

Department of Consumer Affairs

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS

DIVISION 25.

Board of Vocational Nursing and Psychiatric Technicians of the State of California

Notice of Proposed Regulatory Action Concerning:

AB 1536: New School Program Approval Process

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (hereafter Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will 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. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, 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 no later than Tuesday, April 25, 2023, by 5:00 p.m.**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2854, 2881.2, 4504, and 4531.1 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 2866, 2880, 2881, 2881.2, 2881.3, 2883, 4511, 4515, 4530, 4531, 4531.1, 4531.2, and 4532, the Board is proposing adopting sections 2537.2 and 2590.2

and amending section(s) 2525, 2526, 2580, and 2581 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Effect of the Proposed Action

Existing law provides that the Board is authorized to approve schools or programs of vocational nursing and psychiatric technicians (“schools”) in California. Pursuant to BPC sections 2880 and 4530, the Board prepares and maintains a list of approved schools whose graduates, if they have the necessary qualifications, shall be eligible to apply for a license with the Board to practice as a vocational nurse or psychiatric technician.

AB 1536 (Assembly Committee on Business and Professions, Chapter 632, Statutes of 2021) enacted BPC sections 2881.2 and 4531.1, which require the Board to follow a timeline for approving schools and establishes statutory caps for charging fees for schools seeking approval. BPC sections 2881.2 and 4531.1 do not provide specifics on the Board’s new school approval process itself, or the necessary items required for obtaining or maintaining approval, including the contents of the initial approval application, the process for calculating the initial application, final and continuing approval fees, the requirements for obtaining a reduction in the continuing approval fee based upon a reduction in state funding, and the criteria for maintaining continuing approval. These sections also use specific terminology such as “affiliated with an approved school or program,” “letter of intent,” “reasonable costs for providing oversight and review,” but do not define these terms.

Adopt sections 2537.2 and 2590.2

These sections are proposed to implement, interpret, and make specific BPC sections 2881.2 and 4531.1 for schools or programs of vocational nursing or for the preparation of psychiatric technicians seeking approval by the Board. These sections would adopt a new section entitled “Prelicensure Education Provider Fees” for easier comprehension of the purpose of this section and for better organization within the article. It would include an introductory sentence that would clarify the purpose of these new sections: to establish the listed fees pursuant to BPC section 2881.2 and 4531.1.

Specifically, this proposal would adopt a new fee schedule for applicants and approved schools of vocational nursing or for the preparation of psychiatric technicians, as follows:

- (1) the initial application fee of \$5,000;
- (2) the final approval fee of \$15,000 unless the institution is entitled to a decrease in fees due to actual costs being less proportionate to the actual costs associated with that school or program, or due to affiliation with another Board approved school or program;
- (3) the final approval fee of \$5,000 for any applicant providing documentation of its affiliation with another approved school or program. Such documentation would include proof of a formal collaborative agreement between the applicant institution and an approved school or program that is in good standing as specified;
- (4) the method for calculating the initial determination by the Board for the reasonable costs for providing oversight and review of an institution;
- (5) the method and documentation requirements for calculating a reduction in fees to \$2,500 for schools or programs experiencing a reduction in state funding resulting in reduced enrollment capacity; and,
- (6) the process the Board will use to provide a school or program a fee payment statement that shows the Board's initial determination of the reasonable costs for providing oversight and review for the school or program's continuing approval application.

Amend sections 2525, 2526, 2580, and 2581

This proposal would establish such standards and definitions and seeks to adopt regulations specifying the Board's requirements for obtaining and maintaining a school approval for schools or programs of vocational nursing or for the preparation of psychiatric technicians. This proposal would also specify the initial and continuing approval application requirements, including a letter of intent form, applications and forms for initial and continuing approval (listed below), and require the Board to follow a timeline for processing applications and approving schools. This proposal would set minimum requirements for the following:

- (1) the content of the Letter of Intent document (the document that begins the approval process for a new school) and the required format for submission;
- (2) the method and process for notifying a school or program of the next steps in the approval process;
- (3) the form and method of submitting a completed application, including required forms

and fee;

(4) the method and process for notifying a school or program when its initial application is complete and the “good cause” criteria for requesting an extension to complete the application;

(5) the grounds for denying an application (initial or continuing), including for noncompliance with the Board’s regulations and on grounds specified in section 480 of the Business and Professions Code (substantially-related criminal convictions, disciplinary action by another state board, knowingly false statements on the application);

(6) the procedures for notifying an institution of the action taken on the initial application;

(7) the process for submitting the final approval fee and an invoice for the reasonable costs incurred by the Board in the approval process for the institution;

(8) the standards for notifying the Board of any material change in circumstances affecting any information contained in any application or submitted in support of any application;

(9) the method for determining when an approval will expire and the steps the school or program would need to take to apply for continuing approval;

(10) the form and method for submitting a continuing approval application, including required forms and fee;

(11) the method and process for notifying a school or program when its continuing approval application is complete, and,

(12) alternate student criteria if the school or program elects to admit alternate students to its program (moves existing text to a new subsection).

The Board’s current emergency regulations implement these requirements through June 28, 2023; the Board has therefore drafted this proposal that would specify the Board’s new school or program approval process incorporating all of the above-referenced requirements in permanent regulation.

Anticipated Benefits of Proposal

The Board has determined that this regulatory proposal will have the following benefits

Board of Voc Nursing & Psych
Techs (BVNPT)
§§ Affected: 2525, 2526, 2537.2,
2580, 2581, 2590.2

Notice of Proposed Action
Certificate of Compliance
AB 1536: New School Program
Approval Process

Page 4 of 13

Revision Date: 2/28/2023

to the health and welfare of California residents. Qualified prelicensure programs must be approved consistently and timely to ensure that the workforce pipeline of licensed vocational nurses and psychiatric technicians can support the health and well-being of Californians. This regulatory proposal would create consistent standards for the review and approval of new schools of vocational nursing or programs for the preparation of psychiatric technicians and specified timelines for Board review, response, and approval of applications. This will help alleviate applicant confusion and help ensure that applications are processed in a timely manner, thus helping increase the likelihood of a greater number of educational institutions approved by the Board and greater access to educational opportunities for those seeking to enter the workforce as a licensed vocational nurse or psychiatric technician. Adopting standards for notice of, and the method for calculation of, fees relative to the actual costs of providing oversight and review for final approval and continuing approval will also help ensure accountability and transparency in the Board’s fee calculation process.

This regulatory proposal does not affect worker safety or the state’s environment.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

Vocational Nursing Programs

Form #	Form Name
55M-1	Letter of Intent to Submit Application for Initial Approval of New School or Program – Vocational Nursing (New 04/2022)
55M-2	Application for Approval of New School or Program of Vocational Nursing (New 04/2022)
55M-3A	Clinical Facility Verification Form – VN (New 04/2022)
55M-2E	Summary of Instructional Plan Program Hours Vocational Nursing Program (New 04/2022)

55M-15 Continuing Approval Application for a Vocational Nursing School or Program (New 04/2022)

Psychiatric Technician Programs

Form #	Form Name
56M-1	Letter of Intent to Submit Application for Initial Approval of New School or Program – Psychiatric Technician (New 04/2022)
56M-2	Application for Approval of a New Psychiatric Technician School or Program (New 04/2022)
56M-3A	Clinical Facility Verification Form – PT (New 04/2022)
56M-2E	Summary of Instructional Plan Program Hours Psychiatric Technician Program (New 04/2022)
56M-15	Continuing Approval Application for a Psychiatric Technician School or Program (New 04/2022)

Forms for All Programs

Form #	Form Name
55M-3	Intent for Clinical Placement (New 04/2022)
55M-2W	Vocational Nursing or Psychiatric Technician Program Curriculum Content - Instructional Plan (New 04/2022)
55M-10	Verification of Faculty Qualifications Form (New 04/2022)

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The implementation of these requirements do not result in a fiscal impact to the state in the form of federal funding to any state agency. However, the Board anticipates the following costs to the state.

The proposed regulations help to provide a structured timeline for the approval of

prelicensure schools of vocational nursing and schools for preparation of psychiatric technicians. The proposal clarifies the approval requirements and imposes a fee on prelicensure and continuing approval applicants.

Expenditures: Notwithstanding the fees anticipated from the proposed regulations, the Board currently incurs workload costs of approximately \$23,355 related to application review and final approval and workload costs of approximately \$31,645 for continuing approval.

The proposed regulations establish registration fees, which the Board will need to process and cashier with estimated costs of \$20 per transaction, which results in estimated workload costs ranging from \$1,040 to \$2,255 per year and up to \$15,540 over a ten-year period.

The Board notes, the remaining costs (cashiering excluded) to review and approve applications (\$23,335) and continuing approval applications (\$31,645) would be incurred by the Board regardless of the regulations because the Board is required to approve and regulate these institutions. As a result, these current costs are not included in this analysis.

The Board will also incur information technology costs of approximately \$11,000 to reconfigure existing licensing, cashiering, and accounting systems.

Any workload and costs are anticipated to be absorbed within existing resources.

Revenues: The proposed regulations are anticipated to result in revenues ranging from \$480,000 to \$650,000 per year and up to \$5,730,000 over a ten-year period.

Additionally, the Board acknowledges schools may opt to pass on costs to students resulting from the proposed regulations, but any operational decisions made by an individual institution is unknown at this time and therefore not included in this analysis.

The Board also notes, the proposed regulations provide for a continuing approval fee reduction to \$2,500 related to reduced student enrollment and state funding, as specified. However, the Board does not anticipate employing these provisions because student enrollment rates are projected to increase in the future.

Nondiscretionary Costs/Savings to Local Agencies: None

Mandate Imposed on Local Agencies or School Districts, if so, Whether the Mandate is Reimbursable by the State: None.

Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement: None

Significant Effect on Housing Costs (and, if applicable, including any estimated costs of compliance or potential benefits of a building standard): None

BUSINESS IMPACT ESTIMATES

This regulation may have an economic impact on businesses, specifically, schools or educational programs seeking Board approval or continuing approval. However, the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination is based upon the following facts.

This initial determination is based on the following estimates:

- The Board estimates that approximately 250 businesses will be impacted by this proposal.
- The Board estimates that the economic impact of this proposal will be below \$10 million.

Pursuant to AB 1536, the proposed regulations establish fees charged to schools as follows:

- Initial Application: Up to \$5,000
- Final Approval: (Option #1) Up to \$5,000 for schools and programs affiliated with a currently registered school in good standing, or (Option #2) Up to \$15,000 for all other schools and programs
- Continuing Approval: Up to \$5,000 once every four years for registered schools and programs

Initial Application/Final Approval: The Board anticipates initial applications, final approval rates, and costs as follows:

- Year-1: 11 Unaffiliated (\$220,000) & 4 Affiliated (\$40,000)
- Year-2: 21 Unaffiliated (\$420,000) & 5 Affiliated (\$50,000)
- Year-3: 18 Unaffiliated (\$360,000) & 2 Affiliated (\$20,000)
- Ongoing: 13 Unaffiliated (\$260,000) & 2 Affiliated (\$20,000)

Total estimated costs range from \$260,000 to \$470,000 per year and up to \$3,070,000

over a ten-year period.

Continuing Approval: The Board currently has 156 registered schools scheduled to submit a continuing approval application per the four-year renewal cycle and incur costs as follows:

- Year-1: 44 schools (\$220,000)
- Year-2: 29 schools (\$145,000)
- Year-3: 29 schools (\$145,000)
- Year-4: 54 schools (\$270,000)
- Year-5: 59 schools (\$295,000)
- Year-6: 55 schools (\$275,000)
- Year-7: 49 schools (\$245,000)
- Year-8: 69 schools (\$345,000)
- Year-9: 74 schools (\$370,000)
- Year-10: 70 schools (\$350,000)

Total estimated costs related to continuing approval range from \$145,000 to \$370,000 per year and up to \$2,660,000 over a ten-year period.

Total Costs: The proposed regulations result in total costs ranging from \$480,000 to \$650,000 per year and up to \$5,730,000 over a ten-year period.

The Board notes, notwithstanding the proposed regulations, these schools would have otherwise incurred costs (including facilities, staffing, clinical placement, and other) as part of normal business operations. As a result, these costs are not included in this analysis.

The Board further notes, any student enrolling in these schools would have otherwise incurred costs (including tuition, books, and other) as part of enrollment, and paid examination and license fees to apply for licensure with the Board. As a result, these costs are not included in this analysis.

Additionally, the Board acknowledges schools may opt to pass on costs to students resulting from the proposed regulations, but any operational decisions made by an individual institution is unknown at this time and therefore not included in this analysis.

The Board also notes, the proposed regulations provide for a continuing approval fee reduction to \$2,500 related to reduced student enrollment and state funding, as specified. However, the Board does not anticipate employing these provisions because student enrollment rates are projected to increase in the future.

Cost Impact on Representative Private Person or Business: Please see “Business Impact” section for a description of the cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board. The Board anticipates that businesses and individuals may incur costs of \$5,730,000 to comply with this regulation over a ten-year period.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Impact on Jobs / Businesses

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. As explained more completely in the Business Impact Estimate section of this notice, the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Benefits of Regulation

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents by creating consistent standards for the review and approval of new schools of vocational nursing and programs for the preparation of psychiatric technicians, with specified timelines for Board review, response, and approval of applications. This will help alleviate applicant confusion and help ensure that applications are processed in a timely manner, thus helping increase the likelihood of a greater number of educational institutions approved by the Board and thus increasing the number of qualified professions to enter the healthcare workforce. Adopting standards for notice of, and the method for calculation of, fees relative to the actual costs of providing oversight and review for final approval and continuing approval will also help ensure accountability and transparency in the Board’s fee calculation process.

This regulatory proposal does not affect worker safety or the state’s environment.

Business Reporting Requirements

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

Effect on Small Business

The Board has determined that the proposed regulations may affect small businesses. Although small businesses owned by applicants and/or licensees of the Board may be impacted, the Board does not collect or maintain data relating to the number or percentage of licensees or applicants who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation 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; would be as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833 during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS 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. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Vocational Nursing and Psychiatric Technicians at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals 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, with the modifications clearly indicated, will be available for review and written comment 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 comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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 PERSONS

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

Name: Doris Pires

Address: Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833

Telephone No.: (916) 263-7864

Fax No.: (916) 263-7866

E-Mail Address: bvnpt.rulemaking@dca.ca.gov

The backup contact person is:

Name: Mark Ito
Address: Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No.: (916) 263-7851
Fax No.: (916) 263-7866
E-Mail Address: bvnpt.rulemaking@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at https://www.bvnpt.ca.gov/about_us/bvnpt_regulations.shtml.