



Agenda Item 5.0

BRN Future Priorities and Proposals for Review and Possible Action

BRN Board Meeting | August 17, 2022

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Review and Possible Action
August 17, 2022

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BOARD OF REGISTERED NURSING
Agenda Item Summary

AGENDA ITEM: 5.1
DATE: August 17, 2022

ACTION REQUESTED: Consideration and possible modification and adoption of previously approved proposed regulatory text to amend California Code of Regulations (CCR), title 16, section 1410.5 (Coursework Exemptions for Out-of-State Applicants)

REQUESTED BY: Loretta Melby RN, MSN
Executive Officer, California Board of Registered Nursing

BACKGROUND: The addition of 16 CCR section 1410.5 addresses the endorsement process, whereby RNs who are licensed in another state apply for licensure in California. Many endorsement applicants have met the requirements of licensed nurses who are educationally prepared in California apart from a laboratory component in the related natural sciences (anatomy, physiology, and microbiology). This has been a long-time barrier to licensing by endorsement into California.

Currently, a RN applying for endorsement into California who does not meet the education requirements outlined in 16 CCR section 1426, specifically the anatomy, physiology, and microbiology courses with laboratory component, will be made deficient until those courses are completed. Once the applicant completes the required courses with lab and submits proof via an official transcript, the deficiency will be cleared, and a license may be issued.

The Board voted in November 2021 to review and update the education requirements, specifically microbiology with lab for RNs who are licensed in another state and have been practicing in good standing. An updated review of this section was requested in order to reconsider the endorsement process and the requirement outlined in 16 CCR section 1426 (“Required Curriculum”) of anatomy, physiology, and microbiology courses with labs. The Board approved proposed language for this change during its May 18, 2022, Board meeting.

A subsequent motion passed during the Nursing Education

and Workforce Advisory Committee (NEWAC) meeting held on July 28, 2022, with the following recommended technical changes:

1. Revise the language “proof of already successfully completing” in 16 CCR section 1410.5 subdivision (b) to match the language used in subdivision (a)(1), “proof of successful completion”;
2. Correct “more than” in subdivision (b) to “at least” 2 years of practice; and
3. Require proof of practicing

With these changes, NEWAC recommends adopting the language.

Previously Approved Language from the May 18, 2022, Board Meeting. Language added for application for RN by endorsement applications

1410.5. Coursework Exemptions for Out-of-State Applicants

(a) For the purposes of this section, the following definitions apply:

(1) “proof of successful completion” means a transcript meeting the requirements of section 1410.

(2) “good standing” means practice conducted under a current, active, and unrestricted license. “Unrestricted” means the applicant was not disciplined by any state licensing board, including probation, suspension, public reprimand, censure, or reproof.

(b) An applicant licensed in another jurisdiction who has been practicing in good standing for more than 2 years will not need to retake any anatomy, physiology or microbiology courses that include a laboratory component pursuant to section 1426, if the application required by section 1410 includes proof of already successfully completing anatomy, physiology, and microbiology coursework, with or without a laboratory component, as part of their nursing education preparation.

Amended language incorporating recommendations number 1 and 2 made during the NEWAC meeting on July 28, 2022:

1410.5. Coursework Exemptions for Out-of-State Applicants

(a) For the purposes of this section, the following definitions apply:

(1) “proof of successful completion” means a transcript meeting the requirements of section 1410.

(2) “good standing” means practice conducted under a current, active, and unrestricted license. “Unrestricted” means the applicant was not disciplined by any state licensing board, including probation, suspension, public reprimand, censure, or reproval.

(b) An applicant licensed in another jurisdiction who has been practicing in good standing for ~~at least more than~~ 2 years will not need to retake any anatomy, physiology or microbiology courses that include a laboratory component pursuant to section 1426, if the application required by section 1410 includes ~~proof of already successfully completing~~ successful completion of anatomy, physiology, and microbiology coursework, with or without a laboratory component, as part of their nursing education preparation.

SUMMARY OF CHANGES:

- Changed language from “more than 2 years” to “at least 2 years” in subsection (b).
- Changed proof of “already successfully completing” to “successful completion of” in subsection (b).
- A question will be added to the current RN endorsement application asking for proof of practice in good standing, and verified through the existing requirement that the applicant attest to the accuracy of the information contained in the application.

Prior Changes:

- The Board approved the change for the microbiology with lab course during its November 2021 meeting.

NEXT STEPS:

Board to approve the final language and delegate to the Executive Officer to prepare the rulemaking file and proceed with the review by the Director of the Department of Consumer Affairs and the Secretary of the Business, Consumer Services, and Housing Agency.

On their approvals, the rulemaking package will be delivered to the Office of Administrative Law to begin the Notice and Comment period. If no relevant or adverse comments are received, the Executive Officer will proceed with the rulemaking process with the Office of Administrative Law. The Board to delegate to the Executive Officer the authority to make any technical or non-substantive changes required by the control agencies as this regulation is finalized.

If any relevant adverse comments are received, this matter will be placed on a future agenda for Board consideration.

FISCAL IMPACT, IF ANY:

Staff estimates that there will be no fiscal impact to the Board.

PERSON TO CONTACT:

Marissa Clark
Chief of Legislative Affairs
California Board of Registered Nursing
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TITLE 16. BOARD OF REGISTERED NURSING – PROPOSED LANGUAGE

Add section 1410.5 in Article 2 of Division 14 of Title 16 of the California Code of Regulations to read as follows:

1410.5. Coursework Exemptions for Out-of-State Applicants

(a) For the purposes of this section, the following definitions apply:

(1) “proof of successful completion” means a transcript meeting the requirements of section 1410.

(2) “good standing” means practice conducted under a current, active, and unrestricted license. “Unrestricted” means the applicant was not disciplined by any state licensing board, including probation, suspension, public reprimand, censure, or reproof.

(b) An applicant licensed in another jurisdiction who has been practicing in good standing for at least 2 years will not need to retake any anatomy, physiology or microbiology courses that include a laboratory component pursuant to section 1426, if the application required by section 1410 includes proof of successful completion of anatomy, physiology, and microbiology coursework, with or without a laboratory component, as part of their nursing education preparation.

Note: Authority cited: Sections 2715, 2786.1, and 2786.6, Business and Professions Code.

BOARD OF REGISTERED NURSING
Agenda Item Summary

AGENDA ITEM: 5.2
DATE: August 17, 2022

ACTION REQUESTED: Consideration of public comments, discussion, and possible adoption of modified proposed regulatory text to amend CCR, title 16, section 1427 (Clinical Facilities)

REQUESTED BY: Loretta Melby RN, MSN
Executive Officer, California Board of Registered Nursing

BACKGROUND:

The Board first considered and approved proposed regulatory language for California Code of Regulations (CCR), title 16, section 1427 in November 2020. The proposed language was added in response to [California State Audit 2019-120: Recommendation #5](#). After being reviewed by the Business, Consumer Services and Housing Agency, updated language was submitted to the Board and the new language was approved at the November 2021 Board meeting.

The regulatory package was noticed for a 45-day public comment period on November 12, 2021, with the public comment period ending on December 28, 2021. The Board received one letter and the Board's proposed response was approved during the March 2022 Board meeting. The regulatory package was then sent to the Office of Administrative Law (OAL) for their review and approval on March 30, 2022.

During their review, OAL indicated that the proposed language required clarification. Consequently, Board staff withdrew the package from OAL on May 12, 2022. Board staff worked with the Department of Consumer Affairs Legal Affairs Division to further clarify the language and brought the proposed changes back before the Board during the July 2022 Board meeting. The Board approved the updated proposed language.

The updated proposed language was noticed for another 15-day public comment period on July 20, 2022, with the public comment period ending on August 4, 2022. The Board received one letter that was submitted on behalf of four organizations. The letter and the proposed responses to the comments are now being brought before the Board for approval. If approval of the proposed responses is granted, the package will be re-submitted to OAL and processed accordingly. If approval is not granted, the Board will need to revisit the regulatory language and hold another 15-day comment period on revised language, possibly necessitating an additional Board meeting in October. The one year filing deadline for this regulatory package to be submitted to OAL is November 11, 2022.

Regarding comments to proposed text for 16 CCR § 1427, Clinical Facilities, subsection (e)

Noticed Modified Language on which Comments Received:

~~(e) Each A nursing program shall electronically report to a designee of the Board in writing any changes made to the program's the program makes to their use of clinical facilities within ninety (90) calendar days of making each change. By no later than December 31 of each year, a nursing program shall confirm in response to an inquiry from the Board whether the program has made any such changes in addition to those, if any, already reported by the program to the Board within the calendar year. If necessary, the program shall report any additional changes to the Board that have not been reported for that calendar year. As used in this subdivision section, "changes" includes but are not limited to changes to the number of students from the program who have been approved for placement at the clinical facility, changes in the annual clinical placement capacity at the clinical facility, and cancellation or alteration of clinical affiliation agreements.~~

Joint Letter dated July 27, 2022, from California Hospital Association, Health Impact, Association of California Nurse Leaders and American Nurses Association/California.

Comment 1

Summary of Comment:

Commenter states the proposed language in Business and Professions Code (BPC) section 1427(e) lacks clarity. Specifically, the addition of the words "**include, but not limited to**" in the changes proposed undermines the stated goals of adding clarity and reducing confusion as stated in the Initial Statement of Reasons, the Administrative Procedure Act and Government Code section 11349(c). Commenter proposes the deletion of the words "include but not limited to" and replace them with "means" instead.

Proposed Board Response to Comment:

The Board reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The phrase, "includes but not limited to" allows for notification of changes that are deemed to be similar in purpose and consistent with the intent of the defined items listed within the proposed text.

The Board did not feel it was appropriate to provide an exclusive list of examples, because circumstances may vary. The Board also did not feel it was appropriate to provide no examples since that would not be helpful to the reader. Therefore, the Board chose the middle ground of including some examples with the potential for other items to be included on a case-by-case basis.

Comment 2

Summary of Comment:

Commenter requests that in section 1427(e) nursing programs only be required to inform the Board of substantive changes instead of **any** alteration of clinical affiliation agreements. Commenter states that some changes, such as affiliation agreements or moving a nursing school liaison officer to a different building on campus, are not relevant to the BRN. Commenter suggests the Board add “substantive” before “alteration of clinical affiliation agreements.”

Proposed Board Response to Comment:

This comment does not relate to the modified text that was noticed on July 20, 2022, and is therefore not within the scope of the modified text comment period. The Board previously received and considered this comment during the 45-day public comment period and its response was approved at the March Board meeting.

A summary is included below.

The Board believes the proposed text is consistent with the mandate in Assembly Bill 1015 (Rubio, Chapter 591, Statutes of 2021). It is necessary to know all changes in the number of students, permanent or temporary, and in the clinical affiliation agreements, no matter if the program deems either to be a minor change or a major one.

Furthermore, 16 CCR section 1427, subsection (c), addresses the requirements of what must be in a clinical affiliation agreement. Those agreements are regularly reviewed by the Board for compliance during continuing education reviews, so it is reasonable that changes to those agreements be brought to the Board’s attention.

The Board reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Action Requested:

Staff requests the Board consider the comments received and provide any feedback as is deemed necessary, approve the proposed responses to the regulatory text of 16 CCR section 1427 that was previously adopted at the July 2022 Board meeting, and delegate to the Executive Officer the authority to make any technical or non-substantive changes required by the control agencies as this regulation is finalized.

If the Board wishes to change any regulatory text, then once the language is agreed upon, delegate to the Executive Officer authority to adopt the modified text in the absence of any relevant adverse comments and continue with the process to finalize the regulatory package, including making any technical or non-substantive changes.

NEXT STEPS: Re-submit the regulatory package to OAL following Board approval.

FISCAL IMPACT, IF ANY: Staff estimates that there will be no fiscal impact to the Board.

PERSON TO CONTACT: Marissa Clark
Chief of Legislative Affairs
California Board of Registered Nursing
Email: Marissa.Clark@dca.ca.gov

Reference Material

Notice of Proposed Rulemaking: <https://www.rn.ca.gov/pdfs/regulations/notice-1427.pdf>

Initial Statement of Reasons: <https://www.rn.ca.gov/pdfs/regulations/isor-1427.pdf>

Noticed Regulatory Language and Documents Incorporated by Reference:
<https://www.rn.ca.gov/pdfs/regulations/proposedlang-1427.pdf>

Attachment D

Comments Received during 15-Day Comment Period

CCR 1427 Clinical Facilities

Comments in a joint letter received on July 27, 2022, from:

- 1. California Hospital Association (CHA)**
- 2. Health*Impact***
- 3. Association of California Nurse Leaders**
- 4. American Nurses Association/California (ANA\C)**



July 27, 2022

Marissa Clark
Board of Registered Nursing
1747 N. Market Blvd., Suite 150
Sacramento, CA 95834

Via Email: Marissa.Clark@dca.ca.gov

**Re: Comments on Modified Text of Proposed Regulations Amending Title 16,
California Code of Regulations, Section 1427**

Dear Ms. Clark:

Thank you for the opportunity to comment on the California Board of Registered Nursing (BRN) proposed amendments to Title 16, California Code of Regulations, Section 1427. The organizations described below have joined forces to work toward ensuring a robust pipeline of well-educated nurses to serve the current and future needs of Californians.

- The **California Hospital Association** represents more than 400 hospitals and health systems in California, many of which serve as clinical placement sites for nursing students.
- **HealthImpact**, the California nursing workforce and policy center, is at the forefront of ensuring academic institution and practice partner relationships are synergized to meet nursing school clinical education requirements.
- The **Association of California Nurse Leaders**, with more than 1300 members, works collaboratively with academia and service partners to equip nurses for leadership and nursing presence through education and leadership training.
- The **American Nurses Association/California** is a bipartisan professional nursing organization representing the interests of nearly 550,000 licensed registered nurses in California. Our mission is to advance the quality of health care and the ethical practice of nursing in contemporary society through education and policy advocacy. As a state-level

professional advocacy organization, ANA\C has been extensively involved in successful legislative efforts to enact bills to help make California a place of nursing excellence.

As such, we are concerned about the impact of Section 1427 on California hospitals as well as the nursing schools with which we partner to educate the next generation of nurses. Specifically, we are concerned about subdivision (e), which is proposed to read as follows (underlining and strikeout deleted for readability; **bolded italics** added for emphasis):

(e) Each nursing program shall electronically report to the Board any changes made to the program's use of clinical facilities within ninety (90) calendar days of making each change. (As used in this section, "changes" include ***but are not limited to*** changes to the number of students from the program who have been approved for placement at the clinical facility, changes in the annual clinical placement capacity at the clinical facility, and cancellation or alteration of clinical affiliation agreements.

Comment 1

The addition of the words "but are not limited to" inserts a lack of clarity into the regulation. CHA recommends that the second sentence of subdivision (e) be revised as follows:

As used in this section, "changes" include ~~but are not limited to~~ means changes to the number of students from the program who have been approved for placement at the clinical facility, changes in the annual clinical placement capacity at the clinical facility, and cancellation (or substantive alteration of clinical affiliation agreements.)

Comment 1

Comment 2

The Initial Statement of Reasons indicates that the purpose of the amendments to Section 1427 is to ensure that the BRN is made aware of enrollment changes at clinical placement sites so that it may promptly address any issues of clinical displacement. The Initial Statement of Reasons says, on page 3, that "the proposal will clarify for nursing programs what changes need to be reported, reducing confusion in what information is required." However, the most recent modifications to the text — adding the words "but are not limited to" — undermine the stated goals of adding clarity and reducing confusion.

Comment 1

As you know, all regulations must comply with the standards set forth in the Administrative Procedure Act (APA). Specifically, Government Code Section 11349(c) requires that each regulation meet the standard of "clarity," defined to mean "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." Unfortunately, the proposed text of subdivision (e) does not let a nursing program easily understand which changes to report to BRN.

Comment 1

In addition, (the requirement to report any alteration in a clinical affiliation agreement is **overbroad**. Affiliation agreements change frequently, but many of those changes are inconsequential. For example, one large hospital system from time to time makes technical changes to its standard insurance and indemnification language that it includes in all affiliation agreements. This change would be irrelevant to BRN – but Section 1427, as proposed to be amended, would require every nursing program that places students in those hospitals to notify

Comment 2

Comment 2

BRN. Or a hospital may move its nursing school liaison officer to a different building on its campus, which would require an amendment to the affiliation agreement to indicate the new address to which to send notices. There's really no point in notifying BRN about these minor changes to the affiliation agreement.) **Comment 2**

Thank you for your review and consideration of CHA's recommended revisions to the text of Section 1427(e). Please do not hesitate to contact me with any questions you may have about our comments.

Sincerely,



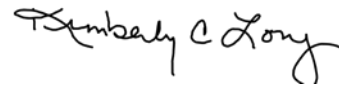
Sheree Lowe
Vice President, Policy
California Hospital Association

/s/ *Marketa Houskova*

Marketa Houskova, DNP, MAIA, BA, RN
Executive Director
Association of California Nurse Leaders



Garrett Chan, PhD, RN, FAAN
President & CEO
Health**Impact**



Kimberly Long, DHA, MSN, FNP, RN, FACHE
Chief Executive Officer
American Nurses Association/California

BOARD OF REGISTERED NURSING
Agenda Item Summary

AGENDA ITEM: 5.3
DATE: August 17, 2022

ACTION REQUESTED: Fund condition report

REQUESTED BY: Board

BACKGROUND: Presentation on the condition of the Board of Registered Nursing Fund

NEXT STEP:

PERSON TO CONTACT: Matthew Yeates
Deputy Chief, Consumer Services and Board Operations Division
California Board of Registered Nursing
Matthew.Yeates@dca.ca.gov

Board of Registered Nursing
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 P (916) 322-3350 | <https://www.rn.ca.gov>

MEMORANDUM

DATE	August 17, 2022
TO	Board of Registered Nursing
FROM	Suzanne Balkis, Budget Analyst
SUBJECT	Agenda Item 5.3: Budget Report

FY 2020-21 (Prior-Year) Expenditure Summary:

The following chart provides a 2020-21 year-end summary of Board expenditures. The Board was appropriated \$57.2 million and spent an estimated \$53.5 million (93.6%), which resulted in savings of \$3.7 million.

FY 2020-21 Expenditures			
Fund	Appropriation	Expenditures*	Savings
BRN Fund	\$57,164,000	\$53,490,587	\$3,673,413

FY 2021-22 (FM 11) Expenditure Projection Detail:

This report includes 2020-21 budgeted and actual expenditures *compared* to 2021-22 budgeted and projected expenditures. Over this two-year period, costs remained relatively stable.

For 2021-22, the Board expended approximately \$58.7 million, of which \$22.5 million was expended on personal services costs and \$36.2 million on operating expenses & equipment (OE&E).

Any unspent funds (savings) remain in the Fund and are available for future appropriation.

Analysis of Fund Condition Statement:

The Board's Fund Condition is based on the 2021-22 Budget act and has been updated with 2020-21 prior-year projected revenues and expenditures, which resulted in a fund balance reserve of \$34.9 million (6.9 months).

For 2021-22 (FM11 Projection), the Board projects revenues of \$79.7 million and expenditure of \$60.4 million, Which result in a fund balance reserve of \$54.2 million (10.2 months)

0761 - Board of Registered Nursing Fund Analysis of Fund Condition
(Dollars in Thousands)
2022-23 Governor's Budget with 2021-22 FM 11 Projections

	PY 2020-21	CY 2021-22	BY 2022-23	BY +1 2023-24	BY +2 2024-25
BEGINNING BALANCE	\$ 47,519	\$ 34,853	\$ 54,214	\$ 60,453	\$ 95,518
Prior Year Adjustment	\$ -530	\$ 0	\$ 0	\$ 0	\$ 0
Adjusted Beginning Balance	\$ 46,989	\$ 34,853	\$ 54,214	\$ 60,453	\$ 95,518
REVENUES, TRANSFERS AND OTHER ADJUSTMENTS					
Revenues					
4121200 - Delinquent fees	\$ 1,082	\$ 1,029	\$ 1,001	\$ 1,001	\$ 1,001
4127400 - Renewal fees	\$ 46,357	\$ 47,917	\$ 46,859	\$ 46,859	\$ 46,859
4129200 - Other regulatory fees	\$ 2,357	\$ 2,074	\$ 2,629	\$ 2,629	\$ 2,629
4129400 - Other regulatory licenses and permits	\$ 21,615	\$ 28,090	\$ 19,046	\$ 19,046	\$ 19,046
4143500 - Miscellaneous Services to the Public	\$ 14	\$ 62	\$ 0	\$ 0	\$ 0
4163000 - Income from surplus money investments	\$ 216	\$ 100	\$ 596	\$ 965	\$ 1,464
4171100 - Other Revenue Cost Recoveries	\$ 1	\$ 1	\$ 0	\$ 0	\$ 0
4171400 - Escheat of unclaimed checks and warrants	\$ 10	\$ 12	\$ 0	\$ 0	\$ 0
4172500 - Miscellaneous revenues	\$ 38	\$ 453	\$ 0	\$ 0	\$ 0
4173500 - Settlements and Judgements - Other	\$ 52	\$ 0	\$ 0	\$ 0	\$ 0
Totals, Revenues	\$ 71,742	\$ 79,738	\$ 70,131	\$ 70,500	\$ 70,999
Loan from the Board of Registered Nursing Fund (0761) to the General Fund (0001) per Item 1111-011-0761, Budget Act of 2020	\$ -30,000	\$ 0	\$ 0	\$ 30,223	\$ 0
Totals, Transfers and Other Adjustments	\$ -30,000	\$ 0	\$ 0	\$ 30,223	\$ 0
TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS	\$ 41,742	\$ 79,738	\$ 70,131	\$ 100,723	\$ 70,999
TOTAL RESOURCES	\$ 88,731	\$ 114,591	\$ 124,345	\$ 161,176	\$ 166,517
Expenditures:					
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 50,740	\$ 55,380	\$ 58,867	\$ 60,633	\$ 62,452
9892 Supplemental Pension Payments (State Operations)	\$ 654	\$ 654	\$ 654	\$ 654	\$ 654
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 2,484	\$ 4,343	\$ 4,371	\$ 4,371	\$ 4,371
TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS	\$ 53,878	\$ 60,377	\$ 63,892	\$ 65,658	\$ 67,477
FUND BALANCE					
Reserve for economic uncertainties	\$ 34,853	\$ 54,214	\$ 60,453	\$ 95,518	\$ 99,040
Months in Reserve	6.9	10.2	11.0	17.0	17.6

NOTES:

Assumes workload and revenue projections are realized in BY +1 and ongoing.
Expenditure growth projected at 3% beginning BY +1.
Expenditures General Salary 4.55% increase.