



Respiratory Care Board of California and Board of Vocational Nursing and Psychiatric Technicians Joint Statement – April 2019 (Revised July 2019)

The Respiratory Care Board (RCB) and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) began meeting in 2018 to discuss concerns related to reports of scope of practice issues occurring in sub-acute facilities, long-term care, and skilled nursing facilities in California. Board members, staff, legal counsel and experts weighed in on the issues by considering current laws, education and training. Prioritizing both boards’ highest priority of public protection, the boards have agreed on a joint statement.

Both boards agree that respiratory care practitioners (RCPs), licensed vocational nurses (LVNs) and psychiatric technicians (PTs) are invaluable members of the patient care team in providing optimum care to patients. Each health care professional relies on others to perform their practice well. They establish a therapeutic interface among all health care personnel that benefits patients in their care and safety.

Both boards’ mandates require that “protection of the public shall be the highest priority... in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (*Business and Professions Code sections 2841.1, 3710.1 and 4501.1*) Each board’s oversight responsibility is summarized below:

Respiratory Care Board of California (RCB)	Board of Vocational Nursing and Psychiatric Technicians (BVNPT)
Responsible for licensing and regulating the practice of respiratory care pursuant to the Respiratory Care Practice Act (<i>Business and Professions Code section 3700 et seq.</i>). The RCB is statutorily charged with protecting the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care (<i>Business and Professions Code section 3701</i>).	Responsible for licensing and regulating the practice of vocational nurses and psychiatric technicians pursuant to the Vocational Nursing Practice Act and the Psychiatric Technicians Law (<i>Business and Professions Code Section 2840 et seq. and Section 4500 et seq., respectively</i>).

The boards jointly agree that stakeholders should be aware that RCPs, LVNs and PTs must follow their respective scopes of practice for patient safety. Violating the respective scope of practice could lead to patient harm and the license being formally disciplined by the respective boards.

A concern to both boards is unlicensed and/or unqualified vendors instructing health care professionals to provide ventilator care. Both boards agree this is an unsafe practice. Further, section 3702.7 of the Business and Professions Code provides that the education of health care professionals about respiratory care, including clinical instruction and the operation or

application of respiratory care equipment and appliances is within the respiratory care scope of practice and would require licensure as an RCP.

Given that numerous patients admitted to sub-acute facilities, long-term care, and skilled nursing facilities require respiratory care, with some dependent upon ventilators to sustain life, and given concerns for care that is being provided at some facilities in California, the RCB and the BVNPT issues this joint statement to inform administrators and staff at sub-acute facilities, long-term care, and skilled nursing facilities on the following issues:

PATIENT CARE PRACTICES

Invasive Mechanical Ventilation

Invasive mechanical ventilation is a lifesaving intervention for patients with respiratory failure and is at the core of respiratory care practitioners' education, training, and competency testing. Given the clinical knowledge of the hazards, indications, contraindications of mechanical ventilation, and complexity associated with invasive mechanical ventilation, and that extensive and formal education and training is required to provide such care.

Respiratory Care Practitioners are authorized to provide the following types of care (LVNs and PTs are not authorized to provide this care):	Licensed Vocational Nurses and Psychiatric Technicians role in patient care:
<ul style="list-style-type: none"> • Changing any setting on a ventilator, with or without a physician's order. • Routine and/or emergent changing inner and/or outer cannulas. • Reconfiguring or changing aerosol or ventilator circuits. • Manipulating ventilator breathing circuits including disconnecting or reconnecting the circuit, for any purpose, including, but not limited to administering bronchodilator or nebulizer treatments. • Troubleshooting artificial airway problems and ventilator-related controls and alarms. • Assessment of a patient's response to ventilator adjustments or current settings. • Assessment for the placement and/or placement of a speaking valve or trach plugging. • Transporting patients intra or inter facility to daily activities and/or scheduled shower days. 	<p>The LVN and PT are authorized to provide care to the patient receiving invasive mechanical ventilation when the care is not specifically related to the mechanical ventilation but is within the LVN or PT's scope of practice. That care includes but is not limited to:</p> <ul style="list-style-type: none"> • Basic Assessment (data gathering) of <u>total</u> patient. • Administration of ordered medications that do not require manipulation of the mechanical ventilator. • Provision of ordered treatments. • Hygiene care. • Comfort care. • Patient and family education. • LVNs and PTs are <u>not</u> responsible for ensuring the security of the artificial airway and related functionality of the ventilator before, during and after transport. However, LVNs and PTs can go as part of the team, but they are not responsible for the ventilator or related care.

CARE/TREATMENT PLANS

Respiratory Care Practitioner	Licensed Vocational Nurses and Psychiatric Technicians
Recommend appropriate respiratory care intervention/s, and manage, or modify, respiratory care interventions based on the patient's response to therapy and written protocols approved by the medical staff.	Contribute data to the registered nurse needed for the evaluation process. However, LVNs and PTs cannot make clinical diagnosis of the patient's respiratory condition, and/or make respiratory care recommendations based on their clinical findings.

Both boards recognize that working titles using any derivative or synonymous meaning of the word "respiratory" for LVNs and PTs is prohibited. This includes but is not limited to: Respiratory Aide, Respiratory Nurse, Inhalation Nurse, etc.

Scope of Practice Questions and Information

Both Boards prefer written inquiries to ensure accurate and complete responses. Phone calls are accepted, and you will be requested to submit the inquiry in writing. Responses to written inquiries may take up to five business days depending on the complexity of the question.

Respiratory Care Board	Board of Vocational Nursing and Psychiatric Technicians
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July 2019 Revision

Both boards agreed to remove "home care locations" from the Joint Statement in response to numerous comments received at the RCB's teleconference board meeting held June 7, 2019 and a stakeholder meeting held June 27, 2019. At the RCB meeting, the board passed a motion "to move forward with excluding home care and continuing working with the BVNPT to modify the Joint Statement."

It was noted at all meetings that services provided in home care, as well as Adult Day Health Care Facilities, Congregate Living Health Facilities, and Pediatric Day Health & Respite Care Facilities [including transport to/from and care during daily outside activities (e.g. school)] serve a population who may need greater access to care and may hold different expectations for care given consideration to patients' quality of life and health care reimbursement allowed. For this reason, both the BVNPT and the RCB will continue conducting research in this area to determine how greater consumer protection safeguards may be put in place such as possible standardization of training in some areas. Any such actions are expected to be addressed through regulations and/or legislation where public comment is encouraged.

**CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
FACILITY/AGENCY DEFINITIONS/NUMBER OF FACILITIES**

Prepared June 13, 2019

**ACUTE PSYCHIATRIC HOSPITAL
127 Licensed Facilities**

A health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for persons with mental health disorders or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services. (Ref: Health and Safety Code section 1250(b)).

**ADULT DAY HEALTH CARE
282 Licensed Facilities**

An organized day program of therapeutic, social, and skilled nursing health activities and services provided pursuant to this chapter to elderly persons or adults with disabilities with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimal capacity for self-care. Provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. Provided on a long-term basis, it serves as an alternative to institutionalization in a long-term health care facility when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family. (Ref: Health and Safety Code section 1570.7(a)).

**ALTERNATIVE BIRTHING CENTER
12 Licensed Centers**

A clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility. (Ref: Health and Safety Code section 1204(b) (4)).

**CHEMICAL DEPENDENCY RECOVERY HOSPITAL
8 Licensed Facilities**

A health facility that provides 24-hour inpatient care for persons who have a dependency on alcohol or other drugs, or both alcohol and other drugs. This care includes, but is not limited to, basic services such as patient counseling services, and dietetic services. Each facility shall have a medical director who is a physician and surgeon licensed to practice in California. (Ref: Health and Safety Code section 1250.3(a)).

**CHRONIC DIALYSIS CLINIC
700 Licensed Clinics**

A clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services. (Ref: Health and Safety Code section 1204(b) (2)).

**CONGREGATE LIVING HEALTH FACILITY
213 Licensed Facilities**

(1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than 18 beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one or more of the following services:

(A) Services for persons who are mentally alert, persons with physical disabilities, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A person who is catastrophically and severely disabled means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a person who is catastrophically disabled shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons, or located in a county of the 16th class pursuant to Section 28020 of the Government Code, may have not more than 25 beds for the purpose of serving persons who are terminally ill.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(Ref: Health and Safety Code section 1250(i))

**CORRECTIONAL TREATMENT CENTER
21 Licensed Facilities**

A health facility operated by the California Department of Corrections and Rehabilitation, the Division of Juvenile Justice, or a county, city, or city and county law enforcement agency that, as determined by the Department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards who may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the Department. (Ref: Health and Safety Code section 1250(j)(1)).

**GENERAL ACUTE CARE HOSPITAL
416 Licensed Facilities**

A health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. (Ref: Health and Safety Code section 1250(a)).

**HOME HEALTH AGENCY
1,996 Licensed Agencies**

A private or public organization, including, but not limited to: any partnership, corporation, political subdivision of the state, or other government agency within the state, which provides, or arranges for the provision of, skilled nursing services, to persons in their temporary or permanent place of residence. (Ref: Health and Safety Code section 1727(a)).

- (a) "Home health agency" means a private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other government agency within the state, which provides, or arranges for the provision of, skilled nursing services, to persons in their temporary or permanent place of residence.
- (b) "Skilled nursing services" means services provided by a registered nurse or licensed vocational nurse.
- (c) "Home Health Aide" means an aide who has successfully completed a state-approved training program, is employed by a home health agency or hospice program, and provides personal care services in the patient's home.
- (d) "Home health aide services" means personal care services provided under a plan of treatment prescribed by the patient's physician and surgeon who is licensed to practice medicine in the state. Home health aide services shall be provided by a person certified by the state department as a home health aide pursuant to this chapter. Services which do not involve personal care services provided under a plan of treatment prescribed by a physician and surgeon may be provided by a person who is not a certified home health aide. Home health aide services shall not include services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

HOSPICE

Hospice (1,389 Licensed Agencies)

A specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, and provide supportive care to the primary caregiver and the family of the hospice patient, and that meets all of the following criteria:

- Considers the patient and the patient's family, in addition to the patient, as the unit of care.
- Utilizes an interdisciplinary team to assess the physical, medical, psychological, social, and spiritual needs of the patient and the patient's family.
- Requires the interdisciplinary team to develop an overall plan of care and to provide coordinated care that emphasizes supportive services, including, but not limited to: home care, pain control, and limited inpatient services. Limited inpatient services are intended to ensure both continuity of care and appropriateness of services for those patients who cannot be managed at home because of acute complications or the temporary absence of a capable primary caregiver.
- Provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease.

Provides for bereavement services following death to assist the family in coping with social and emotional needs associated with the death of the patient.
Actively utilizes volunteers in the delivery of hospice services.
To the extent appropriate, based on the medical needs of the patient, provides services in the patient's home or primary place of residence. (Ref: Health and Safety Code section 1746(d)).

Hospice Facility (12 Licensed Facilities)

A health facility with a capacity of no more than 24 beds that provides hospice services. Hospice services include, but are not limited to, routine care, continuous care, inpatient respite care, and inpatient hospice care. (Ref: Health and Safety Code section 1250(n)).

INTERMEDIATE CARE FACILITY
1,155 Licensed Facilities

INTERMEDIATE CARE FACILITY (13 Licensed Facilities)

A health facility that provides inpatient care to ambulatory or non-ambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care. (Ref: Health and Safety Code section 1250(d)).

INTERMEDIATE CARE FACILITY /Developmentally Disabled (14 Licensed Facilities)

A facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to persons with developmental disabilities whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services. (Ref: Health and Safety Code section 1250(g)).

INTERMEDIATE CARE FACILITY /Developmentally Disabled-Continuous Nursing Care (6 Lic. Facilities)

A homelike facility with a capacity of four to eight, inclusive, beds that provides 24-hour personal care, developmental services, and nursing supervision for persons with developmental disabilities who have continuous needs for skilled nursing care and have been certified by a physician and surgeon as warranting continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated. (Ref: Health and Safety Code section 1250(m)).

INTERMEDIATE CARE FACILITY/Developmentally Disabled-Habilitative (703 Licensed Facilities)

A facility with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer persons with developmental disabilities who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care. (Ref: Health and Safety Code section 1250(e)).

INTERMEDIATE CARE FACILITY /Developmentally Disabled - Nursing (419 Licensed Facilities)

A facility with a capacity of 4 to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated. (Ref: Health and Safety Code section 1250(h)).

PEDIATRIC DAY HEALTH & RESPITE CARE FACILITY
18 Licensed Facilities

A facility that provides an organized program of therapeutic social and day health activities and services and limited 24-hour inpatient respite care to medically fragile children 21 years of age or younger, including terminally ill and technology dependent children. (Ref: Health and Safety Code section 1760.2(a)).

PRIMARY COMMUNITY CLINICS
2,287 Licensed Facilities

Community Clinic (1776 Licensed Clinics) [COMTYC 1666 Clinics + RHC/COMTYC 110 Clinics]

A clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds, or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic. (Ref: Health and Safety Code section 1204(a)(1)(A)).

Free Clinic (62 Licensed Clinics)

A clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds, or contributions that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic. (Ref: Health and Safety Code section 1204(a)(1)(B)).

Federally Qualified Health Centers (FQHC) (177 Licensed Centers)

FQHCs are "a community-based health care providers that receive funds from the Health Resources and Services Administration (HRSA) Health Center Program to provide primary care services in underserved areas. They must meet a stringent set of requirements, including providing care on a sliding fee scale based on ability to pay and operating under a governing board that includes patients.

[Social Security Act section 1905(l)(2)(B)]

Rural health clinic (RHC) (272 Licensed Clinics) (RHC 76 Clinics + RHC/OP 134 Clinics + RCH/MD 62 Clinics)

"a clinic that is located in a rural area designed as a shortage area, is not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases." [Code of Federal Regulations (CFR) 42 section 491.2]

PSYCHOLOGY CLINIC
22 Licensed Clinics

A clinic that provides psychological advice, services, or treatment to patients, under the direction of a clinical psychologist as defined in Health and Safety Code section 1316.5, and is operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds, or contributions, which may be in the form of money, goods, or services. In a psychology clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal taxation under paragraph (3), subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, shall operate a psychology clinic. (Ref: Health and Safety Code section 1204.1).

REHABILITATION CLINIC
135 Licensed Clinics

A clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, or audiological services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice. (Ref: Health and Safety Code section 1204(b)(3)).

SKILLED NURSING FACILITY
1,224 Licensed Clinics

SKILLED NURSING FACILITY - (1224 Licensed Facilities)

A health facility that provides skilled nursing care and supportive care to patients whose primary need is the availability of skilled nursing care on an extended basis (Ref: Health and Safety Code section 1250(c).

The 1224 licensed Skilled Nursing Facilities include:

Continuing Care Retirement Community (CCRC)- 90 Licensed Facilities

A provider of a continuum of services, including independent living services, assisted living services as defined in paragraph (5) of subdivision (a) of HSC section 1771, and skilled nursing care, on a single campus, that is subject to HSC section 1791, or a provider of such a single campus that has not received a Letter of Exemption pursuant to subdivision (d) of section 1771.3. As used in HSC section 1323.5, subdivision (a)(2), "continuous nursing facilities" means any skilled nursing facility within a "continuing care retirement community."

Subacute - Adult - 114 Licensed Facilities

Subacute care means a level of care needed by a patient who does not require hospital acute care but who requires more intensive licensed skilled nursing care than is provided to the majority of patients in a skilled nursing facility. (Ref: CCR, Title 22, Section 51124.5(a)

Subacute - Pediatric 9 Licensed Facilities

Pediatric subacute care services are the health care services needed by a person under 21 years of age who uses a medical technology that compensates for the loss of a vital bodily function (Ref: CCR, Title 22, Section 51124.6(a)

SURGICAL CLINIC
824 Licensed Clinics

Surgical Clinic (824 Licensed Clinics)

A clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure. (Ref: Health and Safety Code section 1204(b)(1)).