

Board of Registered Nursing

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING Title 16, California Code of Regulations (CCR), Division 14, Article 8 Definitions, § 1480

Categories and Scope of Practice of Nurse Practitioners, § 1481

Requirements for a Nurse Practitioner Certification Pursuant to Business and Professions Code Section 2837.103, § 1482.3

Requirements for a Nurse Practitioner Certification Pursuant to Business and Professions Code Section 2837.104, § 1482.4

Notice to Consumers, § 1487

NOTICE IS HEREBY GIVEN that the Board of Registered Nursing (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office on **Tuesday, November 1, 2022, by 5:00 p.m.**

The Board has not scheduled a public hearing on this proposed action. The Board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Business and Professions Code (BPC) sections 2715, 2786, and 2788, the Board proposes to implement, interpret, and make specific BPC sections 2715, 2725, 2836, 2837.100, 2837.101, 2837.103, and 2837.104, in amending sections 1480 and 1481, and adding sections 1482.3, 1482.4, and 1487 of Article 8, Division 14 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Nurse practitioners (NP) are highly regulated professionals who are bound by an ethical code of conduct, a complex network of overlapping regulations tied to their specific practice facility, and licensure and professional certification standards requiring these professionals to achieve and maintain a minimum level of competency promoting quality of care and patient safety. As outlined in 16 CCR 1481, there are several categories that NPs can specialize in. These specialty categories include:

- (1) Family/individual across the lifespan.
- (2) Adult-gerontology, primary care, or acute care.
- (3) Neonatal.
- (4) Pediatrics, primary care, or acute care.
- (5) Women's health/gender related.
- (6) Psychiatric-Mental Health across the lifespan.

In California, NPs are RNs for purposes of licensure, their statutory scope is essentially the same, except for clinical competency that is gained through additional preparation and skill through advanced education. Both RNs and NPs may perform additional medical procedures beyond their nursing scopes through standardized procedures.

According to BPC section 2725(c), standardized procedures are policies and protocols formulated by organized health care systems for the performance of standardized procedure functions. They are developed collectively by nurses, physicians, and the administration of an organized health care system. Standardized procedures are the codification of the functions nurses may provide beyond the ordinary nursing scope. They are based on the competence of the nurses providing the procedures and include record, referral, and requirements of the healthcare setting, among other patient protections.

In September 2020, Governor Gavin Newsom signed Assembly Bill (AB) 890 (Wood, Chapter 265, Statutes of 2020) into law which created two new categories of NPs that could function independently within a defined scope of practice without standardized procedures. The bill also defined education, training, national certification, regulatory, and medical staff governance requirements for these two NP categories.

In this document, the Board refers to these new categories as 103 NPs (as outlined in BPC section 2837.103) and 104 NPs (as outlined in BPC section 2837.104). For NPs to be eligible to practice under these two categories, the Board's existing regulatory categories and standards need to be amended to reflect the changes imposed by the passage of AB 890.

This proposal will:

- Amend the title of Article 8 of Division 14, Title 16 from “Standards for Nurse Practitioners” to “Nurse Practitioners”
- Amend section 1480 to establish a definition for the term group setting
- Amend section 1481 to change the title from “Categories of Nurse Practitioners” to “Categories and Scope of Practice of Nurse Practitioners”
- Amend section 1481 to establish the two new categories that NPs can apply for and the corresponding scope of practice
- Add section 1482.3 to establish the requirements for an NP to be certified pursuant to BPC section 2837.103
- Add section 1482.4 to establish the requirements for an NP to be certified pursuant to BPC section 2837.104
- Add section 1487 to establish the requirements for an NP to provide a notice to consumers

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:

This regulatory action will implement AB 890 and benefit the health and safety of all Californians by expanding access to healthcare for more Californians.

From a public health standpoint, the shortage of primary care physicians in rural and underserved areas means that NPs are a critical component to closing the provider gap in California’s highest-need regions. Allowing NPs to utilize the full extent of their education and training by granting full practice authority is anticipated to result in high-quality care, more primary care providers, and cost savings to the patient. This includes being eligible to serve on medical staff and hospital committees, order durable medical equipment, home health care, hospice, and physical and occupational therapy, as well as certify disability.

From an administrative standpoint, the Board is providing an orderly means of applying for the new certification categories that will streamline the application process.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATION:

During the process of developing these regulations and amendments, the Board

conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The Board has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies: None. The proposed regulations do not result in a fiscal impact to the state. The amendments are intended to provide clarity and to better align the Board's regulations with current law.

Any costs related to the issuance of NP certifications are a result of implementing the provisions of Chapter 265, Statutes of 2020 (AB 890).

The Board notes, current law does not authorize a fee to be charged for certification and no fees are included in this proposal. As a result, no revenues will be collected.

Costs/Savings in Federal Funding to the State: None.

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Board has determined that this regulatory proposal will likely not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in state of California.

Business Reporting Requirements:

The regulatory action does not require businesses to file a report with the Board.

Cost Impact on Representative Private Person or Business:

The proposed regulation will not result in additional costs to individuals who will apply for the two new categories of NPs established by BPC 2837.103 and 2837.104 since no supplementary education or training is required. The Board estimates approximately 32,000 current NPs will apply for the category established by BPC 2837.103 certifications as it becomes available and subsequently the category established by BPC 2837.104 after they have practiced in good standing for three additional years.

The Board is not aware of any other cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

Individuals seeking certification will be able to apply either through the Board's online platform and/or during initial licensure. The Board notes, it does not have statutory fee authority for the issuing of a certification for the category established by BPC 2837.103 and no fees are included in this proposal.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board estimates that there will be no increased costs for small businesses with the proposed regulations. This change may encourage the two new categories of NPs created by this regulatory process to incorporate as a small business as sole proprietors in future, but the numbers at this time are difficult to estimate.

RESULTS OF ECONOMIC IMPACT ASSESMENT/ANALYSIS

The Board has determined this regulatory proposal (1) will not create or eliminate jobs; (2) will not create new business nor eliminate existing businesses; (3) will not expand existing businesses in the state of California.

These regulations benefit the health and welfare of California residents because NPs who practice under the new categories created by BPC 2837.103 and 2837.104 with their additional training and experience will be able to support healthcare in an expanded role in California, especially in impacted areas, which benefits the general health and safety of all Californians.

The proposed amendments will not affect worker safety and the environment because this regulation does not relate to worker safety and the environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of the law.

Interested persons are invited to present statements or arguments orally or in writing relevant to the above determinations at any scheduled hearing or during the written comment period to the Contact Person, below.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based.

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of ISOR, and all of the material contained in the rulemaking file is available for public inspection and may be viewed or obtained upon request from the person designated in the Notice under Contact Person or by accessing the Board's website, www.rn.ca.gov.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at <https://www.rn.ca.gov/regulations/proposed.shtml>.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Marissa Clark
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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at <https://www.rn.ca.gov/regulations/proposed.shtml>