

Item: Discussion of, and Possible Action on, Comments Received During the 45-Day Comment Period Regarding Proposed Amendment of CCR, Title 16, Section 1399.365, Basic Respiratory Tasks and Services, and Discussion of, and Possible Action to, Initiate a Rulemaking to Make Further Amendments to CCR, Title 16, Section 1399.365, Basic Respiratory Tasks and Services

Item Summary: Staff is presenting two separate regulatory actions involving CCR section 1399.365, Basic Respiratory Tasks and Services, for the Board's review and approval.

First, staff is presenting the comments received during the 45-day public comment period for the pending rulemaking to make the emergency amendment to section 1399.365 permanent, along with staff's recommended responses. Staff is not recommending any changes to the proposed regulatory text. Board approval will allow staff to proceed with completing the pending rulemaking.

Second, staff is presenting additional proposed amendments to section 1399.365 to further clarify which activities may be performed as basic respiratory tasks and services.

Because the second emergency readoption expires on January 5, 2027, staff recommends completing the pending rulemaking (referred to as a Certificate of Compliance in the emergency rulemaking context) without modifications and pursuing the additional amendments through a separate rulemaking after the after the Certificate of Compliance is complete. This will allow the Board to consider both actions at this meeting without delaying the process to make the emergency amendment permanent.

- 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 accept the Board staff's recommended comment responses and adopt the proposed regulatory text for section 1399.365 as noticed on August 14, 2026; authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed.
 - move to approve the proposed amended regulatory text for section 1399.365 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

California Code of Regulations (CCR), Title 16, Section 1399.365, Basic Respiratory Tasks and Services, identifies basic respiratory tasks and services that do not require an assessment and can thus be performed in any setting.

At its November 14, 2025, meeting, the Board adopted an emergency amendment to section 1399.365 to clarify that the regulation does not apply to licensed vocational nurses (LVNs) performing respiratory tasks and services in specified exempt settings under Business and Professions Code section 3765.

At this meeting, the Board will consider two separate regulatory actions involving section 1399.365. The first involves completing the pending rulemaking to make the emergency amendment permanent. The second involves approving additional proposed amendments to the same section, which will be pursued through a separate rulemaking after the pending rulemaking is complete.

Emergency Regulation and Pending Rulemaking

The Office of Administrative Law (OAL) approved the emergency amendment on January 12, 2026. The Board subsequently obtained approval for two emergency readoptions to allow additional time to complete the regular rulemaking process.

The emergency regulation history is as follows:

- January 12, 2026: Initial emergency amendment became effective.
- July 9, 2026: First emergency readoption became effective.
- October 7, 2026: Second emergency readoption became effective.

Under the Administrative Procedure Act, an emergency regulation may generally be readopted no more than twice, with each readoption extending the regulation for an additional 90 days. The second readoption is the final extension available through this process and is scheduled to expire on January 5, 2027. To prevent the emergency amendment from expiring, the Board must submit a certificate of compliance to OAL within the applicable timeframe.

The proposed amendment was released for a 45-day public comment period beginning August 14, 2026, and ending September 28, 2026.

Staff reviewed the comments received during this period and prepared recommended responses for the Board's consideration. Staff is not recommending any changes to the proposed regulatory text.

Approval of the recommended responses will allow staff to proceed with the remaining steps necessary to complete the pending rulemaking and make the emergency amendment permanent.

Additional Proposed Amendments to Section 1399.365

While completing the pending rulemaking, staff identified the need for additional clarification regarding certain activities performed as basic respiratory tasks and services. Staff prepared additional proposed amendments to section 1399.365 addressing suctioning, oxygen administration, and continuous positive airway pressure (CPAP) and bilevel positive airway pressure (BiPAP) devices.

Suctioning

Senate Bill (SB) 1304 amended the Vocational Nursing Practice Act to allow certain suctioning activities performed by LVNs as follows:

2860. (a) This chapter confers no authority to practice medicine or surgery, to provide respiratory care services and treatment, or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or mental or physical condition in violation of any provision of law.

(b) (1) Notwithstanding subdivision (a), a 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.

(2) Notwithstanding paragraph (1), a licensed vocational nurse may perform the respiratory tasks and services as authorized under paragraph (9) of subdivision (a) of Section 3765.

(c) Notwithstanding any other law except subdivision (a) of Section 2859, the practice of vocational nursing includes all of the following:

(1) Oral suctioning performed within the oral cavity that does not enter the oropharynx or beyond.

(2) Nasal suctioning performed within the nasal cavity that does not enter the nasopharynx or beyond.

(3) Tracheostomy tube suctioning when the suctioning device remains within the tracheostomy tube and does not pass beyond the distal end of the tube.

(4) Removal and replacement of an external speaking valve for purposes of suctioning the tracheostomy tube.

The proposed regulatory amendments align section 1399.365 with the new suctioning provisions addressed in SB 1304.

Oxygen Administration

The proposed amendments clarify that administering or discontinuing oxygen pursuant to a patient's medical order, including transferring an established oxygen supply between sources, may be performed as a basic respiratory task.

The proposed language also clarifies that assessing a patient's condition to determine whether oxygen therapy should be adjusted is still not considered a basic respiratory task.

CPAP and BiPAP

The proposed amendments clarify which limited activities involving CPAP and BiPAP devices may be performed as basic respiratory tasks. These activities include placing or removing a mask or interface and turning the device on or off pursuant to a medical order.

The proposed language distinguishes these activities from setting up equipment, changing device settings, or adjusting the mask fit or seal, which are still not considered basic respiratory tasks.

Separate Rulemaking Process

Although both regulatory actions involve section 1399.365, staff recommend that they proceed through separate rulemaking processes.

The pending rulemaking is intended to make the existing emergency amendment permanent. Because the second emergency readoption is the final extension available and expires on January 5, 2027, completing this rulemaking within the required timeframe is a priority.

Incorporating the additional proposed amendments into the pending rulemaking may require further public notice and comment, potentially delaying submission of the certificate of compliance to OAL and risking expiration of the emergency amendment.

To avoid this delay, staff recommends completing the pending rulemaking without modifying the proposed regulatory text.

At the same time, staff is requesting the Board's approval of the additional proposed amendments to section 1399.365. If approved, staff will pursue these amendments through a new, separate rulemaking after the pending rulemaking is complete.

This approach allows the Board to consider both regulatory actions at the same meeting while keeping the rulemaking processes separate. It also allows staff to move forward with the additional clarifications without delaying making the emergency amendment permanent.

Attachments

Provided with this item is the following:

1. Proposed Regulatory Text Released for the 45-Day Public Comment Period – CCR Section 1399.365, Basic Respiratory Tasks and Services
2. Staff-Prepared Summaries of Comments with Recommended Responses
3. Written Comments Received During the 45-Day Public Comment Period
4. Additional Proposed Regulatory Text – CCR Section 1399.365, Basic Respiratory Tasks and Services

At This Meeting

Board members will have an opportunity to review and discuss two separate regulatory actions involving CCR section 1399.365.

First, the Board will consider the comments received during the 45-day public comment period and staff's recommended responses for the pending rulemaking. The Board will consider whether to approve the recommended responses as presented or with modifications, without changing the proposed regulatory text. Approval will allow staff to proceed with completing the pending rulemaking to make the emergency amendment permanent.

Second, the Board will consider the additional proposed amendments to section 1399.365 addressing suctioning, oxygen administration, and CPAP/BiPAP activities. The Board will consider whether to approve the proposed regulatory language as presented or with modifications. If approved, staff will pursue the additional amendments through a separate rulemaking after the pending rulemaking is complete. The Board's consideration of the additional amendments will not change the regulatory text being finalized through the pending rulemaking.

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. RESPIRATORY CARE BOARD OF CALIFORNIA

PROPOSED REGULATORY LANGUAGE
Basic Respiratory Tasks and Services

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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AMEND SECTION 1399.365 of Division 13.6 of Title 16 of the California Code of Regulations to read 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 noninvasive 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 subdivisions (i) and (j) of section 3765 of the B&P.

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.

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

**COMPILATION OF COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD:
Basic Respiratory Tasks and Services**

The Respiratory Care Board's (Board) summary of and response to the comments received is presented below.

Comment 1: Anna Ioakimedes, Los Angeles Unified School District
Email Dated August 14, 2026

The commenter requests clarification regarding which version of Business and Professions Code section 3765 should be used when commenting on the proposed regulation because Senate Bill (SB) 1304, if enacted, would amend and renumber provisions of section 3765.

Recommended Response to Comment:

The Board agrees that section 1399.365 should accurately reference the applicable provisions of Business and Professions Code section 3765 as amended by SB 1304. The Board intends to address the necessary conforming changes pursuant to section 100 of title 16 of the California Code of Regulations.

No change to the proposed text is necessary in response to this comment.

Comment 2: Pediatric Day Health Care Coalition (PDHCC)
Email Dated September 18, 2026

The commenter supports the proposed amendment to section 1399.365, which would make permanent the emergency regulation clarifying that LVNs working in specified exempt settings are not limited to the basic respiratory tasks and services identified in section 1399.365. The commenter states that it supported the two prior emergency rulemaking packages and continues to support making the amendment permanent without substantive changes.

Recommended Response to Comment:

The Board appreciates the commenter's support for the proposed amendment to section 1399.365. No change to the proposed text is necessary in response to this comment.

Comment 3: California Association of Health Facilities (CAHF)
Email Dated September 24, 2026

The commenter states that the proposed permanent amendment to section 1399.365(d) references subdivisions (i) and (j) of Business and Professions Code section 3765, but those subdivisions will no longer exist when the amendments made by Senate Bill (SB) 1304 become effective January 1, 2027. The commenter recommends that the Board clarify the intended effective date of the permanent regulation and update section 1399.365(d) to reference paragraph (9) of subdivision (a) of section 3765.

Recommended Response to Comment:

The Board agrees that section 1399.365 should accurately reference the applicable provisions of Business and Professions Code section 3765 as amended by SB 1304. The Board intends to address the necessary conforming changes pursuant to section 100 of title 16 of the California Code of Regulations.

No change to the proposed text is necessary in response to this comment.

Comment 4: California Association of Health Facilities (CAHF)
Email Dated September 24, 2026

The commenter expresses concern that the overall structure of the regulations may cause confusion because LVNs and employers must consult statutes, regulations, and guidance to determine which respiratory task or service may be performed in exempt and non-exempt settings. The commenter encourages the Board to work with the Board of Vocational Nursing and Psychiatric Technicians to develop a single, clearly organized regulatory framework that identifies respiratory care tasks LVNs may perform in all settings, additional tasks authorized in exempt settings, tasks requiring an RCP or another provider authorized by law, uses consistent definitions, and aligns the regulations with the statutory changes effective January 1, 2027.

Recommended Response to Comment:

The Board has reviewed and considered the comment and declines to make the requested amendment.

Sections 1399.365 and 1399.361 serve different purposes. Section 1399.365 identifies basic respiratory tasks and services that may be performed in any setting. Section 1399.361 identifies the respiratory tasks and services that LVNs may perform pursuant to the statutory exemptions applicable to specified settings and circumstances under Business and Professions Code section 3765.

Maintaining these provisions separately distinguishes the basic respiratory tasks and services addressed by section 1399.365 from the respiratory tasks and services authorized for LVNs operating under the specified statutory exemptions addressed by section 1399.361. Section 1399.365(d) further clarifies this distinction by providing that

section 1399.365 does not apply when an LVN is performing respiratory care pursuant to the statutory exemptions identified in that subdivision.

The Board therefore does not believe combining these provisions into a single regulation would provide additional clarity. To the extent the commenter requests broader revisions to the regulatory framework beyond the amendment to section 1399.365(d), those revisions are outside the scope of this rulemaking.

No change to the proposed text is necessary in response to this comment.

Comment 5: LeadingAge California
Email Dated September 24, 2026

The commenter states that section 1399.365 may create confusion for providers and licensees seeking to determine which respiratory tasks and services LVNs may perform in various care settings because the proposed regulation references Business and Professions Code section 3765 but does not account for the amendments made by Senate Bill (SB) 1304. The commenter states that the regulation will no longer align with the statute as of January 1, 2027, and recommends that the Board update the regulation to accurately reflect the changes enacted through SB 1304.

Recommended Response to Comment:

The Board agrees that section 1399.365 should accurately reference the applicable provisions of Business and Professions Code section 3765 as amended by SB 1304. The Board intends to address the necessary conforming changes pursuant to section 100 of title 16 of the California Code of Regulations.

No change to the proposed text is necessary in response to this comment.

Comment 6: Rosemarie Fejerang
Email Dated September 28, 2026

The commenter requests clarification regarding how the proposed regulations will be revised to align with the recently enacted Senate Bill (SB) 1304.

Recommended Response to Comment:

The Board agrees that section 1399.365 should accurately reference the applicable provisions of Business and Professions Code section 3765 as amended by SB 1304. The Board intends to address the necessary conforming changes pursuant to section 100 of title 16 of the California Code of Regulations.

No change to the proposed text is necessary in response to this comment.

Comment 7: Rosemarie Fejerang
Email Dated September 28, 2026

The commenter requests clarification regarding which provisions of the proposed regulations apply, and which do not apply, to skilled nursing facilities and subacute ventilator units.

Recommended Response to Comment:

The Board has reviewed and considered the comment and declines to make amendments to section 1399.365 based on this comment.

Section 1399.365 identifies basic respiratory tasks and services that may be performed in any setting. Section 1399.361 applies to LVNs performing respiratory care in the settings and circumstances specifically exempted by Business and Professions Code section 3765.

The settings and circumstances that qualify for these exemptions are established by statute. The Board cannot expand those exemptions through regulation to include additional settings, such as skilled nursing facilities or subacute ventilator units, that are not included in the statute.

Accordingly, LVNs in skilled nursing facilities and subacute ventilator units may perform the basic respiratory tasks and services authorized by section 1399.365. Section 1399.361 applies only when the LVN is practicing under an applicable statutory exemption in Business and Professions Code section 3765.

No change to the proposed text is necessary in response to this comment.

Comment 8: Los Angeles Unified School District, California School Nurses Organization, Association of California School Administrators, SELPA Administrators of California, Alameda County Office of Education, Office of the Riverside County Superintendent of Schools, and Santa Clara County Office of Education
Email Dated September 28, 2026

The commenters state that Senate Bill (SB) 1304 amended and renumbered Business and Professions Code section 3765 and recommend that the existing statutory references in section 1399.365(d) be updated to reflect the renumbered provisions.

Recommended Response to Comment:

The Board agrees that section 1399.365 should accurately reference the applicable provisions of Business and Professions Code section 3765 as amended by SB 1304. The Board intends to address the necessary conforming changes pursuant to section 100 of title 16 of the California Code of Regulations.

No change to the proposed text is necessary in response to this comment.

Comment 9: **Los Angeles Unified School District, California School Nurses Organization, Association of California School Administrators, SELPA Administrators of California, Alameda County Office of Education, Office of the Riverside County Superintendent of Schools, and Santa Clara County Office of Education**
Email Dated September 28, 2026

The commenters recommend adding Business and Professions Code section 3765(a)(10) to section 1399.365(d). The commenters state that inclusion of section 3765(a)(10) is necessary to avoid conflict with the authority provided by Education Code section 49423.5 to LVNs under the supervision of a credentialed school nurse.

Recommended Response to Comment:

The Board has reviewed and considered the comment and declines to add Business and Professions Code section 3765(a)(10) to section 1399.365(d).

Subdivision (d) identifies statutory exemptions under which section 1399.365 does not apply. Business and Professions Code section 3765(a)(10) specifically authorizes LVNs to perform suctioning and other basic respiratory tasks and services identified by the Board. Those basic respiratory tasks and services are identified in section 1399.365. Therefore, section 1399.365 continues to apply to LVNs performing basic respiratory tasks and services pursuant to section 3765(a)(10).

Education Code section 49423.5 authorizes an LVN, under the supervision of a credentialed school nurse, to provide the basic respiratory services authorized by Business and Professions Code section 3765(a)(10). It does not provide an exemption from section 1399.365. Adding section 3765(a)(10) to subdivision (d) would incorrectly indicate that section 1399.365 does not apply to those LVNs.

No change to the proposed text is necessary in response to this comment.

Comment 10: **Sara M. Granda**
Email Dated September 28, 2026

The commenter requests clarification regarding the applicability of sections 1399.361(a) and 1399.365(d), including how to determine which statutory exemption under Business and Professions Code section 3765 applies to a particular care arrangement. The commenter requests that the Board address individual nurses, agency-employed nurses, and registry arrangements separately where the applicable statutory conditions differ, identify the applicable operative dates and framework governing practice during the transition, and clarify that a residential address or payment authorization does not establish that all conditions of a statutory exemption have been satisfied.

Recommended Response to Comment:

The Board has reviewed and considered the comment. Section 1399.365(d) clarifies that section 1399.365 does not apply when an LVN is performing respiratory care pursuant to one of the statutory exemptions identified in that subdivision. Whether a particular care arrangement qualifies for an exemption is determined by the requirements of Business and Professions Code section 3765. A residential address, payment arrangement, or way an LVN is employed does not, by itself, establish that the requirements of a statutory exemption have been met.

The Board agrees that section 1399.365 should accurately reference the applicable provisions of Business and Professions Code section 3765 as amended by SB 1304. The Board intends to address the necessary conforming changes pursuant to section 100 of title 16 of the California Code of Regulations.

No change to the proposed text is necessary in response to this comment.

Comment 11: California Hospital Association (CHA)
Email Dated September 28, 2026

The commenter supports permanent adoption of the amendment to section 1399.365 as necessary to prevent interruptions in patient care. However, the commenter states that Senate Bill (SB) 1304 added additional exempt settings and that the proposed regulation will no longer align with Business and Professions Code section 3765 when those statutory amendments become effective January 1, 2027. The commenter recommends that the Board revise the regulation to reflect the statutory changes made by SB 1304.

Recommended Response to Comment:

The Board agrees that section 1399.365 should accurately reference the applicable provisions of Business and Professions Code section 3765 as amended by SB 1304. The Board intends to address the necessary conforming changes pursuant to section 100 of title 16 of the California Code of Regulations.

No change to the proposed text is necessary in response to this comment.

Comment 12: California Hospital Association (CHA)
Email Dated September 28, 2026

The commenter expresses concern with the setting-specific framework governing LVN providing respiratory care. The commenter states that limitations on LVNs performing respiratory tasks in skilled nursing facilities and subacute units have resulted in staffing changes, increased costs, and potential impacts on patient access to care. The commenter states that it would support a regulatory framework allowing LVNs to perform respiratory tasks and services in any setting when the LVN has received the training specified in SB 1304.

Recommended Response to Comment:

The Board has reviewed and considered the comment and declines to make the requested amendment.

Business and Professions Code section 3765 establishes specific exemptions that authorize LVNs to perform respiratory care in the settings and under the conditions specified by statute. The Board's regulations cannot expand those exemptions to settings or circumstances not authorized by the Legislature.

Section 1399.365 identifies basic respiratory tasks and services that may be performed in any setting. Section 1399.361 separately identifies the respiratory tasks and services that LVNs may perform in the exempt settings and under the conditions specified in section 3765.

Completion of the training required by SB 1304 does not independently expand those statutory exemptions to additional settings. Accordingly, the Board cannot authorize LVNs to perform the additional respiratory care permitted under those exemptions in any setting solely based on completion of specified training.

No change to the proposed text is necessary in response to this comment.

Comment 13: California Hospital Association (CHA)
Email Dated September 28, 2026

The commenter requests clarification that LVNs may place a non-invasive oxygen delivery mask on a patient in any setting when directed by a physician or registered nurse.

Recommended Response to Comment:

The Board has reviewed and considered the comment and declines to make amendments to section 1399.365 based on this comment.

The proposed amendment to section 1399.365 is limited to subdivision (d), which clarifies the applicability of section 1399.365 to LVNs performing respiratory care pursuant to specified statutory exemptions in Business and Professions Code section 3765. The commenter's request concerns the respiratory tasks and services identified elsewhere in section 1399.365 and is outside the scope of the amendment proposed in this rulemaking.

No change to the proposed text is necessary in response to this comment.

Comment 14: California Assisted Living Association (CALA)
Email Dated September 28, 2026

The commenter supports the overall direction of the proposed regulations but requests additional flexibility for LVNs employed by co-located continuing care retirement communities that operate both exempt and non-exempt settings. The commenter requests that LVNs be permitted to provide respiratory care across the campus when exempt and non-exempt settings are co-located.

Recommended Response to Comment:

The Board has reviewed and considered the comment and declines to make amendments to the proposed text based on this comment.

Business and Professions Code section 3765 identifies the specific settings and circumstances that are exempt. Co-location of an exempt setting with a non-exempt setting does not extend the statutory exemption to the non-exempt setting.

The Board does not have authority through this rulemaking to expand the statutory exemptions established by the Legislature. Such a change would require an amendment to the statute.

No change to the proposed text is necessary in response to this comment.

New Proposed regulations re: BCP 3765

From loakimedes, Anna <anna.ioakimedes@lausd.net>

Date Fri 08/14/26 1:54 PM

To rcbinfo@DCA <rcbinfo@dca.ca.gov>

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Hello,

I recently received the notice of proposed action for the exemption of locations specified in BCP 3765 (j) and (l).

However, [SB 1304](#) will be making substantial amendments to this code section, including re-numbering. This bill is on the Senate floor and is very likely to be signed by the Governor, but amendments are still possible over the next week. This means that as of January 1, 2027, subdivisions (j) and (l) will cease to exist.

Given this dynamic situation, which version of BCP 3765 (current or anticipated effective January 1, 2027) should our comments refer to?

Thank you!

Anna loakimedes, MPP

Legislative Advocate

Los Angeles Unified School District

anna.ioakimedes@lausd.net

(916) 443-4405





Pediatric Day Health Care Coalition

September 18, 2026

Christine Molina, Executive Officer
Respiratory Care Board of California
3700 Rosin Court, Suite 100
Sacramento, CA 95834

Re: Public Comment for Proposed Regulation Package to amend Section 1399.365 of Article 6 of Division 13.6 of Title 16, California Code of Regulations related to Basic Respiratory Tasks and Services – Applicability to Exempt Settings:

Dear Ms. Molina and Members of the Board:

On behalf of the Pediatric Day Health Care Coalition [PDHCC], I would like to thank you for the opportunity to provide public comments on the proposed language to clarify that LVNs working in exempt settings are not limited to basic respiratory tasks and services, as defined.

We have supported two [2] prior emergency regulations packages to Section 1399.365. We would like to go on record as supporting this regulations package to make those emergency regulations permanent, without substantive changes.

Thank you again for your courtesies and welcoming our participation in this process.

Sincerely,

Michael Lyman, President & CEO
Ridgeline Pediatrics and
PDHCC President
MLyman@ridgelinepediatrics.com

cc. Peter Kellison, Clear Advocacy
peter@clearadvocacy.com



Outlook

PDHCC Public Comment Letter of Support - Proposed Amendments to Basic Services Regulations

From Brenda Klutz <Brenda@brklutzconsultingllc.com>

Date Thu 09/17/26 12:28 PM

To Molina, Christine@DCA <Christine.Molina@dca.ca.gov>; Pitt, Kathryn@DCA <Kathryn.Plitt@dca.ca.gov>

Cc Michael Lyman (mlyman@ridgelinepediatric.com) <mlyman@ridgelinepediatric.com>; Peter Kellison <peter@clearadvocacy.com>

 1 attachment (96 KB)

PDHCC Letter to RCB re 1399365 regulations.pdf;

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Good afternoon, Christine and Kathryn – here is our first letter of support to submit for public comment.

A letter will be submitted on the Exempt Settings LVN respiratory care tasks and services by COB Monday.

Thanks so much for the opportunity to submit our comments.

Brenda G. Klutz | B & R Klutz Consulting, LLC | C: 916.807.0652
9 Sand River Court, Sacramento, CA 95831 | Brenda@brklutzconsultingllc.com



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Matthew Stevenson
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Secretary/Treasurer

Julie Butenko
Immediate Past Chair

Cassie Dunham
CEO/President

September 24, 2026

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

Re: Respiratory Care Board of California (RCB) Proposed Amendment of
Section 1399.365, Title 16, California Code of Regulations

Submitted via email to rcbinfo@dca.ca.gov

Dear Mr. Guzman:

The California Association of Health Facilities (CAHF) is submitting this letter regarding the proposal to make permanent the amendment to California Code of Regulations, Title 16, §1399.365. The Respiratory Care Board (RCB) and the Legislature's efforts to address the significant patient care, workforce, and implementation challenges that have arisen following adoption of Section 1399.365 through the passage of Senate Bill (SB) 1304 (Wahab, 2026) and additional guidance issued by the RCB have resulted in some improvement. CAHF supports a coherent regulatory framework that will minimize confusion among stakeholders, reduce compliance burdens, promote consistent enforcement, and ultimately support the timely delivery of safe and effective respiratory care services to Californians across all care settings.

The purpose of the emergency regulations that were adopted and renewed was to:

- Recognize that the Basic Respiratory Care Tasks that were effective October 1, 2026, had a significant negative impact on many of the providers and employers that the original regulations applied to; and
- Exempt specified home and community settings from compliance with 1399.365 while the RCB and the Legislature developed more permanent remedies.

The emergency regulations that have been in effect have been appropriate pending the passage of a legislative solution. With the passage of SB 1304 which will be effective January 1, 2027, there will be a new statutory framework of exempt and non-exempt settings with LVNs in exempt settings, pursuant to Section 3765 of the Business and Professions Code, authorized to perform tasks identified by the Board. It is our understanding that the tasks will be those listed in proposed Section 1399.361, Title 16 of the California Code of Regulations that may be performed by LVNs in home and community-based settings when the LVN and the employer are in compliance with the training requirement.

Timing and Statutory References. The proposed permanent amendment references subdivisions (i) and (j) of section 3765 of the Business and Professions Code as the settings in which the regulations would not apply to licensed vocational nurses. It is appropriate to continue to renew the emergency regulations through January 1, 2027 when the expanded exempt/non-exempt setting framework takes effect. Effective January 1, 2027, subdivision (i) and (j) of section 3765 will no longer exist. For permanent regulations, the correct reference for exempt settings would be subdivision (a) (9) of section 3765 of the Business and Professions Code. The RCB should clarify the intended effective date of the permanent regulations and ensure that the statutory references will match the law that is effective at that time.

CAHF's proposed amendment to Section 1399.365 is as follows:

(d) This section does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in any of the exempt settings listed, and under the conditions specified, in subdivisions ~~(i) and (j)~~ (a) (9) of section 3765 of the B&P.

Reconsideration of the Overall Structure of Respiratory Care Regulations. CAHF continues to be concerned that the structure of Section 1399.365, even with the corrected amendment, will continue to confuse non-RCB licensees and employers because it continues a framework in which LVNs will need to consult statute as amended by SB 1304, as well as multiple regulations and informal guidance from both the LVN and RCB, to determine the tasks that can be performed in exempt vs non-exempt settings. CAHF encourages the RCB and the LVN to work together to develop a single, clearly organized regulatory framework that:

1. Identifies respiratory care tasks that may be performed by LVNs in all settings;
2. Identifies additional respiratory care tasks authorized in exempt settings;
3. Identifies respiratory care tasks that require licensed RCP or another provider authorized by law, such as a RN in all settings;
4. Utilizes consistent definitions throughout all regulations and statutes; and
5. Aligns all regulatory language with the amendments to Business and Professions Code Sections 2860, 3762, and 3765 that become effective January 1, 2027.

Such alignment would create a more coherent regulatory framework, minimize confusion among stakeholders, reduce compliance burdens, promote consistent enforcement, and ultimately support the timely delivery of safe and effective respiratory care services to Californians across all care settings.

Thank you for the opportunity to provide comments on these proposed regulations. We urge the RCB to add this item to the next Board meeting and include an opportunity for verbal public comment so the RCB can hear testimony from the many providers impacted by these regulations. If you have questions, please contact Patti Owens, Director of Regulatory Affairs at powers@cahf.org.

Sincerely,



Patti Owens
Director of Regulatory Affairs



Outlook

CAHF Comments - RCB Proposed Regulations - Section 1399.365 - Permanent Regulations

From Yvonne Choong <ychoong@cahf.org>

Date Thu 09/24/26 11:45 AM

To rcbinfo@DCA <rcbinfo@dca.ca.gov>

Cc Patti Owens <powens@cahf.org>; Cassie Dunham <cdunham@cahf.org>; Molina, Christine@DCA <Christine.Molina@dca.ca.gov>; Pitt, Kathryn@DCA <Kathryn.Plitt@dca.ca.gov>

 1 attachment (245 KB)

CAHF Comments - 1399.365 - Permanent Regulations.pdf;

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Attached are comments from the California Association of Health Facilities on the proposed regulatory package from the Respiratory Care Board (RCB) to amend and make permanent Section 1399.365 – Basic Respiratory Care Tasks

Please direct questions to Patti Owens at powens@cahf.org.

Yvonne Choong, MPP

(She/Her/Hers)

Vice President for Policy

ychoong@cahf.org

916-432-5205



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September 24, 2026

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

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

**Re: 16 CCR 1399.365 Basic Respiratory Tasks and Services
16 CCR 1399.361 Home and Community-Based Respiratory Tasks and Services**

Dear President Guzman and Members of the Respiratory Care Board:

LeadingAge California thanks you for the opportunity to provide comments on the Respiratory Care Board's (RCB) proposal to make permanent the amendment to Section 1399.365 of Title 16 of California Code of Regulations, and the proposal to add Section 1399.361 of Division 13.6 of Title 16 of the California Code of Regulations.

LeadingAge California is the state's leading advocate for quality, nonprofit senior living, and care. Our more than 800 members across the state include providers of affordable senior housing, residential care facilities for the elderly (assisted living), life plan communities, skilled nursing care, home and community-based services, home health and hospice care.

We appreciate the efforts of the RCB and the Legislature to address the patient care, workforce, and implementation challenges associated with Section 1399.365 through the enactment of SB 1304 (Wahab) and subsequent guidance issued by the RCB. While these actions have provided increased clarity, we believe additional alignment is needed to create a clear and consistent regulatory framework that supports providers and ensures older adults have timely access to high-quality respiratory care services across all care settings. Additionally, we remain significantly concerned that the current scope of practice for licensed vocational nurses (LVNs) is not applied consistently across all settings.

Proposed Amendments to Section 1399.365

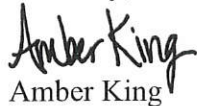
LeadingAge California is concerned that the language included in Section 1399.365 will create confusion for providers and licensees seeking to determine which respiratory care services may be performed by LVNs in various care settings. As currently drafted, Section 1399.365 references Business and Professions Code section 3765 to define exempt settings; however, it does not take into consideration amendments made through Senate Bill 1304. This regulation will not align with statute as of January 1, 2027. LeadingAge California recommends that the RCB update these regulations to accurately reflect the changes enacted through SB 1304 to ensure clarity for LVNs and providers.

Proposed Addition of Section 1399.361

LeadingAge California supports the proposed clarification of respiratory care services that LVNs may perform in exempt settings and generally agrees that the services identified in proposed Section 1399.361 reflect an appropriate LVN scope of practice. However, because SB 1304 establishes additional statutory authority for certain respiratory care services, including specific suctioning tasks that may be performed by LVNs across care settings, finalizing these regulations before they are aligned with the new statutory framework risks creating further confusion for providers and licensees. LeadingAge California encourages the RCB to delay final adoption of this amendment until the language is updated to fully incorporate and align with the changes enacted through SB 1304.

Given the significant impact these regulations have on providers and the individuals they serve, LeadingAge California respectfully requests that the RCB delay the adoption of these regulations until further clarification can be provided. We appreciate the opportunity to provide comments on this important issue. If you have any questions, please do not hesitate to contact me at aking@leadingageca.org.

Sincerely,

A handwritten signature in black ink that reads "Amber King". The signature is written in a cursive, flowing style.

Amber King
Vice President, Legislative Affairs



Outlook

Proposed Regulations Comments

From Amber King <aking@leadingageca.org>

Date Thu 09/24/26 12:44 PM

To rcbinfo@DCA <rcbinfo@dca.ca.gov>

📎 1 attachment (239 KB)

LeadingAge California Comments RCB Regulations 9.24.26.pdf;

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Good afternoon,

Please find LeadingAge California's comments on the following proposed Respiratory Care Board regulations:

16 CCR 1399.365 Basic Respiratory Tasks and Services

16 CCR 1399.361 Home and Community-Based Respiratory Tasks and Services

Thank you,

Amber King

Amber King | Vice President, Legislative Affairs | LeadingAge California | P [\(916\) 469-3376](tel:(916)469-3376) | C [\(916\) 801-5207](tel:(916)801-5207)

1315 I Street, Suite 100, Sacramento, CA 95814 | leadingageca.org | aking@leadingageca.org





Outlook

Public comment for proposed §§1399.361 and 1399.365

From Rose Fejerang <rosefejerang@gmail.com>

Date Mon 09/28/26 7:37 AM

To rcbinfo@DCA <rcbinfo@dca.ca.gov>

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Dear Respiratory Care Board,

I am writing to submit comments regarding proposed sections 1399.361 and 1399.365 prior to the close of the public-comment period today, September 28.

Please consider the following requests for clarification and revision:

- Alignment with Recent Legislation: Explain how the proposed regulations will be revised to align with newly enacted SB 1304.
- Scope of Application: State clearly which provisions apply—and which do not apply—to Skilled Nursing Facilities (SNFs) and subacute ventilator units.
- Definition of Terms: Define the distinction between limited tracheostomy-tube suctioning and deep suctioning.
- Training Standards: Require documented trainer qualifications, return demonstration, and competency validation.
- Escalation Protocols: Clarify escalation requirements when a Licensed Vocational Nurse (LVN) encounters an alarm, secretion problem, desaturation, or suspected ventilator malfunction.

Thank you for your consideration. I look forward to your response regarding next steps.

Sincerely,

Rosemarie Fejerang MS, RCP, RRT, RRT-AE-C
California Licensed Respiratory Care Practitioner #25456



association of california
school administrators



ALAMEDA COUNTY
OFFICE OF EDUCATION
Alysse Castro, Superintendent



September 28, 2026

Kathryn Pitt, Associate Governmental Program Analyst
Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834
Via email to rcbinfo@dca.ca.gov

Dear Ms. Pitt,

Thank you for the opportunity to comment on the updated regulations regarding **Home and Community-based Respiratory Tasks and Services (Add section 1399.361 to Title 16)** and **Basic Respiratory Tasks and Services (Amend section 1399.365 of Title 16)**. This public comment is provided on behalf of the undersigned organizations in response to both regulations packages.

Senate Bill 1304 (Wahab), which was signed by the Governor this week, creates substantive amendments to Business and Professions Code Section 3765, including renumbering the paragraphs and subdivisions. As of January 1, 2027, subdivisions (i) and (j) will no longer be operative.

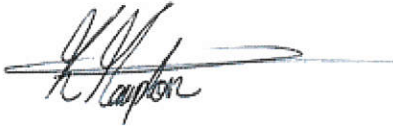
In order to align with the newly renumbered statute, we respectfully recommend that references to subdivisions (i) and (j) be struck and instead reference paragraphs (9) and (10) of subdivision (a), which now incorporate the various exempted settings. The inclusion of (a)(10) (previously subdivision (l)) is necessary to avoid conflicts with the authority granted in Education Code 49423.5 to licensed vocational nurses under the supervision of a credentialed school nurse.

Draft language is included below for your review. Thank you for your attention to this matter.

Sincerely,

Anna Ioakimedes
Legislative Advocate
Los Angeles Unified School District

Katie Nilsson
President
California School Nurses Organization



Kordell Hampton
Legislative Advocate
Association of California School
Administrators



Dr. Amber Gallagher
Chair
SELPA Administrators of California



Lucy Salcido Carter
Director of Policy and Governance
Alameda County Office of Education



Leticia Garcia
Chief Governmental Relations Officer
Office of the Riverside County Superintendent
of Schools



Jessica Simpson
Chief of Staff and Strategic Initiatives
Santa Clara County Office of Education

Proposed Language

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

(a) For the purposes of ~~subdivisions (i) and (j)~~ *paragraphs (9) and (10) of subdivision (a)* of section 3765 of the Business and Professions Code, a licensed vocational nurse may perform the following respiratory care tasks and services:...

§ 1399.365. Basic Respiratory Tasks and Services.

(d) This section does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in any of the exempt settings listed, and under the conditions specified, ~~in subdivisions (i) and (j) of section 3765 of the B&P.~~ *in paragraphs (9) and (10) of subdivision (a) of section 3765 of the B&P.*



Outlook

Public Comment: Add Section 1399.361 and Amend Section 1399.365

From loakimedes, Anna <anna.ioakimedes@lausd.net>

Date Mon 09/28/26 9:35 AM

To rcbinfo@DCA <rcbinfo@dca.ca.gov>

 1 attachment (1 MB)

RCB Public Comment_Education.pdf;

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September 28, 2026

Kathryn Pitt, Associate Governmental Program Analyst
Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834
Via email to rcbinfo@dca.ca.gov

Dear Ms. Pitt,

Thank you for the opportunity to comment on the updated regulations regarding **Home and Community-based Respiratory Tasks and Services (Add section 1399.361 to Title 16)** and **Basic Respiratory Tasks and Services (Amend section 1399.365 of Title 16)**. This public comment is provided on behalf of the undersigned organizations in response to both regulations packages.

Senate Bill 1304 (Wahab), which was signed by the Governor this week, creates substantive amendments to Business and Professions Code Section 3765, including renumbering the paragraphs and subdivisions. As of January 1, 2027, subdivisions (i) and (j) will no longer be operative.

In order to align with the newly renumbered statute, we respectfully recommend that references to subdivisions (i) and (j) be struck and instead reference paragraphs (9) and (10) of subdivision (a), which now incorporate the various exempted settings. The inclusion of (a)(10) (previously subdivision (l)) is necessary to avoid conflicts with the authority granted in Education Code 49423.5 to licensed vocational nurses under the supervision of a credentialed school nurse.

Draft language is included in below for your review. Thank you for your attention to this matter.

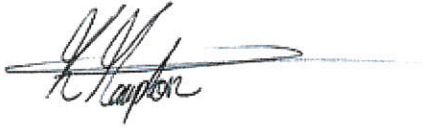
Sincerely,



Anna Ioakimedes
Legislative Advocate
Los Angeles Unified School District



Katie Nilsson
President
California School Nurses Organization



Kordell Hampton
Legislative Advocate
Association of California School
Administrators



Dr. Amber Gallagher
Chair
SELPA Administrators of California



Lucy Salcido Carter
Director of Policy and Governance
Alameda County Office of Education



Leticia Garcia
Chief Governmental Relations Officer
Office of the Riverside County
Superintendent
of Schools



Jessica Simpson
Chief of Staff and Strategic Initiatives
Santa Clara County Office of Education

Proposed Language

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

(a) For the purposes of ~~subdivisions (i) and (j)~~ paragraphs (9) and (10) of subdivision (a) of section 3765 of the Business and Professions Code, a licensed vocational nurse may perform the following respiratory care tasks and services:...

§ 1399.365. Basic Respiratory Tasks and Services.

(d) This section does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in any of the exempt settings listed, and under the conditions specified, ~~in subdivisions (i) and (j) of section 3765 of the B&P.~~ *in paragraphs (9) and (10) of subdivision (a) of section 3765 of the B&P.*

Anna Ioakimedes, MPP

Legislative Advocate

Los Angeles Unified School District

anna.ioakimedes@lausd.net

(916) 443-4405



PUBLIC COMMENT — 16 CCR §§ 1399.361 and 1399.365 — September 28, 2026 — Individual-Nurse Home Implementation

From Sara Granda <smgranda@gmail.com>

Date Mon 09/28/26 10:17 AM

To rcbinfo@DCA <rcbinfo@dca.ca.gov>

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Attention: Kathryn Pitt; Christine Molina, backup contact
Respiratory Care Board of California

Please accept this timely written public comment for both rulemakings noticed August 14, 2026:

- Proposed addition of 16 CCR § 1399.361 — Home and Community-Based Respiratory Tasks and Services.
- Proposed amendment of 16 CCR § 1399.365 — Basic Respiratory Tasks and Services, including subdivision (d).

Please place this submission in both rulemaking files and acknowledge receipt for each.

I am a California resident with high cervical spinal cord injury who depends on continuous ventilation and licensed skilled nursing in my home. I am also a health-law attorney and former medical social worker. My comment concerns how the proposed framework will function when nurses work individually in a residential home without a conventional home health agency employer and clinical hierarchy.

I support clear rules that preserve access to qualified nurses while protecting patients. The rules and implementation materials must help patients and licensees identify who performs the necessary assessment, training, competency validation, clinical direction, documentation, and escalation functions.

My own care illustrates why generic ventilator or tracheostomy experience is insufficient. I use a cuffless, fenestrated tracheostomy, speak while continuously ventilated, and have not required routine suctioning for more than 25 years. I teach licensed nurses the patient-specific history and routines unique to my care. That teaching does not make me the professional competency evaluator or clinical supervisor.

Please address the following numbered comments:

1. Applicability and transition — §§ 1399.361(a) and 1399.365(d).

2. Provide a clear method for determining which statutory exemption applies to a particular arrangement under Business and Professions Code § 3765(i) or (j). Address individual nurses, agency-employed nurses, and registry arrangements separately where their legal conditions differ. Identify the applicable operative dates and the framework governing practice during any transition. A residential address or payment authorization should not be treated as proof that every exemption condition has been satisfied.
3. Continuous ventilator dependence — § 1399.361(a)(1).
4. Clarify how the reconnection and transfer provisions apply to a patient who cannot breathe independently at any time. Implementation materials should expressly address continuity of ventilation during equipment transfers and failures, including the patient-specific preparation and demonstrated competency needed before an independent assignment.
5. Supervising provider and alarm escalation — § 1399.361(a)(2)(A)2.
6. The reference to a supervising provider needs an operational explanation for homes without an HHA hierarchy. Identify how that professional is designated, what availability is required, how the nurse reaches that person, and what the nurse must do when the designated professional is unavailable. Please coordinate with the relevant licensing boards where the answer involves their authority.
7. Individualized airway care — § 1399.361(a)(8) and (9).
8. Clarify how training and competency must account for the actual prescribed tracheostomy configuration and patient baseline. Generic instruction should not substitute for demonstrated competence with an unfamiliar airway configuration. Explain how prescribed options, clinical decisions reserved to other professionals, and escalation instructions should be documented and communicated.
9. Immediate response and emergency continuity — § 1399.361(a)(10).
10. Clarify the relationship between summoning emergency assistance and maintaining necessary patient-specific ventilation while assistance is arriving and during handoff. Calling 911 does not itself supply immediate bedside ventilation or ensure that responding personnel understand an unusual airway configuration. The framework should support an individualized response plan within each professional's lawful scope.
11. Competency records and instruction — § 1399.361(a)(13) and (14).
12. Identify who validates and documents patient-specific competency, who retains the record when no HHA employer exists, and how competency is reassessed after equipment or care-plan changes. Distinguish patient instruction about personal routines from professional validation that a nurse is ready for an independent assignment.
13. Workforce continuity and responsibility.
14. Address how a patient and prospective nurse can identify the required clinical support before a shift is accepted. A list of permitted tasks cannot by itself resolve an unassigned assessment, supervision, or escalation function. Please explain which responsibilities arise under the Board's rules, which arise under other authorities, and how questions crossing those boundaries will be coordinated.
15. Implementation burden and accessible guidance.

Please consider the time and cost imposed when patients must repeatedly interpret regulatory boundaries, train replacement nurses, locate professional oversight, and reconstruct competency records. I request a practical implementation checklist or comparable guidance identifying the applicable exemption, orders, patient-specific training, competency evaluator, clinical contact, documentation custodian, and backup escalation route.

Please address these comments through regulatory text where appropriate and through explanations or coordinated guidance where another authority governs. I am seeking a workable framework for safe community respiratory care, not a determination of any payer dispute or individual disciplinary matter.

For tracking and continued participation, please:

- Confirm the date of receipt and inclusion in each of the two rulemaking files.
- Provide any assigned rulemaking, notice-file, or public-comment tracking number for each proceeding.
- If individual comments do not receive numbers, confirm that this submission is indexed under Sara M. Granda, September 28, 2026, for both §§ 1399.361 and 1399.365.
- Add me to the notification list for modified text and further comment opportunities.
- Provide the Final Statement of Reasons when available, including the Board's responses to these numbered comments.

Please communicate by email in accessible text.

Respectfully,

Sara M. Granda, Esq., MSW
Davis, California
smgranda@gmail.com



September 28, 2026

Kathryn Pitt
Assistant Executive Officer
Respiratory Care Board of California
3750 Rosin Court, Suite 100
Sacramento, CA 95834

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

Subject: 16 CCR 1399.365 Basic Respiratory Tasks and Services and 16 CCR 1399.361 Home and Community-Based Respiratory Tasks and Services

Dear Ms. Pitt:

On behalf of nearly 400 hospitals and health systems, including numerous skilled-nursing facilities, subacute care units, and home health agencies, the California Hospital Association writes to provide comments on two proposed regulations:

- Amendments to Section 1399.365 of Title 16, California Code of Regulations (CCR)
- The addition of Section 1399.361 of Title 16, CCR

While these proposed regulations provide additional clarity on the scope of practice for licensed vocational nurses (LVNs), hospitals and other facilities continue to have significant concerns that setting-based scope of practice regulations will increase health care costs, impede patients' access to medically necessary care, and hamper patients' ability to receive care in the setting of their choice.

Proposed Amendments to Section 1399.365

Previously, the Respiratory Care Board of California (RCB) adopted an amendment to CCR, Title 16, Section 1399.365 as an emergency regulation to clarify the provisions of Business and Professions Code (BPC) 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, and (j) which identifies additional exempt settings. The proposed regulation would permanently adopt this emergency regulation.

CHA supports the permanent adoption of this regulation as a necessary step to ensure that patients served in these settings do not experience harmful interruptions of care. However, the RCB's recently passed sunset review legislation — Senate Bill (SB) 1304, Statutes of 2026 — added additional settings to the list of exempted settings, effective Jan. 1, 2027. At that time, the proposed amendments will no longer align with statute, adding to the confusion LVNs and other health care providers face in understanding the LVN scope of practice. The RCB should promptly revise regulations to reflect the statutory changes included in SB 1304.

Further, hospitals continue to have significant concerns with the setting-specific scope of practice regulatory framework. Providers at all levels of the care continuum, particularly skilled-nursing facilities and subacute care units, have historically employed LVNs to perform many of these functions. Limits to the ability of qualified LVNs to

perform respiratory tasks for which they are trained and experienced have forced significant staffing reconfigurations in these settings, requiring hospitals, skilled-nursing facilities, and subacute units to increase registered nurse or respiratory therapist staffing to cover routine procedures formerly provided by LVNs. With more responsibilities falling on higher-paid staff, health care costs have increased. At the same time, nationwide workforce shortages challenge the ability of facilities to hire new staff leading to increased overtime, a greater reliance on agency staffing, or reduction of services. These factors can impede patient access to medically necessary care in the setting of their choice.

Notably, SB 1304 requires LVNs, in all exempted settings, to complete patient-specific training provided by the employer before Jan. 1, 2028, and receive task-specific training on respiratory tasks and services from specified organizations on or after that date. CHA would support a regulatory framework that allows LVNs to perform respiratory tasks and services in **any** setting, conditioned on receiving the training specified in SB 1304.

Proposed Addition of Section 1399.361

The proposed regulation identifies the specific respiratory care tasks and services that LVNs may perform in the exempted settings referenced in section 1399.365. In general, the services listed in the proposed Section 1399.361 represent an appropriate scope of services for LVNs.

This regulation is intended to provide clarity about the tasks an LVN can and cannot perform in these settings. However, SB 1304 makes statutory changes — including a list of suctioning tasks that can be performed by LVNs in all settings — that will soon add to the confusion surrounding the LVN scope of practice if not aligned in regulation. The RCB should consider delaying the finalization of this proposed regulation until it can promulgate regulations that are inclusive of the framework established by SB 1304.

When the RCB promulgates regulations that recognize the suctioning provisions of SB 1304, the RCB should also consider providing clarification that LVNs in any setting may place a noninvasive oxygen delivery mask on a patient when directed by a physician or RN. Similar to the allowable suctioning tasks, use of an oxygen mask does not require any insertion of a device into the patient's airway.

CHA supports the RCB's goal of ensuring that only appropriately qualified personnel provide specialized patient care. In developing regulations that are applied to LVNs in certain home and community-based settings, the RCB acknowledges that LVNs can provide this care when they receive appropriate training and demonstrate competency. LVNs, with appropriate supervision and training, are an essential part of the care team, particularly in long-term care settings such as skilled-nursing facilities and hospital subacute care units. Allowing 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 full range of patients' health care needs.

Sincerely,

/s/

Megan Howard

Vice President, Policy



Outlook

Submission: RCB Comment Letter from California Hospital Association

From Lisa Geraty <lgeraty@calhospital.org>
on behalf of
Megan Howard <mhoward@calhospital.org>
Date Mon 09/28/26 10:43 AM
To rcbinfo@DCA <rcbinfo@dca.ca.gov>

 1 attachment (86 KB)

CHA Comment Letter 16 CCR 1399.365 and 16 CCR 1399.361_Final.pdf;

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Hello,

Please find attached the California Hospital Association letter regarding 16 CCR 1399.365 Basic Respiratory Tasks and Services and 16 CCR 1399.361 Home and Community-Based Respiratory Tasks and Services. I can be reached via my contact information below as needed.

Thank you,

Megan Howard
Vice President, Policy
California Hospital Association
mhoward@calhospital.org
Cell: 530-680-8883
Office: 202-488-3742



September 28, 2026

Kathryn Pitt
Respiratory Care Board
3750 Rosin Court, Suite 100
Sacramento, CA 95834
Via Email: rcbinfo@dca.ca.gov

Re: Home and Community-Based Respiratory Tasks and Services

Dear Kathryn Pitt:

The California Assisted Living Association (CALA), representing Residential Care Facilities for the Elderly (RCFEs) and Continuing Care Retirement Communities (CCRCs) statewide, appreciates the Board's efforts to provide greater clarity and consistency regarding the respiratory care services LVNs may perform in home and community-based settings under Business and Professions Code section 3765.

Prior to the October 1, 2025 implementation of the Board's regulations defining basic respiratory care tasks, LVNs had safely and effectively assisted residents with CPAP and BiPAP systems and with oxygen in Assisted Living communities. Although RCFEs are not required to employ nurses, many do so to provide these essential services and medication administration, allowing residents to remain in less restrictive community-based settings rather than unnecessarily transitioning to skilled nursing facilities. The regulatory changes created access and continuity-of-care challenges for current and prospective residents unable to independently manage these systems.

CALA appreciates the Board's continued efforts to address concerns raised by affected Californians and preserve access to essential LVN-provided services. While we support the overall direction of the proposed regulations, we respectfully request additional flexibility for LVNs employed by co-located CCRCs operating both exempt and non-exempt settings, allowing them to provide care across the campus. We also request that § 1399.361(a) be revised to align with SB 1304.

Thank you for the opportunity to comment on these proposed regulations pertaining to **respiratory tasks and services in home and community-based settings**. If you have any questions, please contact me at selena@CAassistedliving.org.

Sincerely,

Selena Coppi Hornback
Vice President of Regulatory Affairs

CALA Comments on the RCB Home and Community-Based Respiratory Tasks and Services

From Selena Coppi Hornback <selena@caassistedliving.org>

Date Mon 09/28/26 5:11 PM

To rcbinfo@DCA <rcbinfo@dca.ca.gov>

 1 attachment (113 KB)

CALA Comments_RCB Home and Community-Based Respiratory Tasks and Services- 9.28.26.pdf;

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Please find attached CALA's comments on the Respiratory Care Board's proposed regulations on Home and Community-Based Tasks and Services.

Selena Coppi Hornback
Vice President of Regulatory Affairs



California Assisted Living Association

455 Capitol Mall, Suite 520

Sacramento, CA 95814

(916) 448-1900

CAassistedliving.org

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Fall Conference | Palm Springs | November 2-4, 2026 [REGISTER NOW!](#)

Spring Conference | Sacramento | June 7-9, 2027

Fall Conference | Palm Springs | November 1-3, 2027



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**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:
Basic Respiratory Tasks and Services**

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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AMEND SECTION 1399.365 of Division 13.6 of Title 16 of the California Code of Regulations to read 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 or a tracheostomy tube.
- (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 cardiopulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
- (7) Documentation of care provided, including 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.
- (9) Application, set up, administration, adjustment of oxygen flow rates, titration, weaning, and discontinuation of oxygen therapy pursuant to a patient-specific order, including oxygen tank replacement or transfer of established oxygen therapy from one oxygen source to another.

(10) Placement or removal of a mask or interface used to deliver non-invasive ventilation, including continuous positive airway pressure (CPAP) or bilevel positive airway pressure (BiPAP), and turning the device on or off pursuant to a patient-specific order.

(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) Setup or manipulation of an invasive or non-invasive ventilator, including adjustment of the fit or seal of a mask or interface, or adjustment of any device setting or parameter.

(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) Oral suctioning that enters the oropharynx or beyond.

(7) Nasal suctioning that enters the nasopharynx or beyond.

(8) Endotracheal suctioning.

(9) Tracheal suctioning.

(10) Tracheostomy tube suctioning when the suctioning device passes beyond the distal end of the tracheostomy tube.

~~(6 11) Initial setup, change out, or replacement of an invasive or non-invasive ventilator breathing circuit or adjustment of oxygen liter flow or oxygen concentration.~~

(12) Determination of whether to initiate, apply, set up, administer, adjust oxygen flow rates, titrate, wean, or discontinue oxygen therapy based on an assessment of the patient's condition or response to therapy.

~~(7 13) Tracheal suctioning, Inflation or deflation of a tracheostomy cuff, inflation or deflation, use or removal of an external speaking valve, or removal and or replacement of the tracheostomy tube or inner cannula, or placement, removal, or replacement of an external speaking valve, tracheostomy cap, or HME, except for removal and replacement for purposes of suctioning within the tracheostomy tube.~~

(d) This section does not apply to licensed vocational nurses performing respiratory care services identified by the Board in section 1399.361 while working in any of the exempt settings listed, and under the conditions specified, in subdivisions ~~(i) and (j)~~ (a)(9)(C) of section 3765 of the B&P.

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.