



COLO R A D O

**Department of
Regulatory Agencies**

**2015 Review:
Proposal for Mandatory
Continuing Education for
Administrators of Assisted Living
Facilities**

*Office of Policy, Research and Regulatory Reform
April 9, 2015*



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

April 9, 2015

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

As a part of the Executive Director's Office within the Department of Regulatory Agencies (DORA), the Office of Policy, Research and Regulatory Reform is charged with a statutorily mandated responsibility to conduct reviews of proposals to require mandatory continuing education with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluation of the proposal to impose continuing education requirements on administrators of assisted care facilities and is pleased to submit this written report. The report is submitted pursuant to section 24-34-901, Colorado Revised Statutes, which provides that DORA shall conduct an analysis and evaluation of the proposal to determine whether mandatory continuing education would likely protect the public served by the practitioners.

Sincerely,

A handwritten signature in cursive script that reads 'Barbara J. Kelley'.

Barbara J. Kelley
Executive Director



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Background

Prior to introduction of legislation designed to impose a mandatory continuing education requirement on a regulated occupation or profession, the proponents of the legislation must submit information concerning the need for such a requirement to the office of the Executive Director of the Department of Regulatory Agencies. The Executive Director is required to review, analyze, and evaluate the proposal and report in writing to the General Assembly whether mandatory continuing education would likely protect the public. Section 24-34-901, Colorado Revised Statutes, states:

Proposed continuing education requirements for regulated occupations and professions - review by office of executive director.

(1) Before any bill is introduced in the general assembly that contains, or any bill is amended to contain, a mandatory continuing education requirement for any occupation or profession, the practice of which requires a state of Colorado license, certificate, or registration, the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office of the executive director of the department of regulatory agencies. The executive director shall impartially review such evidence, analyze and evaluate the proposal, and report in writing to the general assembly whether mandatory continuing education would likely protect the public served by the practitioners. Proposals may include, but need not be limited to: Information that shows that the knowledge base for the profession or occupation is changing; that mandatory continuing education of this profession or occupation is required in other states; if applicable, that any independent studies have shown that mandatory continuing education is effective in assuring the competency of practitioners. The proposal may also include any assessment tool that shows the effectiveness of mandatory continuing education and recommendations about sanctions that should be included for noncompliance with the requirement of mandatory continuing education. The provisions of this section shall not be applicable to:

(a) Any profession or occupation that, as of July 1, 1991, has mandatory continuing education requirements in place;

(b) Any bill that is introduced as a result of a legislative interim committee and that as introduced in the general assembly includes a mandatory continuing education requirement.

Before beginning the review, the Executive Director evaluated the application to determine if the review was necessary under the requirements of the statute. The evaluation revealed that a mandatory continuing education program for administrators of assisted living facilities did not meet any of the exemptions from the statute and, therefore, was subject to review by the Executive Director.

Administrator of Assisted Living Facilities - Profile

An assisted living facility is

... a system of housing and limited care that is designed for senior citizens who need some assistance with day-to-day activities but are not sufficiently incapacitated to require care in a nursing home and that usually includes private quarters, meals, personal assistance, housekeeping aid, monitoring of medications, and nurses' visits.¹

The Colorado Revised Statutes define an assisted living residence as

... a residential facility that makes available to three or more adults not related to the owner of such facility, either directly or indirectly through an agreement with the resident, room and board and at least the following services: Personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term "assisted living residence" does not include any facility licensed in this state as a residential care facility for individuals with developmental disabilities, or any individual residential support services that are excluded from licensure requirements pursuant to rules adopted by the department of public health and environment.²

The common threads between the two definitions are that an assisted living facility is adult housing, which provides limited care and services, and is not a nursing home.

An administrator of an assisted living facility (Administrator) is classified as a medical or health services manager by the U.S. Bureau of Labor and Statistics. Employment opportunities are expected to grow 23 percent from 2012 to 2022 as the large baby-boom population ages and people stay active longer.³ Colorado law defines an Administrator as a person who is responsible for the overall operation, and daily administration, management and maintenance of the facility.⁴

¹ Merriam-Webster. *Assisted living*. Retrieved March 31, 2015 from <http://www.merriam-webster.com/dictionary/assisted%20living>

² § 25-27-102(1.3), C.R.S.

³ Bureau of Labor and Statistics. Occupational Outlook Handbook; Medical and Health Services Managers. Retrieved March 26, 2015 from <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm>

⁴ 6CCR 1011-1 Ch.VII § 1.102(2).

An Administrator develops, coordinates, directs, and administers strategies in accordance with federal, state, and local laws. Protection of the rights of the residents is a key component. Additionally, he or she must be able to deal tactfully with staff, residents, family members, visitors, and governmental entities.

Thus, the primary functions of an administrator are:

Administration

Analyze trends in the industry. Develop, implement, and evaluate policies and procedures for facility operations that keep in step with those trends. Devise and implement policies and procedures that will ensure the safety and protection of all residents. Ensure facility operations are in compliance with all laws that govern business, health, and building operations. Work cooperatively with social service agencies.

Personnel Functions

Make sure that all facility personnel meet qualifications necessary for employment. Oversee selection, hiring, supervising and releasing of all employees. Establish procedures for performance measurement of all facility functions, coordinate departmental activities, and provide guidance where necessary.

Budget and Planning Functions

Develop and execute the annual operating budget including physical operations, marketing, sales, human resources, and resident satisfaction. Allocate the resources as defined by the budget to achieve a facility's goals.

Public Relations and Marketing

Develop presentations to educate the public about services offered in the facility. Network with community, industry groups, medical community, and social service entities.

Proposal for Continuing Education

The Colorado Assisted Living Association (Applicant) submitted information on March 3, 2015 to the Department of Regulatory Agencies, proposing mandatory continuing education for administrators of assisted living facilities (Administrators). The application gives the applicant the opportunity to respond to the statutory instructions and to justify the need for mandatory continuing education (MCE). The statutory instructions ask the applicant to supply:⁵

- Information that shows that the knowledge base for the profession or occupation is changing;
- Information that MCE for this profession or occupation is required in other states;
- Independent studies that have shown that MCE is effective in assuring the competency of practitioners.
- Any assessment tool that shows the effectiveness of MCE; and
- Recommendations about sanctions that should be included for noncompliance with the requirement of mandatory continuing education.

In response to a statutory directive to provide information that shows the knowledge base for the profession or occupation is changing, the Applicant provided the following statement:

At present there is no body of knowledge that trains individuals to be a professional administrator for an assisted living community. The assisted living industry is growing in leaps and bounds as baby boomers begin to retire and move through their golden years. The demand for professionalism on the part of assisted living administrators will be required to meet the regulatory requirements for the industry and by the residents of those communities. CDPHE is the regulatory agency and requires that anyone who wishes to become an "administrator" of an assisted living community must take their three day course and become certified.

The Applicant did not provide any independent studies demonstrating that MCE is effective in assuring the competency of Administrators. The Department of Regulatory Agencies (DORA) was unable to locate any studies concerning Administrator MCE efficacy.

The Applicant provided no assessment tools that show the effectiveness of MCE. DORA was unable to find any assessment tools that measure the effects of MCE on facility operations, resident satisfaction, or any other related topic.

⁵ § 24-34-901, C.R.S.

Finally, concerning the recommendation regarding sanctions for noncompliance, the Applicant offered the following opinion:

The sanctions imposed on the administrator would be loss of certification and loss of job. Not to mention the economic hardship that would be incurred on the individual through the loss of their job. Other sanctions could be fines, or retesting for certification.

The Applicant offered no explanation or justification for its opinion concerning sanctions.

Beyond the statutory prerequisites, the Applicant offered no indication as to the need for- or number of continuing education hours that should be required of Administrators. However, it did submit information gathered by the National Center for Assisted Living that explained the extent of regulation among the 50 states. A table with applicable information is included in Appendix A.

The Applicant's basis for MCE rests on a subjective statement concerning a changing knowledge base and review of other state regulation submitted without comment.

Analysis

The Colorado Revised Statutes (C.R.S.) section that governs the consideration of mandatory continuing education requirements states,

... the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement.⁶

The information submitted by The Colorado Assisted Living Association (Applicant) is listed in the "Proposal for Continuing Education" section of this review. It bases the argument for mandatory continuing education (MCE) on two notions:

- The assisted living industry is growing in leaps and bounds as baby boomers begin to retire and move through their golden years; and
- The demand for professionalism on the part of assisted living administrators will be required to meet the regulatory requirements for the industry and by the residents of those communities.

Statute directs that the Executive Director of the Department of Regulatory Agencies (DORA) determine "whether mandatory continuing education would likely protect the public served by the practitioners."⁷ This directive establishes the principal criteria for review and analysis. The principle task for an applicant is to establish that current qualifications for a regulated profession are not sufficient to protect consumers.

Administrators of assisted living facilities (Administrators) are not regulated as a designated profession. Rather, they are subject only to qualified employment requirements administered by the Colorado Department of Public Health and Environment (CDPHE) in connection with its regulation of the assisted living facility. Currently, to qualify as an Administrator, one must be 21 years old,⁸ possess minimum education or experience requirements,⁹ pass a fingerprint background check, and be of good, moral, and responsible character.¹⁰

⁶ § 24-34-901, C.R.S.

⁷ § 24-34-901, C.R.S.

⁸ 6CCR 1011-1 Ch.VII § 1.104(2)(a).

⁹ 6CCR 1011-1 Ch.VII § 1.104(2)(b).

¹⁰ 6CCR 1011-1 Ch.VII § 1.104(3)(c)(i).

The education requirement consists of 30 CDPHE-approved clock hours. Among those, 15 hours must cover:¹¹

- Resident rights;
- Environment and fire safety, including emergency procedures and first-aid;
- Assessment skills;
- Difficult situation and behavior, recognition and management; and
- Nutrition.

The remaining 15 hours must relate to the personal, social and emotional requirements of the resident population.¹²

As stated, CDPHE does not regulate the individual Administrators. Rather, it regulates assisted living facilities. There is no license, registration, or certification issued by the regulator to an Administrator. CDPHE merely confirms that the Administrator meets the legal qualifications outlined above. This is a condition of employment in a regulated facility. CDPHE inspects employee qualifications when it inspects a facility, similar to inspecting facility physical, procedural, and service related systems. If a facility employs an Administrator/employee without the requisite qualifications, the CDPHE has the ability to suspend, revoke, or not renew the license of the facility for being out of compliance.¹³ It does not have the ability to sanction or revoke the certification of the Administrator, as suggested by the Applicant, because CDPHE cannot revoke a certification that it does not issue. Neither can CDPHE sanction an unregulated professional for not complying with a nonexistent practice act.

To make its case, the Applicant also posits the forward-looking argument that, "...administrators will be required to meet the regulatory requirements for the industry and by the residents of those communities." DORA's research did not yield any proposed new industry regulatory requirements. Additionally, an interview with CDPHE conducted for this review did not reveal new industry regulatory requirements in the foreseeable future. Notwithstanding, the General Assembly could create new requirements during any upcoming legislative session. In spite of that possibility, without predictable or probable changes, this is weak justification for a claim of a shifting regulatory environment.

¹¹ 6CCR 1011-1 Ch.VII § 1.103(8).

¹² 6CCR 1011-1 Ch.VII § 1.103(8)(c).

¹³ 6CCR 1011-1 Ch.VII § 1.103(1)(c)(i).

Analysis of U.S. state requirements for Administrator MCE, supplied by the Applicant, yields a variety of mandates.¹⁴ Considering all states, 30 percent (15 states) do not have a requirement that Administrators acquire MCE. Of those states, two—Minnesota and Connecticut—do not require that an assisted living facility have an Administrator. Six states have a requirement that staff completes MCE. It is unclear if “staff” includes the Administrator. Illinois has a six-hour MCE requirement, but it is only applicable if the facility provides Alzheimer’s care. New York requires MCE only if an Administrator does not hold a current New York Nursing Home Administrator License.

There are 17 states that have a similar regulatory scheme to Colorado where there is no professional regulation but qualifications are necessary for employment. When considering those states, seven states (41 percent) do not require MCE. Of the states that do require MCE in all cases, the lightest requirements are in West Virginia—eight hours per year—and Ohio with nine hours per year. The heaviest requirement is in Pennsylvania with 24 hours of MCE required annually. Among all of the states that require MCE as a condition of licensure, the average requirement is the equivalent of 15 hours annually.

¹⁴ Polzer, Karl (2013). *Assisted Living State Regulatory Review 2013*. NCAL, National Center For Assisted Living, 1201 L Street NW, Washington, DC.

Conclusion

The Executive Director of the Department of Regulatory Agencies (DORA) is statutorily charged with determining whether mandatory continuing education (MCE) would likely protect the public. With respect to the application submitted by the Colorado Assisted Living Association (Applicant) an affirmative conclusion is not warranted based upon the information provided in the application and DORA's review and analysis of the information. The Applicant did not establish a compelling case that the public consuming the services in regulated assisted living facilities would likely be protected from harm through the imposition of MCE.

DORA made the following determinations, among others:

- The Applicant failed to demonstrate a need for MCE grounded on the premise that the knowledge base required to function as an administrator of an assisted living facility (Administrator) is changing; and
- The Applicant failed to demonstrate MCE is necessary to maintain an appropriate level of competency contemplated under the Colorado regulatory scheme because, fundamentally, Administrator is not regulated as a profession.

For these reasons, DORA concludes that instituting a regulatory burden as proposed under the subject application is unjustified. The General Assembly should not impose an MCE requirement.

Appendix A – Survey Results

State	Continuing Education Requirement
AL	Alabama State Board of Health rules require administrators to complete six hours of continuing education per year. The Alabama Board of Examiners of Assisted Living Administrators requires 12 hours of continuing education for licensed administrators of assisted living facilities, and 18 hours of continuing education for licensed administrators of specialty care assisted living facilities.
AK	Each administrator must complete 18 clock hours of continuing education annually.
AZ	No Administrator-specific requirement. All staff must have six hours of annual training related to promotion of resident dignity, independence, self-determination, privacy, choice, and resident rights; fire safety and emergency procedures; infection control; and abuse, neglect, and exploitation prevention and reporting requirements. They must have an additional two hours for Personal Care Services and an additional four hours for Directed Care Services.
AR	No Administrator-specific requirement. All staff must have six hours per year of ongoing education and training.
CA	Administrators must complete 40 hours of continuing education units every two years in areas related to any of the uniform core knowledge areas. These 40 hours must include eight hours in Alzheimer's disease and dementia training.
CO	No requirement.
CT	No administrator is required.
DE	A nursing home administrator must maintain current certification as required by state law.
DC	No requirement.
FL	Administrators must complete 12 hours of continuing education very two years on topics related to assisted living.
GA	No Administrator-specific requirement. Staff requirements vary by type of facility.
HI	No requirement.
ID	Licensed administrators are to receive 12 hours of continuing education each year as approved by the Bureau of Occupational Licenses.
IL	The manager of an establishment providing Alzheimer's care or supervisor of an Alzheimer's program must complete six hours of annual continuing education regarding dementia care.
IN	Administrators must complete 40 hours of continuing education biannually.
IA	No Administrator-specific requirement. In programs that serve individuals with dementia, eight hours are required annually for direct care staff, and two hours annually for others.

State	Continuing Education Requirement
KS	Administrators must complete 50 hours of continuing education every two years.
KY	No requirement.
LA	Directors shall complete 12 hours of continuing education per year in areas related to the field of geriatrics, assisted living concepts, specialized training in the population served, and/or supervisory/management techniques.
ME	Administrators must complete 12 hours of continuing education per year in areas related to the care of the population served by the facility.
MD	An assisted living manager shall complete 20 hours of approved continuing education every two years.
MA	No Administrator-specific requirement. A minimum of 10 hours per year of ongoing education and training is required for all employees. Additional hours are required for certain staff positions and also for employees in a Special Care Residence.
MI	Administrator must annually complete either 16 hours of training approved by the Department of Human Services (DHS) or six hours at an accredited college or university in an area approved by DHS.
MN	No Administrator required.
MS	Administrators are required to have 40 hours of approved training every two years.
MT	Administrators must complete at least 16 hours of continuing education per year.
NE	Administrator must complete 12 hours of ongoing training annually in areas related to care of residents and facility management.
NV	No Administrator-specific requirement. All staff must complete eight hours of continuing education per year.
NH	Administrators must complete a minimum of 12 hours of continuing education per year relating to resident plan of care; characteristics of client disabilities; nutrition, basic hygiene, and dental care; first aid; medication management; dementia; resident assessment; aging; and resident rights.
NJ	Administrators must complete a minimum of 30 hours of continuing education every three years relating to assisted living concepts and related topics.
NM	No requirement.
NY	Administrators not holding a current New York license as a nursing home administrator must complete a minimum of 60 hours of continuing education every two years.

State	Continuing Education Requirement
NC	Administrators of adult care homes of seven or more beds must complete 30 hours of continuing education every two years. Family care home administrators must complete 15 hours of continuing education per year. Administrators-in-charge and supervisors-in-charge must complete 12 hours of continuing education per year.
ND	Administrators of assisted living facilities must complete 12 hours of continuing education per year.
OH	Administrators must complete nine hours of continuing education in gerontology, health care, business administration, or residential care administration per year.
OK	Administrators must complete 16 hours of continuing education per year.
OR	Administrators must complete 20 hours of continuing education per year.
PA	Administrators must complete 24 hours of annual training.
RI	Administrator must complete 32 hours of Department of Health approved continuing education within the previous two years. Twenty-four of the required 32 hours of continuing education must be contact hours. The remaining eight hours of continuing education may be noncontact hours.
SC	Administrators must complete 18 hours of continuing education per year.
SD	No requirement.
TN	Administrators must complete 24 hours of continuing education every two years in courses related to Tennessee rules and regulations, health care management, nutrition and food service, financial management, and healthy lifestyles.
TX	Managers must complete 12 hours of continuing education per year in courses related to at least two of the following areas: (1) Resident and provider rights and responsibilities; (2) Abuse/neglect and confidentiality; (3) Basic principles of supervision; (4) Skills for working with residents, families, and other professional service providers; (5) Resident characteristics and needs; (6) Community resources; (7) Accounting and budgeting; (8) First aid; and (9) Federal laws, such as the Americans With Disabilities Act and Fair Housing Act.
UT	No requirement.
VT	Administrators must complete 20 hours of continuing education per year in courses related to assisted living principles and the philosophy and care of the elderly and disabled individuals.

State	Continuing Education Requirement
VA	The Board of Long-Term Care Administrators regulates licensed administrators and requires 20 hours of approved continuing education annually. The Department of Social Services requires 20 hours of continuing education annually for any unlicensed administrators of residential living care only facilities. The training required by the Department of Social Services must be related to management or operation of the facility or related to the resident population.
WA	Administrators must complete 12 hours of continuing education each year by their birthday.
WV	Administrators must complete at least eight hours per year of continuing education related to the operation and administration.
WI	Administrator receives 15 hours annually of relevant continuing education.
WY	Administrators must complete at least 16 hours of continuing education annually. At least eight of the 16 hours of the annual continuing education shall pertain to caring for persons with severe cognitive impairments.