

**TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

**NOTICE OF PROPOSED REGULATORY ACTION
CONCERNING DENTISTS INITIATING AND
ADMINISTERING VACCINES**

NOTICE IS HEREBY GIVEN that the Dental Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing.

WRITTEN COMMENTS

Written comments, 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 by **5:00 p.m., Tuesday, October 18, 2022**, or must be received by the Board at the hearing, should one be scheduled.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. The Board will, however, 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.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 will be available 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 or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Business and Professions Code (BPC) sections 1614, and 1625.6, and to implement, interpret or make specific BPC sections 1625.6, 1645.2 and 1680, the Board is considering making changes to Article 9 of Chapter 2 of Division 10 of Title 16 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is responsible for licensing and regulating dental professionals in California. The Board licenses an estimated 89,000 dental professionals, including approximately 43,500 licensed dentists; 44,500 registered dental assistants (RDAs); and 1,700 registered dental assistants in extended functions (RDAEFs). The Board is also responsible for setting the duties and functions of an estimated 50,000 unlicensed dental assistants.

In early 2021, the Director of the Department of Consumer Affairs issued a public health emergency waiver allowing dentists to administer the COVID-19 vaccines. Assembly Bill (AB 526) (Chapter 653 Statutes of 2021) was signed into law on October 8, 2021. The bill amended provisions of the Dental Practice Act at BPC section 1625.6 to permit dentists to prescribe and administer influenza and COVID-19 vaccinations approved or authorized by the federal Food and Drug Administration to patients 3 years of age and older on a permanent basis. Dentists who would administer these vaccines must biennially complete a vaccination training program offered by the CDC or a provider approved by the Board. They must also comply with all state and federal recordkeeping requirements. This includes documentation for the patient's primary care provider and entering the vaccination information into the appropriate immunization registry designated by the Immunization Branch of the California Department of Public Health.

While BPC 1625.6 provides the authority for dentists to initiate and administer influenza and COVID-19 vaccinations, it does not provide specifics on the length of the required training program. BPC 1625.6 also does not provide specifics on how dentists are to provide immunization information to their patients' primary care providers or to the state immunization registry. This proposal would establish such standards.

Pursuant to the provisions of AB 526, the Board prepared Emergency Regulations and filed them with the Office of Administrative Law on June 13, 2022. The Emergency Regulations were approved on June 23, 2022 and will expire after 240 days (per statute) on February 22, 2023. The Dental Board of California (the Board) is seeking to make permanent the emergency regulations (the Regulations) in Section 1066 approved by the Office of Administrative Law on June 23, 2022. The Regulations authorize dentists to independently prescribe and administer influenza and COVID-19 vaccines approved or authorized by the United States Food and Drug Administration in compliance with the individual federal Advisory Committee on Immunization Practices (ACIP) influenza and COVID-19 vaccine recommendations and published by the federal Centers for Disease Control and Prevention (CDC) to persons three years of age or older. The Board is now submitting the adopted Emergency rulemaking, rulemaking file, and certificate of compliance in accordance with the requirements of Government Code section 11346.1,

subdivision (e) and Business and Professions Code section 1625.6 to permanently establish these standards.

Proposed section 1066 would implement section 1625.6 of the Business and Professions Code (BPC) as enacted by AB 526 and make specific the requirements a dentist must complete when initiating and administering influenza and COVID-19 vaccines to patients. The regulations address the length and frequency of required training, the records that must be kept by the dentist concerning their training and the vaccines they administer, the information dentists must provide to their patients and their patients' primary care provider, state and federal reporting requirements including reporting vaccine administration through California's Immunization Registry (CAIR), and state and federal documentation and recordkeeping requirements.

ANTICIPATED BENEFITS OF PROPOSED REGULATIONS:

Having dentists initiate and/or administer vaccinations will make obtaining vaccinations more convenient. When it is more convenient and less expensive to obtain vaccinations, Californians are more likely to vaccinate, raising vaccination rates and improving public health and public safety. Having individuals obtain vaccinations from dentists may result in a proportionate reduction in physician and other health care workers' workloads, freeing them to focus on patients with more serious medical issues requiring their attention. Such benefits are difficult to quantify.

BPC Code section 1601.2 mandates that the protection of the public shall be the highest priority for the Board and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. The proposed standard provides protection for the public by setting out training, notification, reporting and record retention procedures for dentists who will now be able to offer the public broader access to vaccinations, thus increasing California's vaccination rates, and improving the health of all Californians.

Making these regulations permanent will help provide notice and guidance to dentists who wish to provide vaccines to their patients of the measures necessary to administer and initiate these vaccines in a manner consistent with the law and accepted vaccination practices.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATION(S)

The Board has evaluated this proposal and determined that these proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING 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 regulations help to provide additional guidance to dentists related to training, continuing education, notification to a patient's primary care provider, reporting and record keeping requirements for dentists to initiate and administer influenza and COVID-19 vaccinations as required by 1625.6 of the Business and Professions Code.

This proposal establishes continuing education requirements related to administering vaccines for licensees, as specified, and does not increase the total number of continuing education hours required. As a result, the Board does not anticipate an increase in workload or costs.

The Board will ensure compliance with the proposed regulations through its existing continuing education and enforcement activities and does not anticipate a significant number of violations.

However, in the event a licensee is out of compliance with the regulations and is subject to formal discipline, the Board estimates enforcement-related costs of \$5,000 per case.

The regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings.

Cost or Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Effect on Housing Costs: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts.

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation simply provides dentists, who choose to initiate and/or administer vaccinations without a doctor's prescription, as authorized by Business and Professions Code (BPC) section 1625.6, with the training, recordkeeping and reporting requirements to ensure that the dentists have the appropriate training and are in compliance with federal and state laws governing vaccine administration. Allowing dentists the ability to initiate and/or administer vaccinations will reduce the cost and increase the convenience of obtaining vaccinations. By making vaccines more readily available, dentists may experience an increase in business from patients electing to use their dentist for these services instead of their doctor. In addition, unless a dentist already has the capacity for vaccine storage in their dental office, dentists seeking to administer these vaccines are more likely to do so in other settings that have that storage capacity and the ability to deal with any adverse reactions to the vaccinations. These settings would include clinics, hospitals, and sites set up to handle mass vaccinations. Such settings would likely be able to address and support the documentation and notification requirements, and hence any potential costs, of these proposed regulations.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any negative cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. By making vaccines more readily available, dentists may experience an increase in business from patients electing to use their dentist for these services instead of their doctor. In addition, unless a dentist already has the capacity for vaccine storage in their dental office, dentists seeking to administer these vaccines are more likely to do so in other settings that have that storage capacity and the ability to deal with any adverse reactions to the vaccinations. These settings would include clinics, hospitals, and sites set up to handle mass vaccinations. Such settings would likely be able to address and support the documentation and notification requirements, and hence any potential costs, of these proposed regulations.

EFFECT ON SMALL BUSINESS:

While the Board does not have, nor does it maintain, data to determine if any of its licensees (dentists) are a "small business," as defined in Government Code section 11342.610, the Board has made an initial determination that the proposed regulatory action will not affect small businesses. Although the proposed regulation will directly affect businesses statewide, which may include small businesses, the Board does not anticipate any adverse economic impact as described in the Business Impact Estimate section listed above.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board does not anticipate that these regulations would create or eliminate jobs, nor would the regulations create or eliminate businesses because dentists can choose whether to get trained to initiate and/or administer vaccines. Also, the proposed regulation simply sets out the standards for initiating and/or administering vaccinations for dentists to follow. The regulations would allow for dentists to expand their businesses by offering vaccinations as an additional service to their patients. The Board does not have data to determine the degree of expansion that dentists might experience for their practice as a result of this new service opportunity.

Benefits of Regulation:

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

This regulatory proposal affects the health and welfare of California residents because the proposed regulation will further increase the priority of the Board which is the protection of the public. The adoption of permanent regulations for the initiating and administration of influenza and/or COVID-19 would help make vaccinations easier to obtain, resulting in more Californians getting vaccinated. This would contribute to a rising vaccination rate among Californians, which benefits the public health and welfare of all Californians.

This regulatory proposal will have no impact on worker safety because dentists have dispensed some vaccines to the public for some time under waivers granted by this Department under a state of emergency, and the Board has not received any information about impacts on worker safety. This regulatory proposal will have no impact on the state's environment because it is not relevant to the State's environment. This proposal relates to standards for dentists administering or initiating influenza or COVID-19 vaccines to dental patients.

Business Reporting Requirements

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

INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based, which may be obtained from the contact person identified in this notice.

TEXT OF PROPOSAL:

Copies of the exact language of the proposed regulations, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing (if requested) or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 or by accessing the Board's website at https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml.

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.

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 present statements or arguments orally if a hearing is requested, or in writing relevant to the above determinations as described in the "Written Comments" section of this notice.

CONTACT PERSON

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

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The backup contact person is:

Name: Tina Vallery, Staff Services Manager I
Dental Board of California
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WEBSITE ACCESS

Materials regarding this proposal can be found at the Board's Website at https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml