" has the same meaning as in 18 V.S.A. § 9418 and includes providers participating in the Vermont Medicaid program.

(b) Health insurers and Medicaid shall reimburse a participating provider who is a physician assistant for any medical service delivered by the physician assistant if the same service would be covered if delivered by a physician. Physician assistants are authorized to bill for and receive direct payment for the medically necessary services they deliver.

(c) To provide accountability and transparency for patients, payers, and the health care system, the physician assistant shall be identified as the treating provider in the billing and claims processes when the physician assistant delivered the medical services to the patient.

(d) A health insurer shall not impose any practice, education, or collaboration requirement for a physician assistant that is inconsistent with or more restrictive than the provisions of this chapter.

§ 1744. ~~CERTIFIED PHYSICIAN ASSISTANTS~~

~~Any person who is certified by the board as a physician assistant prior to the enactment of this section shall be considered to be licensed as a physician assistant under this chapter immediately upon enactment of this section, and shall be eligible for licensure renewal pursuant to section 1734b of this title. [Repealed.]~~

Sec. 2. 26 V.S.A. § 1354 is amended to read:

§ 1354. UNPROFESSIONAL CONDUCT

(a) The Board shall find that any one of the following, or any combination of the following, whether the conduct at issue was committed within or outside the State, constitutes unprofessional conduct:

* * *

(38) signing a blank or undated prescription form; or

(39) ~~use of the services of a physician assistant by a physician in a manner that is inconsistent with the provisions of chapter 31 of this title; or [Repealed.]~~

* * *

Sec. 3. DEPARTMENT OF HEALTH; RULEMAKING

The Department of Health shall amend the Board of Medical Practice rules pursuant to 3 V.S.A. chapter 25 to conform the provisions regarding physician assistant licensure to the provisions of this act. The Department shall complete its rulemaking process on or before ~~July 1, 2021~~ January 1, 2021.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, ~~2020~~ 2019 and shall apply to all physician assistant licenses issued or renewed on and after that date.