

**TITLE 16. DIVISION 13.6. RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date:

No hearing date has been scheduled.

Subject Matter of Proposed Regulations:

Basic Respiratory Tasks and Services – Applicability to Exempt Settings

Section(s) Affected:

Section 1399.365 of Article 6 of Division 13.6 of Title 16, California Code of Regulations

Background and Statement of the Problem:

The Respiratory Care Board of California (Board) licenses and regulates respiratory care practitioners and is responsible for administering and enforcing the Respiratory Care Practice Act (Business and Professions Code (BPC) sections 3700–3779). The Board is authorized to adopt regulations necessary to carry out its statutory responsibilities (BPC § 3722).

Existing law provides that licensed vocational nurses (LVNs) are not authorized to perform respiratory care services except as expressly authorized by statute and regulations adopted by the Board. BPC section 3765, subdivisions (i) and (j), establish statutory exemptions authorizing LVNs who meet specified requirements to perform respiratory care tasks and services identified by the Board while working in home health and home and community-based settings.

In 2025, the Board adopted California Code of Regulations (CCR) section 1399.365 to identify basic respiratory tasks and services and to clarify that such tasks do not require a respiratory assessment. Following implementation, it became evident that clarification was necessary to ensure that the regulation was not applied to LVNs working in the exempt settings described in BPC section 3765, subdivisions (i) and (j).

To address this issue and maintain continuity of care while the Board completed regular rulemaking, the Board initially adopted an amendment to CCR section 1399.365 as an emergency regulation. The emergency amendment clarified that section 1399.365 does not apply to LVNs performing respiratory care services identified by the Board while working in exempt settings.

This rulemaking proposes to make that emergency amendment permanent without substantive change.

Anticipated benefits from this regulatory action:

This regulatory action is anticipated to promote clarity, consistency, and lawful practice by permanently clarifying the applicability of CCR section 1399.365. By codifying the exemption for LVNs working in the settings identified in BPC section 3765, subdivisions (i) and (j), the regulation reduces uncertainty and supports consistent interpretation and enforcement of existing law.

The regulation promotes patient safety and continuity of care by ensuring that respiratory care services in home and community-based settings may continue to be delivered consistent with legislative intent and existing statutory authority.

Specific purpose of, and rationale for, each adoption:

1. Subdivision (d) is amended in this rulemaking as follows:

(d) This section does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in any of the exempt settings listed, and under the conditions specified, in subdivisions (i) and (j) of section 3765 of the B&P.

- A. Purpose: Subdivision (d) 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).
- B. Rationale: This clarification is necessary to implement and make specific the statutory exemptions enacted by the Legislature. The amendment ensures that the Board's regulations are applied consistently with legislative intent and prevents misapplication of the regulation to the settings the Legislature expressly exempted.

Making the amendment permanent provides regulatory certainty, supports continuity of care, and promotes consistent statewide application of the law.

Underlying Data:

The Board relied upon the following technical, factual, and procedural materials in developing the proposed regulation:

1. BPC section 3765, subdivisions (i) and (j).
2. Materials from the Respiratory Care Board of California's November 14, 2025, Board meeting, including:
 - a) Agenda
 - b) Materials – Agenda Item 3
 - c) Meeting Minutes

Business Impact:

The Board has determined that the proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses. The regulation makes permanent an existing regulation and does not impose new 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.

Economic Impact Assessment:

The Board has determined that this regulatory proposal will have the following effects:

The proposed regulation will not create or eliminate jobs within the State of California because it makes permanent an existing regulatory amendment that implements statutory authority in BPC section 3765. The regulation clarifies the applicability of existing requirements and does not require businesses to hire or terminate employees or alter staffing levels.

The proposed regulation will not create new businesses or eliminate existing businesses within the State of California because it does not impose new licensing requirements, operational mandates, or compliance obligations. The regulation maintains the existing regulatory framework and provides continued clarity regarding lawful practice.

The proposed regulation will not affect the expansion of businesses currently doing business within the State of California because it does not restrict business operations or limit the provision of services authorized by statute.

This regulatory proposal benefits the health and welfare of California residents by promoting patient safety and consumer protection through clear and consistent regulatory guidance. By preventing misapplication of existing regulations, the proposal reduces uncertainty and supports continuity of care in home health and home and community-based settings.

This regulatory proposal does not affect worker safety because it does not establish or modify occupational safety standards or workplace safety requirements.

This regulatory proposal does not affect the state's environment because it does not regulate environmental activities or result in environmental impacts.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

The Board has determined that no reasonable alternative to the proposed

regulation would be more effective or less burdensome while achieving the purposes of the regulation and ensuring compliance with existing law.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.