

Can Nurse Practitioners or Physician Assistants Admit Patients to Hospitals in New Jersey?



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Mid-level providers, such as scribes, certified medical assistants, medical technologists, limited practical nurses, registered nurses, advanced practice nurses (including nurse practitioners), and physician assistants, are on the frontline of patient care at hospitals in New Jersey. Among the myriad of mid-level providers, two of them, nurse practitioners (“NPs”) and physician assistants (“PAs”), are imbued with the greatest authority in providing patient care. NPs and PAs are also referred to as non-physician practitioners (“NPPs”).

The question that many in the industry are asking is, “Can NPPs admit patients to hospitals in New Jersey?”

This is an issue of not only patient care but also reimbursement for patient care. The legal sources that address this issue include both state and federal statutes and regulations, case law and agency guidance.

NPs are governed by the New Jersey Board of Nursing. They are authorized under the law to perform all tasks which a registered nurse may perform, such as diagnosing and treating human responses to physical and emotional health problems. In addition, they are authorized to:

- Initiate lab and other diagnostic tests;
- Prescribe/order treatments, including referrals;
- Prescribe/order medications and devices in the inpatient setting, with prior consultation with a doctor under appropriate circumstances; and
- Certify to a person’s death.

PAs are governed by the Physician Assistant Licensing Act (“PALA”) and the State Board of Medical Examiners (“BME”). The PALA requires PAs to work under the direct supervision of a physician and limits the procedures that may be performed by a PA. Practice beyond these limitations is considered professional misconduct.

Under law, PAs are permitted to perform the following procedures:

- Obtaining patient history and performing physical exams;
- Suturing and caring for wounds;
- Patient counseling/education;
- In the inpatient setting: performing rounds, writing patient progress notes, therapeutic plans, narrative summaries;
- Assisting in delivery of service in private home, extended care facility, or other settings;
- Facilitating appropriate referral of patients; and
- “Such other procedures suitable for discretionary and routine performance” by PAs as designated by the [BME].

Pursuant to this last category, the BME has approved the following additional “discretionary and routine” procedures:

- Collecting fluids;
- Placing and utilizing access catheters and tubes;
- Performing minor surgical procedures;
- Applying and removing medical and surgical appliances and devices (e.g., splints, casts);
- Managing emergency and life threatening conditions; and
- Performing low-risk obstetrical deliveries.

The BME has also provided its own broad “catchall” provision which permits PAs to perform “such other written procedures established by the employer, provided the procedures are within the training and experience of both the supervising physician and the [PA].”

Although certain aspects of the scope of practice for NPPs overlap, there is a significant difference between the two types of mid-level providers. The scope of practice rules enumerated for NPs permits no “wobble room” -- NPs are not allowed to admit a patient to a hospital. The “catchall” provision in the rules applying to PAs, however, permits, at least, the argument that PAs may

admit patients to a hospital. But, a closer reading of the “catch-all” provision limits PAs activities to “procedures,” and, thus, unless a court considers hospital admissions to be a “procedure,” such an expansive interpretation would likely be unsuccessful.

A recent New Jersey Supreme Court case is instructive on how a court might interpret the scope of a PA’s practice in this context. In *Selective Ins. Co. v. Rothman*, a plenary licensed neurologist sought payment from a patient’s no-fault automobile insurance carrier for needle electromyography (EMG) procedures performed by the neurologist’s employed PA, who was supervised, and whose notes were reviewed and countersigned by the neurologist. The neurologist had requested and received a letter from the Physician Assistant’s Advisory Committee of the BME advising him that, in its view, PAs were authorized, under their scope of practice rules, to perform needle EMGs under his supervision. However, the New Jersey Supreme Court disagreed and denied payment, emphasizing that the PA Advisory Committee could not expand the clear and expressed limitation the Legislature placed on the performance of needle EMGs in the statute, which limited the performance of needle EMGs to only those who “practice medicine and surgery.” Because PAs do not receive a plenary license to practice medicine and surgery, the neurologist’s employed PA would likewise not be authorized to perform the needle EMG procedure, even though the PA was acting as an “extension” of the plenary-licensed physician.

What does all this mean? Although there is no explicit legislative prohibition on a PA’s authority to admit patients to a hospital, as was the case in *Rothman*, the practical answer may lie in whether commercial and governmental payers reimburse for hospital admissions made by PAs. In fact, CMS has issued guidance addressing hospital inpatient admission orders and certifications. To receive reimbursement for hospital inpatient services under Medicare Part A, a physician must certify that the medical necessity of such services be provided in an inpatient setting. Indeed, the “practitioner order” to admit a patient is a critical component of the certification. CMS looks to state law to determine whether a practitioner qualifies as an ordering/admitting practitioner. Because New Jersey law does not specifically permit PAs, and does not permit NPs, to admit patients to hospitals, the more cautious approach would be not to permit NPPs to order a patient admitted, as they would not qualify under New Jersey law as ordering/admitting practitioners for purposes of Medicare reimbursement.

Many hospitals in New Jersey address this issue in their bylaws, as required by the hospital licensing regulations. The hospital licensing regulations state that a “[h]ospital shall establish and implement written policies, procedures, and bylaws that it reviews at least once every three years and revises more frequently as needed, including at least . . . policies on the admission of patients, transfer of patients to another facility, and discharge of patients . . .” Typical hospital bylaws ex-

pressly prohibit NPPs from admitting patients to the hospital, limiting their patient interactions to, for example, visiting and reviewing the medical records of their patients or otherwise collaborating with their physician.

Apparently understanding that some state laws have not yet caught up to the changes in practice resulting from recent healthcare delivery system incentives (e.g., through Obamacare), CMS has advised that even in a state where the law does not specifically authorize an NPP to admit inpatients, it will accept for reimbursement an NPP’s admitting order that defines the initial inpatient care of the patient. In such a case, the ordering practitioner does not have to separately record the order to admit. The NPP would need to discuss the patient with the ordering practitioner, obtain direction to admit from him or her, and document the verbal order. The order would need to identify the admitting practitioner and be authenticated by him or her prior to discharge. CMS provides the following examples of the types of notation it will require:

- Admit to inpatient v.o. (or t.o.) Dr. Smith, or
- Admit to inpatient per Dr. Smith.

Unfortunately, the law in New Jersey remains unclear as to whether PAs may admit patients to a hospital. Perhaps a push should be made for interested stakeholders to clarify the law. No doubt, a conservative approach favors admissions for inpatient care to be ordered exclusively by a physician. New Jersey law does not contradict this view. However, necessity may dictate that such a limited approach may not be practical, desirable or affordable, given the emphasis in current healthcare laws on efficiency and cost-effectiveness. If a New Jersey practitioner wishes to take the risk and expand his or her use of NPPs to admit patients to a hospital, the practitioner should make sure that the patient is admitted at the direction of a qualified ordering practitioner and the order is documented in accordance with Medicare, Medicaid or other commercial payers’ instructions, contracts, and implementing policies.

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