

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 40.

CALIFORNIA BOARD OF NATUROPATHIC MEDICINE

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
FEES

NOTICE IS HEREBY GIVEN that the California Board of Naturopathic Medicine (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 Monday, September 23, 2024** (Note: 5 p.m. is not a full day, so either 45 full days or 46 days with day 46 ending at 5 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 section(s) 122, 3622, 3634, 3680 and 3685 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 122, 144, 3630, 3634, 3680 and 3685, the Board is considering amending section 4240 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Board is a state agency vested with the authority to regulate the practice of naturopathic doctors (Bus. & Prof. Code, § 3612). The Board’s mandate and highest priority is to protect the public (Bus. & Prof. Code, § 3620.1). It is the Board’s duty to enforce and administer the Naturopathic Doctors Act (Chapter 8.2 (commencing with section 3610 of Division 2 of the Business and Professions Code (BPC)) (Act)). The

Board is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (BPC § 3622.).

Pursuant to Business and Professions Code sections 3622 and 3680, the Board has the statutory authority to collect fees to carry out its consumer protection mandate, support the functions of the Board as they relate to regulating naturopathic doctors (ND) and maintain an adequate balance in its contingency fund. The fees of the Board are required to be sufficient to support the functions or operational needs of the Board.

In 2018, it was identified that the Board had a structural imbalance in its Naturopathic Doctor's Fund ("Fund"), which would mean that the Board was projected to run out of revenue to meet its operational needs. Legislation was enacted pursuant to Senate Bill 1480 ("SB 1480" -- Chapter 571 of the Statutes of 2018) to authorize fee increases to help ensure that the Board was able to meet its operational needs. Effective January 1, 2019, the Board implemented the provisions of SB 1480. SB 1480 amended the Board's fee structure to maintain the operation of the Board and restore funds in its reserve by increasing the application, initial licensing, and renewal fees, and establishing a fee for a certified license verification at BPC section 3680. However, since that time, it has been identified that the fees enacted by the 2018 legislation are no longer adequate to cover the Board's expenditures and do not address the increase in future operational costs.

In March 2024, the Board's staff completed and presented to the Board an analysis of the Board's fee structure. This analysis was initiated to ensure that the Board was collecting sufficient revenue to fully reimburse the Board for the actual cost of processing ND license applications and issuing and renewing ND licenses. The goal of the analysis was to identify the Board's actual budgetary need to process each initial and renewal application the Board is required to process. The Board's only sources of revenue are fees charged for each application it processes and each license it issues and renews. The Board also has a mandate to be fully self-supporting, so it is vital that the fees charged to licensees and applicants fully represent the Board's administrative costs. The data indicated that the full cost of fee-based services the Board provides is not adequately represented in the current fee structure, and without exception, the costs exceed the maximum fee authorized by statute. It is estimated that by Fiscal Year 2026-2027, the Board's reserve fund will be negative.

This proposal is necessary to help ensure the Board has sufficient resources to maintain the highest priority of consumer protection and recover costs for administration and enforcement of the Act. The proposed regulations would increase the Board's application, initial license, and renewal fees to the statutory maximums, which will help

to alleviate the Board's structural imbalance and help recover costs for services provided to applicants and licensees.

The Board proposes to amend Section 4240 of Article 7 of Division 40 of Title 16 to increase ND license application, initial license and license renewal fees to address a structural imbalance within the Board's budget and to pursue a reserve in the Board's fund consistent with its mission that "Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (BPC section 3620.1.)

The objective of this proposed regulation is to increase the Board's fees enough to meet its projected expenditures beginning as soon as possible, but no later than 2025 to maintain the Board's mission of protection of the public. The Department of Consumer Affairs (DCA) provides budgetary and fiscal administrative support to the Board. According to the DCA, current Board expenditures necessary to administer its regulatory functions exceed the amount of funds collected from applicants and licensees. This proposal will increase the Board's application, initial license and renewal fees to ensure that the Board will be able to continue to meet its consumer protection mandate by allowing the Board to continue its licensing and enforcement responsibilities. This regulatory proposal seeks to make amendments to the Board's fees, which will help to reduce the Board's structural budget imbalance and to maintain a sufficient fund balance reserve until the Board can increase statutory fee levels to completely eliminate the structural imbalance.

This proposal would implement necessary changes to help ensure the fiscal solvency of the Board. This includes amendments to CCR section 4240 as follows:

- The proposal increases the application fee for a Doctor of Naturopathic Medicine from \$400 to \$600 at subsection (a).
- The proposal increases the initial license fee from \$800 to \$1,200 and updates the associated table showing how the new fee would be prorated according to the applicant's birth month and the date the license is issued per BPC section 4222 in subsection (b).
- The proposal increases the biennial renewal license fee for naturopathic doctors from \$800 to \$1,200 in subsection (c).

In addition, the Board would make the following conforming changes to CCR section 4240:

- The Board proposes to strike the word “Committee” and replace it with the words California Board of Naturopathic Medicine and add the shortform word “Board” to subsection (b).
- This proposal would strike out existing fees at subsections (d) and (f) that were superseded by statutory changes and add a new subsection (g) to this section to reflect new fees enacted by law. The Board proposes to add these updated fees set forth in statute at BPC section 3680 at subsections (d), (f) and (g) for a late renewal fee for a license (currently set by BPC section 3680(d) at \$225), the fee for a duplicate or replacement license (currently set by BPC section 3680(f) at \$38), and the fee for a certified license verification (currently set by BPC section 3680(g) at \$30). The fees proposed to be added at subsections (d), (f) and (g) are listed in Business and Professions Code section 3680 and would therefore not constitute a fee increase but a restatement of existing law. The fees would be restated in these sections for the convenience of the regulated community and staff.

Anticipated Benefits of the Proposal

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

These changes would raise application, initial license and renewal fees to the statutory maximums. California residents would benefit from the proposed regulation because the fee increases will enable the Board to carry out its statutory mandate of public protection by licensing, regulating, and disciplining NDs. Raising fees would help address a structural imbalance in the Board’s budget, ensure the Board’s regulated public is aware of the fees, and attempt to create a consistency between the Board’s expenditures to regulate licensees and protect the public and the fees assessed for carrying out those functions. The Board’s highest priority is consumer protection, and the proposed revisions will allow the Board to continue its important consumer-focused functions in the short term while the Board seeks legislative authority to increase statutory maximums for the fees it collects in the long term.

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.

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 proposed regulations are anticipated to increase the Board's revenues by approximately \$113,000 per year and up to \$1.13 million over a ten-year period.

Since the Board already performs the workload associated with these programs and fees, the Board does not anticipate any additional workload or costs to implement the proposed regulations.

The Board estimates one-time information technology (IT) costs of \$4,000 to update cashiering and accounting software. Any IT costs will be absorbed within existing resources.

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

Nondiscretionary Costs/Savings to Local Agencies: None

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

Mandate Imposed on Local Agencies or School Districts: None

Significant Effect on Housing Costs: None

BUSINESS IMPACT ESTIMATES

This regulation may have an economic impact on businesses, specifically, the Board's licensees and applicants. This determination is based upon the following facts. The regulation would increase fees charged to ND license applicants and ND licensees. To the extent these applicants apply for licensure or licensees opt to renew their licenses, the proposed regulations will impact them as described in further detail in the Initial Statement of Reasons.

However, the proposed regulations will not have a significant statewide adverse economic impact on businesses, including the ability to compete with other businesses in California, because the fee increases are considered to be minor compared to the income of most applicants and licensees in this profession. This proposal represents

an incremental increase of \$100 for the ND licensing application or \$200 for the initial license fee or ND license renewal.

Cost Impact on Representative Private Person or Business

The regulation would increase fees charged to ND license applicants, and ND licensees. To the extent these applicants apply for licensure or licensees opt to renew their licenses, the proposed regulations will impact them. This proposal represents a \$100 increase for ND applications and \$200 for initial and renewal licensure.

The regulations are estimated to result in additional costs of approximately \$113,000 per year and up to \$1.13 million over a ten-year period.

Please see the Initial Statement of Reasons for further detail.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS:

Impact on Jobs / Businesses

The Board has determined that this regulatory proposal will not have a significant impact on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or,
- 3) the expansion of businesses currently doing business within the state.

This proposal would not have any of the above-referenced impacts because these costs are considered minor compared to the income of most applicants and licensees in this profession as more fully discussed in the Business Impact Estimates section above.

Benefits of the Proposed Action: Protection of the public is the Board's highest priority in exercising its licensing, regulatory and disciplinary functions. The Board ensures that only qualified persons are licensed naturopathic doctors by enforcing regulatory requirements, standards of practice, and by educating consumers regarding their rights.

This regulatory proposal will benefit the health and welfare of California residents because the proposal will increase the Board's revenue and funding available to continue the Board's enforcement, investigative, licensing, and public outreach operations. The proposal is does not benefit worker safety or the state's environment because it does not involve either 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

While the Board does not have nor does it maintain data to define if any of its licensees are a “small business” as defined in Government Code section 11342.610, the Board has made an initial determination that any adverse economic impact will not be significant for small businesses, because the increased expense to any business, small or otherwise, is not more than \$200-300 per year.

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 California Board of Naturopathic Medicine, 1747 North Market Blvd., Suite 240, Sacramento, CA 95834, 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 at California Board of Naturopathic Medicine, 1747 North Market Blvd., Suite 240, Sacramento, CA 95834.

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 persons designated in this Notice as the Contact Persons 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 Persons named below or by accessing the website listed below.

CONTACT PERSONS

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

Name: Rebecca Mitchell, Executive Officer
Address: California Board of Naturopathic Medicine
1747 North Market Blvd., Suite 240
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Telephone No.: (916) 928-5862
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E-Mail Address: Rebecca.Mitchell@dca.ca.gov

The backup contact person is:

Name: Raquel Oden, Program Analyst
Address: California Board of Naturopathic Medicine
1747 North Market Blvd., Suite 240

Sacramento, CA 95834
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AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Regulatory 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.naturopathic.ca.gov/laws/proposed_regulations.shtml