

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.6.
RESPIRATORY CARE BOARD OF CALIFORNIA

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Home and Community-Based Respiratory Tasks and Services

NOTICE IS HEREBY GIVEN that the Respiratory Care Board of California (hereafter Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than Monday, September 28, 2026** or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Authority cited: Sections 3722 and 3765, Business and Professions Code. Reference: Section 3765, Business and Professions Code.

Pursuant to the authority vested by section(s) 3722 and 3765 of the Business and Professions Code, and to implement, interpret, or make specific BPC section(s) 3765, the Board is considering adding section(s) 1399.361 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Existing law provides that licensed vocational nurses (LVNs) do not possess independent authority to perform respiratory care services, except as expressly authorized by statute and regulations adopted by the Board. Existing law further authorizes the Board to identify specific respiratory care tasks and services that may be performed by LVNs in limited circumstances and settings. Business and Professions Code (BPC) section 3765, subdivisions (i) and (j), authorize LVNs who meet specified statutory requirements to perform respiratory care tasks and services identified by the Board in home health and home and community-based settings.

This regulatory proposal will implement and operationalize the statutory authority in BPC section 3765 by identifying, in regulation, the specific respiratory care tasks and services that LVNs may perform in the settings authorized by statute. The proposed regulation establishes task-level parameters by expressly identifying authorized respiratory care tasks and services and delineating activities that are not authorized, thereby providing clarity and consistency regarding the lawful scope of LVN practice in the settings specified in section 3765 subdivisions (i) and (j).

The proposed regulation does not expand the statutory authority granted by the Legislature or impose new compliance obligations beyond those established by statute. Instead, it provides the regulatory specificity necessary for licensees, employers, and other stakeholders to understand and apply the requirements of BPC section 3765 in a consistent and lawful manner, promoting patient safety and reducing the risk of unauthorized practice.

No forms are incorporated by reference as part of this regulatory proposal.

Anticipated Benefits of Proposal

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

This regulatory proposal promotes patient safety and consumer protection by clearly identifying the respiratory care tasks and services that LVNs may perform in home health and home and community-based settings pursuant to BPC section 3765. By expressly distinguishing authorized tasks from those that are not authorized, the regulation reduces uncertainty, supports appropriate delegation of respiratory care services, and minimizes the risk of unauthorized practice.

The regulatory proposal also enhances regulatory clarity and consistency by providing a uniform statewide framework for the lawful performance of respiratory care tasks by LVNs in the settings identified in statute. This clarity supports compliance with existing law, facilitates consistent application and enforcement, and promotes continuity of care for patients receiving respiratory services in home and community-based settings.

This regulatory proposal does not affect worker safety or the state's environment.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board conducted a review of existing state regulations related to respiratory care services and the scope of practice of licensed vocational nurses. The Board has concluded that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

The proposed regulation is consistent with the Respiratory Care Practice Act and with existing regulations governing respiratory care services by clearly identifying the respiratory care tasks and services that LVNs may perform pursuant to BPC

section 3765. The regulation complements, and does not conflict with, existing regulations that define basic respiratory tasks and services or the scope of practice of licensed respiratory care practitioners.

No other matters are prescribed by statute for inclusion in this section.

INCORPORATION BY REFERENCE

No forms, documents, or other materials are incorporated by reference as part of this regulatory proposal.

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The Board does not anticipate any additional workload or costs resulting from the proposed regulations. Any additional workload or costs would be a result of current law.

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) indicates the regulations could cause an increase in the number of complaints received, which would result in additional workload and costs. However, the BVNPT does not have a fiscal estimate at this time.

The regulations do not result in any costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies

None.

Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement

None.

Mandate Imposed on Local Agencies or School Districts

None.

Significant Effect on Housing Costs

None.

BUSINESS IMPACT ESTIMATES

Business Impact

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the fact that the proposed regulation

operationalizes existing statutory authority in BPC section 3765 by identifying the respiratory care tasks and services that LVNs may perform in specified settings. The regulation does not impose new licensing requirements, operational mandates, or compliance obligations, and instead provides clarity regarding activities already authorized by statute.

Businesses are anticipated to maintain compliance with the proposed regulations within normal business operations and without incurring additional workload or costs.

Cost Impact on Representative Private Person or Business

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Individuals and businesses are anticipated to maintain compliance with the proposed regulations within normal business operations and without incurring additional workload or costs.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Impact on Jobs / Businesses

The Board has determined that this regulatory proposal will not have any impact on:

- 1) The creation or elimination of jobs within the state because this proposal does not impose new licensing requirements, operational mandates, or compliance obligations, and instead provides clarity regarding activities authorized by statute.
- 2) The creation of new businesses or the elimination of existing businesses within the state because this proposal does not impose new licensing requirements, operational mandates, or compliance obligations, and instead provides clarity regarding activities authorized by statute.
- 3) The expansion of businesses currently doing business within the state because this proposal does not impose new licensing requirements, operational mandates, or compliance obligations, and instead provides clarity regarding activities authorized by statute.

Benefits of Regulation

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

This regulatory proposal promotes patient safety and consumer protection by clearly identifying the respiratory care tasks and services that LVNs may perform in home health and home and community-based settings pursuant to BPC section 3765. By distinguishing authorized tasks from those that are not authorized, the regulation reduces uncertainty, supports lawful practice, and minimizes the risk of unauthorized respiratory care services.

This regulatory proposal does not affect worker safety or the state's environment.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Board.

Effect on Small Business

The Board has determined that the proposed regulations may impact small businesses, including small businesses owned by licensees of the Board. However, small businesses are anticipated to maintain compliance with the proposed regulations within normal business operations and without incurring additional workload or costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative to the proposed regulation would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 3750 Rosin Court, Suite 100, Sacramento, CA 95834, during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 3750 Rosin Court, Suite 100, Sacramento, CA 95834.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the persons designated in this Notice as the Contact Persons and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kathryn Pitt
Address: Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 999-2190
Fax No.: (916) 273-7311
E-Mail Address: rcbinfo@dca.ca.gov

The backup contact person is:

Name: Christine Molina
Address: Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 999-2190
Fax No.: (916) 273-7311
E-Mail Address: rcbinfo@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at <https://rcb.ca.gov/enforcement/lawsregs.shtml>