

**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 (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 scheduled a public hearing on this proposed action. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held:

**Wednesday, August 7, 2024
1:00 pm
Department of Consumer Affairs
Headquarters 2
1747 North Market Blvd
HQ2 Peridot Room No. 280
Sacramento, CA 95834**

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 **Tuesday, August 6, 2024**.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3702.5 and 3722 of the Business and Professions Code (B&P), and to implement, interpret, or make specific B&P sections 2860, 3701, 3702, 3702.5, 3702.7, 3703, and 3765, the Board is considering addition of section 1399.365 of Division 13.6, Title 16 of the California Code of Regulations (CCR) as described herein.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

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

Senate Bill (SB) 1436 (Chapter 624, Statutes of 2022) became effective January 1, 2023, amending B&P section 2860 of the Vocational Nursing Practice Act to state

licensed vocational nurses (LVNs) may not provide respiratory care services and treatment, except LVNs who have received training and who demonstrate competency satisfactory to their employer may, when directed by a physician and surgeon, perform respiratory tasks and services expressly identified by the Board pursuant to subdivision (a) of Section 3702.5 of the B&P.

Existing law at B&P section 3702.5(a) 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. The Board currently has no regulations that further define, interpret, or identify basic respiratory tasks and services.

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.

This regulatory proposal will adopt 16 CCR 1399.365, which lists the broad categories of 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.

Anticipated Benefits of the Proposed Regulation

This regulatory proposal benefits the health and welfare of California residents by further defining, interpreting, and identifying basic respiratory tasks and services that may be safely performed by LVNs or other properly trained health care personnel consistent with the underlying statutory requirements. This will help ensure the most up-to-date standards and practices are met and will help protect patients in need of respiratory care.

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 ensure only qualified personnel are providing respiratory care beyond tasks and services that only require manual, technical skills, or data collection. In addition, all stakeholders (*i.e.*, health care practitioners,

facilities, employers, and patients) benefit by having a clear and precise understanding of which respiratory tasks and services may be performed by LVNs. Providing such clarity will overall enhance the timely delivery of health care monitoring and attention by maximizing resources of the health care teams to perform duties and functions at their skill levels without interruption to health care delivery or planning or reducing the quality of care delivered.

Evaluation of Consistency and Compatibility with Existing State Regulations

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

INCORPORATION BY REFERENCE

This proposal does not include any documents incorporated by reference.

DISCLOSURES REGARDING THIS PROPOSED ACTON

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: There is no fiscal impact to the State in the form of federal funding or any cost or savings to any state agency. The proposed regulation identifies basic respiratory tasks and services. The Board does not anticipate an increase in workload or costs resulting from the proposed regulations, and any workload and costs of implementation are a result of current law.

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 (and, if applicable, including any estimated costs of compliance or potential benefits of a building standard): None

BUSINESS IMPACT ESTIMATES

Business Impact

The Board has made an initial determination that the proposed regulatory action would have no 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.

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 determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and the state's environment: 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.

Business Reporting Requirements

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

Effect on Small Business

The Board determined the proposed regulation will not 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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation 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 during the written comment period or at the scheduled hearing.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the Contact Persons named in this Notice.

TEXT OF PROPOSAL

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

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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 PERSONS

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
Fax No.: (916) 263-7311
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
Fax No.: (916) 263-7311
E-mail: 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>.

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

PROPOSED LANGUAGE CONCERNING BASIC RESPIRATORY TASKS AND SERVICES

Legend—added text indicated by underline, deletion by ~~strikethrough~~.

Add section 1399.365 to read as follows:

1399.365 Basic Respiratory Tasks and Services

Pursuant to subdivision (a) of section 3702.5 of the Business and Professions code, basic respiratory tasks and services (“tasks”), described more specifically below, do not require a respiratory assessment, and only require manual, technical skills, or data collection. Basic respiratory tasks do not include manipulation of an invasive or non-invasive ventilator and do not include assessment or evaluation of chest auscultation. Basic respiratory tasks include:

- (a) Data collection.
- (b) Application and monitoring of the pulse oximeter.
- (c) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator. Basic respiratory tasks do not include pre-treatment assessment, use of medical gas mixtures other than oxygen, preoxygenation, endotracheal or nasal suctioning, or post-treatment assessment.
- (d) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation. Basic respiratory tasks do not include the initial setup, change out, or replacement of the breathing circuit or adjustment of oxygen liter flow or oxygen concentration.
- (e) Hygiene care including replacement of tracheostomy ties and gauze and cleaning of the stoma sites. Basic respiratory tasks do not include tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.
- (f) Use of a manual resuscitation device and other cardio-pulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
- (g) Documentation of care provided, which includes data retrieved from performing a breath count or transcribing data from an invasive or non-invasive ventilator interface.

NOTE: Authority cited: Sections 3702.5 and 3722, Business and Professions Code. Reference: Sections 2860, 3701, 3702, 3702.5, 3702.7, 3703, and 3765 Business and Professions Code.