The PPACA’s Impact on the Scope of Practice of Nurse Practitioners

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I. INTRODUCTION

The Patient Protection and Affordable Care Act (PPACA) is a comprehensive reform of the United States’ healthcare system. While the overhaul ushered in by the PPACA primarily consists of federal legislation and regulation, states have a vital role in deciding how best to implement many of the law’s provisions. A key tenet of the PPACA is its extension of health insurance to millions of Americans. The conventional wisdom among health policy experts is that as more people obtain health insurance, the need for primary care practitioners will grow. After the full implementation of the PPACA, there will be as many as thirty-two million newly insured Americans. States must determine who will provide the primary care that these previously uninsured consumers will need.

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4. Id.


This article argues that the PPACA contains provisions that encourage states to expand nurse practitioners’ scope of practice and that states should take advantage of these incentives by passing bills to ease scope of practice restrictions on the profession. Part II provides a brief overview of the scope of practice of nurse practitioners. Part III examines key provisions of the PPACA affecting nurse practitioners, showing that federal legislators designed the PPACA to encourage states to ease scope of practice restrictions on nurse practitioners through a variety of financial incentives. Part IV discusses recent legislative trends regarding scope of practice bills. Finally, Part V provides recommendations for providers to move beyond current turf wars and work with states to pass legislation easing scope of practice restrictions on nurse practitioners.

II. SCOPE OF PRACTICE OF NURSE PRACTITIONERS: AN OVERVIEW

Scope of practice is comprised of the activities that a healthcare provider is allowed to perform within a specific profession or specialty, as determined by education, training, experience, and legislation.7 Determining scope of practice is done almost strictly on the state level.8 As the PPACA shifts the healthcare paradigm to focus on preventative care, quality of care, and access to care for all consumers, states are recognizing that changes to their scope of practice laws are necessary.9 Changes to state medical practice acts, which define the scope of practice of mid-level

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9. See Scope of Practice Legislative Database, 2011-2013, NCSL, http://www.ncsl.org/research/health/scope-of-practice-legislation-tracking-database.aspx (last visited Oct. 28, 2013) [hereinafter NCSL]. Between January 2011 and December 2012, there were 1795 SOP-related bills proposed in 54 states, territories or the District of Columbia, of which 349 have been adopted or enacted into law. Id. Further, as of April 1, 2013, there were 178 bills related to scope of practice proposed in 2013 alone. Id.
medical professionals, are not uncommon, as these acts often evolve as healthcare demands and capabilities change.\textsuperscript{10} Such laws generally define mid-level providers to include nurse practitioners, physician assistants, and other providers that support clinical care with or without physician supervision.\textsuperscript{11} These laws determine the range of services nurse practitioners can provide and the extent to which they can practice independently.\textsuperscript{12} Nurse practitioners are registered nurses who complete additional graduate-level education and are trained to provide a broad range of primary care services.\textsuperscript{13} Scope of practice laws determine whether nurse practitioners can make a diagnosis or prescribe medication on their own, or whether they must turn to a physician for ultimate approval.\textsuperscript{14}

The American Association of Nurse Practitioners argues that nurse practitioners are in a strong position to provide primary care to the many Americans who will receive health insurance due to the PPACA.\textsuperscript{15} Over sixty percent of nurse practitioners practice in primary care, and, in recent years, many states considered laws expanding the scope of practice for nurse practitioners with the goal of increasing primary care capacity.\textsuperscript{16} One view arising out of current legislative debates is that restrictive scope of practice laws prevent nurse practitioners from practicing to the full extent of their training, thereby limiting consumer access to care and choice of

\textsuperscript{10} Nat’l Council of State Bds. of Nursing, supra note 8, at 8.
\textsuperscript{11} Primary Care: Expanding the Use of Nurse Practitioners, CMTY. CATALYST, http://www.communitycatalyst.org/resources/glossary?entry=mid-level-providers (last visited Oct. 28, 2013).
\textsuperscript{13} Id. at 1.
\textsuperscript{14} Kliff, supra note 3.
\textsuperscript{15} Id.
providers. However, physician groups, such as the American Medical Association, continue to express reservations over whether nurse practitioners should be allowed to practice independently because they lack the comprehensive medical knowledge gained in medical school.

In some states, scope of practice for nurse practitioners is vaguely defined, which causes disputes over the tasks they can perform legally. State scope of practice laws often exacerbate the turf battle between physicians and nurse practitioners in that they vary widely in the autonomy they grant to nurse practitioners to diagnose, treat, and prescribe medication to patients without physician oversight. Inconsistent state scope of practice laws prevent nurse practitioners from practicing in a way that meets the needs of all healthcare consumers. Accordingly, Congress included within the PPACA various provisions that encourage states to expand the scope of practice of nurse practitioners.

III. PPACA PROVISIONS AFFECTING NURSE PRACTITIONERS

The PPACA contains numerous provisions designed to address the anticipated shortage of primary care physicians. For example, beginning in 2011 and lasting through 2015, primary care physicians who treat Medicare patients may be eligible to receive a ten percent increase in reimbursement if their Medicare charges for primary care office visits make

22. See id. at 1240.
23. Id.
up at least sixty percent of their overall Medicare charges.24 In addition, the PPACA contains various other provisions designed to increase general primary care capacity.25 While such provisions may prove to be successful in increasing primary care capacity, they could be strengthened by complementary approaches implemented by the states that could take effect more rapidly.26

One such approach is for states to expand their scope of practice laws by easing restrictions on nurse practitioners.27 The passage of the PPACA already led to a flurry of state legislation regarding nurse practitioners.28 Much of this legislation is designed to ease restrictions on the scope of practice of nurse practitioners.29 States should continue to debate such legislation in order to properly care for the growing population of insured individuals. Despite this recent uptick in legislation since the passage of the PPACA, ten states still require complete physician supervision of nurse practitioners, only a dozen states allow nurse practitioners to fully practice without physician supervision, and the remaining states fall somewhere in the middle, requiring collaboration with physicians or supervision for designated tasks such as prescribing medications.30

The PPACA contains provisions that encourage states to embrace

25. See Emily R. Carrier, et al., Matching Supply to Demand: Addressing the U.S. Primary Care Workforce Shortage, NAT’L INST. FOR HEALTH CARE REFORM, POL. ANALYSIS NO. 7, at 3 (December 2011), available at http://www.nihcr.org/PCP_Workforce. For example, the PPACA contains care delivery reforms and pilot programs, support for primary care training in academic settings, and scholarships for students planning to study primary care. Id.
26. Id. at 3.
27. Id. at 4.
28. See NCSL, supra note 9 (editing search parameters to focus on 2013 legislation relating to nurse practitioners and other advanced practice nurses yields a result of 63 bills as of June 30, 2013).
29. See id.
30. ROBERT WOOD JOHNSON FOUND., supra note 5, at 3.
expansion of the scope of practice of nurse practitioners.\textsuperscript{31} Congress included these provisions because it recognized the recent legislative debates regarding scope of practice and aimed to encourage increased reliance on nurse practitioners to address primary care needs.\textsuperscript{32} Notable provisions include the authorization of funding for nurse-managed health clinics (NMHCs) and school-based health clinics, both of which can be led by nurse practitioners.\textsuperscript{33} In addition to expanding funding for practice models that may be led by nurse practitioners, the PPACA authorizes funding for advanced nursing degrees through loans and grants.\textsuperscript{34} The PPACA provides fifty million dollars annually from 2012 through 2015 for hospitals to train advanced practice nurses.\textsuperscript{35}

\textbf{A. NMHCs}

The purpose of Section 5208 of the PPACA is to fund the development and operation of NMHCs.\textsuperscript{36} The PPACA defines a NMHC as a clinic managed by advanced practice nurses that provides primary care or wellness services to underserved or underprivileged populations and is associated with a school, department of nursing, federally qualified health center, or independent nonprofit health or social services agency.\textsuperscript{37} In order to be eligible to receive a grant under this section, an entity must show that it is an NMHC, and it must submit an application containing an assurance that the NMHC will continue providing comprehensive primary healthcare.

\begin{itemize}
\item \textsuperscript{31} See Hansen-Turton et al., \textit{supra} note 19, at 1240.
\item \textsuperscript{32} \textit{Id.}
\item \textsuperscript{33} \textit{Id.; See} Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, §§ 3024, 4101, 5208 (2010) [hereinafter the PPACA].
\item \textsuperscript{34} Hansen-Turton et al., \textit{supra} note 19, at 1240; \textit{See} The PPACA, \textit{supra} note 33, at §§ 5307-5312. The PPACA authorizes advanced nursing education grants, nurse practice and retention grants, and a loan repayment and scholarship program. \textit{See} The PPACA, \textit{supra} note 33, at §§ 5308-5312.
\item \textsuperscript{35} Carrier, et al., \textit{supra} note 25, at 5.
\item \textsuperscript{36} The PPACA, \textit{supra} note 33, at § 5208.
\item \textsuperscript{37} \textit{Id.}
\end{itemize}
services or wellness services without regard to income or insurance status of the patient for the duration of the grant period, in addition to other assurances.\textsuperscript{38} The law authorized the appropriation of fifty million dollars for fiscal year 2010, and whatever sums are deemed necessary for each of the fiscal years 2011 through 2014.\textsuperscript{39}

The PPACA encourages state reliance on nurse practitioners to alleviate primary care shortages through grants for NMHCs that provide comprehensive primary healthcare services.\textsuperscript{40} Some studies anticipate that permitting nurse practitioners to practice to the full extent of their professional scope will result in improved outcomes and value-driven health care.\textsuperscript{41} States should ease scope of practice restrictions on nurse practitioners because they can provide cost-effective healthcare through models such as the NMHC.\textsuperscript{42}

\textbf{B. School-Based Health Centers}

Section 4101 of the PPACA establishes a grant program to eligible

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\item \textsuperscript{38} Id. In addition, an entity’s application must provide assurances that that nurses are the major providers of services at the NMHC, and that at least one advanced practice nurse holds an executive management position within the organizational structure of the NMHC, as well as an assurance that, not later than 90 days of receiving a grant under this section, the NMHC will establish a community advisory committee. See id.
\item \textsuperscript{39} Id. In 2010, the Department of Health and Human Services released $14.8 million to support grants to ten NMHCs. Tine Hansen-Turton, \textit{Nurse-Managed Health Clinics Provided Badly Needed Primary Care - But Without Funding, They and their Patients are at Risk}, ROBERT WOOD JOHNSON FOUND. HUMAN CAPITAL BLOG (Jan. 27, 2012), http://www.rwjf.org/en/blogs/human-capital-blog/2012/01/nurse-managed-health-clinics-provided-badly-needed-primary-care-but-without-funding-they-and-their-patients-are-at-risk.html. The clinics receiving funding were expected to provide primary care to more than 94,000 patients and train more than 900 advanced practice nurses by 2012. However, in an effort to reduce federal spending, both Congress and the Obama administration elected not to renew funding for this program in 2011 and 2012. See id.
\item \textsuperscript{40} See AM. NURSES ASS’N, NEW CARE DELIVERY MODELS IN HEALTH SYSTEM REFORM: OPPORTUNITIES FOR NURSES AND THEIR PATIENTS 6 (2010), available at http://www.nursingworld.org/MainMenuCategories/Policy-Advocacy/HealthSystemReform/HealthCareReformResources/Care-Delivery-Models.pdf [hereinafter AM. NURSES ASS’N].
\item \textsuperscript{41} Id. at 7.
\item \textsuperscript{42} See id.
\end{itemize}
entities to support the operation of school-based health centers.\textsuperscript{43} In awarding grants under this section, the government gives preference to school-based health centers that serve a large population of children eligible for medical assistance under the state’s Medicaid plan.\textsuperscript{44} Congress’s intent to expand nurse practitioner scope of practice is evident in its allocation of grants to school-based health centers, which can be run by nurse practitioners.\textsuperscript{45} The 2014 expansion of the Medicaid program, mandated by the PPACA, will enroll approximately sixteen million new participants, many needing a primary care provider for the first time.\textsuperscript{46} Some argue that states should grant nurse practitioners the authority to diagnose and prescribe without physician oversight to help ensure that there is an adequate primary care workforce to serve this new population, especially because nurse practitioners are more likely than physicians to treat patients in areas lacking primary care providers.\textsuperscript{47}

IV. STATE LEGISLATION POST-PPACA

State legislatures already debated many bills relating to the scope of practice of nurse practitioners since the passage of the PPACA in 2010.\textsuperscript{48} As of February 2013, fourteen states were considering legislation to expand nurse practitioner scope of practice, up from just seven states considering similar reforms in 2012.\textsuperscript{49} As of April 2013, 250 bills relating to scope of practice for various professions were introduced in forty-seven states.\textsuperscript{50}

\begin{itemize}
  \item[43.] The PPACA, supra note 33, at § 4101.
  \item[44.] Id.
  \item[45.] See Hansen-Turton et al., supra note 19, at 1240.
  \item[46.] CMTY. CATALYST., supra note 11.
  \item[47.] See id.
  \item[48.] See NCSL, supra note 9.
  \item[49.] Kliff, supra note 3.
\end{itemize}
In 2012, seven states debated legislation that would have increased nurse practitioners’ scope of practice, yet none of those bills were passed.51 Such legislation often must contend with a strong physician lobby, which successfully defeats many attempts to expand scope of practice.52 Some nurse practitioners and other groups encourage state use of nurse practitioners to address primary care concerns arguing that states should consider changing scope of practice restrictions and adequately reimbursing nurse practitioners for their services as a way of encouraging their provision of primary health care.53 There is strong support for an expansion of the scope of practice of nurse practitioners at the state level.54 The incentives contained within the PPACA should continue to increase such support and encourage the passage of bills in the state legislatures that ease restrictions on nurse practitioners.55

V. RECOMMENDATIONS

This article proposes several recommendations to foster increased reliance on nurse practitioners to address primary care concerns. First, states should grant nurse practitioners the authority to diagnose and prescribe without physician oversight to help ensure that there is an adequate primary care workforce to serve the newly insured population.56 Easing the scope of practice restrictions currently in place on nurse practitioners in some states will help meet the growing demand for primary health care.

51. Kliff, supra note 3.
53. Id.
54. See NCSL, supra note 9.
55. See Hansen-Turton et al., supra note 19, at 1240.
care services.\textsuperscript{57} Congress should also continue to authorize funding for NMHCs. NMHCs have provided primary care to thousands of new patients according to early projections, and they should be expected to do so in the future if Congress reauthorizes the necessary funding.\textsuperscript{58} This reauthorization would allow NMHCs to provide care for underprivileged populations.\textsuperscript{59} Finally, school-based health centers staffed by nurse practitioners will potentially serve a large population of children eligible for medical assistance under states’ Medicaid plans.\textsuperscript{60} The potential to adequately serve this new population should provide states with further incentive to grant nurse practitioners the authority to diagnose and prescribe without physician oversight.\textsuperscript{61}

VI. CONCLUSION

Congress recognized the recent legislative debates regarding scope of practice restrictions on nurse practitioners when it passed the PPACA. Accordingly, Congress included measures in the PPACA designed to encourage increased reliance on nurse practitioners to address primary care needs. Such provisions will likely encourage states to rewrite legislation and expand the scope of practice of nurse practitioners in order to provide adequate primary care to the millions of Americans who will obtain health insurance upon full implementation of the PPACA. It is incumbent upon the states to utilize the incentives in the PPACA and ease scope of practice restrictions on nurse practitioners. Only then will nurse practitioners realize their full potential to address the predicted shortage of primary care providers as millions of Americans obtain insurance. Increased reliance on

\textsuperscript{57} See Id.
\textsuperscript{58} See Hansen-Turton, supra note 39.
\textsuperscript{59} See the PPACA, supra note 33, at § 5208.
\textsuperscript{60} See the PPACA, supra note 33, at § 4101.
\textsuperscript{61} See CMTY. CATALYST., supra note 11.
nurse practitioners could result in important improvements to the healthcare delivery system through expanded access to primary care services and lower costs.