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Stakeholder Meeting on Basic Respiratory Tasks

Thursday, December 18, 2025

Background

BVNPT organized a public stakeholder meeting to discuss regulatory changes from the California Respiratory Care Board (RCB) regarding the respiratory tasks that a Licensed Vocational Nurse (LVN) may perform, and at what work settings.

On June 5, 2025, RCB approved a regulation regarding basic respiratory tasks and services, California Code of Regulations, title 16, section 1399.365 (Section 1399.365), effective October 1, 2025. This regulation defines basic respiratory tasks and services that may be performed by individuals other than licensed respiratory care therapists, including LVNs.

On November 14, 2025, RCB adopted an emergency amendment to this regulation, which states that Section 1399.365 does not apply to LVNs performing respiratory care services identified by RCB in any of the exempt settings listed, and under the conditions specified, in subdivisions (i) and (j) of section 3765 of the Business and Professions Code.

BVNPT continues to receive questions and concerns from LVNs, professionals overseeing LVNs, families of patients and organizations representing care facilities and employers. Most requested clarification on how the new regulations interact with the duties of LVNs in a variety of environments. There were also many concerns regarding the limitations on LVNs, and how these limitations would impact the health, safety, and quality of life for Californians.

Meeting Summary

Agenda Item 1. – Welcome, Introductions, and Overview

BVNPT Executive Officer Elaine Yamaguchi welcomed everyone and said that the main purpose of the meeting was to make sure that all parties involved had a clear and consistent understanding of the regulations.

Agenda Item 2 – Updates of Regulation packages

1. Emergency Regulations

In November 2025, the Respiratory Care Board authorized their staff to pursue emergency regulations (Laws and Regulations). This was in recognition of the many 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. Essentially, this package, if approved, would ensure that LVNs at home and community-based facilities and services could continue to operate as they had prior to October 1 so as not to disrupt existing patient care.

2. Exemption for Home and Community-based Care Services

   At RCB's November meeting, RCB also approved beginning the process for the second regulatory package that would allow LVNs at a specified list of facilities to perform a more comprehensive set of respiratory tasks and services, i.e., making the exemption in the emergency regulations permanent, and set forth the list of tasks and services for the specified settings. (Consideration and Possible Action to Initiate a Rulemaking for the Proposed Regulation to Adopt California Code of Regulations, Title 16, Section 1399.361, Home and Community-Based Respiratory Tasks and Services)

   Potential Risks of Restricting LVNs at Nonexempt sites.

   - Respiratory Care Practitioners (RCPs) will need to be on duty 24-hours a day and within quick reach to provide the level of basic respiratory care services that LVNs have been performing for patients with long-term respiratory needs.

   - Most of the non-exempt sites do not have an RCP on site and often do not have a Registered Nurse (RN) onsite 24-7.

   - In the absence of an RT, if an LVN cannot perform the respiratory tasks, it is likely that RNs will be expected to perform these tasks. Emergency Medical Technicians (EMT) can perform many of these basic respiratory tasks and services but are often not near home- and community-based facilities, have limited resources, and their response times might take too long.

Public Comment:

Terry Milburn believes that an independent home-health provider's training is the

responsibility of an individual licensee under the new regs. Ms. Milburn requests more information on the 45-day comment period and what follows.

Ileana Butu, BVNPT Counsel, replied that questions regarding regulations adopted by another board are best submitted to that board. Ms. Butu also stated that the timeline for proposed regulations, even emergency regulations, vary case-to-case.

Joe Hafkenschiel, California Association for Health Services at Home: Please clarify the numbers of RCPs, LVNs, and LVNs in training. Mr. Hafkenschiel also asked the number of students graduating.

Ms. Yamaguchi: The number of RCPs is from the 2023-2024 statistics in the Annual Report published by the Department of Consumer Affairs. The number of LVNs come from an approximation of BVNPT statistics. The number of LVN students comes from the records BVNPT's nursing education providers (NECs) collect from VN programs' projected graduation dates. Ms. Yamaguchi stated approximately 85,000 students. (Note: Ms. Yamaguchi later apologized and corrected herself to state 8,500 students.)

Agenda Item 3. – Potential new legislation from BVNPT and stakeholders

- Ms. Yamaguchi is aware there are third parties that plan to put forward legislation impacting the RCB regulations.
- Ms. Yamaguchi informed stakeholders that the BVNPT board members authorized staff to seek legislation to strengthen the "Good Samaritan" law regarding LVNs.
    - This legislation would protect LVNs from civil liability if they attempt to save a life by performing good faith, responsible emergency care.
    - This proposed legislation would include LVNs within their professional environment or similar circumstances.

Public Comment

Yvonne Choong, Vice President for Policy with California Association of Health Facilities (CAFH) stated that CAFH and other organizations are seeking legislative changes to authorize LVNs to apply respiratory care under the direction of their employer and under the supervision of a physician or registered nurse regardless of setting. Ms. Choong asserts that an expansion of Good Samaritan protections will be inadequate.

Drew Brusaschetti, home health provider asked if BVNPT had any conversations with DHCS [Department of Health Care Services]. Brusaschetti explains that DHCDS oversees the delivery of Medi-Cal-eligible beneficiaries and managed care contractors in the state. There are Federal protections with EPSTD [Early and Periodic Screening, Diagnostic, and Treatment] that Mr. Brusaschetti believes will concern DHCS. Mr.

Brusaschetti offered to email Ms. Yamaguchi a contact within the DHCS.

Amber King, LeadingAge California spoke on behalf of nonprofit providers of care services and housing, including assisted living and skilled nursing facilities. LeadingAge California supports creating legislation described by Ms. Choong.

Cheryl Arnold, Corporate Director of Nursing for the Institute of Technology (IOT) within California supports the legislative solution and asks that schools be allowed to join into those discussions. Ms. Arnold mentions that schools must still provide training for respiratory care tasks for their students. Ms. Arnold explained that clinical facilities are not allowing LVN students to train on these skills under the new regulations. Ms. Arnold also asserted that it is inappropriate for RCB to create regulations for LVNs which are inconsistent based on setting.

Ms. Yamaguchi confirmed that programs must still teach the subject matter, as the LVN licensing exam (NCLEX-PN) includes basic respiratory tasks and services.

Christofer Arroyo, Deputy Director for Policy and Public Affairs on State Counsel on Developmental Disabilities (SCDD) said SCDD is a part of the organized legislative coalition. In addition to the topics discussed so far, Mr. Arroyo asserts that BPC Section 3765 impacts the least restrictive place someone needing respiratory care can live and endanger home placements.

Jennifer McLelland, LVN and mother of patient requiring tracheostomy care and a ventilator at night: Ms. McLelland expressed that giving Good Samaritan protections to LVNs is inadequate. Ms. McLelland noted that in her son's case, suctioning is routine. Ms. McLelland wants LVNs not to wait for an emergency because an LVN could prevent an emergency by regular suctioning rather than allowing an emergency to develop.

Joe Hafkenschiel, California Association of Health Services at Home: Hospice care will not get an exemption thus far. They support the legislative effort discussed before and offer to cosponsor.

Agenda Item 4: Discussion of Respiratory Care Board: California Code of Regulations: title 16, section 1399.365.

Elaine Yamaguchi screen-shared a document titled "Where LVNs Work."

- "Where LVNs Work" is broken into three component areas thus far:
  - The exempt facilities under the proposed emergency regulatory changes to RCB 1399.365.
  - A list of facilities and settings that are not currently expected to gain exemption

through any current proposed regulation or legislative bill.

- Ms. Yamaguchi asked for additions to the list of facilities and settings without exemption to fully reflect the broad locations an LVNs.

Public Comment:

Meredith Chillemi, LeadingAge California noted that residential care for the elderly facilities/assisted living facilities are not covered in the exemption. Such facilities often range from six beds up to 100 in one facility. Ms. Chillemi asserts that assisted living facilities should be added to the exemptions.

Keith Kasin, Chief Operating Officer for Hill Crest in La Verne, California noted that Continuing Care Retirement Communities (CCRCs) are large and without clear exemptions. CCRCs provide a wide variety of transitional services for the residents with the expectation that this shall be the last community that the residents shall inhabit. Mr. Kasin notes that the unique properties of CCRCs make it unclear whether they would gain an exemption for Long-Term Care. They are regulated both as a Residential Care Facilities for the Elderly (RCFE) and under the California Department of Public Health's Centers for Medicare and Medicaid Services guidelines.
Mr. Kasin asserted that without exemptions for CCRCs these new regulations may force residents to move out of the end-of-life care the resident organized due to insufficient respiratory care at CCRCs.

Katelyn Ashton, Loretta's Little Miracles and part of the Pediatric Day Healthcare Coalition requested that her organization is included in all documentation for the proposed pediatric day health exemption to the RCB regulations.

Jennifer McLelland explained that school districts have an obligation to place children in the least restrictive environment while providing an education even with heightened care needs. This is why nurses are used and LVNs are the most common nurse to address this need. Ms. McLelland further explained that not all nurses filling this need are hired by the school districts or under the supervision of a credential registered nurse. Many school districts have contracts with home nurse staffing agencies. Ms. McLelland asserted that the exemption created under Senate Bill (SB) 389-Ochoa-Bogh (Chapter 582 of the Statutes of 2025) does not but should cover these nurses.

Yvonne Choong offered to reach out to contacts to further fill out the lists Ms. Yamaguchi provided. Ms. Choong warned that the list of locations where LVNs work can be dynamic and limiting the scope of practice for LVNs by individual settings will not adequately address changing healthcare needs.

Sheri Coburn, Executive Director for California School Nurses Organization spoke of sharing RCB's concern of making certain that respiratory tasks in an educational setting are addressed by those with adequate training. Ms. Coburn's organization has developed training procedures for LVNs and "unlicensed assistive personnel." The same training is important in the home health setting. Ms. Coburn is concerned about access to education in light of SB-389. Ms. Coburn argues that the California State Supreme Court was clear that when a physician orders care and a parent consents, services may be provided. The case addresses medication, which Ms. Coburn argues is substantively similar to basic respiratory tasks. Lastly, Ms. Coburn states that their organization has reached out to the state legislature.

Nohely Macias, Nurse Consultant, stated that Community Care Facilities (CCFs), as defined within the California Health and Safety Code section 1502, will not be exempt under Section 1399.365. Community Care Facilities support residents with intellectual and developmental disabilities and provide care for individuals supported by the regional centers. Entities under the California Welfare and Institutions Code section 4684.50 (Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN)) are also not listed under the proposed Section 1399.365 exemptions. Ms. Macias gave examples including Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN) and Group Home for Children with Special Health Care Needs (GHCSHN).

Agenda Item 5: Discussion of Respiratory Care Board California Code of Regulations: title 16, section 1399.361.

Elaine Yamaguchi continued screen-sharing "Where LVNS Work" through Webex. Ms. Yamaguchi switched focus to a list of proposed tasks and services known to be included with RCB's proposed regulations (16 CCR 1399.361).

- Ms. Yamaguchi applauded RCB's responsiveness regarding the public response and the integration of public comment on forthcoming regulations.
- Ms. Yamaguchi opened discussion to gain public comment on the kinds of tasks and services where LVNs should be exempt from BPC Section 3765.
- The list shall be shared with the stakeholders separately.

Ileana Butu will review the list of proposed tasks and services before the document becomes public.

Public Comment:

Brenda@brklutzconsultingllc.com, Pediatric Day Health Care Coalition asserted that

some of the tasks on the proposed list require clarification to fully encompass tasks already being performed. Brenda offered an example where an individual may be sleeping “on oxygen” but will need to be transferred to a ventilator. The transfer itself is not covered within RCB’s current proposal for regulations. Brenda expects to offer this comment to the public comment period of the forthcoming regulation.

Denise Saucedo requested more stakeholder meetings going forward.

Elaine Yamaguchi reemphasized the 45-day public comment period for regulations. Ms. Yamaguchi empathized that it is difficult to plan the schedule of the rulemaking process due to its complexity. After the public comment period closes, RCB will read and address each substantive comment submitted by the public. They will report all comments to their board’s approval, with recommendations. RCB may then publish proposed changes creating a new 15-day comment period on the changes.

While the regulatory process proceeds, the State’s joint “sunset” committee will meet this coming Spring and will be reviewing RCB. Ms. Yamaguchi summarized the “sunset” process.

Public Request for Clarification:

Terry Milburn appreciated this further explanation of the regulatory process.

Ileana Butu relayed that the public may go to the OAL’s website, oal.ca.gov, to gain more insight into the rulemaking process, noting they have information about regulation adoption timelines.

Agenda Item 6 – Discussion of Possible Trainings

Elaine Yamaguchi:

- There are many respiratory care tasks that BVNPT believes within the scope of an LVN.
    - As the industries change, need for new skills will arise. BVNPT supports further training for LVNs by experts and specialists in the practice and equipment used in the field.
    - BVNPT supports a post-licensure certification that requires refreshment to be maintained. BVNPT staff have proposals for this training for RCB or the legislature during sunset review.

Denise Saucedo raised concerns for how long the proposed training process would be to implement, how much it will cost businesses to get training, and whether BVNPT has

sufficient staff for approving the training providers and post-licensure certificates. Ms. Yamaguchi confirmed, the length of time to implement will likely be great and the extra staff required to address it will take time to muster.

Keith Kasin referenced a previous comment discussing what respiratory tasks LVNs must learn within their nursing education. Keith asserts that without exemptions for the sites where LVNs train, LVNs will not get the training they require for licensure. With the increase in training for post-licensure certification being discussed, Keith asked whether the initial training of LVNs could be increased to reflect this higher demand. Keith also suggests that the facilities that nursing programs use could is benefit from increased training to prepare LVNs for the increased training requirements that future post-licensure certification may require.

Keith also proposed that directors of nursing and similar positions overseeing training also get access to the training required to become a post-licensure provider for basic respiratory tasks.

Sheri Coburn addressed the methods credentialed school nurses use to train their support staff such as LVNs in specialized healthcare procedures such as basic respiratory tasks. Ms. Coburn noted that California School Nurses Organization (CSNO) has created a learning management system for in-person or online education. CSNO has shared this knowledge and offered resources to the RCB. Ms. Coburn also offers this to BVNPT. Ms. Coburn advocated for any quality learning management system of quality.

Agenda Item 7: Discussion of Sunset process and timeline

Elaine Yamaguchi: Ms. Yamaguchi recognized that several topics were discussed in previous agenda items and will move forward to agenda Item #8.

Agenda Item #8: Discussion of LVN Scope at Education and Practice Committee

Elaine Yamaguchi said that stakeholders requested greater specificity in the regulations overseeing LVN scope of practice. This presents a challenge: regulating the scope of practice narrowly may hinder adaptation to the changing needs of the healthcare industry. BVNPT plans to start discussion of this challenge at the Education and Practice Committee meeting on February 4, 2026. She also noted that once BVNPT approves a recommendation to adjust the scope of practice for LVNs, it must be approved by the legislature.

Public Comment:
Jennifer McLelland asked for a clarification of the definition of "basic assessment" and "data collection" within LVN regulations. If LVNs can only collect data, how do they also perform such tasks as insert catheters or nasogastric tubes? Is there something written down that defines assessment to include other practical healthcare?

Ms. Yamaguchi deferred to Dr. Judith McLeod, Supervising Nursing Education Consultant.

Dr. McLeod noted that the scope of practice includes "technical and manual skills," such as inserting catheters. Basic assessment data collection as defined by BVNPT conflicts with what RCB defines as a basic assessment.

Sheri Coburn requested that the LVN regulations include language substantively similar to the language quoted from the Registered Nursing Act:

> "No state agency other than the Board may define or interpret the practice of nursing for those licensed pursuant to the provisions of this chapter or developed standardized procedures or protocols pursuant to this chapter unless so authorized by this chapter or specifically required under state or federal statute. State agency includes every state office, officer, department, bureau, board, authority, and commission."

Brenda@brklutzconsultingllc.com stated that finding the LVN scope of practice on the BVNPT website is not simple, and wonders if a master list will be on the website before the Education and Practice Committee.

Ms. Yamaguchi replied that the website should be updated for simplicity. The complete list of skills will not likely be posted until reviewed and approved by BVNPT's board members.

Agenda Item 9 – Invitation for Public Comment

Terry Milburn noted that parents get training for their tracheostomy- and ventilator-dependent children. Ms. Milburn asks if this kind of training could be used by an LVN for continuing education that would need to be refreshed. Would these hospitals or other such locations be appropriate to go back for their refreshed knowledge if the facility is willing to further train the LVN? Ms. Milburn also voiced that the training requirements for home health are rising.

Ms. Yamaguchi commented that it may be viable and also noted that the businesses that provide equipment also have training programs that provide training as needed

when they provide equipment.

Amber King on behalf of LeadingAge California said that the organization is concerned about the potential trauma to patients transferring from facilities to their home health without an LVN being able to provide care as inhibited by BPC Section 3765. Ms. King notes some communities will be impacted to a greater degree.

Fernando Lugo spoke of concern regarding the modifications of the scope of practice of LVNs within skilled nursing facilities. Such facilities tend to be understaffed without adding new staff requirements. Mr. Lugo fears the increased strain will cause further harm.

Yvonne Choong made her contact information available for those aiming to join the coalition for legislative action. Ms. Choong believes that the coalition will further grow as more communities become aware of how the Section 1399.365 changes impact them.

Keith Kasin asserted that the impact of BPC Section 3765 is great. His organization has heard this concern from a broad base of care providers. Mr. Kasin wants LVNs to maintain one consistent scope of practice over all locations.

Kevin Hogan offered concern that skilled nursing facilities will be so impacted, it would turn away patients. Mr. Hogan added concerns that BPC Section 3765 changes will impact registered nurse staffing to the detriment of facilities, as well. Combined, Mr. Hogan fears that patients will have to move back and forth between hospitals and skilled nursing facilities to the detriment of the patients.