Item: Discussion and Possible Action in Response to Implementation of California Code of Regulations section 1399.365: Basic Respiratory Tasks and Services

Item Summary: The Respiratory Care Board's regulation on Basic Respiratory Tasks and Services (16 CCR § 1399.365) took effect on October 1, 2025, establishing clear parameters for which respiratory tasks are considered basic, those that may be performed without a respiratory assessment, and distinguishing them from tasks that require assessment by a licensed respiratory care practitioner or another authorized healthcare provider.

Implementation across most healthcare settings has proceeded smoothly, supported by outreach to more than 1,200 facilities, coordination with the California Department of Public Health and the Department of Health Care Services, and publication of educational materials for licensees and employers.

The regulation currently applies across healthcare settings, including home health and home and community-based settings referenced in Business and Professions Code sections 3765(i) and (j). These provisions identify settings that will qualify for exemptions once the Board adopts additional regulations defining the specific respiratory tasks and corresponding training and competency requirements for those environments. Until that process is complete, providers in these settings remain subject to section 1399.365, and several have requested clarification regarding how the regulation interacts with the statutory framework and affects delegation and staffing practices.

Board Action:

1. President calls the agenda item and it is presented by or as directed by the President
2. President facilitates Board discussion regarding the implementation of California Code of Regulations, Title 16, Section 1399.365.
3. Board may consider and take appropriate action as determined following discussion.

RESPIRATORY CARE BOARD
OF CALIFORNIA
Public protection is our highest priority

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August 6, 2025

Faciltiy Name
Facility Address 1
Facility Address 2

Subject: Implementation of New Regulation on Basic Respiratory Care Tasks and Services

The Respiratory Care Board of California (RCB) would like to inform you of a newly approved regulation that may affect your facility's delegation of respiratory care duties and staffing practices. On June 5, 2025, the Office of Administrative Law approved the RCB's regulation concerning Basic Respiratory Tasks and Services, now codified under California Code of Regulations, title 16, section 1399.365. This regulation was filed with the Secretary of State and will take effect on **October 1, 2025**.

To support your facility to prepare for timely implementation, we are enclosing a copy of the new regulation for your review. It can also be accessed on the RCB's website at: https://rcb.ca.gov/enforcement/reg_updates_basic_tasks.shtml

Overview of the Regulation

This regulation was adopted under the authority granted to the RCB by Senate Bill 1003, codified as Business and Professions Code section 3702.5, which authorizes the Board to define, interpret, and identify basic respiratory care tasks and services that do not require a respiratory assessment.

This regulation clearly defines which basic respiratory care tasks and services may be performed without the need for a respiratory assessment or evaluation. It is designed to guide safe delegation practices across all healthcare settings by identifying tasks that may be performed by non-respiratory care personnel (such as licensed vocational nurses) within specific limits, and those tasks that remain the exclusive responsibility of licensed respiratory care practitioners (RCPs) and may not be delegated under any circumstance.

Recommended Steps for Your Facility:

- **Review the Regulation Thoroughly**
  Ensure administrative, respiratory therapy, and nursing leadership are familiar with the scope and limitations of the regulation.

- **Assess Your Current Practices**
  Determine whether any respiratory-related tasks currently performed by non-RCP personnel comply with the new regulation.

- **Discontinue Non-Compliant Practices**
  Any practices involving non-RCP personnel performing tasks not authorized under the regulation should be discontinued immediately.

- **Update Policies, Procedures, and Training**
  Revise job descriptions, delegation protocols, policies, and internal training materials to align with the regulation's requirements.

To assist in this process, we have enclosed a **Facility Self-Audit Tool** to help your team understand the regulation, evaluate current practices, and plan any necessary adjustments to ensure compliance by the October 1, 2025, effective date.

We understand that adapting to a new regulation takes time and thoughtful planning, which is why we are notifying you in advance. Our goal is to ensure your facility has the necessary time and resources to comply fully while continuing to provide safe, high-quality care.

If you have any questions or need further clarification, please don't hesitate to contact the RCB at rcbinfo@dca.ca.gov or (916) 999-2190.

As always, the RCB's mission is to protect the health and safety of California consumers. We value the vital role your facility plays in providing respiratory care and appreciate your partnership in meeting this new regulation.

Sincerely,

Christine Molina, Executive Officer
Respiratory Care Board of California

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

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.

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.

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Frequently Asked Questions (FAQs)

New Regulation on Basic Respiratory Tasks and Services - Effective October 1, 2025
Issued by the Respiratory Care Board of California

1. **What is this regulation about?**
   Effective October 1, 2025, California Code of Regulations, title 16, section 1399.365 defines which basic respiratory tasks and services may be safely performed and provided by non-respiratory care personnel (such as LVNs or CNAs), and which tasks are considered advanced and must only be performed by a licensed Respiratory Care Practitioner (RCP). The regulation aims to protect patient safety and improve clarity for delegation decisions.

2. **Who must follow this regulation?**
   This regulation applies to all personnel in healthcare settings where respiratory care services may be delivered, including skilled nursing facilities, subacute facilities, long-term care centers, and any setting where non-RCP personnel are involved in respiratory-related tasks.

3. **Can LVNs or CNAs perform basic respiratory care tasks?**
   Yes, LVNs and CNAs may perform the basic respiratory tasks listed in subsection (b) of Section 1399.365, as long as no respiratory assessment is required and the task is within their scope of practice, training, and under appropriate supervision.

4. **What are examples of allowable basic respiratory tasks for LVNs and CNAs?**
   Tasks that do not require respiratory assessment and may be performed by LVNs, CNAs, or other trained non-RCP staff include:
   (1) Collecting patient data.
   (2) Applying and monitoring a pulse oximeter.
   (3) Administering medications by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator.
   (4) Replacing heat moisture exchangers and oxygen tanks for patients using non-invasive mechanical ventilators.
   (5) Providing hygiene care, including changing the tracheostomy ties, replacing gauze, and cleaning around the stoma site.
   (6) Using a manual resuscitation device in the event of an emergency.
   (7) Documenting care provided, including recording information like breath counts or transcribing data from an invasive or non-invasive ventilator interface.
   (8) Observing and gathering data from chest auscultation, palpation, and percussion.

5. **Can LVNs or CNAs manipulate ventilator settings?**
   No. This is an excluded tasks under subsection (c)(1) of section 1399.365.

6. **Can an LVN suction a patient's tracheostomy?**
   No. This is an excluded task under subsection (c)(5) of section 1399.365.

7. **Can LVNs or CNAs collect breath counts or document data from a ventilator screen?**
   Yes. As long as they are not interpreting the data and are simply transcribing or documenting it, these activities are permitted under subsection (b)(7).

8. **Can a CNA clean around a tracheostomy site or change the dressing?**
   Yes. Hygiene tasks such as replacing gauze or cleaning the stoma sites are allowed (see subsection (b)(5)). However, any manipulation of the tracheostomy tube, inner cannula, or cuff is not allowed (see subsection (c)(7)).

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9. **Does this regulation change the scope of practice for RCPs, LVNs, CNAs, or other healthcare personnel?**
   No. Section 1399.365 does not expand or restrict the existing legal scope of practice for any healthcare professional. It simply defines which basic respiratory tasks may be performed without a respiratory assessment under Section 3702.5 of the Business and Professions Code.

   Any task not listed in subsection (b) must still fall within the healthcare professional's existing legal scope, and nothing in this regulation should be interpreted to authorize personnel to act outside their licensure, certification, or training requirements. Employers are responsible for ensuring all personnel act within their legally defined roles.

10. **Are we required to hire RCPs to comply with this regulation?**
    If your facility currently delegates tasks to non-RCPs that require a respiratory assessment, then yes, personnel adjustments may be required. However, the regulation does not require RCPs to be employed unless such services are being provided.

11. **What steps should our facility take to comply with the regulation by October 1, 2025?**
    a) Review the regulation in detail
    b) Audit current staffing and delegation practices using the Facility Self-Audit Tool
    c) Discontinue any non-compliant tasks by non-RCPs
    d) Revise policies, job descriptions, and training
    e) Educate staff on the appropriate scope of practice

12. **Will the RCB provide resources to help our facility comply with the regulation?**
    Yes. To assist facilities in understanding and implementing the new regulation, the RCB has developed several resources, including:
    - A Facility Self-Audit Tool to help you assess your current delegation practices and identify areas that may need adjustment.
    - FAQ sheets to clarify key aspects of the regulation and answer common questions from the perspective of RCPs, LVNs, employers, and the public.

    You can find updates, tools, and other resources related to the regulation on the RCB's website at: https://rcb.ca.gov/enforcement/reg_updates_basic_tasks.shtml

    We encourage facilities to check the website periodically for the most current information and additional compliance tools.

13. **What are the consequences for noncompliance?**
    Noncompliance may lead to investigation or enforcement action by the RCB. The RCB is currently focused on education and assisting healthcare facilities achieve timely voluntary compliance but expects all facilities to meet regulatory requirements by the effective date of October 1, 2025.

14. **Who can we contact for more information?**
    Email: rcbinfo@dca.ca.gov
    Phone: (916) 999-2190
    Website: https://www.rcb.ca.gov
    Regulation Link: https://rcb.ca.gov/enforcement/reg_updates_basic_tasks.shtml

Thank you for your commitment to patient safety and for working with us to implement this important regulation. Your dedication to providing high-quality care is essential in protecting the health and well-being of all Californians.

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Facility Self-Audit Tool

Basic Respiratory Tasks & Services – Compliance Checklist

(For Internal Use – Not for Submission)

Use this tool to assess whether your facility is in alignment with California Code of Regulations, title 16, section 1399.365 before the October 1, 2025, compliance deadline.

Audit Item	Yes	No	N/A	Notes / Actions Needed
Facility leadership and relevant management have reviewed the new respiratory tasks regulation (CCR §1399.365) and understand its requirements.	☐	☐	☐	
An inventory of respiratory care tasks currently performed by LVNs, CNAs, or other non-RCP staff has been created.	☐	☐	☐	
The facility has identified which of those tasks non-RCPs are permitted to perform, and which require RCP performance under the regulation.	☐	☐	☐	
All respiratory care tasks that require clinical judgment, respiratory assessment, or adjustment (such as suctioning, tracheostomy care, oxygen titration) are performed exclusively by RCPs.	☐	☐	☐	
Any respiratory tasks currently performed by non-RCPs that fall outside the regulation's approved scope for non-RCPs have been discontinued or reassigned to qualified RCPs.	☐	☐	☐	
Job descriptions, delegation policies, and internal protocols have been updated to reflect the new regulation's limits on task delegation.	☐	☐	☐	
Staff education and/or training programs have been implemented or scheduled to inform personnel about the new regulation and how it impacts their role.	☐	☐	☐	
A designated staff member or compliance officer has been assigned responsibility for overseeing compliance with the new regulation.	☐	☐	☐	
The facility has established or updated procedures to regularly monitor and audit respiratory care task delegation to maintain ongoing compliance with the regulation.	☐	☐	☐	

Tip: **If you answered "No" to any of the above, we recommend you address those areas prior to October 1, 2025, to ensure compliance with the regulation.**

75 YEAR ANNIVERSARY

CALIFORNIA ASSOCIATION CAHF OF HEALTH FACILITIES

Supporting People, Health and Quality of Life

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Matthew Yarwood
Immediate Past Chair

Cassie Dunham
CEO/President

October 3, 2025

Governor Gavin Newsom
State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

Subject: Request for Delayed Effective Date for CCR Title 16, Section 1399.365 – Basic Respiratory Tasks and Services

Sent via email

Dear Governor Newsom:

The California Association of Health Facilities (CAHF) is submitting this letter to alert you to the serious negative impacts of patient access to care and health facility operations resulting from the approval of California Code of Regulations, Title 16, Section 1399.365 promulgated by the Respiratory Care Board of California (RCB).

These regulations took effect on October 1, 2025 and specify the scope of basic respiratory tasks that may be performed without assessment or evaluation. In conjunction with SB 1451 (2024) and SB 1436 (2022), the regulations significantly narrow the respiratory care services that can be performed by non-respiratory care professionals, which will increase healthcare labor costs and reduce access to care for vulnerable patients. These services being provided safely for decades by trained and experienced non-respiratory care professionals practicing under physician and registered nurse supervision.

CAHF is especially concerned about the limitations on the respiratory care tasks that may be performed by licensed vocational nurses (LVNs) under their scope of practice in skilled nursing facilities (SNFs). SNFs 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.

Unfortunately, the regulations were passed with little to no notice to the health care community and without any pre-notice to licensed vocational nurses or the institutions they work for.

Compliance with these regulatory requirements presents significant, and in some cases insurmountable challenges for SNFs, particularly in light of ongoing workforce shortages, financial constraints, and operational readiness.

CAHF respectfully requests executive action to suspend or provide exemptions to the requirements in California Code of Regulations, Title 16, Section 1399.365 until a plan has been developed to:

- Ensure funding for the additional staff costs to comply with the revised respiratory care scope of practice for non-respiratory care professionals;
- Recruit and train appropriate staff;
- Update internal policies and procedures; and
- Ensure safe and compliant care transitions for residents.

Please see the attached issue summary for additional information about the impact of these regulations on California's patients and health care facilities.

We would appreciate the opportunity to discuss this issue in more detail. 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 Health Care Services
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.

CALIFORNIA ASSOCIATION OF HEALTH FACILITIES

ISSUE SUMMARY

Impact of Respiratory Care Board Regulations to Limit Scope of Practice for Licensed Vocational Nurses

Background

CAHF is the largest statewide trade association in California representing long-term care facilities. CAHF currently represents almost 1,300 licensed skilled nursing (SNFs) and intermediate care facilities serving individuals with intellectual and developmental disabilities (ICF-DDs), throughout California. Almost 80% of California's roughly 1,100 freestanding skilled nursing facilities in California are CAHF members. CAHF's member facilities annually service more than 300,000 elderly and disabled Californians each year and employ more than 130,000 persons.

There are over 1,000 skilled nursing facilities in California that provide skilled nursing and/or subacute care to residents who require 24-hour nursing care. SNF care is funded primarily by Medi-Cal and Medicare. A subset of SNF providers are subacute care providers—hospital-based and freestanding nursing facilities—who provide care to adults and pediatric populations. Adult subacute care is defined as a level of care needed by a patient who does not require hospital acute care but who requires more intensive licensed skilled nursing care than is provided to the majority of patients in a skilled nursing facility. Pediatric subacute care is a level of care needed by a person less than 21 years of age who uses a medical technology that compensates for the loss of a vital bodily function. Subacute patients require special medical equipment, supplies, and treatments such as ventilators, tracheostomies, total parenteral nutrition, tube feeding and complex wound management care.

2025 Basic Respiratory Care Regulations – Basic Care. On June 5, 2025, the Office of Administrative Law (OAL) approved the Respiratory Care Board (RCB) regulations related to Basic Respiratory Tasks and Services codified at California Code of Regulations, title 16, section 1399.365. The regulations were promulgated pursuant to authority granted to the RCB by SB 1003 (2019) in Business and Professions Code section 3702.2, allowing the RCB to define basic, intermediate and advanced respiratory tasks and services in regulation. The regulations also limit the tasks that may be performed by non-respiratory care professional (RCPs). The regulation became effective on October 1, 2025.

Key Concerns and Impacts

Shortage of RCPs to Replace or Augment LVN Staff. Compliance with the new regulation will require hiring of additional RCPs to meet requirements. California faces an existing critical shortage of licensed respiratory care practitioners (RCPs), registered nurses (RNs), licensed vocational nurses (LVNs), and certified nursing assistants (CNAs). California SNFs employ about 16,000 LVN full-time equivalents (FTEs). Requiring the hiring of the additional thousands of RCPs and RNs needed to comply with the requirements on a 24-hour basis will further increase demand for and costs of hiring RCPs to comply with the regulations. The change in scope of practice for LVNs relative to respiratory care will intensify staffing gaps, especially in rural and underserved areas where recruitment and retention of qualified personnel remain persistent challenges.

Increased Cost to Replace or Augment LVN Staff with RCP Staff.
Currently, relative to LVNs, SNFs employ many more LVNs than RCPs. According to the Employment Development Department (EDD) Bureau of Labor Statistics 2024 data, the median hourly wage for a respiratory therapist is about 35% higher than the median hourly wage for an LVN, so replacing LVNs with RCPs or hiring additional RCPs to perform these functions creates an unfunded mandate for health care facilities. Even if SNFs are able to recruit, hire and retain the

thousands of RCPs to fill these roles, these facilities will still incur substantial unfunded costs to revise care protocols and delegation policies, and provide additional training and competency validation for non-RCP personnel.

State law requires an "add-on" payment for Medi-Cal SNF providers for compliance with state mandates and this regulation would constitute a new requirement since SNFs would have to adjust staffing away from LVNs toward RCPs and RNs. This will be a significant cost for the Medi-Cal program in an already unstable fiscal environment.

Regulations will Disrupt Timely Care Delivery in SNFs. Limiting the flexibility of LVNs and SNFs to perform respiratory tasks that they have historically provided will be a significant patient safety risk if LVNs are unable to immediately respond to respiratory care issues and must instead find an RCP or RN in the facility who is available to perform the task. Depending on the availability of RCP or RN staff, this will delay timely care. LVNs providing basic respiratory services are especially critical in adult and pediatric subacute facilities because of the higher patient acuity and the more frequent use of tracheostomies and other oxygen delivery devise that require more frequent cleaning and adjustments. The regulations do not include exemptions for respiratory tasks that can be performed in an emergency situation and LVNs and employers will place their professional and facility licenses at risk if they use their judgement to allow LVNs to perform respiratory care tasks in these situations.

Impact on Resident Admissions and Transfers. The regulation is likely to result in SNFs being unable to accept or needing to transfer residents with respiratory needs unless adequate RCP staffing is available. This could lead to:

- Increased hospital lengths of stay;
- Bottlenecks in discharge planning; and
- Reduced access to post-acute care for vulnerable populations.

Residents who require respiratory care services, by definition, are more fragile and at risk for harm from unnecessary transfers. Maintaining the previous LVN scope of practice which allows for LVNs to safely perform respiratory care tasks in SNFs will help to ensure timely placement and to keep residents in their communities close to their families and support networks.

Confusion and contradictions in LVN Scope of Practice Based on Setting. The LVN scope of practice is defined in state law and oversight for LVN licensing is under the oversight of the Board of Vocational Nursing and Psychiatric Technicians (BVNPT). LVNs are trained and licensed to perform a range of practical tasks as part of a health care team under the direct supervision of RNs and physicians, regardless of setting type.

As part of their scope of practice to provide direct patient care, basic nursing care, and administer medications, LVNs provide basic respiratory services in SNFs including related to oxygen delivery and tracheostomy care (suctioning, cleaning, etc.) consistent with their training. LVNs have performed these respiratory tasks for decades. Working within an already highly regulated SNF setting means that all LVN care, including respiratory services, is provided in an environment with multiple safeguards to support and ensure patient safety.

Business and Professions Code section 2860 states that licensed vocational nurse who has received training and who demonstrates competency satisfactory to their employer may, when directed by a physician and surgeon, perform respiratory tasks and services expressly identified by the Respiratory Care Board of California pursuant to subdivision (a) of Section 3702.5. By limiting the definition of basic respiratory care tasks, the regulations also limit the respiratory care tasks that a physician and surgeon can direct an LVN to perform.

Paradoxically, state law and regulations, would allow LVNs in less regulated settings, such as home health, schools, and congregate living, to perform respiratory care tasks but LVNs in more regulated health facility settings are prohibited from providing from performing the same respiratory tasks. The regulations will increase confusion among LVNs, employers and other health care professionals about which respiratory care services can be provided by LVNs and in which settings.

The combined effect of the impacts will result in patient harm and substantial financial burdens for SNFs already operating under tight margins and facing chronic underfunding.

Action Needed

Executive action is needed to suspend or provide exemptions to the requirements in California Code of Regulations, Title 16, Section 1399.365 until a plan has been developed to:

- Ensure funding for the additional staff costs to comply with the revised respiratory care scope of practice for non-respiratory care professionals;
- Recruit and train appropriate staff;
- Update internal policies and procedures; and
- Ensure safe and compliant care transitions for residents.

CONTACT

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