

AMENDED IN SENATE APRIL 24, 2025

SENATE BILL

No. 389

**Introduced by Senator Ochoa Bogh
(Coauthor: Senator Dahle)**

February 14, 2025

An act to amend Section 3765 of the Business and Professions Code, and to amend Section 49423.5 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as amended, Ochoa Bogh. Pupil health: individuals with exceptional needs: ~~specialized physical health care services; respiratory services; licensed vocational nurses.~~

(1) Existing law, the Respiratory Care Practice Act, establishes the Respiratory Care Board of California to license and regulate the practice of respiratory care. The act authorizes, among other things, a licensed vocational nurse who is employed by a home health agency to perform respiratory tasks and services identified by the board, as specified.

This bill would also authorize the performance of suctioning and other basic respiratory tasks and services by a licensed vocational nurse under the supervision of a credentialed school nurse.

~~Existing~~

(2) Existing law authorizes an individual with exceptional needs who requires specialized physical health care services, as defined, during the regular schoolday, to be assisted by individuals meeting specified requirements.

~~This bill would authorize, notwithstanding any other law, a licensed vocational nurse under the supervision of a credentialed school nurse~~

~~who meets the above-described requirements to perform specialized physical health care services.~~

This bill would also authorize an individual with exceptional needs who requires specialized physical health care services to be assisted by a licensed vocational nurse under the supervision of a credentialed school nurse for the above-described basic respiratory services.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3765 of the Business and Professions
- 2 Code is amended to read:
- 3 3765. This act does not prohibit any of the following activities:
- 4 (a) The performance of respiratory care that is an integral part
- 5 of the program of study by students enrolled in approved
- 6 respiratory therapy training programs.
- 7 (b) Self-care by the patient or the gratuitous care by a friend or
- 8 member of the family who does not represent or hold themselves
- 9 out to be a respiratory care practitioner licensed under the
- 10 provisions of this chapter.
- 11 (c) The respiratory care practitioner from performing advances
- 12 in the art and techniques of respiratory care learned through formal
- 13 or specialized training.
- 14 (d) The performance of respiratory care in an emergency
- 15 situation by paramedical personnel who have been formally trained
- 16 in these modalities and are duly licensed under the provisions of
- 17 an act pertaining to their specialty.
- 18 (e) Temporary performance, by other health care personnel,
- 19 students, or groups, of respiratory care services, as identified and
- 20 authorized by the board, in the event of an epidemic, pandemic,
- 21 public disaster, or emergency.
- 22 (f) Persons from engaging in cardiopulmonary research.
- 23 (g) Formally trained licensees and staff of child day care
- 24 facilities from administering to a child inhaled medication as
- 25 defined in Section 1596.798 of the Health and Safety Code.
- 26 (h) The performance by a person employed by a home medical
- 27 device retail facility or by a home health agency licensed by the
- 28 State Department of Public Health of specific, limited, and basic

1 respiratory care or respiratory care-related services that have been
2 authorized by the board.

3 (i) The performance, by a vocational nurse licensed by the Board
4 of Vocational Nursing and Psychiatric Technicians of the State of
5 California who is employed by a home health agency licensed by
6 the State Department of Public Health, of respiratory tasks and
7 services identified by the board, if the licensed vocational nurse
8 complies with the following:

9 (1) Before January 1, 2028, the licensed vocational nurse has
10 completed patient-specific training satisfactory to their employer.

11 (2) On or after January 1, 2028, the licensed vocational nurse
12 has completed patient-specific training by the employer in
13 accordance with guidelines that shall be promulgated by the board
14 no later than January 1, 2028, in collaboration with the Board of
15 Vocational Nursing and Psychiatric Technicians of the State of
16 California.

17 (j) The performance of respiratory care services identified by
18 the board by a licensed vocational nurse who satisfies the
19 requirements in paragraph (1) in the settings listed in paragraph
20 (2).

21 (1) (A) The licensed vocational nurse is licensed pursuant to
22 Chapter 6.5 (commencing with Section 2840).

23 (B) The licensed vocational nurse has completed patient-specific
24 training satisfactory to their employer.

25 (C) The licensed vocational nurse holds a current and valid
26 certification of competency for each respiratory task to be
27 performed from the California Association of Medical Product
28 Suppliers, the California Society for Respiratory Care, or another
29 organization identified by the board.

30 (2) A licensed vocational nurse may perform the respiratory
31 care services identified by the board pursuant to this subdivision
32 in the following settings:

33 (A) At a congregate living health facility licensed by the State
34 Department of Public Health that is designated as six beds or fewer.

35 (B) At an intermediate care facility licensed by the State
36 Department of Public Health that is designated as six beds or fewer.

37 (C) At an adult day health care center licensed by the State
38 Department of Public Health.

1 (D) As an employee of a home health agency licensed by the
2 State Department of Public Health or an individual nurse provider
3 working in a residential home.

4 (E) At a pediatric day health and respite care facility licensed
5 by the State Department of Public Health.

6 (F) At a small family home licensed by the State Department
7 of Social Services that is designated as six beds or fewer.

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

11 (3) This subdivision is operative on January 1, 2028.

12 (k) The performance of pulmonary function testing by persons
13 who are currently employed by Los Angeles County hospitals and
14 have performed pulmonary function testing for at least 15 years.

15 *(l) The performance of suctioning and other basic respiratory*
16 *tasks and services by a vocational nurse licensed by the Board of*
17 *Vocational Nursing and Psychiatric Technicians of the State of*
18 *California under the supervision of a credentialed school nurse*
19 *in accordance with Sections 49423.5 and 49426.5 of the Education*
20 *Code.*

21 *SEC. 2. Section 49423.5 of the Education Code is amended to*
22 *read:*

23 49423.5. (a) Notwithstanding Section 49422, an individual
24 with exceptional needs who requires specialized physical health
25 care services, during the regular schoolday, may be assisted by
26 any of the following individuals:

27 (1) Qualified persons who possess an appropriate credential
28 issued pursuant to Section 44267 or 44267.5, or hold a valid
29 certificate of public health nursing issued by the Board of
30 Registered Nursing.

31 (2) Qualified designated school personnel trained in the
32 administration of specialized physical health care if they perform
33 those services under the supervision, as defined by Section 3051.12
34 of Title 5 of the California Code of Regulations, of a credentialed
35 school nurse, public health nurse, or licensed physician and surgeon
36 and the services are determined by the credentialed school nurse
37 or licensed physician and surgeon, in consultation with the
38 physician treating the pupil, to be all of the following:

39 (A) Routine for the pupil.

40 (B) Pose little potential harm for the pupil.

1 (C) Performed with predictable outcomes, as defined in the
2 individualized education program of the pupil.

3 (D) Do not require a nursing assessment, interpretation, or
4 decisionmaking by the designated school personnel.

5 (3) *For basic respiratory services authorized by subdivision (1)*
6 *of Section 3765 of the Business and Professions Code, a vocational*
7 *nurse licensed by the Board of Vocational Nursing and Psychiatric*
8 *Technicians of the State of California under the supervision of a*
9 *credentialed school nurse.*

10 (b) Specialized health care or other services that require
11 medically related training shall be provided pursuant to the
12 procedures prescribed by Section 49423.

13 (c) Persons providing specialized physical health care services
14 shall also demonstrate competence in basic cardiopulmonary
15 resuscitation and shall be knowledgeable of the emergency medical
16 resources available in the community in which the services are
17 performed.

18 (d) “Specialized physical health care services,” as used in this
19 section, includes catheterization, gastric tube feeding, suctioning,
20 or other services that require medically related training.

21 (e) Regulations necessary to implement this section shall be
22 developed jointly by the State Department of Education and the
23 State Department of Health Care Services, and adopted by the state
24 board.

25 (f) This section does not diminish or weaken any federal
26 requirement for serving individuals with exceptional needs under
27 the Individuals with Disabilities Education Act (20 U.S.C. Sec.
28 1400 et seq.), and its implementing regulations, and under Section
29 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and its
30 implementing regulations.

31 (g) This section does not affect current state law or regulation
32 regarding medication administration.

33 (h) It is the intent of the Legislature that this section not cause
34 individuals with exceptional needs to be placed at schoolsites other
35 than those they would attend but for their needs for specialized
36 physical health care services.

37 ~~SECTION 1. Section 49423.5 of the Education Code is~~
38 ~~amended to read:~~

39 ~~49423.5. (a) (1) Notwithstanding Section 49422, an individual~~
40 ~~with exceptional needs who requires specialized physical health~~

~~care services, during the regular schoolday, may be assisted by any of the following individuals:~~

~~(A) Qualified persons who possess an appropriate credential issued pursuant to Section 44267 or 44267.5, or hold a valid certificate of public health nursing issued by the Board of Registered Nursing.~~

~~(B) Qualified designated school personnel trained in the administration of specialized physical health care if they perform those services under the supervision, as defined by Section 3051.12 of Title 5 of the California Code of Regulations, of a credentialed school nurse, public health nurse, or licensed physician and surgeon and the services are determined by the credentialed school nurse or licensed physician and surgeon, in consultation with the physician treating the pupil, to be all of the following:~~

~~(i) Routine for the pupil.~~

~~(ii) Pose little potential harm for the pupil.~~

~~(iii) Performed with predictable outcomes, as defined in the individualized education program of the pupil.~~

~~(iv) Do not require a nursing assessment, interpretation, or decisionmaking by the designated school personnel.~~

~~(2) Notwithstanding any other law, a licensed vocational nurse under the supervision, as defined by Section 3051.12 of Title 5 of the California Code of Regulations, of a credentialed school nurse who meets the requirements described in paragraph (1) may provide specialized physical health care services pursuant to this section.~~

~~(b) Specialized health care or other services that require medically related training shall be provided pursuant to the procedures prescribed by Section 49423.~~

~~(c) Persons providing specialized physical health care services shall also demonstrate competence in basic cardiopulmonary resuscitation and shall be knowledgeable of the emergency medical resources available in the community in which the services are performed.~~

~~(d) "Specialized physical health care services," as used in this section, includes catheterization, gastric tube feeding, suctioning, or other services that require medically related training.~~

~~(e) Regulations necessary to implement this section shall be developed jointly by the State Department of Education and the State Department of Health Care Services, and adopted by the state board.~~

1 ~~(f) This section does not diminish or weaken any federal~~
2 ~~requirement for serving individuals with exceptional needs under~~
3 ~~the Individuals with Disabilities Education Act (20 U.S.C. Sec.~~
4 ~~1400 et seq.), and its implementing regulations, and under Section~~
5 ~~504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and its~~
6 ~~implementing regulations.~~

7 ~~(g) This section does not affect current state law or regulation~~
8 ~~regarding medication administration.~~

9 ~~(h) It is the intent of the Legislature that this section not cause~~
10 ~~individuals with exceptional needs to be placed at schoolsites other~~
11 ~~than those they would attend but for their needs for specialized~~
12 ~~physical health care services.~~