



Kim Stanger

Partner
208.383.3913
Boise
kcstanger@hollandhart.com

New Physician Assistant Collaboration Rules for Idaho

Insight — June 16, 2021

Idaho has joined several other states in revamping requirements for physician assistants (aka physician associates) effective July 1, 2021. The new law removes the requirement for individually identified supervising physicians and delegation of services agreements in favor of general oversight and/or collaborative practice agreements.

Collaboration. In all cases, the physician assistant must "collaborate with, consult with, or refer to the appropriate member of the facility [or practice] health care team as indicated by: the condition of the patient; the education, experience, and competence of the physician assistant; and the community standard of care." (Idaho Code § 54-1807A(2)). The facility or practice must establish and document the degree and nature of the required collaboration through either (i) bylaws or procedures or (ii) a written collaborative practice agreement depending on the setting in which the physician assistant provides services:

1. Facilities or Practices with a Credentialing and Privileging System. If the facility or practice has a credentialing and privileging system (e.g., hospitals, surgery centers, or other facilities or practices that have implemented such a system), the facility or practice may opt to delineate the required collaboration in its bylaws or procedures. (I.C. § 54-1807A(2)). In such cases, the law assumes that sufficient oversight will be rendered through the facility's or practice's credentialing and peer review process and no written collaborative practice agreement is necessary. Of course, such facilities may choose to use collaborative practice agreements if they so choose.

2. Other Facilities or Practices. If the facility or practice does not have a credentialing or privileging system, the facility or practice and physician assistant must execute a written collaborative practice agreement. (I.C. § 54-1807A(2)). A physician assistant employed by non-physician health care providers must have a collaborative practice agreement with one or more physicians licensed in Idaho. (*Id.*). Physician assistants or a group of physician assistants may independently own a practice¹ provided that each physician assistant has a collaborative practice agreement with a physician licensed in Idaho. (I.C. § 54-1807A(3)).

Required Terms. The bylaws, procedures or collaborative practice agreement may provide for collaborative oversight through the employer, group, hospital service, or credentialing and privileging system of a licensed facility; however, at a minimum, they must require the physician assistant to collaborate with one or more physicians licensed in Idaho. The collaborating physicians need not be individually named if more than one

physician works in the facility or practice. (I.C. § 54-1807A(2)). Idaho Board of Medicine ("BOM") regulations require that collaborative practice agreements must contain the following elements: (i) the parties to the agreement (which presumably means the physician assistant, the specific collaborating physician if there is only one such physician available, or the facility or practice if there are multiple collaborating physicians available); (ii) the authorized scope of practice for each licensed physician assistant; (iii) a requirement that the physician assistant collaborate with, consult with, or refer to the collaborating physician or another appropriate physician as indicated by the condition of the patient; the education, experience and competence of the physician assistant; and the community standard of care; and (iv) if necessary, any monitoring parameters. (IDAPA 24.33.02.028.02).

Scope of Practice. According to the BOM regulations, the physician assistant's scope of practice "includes only those duties and responsibilities identified in a collaborative practice agreement or the facility bylaws or procedures of any facility with credentialing and privileging systems." (IDAPA 24.33.02.028.01). Accordingly, as in collaborative practice agreements, facilities or practices that are relying on bylaws or procedures instead of collaborative practice agreements should specify in at least general terms the duties and responsibilities of physician assistants. A physician assistant is responsible for the care he or she provides and is responsible for obtaining professional liability insurance if the physician assistant is not covered by the facility or practice in which the physician assistant works. (IDAPA 54-1807A(2)).

Collaborating Physicians. Under the statute, "[t]he facility or practice and each collaborating physician are responsible for ensuring that the medical services performed by the physician assistant are within the physician assistant's scope of education, experience, and competence." (I.C. § 54-1807A(4)). Furthermore, "[e]ach collaborating physician shall collaborate with the physician assistant on the performance of only those medical services for which the collaborating physician has training and experience." (*Id.*). BOM regulations require that a collaborating physician comply with the statute and BOM regulations concerning physician assistants. (IDAPA 24.33.01.162). However, by statute, the bylaws, procedures and collaborative practice agreements need not identify a specific collaborating physician if there is more than one such physician. (I.C. § 54-1807A(2)). It is not clear how the BOM could or would enforce this requirement against a specific physician who was not identified by name as a collaborating physician.

Significantly, the new statute and BOM regulations removed former provisions that imposed specific duties on supervising physicians (e.g., periodic review of medical records and regular meetings with the physician assistant). Facilities or practices may decide to include such requirements in policies or procedures, but they are not required. Also, the new statute and rules removed bothersome provisions that ostensibly made supervising physicians vicariously liable for the physician assistant's actions. This should provide comfort to collaborating physicians, although collaborating physicians must still act appropriately to avoid personal

liability for their own acts or omissions.

Next Steps. Given the new rules, physician assistants and facilities or practices in which they provide services should do the following by July 1:

1. Determine if they are going to rely on collaborative practice agreements or bylaws and procedures to define the collaborative duties of physician assistants.
2. Depending on that determination, modify or draft bylaws, procedures, and/or collaborative practice agreements consistent with the requirements set forth above. Among other things, the documents should establish the scope of practice of physician assistants (e.g., examining patients, prescribing medications, ordering tests, performing procedures, etc.) in addition to requiring collaboration with licensed physicians.
3. Educate physician assistants and collaborating physicians on their respective responsibilities and the processes for facilitating collaboration and oversight.
4. Update policies, procedures, and agreements to remove or modify references to or responsibilities of supervising physicians, thereby avoiding potential liability based on supervision that is no longer required or occurring. Of course, a facility or practice may decide to continue using supervising physicians and delegation of services agreements for their own operational or risk management purposes, but doing so may create additional liability if the parties fail to perform consistent with the terms of such policies or agreements.
5. If physicians have been receiving compensation for acting as the supervising physician, consider eliminating or modifying the compensation consistent with the relaxed obligations set forth in the new rules and regulations.

¹ As in the past, each physician assistant must be licensed, registered or certified as a physician assistant in the United States for at least two (2) years before the physician assistant may independently own a practice in Idaho. (I.C. § 54-1807A(3)).

For questions regarding this update, please contact:

Kim C. Stanger

Holland & Hart, 800 W Main Street, Suite 1750, Boise, ID 83702

email: kcstanger@hollandhart.com, phone: 208-383-3913

only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author. This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.