

Item: Discussion of, and Possible Action to, Initiate a Rulemaking to Adopt California Code of Regulations, Title 16, Sections 1399.362, Patient Specific Training Guidelines, and 1399.363, Task Specific Training Guidelines

Item Summary: Staff is presenting proposed regulatory text for CCR sections 1399.362 and 1399.363 for the Board's review and approval. The proposed regulations establish guidelines for the patient-specific and task-specific training required by SB 1304 for licensed vocational nurses performing respiratory care services in specified exempt settings.

SB 1304 requires the Board to develop these guidelines in collaboration with the Board of Vocational Nursing and Psychiatric Technicians. Beginning January 1, 2028, LVNs must complete both types of training in accordance with the Board's guidelines in order to perform the authorized respiratory tasks and services outlined in CCR section 1399.361 in specified exempt settings. Approval of the proposed regulatory language at this meeting will allow staff to begin preparing the formal rulemaking package and word towards having the guidelines approved as soon as possible.

- Board Action:**
1. President calls the agenda item and it is presented by or as directed by the President.
 2. President requests motion:
 - move to approve the proposed regulatory text for section 1399.362 as presented (or as amended during the meeting) and the text for section 1399.363 as presented (or as amended during the meeting); direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business and Consumer Services Agency for review; and, if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, including making any non-substantive changes to the package and setting the matter for a public hearing. If no adverse comments are received during the 45-day comment period or at the public hearing, if requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations as noticed.
 - any other appropriate motion.
 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.

Background

Senate Bill (SB) 1304 (Chapter 431, Statutes of 2026), the Board's sunset legislation, was signed by the Governor and will take effect January 1, 2027. SB 1304 amended Business and Professions Code section 3765, among other sections, to allow licensed vocational nurses (LVNs) to perform respiratory tasks and services identified by the Board in specified exempt settings when the following requirements are met. The relevant provisions of Business and Professions Code section 3765, as amended by SB 1304, are provided below for reference:

3765.

(a) This act does not prohibit any of the following activities:

...

(9) The performance, by a vocational nurse licensed by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, of respiratory tasks and services identified by the board, if the licensed vocational nurse complies with all of the following:

(A) Before January 1, 2028, the licensed vocational nurse has completed patient-specific training satisfactory to their employer and before the provision of patient care.

(B) On or after January 1, 2028, the licensed vocational nurse has completed both of the following, in accordance with guidelines that shall be promulgated by the board in collaboration with the Board of Vocational Nursing and Psychiatric Technicians of the State of California:

(i) The licensed vocational nurse has completed task-specific training on each respiratory task or service the licensed vocational nurse will perform. This training may be provided by the employer directly or through the California Association of Medical Product Suppliers (CAMPS), the California Society for Respiratory Care (CSRC), or another organization identified by the board.

(ii) The licensed vocational nurse has completed patient-specific training provided by their employer.

(C) The licensed vocational nurse performs respiratory care tasks and services, as identified by the board, and, pursuant to this paragraph, in any of the following settings:

(i) At a congregate living health facility, intermediate care facility designated as 15 beds or fewer, adult day health care center, pediatric day health and respite care facility, hospice agency, hospice facility, or home health agency, licensed by the State Department of Public Health.

(ii) At a small family home, adult residential facility, adult residential facility for persons with special health care needs, group home, group home for children with special health care needs, enhanced behavioral supports home, community crisis home, residential care facility for the elderly, residential care facility for the chronically ill, adult day program, or therapeutic day services facility, licensed by the State Department of Social Services.

(iii) At a medical foster home for veterans approved by the United States Department of Veterans Affairs.

(iv) As a private duty nurse as part of daily transportation and activities outside a patient's residence or family respite for home- and community-based patients.

(v) As an individual nurse provider working in a residential home.

(vi) As part of services provided through a family home agency, as defined in Section 4689.1 of the Welfare and Institutions Code.

(vii) As part of supported living services provided pursuant to Section 4689 of the Welfare and Institutions Code.

...

(b) For purposes of this section, “employer” means a person, agency, facility, organization, or entity responsible for assigning, directing, or coordinating the care provided by the licensed vocational nurse. “Employer” includes, where applicable, a family member or legal guardian authorized under the patient’s plan of care to perform that function.

(c) For purposes of this section, “intermediate care facility” includes an intermediate care facility for the developmentally disabled that provides habilitative care, nursing care, or continuous nursing care.

What This Change Means

During 2027, an LVN may perform the authorized respiratory tasks and services listed in section 1399.361 in an exempt setting after completing patient-specific training that is satisfactory to their employer. Starting January 1, 2028, an LVN must complete both patient and task-specific training before performing those duties. The proposed regulations in this item establish guidelines for those required trainings.

Patient-Specific and Task-Specific Training

The two types of training serve different purposes.

Patient-specific training prepares an LVN to provide respiratory services based on a patient’s individual needs. Starting January 1, 2028, SB 1304 requires employers to provide this training before the LVN performs the authorized respiratory tasks and services identified in section 1399.361 for the first time. Proposed CCR section 1399.362 establishes the guidelines for this training.

Task-specific training focuses on the respiratory task itself. An LVN must receive training on each respiratory task or service, identified in CCR section 1399.361, they will perform. SB 1304 allows this training to be provided by:

1. The employer;
2. California Association of Medical Product Suppliers (CAMPS);
3. California Society for Respiratory Care (CSRC); or
4. Another organization identified by the Board.

Proposed CCR section 1399.363 establishes the guidelines for this training.

Collaboration with BVNPT

SB 1304 requires the Board to develop the training guidelines in collaboration with BVNPT. RCB and BVNPT’s staff and legal counsel worked closely throughout the development of the proposed regulations, bringing together the two boards’ expertise in respiratory care and vocational nursing practice.

The collaboration has been productive and provided an opportunity to discuss how the statutory requirements will work in practice across the different exempt settings covered by SB 1304. BVNPT staff and counsel provided thoughtful feedback and recommendations and many of their suggested revisions were incorporated into the proposed language. The proposed language presented to the Board reflects that collaborative work. RCB staff appreciate BVNPT staff’s and counsel’s engagement, partnership, and contributions in developing these regulations.

Rulemaking Timeline

The Board is working to have these guidelines in place before January 1, 2028. An informational timeline of California's regular rulemaking process is included with this agenda item to illustrate the steps necessary to complete the rulemaking process.

The proposed regulations are currently in Phase 1 of the attached timeline. During this phase, staff develops the proposal, completes the necessary internal and legal review, and presents the proposed regulatory language to the Board for approval. Board approval of the proposed language at this meeting will allow staff to move into the next phase.

During Phase 2, staff will prepare the formal rulemaking package, including the documents explaining the necessity, legal basis, and fiscal and economic impacts of the proposed regulations. The package will then undergo additional legal, Department, and Agency review. Based on the general planning estimates in the attached timeline, these development and review steps may take several months.

Once those reviews are complete, the regulations can enter the formal public rulemaking process. This includes a minimum 45-day public comment period, possible public hearing, and subsequent Board consideration of the comments received and any changes to the proposed regulatory text that may be appropriate. The package undergoes final executive reviews before being submitted to the Office of Administrative Law (OAL), which has a 30-working-day review period.

The attached timeline estimates that the remaining phases of a regular rulemaking can take approximately seven to twelve months or longer after Board approval, depending on review times, public comments received, and whether revisions are necessary. Regulations also generally become effective on with quarterly effective dates following OAL approval and filing with the Secretary of State.

Approval of the proposed language at this meeting will allow staff to proceed to the next phase of the rulemaking process and provide time to complete the remaining required steps toward having the guidelines in place by January 1, 2028.

Attachments

Provided with this item are the following:

1. Regular Rulemaking Process Timeline
2. Proposed Regulatory Text – CCR Section 1399.362, Patient Specific Training Guidelines
3. Proposed Regulatory Text – CCR Section 1399.363, Task Specific Training Guidelines

At This Meeting

Board members will have an opportunity to review and discuss proposed regulatory text for CCR sections 1399.362, Patient Specific Training Guidelines, and 1399.363, Task Specific Training Guidelines.

The Board will consider whether to approve the proposed regulatory language as presented or with modifications. Approval will complete Phase 1 of the rulemaking process and allow staff to begin preparing the formal rulemaking package.

REGULAR RULEMAKING PROCESS

California's regular rulemaking process includes development, review, public participation, and approval. Timelines are estimates and may vary based on the rule's complexity, review periods, public comments, and required revisions.

PHASE 1 — CONCEPT		
Research and Develop the Proposal (<i>Timing Varies</i>)	Staff identifies the regulatory need, reviews relevant laws, and drafts proposed language with input from appropriate stakeholders and experts.	
Internal Review (~ 2 months)	After development, the proposed language undergoes internal review. Regulatory counsel’s review: ~ 30 days, second-level legal review: ~ 30 days. Additional revisions may be required after the reviews.	
★ BOARD ACTION — APPROVE PROPOSED REGULATORY LANGUAGE		
The Board reviews and approves proposed regulatory language, allowing staff to prepare the formal rulemaking package.		
PHASE 2 — PRODUCTION		
Prepare Formal Rulemaking Package (~ 1 month)	After Board approval, staff prepares the rulemaking package, including regulatory text and documents that explain the regulations’ necessity, legal basis, and expected fiscal and economic impacts.	
Internal Review (~ 1-3 months)	The package then moves through several levels of review. Regulatory Counsel review: ~ 30 days. DCA review: ~ 4–6 weeks. Agency review: ~ 4–6 weeks. Staff preparation and revisions: timing varies.	
PHASE 3 — INITIAL FILING & PUBLIC COMMENT		
Formal Public Rulemaking Process (~ 2 months)	The proposed regulations are noticed for at least 45 days of public comments. Staff reviews the comments, drafts proposed responses, and recommends whether revisions are appropriate in light of the comments received.	
★ BOARD ACTION — APPROVE RESPONSES TO PUBLIC COMMENTS		
Board reviews and approves proposed responses to comments received, if any. If no revisions are needed, the package proceeds to final filing.		
★ BOARD ACTION — APPROVE MODIFIED REGULATORY LANGUAGE, IF NEEDED		
The Board reviews and approves proposed modified text if changes are made in response to comments. If modifications are substantial, the revised text goes out for 15-day comment period. Staff drafts proposed responses and Board must approve. If further changes are necessary, additional 15-day comment periods may take place.		
PHASE 4 — FINAL FILING		
Final Internal Review (~ 2 months)	Staff prepare the rulemaking package for final review. Staff preparation and revisions: timing varies. Regulatory Counsel final review: ~ 30 days. DCA /Agency final review: ~ 30 days.	
OAL Review (~ 1 month)	The final rulemaking package goes to the Office of Administrative Law (OAL) for a 30-working-day review.	
Effective Date (~ 1-4 months)	Once approved by OAL and filed with the Secretary of State, regulations take effect as follows:	
	OAL Approval & Filing Period:	Effective Date:
	September 1–November 30 (<i>of the preceding year</i>)	January 1
	December 1–February 28	April 1
	March 1–May 31	July 1
	June 1–August 31	October 1

**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.6. RESPIRATORY CARE BOARD OF CALIFORNIA
ARTICLE 6. SCOPE OF PRACTICE
DEPARTMENT OF CONSUMER AFFAIRS**

**PROPOSED REGULATORY LANGUAGE:
Patient-Specific Training Guidelines**

Legend:	Added text is indicated with an <u>underline</u> . Omitted text is indicated by (* * *) Deleted text is indicated by ~~strikeout~~ .
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ADD SECTION 1399.362 of Division 13.6 of Title 16 of the California Code of Regulations to read as follows:

1399.362. Patient-Specific Training Guidelines.

(a) On or after [insert approval date from OAL in 2028], any licensed vocational nurse (LVN) performing an authorized respiratory task or service identified in section 1399.361 in a setting identified in B&P section 3765(a)(9)(C) must complete the patient-specific training required by B&P section 3765(a)(9)(B)(ii) in accordance with the requirements of the guidelines described in this section before performing the respiratory task or service for the first time on an individual patient.

(b) Training must be provided by the LVN's employer, as defined in B&P section 3765(b), at no cost to the LVN and during working hours.

(c) For purposes of this section, "patient-specific training" means training specific to the individual patient and must cover each authorized respiratory task or service identified in section 1399.361 that the LVN will perform for the patient. The training must include, at a minimum, all the following:

- (1) The patient's current medical orders and plan of care related to the respiratory tasks or services;
- (2) The patient's respiratory needs and relevant baseline condition;
- (3) The respiratory equipment, supplies, and settings used in the patient's care;
- (4) The procedures for performing each respiratory task or service for the patient;
- (5) Patient-specific precautions, contraindications, limitations, or other special considerations related to the respiratory tasks or services;
- (6) The monitoring and observations required before, during, and after performance of the respiratory tasks or services;
- (7) Signs or symptoms of complications, adverse reactions, equipment malfunctions, unexpected changes in the patient's condition, or emergency situations;

(8) Actions to be taken in response to complications, adverse reactions, equipment malfunctions, unexpected changes in the patient's condition, or emergency situations;

(9) Circumstances requiring the LVN to stop a respiratory task or service and seek assistance or further direction in accordance with the patient's plan of care or applicable policies and procedures;

(10) Circumstances requiring the LVN to seek emergency medical services or otherwise obtain emergency medical assistance;

(11) Patient-specific emergency procedures and information regarding whom to contact when assistance, further direction, or emergency response is necessary; and

(12) Documentation and reporting requirements specific to the patient's respiratory care.

(d) (1) The employer must document completion of patient-specific training. The documentation must include:

(A) The LVN's name and license number;

(B) The patient's name;

(C) The name of the employer;

(D) The date and time the training was completed;

(E) Each respiratory task or service for which patient-specific training was provided; and

(F) The name and position or title of the person(s) who provided the training.

(2) The employer must retain documentation required by paragraph (1) while the LVN is providing respiratory tasks or services for the patient and for four years after the LVN last provides such care to the patient.

(3) The employer must make such documentation available to the Board or the Board of Vocational Nursing and Psychiatric Technicians upon request.

(e) An LVN must complete new patient-specific training before performing an applicable respiratory task or service for a patient when any of the following occurs:

(1) The patient's medical orders or plan of care change in a manner that changes how the LVN will perform the respiratory task or service;

(2) The patient's respiratory equipment or prescribed settings change in a manner that changes how the task or service is performed;

(3) The patient's respiratory needs change in a manner that changes how the LVN will perform the respiratory task or service;

(4) The LVN will perform a respiratory task or service identified in section 1399.361 for the patient for which the LVN has not previously completed patient-

specific training, or documentation of the LVN's previous patient-specific training is not available.

(f) Training may be provided in person or through live or remote instruction that allows for real-time visual and verbal interaction between the LVN and the individual providing the training.

(g) An LVN must complete both the patient-specific training required by this section and the applicable task-specific training required by section 1399.363 before performing an authorized respiratory task or service.

Note: Authority cited: Sections 3722, 3765, and 3767, Business and Professions Code.
Reference: Sections 2860 and 3765, Business and Professions Code.

**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.6. RESPIRATORY CARE BOARD OF CALIFORNIA
ARTICLE 6. SCOPE OF PRACTICE
DEPARTMENT OF CONSUMER AFFAIRS**

**PROPOSED REGULATORY LANGUAGE:
Task-Specific Training Guidelines**

Legend:	Added text is indicated with an <u>underline</u> . Omitted text is indicated by (* * *) Deleted text is indicated by ~~strikeout~~ .
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ADD SECTION 1399.363 of Division 13.6 of Title 16 of the California Code of Regulations to read as follows:

1399.363. Task-Specific Training Guidelines.

(a) On or after [insert approval date from OAL in 2028], any licensed vocational nurse (LVN) performing an authorized respiratory task or service identified in section 1399.361 in a setting identified in B&P section 3765(a)(9)(C) must complete the task-specific training required by B&P section 3765(a)(9)(B)(i) in accordance with the requirements of the guidelines described in this section before performing the respiratory task or service for the first time on any patient.

(b) Task-specific training must be provided by one of the following:

- (1) The LVN's employer, as defined in B&P section 3765(b);
- (2) The California Society for Respiratory Care (CSRC); or
- (3) The California Association for Medical Product Suppliers (CAMPS).

(c) Task-specific training may be provided through a comprehensive course covering all authorized respiratory tasks and services identified in section 1399.361, or one or more courses or modules covering individual respiratory tasks or services the LVN will perform.

(d) For each respiratory task or service, the training must include, at a minimum, the following:

- (1) The purpose and indications for the task or service;
- (2) Contraindications and precautions associated with the task or service;
- (3) What the LVN is authorized and not authorized to perform as part of the task or service under section 1399.361;
- (4) Equipment and supplies necessary to perform the task or service;
- (5) Safe operation and use of equipment associated with the task or service, including recognition of equipment malfunctions and basic troubleshooting, consistent with current manufacturer's instructions;

- (6) Current infection prevention and control practices applicable to the task or service;
 - (7) Patient information and observations necessary before performing the task or service;
 - (8) Current practices and procedures for safely performing the task or service;
 - (9) Patient monitoring and observations necessary during and following performance of the task or service;
 - (10) Recognition of complications, adverse reactions, equipment malfunctions, unexpected changes in the patient's condition, and emergency situations associated with the task or service;
 - (11) Actions to be taken in response to complications, adverse reactions, equipment malfunctions, unexpected changes in the patient's condition, or emergency situations;
 - (12) Circumstances requiring the LVN to stop the task or service and seek assistance from their supervisor or another qualified health care practitioner in accordance with applicable policies and procedures;
 - (13) Circumstances requiring the LVN to seek emergency medical services or otherwise obtain emergency medical assistance;
 - (14) Documentation and reporting requirements for the respiratory task or service;
 - (15) Current patient safety standards and considerations specific to the task or service; and
 - (16) An assessment that evaluates the LVN's understanding of the material. The assessment may include a written or electronic examination, case-based or scenario-based questions, simulation, skills assessment, or return demonstration of the respiratory task or service covered by the training.
- (e) The clinical content of task-specific training must be developed by, or reviewed and approved by, an individual who holds a current and unrestricted California license as a Respiratory Care Practitioner, Physician, Registered Nurse, Physician Assistant, or Nurse Practitioner, and who possesses education, training, or experience related to the respiratory tasks or services addressed by the training.
- (f) (1) Upon successful completion of task-specific training, the training provider must give the LVN a certificate of completion or other documentary evidence that includes the following:
- (A) The LVN's name;
 - (B) The LVN's license number;
 - (C) The name of the training provider;
 - (D) The date the training was successfully completed;

(E) The date the training expires; and

(F) Each respiratory task or service for which the LVN successfully completed task-specific training.

(2) Task-specific training is valid for five years from the date of successful completion. After the training expires, the LVN must complete the task-specific training again.

(3) The LVN must retain proof of successful completion required by paragraph (1) for four years after the training expires and provide it to the Board or the Board of Vocational Nursing and Psychiatric Technicians upon request.

(g) Training may be provided in person, through live remote instruction, self-paced electronic instruction, simulation, a hybrid format, or another instructional method that meets the requirements of this section.

(h) (1) A task-specific training provider must maintain the following records:

(A) The course content or curriculum;

(B) The assessment used to determine successful completion; and

(C) The name and professional license number of the individual who developed or reviewed and approved the clinical content pursuant to subdivision (e).

(2) The training provider must retain the records required by paragraph (1) for at least five years after the training was last provided.

(3) The training provider must provide the records required by paragraph (1) to the Board or the Board of Vocational Nursing and Psychiatric Technicians upon request.

(i) An LVN must complete both the task-specific training required by this section and the applicable patient-specific training required by section 1399.362 before performing an authorized respiratory task or service.

Note: Authority cited: Sections 3722, 3765, and 3767, Business and Professions Code.
Reference: Sections 2860 and 3765, Business and Professions Code.