

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONERS
PART 14 SCOPE OF PRACTICE GUIDELINES FOR NON-LICENSED, NON-EXEMPTED PERSONS

16.23.14.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Respiratory Care Advisory Board.
[16.23.14.1 NMAC - Rp, 16.23.14.1 NMAC 12/10/2024]

16.23.14.2 SCOPE: The provisions in Part 14 of Chapter 23 apply to licensees and non-licensees.
[16.23.14.2 NMAC - Rp, 16.23.14.2 NMAC 12/10/2024]

16.23.14.3 STATUTORY AUTHORITY: Part 14 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-11 NMSA 1978. Specifically, Sections 61-12B-2; 61-12B-3; 61-12B-4; 61-12B-7; Subsections C, D and E of Section 61-12B-9, Paragraph (7) of Subsection A of Sections 61-12B and 61-12B-15 NMSA 1978.
[16.23.14.3 NMAC - Rp, 16.23.14.3 NMAC 12/10/2024]

16.23.14.4 DURATION: Permanent.
[16.23.14.4 NMAC - Rp, 16.23.14.4 NMAC 12/10/2024]

16.23.14.5 EFFECTIVE DATE: December 10, 2024, unless a later date is cited at the end of a section.
[16.23.14.5 NMAC - Rp, 16.23.14.5 NMAC 12/10/2024]

16.23.14.6 OBJECTIVE: The objective of Part 14 of Chapter 23 is to clarify who can perform respiratory care-related functions and procedures. Its objective is also to clarify for non-licensed persons what respiratory care-related function, procedures, or services that they can legally perform, for instance, in the delivery of medical equipment in the home care setting, in accordance with the Respiratory Care Act, Sections 61-13-1 through 61-13-17 NMSA 1978.
[16.23.14.6 NMAC - Rp, 16.23.14.6 NMAC 12/10/2024]

16.23.14.7 DEFINITIONS:

- A. “Department”** means the New Mexico regulation and licensing department.
 - B. “DME or DME company”** refers to durable medical equipment or companies that provide durable medical equipment in the health care industry.
 - C. [RESERVED]**
 - D. “Gratuitous”** means to receive no form of payment or remuneration.
 - E. “Home care setting”** as it applies to respiratory care, means any facility, including a patient’s home that would usually not employ respiratory care practitioners, specifically those facilities visited by a person from outside the facility to provide respiratory care services.
 - F. [RESERVED]**
 - G. “License”** Has the same meaning as defined in Subsection E of Section 61-1-2 NMSA 1978.
 - H. [RESERVED]**
 - I. “Prescription”** means an order given individually for the person for whom prescribed, either directly from the prescriber to the person licensed to fill the prescription or indirectly by means of a written order signed by the prescriber
 - J. “Medical direction”** as applied to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.
- [16.23.14.8 NMAC - Rp, 16.23.14.7 NMAC 12/10/2024]

16.23.14.8 RESPIRATORY CARE SCOPE OF PRACTICE: The scope of practice for respiratory care practitioners is clearly defined in Subsection C of Section 61-12B-3 NMSA 1978 and the respiratory care functions and procedures within the scope of practice of respiratory care practitioners are outlined in Subsection D of Section

61-12B-3 NMSA 1978. In order to perform these functions and procedures in New Mexico, a person must be licensed by the state under the Respiratory Care Act.
[16.23.14.8 NMAC - Rp, 16.23.14.8 NMAC 12/10/2024]

16.23.14.9 EXCEPTIONS TO LICENSURE: The following individuals are exempted from licensure under the Respiratory Care Act.

A. Persons licensed by other appropriate state agencies may perform the respiratory care functions and procedures provided in Section 61-12B-3 NMSA 1978, so long as they are authorized to do so by their profession's licensing body.

(1) The licensing body establishes and regulates the professional standards of the licensed profession; and

(2) The licensing body is obligated to enforce the provisions of its statutory mandate and the rules and regulations of that profession.

B. Persons who provide respiratory care-related self-care.

C. Persons, who do not represent themselves to be respiratory care practitioners, but who provide gratuitous care to friends or family members, or who provide respiratory care services in a case of emergency.

D. Persons who have demonstrated competency in one or more areas covered by the Respiratory Care Act may perform only those functions that they are qualified by examination to perform, as long as the testing body offering the examination is certified by the national commission for health certifying agencies.

[16.23.14.9 NMAC - Rp, 16.23.14.9 NMAC 12/10/2024]

16.23.14.10 VIOLATION OF THE RESPIRATORY CARE ACT SCOPE OF PRACTICE: It is a misdemeanor violation for anyone to perform respiratory care procedures that are regulated under the Respiratory Care Act unless licensed by the board; or unless exempted from licensure by the provisions in the Respiratory Care Act; or unless authorized under another licensed professional's license to perform respiratory care-related functions, procedures, or services.

A. The department may seek an immediate injunction to stop the illegal practice of respiratory care; or

B. The department may initiate civil action proceedings in any district court to enforce any of the provisions of the Respiratory Care Act.

[16.23.14.10 NMAC - Rp, 16.23.14.10 NMAC 12/10/2024]

16.23.14.11 UNLICENSED PERSONS NOT EXEMPTED BY THE RESPIRATORY CARE ACT:

Persons who are not licensed in New Mexico to practice respiratory care, and who are not exempted from licensure by the Respiratory Care Act, particularly those persons employed by durable medical equipment companies, home care delivery, or other similar service companies may perform only the functions listed below. If a procedure, service, or function is not listed below, the non-licensed person may not legally perform it.

[16.23.14.11 NMAC - Rp, 16.23.14.11 NMAC 12/10/2024]

16.23.14.12 CPAP, BI-LEVEL WITHOUT BACK-UP RATE:

A. Deliver equipment and supplies.

B. Instruct the patient/family how to order supplies

C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.12 NMAC - Rp, 16.23.14.12 NMAC 12/10/2024]

16.23.14.13 ORAL SUCTIONING:

A. Deliver equipment and supplies.

B. Instruct the patient/family how to order supplies

C. Instruct the patient/family or where to call in case of emergency

[16.23.14.13 NMAC - Rp, 16.23.14.13 NMAC 12/10/2024]

16.23.14.14 OXYGEN DELIVERY, SET UP, CARE, MONITORING, AND INSTRUCTION:

A. Deliver oxygen equipment and supplies.

B. Instruct the patient/family how to order supplies

C. Connect the oxygen tubing or cannula to the oxygen equipment.

D. Instruct the patient/family on the use of the cannula.

- E. Instruct the patient/family on how to turn the oxygen unit on.
- F. Demonstrate to patient/family how to set the liter flow.
- G. Instruct the patient/family on how to connect and clean the humidifier bottle.
- H. Instruct the patient/family on oxygen safety.
- I. Instruct the patient/family on how to deal with equipment malfunction.
- J. Instruct the patient/family regarding the back-up oxygen cylinder.
- K. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.14 NMAC - Rp, 16.23.14.14 NMAC 12/10/2024]

16.23.14.15 VENTILATOR/LIFE SUPPORT:

- A. Deliver ventilator and supplies.
- B. Instruct the patient/family how to order supplies.
- C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.15 NMAC - Rp, 16.23.14.15 NMAC 12/10/2024]

16.23.14.16 BRONCHIAL PULMONARY HYGIENE:

- A. Deliver equipment and supplies.
- B. Instruct the patient/family how to order supplies.
- C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.16 NMAC - Rp, 16.23.14.16 NMAC 12/10/2024]

16.23.14.17 NASOTRACHEAL SUCTIONING:

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.17 NMAC - Rp, 16.23.14.17 NMAC 12/10/2024]

16.23.14.18 IPPB, NEBULIZER SET UP AND TREATMENT:

- A. Deliver equipment and supplies.
- B. Instruct the patient/family how to order supplies.
- C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.18 NMAC - Rp, 16.23.14.18 NMAC 12/10/2024]

16.23.14.19 APNEA MONITOR:

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.19 NMAC - Rp, 16.23.14.19 NMAC 12/10/2024]

16.23.14.20 DIAGNOSTIC TESTING:

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.20 NMAC - Rp, 16.23.14.20 NMAC 12/10/2024]

16.23.14.21 TRACHEOSTOMY CARE:

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family who or where to call in case of emergency.

[16.23.14.21 NMAC - Rp, 16.23.14.21 NMAC 12/10/2024]

16.23.14.22 [RESERVED]

16.23.14.23 [RESERVED]

16.23.14.24 UNLICENSED PRACTICE OF RESPIRATORY CARE - DISCIPLINARY GUIDELINES:

In accordance with the provisions contained within the Uniform Licensing Act, the department may take disciplinary action as provided in Section 61-1-3.2, NMSA 1978, (2003 Repl. Pamp.) if the department, in consultation with the board, determines that the respondent has violated the Respiratory Care Act or the department's rules and regulations governing respiratory care (16.23 NMAC) by practicing respiratory care in New Mexico without a valid New Mexico license.

A. The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of respiratory care.

B. The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a company or other business entity that requires an unlicensed person to engage in the practice of respiratory care without a license. The penalty shall be imposed in the amount of one thousand dollars (\$1,000) for each individual that the company or business entity employs and who is performing respiratory care scope of practice procedures and protocols without benefit of a valid New Mexico respiratory care license or permit.

C. In addition, the department, in consultation with the board may assess the person, company, or other business entity for administrative costs, including investigative costs and the cost of conducting a hearing. [16.23.14.23 NMAC - Rp, 16.23.14.23 NMAC 12/10/2024]

HISTORY of 16.23.14 NMAC: [RESERVED]

HISTORY OF REPEALED MATERIAL:

16.23.14 NMAC, "Scope of Practice Guidelines For Non - Licensed, Non - Exempted Persons filed 6/6/2000 - Repealed effective 12/10/2024.

Other History: 16.23.14 NMAC, "Scope of Practice Guidelines For Non - Licensed, Non - Exempted Persons filed 6/6/2000 - Replaced by 16.23.14 NMAC, "Scope of Practice Guidelines For Non - Licensed, Non - Exempted effective 12/10/2024.