

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

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Basic 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 their 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 sections 3722 and 3765 of the Business and Professions Code (BPC), and to implement, interpret, or make specific section 3765, the Board is considering amending section 1399.365 of title 16 of the California Code of Regulations (CCR), which was originally adopted pursuant to the Board’s authority under BPC section 3702.5.

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. 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.

The Board initially adopted an amendment to CCR, title 16, section 1399.365 as an emergency regulation to clarify the applicability of the Board's Basic Respiratory Tasks and Services regulation to LVNs working in the exempt settings described in BPC section 3765, subdivisions (i) and (j). The emergency regulation ensured continuity of care while the Board proceeded through the regular rulemaking process.

This proposed regulatory action makes that emergency amendment permanent without substantive change. The regulation clarifies that CCR section 1399.365 does not apply to LVNs performing respiratory care services identified by the Board while working in the exempt settings specified in BPC section 3765, subdivisions (i) and (j).

The proposed regulation implements existing statutory authority and does not expand LVN scope of practice beyond what the Legislature authorized. Instead, it provides regulatory clarity and consistency regarding the applicability of the Board's regulations, supports lawful practice, and promotes continuity of care in home and community-based settings.

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 benefit the health and welfare of California residents by promoting clarity and consistency regarding the regulatory framework governing respiratory care services in home and community-based settings.

By permanently clarifying the applicability of CCR section 1399.365, the regulation reduces confusion among licensees, employers, patients, and other stakeholders and supports consistent application of existing law. This clarity promotes patient safety, continuity of care, and effective enforcement of the Respiratory Care Practice Act.

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

Evaluation of Consistency and Compatibility with Existing State Regulations

The Board has reviewed existing state regulations and has determined that the proposed regulation is consistent and compatible with existing regulations governing respiratory care services and the scope of practice of LVNs. The regulation aligns with statutory exemptions established in BPC section 3765 and complements existing regulations without conflict.

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 regulations do not result in a fiscal impact to the state. This proposal makes permanent an existing regulatory amendment and implements statutory authority in BPC section 3765 by clarifying the applicability of the Board's regulations to LVNs performing respiratory care services in specified settings.

The Board does not anticipate any additional workload or costs resulting from the proposed regulation. Any workload associated with implementation and enforcement of this regulation is attributable to existing law.

The regulations do not result in 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 will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The regulation makes permanent an existing emergency amendment and does not impose new licensing requirements, operational mandates, or compliance obligations. The regulations clarify the applicability of CCR section 1399.365 and do not create new requirements or costs for licensees, facilities, or employers.

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. The action maintains existing practice and provides clarification to prevent disruption in care.

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,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or
- 3) the expansion of businesses currently doing business within the state.

This proposal would not have any of the above-referenced impacts as explained in the Business Impact Estimates section of this notice.

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 providing clear and consistent regulatory guidance regarding the applicability of the Board's regulations to LVNs performing respiratory care services in home health and home and community-based settings pursuant to BPC section 3765. By clarifying the regulatory framework and preventing misapplication of existing regulations, the proposal reduces uncertainty, supports lawful practice, and promotes continuity of care.

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 regulation will not have a significant adverse economic impact on small businesses. This determination is because the regulation makes permanent an existing regulatory clarification and does not impose new licensing requirements, operational mandates, or compliance obligations.

While small businesses owned by licensees of the Board may be affected by the regulation, the Board does not maintain data relating to the number or percentage of licensees who own small businesses. Therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board has determined 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 while 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 Initial Statement of Reasons, proposed regulatory text, and all information upon which the proposal is based are available upon request from the Board.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all information upon which the proposal is based may be obtained upon request from the Board at 3750 Rosin Court, Suite 100, Sacramento, CA 95834, or by contacting the persons listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board may adopt the proposed regulations substantially as described or may modify the proposals if the modifications are sufficiently related to the original text. Except for technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for public review and written comment for at least 15 days prior to adoption. The modified text will be made available from the persons designated in this Notice as the Contact Persons and will be provided to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes.

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>