

**BOARD OF REGISTERED NURSING
INITIAL STATEMENT OF REASONS**

Hearing Date: April 23, 2018

Subject Matter of Proposed Regulations: Fee Increase

Sections Affected: Title 16, Division 14, Section 1417

Specific Purpose of Amendment:

The Board is proposing to increase fees as detailed in the following table. The fees increase applies to renewal of licenses and certificates that expire after the effective date of the regulations, and to all other specified fees on the effective date of the regulations. Senate Bill No. 1039 (Stats. 2016, ch. 799, hereafter, SB 1039) added statutory language that imposed new statutory fee ranges and required the Board to set fees within the prescribed ranges. In order to comply with SB 1039, the proposed regulation establishes the fees within the new statutory ranges, and in most cases, at the bottom of the range. The increases in fees are necessary to support the Board's functions to ensure public protection through licensure and enforcement of the Nursing Practice Act and the Board's regulations.

FEES	EXISTING	PROPOSED
RN Interim Permit Fee	\$50	\$100
Application Fee for Licensure by Examination for a California Graduate from an Approved California School	\$150	\$300
Application Fee for Licensure by Examination from a Graduate in Another State, District or Territory of the United States	\$150	\$350
Application Fee for Licensure by Examination by an International Graduate	\$150	\$750
Application Fee for Repeat Examination	\$150	\$250
Temporary License Fee	\$50	\$100
Application Fee for Endorsement by a Registered Nurse in Another State, District or Territory of the United States	\$100	\$350
Application Fee for Endorsement by an International RN	\$100	\$750
Biennial Registered Nurse Renewal Fee**	\$150	\$180
+ Assessment for RN Education Fund	\$10	\$10
RN Delinquent Renewal Fee	\$75	\$90
Application Fee for Reinstatement of Lapsed License	N/A	\$350
Temporary Nurse Practitioner Certification Fee	\$50	\$150
Nurse Practitioner Certification Application Fee	\$150	\$500
Biennial Nurse Practitioner Renewal Fee	N/A	\$150
Nurse Practitioner Delinquent Renewal Fee	N/A	\$75
Application Fee for Certified Nurse Practitioner Furnishing	\$50	\$400
Biennial Certified Nurse Practitioner Furnishing Renewal Fee***	\$30	\$150
+ Controlled Utilization Review and Evaluation System Fee	\$12	\$12
Nurse Practitioner Furnishing Delinquent Renewal Fee	\$15	\$75

Temporary Nurse-Midwife Certification Fee	\$50	\$150
Nurse-Midwife Certification Application Fee	\$150	\$500
Fee for Application for Nurse-Midwife Equivalency Examination*	\$200	\$200
Biennial Nurse-Midwife Certification Renewal Fee	\$100	\$150
Nurse-Midwife Delinquent Renewal Fee	\$50	\$75
Application Fee for Certified Nurse-Midwife Furnishing	\$50	\$400
Biennial Certified Nurse-Midwife Furnishing Renewal Fee****	\$30	\$150
+ Controlled Utilization Review and Evaluation System Fee	\$12	\$12
Certified Nurse-Midwife Furnishing Delinquent Renewal Fee	\$15	\$75
Temporary Nurse Anesthetists Certification Fee	\$50	\$150
Nurse Anesthetists Certification Application Fee	\$150	\$500
Biennial Nurse Anesthetists Certification Renewal Fee	\$100	\$150
Nurse Anesthetists Certification Delinquent Renewal Fee	\$50	\$75
Temporary Clinical Nurse Specialist Fee	N/A	\$30
Clinical Nurse Specialist Application Fee	\$150	\$500
Biennial Clinical Nurse Specialist Renewal Fee	\$100	\$150
Clinical Nurse Specialist Delinquent Renewal Fee	\$50	\$75
Temporary Public Health Nurse Fee	\$50	\$150
Public Health Nurse Application Fee	\$150	\$500
Biennial Public Health Nurse Renewal Fee	N/A	\$125
Psychiatric/Mental Health Nurse Application Fee	N/A	\$350
Application Fee for Continuing Education Provider Approval	\$300	\$750
Biennial Continuing Education Provider Renewal Fee	\$300	\$750
Continuing Education Provider Renewal Delinquent Fee	\$150	\$375
Application Fee for an Institution of Higher Education or a Private Postsecondary School of Nursing Approval	\$5,000	\$40,000
Fee for Continuing Approval of a Nursing Program Established After January 1, 2013	\$3,500	\$15,000
Fee for Authorizing of a Substantive Change to an Approval of a School of Nursing	\$500	\$2,500
Duplicate License Fee*	\$50	\$50
Duplicate Wall Certification Fee	\$30	\$60
Copy of NCLEX-RN Results	\$10	\$60
Certified Copy of a School Transcript*	\$50	\$50
Fee for Processing Endorsement Papers to Other States*	\$100	\$100
Confirmation of License Certification	\$2	\$20
Penalty Fee for Dishonored Check*	\$30	\$30

*There were no fee increases for the marked fees. They are included here so that fee amounts in regulation match fee amounts in statute.

**Due to the fee increase, registered nurses will pay \$190 at the time of license renewal. The fee includes the \$10 assessment for the RN Education Fund. The RN renewal fee was set at \$180 in statute effective 1/1/2017 and these regulations are only updating regulation to match statute.

***With the proposed fee increase, certified nurse practitioners furnishing will pay \$162 at the time of license renewal. The fee includes a \$12 assessment for the Controlled Utilization Review and Evaluation System Fee.

***With the proposed fee increase, certified nurse-midwife furnishing will pay \$162 at the time of license renewal. The fee includes a \$12 assessment for the Controlled Utilization Review and Evaluation System Fee.

Specific Changes and Factual Basis/Rationale:

Pursuant to Business and Professions (B&P) Code, Sections 163.5, 2746.53, 2786.5, 2815, 2815.1, 2815.5, 2815.7, 2816, 2830.7, 2831, 2833, 2836.3 and 2838.2, the Board has statutory authority to assess fees, including those in the above table. The revenue generated from the fees is placed in the Board of Registered Nursing Fund, and is utilized by the Board to perform the duties and functions authorized by the Nursing Practice Act (NPA). In 1991, the Board set fees at the minimum level of the range established in statute. In 2010, the Board raised its fees for the first time in nearly 20 years in order to support the Board and enhance its enforcement functions. In 2015, the Board adopted emergency regulations to raise most fees to the maximum range in statute. In 2016, the Board completed the certificate of compliance to make the Board's emergency regulations permanent.

The Board commissioned an independent fee audit conducted by Capital Accounting Partners in 2015. The fee audit report identified which fees needed to be adjusted to recover actual costs for processing the different workload functions of the Board, such as enforcement and licensing. After SB 1039 was passed into law, the Board assessed appropriate fee amounts to be set, with most fees set to the bottom of the new statutory ranges.

As indicated, most of the fees assessed in the proposed regulation are the result of statutory changes that require the Board to impose fees within a certain range. For instance, Business and Professions Code section 2786.5 imposed the following fees on schools: between \$40,000 and \$80,000 for approval of a nursing program; between \$15,000 and \$30,000 for continuing approval of a nursing program established after January 1, 2013; and, between \$2,500 and \$5,000 to authorize a substantive change. In each case, the Board's proposed regulation would set the fee at the bottom of the statutory range.

While most of the fees in the proposed regulation are the result of statutory requirements to set a fee within a prescribed range, two sets of fees are not required to be imposed by statute. With respect to nurse-midwife and nurse practitioner furnishing fees (Bus. & Prof. Code, §§ 2746.53 & 2836.3), the Legislature permitted the Board to collect fees within a statutorily-prescribed range: "The board may charge" fees within the range. The Board's existing regulation, however, already requires all applicants for a furnishing number and the biennial renewal of a furnishing number to pay a fee, and imposes a penalty fee for an untimely renewal. The proposed regulations, therefore, would not impose new fees with respect to furnishing numbers, but would instead only increase the existing fees as specified in the new statutory ranges. The proposed regulation would set the fees at the bottom of the statutory ranges.

Under this regulatory proposal, two types of fees would be set above the new statutory minimums set forth in SB 1039: (1) the application fee for continuing education provider approval; and, (2) the penalty fee for failing to timely renew as a continuing education provider. The Board currently collects fees in connection with these activities. With respect to the application fee for continuing education provider approval, SB 1039 increased the statutory fee

range to between \$500 and \$1,000. (Bus. & Prof. Code, § 2815, subd. (f).) The regulatory proposal would set this fee at \$750. The purpose for setting the fee above the statutory minimum at \$750 is to support the functions of the Boards Continuing Education unit as the process it takes to review applications and audit registered nurses and continuing education providers is extensive and requires additional work. The work required to review applications for approval is akin to the work required to review a renewal application, where the minimum statutory fee is \$750. The proposed fee establishes parity between initial approval and renewal applications. Also, each registered nurse is required to submit to the Board 30 hours of continuing education units per renewal cycle. The Board's goal is to audit at least 10% of its nursing population each year. The proposed fee would better serve the Board as it provides additional resources for the Board to meet its goals.

The penalty fee for failing to timely renew as a continuing education provider is calculated based on the renewal fee. SB 1039 increased the statutory range for renewals of continuing education providers to between \$750 and \$1,000, and required the penalty fee to be established at “not more than 50 percent of the regular renewal fee, but not less than one hundred twenty-five dollars (\$125) nor more than five hundred dollars (\$500).” (Bus. & Prof. Code, § 2815, subds. (g) & (h).) This regulatory proposal would set the renewal fee at \$750, the statutory minimum. Because the penalty fee for failing to timely renew may not be “more than 50 percent of the regular renewal fee,” the Board proposes to set the penalty fee at 50 percent of the renewal fee, \$375. The purpose for setting this fee above the statutory minimum (\$125) is to support the functions of the Board's Continuing Education unit as the process it takes to review applications and audit registered nurses and continuing education providers is extensive and require additional work.

There are also six new types of fees set forth in the proposed regulations. The Board does not currently collect fees for the six different types of transactions listed below, but still processes them at no cost to the registered nurse. Pursuant to SB 1039, the Legislature required the Board to impose a fee for these six types of activities, within a prescribed statutory range. The proposed regulation would specify the applicable fee(s), as determined by the Board. The fees are necessary to comply with SB 1039 and to support the Board's operational needs.

Nurse Practitioner Certificate Renewal and Penalty for Untimely Nurse Practitioner Certificate Renewal

The Board did not previously collect fees for nurse practitioner certificate renewals and untimely nurse practitioner certificate renewals. But pursuant to B&P Code section 2815(o), the Legislature imposed new fee ranges for these activities. Section 2815(o)(1) required the Board to establish the fee to be paid by a registered nurse for an evaluation of his or her qualifications to use the title “nurse practitioner” at between \$500 and \$1,500. B&P Code section 2815(o)(3) required the Board to establish the fee to be paid upon filing an application for renewal of a certificate to practice as a nurse practitioner at between \$150 and \$1,000. B&P Code section 2815(o)(4) required the Board to establish the penalty fee for failure to renew a certificate to practice as a nurse practitioner within the prescribed time at between \$75 and \$500. In each case, the proposed regulation would establish the fee at the bottom of the statutory range.

Application for Reinstatement of a Lapsed License

The Board did not previously collect a fee for applications for reinstatement of a lapsed license. But pursuant to B&P Code section 2815(d)(2), the Board is required to set a fee to be paid upon

the filing of an application for reinstatement at between \$350 and \$1,000. The proposed regulation would establish the fee at \$350, the bottom of the applicable range.

Application for Psychiatric Mental Health Nurse

The Board also did not previously collect a fee for listing as a psychiatric mental health nurse. But B&P Code section 2815(p) required the Board to establish the fee to be paid by a registered nurse for listing as a “psychiatric mental health nurse” at between \$350 and \$750. Again, the proposed regulation would establish the fee at \$350, the bottom of the statutory range.

Public Health Nurse Certification Renewal

The Board did not previously collect a fee for the renewal of a public health nurse certification. But pursuant to B&P Code section 2816, the Board must establish the fee to be paid upon the application for renewal of the public health nurse certification at between \$125 and \$500. The proposed regulation would set the fee at \$125.

Temporary Clinical Nurse Specialist Certification

The Board did not previously collect a fee for temporary clinical nurse specialist certification. But B&P Code section 2838.2(d)(2) required the Board to set the fee to be paid by a registered nurse for a temporary clinical nurse specialist certification at between \$30 and \$50. The proposed regulation would set the fee at \$30, the statutory minimum.

The Board’s highest priority is consumer protection. The primary methods by which the Board achieves this goal include: ensuring applicants meet minimum qualifications for licensure, investigating complaints against registered nurses and disciplining licensees for violation of the NPA; monitoring nurses whose licenses have been placed on probation; and managing an Intervention Program for registered nurses, whose practice may be impaired due to chemical dependency or mental illness. The Board’s ability to perform these essential functions in an effective, efficient, and timely manner is compromised by several major factors, including insufficient staff and inadequate funds to pay for additional staff.

The Board’s operating expenses have been increasing an average of \$4 million per year for the past three (3) years. The Board’s revenue increased only an average of \$1.6 million per year during the same time frame. The revenue generated from the increase in fees will be used to maintain a minimum fund reserve for the next three (3) years. The Department of Consumer Affairs Budget Office has stated that eleven and a half (11.5) months is an average reserve, and is about half of the 24-month maximum statutory limit prescribed in B&P Code section 128.5. The Board estimates revenue from setting the fees at the specified levels will be approximately \$22,011,000 annually. Analysis of the Board’s fund condition shows that without a fee increase, the Board will be operating at a deficit by the end of FY 2020/21. The following table shows the projected fund reserve under these two (2) conditions:

Months in Reserve

Fiscal Year	No Fee Increase	Fee Increase
2019/20	1.4	6.4
2020/21	-0.1	10.4

The proposed regulations are necessary to preserve the public's health and safety because without the necessary revenue generated by the fees, the Board is unable to fully fund its licensing and enforcement programs and meet its mandate to regulate the practice of registered nurses. The increased revenues will be used to support the different programs throughout the board.

Underlying Data:

Technical, theoretical or empirical studies or reports relied upon:

- Board Fund Condition
- California Board of Registered Nursing Report – User Fee Audit – Capital Accounting Partners, LLC (September 2015)

Benefits:

California residents would benefit from the proposed regulation because the fee increases will enable the Board to continue regulating the practice of nursing and protecting consumers. The Board is self-supported. It relies on fees to generate revenue. An increase in fees would further allow the Board to support its daily functions, including the enforcement program. Through its enforcement program, the Board protects consumers by investigating complaints against registered nurses and disciplining licensees for violations of the Nursing Practice Act. The enforcement program also monitors nurses whose licenses have been placed on probation. The Board also has an Intervention program that manages registered nurses whose practice may be impaired due to substance use disorder or mental illness. The Board's highest priority is consumer protection, and an increase in fees would allow the Board to continue with its important consumer-focused programs.

Business Impact:

These regulations will not have a significant adverse economic impact on businesses; they should only have a minimal impact on continuing education providers and schools. Any financial impact on the businesses should be absorbed through the offset costs of tuition or course fees.

Economic Impact Assessment:

The proposed regulations affect individuals and some small businesses financially, but the affects will be minimal and absorbable. The affected individuals are the applicants for registered nursing (RN) licenses, applicants for advanced practice certificates, and registered nurses renewing their licenses and renewing their Board-issued certificates. The number of applications for RN licensure and advanced practice certificates have been relatively stable for years. The Board does not anticipate that the number of applications or licenses will change significantly as a result of these proposed regulations. The financial impact on the existing licensee population can range from \$20 - \$30 if they are a registered nurse. If they have additional certificates, the financial impact can range from \$50 - \$150. Even though a minimal financial affect will occur, it is anticipated that these regulations will not affect the creation of jobs nor will they eliminate jobs within the State of California, because the costs for renewal of licensure and application for advanced practice certificates would be minor.

The affected small businesses are continuing education providers and approved nursing programs. While there will be some additional costs involved in applying and renewing

continuing education providers, this should be offset by revenue collected by a provider from the registered nurse population taking courses to comply with 30 hours of continuing education units required for renewal. The Board does not know the average revenue for continuing education providers, because there are many types of courses offered by a large variety of providers, such as colleges, online courses and seminars.

Institutions that apply for new nursing program approval through the Board will be subject to the increased application fees. These proposed regulations could also potentially impact preexisting nursing programs that are required to submit fees for continuing approval of a nursing program and/or substantive program changes. Substantive changes include the following:

- (1) Change in location;
- (2) Change in ownership;
- (3) Addition of a new campus or location;
- (4) Major curriculum change.

These increased fees, however, are largely driven by statute, not this regulatory proposal. Business and Professions Code section 2786.5 imposed the following fees on schools: between \$40,000 and \$80,000 for approval of a nursing program; between \$15,000 and \$30,000 for continuing approval of a nursing program established after January 1, 2013; and, between \$2,500 and \$5,000 to authorize a substantive change. In each case, the Board's proposed regulation would set the fee at the bottom of the prescribed statutory range.

Nonetheless, a nursing program could potentially offset its fees through increased tuition costs and other program fees. Therefore, it is anticipated that these regulations will not eliminate businesses within California or affect the expansion of businesses currently doing business within California.

The proposed regulation will benefit California residents by ensuring the Board has the necessary resources to be effective in protecting them and supporting the Board's functions with the revenue generated from the fee increase. The Board anticipates that these regulations will not affect worker safety, nor will it affect the state's environment.

The Board concludes that the proposal will not create or eliminate jobs within the State of California; will not create or eliminate existing businesses within the state; will not affect the expansion of businesses currently doing business within the State of California; will not affect worker safety; and does not affect the state's environment.

Specific Technologies or Equipment:

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

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulations. This alternative was rejected because the changes proposed by this regulatory action are necessary in order to keep the Board solvent.
2. Adopt the regulation. The Board determined that this alternative is the most feasible because the proposed regulatory changes would support the Board's functions and give the Board the ability to protect the public.