

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS  
RESPIRATORY CARE BOARD OF CALIFORNIA**

**Notice of Proposed Regulatory Action Concerning:  
Basic Respiratory Tasks and Services**

**TITLE 16. DIVISION 13.6. RESPIRATORY CARE BOARD OF CALIFORNIA**

**NOTICE IS HEREBY GIVEN** that the Department of Consumer Affairs, Respiratory Care Board of California (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, 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 not later than **Tuesday, December 27, 2022**, or must be received by the Board at the hearing, if a hearing is held.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding any requested hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person listed in this Notice at the address indicated in the below ‘contact person’ section. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AUTHORITY AND REFERENCE**

Pursuant to the authority vested by sections 3702.5 and 3722 of the Business and Professions Code<sup>1</sup> (B&P), and to implement, interpret or make specific sections 2860, 3702, 3702.5, and 3702.7, the Respiratory Care Board of California is considering addition of section 1399.365 of Division 13.6, Title 16 of the California Code of Regulations (CCR) as described herein.

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<sup>1</sup> Unless otherwise specified, all sections refer to the Business and Professions Code.

## INFORMATIVE DIGEST

### A. Informative Digest

The Board enforces the Respiratory Care Practice Act at Business and Professions Code (B&P) sections 3700-3779 and oversees approximately 24,000 licensed respiratory care practitioners.

SB 1436 (Chapter 624, Statutes of 2022) becomes effective January 1, 2023. B&P section 2860 of the Vocational Nursing Practice Act was amended to provide that licensed vocational nurses (LVNs) may not provide respiratory care services and treatment but may, after receiving training and demonstrating competency, and when directed by a physician and surgeon, perform basic respiratory tasks and services expressly identified by the Board pursuant to B&P section 3702.5.

B&P section 3702.5 grants the Board authority to adopt regulations to further define, interpret, or identify basic respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills, or data collection.

Article 6, Division 13.6, Title 16 of the CCR is titled "Scope of Practice" providing the appropriate placement of section 1399.365, the subject of this proposal.

#### **Problem being addressed:**

The need to further define, interpret or identify basic respiratory tasks and services as provided in subdivision (a) of section 3702.5.

#### **Specifically, the Board proposes to:**

Adopt 16 CCR 1399.365 to list basic respiratory tasks and services. This new section identifies the following seven basic respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills or data collection:

- 1) Data collection.
- 2) Application and monitoring of the pulse oximeter.
- 3) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator.
- 4) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation.
- 5) Hygiene care including replacement of tracheostomy tie and gauze and cleaning of the stoma site.
- 6) Use of a manual resuscitation device and other cardio-pulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
- 7) Appropriate documentation of care provided.

**B. Policy Statement Overview/Anticipated Benefits of Proposal**

The Board's highest priority is protection of the public in exercising its licensing, regulatory, and disciplinary functions. The Board is mandated to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. To continue performing these functions in support of its mandate, the Board must identify respiratory tasks and services that may be safely performed by LVNs or other properly trained health care personnel to reflect the underlying statutory requirements and to meet the most up-to-date standards and practices.

To that end, this proposal adds 16 CCR 1399.365 to define, interpret or identify basic respiratory tasks and services as provided in subdivision (a) of section 3702.5 of the B&P. Identifying these tasks will increase consumer protection by ensuring only qualified personnel are providing respiratory care beyond services that only require manual, technical skills or data collection. In addition, all stakeholders (i.e., healthcare practitioners, facilities, employers, and patients) will have a clear understanding of which respiratory tasks and services may be performed by LVNs.

This regulation will promote better health care planning and delivery, as well as protection for patients in need of respiratory care.

**C. Consistency and Compatibility with Existing State Regulations**

During the process of developing these regulations, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

**BUSINESS REPORTING REQUIREMENTS**

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

**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 proposed amendments identify basic respiratory tasks and services. As a result, the Board does not anticipate an increase in workload or costs.

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 made an initial determination that the proposed regulations 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.

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.

Effect on Housing Costs: None

## **EFFECT ON SMALL BUSINESS**

The Board has determined the proposed regulations are not anticipated to affect small businesses operating in the state because existing law provides that only respiratory care practitioners or other health care personnel may practice respiratory care within the scope of practice of each profession.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:**

### Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

### Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to worker safety and the state's environment: None. This proposal will benefit California residents' health, safety, and welfare because it will ensure LVNs are only performing those basic respiratory tasks and services for which they are trained and competency tested to perform. Patients requiring more advanced levels of respiratory care beyond basic tasks and services will receive such care from qualified health care personnel.

## **CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative it considered to the proposal or that has otherwise been identified and brought to its attention 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 than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 and/or present such statements or arguments orally or in writing at any scheduled hearing.

## **INITIAL STATEMENT OF REASONS AND INFORMATION**

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

## **TEXT OF PROPOSAL**

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

## **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 person named below or by accessing the website listed below.

## **CONTACT PERSON**

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

Name: Stephanie Nunez  
Address: Respiratory Care Board  
3750 Rosin Court, Suite 100  
Sacramento, CA 95834  
Telephone No: (916) 999-2190  
E-mail: 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  
E-mail: rcbinfo@dca.ca.gov

Website Access: Materials regarding this proposal can be found at:  
<https://rcb.ca.gov/enforcement/lawsregs.shtml>