

NORTH CAROLINA RESPIRATORY CARE BOARD

FOR IMMEDIATE RELEASE: REVISED

January 14, 2021

The North Carolina Respiratory Care Board is issuing this statement to address whether and how Certified EMS Personnel may participate in the provision of some respiratory care in North Carolina hospitals. This statement is based on the Board's prior declaratory rulings, which have interpreted a relevant provision in the Respiratory Care Practice Act, and is being issued to provide guidance to hospital executives, and to the managers and supervisors of respiratory care services, about the Board's analysis of how the Respiratory Care Practice Act relates to situations when Certified EMS Personnel who are not licensed by the Board are called on to participate in the provision of respiratory-related services in North Carolina hospitals. This statement is not intended to limit or otherwise affect the scope of practice for Certified EMS Personnel, which is established by other rules, or to affect other applicable state rules.

The Board has become aware that the Centers for Medicare and Medicaid released a COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers on December 1, 2020. This waiver states:

"Respiratory Care Services. CMS is waiving the requirements at 42 CFR §482.57(b)(1) that require hospitals to designate in writing the personnel qualified to perform specific respiratory care procedures and the amount of supervision required for personnel to carry out specific procedures. These flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan. Not being required to designate these professionals in writing will allow qualified professionals to operate to the fullest extent of their licensure and training in providing patient care."

NCRCB understands that this statement by CMS was issued to provide more flexibility in the staffing of hospitals' responses to meet the challenges of the COVID-19 Pandemic. This CMS statement has prompted several questions to the Board about whether trained Certified EMS Personnel may provide respiratory-related services in hospitals. While the CMS statement confirms increased flexibility for compliance with the CMS Conditions of Participation for hospitals, the Practice of Respiratory Care in North Carolina is regulated at the state level by the Respiratory Care Practice Act ('RCPA). In N.C. Gen. Stat. § 90-664, the RCPA recognizes that some persons and practices are not affected by its requirements:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the

supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.

In effect, this language provides an exemption from licensure under the RCPA for certain persons and practices when an individual is acting within the scope of practice of another health profession. However, the Board is still required to fulfill its primary duty to protect the public from the unqualified practice of respiratory care by ensuring that proper measures are in place to safeguard the public health, safety, and welfare. In its previous declaratory rulings, the Board has stated that the above exemption for someone who is registered, certified, credentialed, or licensed to engage in another profession or occupation in this State only applies when 1) a person is either performing work incidental to or within the defined scope of practice of that profession or occupation, or 2) is working under the supervision of a person who is registered, certified, credentialed, or licensed to engage in another profession or occupation and is performing work incidental to or within the defined scope of practice of that profession or occupation.

Certified EMS Personnel typically function in hospitals and clinics under protocols approved by the Office of Emergency Medical Services (“OEMS”) and by the Medical Director of the EMS System or Specialty Care Transport Program with which they are affiliated. See, 10A NCAC 13P .0506 (a) (3). However, OEMS Rule 10A NCAC 13P .0506 (b) recognizes that Certified EMS Personnel may provide services in alternative practice settings that are defined in OEMS Rule 10A NCAC .0102, and those alternative practice settings include hospitals. Under those circumstances, the OEMS Rule requires that all Certified EMS Personnel shall:

- (1) be under the medical oversight of a physician licensed by the North Carolina Medical Board that is associated with the practice setting where the individual will function; and
- (2) be restricted to performing within the scope of practice as defined by the North Carolina Medical Board pursuant to G.S. 143-514 for the individual's level of EMS credential.

With this guidance from the OEMS Rules, the North Carolina Respiratory Care Board has concluded that Certified EMS Personnel who conform to the limitations in the OEMS Rule 10A NCAC 13P .0506 (b), may be involved in the provision of respiratory-related services in hospitals without having a license from the North Carolina Respiratory Care Board.

While CMS is waiving the requirements at 42 CFR §482.57(b)(1), the respiratory care services requirements in 42 CFR §482.57 (a) remain enforceable. This standard requires that the organization of the respiratory care services must be

appropriate to the scope and complexity of the services offered; (1) There must be a director of respiratory care services who is a doctor of medicine or osteopathy with the knowledge experience, and capabilities to supervise and administer the service properly. The director may serve on either a full-time or part-time basis; and (2) There must be adequate numbers of respiratory therapists, respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with State law. These are important CMS criteria that must continue to be observed, and as licensees of this Board, respiratory care managers and supervisors, who direct respiratory care services, must provide the required supervision of those services and ensure Certified EMS Personnel are working within their scope of practice. The Board will respond to any request for clarification.

The Board also urges the medical professionals who are directing respiratory care, and the health care organizations where respiratory care services are provided, ensuring that safe care is provided by adopting and enforcing policies and procedures that are consistent with the OEMS Rules; with the hospital licensing rules, including 10A NCAC 13B Section 4400; and with other applicable state laws.

Board Approved on January 14, 2021