California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.6. Respiratory Care Board
Article 6. Scope of Practice
FINDING OF EMERGENCY

SUBJECT MATTER OF PROPOSED REGULATION

Clarification of Applicability of Basic Respiratory Care Tasks and Services

SECTION AFFECTED

Title 16, Division 13.6, California Code of Regulations, Section 1399.365

SPECIFIC FACTS SHOWING THE NEED FOR IMMEDIATE ACTION

The Respiratory Care Board (Board) recently promulgated Title 16, California Code of Regulations section 1399.365 ("Basic Tasks and Services")—a regulation relating to the performance of basic respiratory tasks and services by Licensed Vocational Nurses (LVNs). The regulation went into effect on October 1, 2025, but since then, it has become clear that certain small home and community-based health facilities that utilize LVNs to provide non-basic care to patients did not recognize the significance of the regulation until after it took effect. Consequently, unless the regulation is promptly rolled back in just these limited settings, there is substantial evidence that limiting the type of non-basic care that LVNs provide in those settings will significantly disrupt patient care and be detrimental to the public health, safety and welfare.

The purpose of the Basic Tasks and Services regulation was to establish a baseline level of respiratory care tasks and services that could be performed by LVNs working in licensed healthcare facilities that are typically staffed with a network of licensed healthcare providers. It was expected—by the Board and the public—to be the first of at least three separate rulemakings to implement three recent legislative changes governing the provision of respiratory care in different healthcare settings.

The legislation was intended to be implemented holistically. The first statutory change involved the addition of Business and Professions Code (B&PC) section 3702.5, which empowered the Board to specify in regulation three different levels of respiratory care tasks and services—basic, intermediate, and advanced—each requiring a greater degree of training and skill to perform. By virtue of a separate provision in the B&PC, LVNs were limited generally to performing respiratory tasks and services identified by the Board in regulation at the "basic" level.

The second change involved a statutory exemption from the Board's regulatory oversight for LVNs employed by a licensed home health agency that perform "respiratory tasks and services identified by the board." (B&PC, § 3765, subd. (i).) The legislative history of the law noted that this exemption was intended to enable LVNs to perform in these settings *any* respiratory tasks and services the Board identified, not limited to "basic" tasks. The purpose of the statutory exemption was to protect patients

receiving care from LVNs in these settings, due to the limited availability of Respiratory Care Practitioners (RCP) who work in them: "[the bill] 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." (Sen. Com. on Bus., Prof., & Econ. Development, analysis of Sen. Bill No. 1451 (2023-2024 Reg. Sess.) as amended Feb. 16, 2024, p. 11.)

The third statutory change involved the addition of another similar exemption from the Board's oversight for LVNs working in enumerated home and community-based healthcare settings that perform "respiratory services identified by the board." (B&PC, § 3765, subd. (j).) Again, LVNs were permitted to perform *any* respiratory services identified by the Board, and for the same reasons that animated the Legislature's adoption of the previous statutory exemption:

> [T]here 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. . . . 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. The language in this bill authorizes 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 RCP, which in turn will 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." (Sen. Com. on Bus., Prof., & Econ. Development, analysis of Sen. Bill No. 1451 (2023-2024 Reg. Sess.) as amended Feb. 16, 2024, pp. 11-12.)

As described in the legislative history of the laws, the expectation of the Board, exempt facilities, and their providers and patients, was that LVNs working in these limited settings would continue providing patient care uninterrupted while the Board engaged in rulemaking to identify the respiratory tasks and services that would implement the statutory exemptions. And to effectuate that intent, the Board should have originally limited the Basic Tasks and Services regulation to the settings that it was primarily designed to address—non-exempt, larger healthcare settings with a network of providers. But it did not, and as it began to notify healthcare facilities, licensees, and the public generally about the new regulation taking effect October 1, 2025, it received urgent reports from providers, families, individuals and professional associations describing service interruptions, staff reassignments, and delayed care in the home health and community-based settings that are subject to statutory exemption and expected to participate in separate rulemakings governing those settings. The reports were particularly concentrated among pediatric day health centers, home health

agencies, and congregate living health facilities that employ LVNs to perform respiratory care services under a physician's direction.

Because the Basic Tasks and Services regulation failed to exclude these exempt settings from the law—settings that were not the Board's intended focus of the regulation in the first place—it has become an unintended catalyst prompting the withdrawal of necessary LVN care from these settings, which runs contrary to the legislative intent that animated the statutory exemptions.

And because the affected programs serve patients requiring continuous respiratory support, including ventilator management, tracheostomy care, and airway suctioning, the loss, interruption or delay of services poses a direct threat to patient safety, life, and the continuity of care. For example, Valley Children's Healthcare, a regional pediatric health system providing critical care to medically fragile children and their families, expressed concern that the new regulation has prohibited LVNs in Pediatric Day Health Centers (PDHCs) from performing respiratory care services such as oxygen therapy, suctioning, and airway management necessary for patient survival. (Oct. 22, 2025, letter.) The organization warned that since the implementation of the Basic Tasks and Services regulation, "children are losing access to the only community programs capable of meeting their needs." Valley Children's Healthcare also stated that without LVN participation, PDHCs would be forced to call 911 rather than provide immediate care, leading to preventable hospital transfers and greater strain on emergency resources. Similarly, California Association of Medical Product Suppliers (CAMPS), a statewide association representing providers of home medical equipment and supplies serving medically fragile individuals, warned that as written, the new regulation will "disrupt the continuity of care for medically fragile children and adults who choose to receive respiratory care services and the normalcy of life at home and in community-based settings with their families instead of in a hospital or other institutional setting." (Oct. 23, 2025, letter.)

The proposed regulatory amendment that is the subject of this emergency rulemaking corrects the Board's unintended oversight in the adopted regulation and permits the continuation of care by LVNs in exempt settings, while the Board continues its rulemaking efforts to define the type of permissible respiratory care that can be carried out in those settings. The emergency rulemaking is necessary to avoid serious patient harm and conform to the legislative aims of the statutory exemptions for respiratory care provided in home and community-based settings.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 2022, Senate Bill 1436 (Chapter 624, Statutes of 2022) amended the Vocational Nursing Practice Act to clarify that LVNs are generally not authorized to perform respiratory care services except as specifically identified by the Board. SB 1436 simultaneously authorized the Board to identify limited "basic respiratory tasks and services" that LVNs may perform under specified conditions. The purpose of the law was to empower the Board to expressly identify respiratory tasks and services that were

considered basic, and that LVNs could perform in healthcare settings where there is a network of skilled care providers.

Recognizing that a network of care was not feasible in-home settings, the measure also added subdivision (i) to B&PC section 3765, which authorized trained LVNs employed by licensed home health agencies to perform *any* respiratory care services identified by the Board, consistent with that authority.

In 2024, there was a need to expand the exemption to other similar home and community-based settings, and the Legislature enacted Senate Bill 1451 (Chapter 481, Statutes of 2024), which added subdivision (j) to B&PC section 3765. This provision extended the LVN framework established under subdivision (i) to additional home and community-based care settings and reaffirmed that LVNs employed in those exempt environments may perform *any* respiratory care services identified by the Board, and they were not restricted to the basic level. As described above, subdivisions (i) and (j) were intended to maintain continuity of care in settings where LVNs have historically provided respiratory support, and where there is a lack of other skilled providers available or willing to provide care. Since the statutory exemptions require the Board to identify the respiratory tasks and services that LVNs may perform in exempt settings, the Board is currently engaged in rulemaking efforts to implement the exemptions.

To implement SB 1436's directive regarding basic tasks, the Board adopted section 1399.365 of Title 16 of the California Code of Regulations (CCR), effective October 1, 2025, defining the specific basic respiratory care tasks and services that LVNs may generally perform without conducting a respiratory assessment. The Board should have excluded LVNs working in exempt settings from that rulemaking, but it did not. The Board even acknowledged in its Initial Statement of Reasons for the section 1399.365 rulemaking package that "[t]o address other portions of SB 1436, the RCB will being holding meetings in 2024 to address tasks and services related to home care that will ultimately lead to additional rulemaking." Similarly, in its Final Statement of Reasons, the Board acknowledged that while it had yet to identify the respiratory tasks and services that LVNs may perform in an exempt setting, the Board favored "giving home health agencies enough authority to continue performing the same tasks and services that most have done for years with patient-specific training."

Because section 1399.365 became effective before the Board's regulations relating to the exemptions and related guidance under section 3765(i) and (j), there is uncertainty about LVNs' roles in the exempt home and community-based settings contemplated by statute.

Immediately following implementation, the Board was flooded with reports from providers, families, and professional associations describing service interruptions, staff reassignments, and delayed care in these settings as facilities attempted to apply the new regulation. The majority of these reports related to pediatric day health centers, home health agencies, and congregate living health facilities that employ LVNs to

perform respiratory care services under physician direction—facilities that are exempt from the Board's oversight under BP&C section 3765, subdivisions (i) and (j).

These programs serve patients, many of whom are children, requiring continuous respiratory support, including ventilator management, tracheostomy care, and airway suctioning. Accordingly, the loss or delay of services poses a direct risk to patient safety and the continuity of care.

As of November 2025, the Department of Public Health's CalHealthFind database lists approximately 4,343 Home Health Agencies, 335 Adult Day Health Care Centers, 215 Congregate Living Health Facilities, 933 Intermediate Care Facilities, and 26 Pediatric Day Health and Respite Care facilities. In addition, data from the California Department of Social Services' Community Care Licensing Division indicate that 363 Small Family Homes are licensed statewide, each serving six or fewer children with special health care needs. Reliable statewide data is not available for nurse providers working in residential homes and private duty nurses providing community-based support. In total, these combined facility types represent more than 6,200 licensed programs statewide that provide or support respiratory care services in home health and home and community-based settings. This data represents the facilities, programs and individuals specifically contemplated by the statutory exemptions of B&PC section 3765, subdivisions (i) and (j), in which Legislature clarified that LVNs will be able to perform respiratory tasks and services identified by the Board. This data further demonstrates that application of the Basic Tasks and Services regulation to prevent LVNs from continuing to provide care in exempt settings while the Board works on identifying the tasks and services that can be performed in exempt settings will have a broad and harmful impact on medically fragile patients and their families.

The Board has received approximately 200 letters and written statements from affected individuals and organizations, as well as over 100 phone inquiries. Stakeholder correspondence and testimony confirm that the current application of CCR section 1399.365 to the exempt settings described in B&PC section 3765(i) and (j) has led to significant disruption in service delivery and confusion in these settings. At its October 24, 2025, meeting, the Board heard testimony from over 60 providers and families describing the urgent need to roll back the Basic Tasks and Services regulation in exempt settings to maintain safe, consistent respiratory care. Many of these public commenters were parents who rely on LVNs in the home health settings exempt under B&PC 3765(i) and who are now left without care for their children. They testified that they must choose between caring for their child or going to work; keeping their child at home without adequate care or moving their child to a facility that can provide it.

Without the amendment proposed in this emergency rulemaking action, the Basic Tasks and Services regulation will continue to apply in the exempt settings, and medically fragile patients remain at risk of care delays, harm, or transfer to higher levels of care, contrary to the legislative intent for a holistic legislative and regulatory scheme that

accounts for the provision of different levels of care in different settings. The proposed amendment is consistent and compatible with existing regulations.

NECESSITY FOR IMMEDIATE ACTION

The Board finds that emergency adoption of this amendment is necessary to avoid disruption of patient care and to protect public health and safety, as required by Government Code section 11346.1(b) and Title 1, CCR, section 50(b)(3).

Patient Health and Safety: Consumers served in exempt settings rely on continuous respiratory care to sustain life and prevent hospitalization. Since implementation of CCR section 1399.365, the Board has received reports of care delays, staffing disruptions, and service interruptions in these settings as licensees and employers attempt to comply. These disruptions pose immediate risks to patient stability and the continuity of medically necessary care.

Public Outreach and Stakeholder Impact: The Board has received approximately 200 letters and written statements from affected individuals, families, and professional associations representing providers and facilities statewide, as well as an estimated 100 phone inquiries related to the regulation's implementation. The letters document widespread confusion among providers, families, and caregivers regarding LVN authority to perform routine care under existing orders that they provided before the Basic Tasks and Services regulation took effect. The correspondence and testimony consistently warn of reduced access to essential care, potential program closures, and adverse health outcomes for medically fragile patients who depend on trained LVNs for daily airway management, suctioning, and oxygen therapy.

Legislative Intent: Through B&PC section 3765(i) and (j), the Legislature established a framework to preserve LVNs' performance of identified respiratory tasks and services in specified home health and home and community-based settings under defined training and competency requirements. Because section 1399.365 became operative before the Board could identify appropriate tasks and services in these settings, its scope is temporarily inconsistent with legislative intent and has resulted in uncertainty across multiple programs that depend on LVN-provided respiratory care for continuity of care and patient safety.

Administrative Timing: Completion of a standard rulemaking process under the Administrative Procedure Act typically requires six to nine months, at a minimum. During this time, affected programs would remain subject to uncertainty, risking further care interruptions, patient transfers, and loss of community-based services—all impacting patient safety. Immediate action is required to maintain safe and consistent delivery of respiratory care in exempt settings. The need for regulatory clarification became evident only after the October 1, 2025, implementation of CCR section 1399.365, following numerous stakeholder inquiries and reports of patient-care disruptions. It was therefore not feasible to complete a regular rulemaking process in time to mitigate harm or restore operational stability in affected programs.

EVIDENCE DEMONSTRATING EMERGENCY

The record includes substantial evidence demonstrating that the application of CCR section 1399.365 in exempt settings described in B&PC section 3765(i) and (j) is creating immediate public health and safety risks.

Public Correspondence: Approximately 200 written letters and statements have been received from families of medically fragile children and adults, facility operators, LVNs, and professional associations, including the California Association of Medical Product Suppliers and Together We Grow. The correspondence documents care disruptions, staffing shortages, and risks of program closure across multiple licensed settings.

Public Testimony: At the October 24, 2025, Board meeting, approximately 50 individuals attended in person and nearly 500 participated online, with approximately 60 public comments received. Stakeholders from exempt pediatric day health centers, home health agencies, and congregate living facilities provided testimony describing interruptions to respiratory care services and the need for immediate roll back of the Basic Tasks and Services regulation in these settings to preserve patient safety and life.

Stakeholder Communications: Since October 2025, the Board has logged approximately 100 phone inquiries and multiple direct communications from provider associations, confirming the impact of the regulation on licensed facilities and medically fragile patient populations.

Scope of Impact: As of November 2025, the Department of Public Health's CalHealthFind database lists approximately 335 Adult Day Health Care centers, 215 Congregate Living Health Facilities, 4,343 Home Health Agencies, 933 Intermediate Care Facilities, and 26 Pediatric Day Health and Respite Care facilities statewide. Many of these programs fall within the care environments authorized under B&PC section 3765(i) and (j). The breadth of these license categories demonstrates the scale of impact on patients requiring ongoing respiratory care.

UNDERLYING DATA

The Board relied upon the following documents for this proposal:

1. Excerpt from Draft October 24, 2025, Board Meeting Minutes – Item 4: Discussion and Possible Action in Response to Implementation of California Code of Regulations section 1399.365 Basic Respiratory Tasks and Services, including comments and oral testimony received.
2. Excerpt from Draft November 14, 2025, Board Meeting Minutes – Item 2: Consideration of Finding of Emergency and Possible Action to adopt Finding of Emergency and Initiate Emergency Rulemaking for Proposed Amendments to California Code of Regulations, Title 16, §1399.365, to Address Immediate Public Health and Safety Concerns, including comments and oral testimony received.

3. Stakeholder Correspondence – Approximately 200 letters and written statements from providers, associations, and affected families.
4. CalHealthFind and CDSS Facility Data Summary – Facility counts for Adult Day Health Care Centers, Congregate Living Health Facilities, Home Health Agencies, Intermediate Care Facilities, Pediatric Day Health and Respite Care facilities (CalHealthFind), and Small Family Homes (CDSS Community Care Licensing).

AUTHORITY AND REFERENCE

Authority Cited: Business and Professions Code sections 3701 and 3710.
Reference: Business and Professions Code sections 3702, 3702.5 and 3765, subdivisions (i) and (j).

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. The amendments are intended to improve clarity and better align the Board's regulations with legislative intent and current law.

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact: The Board has determined that this regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with those in other states. The amendment merely clarifies the applicability of CCR section 1399.365 and does not create new requirements or costs for licensees, facilities, or employers.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs or businesses within California. Because the amendment provides clarification rather than new regulatory obligations, no measurable effect on employment or business operations is anticipated.

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

Effect on Housing Costs: None.