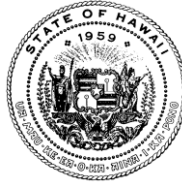


DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH
DEPT. COMM. NO. 312

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:

December 26, 2019

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Report on Establishing an Advanced Practice Registered Nurse Medical Leader Working Group pursuant to Act 205 Session Laws of Hawaii 2019 (HB658 HS1 SD1).

In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at:

<https://health.hawaii.gov/opppd/department-of-health-reports-to-2020-legislature/>

Sincerely,

Bruce S. Anderson, Ph.D.
Director of Health

Enclosures

**REPORT TO THE THIRTIETH LEGISLATURE
STATE OF HAWAII
2020**

PURSUANT TO ACT 205, SESSION LAWS OF HAWAII 2019
(HB658 HD1 SD1)

ESTABLISHES THE ADVANCED PRACTICE REGISTERED NURSE MEDICAL LEADERSHIP WORKING GROUP
CHAired BY THE DEPARTMENT OF HEALTH TO RESEARCH AND MAKE RECOMMENDATIONS
REGARDING ADVANCED PRACTICE REGISTERED NURSES' ELIGIBILITY FOR MEDICAL LEADERSHIP
POSITIONS.

Prepared by the Department of Health
Office of Planning, Policy, and Program Development
December 2019

EXECUTIVE SUMMARY

This report presents findings and recommendations regarding the accessibility to medical leadership positions by advanced practice registered nurses (APRN).

The Advanced Practice Registered Nurse Medical Leadership Working Group convened one meeting on December 2, 2019.

The major finding of the Working Group is that statutory amendments are not required to address the existing regulatory requirements prohibiting APRNs from qualifying for certain medical leadership positions. Rather, amendments to certain Hawaii Administrative Rules are sufficient.

REPORT TO THE LEGISLATURE

Background

The Legislature and Executive Branch have enacted several laws that establish Advanced Practice Registered Nurses as a vital part of Hawaii's health care system, authorized to practice primary care and specialty care independently. Hawaii continues to establish a set of community standards that assures APRNs may practice to the full extent of their education and training, or "top-of-license" nursing practice. One dimension of "top-of-license" practice is for APRNs to qualify for medical leadership positions such as medical director.

A medical director provides guidance and leadership on the use of medicine in a healthcare organization. It is a key role that assures quality, professionalism, and ethical health care. The medical director's role involves the development, implementation, and evaluation of care policies, coordination of facility-wide medical care, and consultation and training to licensed staff. The specific leadership roles may vary depending on the type of health care facility. By contrast, the role of an attending physician involves primary responsibility for the medical care of individual patients.

Act 205, Session Laws of Hawaii 2019, required the Department of Health to establish and convene the advanced practice registered nurse medical leadership working group to research and make recommendations to permit advanced practice registered nurses to be eligible for medical leadership positions and identify any exceptions, federal regulations, or other circumstances under which eligibility for positions of medical director or medical director-analogs may be inappropriate.

The Working Group is to be composed of the following members:

1. The director of health or the director's designee;
2. The director of commerce and consumer affairs or the director's designee;
3. The director of the Hawaii center for nursing or the director's designee;
4. A representative from a health care facility trade association to be appointed by the chairperson; and
5. Other representatives from health care or academia, as requested by the director of health.

One meeting was convened on December 2, 2019, at which a quorum of at least half the members was achieved.

Working Group members were:

1. Lorrin Kim
Designee of the Director of Health
Chief, Office of Planning, Policy, and Program Development
Department of Health
2. Lee Ann Teshima
Designee of the Director of Commerce and Consumer Affairs
Executive Officer, Hawaii Board of Nursing
Department of Commerce and Consumer Affairs
3. Amy Ono, JD
Designee of the Director of the Hawaii Center for Nursing
University of Hawaii
4. Paige Heckathorn
Director of Government Affairs

- Healthcare Association of Hawaii
5. Jill Shinno, APRN
Vice President
Hawaii Permanente Medical Group
 6. Bradley Kuo, NP
Past President of the Hawaii Association of Professional Nurses
 7. Run Heidelberg, DNP, APRN
Administrator, Hawaii State Hospital
Department of Health
 8. Keith Ridley
Chief, Office of Health Care Assurance
Department of Health

Discussion

State Regulatory Environment

The Department of Health (DOH) stated its policy of non-interference with private sector health care system and facility governance. However, DOH noted at least three titles of Hawaii Administrative Rules (HAR) that limit medical director qualifications to physicians:

1. Title 11-93-51 Freestanding Birthing Facilities: “Medical director’ means a suitably qualified physician who is appointed by the governing body to carry out section 11-93-61.”
2. Title 11-95 Freestanding Surgical Outpatient Facilities: “Medical director’ is the physician who is responsible for planning, organizing, conducting and directing the medical affairs of the facility. The medical director shall currently hold active surgical or anesthesiologist privileges at a local hospital.”
3. HAR 11-94.1 Skilled Nursing/Intermediate Care Facilities is discussed in the section below on federal regulations.

DOH further noted that another title does not exclude APRNs from positions on facility medical staff, which is different from medical director, but neither does it expressly affirm APRNs:

Title 11-93 Broad Service Hospitals: “Medical staff’ means physicians, dentists, podiatrists and other individuals licensed by the state, who are permitted by law and who have been authorized by the governing body to provide patient care services within the facility. All medical staff members and other individuals who are permitted by law and by the hospital to provide patient care services independently in the hospital shall have delineated clinical privileges that allow them to provide patient care services within the scope of their clinical privileges.”

APRNs are licensed by the State, and notwithstanding any law to the contrary, may be authorized by a broad service hospital governing body to treat patients. Title 11-93 Broad Service Hospitals is otherwise silent on the qualifications and credentials of a medical director for hospital services.

No other HAR, Session Law, or Hawaii Revised Statutes were cited by Working Group members as potential or actual barriers to APRNs qualifying for medical leadership positions.

Lastly, DOH advised that the aforementioned HAR also authorize the Director of Health to waive individual requirements, including the qualifications of a medical director, if requested by the licensee.

Federal Regulatory Environment

The Working Group discussed examples from the US Centers on Medicare and Medicaid Services (CMS) that specifically require only physicians to serve as medical directors, for example, in CMS-approved long-term care facilities.

CMS Transmittal 15, November 28, 2005: “§483.75(i) Medical Director (1) The facility must designate a physician to serve as medical director. (2) The medical director is responsible for – (i) Implementation of resident care policies; and (ii) The coordination of medical care in the facility”

Participants acknowledged that federal regulations may supersede state regulations and noted that while CMS certification is voluntary for certain health care facilities, facilities that are certified must adhere to the stricter requirement.

Other Potential Barriers

The Working Group discussed anecdotes of barriers to APRNs entering the health care market, including contracting requirements, but specific examples for follow up were not readily available. The Department of Health pledged to review its own service contracts and report back to the Working Group. APRN stakeholders were advised to follow up with the Department of Human Services, the Department of Education, and other state agencies who procure medical and behavioral health with a request to review their contracting requirements.

Private sector business practices were deemed out of scope for this Working Group since neither DOH nor the Department of Commerce and Consumer Affairs (DCCA) has regulatory authority for business-to-business transactions. Concerns were raised about the viability of APRN-led outpatient clinics, including the ability to secure state contracts, but no regulatory barriers were identified since DOH nor any other state agency licenses or regulates outpatient practices except as general business entities.

DOH reiterates its policy of non-interference in private sector health care governance

Conclusion

No statutory amendments are recommended.

Although the Working Group identified three HAR that prohibit APRNs from qualifying for medical leadership positions, DOH has the authority to waive requirement for each should the circumstance arise.

DOH will work with regulated entities, APRNs, and other relevant stakeholders to examine whether rule amendments have support.