

**State of California
Office of Administrative Law**

In re:
Respiratory Care Board

Regulatory Action:

Title 16, California Code of Regulations

Amend sections: 1399.365

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2026-0921-03

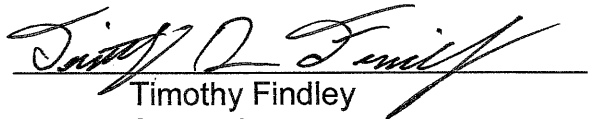
OAL Matter Type: Emergency Readopt (EE)

This emergency readoption action pursuant to Government Code section 11346.1(h) by the Respiratory Care Board of California readopts for a second time OAL File No. 2025-1231-01E, which amended the existing regulatory identification of basic respiratory tasks and services to specify that its provisions do not apply to licensed vocational nurses performing respiratory care tasks and services as provided by Business and Professions Code section 3765, subdivisions (i) and (j). The Respiratory Care Board of California previously readopted OAL File No. 2025-1231-01E in OAL File No. 2026-0629-01EE.

OAL approves this emergency regulatory action pursuant to Government Code sections 11346.1 and 11349.6.

This emergency regulatory action is effective on 10/7/2026 and will expire on 1/6/2027. The Certificate of Compliance for this action is due no later than 1/5/2027.

Date: October 1, 2026


Timothy Findley
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Christine Molina, Executive
Officer

Copy: Kathryn Pitt

EMERGENCY

For use by Secretary of State only

**OAL FILE
NUMBERS**

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2026-0921-03EE

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2026 SEP 21 PM3:43**ENDORSED - FILED**In the office of the Secretary of State
of the State of California**OCT 01 2026****1:49 pm****NM**

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Respiratory Care Board of California

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE ☐ Notice re Proposed Regulatory Action ☐ Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Basic Respiratory Tasks and Services		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2025-1231-01E; 2026-0629-01EE	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 16		AMEND 1399.365	
		REPEAL	
3. TYPE OF FILING			
☐ Regular Rulemaking (Gov. Code §11346) ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) ☐ Emergency (Gov. Code, §11346.1(b))		☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	
		☒ Emergency Readopt (Gov. Code, §11346.1(h)) ☐ File & Print ☐ Other (Specify)	
		☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) ☐ Print Only	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §100.5; Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		☐ Effective on filing with Secretary of State ☐ \$100 Changes Without Regulatory Effect ☒ Effective other (Specify) 10/7/2026	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
☐ Department of Finance (Form STD. 399) (SAM §6660) ☒ Other (Specify) Christine Lally, Acting Director, Department of Consumer Affairs		☐ Fair Political Practices Commission ☐ State Fire Marshal	
7. CONTACT PERSON Kathryn Pitt		TELEPHONE NUMBER (916) 999-2203	FAX NUMBER (Optional)
		E-MAIL ADDRESS (Optional) kathryn.pitt@dca.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Christine Molina

DATE

09/21/2026

TYPED NAME AND TITLE OF SIGNATORY

Christine Molina, Executive Officer

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED**OCT 01 2026****Office of Administrative Law**

RESPIRATORY CARE BOARD OF CALIFORNIA

ORDER OF ADOPTION

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

Amend Section 1399.365 as follows:

§ 1399.365. Basic Respiratory Tasks and Services.

- (a) For purposes of this section, "assessment" means making an analysis or judgment and making recommendations concerning the management, diagnosis, treatment, or care of a patient or as a means to perform any task in regard to the care of a patient. Assessment as used in this section is beyond documenting observations, and gathering and reporting data to a licensed respiratory care practitioner, registered nurse, or physician.
- (b) For purposes of subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services do not require a respiratory assessment and include the following:
 - (1) Patient data collection.
 - (2) Application and monitoring of a pulse oximeter.
 - (3) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator.
 - (4) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation.
 - (5) Hygiene care including replacement of tracheostomy ties and gauze and cleaning of the stoma sites.
 - (6) Use of a manual resuscitation device and other cardio-pulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
 - (7) Documentation of care provided, which includes data retrieved from performing a breath count or transcribing data from an invasive or non-invasive ventilator interface.
 - (8) Observing and gathering data from chest auscultation, palpation, and percussion.
- (c) For purposes of subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services do not include the following:
 - (1) Manipulation of an invasive or non-invasive ventilator.
 - (2) Assessment or evaluation of observed and gathered data from chest auscultation, palpation, and percussion.
 - (3) Pre-treatment or post-treatment assessment.
 - (4) Use of medical gas mixtures other than oxygen.
 - (5) Preoxygenation, or endotracheal or nasal suctioning.

- (6) Initial setup, change out, or replacement of a breathing circuit or adjustment of oxygen liter flow or oxygen concentration.
 - (7) Tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.
- (d) This section does not apply to licensed vocational nurses performing respiratory care services identified by the Board while working in any of the exempt settings listed, and under the conditions specified, in 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.