

Item: Consideration of Finding of Emergency and Possible Action to Initiate Emergency Rulemaking for Proposed Amendments to CCR, Title 16, §1399.365, to Address Immediate Public Health and Safety Concerns.

Item Summary: The Board will consider making a Finding of Emergency relating to the implementation of CCR, Title 16, section 1399.365 and making a motion to authorize staff to initiate the emergency rulemaking process pursuant to Government Code §11346.1. Emergency regulations are proposed to address immediate public health and safety concerns regarding LVNs' ability to practice respiratory care tasks and services identified by the Board in home health and home and community-based settings. Approval will allow staff to prepare the emergency rulemaking package and submit the amended regulation to the Office of Administrative Law under the emergency rulemaking process, expediting implementation.

- Board Action:
1. President calls the agenda item and it is presented by or as directed by the President
 2. President requests motion on Finding of Emergency
 3. President may request if there is a second to the motion, if not already made.
 4. Board member discussion/edits (if applicable).
 5. Inquire for public comment / further Board discussion as applicable.
 6. Repeat motion and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain
 7. President requests motion to direct staff to take all steps necessary to complete the emergency rulemaking process, including the filing of the emergency rulemaking package with the Office of Administrative Law (OAL), authorize the Executive Officer to make any non-substantive changes to the emergency rulemaking text and documents, and adopt the proposed regulatory language as written in the Order of Adoption. If no adverse comments are received and the text is approved by OAL, authorize re-adoption as needed and authorize the staff to take all steps necessary to complete the regular rulemaking process, including setting the matter for a hearing if requested, to make the regulations permanent and adopt the proposed regulations at Title 16, CCR Section 1399.365, as noticed.- any other appropriate motion.
 8. President may request if there is a second to the motion, if not already made.
 9. Board member discussion/edits (if applicable).
 10. Inquire for public comment / further Board discussion as applicable.
 11. Repeat motion and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain

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.

Background

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 be 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.

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. Stakeholder Correspondence – Approximately 200 letters and written statements from providers, associations, and affected families.
3. 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.

RESPIRATORY CARE BOARD OF CALIFORNIA

ORDER OF ADOPTION

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

Amend Section 1399.365 as follows:

§ 1399.365. Basic Respiratory Tasks and Services

- (a) For purposes of this section, “assessment” means making an analysis or judgment and making recommendations concerning the management, diagnosis, treatment, or care of a patient or as a means to perform any task in regard to the care of a patient. Assessment as used in this section is beyond documenting observations, and gathering and reporting data to a licensed respiratory care practitioner, registered nurse, or physician.
- (b) For purposes of subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services do not require a respiratory assessment and include the following:
 - (1) Patient data collection.
 - (2) Application and monitoring of a 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 ties and gauze and cleaning of the stoma sites.
 - (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) Documentation of care provided, which includes data retrieved from performing a breath count or transcribing data from an invasive or non-invasive ventilator interface.
 - (8) Observing and gathering data from chest auscultation, palpation, and percussion.
- (c) For purposes of subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services do not include the following:
 - (1) Manipulation of an invasive or non-invasive ventilator.
 - (2) Assessment or evaluation of observed and gathered data from chest auscultation, palpation, and percussion.
 - (3) Pre-treatment or post-treatment assessment.
 - (4) Use of medical gas mixtures other than oxygen.
 - (5) Preoxygenation, or endotracheal or nasal suctioning.

- (6) Initial setup, change out, or replacement of a breathing circuit or adjustment of oxygen liter flow or oxygen concentration.
- (7) Tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.

(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 Business and Professions Code section 3765, subdivisions (i) and (j).

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.



California Association of Medical Product Suppliers
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THIS LETTER SENT VIA EMAIL

christine.molina@dca.ca.gov

November 11, 2025

Ricardo Guzman, President
Christine Molina, Executive Director
Respiratory Care Board of California
3700 Rosin Court, Suite 100
Sacramento, CA 95834

Re. California Code of Regulations, Title 16, Section 1399.365: Basic Respiratory Tasks and Services

Dear President Guzman & Director Molina:

I am writing on behalf of the California Association of Medical Product Suppliers (CAMPS) to urge your support for adoption of a “Finding of Emergency to Initiate Emergency Rulemaking for Proposed Amendments to California Code of Regulations, Title 16, §1399.365.”

We also wish to thank members of the Respiratory Care Board (RCB) for understanding the critical nature of the concerns raised at the October 24th Board meeting and for proposing an emergency rulemaking process that will allow Licensed Vocational Nurses (LVNs) in exempt settings to continue providing respiratory care services for those who choose to live at home and in community-based settings with their families.

We wish to restate our request that emergency regulatory language include clear authorization for LVNs in “exempt settings” who have received training from their employer to continue performing intermediate tasks & services until the RCB implements new training guidelines.

Secondly, we request that the Board establish a “training and compliance window” that will allow a sufficient amount of time for LVNS to complete the required training, and for facility administrators to ensure full compliance and a smooth transition before implementation deadlines take effect. Establishing a “training and compliance window” will also enable facility administrators to coordinate schedules, maintain staffing levels, and minimize disruption to daily operations while LVNs under their employ work toward meeting the new training requirements.

In closing, we wish to thank the Board for the opportunity for further conversations and engagement with stakeholders. We believe that medically fragile children and adults who are allowed to live in familiar environments surrounded by their families and support systems at home or in community-based settings are able to experience a greater sense of normalcy and

quality of life. Providing care in the home promotes emotional well-being, supports family involvement in care, and encourages independence.

We look forward to working with you to encourage LVNs to practice to the full extent of their skills and knowledge so that individuals with complex medical needs will continue to have the choice to safely reside in their homes and community-based settings.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria Peterson", with a long horizontal flourish extending to the right.

Gloria Peterson
Executive Director
California Association of Medical Product Suppliers



*Supporting People,
Health and
Quality of Life*

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Cassie Dunham
CEO/President

November 10, 2025

Ricardo Guzman, MA, RRT, RCP
President
Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834

Subject: 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

Sent via email

Dear Mr. Guzman:

The California Association of Health Facilities (CAHF) is submitting this letter regarding the proposal to initiate emergency rulemaking to amend California Code of Regulations, Title 16, §1399.365 in response to immediate public health and safety concerns. CAHF agrees with the Respiratory Care Board (RCB) that the regulations in effect will have serious negative impacts on patient safety and access to care and health facility operations in a wide range of healthcare and non-healthcare settings. Immediate regulatory action is required to prevent the serious harm and suffering that will occur when patients have to wait for a respiratory care professional (RCP) to perform respiratory care tasks such as ventilator adjustment and suctioning that had historically been performed safely, effectively and quickly by non-RCPs such as licensed vocational nurses (LVNs), practicing under physician and nurse supervision.

At the October 24, 2025 meeting of the RCB, there was extensive testimony from many patients, families and health care providers about the danger and disruption caused by these regulations in a range of settings. The RCB proposed to promulgate emergency regulations to state that §1399.365 does not apply to licensed vocational nurses working in any of the exempt settings listed in Business and Professions Code section 3765, subdivisions (i) and (j).

This proposed solution is insufficient because it does not address the negative impact that the regulations will continue to have in a wide range of other licensed health care settings such as skilled nursing facilities (SNFs) not delineated in statute. SNFs and other health providers have historically employed LVNs to safely perform these respiratory care functions, allowing facilities to expand the reach of their supply of health workers and improve the care available to their patients. Patients receiving care in these settings will continue to be at risk for harm even if the emergency regulations are approved because LVNs will still be prohibited from providing respiratory care services.

The RCB 's action to not enforce §1399.365 in these non-exempt settings unless there is gross negligence is also insufficient. Licensed health facilities, such as SNFs, are expected to be in full compliance with all laws and regulations as a condition of licensure and as contracted Medi-Cal providers. These facilities cannot allow their LVNs to practice beyond their scope of practice, even if the Board has stated that they are unlikely to enforce the regulation.

If §1399.365 is not amended to exempt application of the regulations to LVNs working in SNFs or to clearly allow LVNs to perform the respiratory care tasks that they have safely performed for decades in licensed health facilities, SNFs will be required to take steps to comply with §1399.365 through actions that may include discharging residents to settings where their respiratory needs can be met or limiting resident admissions to individuals who do not require respiratory care services. This will create major barriers to appropriate care for vulnerable patients. No additional funding has been provided for SNFs to hire RCPs who can provide respiratory care services beyond basic care as defined nor are RCPs readily available in many parts of the state, so it would be virtually impossible for SNFs to reorganize their staffing to immediately comply with §1399.365.

CAHF strongly urges the Board to amend §1399.365 to state that the section does not apply to LVNs performing respiratory care services for which the licensed vocational nurse has completed training satisfactory to their employer and when care is provided in a licensed health facility under the supervision of a licensed physician and surgeon or a registered nurse, as has historically been the case. This amendment is critical to ensure continuity of care and to respond to the immediate public health and safety issues that have been created by the adoption of §1399.365.

If the RCB lacks the statutory authority to amend §1399.365 as recommended, CAHF urges the RCB to seek urgency legislation to correct the current dangerous situation created by the adoption of these regulations, to ensure that LVNs who are trained and working under appropriate supervision can continue to perform respiratory care tasks for their patients.

If you have questions, please contact Yvonne Choong, Vice President, Policy at ychoong@cahf.org or (916)432-5205.

Thank you for your consideration and for your continued commitment to safe, high-quality respiratory care in California's skilled nursing facilities.

Sincerely,



Cassie Dunham
President and CEO

Cc: Kim Johnson, Secretary, California Health and Human Services Agency
Tomiquia Moss, Secretary, California Business, Consumer Services and Housing Agency
Richard Figueroa, Deputy Cabinet Secretary
Mandi Posner, Deputy Director, Center for Health Care Quality, California Department of Public Health
Michelle Baass, Director, California Department of Health Care Services
Kim Kirchmeyer, Director, Department of Consumer Affairs
Elaine Yamaguchi, Executive Officer, California Board of Vocational Nursing and Psychiatric Technicians
Christine Molina, Executive Officer, Respiratory Care Board of California.



Date: 11/10/2025

Sent via Email to: rcbinfo@dca.ca.gov

To: Members of the Respiratory Care Board

Subject: Emergency Regulations - CCR 1399.365 Basic Respiratory Tasks

Dear Members of the Respiratory Care Board,

I am writing on behalf of Arbor Rehabilitation and Nursing Center, a provider of care for residents in Skilled Nursing Facility (SNF), to submit our comments and concerns regarding the proposed emergency regulations, specifically CCR 1399.365 Basic Respiratory Tasks.

Since the announcement of these regulations, our facility has undertaken significant steps to ensure compliance. This has included additional staff training, revising our clinical protocols, and reallocating resources to meet the new regulatory requirements. Despite our best efforts, we have encountered several challenges, primarily due to workforce shortages and the unique needs of our patient population.

Registered Nurses are often required to step away from caring for their assigned patients to administer respiratory therapies. This can negatively affect the care of their other patients. We are very concerned that the current regulations, which do not account for the unique circumstances within Skilled Nursing Facilities (SNFs), may unintentionally jeopardize patient safety and restrict access to vital respiratory services. For example, there are times that there is only one RN in the building, with a census of 140, many of whom have respiratory therapies. Such staffing levels make it exceedingly difficult for nurses to provide timely and attentive care to all residents, particularly during periods of increased demand for respiratory services. Consequently, some patients may face delays in receiving critical respiratory treatments, potentially putting their health and well-being at risk.

Given these challenges, we strongly urge the Board to consider granting exemptions for SNFs within the emergency regulations. Our facilities serve highly vulnerable populations with complex needs, and a one-size-fits-all regulatory approach does not account for the realities we face daily. Providing exemptions or alternative compliance pathways for our settings would help ensure that our residents continue to receive timely, high-quality respiratory care without unnecessary disruptions or unnecessary hospitalizations.

We respectfully request that the Board either delay implementation of the emergency regulations or establish clear exceptions for SNFs. This will allow for further input from providers and the development of practical solutions that protect both patient safety and access to care.

900 North Church St., Lodi, CA 95240

TEL (209) 333-1222

www.ArborNursingCenter.com



Thank you for your consideration of these urgent concerns. We hope that the Board will recognize the widespread provider apprehension regarding these regulations and work collaboratively to find an approach that best serves all patients.

Sincerely,

Nicole Sparks, BSN RN
Director of Nursing
Arbor Rehabilitation and Nursing Center
nsparks@ensignservices.net



November 11, 2025

To: Respiratory Care Board of California

Subject: Concerns about implementation of CCR 1399.365 Basic Respiratory Tasks

Submitted via email to the Respiratory Care Board at rcbinfo@dca.ca.gov

On behalf of nearly 400 hospitals and health systems, including numerous affiliated home health agencies (HHAs), the California Hospital Association requests that the Respiratory Care Board (RCB) proceed expeditiously to initiate the emergency rulemaking process to address immediate public health and safety concerns regarding the ability of licensed vocational nurses to practice respiratory care tasks and services (CCR, Title 16, section 1399.365) in home and community settings. These comments are submitted for consideration at the board's Nov. 14 public meeting.

Hospitals are concerned about the limitations that the regulations impose on what tasks may be performed by licensed vocational nurses (LVN). Providers at all levels of the care continuum have historically employed LVNs to perform respiratory care and services. Limiting the ability of qualified LVNs to perform respiratory tasks for which they are fully trained and qualified will impede patient access to care and limit Californians' ability to reside in the least restrictive setting of their choice. Individuals who would otherwise choose to live at home or in a community setting will no longer be able to, due to the lack of available respiratory care services created by these limitations.

The board has recognized the need to address access to services in home and community settings by establishing an exemption for LVNs working in these settings. To that end, the board should take immediate action to reiterate and clarify the provisions of Business and Professions Code 3765 (i), which provides for an exemption for respiratory care and services provided by LVNs employed by a home health agency licensed by the state Department of Public Health. This action is necessary to ensure that patients served by these agencies do not experience harmful interruptions of care.

Impact on Admissions and Continuity of Care

The restrictions currently imposed by the regulations limit HHAs' ability to accept patients with respiratory care needs. Home and community-based providers that rely on LVNs to provide respiratory support may no longer be equipped to manage patients with even moderate respiratory needs. This inability to receive medically necessary care in home and community settings will lead to harmful and costly delays in hospital discharge, as well as otherwise avoidable transfers to hospital emergency departments.

Staffing Challenges and Workflow Disruptions

This regulation forces a significant reconfiguration of staffing models. HHAs will need to increase registered nurse (RN) or respiratory therapist (RT) staffing to cover routine procedures formerly

provided by LVNs. However, ongoing nationwide health care workforce shortages make such adjustments impractical. A reallocation of responsibilities also reduces the time RNs and RTs have for other patient care activities, further stretching limited resources.

Increased Costs and Operational Burden

With more responsibilities falling on higher-paid staff, operational costs will rise. Providers will face increased overtime, a greater reliance on agency staffing, or even the need to restructure care delivery models.

In summary, CHA supports the board's goal of ensuring that only appropriately qualified personnel provide specialized patient care. Significant concern remains, however, that the current delineation of basic tasks does not recognize that many of the tasks noted as outside the scope of LVNs are in fact currently included in LVN prelicensure training and practiced in the LVN clinical rotation. This is noted in formal recommendations advanced by the Board of Vocational Nursing and Psychiatric Technicians and submitted to the RCB.

LVNs are essential members of the care team, particularly in home and community-based settings. With appropriate supervision and training, they can provide safe and appropriate care. Providing for the ability of all members of the clinical team, including LVNs, to work within their full scope of practice is critical to our shared goal of meeting the care needs of the full range of patients and residents we serve.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pat Blaisdell", with a stylized, flowing script.

Pat Blaisdell
Vice President, Policy
California Hospital Association



November 11, 2025

Christine Molina, Executive Officer
Respiratory Care Board of California
3750 Rosin Court, Suite 100
Sacramento, CA 95834

Re: Impact of CCR Title 16, Section 1399.365 – Basic Respiratory Tasks and Services on Long-Term Care

Dear Ms. Molina,

Paradise Valley Estates is writing to share our significant concern with the newly implemented regulations defining basic respiratory tasks and services and how it is impacting the delivery of long-term care in California.

We applaud RCB for setting up a meeting on November 14 to discuss the emergency regulations to exempt the home health and other exempted providers from compliance with the Basic Care regulations.

However, we urge you to consider setting another emergency meeting, as soon as possible, to discuss delaying and phasing in the implementation of the regulations for all settings, whether home based, community based or in licensed settings.

Paradise Valley Estates is a life plan community consisting of independent living, assisted living, memory care, and skilled nursing. Retired military officers from a nonprofit organization founded our community in 1997. We still have a strong military presence, but several years ago we began accepting non-veterans into our community. So, our residents represent a variety of backgrounds, careers, faiths, and lifestyles. Paradise Valley Estates strives to provide services and care for these residents, supporting them in being able to age in place within their home.

The newly adopted California Code of Regulations, Title 16, Section 1399.365, significantly narrows the respiratory care services that can be performed by non-respiratory care professionals, and will increase healthcare labor costs and reduce access to care for vulnerable residents. These services have been provided safely for decades by trained and experienced non-respiratory care professionals, practicing under physician and registered nurse supervision.

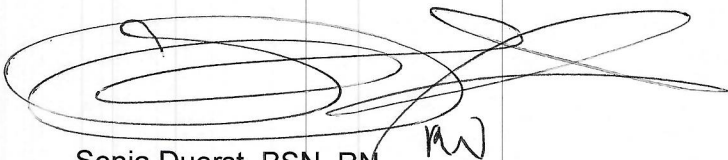
Unfortunately, these regulations are disproportionately impacting long-term care providers that rely on licensed vocational nurses (LVNs) to perform these respiratory care tasks under their scope of practice in skilled nursing facilities (SNFs), residential care facilities for the elderly (RCFEs) and community care settings. LVNs play a critical role in the long-term care workforce, particularly with the shortage and maldistribution of available RNs.

Compliance with these regulatory requirements is presenting significant—and in some cases insurmountable—challenges for long-term care providers. Paradise Valley Estates employs LVNs in our wellness clinic, assisted living, memory care, and skilled nursing facility. If our LVNs are unable to perform respiratory care tasks, our residents may no longer be able to age in place at their home because they will no longer be able to receive such services. Again, RNs are not as available to long-term care facilities, much less RCFEs. Our LVNs are critical in providing care to our residents and maintaining their health, and without their support in being able to perform respiratory care tasks our residents will suffer, whether it is increased hospitalizations or needing to transition to higher levels of care or outside facilities that have RNs to provide respiratory care services.

Considering these challenges, Paradise Valley Estates respectfully requests the Board suspend, phase-in, or provide exemptions to the requirements in California Code of Regulations, Title 16, Section 1399.365 to ensure continuity of care for older adults can be achieved.

If you have any questions or would like to discuss our challenges in greater detail, please do not hesitate to contact me directly at 707-207-7860

Sincerely,

A handwritten signature in black ink, appearing to be 'Sonja Duerst', with a large, stylized flourish extending to the right.

Sonja Duerst, BSN, RN
Clinical Services Director
Paradise Valley Estates

Christine Molina
Executive Director
Respiratory Care Board of California
3750 Rosin Court, Suite 100
Sacramento, CA 95834

SUBJECT: PROPOSED AMENDMENTS TO CCR TITLE 16 SECTION 1399.365 AND 1399.361

Dear Ms. Molina,

The undersigned educational agencies are writing to provide public comment on the proposed emergency regulations at CCR Title 16 Section 1399.365 and the proposed new regulations at CCR Title 16 Section 1399.361. Schools are a vital part of the community-based network that serves individuals with respiratory needs, and we require the full scope of exemptions proposed for other community-based settings. While the recently-signed Senate Bill (SB) 389 accomplishes a small part of this goal, we urge our inclusion in both the proposed emergency regulations and new proposed regulations to ensure we are able to continue providing students with the fair and equitable access to education that they are guaranteed under the federal Individuals with Disabilities Education Act (IDEA).

SB 389 allows a Licensed Vocational Nurse (LVN) employed by an educational agency to perform “suctioning and other basic respiratory tasks and services.” However, this language points back to the phrase “other basic respiratory tasks and services” in CCR Title 16 Section 1399.365, which has already been determined to be prohibitively restrictive in community settings. While we appreciate the authority to provide suctioning to our students via LVNs, there are other services that staff routinely perform in schools, as is done in other home and community-based settings, that are necessary to safely allow the student to engage in their daily activities and access their instructional program. With limited exception, the tasks enumerated in Section 1399.365 are currently prohibited, and SB 389 does not provide the necessary authorization for school staff other than credentialed school nurses to continue performing these functions. Of the tasks enumerated in 1399.365 (c), school-based LVNs may now only perform (c)(5) and one part of (c)(7). Qualified trained school staff do not currently have authority to perform:

- (1) Manipulation of an invasive or non-invasive ventilator.
- (2) Assessment or evaluation of observed and gathered data from chest auscultation, palpation, and percussion.
- (3) Pre-treatment or post-treatment assessment.
- (4) Use of medical gas mixtures other than oxygen.
- ~~(5) Preoxygenation, or endotracheal or nasal suctioning.~~
- (6) Initial setup, change out, or replacement of a breathing circuit or adjustment of oxygen liter flow or oxygen concentration.
- ~~(7) Tracheal suctioning,~~ cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.

Without the specific addition of schools’ ability to perform these ancillary functions, SB 389’s intention to authorize LVNs for school-based suctioning and respiratory health care cannot be

achieved or realized. We are concerned that failure to authorize additional actions will result in students suffering a respiratory emergency that could otherwise be avoided. While LVNs in school settings are supervised by a credentialed school nurse, there are circumstances, such as transportation to and from school, in which a school nurse would not be immediately available. For these reasons, it is critical that LVNs and other qualified trained school staff be permitted to continue to perform the respiratory services that they have performed for decades without ill effect.

The new regulations proposed in Section 1399.361 further complicate the matter if schools are not included as an additional exempted community-based setting. Under IDEA, schools are required to serve all students with a wide variety of health care needs in the least restrictive environment possible, in collaboration with the child's primary care provider or other medical specialists. Given the requirements of IDEA, and the established right to a public education, districts have no authority to decline to serve a student, or to place a student in a specialized classroom or setting if placement in a typical classroom is possible. School nurses and other qualified trained school staff must retain the ability to flexibly support students in the manner most appropriate to their individualized education plan. This authority is specified in Education Code Section 49423.5 (a), and includes the authority, granted in subdivision (a)(2), for a school nurse to delegate tasks to "Qualified designated school personnel trained in the administration of specialized physical health care."

For these reasons, we respectfully request that school districts operating pursuant to Education Code 49423.5 be fully excluded from the proposed emergency regulations in Section 1399.365 and considered in any proposed rulemaking in Section 1399.361. We have provided language below that we believe would allow schools to continue to safely serve students with qualified staff under the supervision of a credentialed school nurse as we have done for decades.

We appreciate your attention to this issue.

Sincerely,

Anna Ioakimedes

Legislative Advocate

Los Angeles Unified School District

Sheri Coburn, EdD, MS, RN, PHN, RCSN

Executive Director

California School Nurses Organization

Lucy Salcido Carter

Director of Policy and Governance

Alameda County Office of Education

Serette Kaminski

Legislative Advocate

Association of California School Administrators

Leticia Garcia

Chief Governmental Relations Officer

Riverside County Office of Education

Proposed Amendment to CCR Title 16 Section 1399.365

(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 Business and Professions Code section 3765, subdivisions (i) and (j) *and in school settings under subdivision (l).*

Proposed Amendment to CCR Title 16 Section 1399.361

§ 1399.361. Exemption for Licensed Vocational Nurses to Perform Specified Respiratory Care Tasks and Services

(a) For the purposes of subdivisions (i), ~~and (j)~~ and (l) of section 3765 of the Business and Professions Code, which authorizes licensed vocational nurses (LVN) working in specified home and community-based settings to perform respiratory care tasks and services identified by the Board, a LVN may perform the respiratory care tasks and services set forth in this section, provided all conditions of this section and section 3765 are satisfied. This section shall be operative in accordance with the dates set forth in subdivisions (i) and (j)(3) of section 3765 of the Business and Professions Code.

(b) A LVN may perform the respiratory tasks and services identified in subdivision (d) provided all of the following requirements are met:

(1) The respiratory task or service shall be performed pursuant to a valid and lawful order issued by a physician and surgeon licensed in California.

(2) The employer or responsible entity shall document, in writing, that the LVN:

(A) Holds a current and valid license issued by the Board of Vocational Nursing and Psychiatric Technicians of California.

(B) Has met all training and competency requirements specified in subdivisions (i) and (j) of section 3765 of the Business and Professions Code, if applicable, and any regulations adopted by the Board.

(3) Documentation required under subdivision (b)(2) shall be maintained by the employer or responsible entity for a period of four years from the date the LVN's most recent training is completed and shall be made available to the Board upon request.

(4) For purposes of this section, "employer or responsible entity" means:

(A) In a facility-based or agency-based setting, the licensed facility operator or employing agency.

(B) In the case of an individual nurse provider or private duty nurse arrangement where no licensed facility or agency serves as the employer, the LVN shall be considered the responsible entity.

(C) In a school setting, the local education agency, or employing agency.

(c) An LVN may perform the respiratory tasks and services identified in subdivision (d) of this section only in the settings specified in subdivisions (i), ~~and (j)~~ and (l) of section 3765 of the Business and Professions Code.

(d) An LVN may perform the following respiratory care tasks and services, subject to the limitations in subdivisions (a) through (c) of this section.

November 13, 2025

Secretary Kim Johnson
California Health and Human Services Agency
1215 O St, Sacramento, CA 95814
Via email at kim.johnson@chhs.ca.gov

Director Pete Cervinka
P.O. Box 944202
Sacramento, CA 94244-2020
Via email at pcervinka@dds.ca.gov

Director Michelle Baass
California Department of Health Care Services
P.O. Box 997413, MS 0000
Sacramento, CA 95899-7413
Via email at Michelle.Baass@dhcs.ca.gov

Copy to Respiratory Care Board of CA via email at rcbinfo@dca.ca.gov

**Subject: Urgent Request for Action to Preserve Access to
Respiratory Care for Disabled Californians**

Dear Secretary Johnson and Directors Baass and Cervinka:

Disability Rights California (DRC) and the National Health Law Program (NHeLP) write to express deep concern regarding the recent regulatory changes that have rendered it illegal for Licensed Vocational Nurses (LVNs) to perform essential respiratory care tasks as of October 1, 2025.¹ These changes, driven by the Respiratory Care Board's (RCB) interpretation of the Business and Professions Code, redefine "care related to breathing" in a way that excludes LVNs from providing life-sustaining services to disabled individuals

¹ Basic Respiratory Tasks and Services codified at California Code of Regulations, title 16, section 1399.365.

Re: Urgent Request for Action to Preserve Access to Respiratory Care for Disabled Californians

receiving Medi-Cal Funded Home and Community-Based Services (HCBS) and Long-Term Services and Supports (LTSS) services.²

Services and settings impacted include Private Duty Nursing (PDN) for adults and children, (authorized through all delivery systems – California Children’s Services (CCS), Fee for Service (FFS) Medi-Cal, Medi-Cal Managed Care, Community-Based Adult Services (CBAS) programs, school settings, Intermediate Care Facilities-Developmentally Disabled Nursing (ICF-DDN) and Continuing Nursing (ICF-DD-CNC), Congregate Living Health Facilities (CLHF), and Adult Residential Facilities for Persons with Special Healthcare Needs (ARFPSHNs).

What this means is that the LVNs currently providing nursing care to thousands of disabled children and adults who receive daily in-home or in-school nursing services are doing so in violation of the law. These changes threaten the health, safety, and independence of thousands of disabled Californians who rely on LVNs for daily care in home health, group homes, day programs, schools, and long-term care facilities. For context on the size of the impact, in the Home and Community-Based Alternatives Waiver (HCBA) alone, there are 3,648 individuals receiving LVN care, and 508 who receive Registered Nursing care.³

Why This Matters:

California’s HCBS system of care is built on an LVN staffing model due in part to the shortage of RNs in the state and nationwide. LVNs provide the vast majority of hands-on care for disabled individuals

² While there is an exemption in school-based settings, it is not effective until January 1, 2026. Senate Bill 389, Chaptered October 10, 2025, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB389.

³ <https://www.dhcs.ca.gov/services/ltc/Documents/HCBA-Waiver-CAR0605.pdf>. At p. 405.

Re: Urgent Request for Action to Preserve Access to Respiratory Care for Disabled Californians

with respiratory needs. The sudden removal of LVNs from this role—without a replacement plan—will dismantle the care infrastructure and unnecessarily force disabled people into institutional settings and place disabled people at risk of serious adverse outcomes including injury or death due to shortage of allowable care providers as a result of RCB's regulation.

Who Is Impacted:

There are hundreds of thousands of impacted individuals including:

- Children and adults with tracheostomies, ventilators, CPAP/BiPAP machines, or oxygen support
- Individuals in ICF-DD-CNC, ARFPSHN homes, Group Homes for Children with Special Healthcare Needs (GHCSHN), Congregate Living Health Facilities, and other licensed facilities
- Participants in Pediatric Day Health Centers and day programs
- Participants in Community-Based Adult Services (CBAS) programs
- Students requiring nursing care in schools
- Residents of state hospitals and correctional institutions
- Individuals in subacute hospitals and nursing homes.

Immediate Issues:

In terms of implementation, no workable plan or allocated budget exists to replace LVNs with Registered Nurses (RNs) or Respiratory Therapists (RTs). And even if there were a plan, the cost of authorizing RN level care in lieu of currently authorized LVN care would be astronomical. As a result, people with disabilities in the community face institutionalization, injury, or death due to care disruptions. Likewise, care facilities are at risk of closure, as they are unable to meet staffing mandates without rate increases to allow

Re: Urgent Request for Action to Preserve Access to Respiratory Care for Disabled Californians

them to hire RNs or Respiratory Therapists.

In addition to the harm to people with disabilities, LVNs now face untenable choices between violating the law or abandoning patients by failing to provide timely life sustaining care that they are already trained to provide and have safely provided for long periods of time.

Legal and Regulatory Framework:

The “Respiratory Care Practice Act,” establishes the Respiratory Care Board (RCB) which enforces and administers the Act.⁴ The Board’s authority is broad: “[n]o other state agency may define or interpret the practice of respiratory care for those licensed pursuant to the Act..... unless authorized by this chapter or specifically required by state or federal statute.”⁵

While Business and Professions Code § 3765 (i) and (j) were intended to provide exemptions for LVNs in home and community-based settings, this section of the code is not effective **until 2028**. The rulemaking packages to implement these exemptions are delayed until 2026–2028. This leaves a dangerous gap in care access for years, with no legal pathway for LVNs to continue providing respiratory care in the interim.

DRC and NHeLP respectfully urge CalHHS, DHCS and DDS to:

1. Clarify the legality of LVNs continuing to provide respiratory care under Medi-Cal-funded programs in exempt HCBS settings.

⁴ Business and Professions Code § 3700 et seq. Regulations implementing the Act are found in Title 16 C.C.R. § 1399.300 et seq.

⁵ Business and Professions Code § 3702.5.

Re: Urgent Request for Action to Preserve Access to Respiratory Care for Disabled Californians

2. Coordinate with RCB and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) to expedite emergency rulemaking or guidance that preserves the availability of respiratory care provided by LVNs in home and community settings.
3. Engage stakeholders to develop interim solutions that prevent institutionalization and loss of life.
4. Ensure Medi-Cal reimbursement policies reflect the reality of care delivery and account for the increased costs facilities will incur to transition from staffing primarily LVNs to staffing RNs and RTs as needed.

Proposed Emergency Rulemaking from RCB

The RCB has scheduled a public meeting on 11/14/2025 for the following purposes;

1. 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, and
2. Consideration and Possible Action to Initiate a Rulemaking for the Proposed Regulation to Adopt California Code of Regulations, Title 16, §1399.361, Home and Community-Based Respiratory Tasks and Services

DRC and NHeLP ask that CalHHS, DHCS and DDS actively engage with RCB to ensure that the proposed amendment to California Code of Regulations, Title 16, §1399.365 adequately ensures continued access to LVN care in community-based settings, including care received in schools. After ensuring that a short-term fix is in place to prevent catastrophic disruptions in care, CalHHS, DHCS and DDS should collaborate closely with RCB to develop the guidelines for

Re: Urgent Request for Action to Preserve Access to Respiratory
Care for Disabled Californians

determining what will be considered allowable “basic” and
“intermediate” respiratory care going forward. Again, it is essential to
ensure that the regulations promulgated under California Code of
Regulations, Title 16, §1399.361 protect continued access to critical
community-based healthcare and nursing services. Advocates stand
ready to collaborate with DHCS to protect access to care and uphold
the rights of individuals with disabilities to live safely and
independently in their communities.

Thank you for your attention to this urgent matter.

Sincerely,



Anna Leach-Proffer
Managing Attorney
Disability Rights California



Elizabeth Zirker
Senior Attorney
National Health Law Program

Also in support,

Hagar Dickman
Justice in Aging (JIA)

Silvia Yee
Disability Rights Education and Defense Fund (DREDF)



November 13, 2025

Respiratory Care Board of California
3750 Rosin Court, Suite 100
Sacramento, CA 95834

Submitted to rcbinfo@dca.ca.gov

Re: Public Comment for Respiratory Care Board Meeting, November 14, 2025, Agenda Item 3, 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

Dear Honorable Members of the Respiratory Care Board of California:

The State Council on Developmental Disabilities (SCDD) disrupts systems to make them work better – more effective, efficient, agile, and accountable – for Californians with intellectual and developmental disabilities and their families. In this role, the Council appreciates the opportunity to comment on the Board's consideration of rulemaking to adopt Title 16, California Code of Regulations, §1399.361, which concerns home and community-based respiratory tasks and services.

During the Board's October 24, 2025 meeting, members discussed the need for a regulatory framework that supports safe, appropriate respiratory care in home and community settings. We recognize the importance of this work and offer the following perspective to support the Board as it initiates this rulemaking process.

For individuals with significant disabilities, access to in-home respiratory support is essential to maintaining health, stability, and the ability to remain safely in their communities. Without a clear regulatory pathway, some individuals may face gaps in care or find themselves at risk of unnecessary transfers from their homes into institutional environments such as subacute care facilities.

Federal disability rights laws require that services be provided in the most integrated setting appropriate. The Americans with Disabilities Act and the U.S. Supreme Court's *Olmstead v. L.C.* decision affirm that unjustified institutionalization constitutes discrimination. In *Olmstead*, the Court recognized that people with disabilities have a



civil right to receive services in their own homes and communities rather than being unnecessarily isolated in institutions.

For these reasons, the Council supports the Board's effort to establish regulations that enable individuals to receive necessary respiratory care in home and community settings while safeguarding health and safety. We also support development of clear standards that prevent unnecessary institutionalization and ensure continuity of care for individuals who rely on respiratory services.

The State Council welcomes the opportunity to share additional information, engage with Board staff, and work collaboratively on regulatory language that meets medical needs while protecting the civil rights of people with disabilities. Please feel free to contact me at 818-903-1864 or christofer.arroyo@scdd.ca.gov.

Thank you for consideration of these comments,

Christofer Arroyo

Digitally signed by Christofer Arroyo
Date: 2025.11.13 17:46:42 -08'00'

Christofer Arroyo
Deputy Director of Policy and Public Affairs
State Council on Developmental Disabilities