

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 385

Short Title: Anesthesia Care/TEFRA Compliance. (Public)

Sponsors: Senators Krawiec, Hise, and Adcock (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 29, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE ANESTHESIOLOGISTS TO COMPLY WITH CERTAIN
3 REQUIREMENTS DURING THE SUPERVISION OF ANESTHESIA CARE PROVIDED
4 BY CERTIFIED REGISTERED NURSE ANESTHETISTS IN ORDER TO QUALIFY
5 FOR REIMBURSEMENT OF THOSE SERVICES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 1 of Chapter 90 of the General Statutes is amended by adding
8 a new section to read:

9 **"§ 90-18.8. Anesthesiologist TEFRA compliance.**

10 (a) Definitions. – The following definitions shall apply in this section:

- 11 (1) Anesthesia care. – The performance of activities by a certified registered nurse
12 anesthetist under 21 NCAC 36 .0226.
13 (2) Anesthesiologist. – A licensed physician who has successfully completed an
14 anesthesiology training program approved by the Accreditation Committee on
15 Graduate Medical Education or the American Osteopathic Association or who
16 is credentialed to practice anesthesiology by a hospital or an ambulatory
17 surgical facility.
18 (3) Certified registered nurse anesthetist. – A licensed registered nurse who
19 completes a program accredited by the Council on Accreditation of Nurse
20 Anesthesia Educational Programs, is credentialed as a certified registered
21 nurse anesthetist by the Council on Certification of Nurse Anesthetists, and
22 who maintains recertification through the Council on Recertification of Nurse
23 Anesthetists and performs nurse anesthesia activities in collaboration with a
24 physician, dentist, podiatrist, or other lawfully qualified health care provider.
25 Nurse anesthesia activities do not constitute the practice of medicine.
26 (4) Medical direction. – The direction of anesthesia care by an anesthesiologist to
27 up to four certified registered nurse anesthetists performing concurrent cases.
28 (5) Supervision. – Overseeing the activities of, and accepting responsibility for,
29 the anesthesia services rendered by a certified registered nurse anesthetist for
30 purposes of reimbursement and not as a standard of care.
31 (6) TEFRA. – The Tax Equity and Fiscal Responsibility Act of 1982, Public Law
32 97-248.

33 (b) Compliance. – Consistent with TEFRA, an anesthesiologist supervising a certified
34 registered nurse anesthetist performing anesthesia care must comply with all of the following
35 requirements in order to bill any third-party payor for medical direction services:



- 1 (1) Perform a pre-anesthetic examination and evaluation and document it in the
2 medical record.
- 3 (2) Prescribe the anesthesia plan.
- 4 (3) Personally participate in and document the most demanding procedures in the
5 anesthesia plan, including induction and emergence, if applicable.
- 6 (4) Ensure that any procedures in the anesthesia plan that the anesthesiologist
7 does not perform are performed by a certified nurse anesthetist or
8 anesthesiologist assistant, as appropriate.
- 9 (5) Monitor the course of anesthesia administration at frequent intervals and
10 document that they were present during some portion of the anesthesia
11 monitoring.
- 12 (6) Remain physically present and available for immediate diagnosis and
13 treatment of emergencies."

14 **SECTION 2.** Article 3 of Chapter 58 of the General Statutes is amended by adding
15 a new section to read:

16 "**§ 58-3-301. Medical direction of nurse anesthetists.**

17 (a) Definitions. – The following definitions shall apply in this section:

- 18 (1) Anesthesia care. – The performance of activities by a certified registered nurse
19 anesthetist under 21 NCAC 36 .0226.
- 20 (2) Anesthesiologist. – A licensed physician who has successfully completed an
21 anesthesiology training program approved by the Accreditation Committee on
22 Graduate Medical Education or the American Osteopathic Association or who
23 is credentialed to practice anesthesiology by a hospital or an ambulatory
24 surgical facility.
- 25 (3) Certified registered nurse anesthetist. – A licensed registered nurse who
26 completes a program accredited by the Council on Accreditation of Nurse
27 Anesthesia Educational Programs, is credentialed as a certified registered
28 nurse anesthetist by the Council on Certification of Nurse Anesthetists, and
29 who maintains recertification through the Council on Recertification of Nurse
30 Anesthetists and performs nurse anesthesia activities in collaboration with a
31 physician, dentist, podiatrist, or other lawfully qualified health care provider.
32 Nurse anesthesia activities do not constitute the practice of medicine.
- 33 (4) Medical direction. – The direction of anesthesia care by an anesthesiologist to
34 up to four certified registered nurse anesthetists performing concurrent cases.
- 35 (5) Supervision. – Overseeing the activities of, and accepting responsibility for,
36 the anesthesia services rendered by a certified registered nurse anesthetist for
37 purposes of reimbursement and not as a standard of care.
- 38 (6) TEFRA. – The Tax Equity and Fiscal Responsibility Act of 1982, Public Law
39 97-248.

40 (b) An insurer offering a health benefit plan in this State shall reimburse claims for
41 medical direction of a nurse anesthetist at fifty percent (50%) of the rate of reimbursement the
42 anesthesiologist would have received for services if the services had been performed without the
43 nurse anesthetist.

44 (c) Consistent with TEFRA, an insurer offering a health benefit plan in this State shall
45 require that any anesthesiologist supervising a certified registered nurse anesthetist performing
46 anesthesia care comply with all of the following requirements in order for a claim for medical
47 direction services to be payable under that health benefit plan:

- 48 (1) Perform a pre-anesthetic examination and evaluation and document it in the
49 medical record.
- 50 (2) Prescribe the anesthesia plan.

- 1 (3) Personally participate in and document the most demanding procedures in the
- 2 anesthesia plan, including induction and emergence, if applicable.
- 3 (4) Ensure that any procedures in the anesthesia plan that the anesthesiologist
- 4 does not perform are performed by a certified nurse anesthetist or
- 5 anesthesiologist assistant, as appropriate.
- 6 (5) Monitor the course of anesthesia administration at frequent intervals and
- 7 document that they were present during some portion of the anesthesia
- 8 monitoring.
- 9 (6) Remain physically present and available for immediate diagnosis and
- 10 treatment of emergencies.
- 11 (7) Provide indicated post-anesthesia care."

12 **SECTION 3.** G.S. 135-48.51 reads as rewritten:

13 **"§ 135-48.51. Coverage and operational mandates related to Chapter 58 of the General**

14 **Statutes.**

15 The following provisions of Chapter 58 of the General Statutes apply to the State Health Plan:

- 16 ...
- 17 (11a) G.S. 58-3-301, Medical direction of nurse anesthetists.
- 18 "

19 **SECTION 4.** G.S. 58-93-120 reads as rewritten:

20 **"§ 58-93-120. Other laws applicable to PHPs.**

21 The following provisions of this Chapter are applicable to PHPs in the manner in which they

22 are applicable to insurers:

- 23 ...
- 24 (14a) G.S. 58-3-301, Medical direction of nurse anesthetists.
- 25 "

26 **SECTION 5.** The Department of Health and Human Services, Division of Health

27 Benefits (DHB), shall review the Medicaid State Plan and all applicable Medicaid clinical

28 coverage policies to ensure that the Medicaid program is paying anesthesiologists for medical

29 direction of nurse anesthetists at fifty percent (50%) of the reimbursement the anesthesiologist

30 would receive if they performed the work alone. DHB shall further ensure that all requirements

31 for reimbursement of anesthesiologist medical direction services are in compliance with the Tax

32 Equity and Fiscal Responsibility Act of 1982, Public Law 97-248 (TEFRA). This includes

33 verification that all prepaid health plans and local management entities/managed care

34 organizations are also in compliance.

35 **SECTION 6.** Section 1 of this act becomes effective October 1, 2023, and applies to

36 services rendered on or after that date. Sections 2 and 3 of this act become effective October 1,

37 2023, and apply to insurance contracts issued, renewed, or amended on or after that date. The

38 remainder of this act is effective when it becomes law.