

**California Board of Registered Nursing
California Department of Consumer Affairs**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Clinical Facilities

Section(s) Affected: Section 1427, Title 16, California Code of Regulations (CCR)

Background:

Pursuant to the Nursing Practice Act (NPA), Business and Professions Code (BPC) section 2700 *et seq.*, the Board of Registered Nursing (Board) licenses registered nurses, and certifies advanced practice nurses, which include certified nurse-midwives, nurse practitioners, registered nurse anesthetists, clinical nurse specialists, and public health nurses. In addition to licensing and certification, the Board establishes accreditation requirements for California nursing schools and reviews nursing school criteria (“prelicensure”); receives and investigates complaints against its licensees; and takes disciplinary action as appropriate. The Board currently oversees 150 pre-licensure nursing programs in California. Clinical agencies decide with which nursing education programs they will establish clinical education affiliation agreements and thus provide placements for students.

Specific Purpose of Each Adoption, Amendment, or Repeal:

1. Problem Being Addressed/Purpose of the Amendments:

BPC section 2715 gives the Board rulemaking-authority and through section 2786 it authorizes the Board to approve schools and regulate prelicensure nursing programs in California. The Board’s regulations are set forth in Title 16, Division 14, Article 3 of the CCR. The last significant revision to the regulations was in 2010. There are currently 150 pre-licensure nursing programs approved in California.

According to the Regional Nursing Summits Summary Report of 2019:

California demand for pre-licensure Registered Nurse (RN) clinical education capacity/clinical placements is outpacing current acute care capacity for pre-licensure Associate Degree Nursing (ADN), Baccalaureate Science Nursing (BSN), and Entry Level Masters (ELM) nursing programs and students.

(HealthImpact, page 2.) Specifically, the issue of clinical displacement has been on the agenda of the Board for quite a few years now. The Board has received public testimony of instances of denial of long-established clinical placements for some nursing programs. (see reproduced letter as Attachment C of HealthImpact, page 35.) “Clinical Displacement” refers to the phenomenon where one or more groups of nursing students are precluded from working in a given hospital or other clinical setting due to one school’s students occupying clinical placements previously held by another school’s students.

In 2017, 77 of the 141 nursing programs (54.6%) reported being denied clinical space; however, 31 programs were offered alternative sites by industry partners. The remaining lack of clinical space resulted in a loss of 302 clinical placements, units or shifts, which affected 2,147 students, a number that has remained relatively stable over the last several years.

(2016-2017 BRN Pre-licensure Schools Report). For this reason, the Board needs to be aware of changes made in the program-clinical facility relationship as soon as possible. This regulatory change ensures that a program provides this information in a timely fashion.

The Board has an interest in promoting a wide variety of educational opportunities that meet its minimum requirements. It continues to prepare pre-licensure registered nursing graduates that provide safe, competent, and quality care for California consumers.

Existing law provides that a nursing program shall not utilize any agency or facility for clinical experience without prior approval by the Board. Each program must submit evidence that it has complied with the requirements of maintaining written objectives for student learning at clinical facilities and the ability of the facility to meet those learning objectives. It also requires each program to have a written agreement with every facility that it utilizes along with the assurance of availability and appropriateness of the learning environment in meeting the programs written objectives. This includes provisions for orientation of faculty and students and specifies the responsibilities and authority of the facility’s staff as related to the educational experience of the students. The written agreement spells out the availability of quality staff in adequate numbers to ensure safety and continuous health care services provided to patients. Provisions for continuous communication between the facility and program are detailed along with a description of responsibilities of faculty assigned to the facility utilized by the program. The nursing program also needs to take into consideration the impact of any additional group of students or students from other programs already assigned to the agency or facility.

The Board participated in a planning team during 2018, along with representatives from the California Hospital Association, California Community Colleges Chancellor’s Office, California State University Office of the Chancellor, California Organization of Associate

Degree Nursing Program Directors, California Association of Colleges of Nursing, Association of California Nurse Leaders, American Nurses Association of California, and HealthImpact, to discuss workforce supply and demand, placement systems, and education planning.

The Board proposes to amend 16 CCR 1427 to adopt more comprehensive language to address the reporting requirements for nursing programs when they experience any changes made to their use of clinical facilities to require reporting within 90 days of when a change occurs, and also in an annual report. It also clarifies some specific “changes” that need to be reported to the Board. This includes changes to the number of students from the program approved for placement at clinical facilities, changes in annual clinical placement capacity at the facility, and cancellation or alteration of clinical affiliation agreements.

2. Anticipated Benefits from the Regulatory Action:

This proposal will greatly improve the integrity of the Board’s oversight of prelicensure nursing programs and their monitoring of the clinical facilities they use. The amended language communicates to new nursing program applicants and existing programs the Board will closely review all changes impacting clinical facilities used for student placement.

Additionally, the proposal will clarify for nursing programs what changes need to be reported, reducing confusion on what information is required. The proposed amendment will protect consumers by ensuring approved nursing programs have adequate faculty, facilities, clinical placements, policies, procedures, staff, support services, physical space, and equipment to operate a sustainable program for the number of students the program intends to enroll.

This proposal will encourage new and approved programs to furnish complete and accurate clinical facility information to the Board within an acceptable timeframe. The proposal clarifies that the Board has the oversight authority of approved nursing program’s changes in clinical placement student numbers, annual clinical placement capacity at the utilized facility, and needs to be aware of any cancellation or alteration of clinical affiliation agreements. This change will alleviate stakeholder uncertainty and assist the Board in maintaining quality control over nursing education for protection of the public

3. Factual Basis/Rationale:

The Board proposes to add subdivision (e) to CCR 1427 as follows:

- (e) A nursing program shall report to a designee of the Board in writing any changes the program makes to their use of clinical facilities within ninety (90) calendar days of making a 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, “changes” includes 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.

This change is necessary to ensure that approved nursing programs have adequate agencies or facilities for clinical placements and ensure these clinical placements can provide the experience necessary to meet written clinical learning objectives for the number of students enrolled in the program. Previously this data validation effort was carried out every five years, as requested by the academic institution, and for enrollment increase requests, but will now be done annually for all programs.

This addition will communicate to programs they must report the changes described within 90 days and in annual reports to the Board, and will alleviate any confusion among approved nursing programs of their need to report. Programs must report to the Board by no later than December of each year. The Board’s Nursing Education Consultant (NEC) will generate a report from information maintained by the Board regarding the program’s clinical facilities, and will confirm the completeness of the report with the program. If the program has any additional changes to report, they are required by the amended regulation to provide it to the Board at this time. The Board will then review the information.

A nursing program can utilize a simple email to communicate changes to the NEC about clinical facilities no longer in use. If a clinical facility needs to be added and approved, the program will need to follow the established process of clinical facility approval by working with their NEC to obtain Board approval. The Board has updated its clinical facility approval form to capture annual capacity estimates from clinical facilities, as well as annual clinical placement needs of programs. It will also compile and aggregate the information from the facility approval forms into a database and will annually publish clinical capacity information on its website for public use. This information will ensure that the BRN is using up-to-date, accurate, and objective information to inform the governing board’s enrollment decisions and to assess clinical capacity for student placements.

Once the Board receives information regarding changes from a program, it will trigger a response from the Board-assigned NEC to start assisting the program to ensure that the program has adequate resources to maintain compliance, so students are not negatively impacted. The Board uses the reported information to make decisions on future enrollment increases, new program approvals, adequacy of resources, etc.

Based on the information it receives from programs, the Board would not necessarily revoke approval of a program that experiences clinical displacement. The Board would consider whether the program should reduce enrollments. If, for instance, if a displacement is caused by a new nursing program (School C) or a nursing program that increased their enrollment (School B) and that affected this school (School A), then the Board may require decreased enrollment in School C or B to allow for the currently enrolled students in School A to continue.

The Board requires changes to be reported within 90 days because the California State Auditor-Report 2019-120 recommended this timeframe. Recommendation #5 states that “To ensure that BRN is using up-to-date, accurate, and objective information to inform the governing board's enrollment decisions and to assess clinical capacity for student placements, by April 1, 2021, BRN should do the following: revise its regulations to require nursing programs to report any changes they make to their use of clinical facilities within 90 days of making a change and report annually if the program has made no changes.”

Additionally, this 90-day timeframe acknowledges programs cannot necessarily report changes beforehand because of rapidly changing circumstances. Because these changes would typically cause clinical displacement, the program may be working on locating and securing new clinical accommodations before they report changes to the Board. Furthermore, requiring a report within 90 days is necessary because changes to a program can occur more frequently than annually. The clinical facility process is fluid and changes to a program may occur multiple times per year. It is important programs report those changes as they occur. Requiring both 90-day reports and annual reports ensures that changes are reported close to the change and once per year to capture all events. Additionally, annual data validation ensures consistency and accuracy within the data set so that we can present accurate and updated information to our stakeholders.

The minimum curriculum requirement for licensure is 36 semester or 54 quarter units in the art and science of nursing. (Cal. Code Regs., tit. 16 § 1426 (c).) This regulation also requires that theory and clinical practice to be taught concurrently in the following nursing areas: geriatrics, medical-surgical, mental health/psychiatric nursing, obstetrics, and pediatrics. (Cal. Code Regs., tit. 16, § 1426(d).) Some of a student's clinical practice hours (up to 25%) may be completed outside of a direct patient care experience as long as that clinical practice provides an experience necessary to meet the written objectives for student learning. At least 75% of the clinical hours in a course that includes the above nursing areas must take place “in direct patient care in a board-approved clinical setting.” (Cal. Code Regs., tit. 16, § 1426(g)(2).) This requires that the Board have up to date information on clinical facilities available and any changes that are being made on their use.

Underlying Data:

Berg, J., *Regional Nursing Summits, Bridging the Gaps in Pre-licensure RN Clinical Education Capacity, Summary Report* (HealthImpact, January 2, 2019).
http://healthimpact.org/wp-content/uploads/2019/01/Final-Report-Regional-Summits-01022019_v8.pdf

Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges, *Substantive Change Manual* (January 2019), located online at <https://accjc.org/publications/>

American Career College v. The California Board of Registered Nursing, Superior Court of the State of California, County of Los Angeles Case No. 19STCP01383, Notice of Ruling on American Career College's Application for a Preliminary Injunction filed May 21, 2019.

Spetz, J., *Regional Forecasts of the Registered Nurse Workforce in California* (Healthforce Center at UCSF, 2018), located online at <https://healthforce.ucsf.edu/sites/healthforce.ucsf.edu/files/publication-pdf/RN%20Forecast%20Report.pdf>

Foundation for California Community Colleges, Centralized Clinical Placement System. Increasing regional nursing capacity through technology (Undated).

<https://foundationccc.org/What-We-Do/Workforce-Development/Health-Care-Education/Centralized-Clinical-Placement-System>

California State Auditor-Report 2019-120 Recommendations

<https://www.auditor.ca.gov/reports/recommendations/2019-120>

Board of Registered Nursing, Board Meeting Minutes: November 18, 2020

https://www.rn.ca.gov/pdfs/meetings/brd/brdmins_nov20.pdf

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

This regulatory proposal will not:

- create or eliminate jobs or businesses within the State of California because the regulation only changes the frequency of reports by the programs to the Board. These changes are not of such a magnitude to create or eliminate jobs or businesses.
- affect the expansion of businesses currently doing business within the State of California because the regulation only changes the frequency of reports by the programs to the Board. These changes are not of such a magnitude to create or expand businesses.

- affect the state’s environment because it is not related to any environmental issues; or
- affect worker safety because this regulation does not relate to worker safety.

This regulation proposal will:

- benefit California consumers by increasing the integrity of the Board’s oversight of prelicensure nursing schools through increased transparency of regulated nursing schools;
- eliminate stakeholder confusion regarding the Board’s interpretation of its existing regulation regarding the requirement for Board preapproval for enrollment increases and changes in enrollment patterns; and
- make regulatory language consistent with authorizing statutes.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

There is no significant statewide adverse economic impact directly affecting business with this regulation proposal for the 150 pre-licensure nursing programs in California.

The proposed regulations encourage increased program transparency and oversight integrity. It makes explicit the Board’s longstanding interpretation of its existing regulation regarding Board preapproval of clinical facilities to ensure they are appropriate and able to provide the experience necessary to meet written clinical objectives and to protect the nursing students by decreasing the chance of clinical displacement and therefore the inability to progress towards graduation and complete the nursing program in which they are enrolled. While the regulation will impose a new reporting requirement, it will be an absorbable cost for schools and is not likely to result in a significant statewide adverse economic impact.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has initially determined that no reasonable alternative to the regulatory proposal would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or equally effective in achieving the purposes of the regulation

in a manner that ensures full compliance with the law being implemented or made specific.