Senate Business, Professions and Economic Development Committee
COMMITTEE BILL: PROPOSED LEGISLATION

Note: Submit the completed form to the Committee electronically by email and attach any additional information or documentation as necessary.

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DATE SUBMITTED: October 25, 2023

SUMMARY

SB 1436 *(statutes of 2022)* addressed basic respiratory tasks and services that could be provided by Licensed Vocational Nurses (LVNs) and provided a carve out to allow LVNs with specified training, to deliver more advanced respiratory care for patients in home care. Since the passage of SB 1436, the Respiratory Care Board (Board) has been alerted to other home and community-based settings that also require LVNs to provide more advanced tasks of respiratory care to prevent patients from being reinstitutionalized or to participate in daily activities. This proposal aims to authorize LVNs, with specified training, to perform tasks beyond basic respiratory tasks in the home and community-based settings where it is unfeasible to employ a respiratory care practitioner (RCP).

IDENTIFICATION OF PROBLEM

SB 1436 *(statutes of 2022)* resolved a serious and long-standing consumer safety issue regarding the safe practice of respiratory care in health care facilities by allowing the Board to identify the basic respiratory tasks and services that could be safely delivered by licensed vocational nurses (LVNs). SB 1436 also recognized that health care reimbursement and the health care delivery model that has evolved since the 1990s, made it unfeasible to employ an RCP, in addition to a nurse, in the home care setting and as such, an exemption for home health agencies was included in SB 1436.

Home care and community-based facilities cannot afford respiratory care practitioners to provide respiratory care services and patients fear being re-institutionalized and/or losing access to daily living services.

Since the passage of SB 1436, it has come to the Board's attention that there are other licensed "home and community based" facilities and patients in the same predicament: With only one or a few patients requiring

respiratory services making it unfeasible to hire an RCP, there are fears of patients being re-institutionalized or losing access to daily living services. As a result, the Board conducted extensive research to identify all the types of small facilities outside of acute care facilities, and services that provide respiratory care **(see Attachment A).**

The Board also reviewed several additional facilities and independent providers who provide for transporting and/or overseeing care of patients during daily activities, such as an outing, attending school, or providing a few hours of relief for parents in homecare.

Following the rationale for exempting licensed home health agencies in SB 1436, the Board identified qualifying factors in considering whether other facility-types may also warrant an exemption, which would allow trained LVNs to perform respiratory care beyond basic tasks:

1. Facilities and homes that have a small home-like setting, with six beds or less, with one or so few respiratory care patients it makes it unfeasible to hire an RCP to provide all respiratory care,
2. Facilities and homes that are not currently using RCPs or RNs to deliver respiratory care, and
3. Facilities that are not explicitly required to use RCPs to deliver respiratory care.

The Board also supports exemptions for caretakers who provide care outside the resident facility or home during daily activities or caretakers who provide support for home-care patients.

In addition to Home Health Agencies, the Board found the following types of facilities and/or providers meet these criteria, provided residential facilities are <u>designated for six beds or less</u>:

<u>Licensed Congregate Living Health Facilities (approx. 268 facilities – 227 are 1-6 beds, 41 are 7-18 beds. Licensed by California Department of Public Health (CDPH))</u>

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

<u>Licensed Intermediate Care Facilities (approx. 1049 facilities. Licensed by CDPH))</u>

- Intermediate Care Facility (8 Licensed Facilities / 1-60+ beds)
  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 (5 Licensed Facilities / 4-8 beds)
  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 (630 Licensed Facilities / 4-6 beds and 7-15 beds)
  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 (392 Licensed Facilities / 4-6 beds and 7-15 beds)
  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)).

<u>Small Family Homes (153 Homes / up to 6 beds. Licensed by Dept. of Social Services)</u>

A facility or home, that provides 24-hour care for six or fewer children who have mental health disabilities, or developmental, or physical disabilities and who require special care and supervision because of their disabilities. A small family home may accept children with special health care needs. In addition to accepting children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity. [Note: Tracheostomy and ventilator patients permitted. Ref: https://www.cdss.ca.gov/ord/entres/getinfo/pdf/sfhman.PDF and Welfare and Institutions Code Section 17736]

Licensed Adult Day Health Care Facilities (Approx.318 facilities/ up to 121 patients. Licensed by CDPH) – DAILY ACTIVITIES

Adult Day Health Care means "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," pursuant to HSC section 1570.7(a).

Licensed Pediatric Day Health & Respite Care Facilities (Approx. 18 facilities/ up to 75 patients. Licensed by CDPH) - DAILY ACTIVITIES

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)).

Private Duty Nurse, Individual Nurse Provider- DAILY ACTIVITIES

Pursuant to Health and Safety Code, Section 1743.2, a private duty nurse (LVN/RN) provides skilled nursing services to patients in the home or a community-based setting which includes the patient's home and/or outside of the patient's home, as necessitated by normal life activities. A private duty nurse may also choose to apply to be an Individual Nurse Provider through the Home and Community-Based Services (HCBS) Waiver and Assisted Living Programs (CA Department of Health Care Services).

When SB 1436 went through the legislative process in 2022, the request to carve out home care came forth at the behest of many stakeholders, including patients and family members in the home, where the quality of life at home and fear of being re-institutionalized, far outweighed concerns of regulation of competency and quality of care, opting instead for in-house training of LVNs to perform specific tasks. However, nearly all stakeholders acknowledge that the lack of reimbursement for respiratory services provided by RCPs impedes quality care and contributes to readmission rates or emergency room visits. This is especially true for families who rely solely on family members to provide care.

Specifically, RCPs employed through Home Medical Device Facilities have routine contact with patients when respiratory care equipment is dispensed and provide consulting services as a courtesy. However, with drastic reductions in reimbursement for respiratory durable medical equipment over the last 20 years, it is difficult for many, if not most providers to provide this additional service. Greater access to these RCP resources would be a tremendous safety benefit to patients and families in the home and community-based settings and prevent many hospital readmissions.

PROPOSED SOLUTION

There is currently no legal path for LVNs to provide respiratory care services beyond basic care. Patients receiving home and community-based services often require advanced respiratory care. Respiratory care services are not "skilled nursing services." This proposed legislation would establish a means for LVNs to obtain approved education and training to legally provide respiratory care in home and community-based settings.

The Board also believes this proposed legislation fulfills the intent of the Legislature as expressed in subdivision (c) of Health and Safety Code *1743 (Added by Stats. 2001, Ch. 242, Sec. 1. Effective January 1, 2002.):*

> 1743. (a) The Legislature finds and declares all of the following:
> (1) There is currently a crisis in accessing home health care.
> (2) Approximately 300 home health agencies have closed in the past two years.
> (3) The reduction in the number of home health agencies has made it difficult for many children and adults needing skilled nursing services provided on a shift basis under home- and community-based waivers to receive the services they need, and also jeopardizes the ability of people with disabilities and others from remaining in home- and community-based settings.
> (4) Home health agencies have historically been designed as a model of care for elderly Medicare beneficiaries, but this model is not well-suited for the kind of care required by adults and children with disabilities.
> (b) It is the intent of the Legislature in enacting this chapter to ensure adequate access to home- and community-based skilled nursing services provided on a shift basis for people who need these services, including people with disabilities.
> (c) It is the intent of the Legislature, in adopting a new licensure category for private duty nursing agencies, to provide appropriate nursing care while upholding the same strong consumer protections applicable to home health agencies under Title 22 of the California Code of Regulations.

Respiratory patients are often the most vulnerable of the home and community-based patient population with an overwhelming majority of those patients reliant upon Medi-Cal reimbursement. This proposal would establish a legal pathway for trained LVNs to provide more advanced respiratory care allowing patients to have the choice to remain at home or in a home and community-based setting.

BACKGROUND

It wasn't until the 1960s that home health care was included in the Medicare, Medicaid, and Old Age Assistance Act. But because those creating the guidelines assumed there were family members who would be subsidizing home health care needs, coverage for home health care was mandated only for medically necessary, intermittent care for those acutely ill patients who had been released from the hospital. By the 1990s, however, changes within varying levels of

government allowed for expansion of home health services, but it didn't last. The Balanced Budget Act of 1997 drastically slashed Medicare home benefits, and as a result, the number of patient visits were reduced, and 3000 home care agencies shut down.[1] In response, the California Legislature enacted section 1743 of the Health and Safety Code in 2002, previously cited, to address the shortage of providers in home care and community-based settings, with the intent to uphold the "same strong consumer protections."

The first California respiratory care practitioner license was issued in 1985 with the mandate to protect the public form the unqualified and unlicensed practice of respiratory care. In 2002, section 3710.1 was added to the Respiratory Care Practice Act providing that "protection of the public shall be the highest priority" for the Board and "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

As changes were taking place in home care and new home and community-based settings were emerging in the 1990s, the licensure of RCPs was in its infancy. During this transition, it appears home and community-based health care continued to evolve, neglecting to recognize RCPs and the respiratory care scope of practice, as well as their expertise in managing all things cardiopulmonary.

There are three primary factors that have led to the current problem facing home and community-based patients:

1) The misunderstanding by the industry that respiratory care is a skilled nursing service. At some point after the establishment of many home and community-based facilities in the 1990s, some regulators and many in the industry erroneously interpreted "skilled nursing services" to include respiratory care tasks and services identified in sections 3702 and 3702.5 of the Business and Professions Code (B&P) - - yet the mandated nursing-patient ratios exclude RCPs and respiratory care services from being counted toward meeting those ratios.

At some point, regulators and many in the industry erroneously interpreted "skilled nursing services" to include respiratory care tasks and services - - yet the mandated nursing-patient ratios exclude RCPs and respiratory care services from being counted toward meeting those ratios.

2) Nurse-to-patient ratios established years ago, incentivized the evolution of the definition of "skilled nursing services" to include respiratory care tasks and services erroneously. The California Nurses Association (CNA) is on record as stating respiratory care services are NOT skilled nursing services. Because RCPs providing respiratory care services are not counted toward this ratio, and there is no reimbursement for respiratory services in home and community-based settings, it is convenient for some providers to claim respiratory care is included in nursing services in order to meet the nurse-to-patient ratio in the most fiscally prudent manner. By applying this interpretation, patients are not receiving the required hours of skilled nursing services and unauthorized health care providers put their licenses at risk by performing tasks they are not fully trained, educated or competency tested to perform.

[1] https://www.24hrcares.com/blog/brief-history-home-care-industry/

3) The lack of reimbursement OR reimbursement requirements and enforcement thereof, that requires RCPs or other qualified health care personnel be the actual providers of respiratory tasks and services. Establishing or increasing a reimbursement amount for a service is necessary, but failure to enforce the use of qualified providers, will not eliminate the use of providers with less or no education, training, and competency testing from performing tasks above and outside their scope of practice.

Reimbursement for respiratory therapy services is nearly silent in laws and regulations for home and community-based settings. Regulations were found within Title 22, Division 3, Subdivision 1, California Medical Assistance Program, Chapters 3 and 8, that specifically provide definitions and identify services for reimbursement—despite independent RCP providers being available, respiratory therapy is erroneously omitted.

> § 58013. Home Health Care Services.
> "Home Health Care Services" means skilled nursing or other professional services in the residence, including, but not limited to, part-time and intermittent skilled nursing services, home health aide services, physical therapy, occupational therapy, or speech therapy and audiology services, and medical social services by a social worker.
>
> § 51523. Home Health Agency Services.
> (a) An approved home health agency shall be reimbursed in accordance with the maximum rates as shown below. However, in no case shall the service billed exceed charges made to the general public for the provision of similar services.

Procedure Code	Per Visit Allowance	Max. Rates
Z6900	Nursing Services	$74.86
Z6902	Home Health Aide Services	$45.75
Z6904	Physical Therapy Services	$68.84
Z6906	Occupational Therapy Services	$71.36
Z6908	Speech Therapy Services	$78.43
Z6910	Medical Social Services	$96.22
Z6914	Case Evaluation and Initial Treatment Plan	$30.13
Z6916	Monthly Case Evaluation Extension of Treatment Plan	$15.19
Z6918	Unlisted Services	By Report
Z6920	Early Discharge Visit	$74.86

In addition, Home Medical Device Retail Facilities, who are the "bridge" between the patient and possible hospital readmissions, are not reimbursed for consulting services. The HMDR facility reimbursement model is solely based on equipment reimbursement. [Reference: Welfare and Institutions Code, Section 14105.48 and California Code of Regulations, Title 22, Division 3, Subdivision 1, Chapter 3, Article 7, Section 51521.]

LEGISLATIVE HISTORY

The enabling statute to license RCPs (RCPs) was signed into law in 1982, thus establishing the Respiratory Care Board of California. The first license was issued in 1985 through a grandfather provision that ended in 1987. The Board is mandated to protect the public from the unauthorized and/or unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care.

The Board ensures that applicants meet the minimum education and competency standards and conducts a thorough criminal background check on each applicant prior to licensure. The Board also pursues discipline for violations of its Act. Nearly 47,000 licenses have been issued to date.

RCPs work most often in intensive care units (ICUs) and emergency departments, but are also commonly found in acute care settings, outpatient clinics, skilled nursing facilities, sleep clinics and home-health environments. In facilities that maintain critical care transport teams, RCPs are a preferred addition to all types of surface or air transport. RCPs work with patients of all ages from newborn infants to the elderly.

RCPs provide direct patient care, patient education, and care coordination. An RCP's responsibilities and competencies include:

- Clinical decisions that are data-driven and evidenced based.
- Involvement in research and adept at understanding the practical ramifications of published research.
- The use of sophisticated medical equipment and performance of complex therapeutic procedures and diagnostic studies.
- An in-depth understanding of human physiology and the ability to apply that knowledge in the workplace.
- Excellent teamwork skills, including effective communication when interacting with other health care providers.

RCPs are advanced-practice clinicians in airway management. They establish and maintain the airway during trauma and intensive care. RCPs also educate, diagnose, and treat people who are suffering from heart and lung problems. Specializing in the diagnosis and treatment of cardiopulmonary ailments, RCPs often collaborate with specialists in pulmonology and anesthesia in various aspects of clinical care. RCPs with advanced education or credentialing evaluate and treat patients with a great deal of autonomy under the direction of a pulmonologist.

RCPs in the United States are migrating toward a role with autonomy similar to the nurse practitioner, or as an extension of the physician like the physician assistant. RCPs are frequently utilized as complete cardiopulmonary specialists being utilized to place and manage arterial accesses along with peripherally inserted central catheters, administer medications or pharmacological agents for conscious sedation and serve as extracorporeal membrane oxygenation (ECMO) and extracorporeal life support (ECLO) specialists.

In the 1990s, a new and growing trend emerged in the health care industry. It was in in the mid-1990s that the Board became aware of the Board of Vocational Nursing and Psychiatric Technicians promoting the use of LVNs to manage ventilators and care for respiratory care patients. Since that time the Board has pushed back against this misinterpretation from a consumer safety standpoint, as demonstrated in the Board's 2022 Sunset Report. The effort to promote the use of LVNs to provide respiratory care aligns with many new or evolved community and home-based health care options that came about in the early 1990s.

Respiratory Care Scope of Practice

Following are the three sections of the Business and Professions Code, Division 2, Chapter 8.3 that define the respiratory care scope of practice. Section 3702.5 states the Board is the sole authority to define and interpret the practice of respiratory care.

3702.

(a) Respiratory care as a practice means a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions, and includes all of the following:

(1) Direct and indirect pulmonary care services that are safe, aseptic, preventive, and restorative to the patient.

(2) Direct and indirect respiratory care services, including, but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician and surgeon.

(3) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and (A) determination of whether such signs, symptoms, reactions, behavior, or general response exhibits abnormal characteristics; (B) implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician and surgeon or the initiation of emergency procedures.

(4) The diagnostic and therapeutic use of any of the following, in accordance with the prescription of a physician and surgeon: administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and baromedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens of blood; collection of specimens from the respiratory tract; analysis of blood gases and respiratory secretions.

(5) The transcription and implementation of the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care.

(b) As used in this section, the following apply:

(1) “Associated aspects of cardiopulmonary and other systems functions” includes patients with deficiencies and abnormalities affecting the heart and cardiovascular system.

(2) “Respiratory care protocols” means policies and protocols developed by a licensed health facility through collaboration, when appropriate, with administrators, physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care practitioners.

3702.5.
Except for the board, a state agency may not define or interpret the practice of respiratory care for those licensed pursuant to this chapter, or develop standardized procedures or protocols pursuant to this chapter, unless authorized by this chapter or specifically required by state or federal statute. The board may adopt regulations to further define, interpret, or identify all of the following:

Except for the board, a state agency may not define or interpret the practice of respiratory care for those licensed pursuant to this chapter, or develop standardized procedures or protocols…

(a) Basic respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills, or data collection.

(b) Intermediate respiratory tasks, services, and procedures that require formal respiratory education and training.

(c) Advanced respiratory tasks, services, and procedures that require supplemental education, training, or additional credentialing consistent with national standards, as applicable.

3702.7.
The respiratory care practice is further defined and includes, but is not limited to, the following:

(a) Mechanical or physiological ventilatory support as used in paragraph (4) of subdivision (a) of Section 3702 includes, but is not limited to, any system, procedure, machine, catheter, equipment, or other device used in whole or in part, to provide ventilatory or oxygenating support.

(b) Administration of medical gases and pharmacological agents for the purpose of inducing conscious or deep sedation under physician and surgeon supervision and the direct orders of the physician and surgeon performing the procedure.

(c) All forms of extracorporeal life support, including, but not limited to, extracorporeal membrane oxygenation (ECMO) and extracorporeal carbon dioxide removal (ECCO2R).

(d) Educating students, health care professionals, or consumers about respiratory care, including, but not limited to, education of respiratory core courses or clinical instruction provided as part of a respiratory educational program and educating health care professionals or consumers about the operation or application of respiratory care equipment and appliances.

(e) The treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders as provided in Chapter 7.8 (commencing with Section 3575).

Home Medical Device Retail (HMDR) Facilities

The regulation of HMDR Facilities began in or about 2000 and is overseen by the California Department of Public Health. HMDR facilities supply prescription medical devices or durable medical equipment for use in home and community-based settings to treat acute or chronic illnesses or injuries. The HMDR program also licenses exemptees that are required to be on staff in lieu of a pharmacist at facilities selling prescription medical devices as described under California and Federal medical device laws. The Board and the HMDR program worked together and met numerous times over several years in the early 2000s, to ensure the new laws and regulations were interpreted and enforced correctly and in the interest of consumer safety.

HMDRs are the key component and quite possibly the missing link to establishing patient safeguards for respiratory care in home and community-based settings. Most home and community-based respiratory patients rely on equipment, such as ventilators, issued by a HMDR facility. HMDR facilities, via regulations promulgated by the Board[2], require that only RCPs are permitted to provide respiratory care including mask fitting, equipment set-up and connection, performing clinical assessments, education, and follow-up services (as needed or at the request of the patient and/or the patient's family/care provider).

For patients where family members are the sole health care providers and/or do not utilize a home health agency, RCPs employed at HMDR facilities serve as the only "bridge" between the patient and the doctor in addressing problems. The RCP at the HMDR facility resolves issues to avoid additional doctor or emergency room visits.

However, the HMDR facility reimbursement model is solely based on equipment reimbursement. Reimbursement for the installation, setup, or instruction in the use of equipment is currently limited to the reimbursement for the equipment itself. [Reference: Welfare and Institutions Code, Section 14105.48 and California Code of Regulations, Title 22, Division 3, Subdivision 1, Chapter 3, Article 7, Section 51521.]

Given that home care services do not make staffing an RCP 24 hours a day for one patient feasible, relying on the services of the HMDR facility RCP are essential.

Adult Day Health Care (ADHC)

- In 1978, AB 1611 was enacted making California the first state to pass legislation to make ADHC a specific licensure category and a Medi-Cal benefit. Licensure was limited to public or private, non-profit community organizations.
- In 1993, new policy was implemented (codified in 1995 via AB 1882) allowing residents of Intermediate Care Facilities/ Developmentally Disabled-Habilitative (ICF/DD-H) facilities to attend ADHC centers.
- Also in 1993, SB 2429 and SB 681, allowed the delivery of other types of adult day services operating under the ADHC license.
- In 1995, SB 1492 eliminated licensure restrictions and allowed individuals and for-profit entities to be licensed and certified as ADHC providers.

Licensed Pediatric Day Health & Respite Care

- In 1990, legislation was enacted *(AB 3413, Ch. 1227, Sec. 8. Statutes of 1990)* to establish the licensure of Licensed Pediatric Day Health & Respite Care facilities. Health and Safety Code, Section 1760.4 defines "Medically fragile" as means of having an acute or chronic health problem which requires therapeutic intervention and skilled nursing care during all or part of the day. Medically fragile problems include, but are not limited to, HIV disease, severe lung disease requiring oxygen, severe lung disease requiring ventilator or tracheostomy care, complicated spina bifida, heart disease,

[2] Title 16. Professional and Vocational Regulations, Division 13.6. Respiratory Care Board of California, Article 6. Scope of Practice, § 1399.360. Unlicensed Personnel Services; Home Care.

malignancy, asthmatic exacerbations, cystic fibrosis exacerbations, neuromuscular disease, encephalopathies, and seizure disorders. Yet there are no requirements or even suggestions that RCPs be part of the staffing personnel.

Licensed Congregate Living Health

- SB 331 (statutes of 1987) defined "Congregate living health facility" as a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians. This definition has been altered significantly since 1987 as noted earlier and as found in subdivision (i) of section 1250 of the Health and Safety Code.

Intermediate Care

- In 1987, SB 331 defined four of the five types of intermediate care facilities and no substantive changes have been made since:
  Intermediate care facility
  Intermediate care facility/developmentally disabled habilitative
  Intermediate care facility/developmentally disabled
  Intermediate care facility/developmentally disabled nursing
- In 2009, subdivision (m) was added to section 1250 of the Health and Safety Code (AB 1540, statutes of 2009) for:
  Intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-CN)

JUSTIFICATION

There is currently no legal path for LVNs to provide respiratory care services beyond basic care. Yet, patients in home and community-based services often require advanced respiratory care. The proposed legislation addresses the immediate need to ensure patients are not in jeopardy of being reinstitutionalized by providing additional exemptions allowing LVNs with appropriate training to practice respiratory care in home and community-based settings.

ARGUMENTS PRO & CON

Pro: The legislative proposal alleviates fears of patients and providers to ensure existing practices continue and lives are not disrupted, and businesses are not displaced. Without this legislation, providers will be forced to hire respiratory care practitioners IN ADDITION to licensed vocational nurses to care for respiratory patients or refuse to accept respiratory patients, causing them to be reinstitutionalized.

Con: The unknown cases of respiratory-patient harm that may occur by failure to have access to fully educated, trained and competency tested RCPs. However, respiratory patients in home and community-based settings have stated that their freedom to choose quality of life at home or in home-like settings, outweighs the need for expertise and qualifications of the health care provider.

PROBABLE SUPPORT & OPPOSITION

Likely Support:	California Society for Respiratory Care (CSRC) California Association of Medical Product Suppliers (CAMPS) Patients, family, and patient advocates Disability Rights California California Association for Health Services at Home (CAHSH) Congregate Living Health Facilities Association (CLHFA) Service Employees International Union-United Healthcare Workers West (SEIU-UHW) Board of Vocational Nursing and Psychiatric Technicians (BVNPT)
Likely Neutral:	California Department of Public Health (CDPH) California Department of Health Care Services (CDHCS) Department of Social Services (DSS) Department of Developmental Services (DDS) California Nursing Association (CNA)

FISCAL IMPACT

This proposal has minimal fiscal impact. The Board will be able to absorb the workload associated with drafting regulations and implementing provisions.

The fiscal impact on the CDPH, CDHCS, DSS and DDS are unknown.

ECONOMIC IMPACT

This proposal negates the possibility of a significant economic impact to businesses and consumers. This proposal aligns the law with the existing wide-spread practice occurring in these home and community-based settings. It is surmised there will be a smaller economic impact associated with training and educating LVNs once standard guidelines are established. These costs will be mitigated by existing costs for those companies who expend resources currently to train LVNs to perform respiratory care.

FINDINGS FROM OTHER STATES

A handful of states were found that allow Licensed Practical Nurses (LPNs), the equivalent of LVNs, to perform limited care for ventilator patients including changing a trach dressing, suctioning, and changing ventilator circuits upon completion of initial and annual renewal training and with adequate supervision in home and community-based settings. None of these states permitted LPNs to perform deep suctioning, adjust ventilator settings or any task requiring independent assessment.

Several states also noted a requirement that RCPs be available as needed to meet the needs of long-term ventilator dependent residents in facilities that are equivalent to home and community-based facilities in California.

PROPOSED TEXT

Business and Professions Code

3765.

This act does not prohibit any of the following activities:

(a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold themselves out to be a respiratory care practitioner licensed under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their specialty.

(e) Temporary performance, by other health care personnel, students, or groups, of respiratory care services, as identified and authorized by the board, in the event of an epidemic, pandemic, public disaster, or emergency.

(f) Persons from engaging in cardiopulmonary research.

(g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.

(h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department of Public Health of specific, limited, and basic respiratory care or respiratory care related services that have been authorized by the board.

(i) The performance, by a vocational nurse licensed by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, who is employed by a home health agency licensed by the State Department of Public Health of respiratory tasks and services identified by the board, if the licensed vocational nurse complies with the following:

(1) Before January 1, ~~2025~~2028, the licensed vocational nurse has completed patient-specific training satisfactory to their employer.

(2) On or after January 1, ~~2025~~2028, the licensed vocational nurse has completed patient-specific training by the employer in accordance with guidelines that shall be promulgated by the board no later than January 1, ~~2025~~2028, in collaboration with the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(j) The performance, by a vocational nurse licensed by the Board of Vocational Nursing and Psychiatric Technicians of the State of California who meets the additional qualifications under paragraph (1) of this subdivision, to perform respiratory care services identified by the board and within the scope of the patient-specific training and the certification(s) required under paragraph (1) of this subdivision, while practicing in the settings listed under paragraph (2) of this subdivision:

(1) In order to perform respiratory care services in accordance with subdivision (j) of this section, on or after January 1, 2028, the licensed vocational nurse shall have completed patient-specific training satisfactory to the employer, and shall maintain current and valid certifications of competency for respiratory tasks performed, from the California Association of Medical Product Suppliers or the California Society for Respiratory Care or another organization identified by the board.

(2) Licensed vocational nurses may perform respiratory care services pursuant to this subdivision exclusively in the following settings:

(A) At congregate living health facilities licensed by the California Department of Public Health that are designated as six beds or less.

(B) At intermediate care facilities licensed by the California Department of Public Health that are designated as six beds or less.

(C) At adult day health care facilities licensed by the California Department of Public Health.

(D) As an employee of a home health agency licensed by the California Department of Public Health.

(E) At pediatric day health and respite care facilities licensed by the California Department of Public Health.

(F) At small family homes licensed by the Department of Social Services designated as six beds or less.

(G) As a private duty nurse as part of daily transportation and activities outside a patient's residence or family respite for home and community-based patients.

~~(j)~~ (k) The performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

Respiratory Care Board
Legislative Research- Identified Exemptions Needed
July 2023

CDPH
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

Issues certificates, licenses, permits, and registrations. Provides regulatory oversight of professionals, facilities, and equipment.

Licensed Congregate Living Health Facilities
(approx. 268 facilities)
[189 of these hold a HCBA Waiver]

Licensed Intermediate Care Facilities
(approx. 1049 facilities)

- Intermediate Care Facility (ICF) (8 Facilities)
- ICF /Developmentally Disabled (14 Facilities)
- ICF/Developmentally Disabled-Continuous Nursing Care (5 Facilities)
- ICF/Developmentally Disabled-Habilitative (630 Facilities)
- ICF/Developmentally Disabled – Nursing (392 Facilities)

Licensed Home Health Agencies
(3000+ Agencies)

EXEMPTION QUALIFIERS

1. Facilities and homes that have a small home-like setting, with six beds or less,
2. Facilities and homes that have one or so few respiratory care patients it makes it unfeasible to hire an RCP to provide all respiratory care,
3. Facilities and homes that are not currently using RCPs or RNs to deliver respiratory care, and
4. Facilities that are not explicitly required to use RCPs to deliver respiratory care.

DSS
DEPARTMENT OF SOCIAL SERVICES

Licenses residential facilities for adults and children. Primarily focused on helping individuals that do not have medical needs.

Licensed Small Family Homes (SFH)
(approx. 153 homes)

UNREGULATED SITES AND/OR ACTIVITY-BASED SERVICES

Private Family Homes
Optional choice for health care in lieu of a facility that provides up to 24 hour skilled nursing care and respiratory care

Schools
An INP or Private Duty Nurse may accompany patient to school or the school staff may provide respiratory care.

Employment/Outings/Respite
An INP or Private Duty Nurse may accompany patient to employment or outings or provide respite in home care for permanent caregivers.

CDPH-LICENSED ACTIVITY-BASED SERVICES

Licensed Pediatric Day Health & Respite Care Facilities (approx. 22 facilities)

Licensed Adult Day Health Care Facilities
(approx. 318 facilities)

DHCS
DEPARTMENT OF HEALTH CARE SERVICES
Coordinate services, but do not license sites.

DDS
CA Department of Developmental Services
Coordinate services, but do not license sites.

CDPH
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

Issues certificates, licenses, permits, and registrations. Provides regulatory oversight of professionals, facilities, and equipment.

Licensed Pediatric Day Health & Respite Care Facilities (Approx. 22 facilities/ 1-75 patients) ***
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)).

L**icensed Adult Day Health Care Facilities (Approx. 318 facilities / 1-121 patients)** ***
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)). [Permitted to accept medically fragile and technology dependent individuals, including those requiring ventilator or tracheostomy care (22 CCR § 54309, HSC § 1760.2(b)]

Licensed Congregate Living Health Facilities (Approx. 268 facilities / 1-6 beds (227) and 7-18 beds (41)) ***
(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)).

HEALTH AND SAFETY CODE, Division 2, Chapter 2, Article 2
1267.16.
(a) A congregate living health facility which serves six or fewer persons shall be considered a residential use of property for purposes of any zoning ordinance or law related to the residential use of property. This article does not forbid any city, county, or local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a congregate living health facility as long as these restrictions are identical to those applied to single-family residences. ...

As of 3/31/23, 189 of these facilities participate in the Home and Community-Based Waiver program of the Department of California Health Care Services: https://www.dhcs.ca.gov/services/Pages/HCBSWaiver.aspx

CDPH
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CONTINUED

Issues certificates, licenses, permits, and registrations. Provides regulatory oversight of professionals, facilities, and equipment.

Licensed Intermediate Care Facilities (Approx. 1049 facilities) ***

• Intermediate Care Facility (8 Licensed Facilities / 1-59 and 60+ Beds)
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)). [Note: Primarily skilled nursing services but may provide respiratory tasks including auscultation, monitoring, nebulizer treatments, oxygen, CPAP, BiPAP, and IPPB.]

• 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 (5 Licensed Facilities / 4-8 beds)
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)). [Note: Tracheostomies and ventilators permitted. Under DHS Home and Community Based Services Waiver. Respiratory tasks may include auscultation, monitoring, nebulizer treatments, oxygen, CPAP, BiPAP, IPPB, tracheostomy and ventilator care, and suctioning.]

• Intermediate Care Facility/Developmentally Disabled-Habilitative (630 Licensed Facilities / 4-6 and 7-15 beds)
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)).
[Note: No tracheostomy or ventilator patients. No licensed staff required on daily basis. Respiratory tasks may include medication administration via inhaler and nebulizer, or pulse oximetry and oxygen.

• Intermediate Care Facility/Developmentally Disabled - Nursing (392 Licensed Facilities / 4-6 and 7-15 beds)
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)). [Note: Ventilator patients not permitted, but tracheostomy patients are permitted (22 CCR § 51343.2(e)(2-3), (22 CCR § 51343.2(f)(5)). Respiratory tasks may include tracheostomy site care, light suctioning, nebulizer treatments, IPPB, CPAP, BiPAP, oxygen administration, and apnea monitoring.]

Home Medical Device Retail (HMDR) Facilities (Approx. 1043 Licensed Retailers)
The regulation of HMDR Facilities began in or about 2000. HMDR facilities supply prescription medical devices or durable medical equipment for use in home and community-based settings to treat acute or chronic illnesses or injuries. The HMDR program also licenses exemptees that are required to be on staff in lieu of a pharmacist at facilities selling prescription medical devices as described under California and Federal medical device laws. The Board and the HMDR program worked together and met numerous times over several years, to ensure the new laws and regulations were interpreted and enforced correctly and in the interest of consumer safety.

HMDRs are the key component and quite possibly the missing link to establishing patient safeguards for respiratory care in home and community-based settings. Most home and community-based respiratory patients rely on equipment, such as ventilators, issued by an HMDR facility. HMDR facilities, via regulations promulgated by the Board, require that only RCPs are permitted to provide respiratory care including mask fitting, equipment set-up and connection, performing clinical assessments, education, and follow-up services (as needed or at the request of the patient and/or the patient's family/care provider).For patients where family members are the sole health care providers and/or do not utilize a home health agency, RCPs employed at HMDR facilities serve as the only "bridge" between the patient and the doctor in addressing problems. The RCP at the HMDR facility resolves issues to avoid additional doctor or emergency room visits. However, the HMDR facility reimbursement model is solely based on equipment reimbursement. Reimbursement for the installation, setup, or instruction in the use of equipment is currently limited to the reimbursement for the equipment itself. Given that home care services do not make staffing an RCP 24 hours a day for one patient feasible, relying on the services of the HMDR facility RCP is essential.

CDPH
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CONTINUED

Issues certificates, licenses, permits, and registrations. Provides regulatory oversight of professionals, facilities, and equipment.

Home Health Agencies (Approx. 3,397 Licensed Agencies) ***
A State license is required to operate as a Home Health Agency (HHA) in California. An HHA 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", pursuant to Title 22 of the California Code of Regulations (CCR) section 74600(a).

Skilled Nursing Facility (Approx. 1,198 Facilities / 8-769 beds / Median: 98 beds)
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).

Counted as part of the 1,198 licensed Skilled Nursing Facilities are the following facility types:

Continuing Care Retirement Community (CCRC) (90 Licensed Facilities / 45-166 beds)
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 (117 Licensed Facilities / 17-241 beds)
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 (10 Licensed Facilities / 21-84 beds)
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). [Note: Required to employ RCPs. Pediatric subacute care units must utilize a minimum of 3.0* respiratory care practitioner (RCP) hours for ventilator dependent patients, and 2.0* RCP hours for non-ventilator dependent patients, of medically necessary respiratory care services, when provided under the order of a person lawfully authorized to give such an order, and according to each pediatric subacute patient’s assessment and care plan. Ref: Cal. Code Regs. Tit. 22, 51215.8 - Pediatric Subacute Care Unit]

DSS
DEPARTMENT OF SOCIAL SERVICES

"The mission of the California Department of Social Services is to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence."

Divisions include: Adult Programs Division; Community Care Licensing Division; Disability Determination Service Division; Housing and Homelessness Division; Child Care and Development Division; Children and Family Services Division, and Family Engagement and Empowerment Division. DSS Licenses: Foster Family Agencies; 24-Hour Residential Care for Children; Adult Residential and Daycare; Elderly Assisted Living; Child Care; and Home Care Organizations

Adult and Senior Facilities

Adult Residential Facilities (ARF)
Provide 24-hour a day, non-medical care and supervision for clients ages 18-59 or any person 60 years of age or older under specified requirements. These clients may have a mental, physical or developmental disability.

Enhanced Behavioral Support Homes-ARF (EBSH)
Enhanced Behavioral Support Home means a facility certified by the Department of Developmental Services (DDS) and licensed by the Department (CCLD) as an Adult Residential Facility that provides 24-hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral supports under specified requirements.

Community Crisis Homes-ARF (CCH)
Community Crisis Home means an Adult Residential Facility certified by the Department of Developmental Services and licensed by the Department that provides 24-hour nonmedical care to individuals with developmental disabilities receiving regional center services and in need of crisis intervention services under specified requirements.

Social Rehabilitation Facilities (SRF)
Provide 24 hour a day non-medical care and supervision in a group setting to adults recovering from a mental illness who temporarily need assistance, guidance or counseling. Mental Health certification from the California Department of Health Care Services. is required for this type of facility.

Residential Care Facilities for the Chronically Ill (RCFCI)
Provides care and supervision to adults who have HIV disease or AIDS, emancipated minors with HIV disease or AIDS, or family units with adults or children or both with HIV disease or AIDS, or have a terminal illness.

Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHN)(Approx. 96 facilities / up to 5 patients)
Provide 24-hour a day services for up to five adults with developmental disabilities, who have special health care needs and intensive support needs. This facility type requires certification of program approval from the Department of Developmental Services. [http://www.dds.ca.gov/] [Note: Tracheostomies and ventilators permitted (WIC § 4684.50(g)(3-4)). Respiratory therapist (RT) or RN required 24/7 if a client uses a ventilator. Respiratory tasks - facility specific and depends on client needs and may include: auscultation, monitoring, nebulizer treatments, oxygen, CPAP, BiPAP, IPPB, tracheostomy and ventilator care, and suctioning (performed by RCP or RN).

Adult Day Programs (ADP)
Any community-based facility or program that provides non-medical care and supervision to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of these individuals, in a day care setting, on less than a 24-hour basis.

Residential Care Facility for the Elderly (RCFE)
A housing arrangement for persons, 60 years of age and over, where 24-hour non-medical care and supervision is provided. Residential Care Facility for the Elderly are often referred to as assisted living facilities, or board and care homes.

Residential Care Facility for the Elderly-Continuing Care Retirement Community (RCFE-CCRC) (Approx. 117 facilities)
Offer a long-term continuing care contract that provides for housing, residential services, and nursing care, usually in one location, and usually for a resident's lifetime. The skilled nursing units are licensed to provide medical services and are licensed separately by the California Department of Public Health. The Continuing Care Contracts Bureau of the CDSS is responsible for reviewing and approving applications to operate a CCRC and overseeing the financial/contract compliance. A RCF may contract with a Home Health Agency (licensed by CDPH) to provide medical services.[Note: Advised respiratory services NOT provided]

DSS
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Children Facilities

The Community Care Licensing Division (CCLD), Children's Residential Program licenses several categories of children's community care facilities as follows:

Crisis Nursery
A facility licensed to provide short-term, 24-hour non-medical residential care and supervision for children under six years of age, who are placed by a parent or legal guardian due to a family crisis or a stressful situation, for no more than 30 days.

Adoption Agency (AA)
Nonprofit organizations licensed to assist with the permanent placement of children to adoptive parents. The AA is governed by the Community Care Facilities Act.

Foster Family Agency (FFA) and the Foster Family Agency Suboffice
A foster family agency is a public agency or private organization, organized and operated on a nonprofit basis that does any of the following: (A) Recruiting, certifying, approving, providing training for, and providing professional support to, foster parents and Resource Families. (B) Coordinates with county placing agencies to find homes for foster children in need of care. (C) Provides services and supports to licensed or certified foster parents, county-approved Resource Families, and children. An FFA suboffice is any additional, independently licensed office set up by the foster family agency to supplement the services provided by the administrative office.

Types of homes overseen by FFA and FFA suboffices are:

Resource Family Approved Home (RFA): The RFA process will streamline and eliminate the duplication of existing processes, unify approval standards for all caregivers regardless of the child's case plan, include a comprehensive psychosocial assessment, home environment check and training for all families (including relatives), prepare families to better meet the needs of vulnerable children in the foster care system and allow a seamless transition to permanency.

Certified Family Home (CFH): Currently CFHs are foster parents certified by an FFA to provide care for six or fewer foster children in their own home. The home may include their children and/or family members and be a home which is owned or rented. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. FFAs are now converting CFHs through the Resource Family Approval process.

Licensed Foster Family Home (FFH)

An FFH is a home where a county or state licensed foster parent provides care for six or fewer foster children (or up to eight if they are a sibling group) in their own home. The home may include their children and/or family members and be a home which is owned or rented. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian.

Small Family Homes (SFH) (Approx. 153 homes / Up to 6 beds) ***
A facility or home, that provides 24 hour care for six or fewer children who have mental health disabilities, or developmental, or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs. In addition to accepting children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity. [Note: Tracheostomy and ventilator patients permitted. Ref: https://www.cdss.ca.gov/ord/entres/getinfo/pdf/sfhman.PDF and Welfare and Institutions Code Section 17736]

DSS
DEPARTMENT OF SOCIAL SERVICES

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Children Facilities Continued

Group Home (GH)
A GH provides 24-hour non-medical care and supervision to children and nonminor dependents up to age 19, in a structured environment, with services provided by persons employed by the licensee. Children in a GH are in treatment programs under court jurisdiction or as dependent children removed from their homes because of abuse, neglect, or abandonment.

GHs include five subcategories:

-Community Treatment Facility (CTF): A CTF provides 24-hour non-medical care and mental health treatment services to children in a secure environment, which are less restrictive than a hospital. A facility's program design is subject to program standards developed and enforced by the State Department of Health Care Services (DHCS).

-**Care for Children Under the Age of Six**: A GH program which provides care for children under the age of six years who are dependents of the court, regional center placements, or voluntary placements who are not accompanied by the minor parent.

-**Minor-Parent Program**: A GH program that serves pregnant minors and minor parents with children younger than six years of age, who are dependents of the court, nondependent, voluntary and/or regional center placements, and reside in the GH with the minor-parent, who is the primary caregiver of the young child.

-Enhanced Behavioral Supports Home: A facility certified by the State Department of Developmental Services (DDS) and licensed by CCLD as a group home that provides 24-hour non-medical care to individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting. An enhanced behavioral supports home has a maximum capacity of four residents.

-Youth Homelessness Prevention Programs: A Youth Homelessness Prevention Center is a nonprofit group home licensed by the Department to provide voluntary, short-term shelter and personal services for up to 25 participants who are homeless youth, youth who are at risk of homelessness, youth who are exhibiting status offender behavior, or runaway youth who are 12 to 17 years of age, inclusive, or 18 years of age if the youth is completing high school or its equivalent.

Short-Term Residential Therapeutic Program (STRTP)
A residential facility licensed by CCLD and operated by a public agency or private organization that provides short-term, specialized, and intensive therapeutic and 24-hour care and supervision to children. The care and supervision provided by an STRTP shall be non-medical, except as otherwise permitted by law.

There are two subcategories of STRTP:

-Care for Children Under the Age of Six: An STRTP which provides care for children under the age of six years who are dependent of the court, regional center placements or voluntary placements who are not accompanied by the minor parent.

-Dependent and Nonminor Dependent-Parent Program: An STRTP that cares for minor or nonminor dependents who are pregnant or parenting children younger than six years of age, who are dependents of the court, nondependent, voluntary and/or regional center placements, and reside in the STRTP with the minor or nonminor dependent parent, who is the primary caregiver of the young child.

Temporary Shelter Care Facility
A temporary shelter care facility is a facility owned and operated by the county or on behalf of a county by a private, nonprofit agency that provides for 24-hour non-medical care for up to 10 calendar days, for children under 18 years of age who have been removed from their homes as a result of abuse or neglect. During the child's stay, the county is identifying and placing the child with a suitable family member or in an appropriate licensed or approved home or facility.

Transitional Housing Placement Program (THPP)
A licensed provider who operates programs which include supportive housing and a wide range of supportive services to youth from 16 to 21years of age, who are in or were formally in foster care on their 18th birthday. Supportive services shall include: counseling, educational guidance, employment counseling, job training and assistance reaching emancipation goals outlined in a participant's Transitional Independent Living Plan, the emancipation readiness portion of a youths' case plan.

DSS
DEPARTMENT OF SOCIAL SERVICES

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In-Home Supportive Services (IHSS) Program

The IHSS Program will help pay for services provided to residents so they can remain safely in their home. The types of services which can be authorized through IHSS are housecleaning, meal preparation, laundry, grocery shopping, personal care services (such as bowel and bladder care, bathing, grooming and paramedical services), accompaniment to medical appointments, and protective supervision for the mentally impaired.

Home Care Services

Home Care Services Bureau (HCSB)

The Home Care Services Bureau (HCSB) is responsible for licensing and regulation of Home Care Organizations and Home Care Aides- not to be confused with Home *Health* Agencies and Home *Health* Aides. "Home Care Organization" is defined as "a CDSS licensed entity that arranges for home care services by an affiliated home care aide to a client. Home Care Aide is an individual, 18 years of age or older, who is not employed by a home care organization, but who is listed on the home care aide registry and is providing home care services through a direct agreement with a client. A Home Care Aide provides assistance with daily living activities.

DHCS
DEPARTMENT OF HEALTH CARE SERVICES

DHCS funds health care services for more than 15.4 million Medi-Cal beneficiaries. About one-third of Californians receive health care services financed or organized by DHCS, making the Department the largest health care purchaser in California.

Programs administered by DHCS: California Children's Services; Child Health and Disability Prevention program; Genetically Handicapped Persons Program; Newborn Hearing Screening Program; Family Planning, Access, Care, and Treatment program; Program of All-Inclusive Care for the Elderly; Every Woman Counts; and Coordinated Care Management.

Home and Community-Based Medi-Cal Waiver Program

The HCBA Waiver provides care management services to persons at risk for nursing home or institutional placement. The care management services are provided by a multidisciplinary Care Management Team (CMT) comprised of a nurse and social worker. The CMT coordinates Waiver and State Plan services (such as medical, behavioral health, In-Home Supportive Services, etc.), and arranges for other available long-term services and supports available in the local community. Care management and Waiver services are provided in the participant's community-based residence. This residence can be privately owned, secured through a tenant lease arrangement, or the residence of a participant's family member.

Home and Community-Based Services (HCBS) Waivers allow states that participate in Medicaid, known as Medi-Cal in California, to develop creative alternatives for individuals who would otherwise require care in a nursing facility or hospital. Medi-Cal has an agreement with the Federal Government, which allows for waiver services to be offered in either a home or community setting. The services offered under the waiver must cost no more than the alternative institutional level of care. Recipients of HCBS Waivers must have full-scope Medi-Cal eligibility.

There are a variety of HCBS Waiver providers, including but not limited to, the following:
- Licensed and certified Home Health Agencies,
- Individually licensed HCBS Waiver Providers, and
- Unlicensed caregivers.

CA Home and Community Based Alternatives Waiver (0139.R06.00)

Provides case management, habilitation services, home respite, waiver personal care services, paramedical service, assistive technology, community transition services, comprehensive care management, continuous nursing and supportive services, developmentally disabled/ continuous nursing care (DD/CNC) non-ventilator dependent services, DD/CNC- ventilator dependent services, environmental accessibility adaptations, facility respite, family/caregiver training, medical equipment operating expense, personal emergency response systems (PERS), PERS installation and testing, private duty nursing - including home health aide and shared services, and transitional case management services to individuals who are medically fragile or who are technology dependent ages 0 or older who meet a hospital, nursing facility, or ICF/IID level of care.

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waivers target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The Centers for Medicare & Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the state, service delivery system structure, state goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

Individual Nurse Providers

LVNs may apply to be an INP through DHCS
Any LVN working under an RN may become a MediCal Provider. However, enrollment may only be done through the HCBS Waiver and Assisted Living Programs.

DHCS
DEPARTMENT OF HEALTH CARE SERVICES

DHCS funds health care services for more than 15.4 million Medi-Cal beneficiaries. About one-third of Californians receive health care services financed or organized by DHCS, making the Department the largest health care purchaser in California.

Programs administered by DHCS: California Children's Services; Child Health and Disability Prevention program; Genetically Handicapped Persons Program; Newborn Hearing Screening Program; Family Planning, Access, Care, and Treatment program; Program of All-Inclusive Care for the Elderly; Every Woman Counts; and Coordinated Care Management.

California Children Services (CCS)

CCS is a State program for children with certain diseases or health problems. Through this program, children up to 21 years old can get the health care and services they need. CCS will connect them with doctors and trained health care people who know how to care for children with special health care needs

Health and Safety Code, Section 123800 et seq. is the enabling statute for the CCS program. The explicit legislative intent of the CCS program is to provide necessary medical services for children with CCS medically eligible conditions whose parents are unable to pay for these services, wholly or in part. The statute also requires the DHCS and the county CCS program to seek eligible children by cooperating with local public or private agencies and providers of medical care to bring potentially eligible children to sources of expert diagnosis and treatment.

The CCS program is mandated by the Welfare and Institutions Code and the California Code of Regulations (Title 22, Section 51013) to act as an "agent of Medi-Cal" for Medi-Cal beneficiaries with CCS medically eligible conditions. Medi-Cal is required to refer all CCS-eligible clients to CCS for case management services and authorization for treatment. The statute also requires all CCS applicants who may be eligible for the Medi-Cal program to apply for Medi-Cal.

The CCS program is administered as partnership with county health departments. Primary role is to connect CCS-eligible children to resources they need. This includes determining all phases of program eligibility, evaluating needs for specific services, determining the appropriate provider(s), and authorizing for medically necessary care.70% of CCS-eligible children are also Medi-Cal eligible. The remaining 30% are funded by other government sources (fed, state, county).

Examples of CCS-eligible conditions include, but are not limited to, chronic medical conditions such as cystic fibrosis, hemophilia, cerebral palsy, heart disease, cancer, traumatic injuries, and infectious diseases producing major sequelae. CCS provides medical therapy services that are delivered at public schools. [Note: Stanford University study on Costs vs. Readmissions available on this website]

Assisted Living

DEPT. OF HEALTH CARE SERVICES
DEPT. OF SOCIAL SERVICES
CA DEPT. OF PUBLIC HEALTH

Advised in March 2023 by the deputy director of the Home and Community Based Services Program at DHCS that Assisted Living Waiver (ALW) providers do NOT provide respiratory care.

The Assisted Living Waiver Program is on track to be combined with the HCBS Waiver Program.

Providers for Assisted Living include qualifying Residential Care Facilities for the Elderly (RCFE), Adult Residential Care Facilities (ARF) [both licensed by the Department of Social Services] and Care Coordination Agencies (CCA) [CCA is not regulated but provides services for RCFE and ARF], and Home Health Agencies (HHA).

DDS
CA DEPARTMENT OF DEVELOPMENTAL SERVICES

The California Department of Developmental Services (DDS) works to ensure Californians with developmental disabilities have the opportunity to make choices and lead independent, productive lives as members of their communities in the least restrictive setting possible.

Under the Lanterman Developmental Disabilities Services Act, DDS is responsible for overseeing the coordination and delivery of services and supports to more than 360,000 Californians with developmental disabilities including cerebral palsy, intellectual disability, autism, epilepsy and related conditions. The state's service system is designed to meet the needs and choices of individuals at each stage of their lives, and, to the extent possible, serve them in their home communities, providing choices that are reflective of lifestyle, cultural and linguistic backgrounds.

Individuals live in a wide variety of settings, from Skilled Nursing Facilities to living with family to living independently. Approximately 270,000 live in their own home with family. Other settings may be licensed by Department of Social Services (DSS), Department of Public Health (CDPH), or may be an unlicensed setting. Many individuals attend Day Programs and many attend school – from kindergarten through college. For some it is necessary to hire staff to be with them at all times to provide respiratory care, including suctioning, inner cannula care, and ensuring the ventilator is functioning as ordered. Children attending school may require 1:1 support staff while at school and engaging in afterschool activities. Individuals in the work force may require 1:1 support staff so they are able to work outside their home.