

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

**ADVANCE NOTICE OF INTENT**  
**TO RE-ADOPT EMERGENCY REGULATIONS**

This notice is sent in accordance with Government Code section 11346.1 and California Code of Regulations, title 1, section 52. Government Code section 11346.1(a)(2) requires that, at least five (5) working days prior to submission of the proposed re-adoption of emergency regulations to the Office of Administrative Law (OAL), the adopting agency provide notice of the proposed emergency regulation re-adoption to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulation re-adoption to OAL, OAL shall allow interested persons five (5) calendar days to submit comments on the proposed re-adoption of the emergency regulations as set forth in Government Code section 11349.6.

The Respiratory Care Board (Board) initially adopted emergency amendments to California Code of Regulations, title 16, section 1399.365, relating to the applicability of the Basic Respiratory Tasks and Services regulation to LVNs working in settings exempt pursuant to Business and Professions Code (BPC) section 3765, subdivisions (i) and (j). The emergency regulation was approved by OAL and became effective on January 12, 2026.

Pursuant to California Code of Regulations, title 1, section 52, subdivision (b)(1), the Board has made substantial progress and proceeded with diligence to comply with Government Code section 11346.1, subdivision (e).

During adoption of the emergency regulation at its November 14, 2025, meeting, the Board authorized staff to take all steps necessary to complete the emergency rulemaking process, pursue regular rulemaking to make the regulation permanent, and seek readoption if necessary to avoid a lapse in the regulation's effectiveness. During the same meeting, the Board approved proposed regulatory text to adopt California Code of Regulations, title 16, section 1399.361, Home and Community-Based Respiratory Tasks and Services, and directed staff to submit the proposed text to the Department of Consumer Affairs (DCA) and the Business, Consumer Services and Housing Agency (Agency) for review prior to initiation of formal rulemaking.

The emergency amendment was approved by OAL and became effective on January 12, 2026. Since that time, the Board has continued evaluating implementation of section 1399.365 and engaging stakeholders regarding practical application of the regulation. On January 23, 2026, the Board's Professional Qualifications Committee (Committee) conducted a publicly noticed meeting to discuss stakeholder feedback concerning

suctioning-related provisions contained in section 1399.365 and to evaluate whether additional regulatory clarification may be appropriate. The Committee considered stakeholder questions relating to nasal suctioning, tracheal suctioning, and oral suctioning and discussed whether future amendments may be warranted to further clarify the regulation while remaining consistent with the Board's original regulatory intent.

The Committee's recommendations were subsequently presented to the full Board for discussion at its April 30, 2026, meeting. During that meeting, Board members and stakeholders engaged in substantial discussion regarding the proposed suctioning-related amendments and raised questions concerning the practical application of the proposed language in various care settings. Following that discussion, the Board determined that additional review by the Professional Qualifications Committee was warranted before advancing any amendments to ensure that any proposed revisions accurately reflect the Board's regulatory intent, protect public safety, and provide clear guidance to affected stakeholders. The Board has continued working with stakeholders and legal counsel to further evaluate these issues.

The Board and staff have continued to work with legal counsel, the DCA, and Agency to advance permanent rulemaking efforts relating to respiratory care services performed by LVNs. These efforts include both the Certificate of Compliance process necessary to make the emergency amendment permanent and continued development of section 1399.361, which is intended to establish a comprehensive regulatory framework governing respiratory care services performed in exempt home and community-based settings.

Additional time is necessary to complete departmental review, provide public notice, receive and evaluate public comments, and prepare the final rulemaking record required by the Administrative Procedure Act. Readoption of the emergency regulation is therefore necessary to avoid a lapse in regulatory clarity regarding the applicability of section 1399.365 to the exempt settings while the Board completes the regular rulemaking process.

The Board hereby incorporates by reference OAL File Number 2025-1231-01E.

Attached is the Order of Adoption containing the emergency regulation text proposed for readoption. The Board plans to file the Emergency Readoption Rulemaking Package with OAL at least five (5) working days from the date of this notice. If you wish to comment on the proposed readoption, both the Board and OAL must receive comments within five (5) calendar days of the Board's filing with OAL. During an emergency readoption filing, it is within the Board's discretion to respond to any public comment received during the five-day comment period.

Comments should be sent simultaneously to:

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**AND**

Address: OAL Reference Attorney  
300 Capitol Mall, Suite 1250  
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E-Mail Address: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

If you have any questions, please contact:

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**BACKGROUND**

On October 1, 2025, California Code of Regulations, title 16, section 1399.365, Basic Respiratory Tasks and Services, became operative. The regulation was adopted pursuant to BPC section 3702.5 and identifies respiratory tasks and services that the Board has determined are basic respiratory tasks and services because they do not require a respiratory assessment and require only manual or technical skills or data collection.

Following implementation of section 1399.365, the Board received significant stakeholder feedback concerning the regulation's application to home health and community-based settings exempted under BPC section 3765, subdivisions (i) and (j). Stakeholders expressed concern that the regulation could be interpreted as restricting LVNs from continuing to perform respiratory care services in exempt settings while the Board was still developing the regulations necessary to fully implement those statutory exemptions.

In response, the Board adopted emergency amendments to section 1399.365 to clarify that the regulation does not apply to LVNs performing respiratory care services identified by the Board while working in the exempt settings and under the conditions specified in BPC section 3765, subdivisions (i) and (j). The emergency amendment was

intended to preserve continuity of care while the Board continued its efforts to develop a comprehensive and permanent regulatory framework governing respiratory care services performed in exempt settings.

The Board is concurrently developing California Code of Regulations, title 16, section 1399.361, Home and Community-Based Respiratory Tasks and Services, which is intended to identify the respiratory care services that may be performed by LVNs in exempt home and community-based settings. The Board approved proposed regulatory text for section 1399.361 on November 14, 2025, and the proposal is currently undergoing review prior to initiation of formal rulemaking.

### **AUTHORITY AND REFERENCE**

Authority cited: Sections 3722 and 3765, Business and Professions Code.

Reference: Section 3765, Business and Professions Code.

Pursuant to the authority vested by sections 3722 and 3765 of the BPC(BPC), and to implement, interpret, or make specific section 3765, the Board is considering amending section 1399.365 of title 16 of the California Code of Regulations (CCR), which was originally adopted pursuant to the Board's authority under BPC section 3702.5.

### **SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION**

The circumstances that necessitated adoption of the emergency regulation remain substantially unchanged. The emergency amendment clarified that section 1399.365 does not apply to LVNs performing respiratory care services identified by the Board while working in the exempt settings identified in BPC section 3765, subdivisions (i) and (j). Those statutory exemptions remain in effect, and the Board continues working toward development of a permanent regulatory framework governing respiratory care services performed in those settings.

Allowing the emergency regulation to expire before completion of the regular rulemaking process would create uncertainty regarding the applicability of section 1399.365 to exempt settings and could undermine the continuity of care that the emergency regulation was intended to preserve. Such a result would be inconsistent with the legislative intent underlying BPC section 3765 and would create uncertainty for patients, providers, LVNs, facilities, and regulatory agencies.

The Board has proceeded diligently toward completion of permanent rulemaking. The Board approved proposed section 1399.361 concurrently with adoption of the emergency amendment, has continued stakeholder engagement through publicly noticed meetings, has evaluated implementation issues raised following the operative date of section 1399.365, and has continued advancing both regulatory actions through the review process. Additional time is necessary to complete departmental review, provide public notice, receive and evaluate public comments, and prepare the final rulemaking record required by the Administrative Procedure Act.

Accordingly, readoption of the emergency regulation is necessary to maintain regulatory continuity while the Board completes the regular rulemaking process and related regulatory efforts.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

BPC section 3702.5 authorizes the Board to identify by regulation basic respiratory tasks and services that do not require a respiratory assessment and require only manual or technical skills or data collection. Pursuant to that authority, the Board adopted California Code of Regulations, title 16, section 1399.365, which became operative on October 1, 2025.

Following implementation of section 1399.365, stakeholders raised concerns regarding application of the regulation to settings exempted by Business and Professions Code section 3765, subdivisions (i) and (j). In response, the Board adopted an emergency amendment adding subdivision (d) to clarify that section 1399.365 does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in those exempt settings and under the conditions specified by statute.

This proposal would readopt the existing emergency amendment without substantive change. The readoption would preserve the current regulatory framework while the Board completes the regular rulemaking process and continues development of section 1399.361, which is intended to identify respiratory care services that may be performed by licensed vocational nurses in exempt home and community-based settings.

The Board has determined that the proposed readoption is not inconsistent or incompatible with existing state regulations.

No forms are incorporated by reference as part of this regulatory proposal.

### **Anticipated Benefits of Proposal**

The proposed readoption will continue to provide clarity regarding the applicability of section 1399.365 to the exempt settings identified in Business and Professions Code section 3765, subdivisions (i) and (j). It will promote continuity of care, reduce uncertainty among affected stakeholders, and preserve the regulatory framework currently relied upon by patients, providers, facilities, and licensed vocational nurses while the Board completes the regular rulemaking process.

The proposed re-adoption will also support the Board's ongoing efforts to develop a comprehensive and permanent regulatory framework governing respiratory care services performed in exempt home and community-based settings while maintaining the Board's consumer protection mandate.

### **Evaluation of Consistency and Compatibility with Existing State Regulations**

The Board has reviewed existing state regulations and has determined that the proposed regulation is consistent and compatible with existing regulations governing

respiratory care services and the scope of practice of LVNs. The regulation aligns with statutory exemptions established in BPC section 3765 and complements existing regulations without conflict.

No other matters are prescribed by statute for inclusion in this section.

#### **PURPOSE AND RATIONALE FOR EACH ADOPTION, AMENDMENT OR REPEAL**

Amend Section 1399.365, subdivision (d), of Article 6, Division 13.6, Title 16 of the California Code of Regulations.

Subdivision (d) provides that section 1399.365 does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in the exempt settings listed, and under the conditions specified, in Business and Professions Code section 3765, subdivisions (i) and (j).

The purpose of subdivision (d) is to clarify the applicability of section 1399.365 and ensure consistency between the regulation and the statutory exemptions established by the Legislature in Business and Professions Code section 3765. The Board adopted the emergency amendment after receiving stakeholder feedback indicating that the regulation could be interpreted as restricting licensed vocational nurses from continuing to perform respiratory care services in settings that the Legislature intended to exempt from the Board's oversight pending development of additional regulations.

The rationale for subdivision (d) remains unchanged. The Board determined that clarification was necessary to preserve continuity of care in exempt home health and community-based settings while the Board develops a permanent regulatory framework governing respiratory care services performed by licensed vocational nurses in those settings. The amendment prevents confusion regarding the applicability of section 1399.365 and provides regulatory certainty for patients, providers, licensed vocational nurses, facilities, and other affected stakeholders.

This emergency readoption does not make any substantive changes to the existing regulatory text. The Board proposes to readopt subdivision (d) without modification in order to maintain regulatory continuity while it completes the regular rulemaking process and related regulatory efforts, including development of California Code of Regulations, title 16, section 1399.361, Home and Community-Based Respiratory Tasks and Services.

The Board has considered alternatives and has determined that readoption of the existing regulatory text is the only alternative that will continue to provide clarity regarding the applicability of section 1399.365 to the exempt settings identified in Business and Professions Code section 3765, subdivisions (i) and (j), while the permanent rulemaking process is completed.

## DISCLOSURES REGARDING THE PROPOSED ACTION

### Fiscal Impact Estimates

#### Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The regulations do not result in a fiscal impact to the state. This proposal re-adopts an existing regulatory amendment and implements statutory authority in BPC section 3765 by clarifying the applicability of the Board's regulations to LVNs performing respiratory care services in specified settings.

The Board does not anticipate any additional workload or costs resulting from the proposed regulation. Any workload associated with implementation and enforcement of this regulation is attributable to existing law.

The regulations do not result in costs or savings in federal funding to the state.

#### Nondiscretionary Costs/Savings to Local Agencies

None.

#### Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement

None.

#### Mandate Imposed on Local Agencies or School Districts

None.

#### Significant Effect on Housing Costs

None.