



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2017 Sunset Review:
Nursing Home Administrators Practice Act**

October 13, 2017



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 13, 2017

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:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Board of Examiners of Nursing Home Administrators (Board). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2018 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 39 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Marguerite Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2017 Sunset Review Nursing Home Administrators Practice Act

SUMMARY

What is regulated?

The Nursing Home Administrators Practice Act (Act) provides regulatory oversight of nursing home administrators (NHAs), administrators in training (AITs) and temporary licensees.

Why is it regulated?

The purpose of the Act is to, among other things, ensure that practitioners have achieved the minimum requirements to practice as an NHA, AIT or temporary license holder.

Who is regulated?

In fiscal year 15-16, there were 533 NHAs, 10 AITs, 2 temporary hospital administrator licensees and 11 non-hospital administrator temporary licensees.

How is it regulated?

The Act is enforced by the Board of Examiners of Nursing Home Administrators (Board), which is comprised of five members (three professional and two public). The Board is a Type 1 policy autonomous board with the authority to impose discipline on licensees, promulgate rules and establish policy.

What does it cost?

In fiscal year 15-16, the total expenditures for the oversight of licensees were \$141,319. There were 0.90 full-time equivalent employees associated with this regulatory oversight.

What disciplinary activity is there?

In fiscal year 15-16, the Board imposed discipline once on an NHA, which was a revocation. The revocation was issued because the NHA admitted to committing crimes such as burglary and theft.

KEY RECOMMENDATIONS

Continue the Nursing Home Administrators Practice Act for seven years, until 2025.

This sunset review revealed that the Board rarely imposes discipline on licensees for violations of the Act or applicable rules, which calls into question the need for formal regulation by the State of Colorado, including Board oversight. However, the federal Social Security Act requires states to create and enforce state regulatory oversight of NHAs. Thus, NHAs are required to be regulated in every state. As a result, the General Assembly should continue the regulation of NHAs by the Board for seven years, until 2025.

Modify the composition of the Board from a professional member majority to a public member majority.

Data collected for this report suggests that the Board is protecting NHAs from receiving formal discipline when violations of the Act or applicable rules occur. Consequently, the Board appears to be self-serving to the profession rather than acting in the public interest. Therefore, the General Assembly should modify the composition of the Board to include a public member majority. Doing so will address the issue of the Board appearing to protect licensed NHAs rather than protecting the public by imposing formal discipline when warranted.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended Board meetings, interviewed Division staff and Board members, reviewed records, interviewed officials with state and national professional associations, interviewed other stakeholders, interviewed regulators from other states, reviewed Colorado statutes and rules, and reviewed the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

AARP
American College of Health Care Administration
Colorado Commission on Aging
Colorado Hospital Association
Colorado Department of Public Health and Environment
Colorado Health Care Association and Center for Assisted Living
Centers for Medicare and Medicaid Services
Disability Law Colorado
Division of Professions and Occupations
National Association of Long-Term Administrator Boards

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
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www.dora.colorado.gov/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Board of Examiners of Nursing Home Administrators (Board) as enumerated in Article 39 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2018, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to regulate nursing home administrators should be continued and to evaluate the performance of the Board and the staff of the Division of Professions and Occupations (Division). During this review, the Board and the Division must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended Board meetings, interviewed Division staff and Board members, reviewed records, interviewed officials with state and national professional associations, interviewed other stakeholders, interviewed regulators from other states, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Profession

It is estimated that by 2030, the number of seniors aged 65 and over will increase by more than 75 percent, totaling 72 million, which will account for approximately one-fifth of the total U.S. population.² Colorado possesses one of the fastest growing senior populations in the country.³ It is estimated that the number of Coloradans over the age of 65 will reach 1.2 million by 2030.⁴ It is also estimated that in 2021, there will be approximately 1,100 Coloradans who are 100 years of age or older.⁵

As the U.S. population continues to age, the utilization of nursing home facilities is increasingly important. A nursing home facility is defined as a facility that provides skilled nursing home services or intermediate care nursing home services.⁶ Skilled nursing care is a high level of medical care provided to residents by trained professionals, such as registered nurses, and physical, speech and occupational therapists.⁷ Some examples of skilled nursing services include wound care, intravenous (IV) therapy, injections, physical therapy and monitoring of vital signs.⁸

Intermediate care at nursing home facilities are services that are provided intermittently for patients who are recovering from acute⁹ conditions but do not need continuous care or daily therapeutic services.¹⁰ Intermediate care is provided by professionals such as registered or licensed practical nurses and therapists, under the supervision of a physician.¹¹ Examples of intermediate care include:¹²

- Cooking of meals,
- Housekeeping and laundry services, and
- Providing and delivering medications.

² Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

³ Department of Human Services. *Colorado Commission on Aging*. Retrieved May 23, 2017, from <https://www.colorado.gov/pacific/cdhs-boards-committees-collaboration/colorado-commission-aging>

⁴ Colorado Senior Lobby. *Shedding Light on Colorado's Senior Population*. Retrieved June 2, 2017, from http://www.coloradoseniorlobby.org/news_from_csl/shedding-light-on-colorados-senior-population/

⁵ Department of Human Services. *Colorado Commission on Aging*. Retrieved May 23, 2017, from <https://www.colorado.gov/pacific/cdhs-boards-committees-collaboration/colorado-commission-aging>

⁶ § 25-1-1002, C.R.S.

⁷ AgingCare.com *What is the Difference Between Skilled Nursing and a Nursing Home?* Retrieved May 31, 2017, from <https://www.agingcare.com/articles/difference-skilled-nursing-and-nursing-home-153035.htm>

⁸ AgingCare.com *What is the Difference Between Skilled Nursing and a Nursing Home?* Retrieved May 31, 2017, from <https://www.agingcare.com/articles/difference-skilled-nursing-and-nursing-home-153035.htm>

⁹ Acute often connotes an illness that is of short duration, rapidly progressive, and in need of urgent care.

¹⁰ Lawyers.com. *Levels of Nursing Home Care*. Retrieved June 2, 2017, from <http://personal-injury.lawyers.com/nursing-home-litigation/levels-of-nursing-home-care.html>

¹¹ Lawyers.com. *Levels of Nursing Home Care*. Retrieved June 2, 2017, from <http://personal-injury.lawyers.com/nursing-home-litigation/levels-of-nursing-home-care.html>

¹² Lawyers.com. *Levels of Nursing Home Care*. Retrieved June 2, 2017, from <http://personal-injury.lawyers.com/nursing-home-litigation/levels-of-nursing-home-care.html>

Nursing home administrators (NHAs) are responsible for the overall functioning of nursing homes, including, but not limited to:

- Caring for nursing home residents and their families,
- Managing nursing home staff,
- Managing all financial aspects of nursing home facilities,
- Complying with federal and state procedures, and
- Maintaining a nursing home facility.

NHAs are responsible for, among other things, evaluating an elderly resident's needs, and must possess a working knowledge of the physical and psychological effects of the aging process. These competencies allow NHAs to implement the appropriate nursing care, drug administration or rehabilitation to successfully treat or improve a resident's standard of living.¹³

NHAs hire appropriate staff to ensure that residents are afforded quality care. Further, NHAs are responsible for training employees so they are compliant with protocols and regulations, particularly related to counseling or interacting with residents and their families.¹⁴

NHAs are also responsible for many financial aspects of nursing homes, which include, but are not limited to:¹⁵

- Bookkeeping functions,
- Managing billing for residents and families,
- Analyzing and planning budget proposals,
- Communicating financial updates with other management professionals and board members, and
- Overseeing payroll protocols.

NHAs are also responsible for providing appropriate systems to account for and to protect residents' personal funds and property within the facility.¹⁶

NHAs must possess an understanding of Medicare, Medicaid, and other applicable policies, which ensure, among other things, residents are receiving a high quality of care during their stay at a nursing home facility.¹⁷

¹³ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

¹⁴ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

¹⁵ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

¹⁶ 3 CCR 717-1-IV. A.11, Board of Examiners of Nursing Home Administrator Rules.

¹⁷ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

NHAs are responsible for ensuring the overall nursing home facility is adequately maintained. Doing so assures nursing home facilities, as well as the equipment used within the facilities, are safe for residents and staff.¹⁸ Also, NHAs ensure that the nursing home facilities are compliant with fire and safety codes.

According to Colorado Department of Public Health and Environment (CDPHE) staff, there are currently 227 licensed nursing homes in Colorado. A nursing home facility is subject to a recertification survey (inspection) every 13 to 36 months, depending on whether it receives Medicare/Medicaid. However, inspections may occur more often if there have been complaints about a specific nursing home or a nursing home facility has historical issues related to safety and compliance with laws and/or regulations.

Inspections are comprehensive and entail CDPHE staff, typically four or five staff members, entering a facility, unannounced, and conducting a survey. Surveys review a variety of items, including but not limited to: up-to-date policies and procedures, sanitary conditions, patient treatment and safety protocols and related financial documentation. Generally, CDPHE staff complete surveys in four to five working days. Any deficiencies identified during a survey are communicated to the NHA at the nursing home facility and a corrective action plan to resolve the issue(s) must be submitted to CDPHE.

Also, through a memorandum of understanding with CDPHE and the Department of Regulatory Agencies, certain survey findings are automatically referred to the Board of Examiners of Nursing Home Administrators. These findings include:¹⁹

- Immediate jeopardy of a nursing home resident;
- Substandard care, including deficiencies concerning actual harm of a nursing home resident; or
- Revisit survey finds uncorrected or new deficiencies concerning actual harm that is not immediate jeopardy of a nursing home resident.

¹⁸ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

¹⁹ Memorandum of Understanding Between the Colorado Department of Public Health and Environment and the Colorado Department of Regulatory Agencies. *Attachment B Criteria for Automatic CDPHE Referrals to the Board of Examiners of Nursing Home Administrators (BONHA)*.

Legal Framework

History of Regulation

In 1967, Congress amended the federal Social Security Act to mandate that individual states establish licensing programs for nursing home administrators (NHAs). In 1969, the Colorado General Assembly created, via Senate Bill 69-346, the Nursing Home Administrators Practice Act (Act), which included a nine-member board to provide regulatory oversight.

Since inception of regulatory oversight, many changes to the Act have been implemented. The Colorado Office of Policy, Research and Regulatory Reform (COPRRR) has conducted numerous sunset reviews, which have facilitated many changes to the Act. In fact, COPRRR completed sunset reviews of the Act in 1977, 1982, 1992, 1998 and 2008, which included recommendations for statutory changes. Examples of recommendations in these sunset reports are highlighted below:

- In 1992, the NHA sunset review, among other things, recommended amending the size of the Board from nine to seven members.
- In 1998, the NHA sunset review recommended modifying the composition of the Board to include one public member position that replaced a licensed professional from the long-term care industry. The 1998 sunset review also recommended amending the appointment of Board members from three to four year-terms.
- In 2008, the NHA sunset review recommended the Board composition be changed from eight to five members. This sunset review also recommended granting the Board fining authority.

All of the aforementioned recommended changes to the Act via sunset reviews were enacted by the General Assembly.

Legal Summary

The Act is created in section 12-39-101, *et seq.*, Colorado Revised Statutes, and provides regulatory oversight of NHAs, nursing home administrators in training (AITs) and temporary licensees. The practice of nursing home administration by NHAs means the planning, organizing, directing and controlling the operation of a nursing home.²⁰

Board of Examiners of Nursing Home Administrators

The Board of Examiners of Nursing Home Administrators (Board) consists of five members, and its composition is as follows:²¹

²⁰ § 12-39-102(5), C.R.S.

²¹ §§ 12-39-104(1)(a)(I) and (II), C.R.S.

-
- Three members who are practicing NHAs and at least one of whom is from a non-profit facility (NHAs must be licensed for at least three years);²² and
 - Two members of the public.

All Board members are appointed by the Governor²³ and appointments are for four-year terms.²⁴ The Board is required to meet at least twice per year.²⁵

The Board is a Type 1 policy autonomous board that provides regulatory oversight of NHAs, AITs and temporary licensees.²⁶

Licensure Requirements

Currently, there are three avenues for a candidate to secure an NHA license:

- By completing the AIT program,
- By examination, and
- By endorsement.

In order to participate in the AIT program, a candidate must have already completed two years of college-level study in areas related to healthcare or two years' experience in nursing home administration or comparable healthcare management for each year of required education.²⁷

Healthcare related courses include:²⁸

- Nursing,
- Social services (if related to healthcare),
- Recreational therapy (not physical education),
- Dietary,
- Psychology,
- Sociology,
- Physiology,
- Anatomy,
- Biology,
- Speech,
- Healthcare management, and
- Administration.

²² § 12-39-104.5(1)(c), C.R.S.

²³ § 12-39-104(1)(a), C.R.S.

²⁴ § 12-39-104(1)(b), C.R.S.

²⁵ § 12-39-104(3), C.R.S.

²⁶ § 12-39-104(4), C.R.S.

²⁷ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule III B.1.

²⁸ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule III B.1.a.ii.

The Board is authorized to waive any portion of the required education or experience if it finds that the AIT candidate has prior experience or training sufficient to satisfy the requirements.²⁹

AIT candidates are also required to complete at least 1,000 hours of supervised training under the guidance and supervision of an NHA preceptor.³⁰ In order to be eligible to serve as a preceptor, an NHA is required to possess at least three years of experience and must have actively practiced nursing home administration for the preceding 24 months in Colorado.³¹

An AIT program participant is also required to submit periodic progress reports to the Board,³² and must pass the examination to become licensed.

Alternately, a candidate for NHA licensure may qualify to take the licensing examination if he or she possesses a bachelor's degree or higher in public health administration or health administration, a master's degree in management or business administration or any degree deemed appropriate by the Board.³³

A candidate for licensure may also qualify to take the examination if he or she completes an associate's degree or higher in a healthcare-related field or a bachelor's degree in business or public administration and has a minimum of one year of experience in administration in a nursing home or hospital.³⁴

The experience requirement must include day-to-day, on-site responsibility for supervising, directing, managing, monitoring or exercising reasonable control over subordinates for one year.³⁵

A candidate for NHA licensure by endorsement must provide written documentation to the Board verifying that he or she has passed the national examination and state examination in another state.³⁶ A candidate must also provide to the Board evidence of a current active license from another state, and information pertaining to any disciplinary actions imposed.³⁷

Additionally, there are currently two temporary license types (hospital administrator and non-hospital administrator) available to practice as an NHA in emergency situations.

²⁹ § 12-39-107(6), C.R.S.

³⁰ § 12-39-107(1), C.R.S.

³¹ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule III E.1.a.

³² § 12-39-107(4), C.R.S.

³³ § 12-39-106(1)(b), C.R.S.

³⁴ § 12-39-106(1)(c)(I), C.R.S.

³⁵ § 12-39-106(1)(c)(II), C.R.S.

³⁶ § 12-39-110(1)(a)(I), C.R.S.

³⁷ § 12-39-110(2)(a), C.R.S.

The Board must issue a temporary license to a qualified candidate who is employed as a hospital administrator by a general hospital licensed or a certified by the Department of Public Health and Environment³⁸ when certain circumstances occur, such as the death, termination or resignation of an NHA.³⁹

A qualified candidate meets one of the following requirements:⁴⁰

- Successfully completed the AIT program, or
- Qualifies for licensure by examination, endorsement or reinstatement.

An initial temporary license for a hospital administrator cannot exceed six months;⁴¹ however, after six months, a 90-day extension may be granted.⁴² An additional 90-day extension may be requested by the license-holder and granted by the Board.⁴³ A temporary license cannot exceed a 12-month period.⁴⁴

Also, the Board may issue a temporary license in emergency situations to a qualified candidate who is not a hospital administrator when certain circumstances occur, such as the death, termination or resignation of an NHA.⁴⁵ Importantly, a candidate who is the current Director of Nursing at the facility is not required to submit an application for licensure prior to consideration for a temporary license.⁴⁶

A qualified candidate for a temporary license in emergency situations must meet one of the following requirements:⁴⁷

- Successfully completed the AIT program, or
- Qualifies for licensure by examination, endorsement or reinstatement.

An initial temporary license for emergency situations cannot exceed 90 days; however, the Board may issue one 90-day extension.⁴⁸

Board's Disciplinary Authority

The Board is also responsible for, among other things, imposing formal discipline on NHAs, AITs and temporary licensees for violations of the Act or applicable rules. Specifically, the Board may revoke, suspend, refuse to renew a license, place a licensee on probation or issue a letter of admonition.⁴⁹

³⁸ § 12-39-108(6), C.R.S.

³⁹ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.3.a.

⁴⁰ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.3.b.i.ii.

⁴¹ § 12-39-108(5), C.R.S.

⁴² 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.3.a.i.

⁴³ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.3.a.ii.

⁴⁴ § 12-39-108(6), C.R.S.

⁴⁵ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.2.a.

⁴⁶ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.1.a.

⁴⁷ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.2.c.

⁴⁸ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.2.b.

⁴⁹ § 12-39-105(1)(a)(III), C.R.S.

Grounds for discipline include, but are not limited to, having:⁵⁰

- Procured or attempted to procure a license by fraud, deceit, misrepresentation misleading omission or material misstatement of fact;
- Been convicted of a felony or pled guilty or nolo contendere to a felony;
- Had a license to practice as an NHA or any other healthcare occupation suspended or revoked in any jurisdiction;
- Violated or aided or abetted a violation of any provision of the Act or applicable rule;
- Committed or engaged in any act or omission which fails to meet generally accepted standards for NHAs;
- Falsified or made incorrect entries or failed to make essential entries on resident records;
- Practiced as an NHA without a license; or
- Practiced as an NHA when the person's license was suspended or revoked.

The Board may issue a cease and desist order to a licensee if he or she is acting in a manner that is an imminent threat to the health and safety of the public or to an individual practicing as an NHA without the required license.⁵¹

⁵⁰ §§ 12-39-111(1)(a)(b)(c)(d)(e)(f)(l) and (n), C.R.S.

⁵¹ § 12-39-117(1)(a), C.R.S.

Program Description and Administration

The Nursing Home Administrators Practice Act (Act) is created in section 12-39-101, *et seq.*, Colorado Revised Statutes (C.R.S.). The purpose of the statute is to provide regulatory oversight of nursing home administrators (NHAs), nursing home administrators in training (AITs) and temporary licensees.

The regulation of NHAs, AITs and temporary licensees is vested in the Board of Examiners of Nursing Home Administrators (Board) within the Department of Regulatory Agencies (DORA). The Board is a Type 1, policy autonomous board that is responsible for issuing licenses, imposing discipline on licensees for violations of the Act or applicable rules, rulemaking and policymaking. The Board is comprised of five members, three are licensed NHAs (at least one of whom must be from a nonprofit facility) and two are public members. All Board members are appointed by the Governor and serve four-year terms.

The Division of Professions and Occupations (Division) within the Department of Regulatory Agencies is responsible for various administrative functions related to the Board. For instance, Division staff is responsible for issuing licenses, conducting investigations and preparing Board meeting agendas and advising Board members on regulatory issues.

In fiscal year 15-16, the Division devoted 0.90 full-time equivalent (FTE) employees to provide professional support to the Board. The FTE are as follows:

- Administrative Assistant III (0.25 FTE),
- Program Management I (0.30 FTE), and
- Technician IV (0.35 FTE).

The aforementioned FTE do not include staffing in the centralized offices of the Division, which include the following:

- Director's Office,
- Office of Investigations,
- Office of Expedited Settlement,
- Office of Examination Services,
- Office of Licensing, and
- Office of Support Services.

Table 1 highlights the total expenditures for the regulation of NHAs, AITs and temporary licensees in fiscal years 11-12 through 15-16.

Table 1
Total Expenditures in Fiscal Years 11-12 through 15-16

| Fiscal Year | Total Program Expenditures |
|-------------|----------------------------|
| 11-12 | \$146,531 |
| 12-13 | \$164,620 |
| 13-14 | \$115,288 |
| 14-15 | \$156,824 |
| 15-16 | \$141,319 |

As Table 1 shows, the total expenditures have fluctuated in the past five fiscal years. Division staff reported the significant drop in expenditures in fiscal year 13-14 was due to a reduction in legal services and a drop in personal services. The decrease in personal services is attributable to position vacancies.

Licensing

The Act requires a practitioner to secure a license from the Board prior to practicing as an NHA in Colorado. One avenue to qualify for NHA licensure is for candidates to complete the AIT program, which entails possessing an associate's degree in a healthcare related field, and completing a minimum of 1,000 hours of supervised training with a preceptor.

AITs are issued a credential prior to practicing under the personal direction of a licensed NHA. A credential is valid for the duration of a person's participation in the AIT program. Table 2 illustrates the total number of AITs credentialed in the past five fiscal years.

Table 2
Total Number of Credentialed AITs in Fiscal Years 11-12 through 15-16

| Fiscal Year | Total Number of AITs |
|-------------|----------------------|
| 11-12 | 16 |
| 12-13 | 10 |
| 13-14 | 9 |
| 14-15 | 9 |
| 15-16 | 10 |

As Table 2 indicates, the number of AITs practicing in Colorado, particularly in fiscal years 12-13 through 15-16 has remained fairly constant.

In fiscal year 15-16, the fee to obtain an AIT credential was \$250.

Candidates for NHA licensure may also possess a bachelor's degree or higher in public health administration or health administration, a master's degree in management or business administration or any other degrees deemed appropriate by the Board. Candidates who have achieved this level of education are not required to complete the AIT program.

Additionally, applicants for NHA licensure may possess an associate's degree or higher in a healthcare-related field or a bachelor's degree in business administration and have a minimum of one year of experience in administration in a nursing home or hospital. These candidates are also not required to complete the AIT program.

All candidates for NHA licensure who have completed the required education and training are eligible to take the National Association of Long Term Care Administrator Boards (NAB) examination as well as the Colorado State-Specific Nursing Home Administrators Examination (CONHA).

Practitioners who are licensed in another state may request an NHA license from the Board by endorsement. Such a candidate must provide to the Board evidence of a current active license from another state and information pertaining to any disciplinary actions imposed.⁵² Such a candidate must also provide written documentation to the Board verifying that he or she has passed the national examination and state examination in another state.⁵³

Table 3 delineates the total number of NHAs in fiscal years 11-12 through 15-16.

Table 3
Total Number of Licensed NHAs in Fiscal Years 11-12 through 15-16

| Fiscal Year | Total Number of Licensed NHAs |
|-------------|-------------------------------|
| 11-12 | 477 |
| 12-13 | 490 |
| 13-14 | 530 |
| 14-15 | 548 |
| 15-16 | 553 |

Table 3 shows that the total number of licensed NHAs has increased in each of the past five fiscal years. Generally, the growth is attributable to the overall growth of the industry.

⁵² § 12-39-110(2)(a), C.R.S.

⁵³ § 12-39-110(1)(a)(I), C.R.S.

Table 4 illustrates the total number of original (examination), endorsement, renewal and reinstatement licenses issued in fiscal years 11-12 through 15-16.

Table 4
Total Number of Original, Endorsement, and Renewal NHA Licenses in Fiscal Years 11-12 through 15-16

| Fiscal Year | Original | Endorsement | Renewal | Reinstatement | Active Licenses |
|-------------|----------|-------------|---------|---------------|-----------------|
| 11-12 | 34 | 11 | 462 | 9 | 477 |
| 12-13 | 52 | 23 | 441 | 3 | 490 |
| 13-14 | 54 | 22 | 477 | 8 | 530 |
| 14-15 | 38 | 15 | 511 | 3 | 548 |
| 15-16 | 32 | 20 | 518 | 9 | 553 |

In fiscal year 15-16, the fee to obtain an original license was \$250, and the renewal fee was \$185. NHA licenses must be renewed annually.

In fiscal year 15-16, the fee to obtain a license by endorsement was \$250.

A licensee who allows his or her license to expire is required to submit a reinstatement application to the Division and pay a \$200-fee.

There are also two types of temporary licenses, one for a hospital administrator and one for a person who is not a hospital administrator. Both of the licenses are available for emergency situations in which an NHA is terminated, dies or resigns from a nursing home. The Board is required to issue a temporary license to a hospital administrator if he or she meets the following requirements.⁵⁴

- Successfully completed the AIT program, or
- Qualifies for licensure by examination, endorsement or reinstatement.

The Board may issue a temporary license to a candidate who meets the above referenced requirements but is not a hospital administrator.

⁵⁴ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.3.b.i. and ii.

Table 5 shows the total number of temporary hospital administrator and non-hospital administrator licenses in fiscal years 11-12 through 15-16.

Table 5
Total Number of Temporary Hospital Administrator and Non-Hospital Administrator Licenses in Fiscal Years 11-12 through 15-16

| Fiscal Year | Total Number of Temporary Hospital Administrator Licenses | Total Number of Temporary Non-Hospital Administrator Licenses |
|-------------|---|---|
| 11-12 | 0 | 0 |
| 12-13 | 8 | 8 |
| 13-14 | 3 | 3 |
| 14-15 | 2 | 0 |
| 15-16 | 2 | 11 |

In fiscal year 15-16, the fee to obtain either temporary license was \$300.

Examinations

NAB Examination

Prior to July 1, 2017, the NAB examination was constructed as a single test. After July 1, 2017, the NAB examination transitioned into a new structure and the examination now consists of two parts: the core of knowledge examination for long-term care administrators (CORE) and line of service examination (LOS). The CORE portion of the examination consists of 110 multiple-choice questions (100 scored). The purpose of the CORE examination is to test a candidate's competency to practice in the long-term care profession.

The LOS examination, which consists of 55 questions (50 scored), tests a candidate's competency related to the NHA profession.

The CORE and LOS examinations contain five domains, including:

- Customer Care, Support and Services;
- Human Resources;
- Finance;
- Environment; and
- Management and Leadership.

The examinations are developed by NAB and administered through PSI Services. The cost to take the CORE and LOS examinations is \$425 and they must be completed in three hours.

If a candidate fails one or both parts of the examination, he or she is eligible to re-take the failed part of the examination(s) after a 60-day waiting period.

In 2016, the national pass rate for first-time test-takers of the NAB examination was 64 percent.⁵⁵ Importantly, Colorado-specific pass rates were not available.

CONHA Examination

Beginning July 2017, a candidate seeking to obtain an NHA license in Colorado is also required to pass the CONHA examination. The CONHA examination is specific to Colorado current statutes and rules related to NHAs, nursing homes and patient care.

The CONHA examination consists of 45-50 multiple-choice questions and must be completed within 90 minutes. The examination has four content areas:⁵⁶

- General Licensure Standards;
- Nursing Care Facilities;
- Facilities for Individuals with Intellectual and Developmental Disabilities; and
- Board of Examiners of Nursing Home Administrators Statutes, Rules and Regulations.

The CONHA examination is developed by the Board under the guidance of the Division's psychometrician. It is administered under proctored conditions at Iso-Quality Testing, and costs \$125.

If a candidate fails the examination, he or she is required to wait a minimum of 30 days before re-taking it.

Since the CONHA examination was implemented in July 2017, pass rates were not available.

⁵⁵ National Association of Long Term Care Administrator Boards. *2016 Annual Report*.

⁵⁶ Colorado Department of Regulatory Agencies. *State-Specific Nursing Home Administrators Examination (CO NHA)*. Retrieved June 12, 2017, from <https://drive.google.com/file/d/0BzKoVwvexVATrk1QNkJrUkQzb0U/view>

Complaints/Disciplinary Actions

In the past five fiscal years, the Board has received complaints concerning NHAs and AITs. Anyone can file a complaint against NHAs, AITs or temporary license holders including, but not limited to nursing home residents, family members or other licensees. Most typically, however, complaints are initiated by the Colorado Department of Public Health and Environment (CDPHE) staff when deficiencies are identified during a survey (inspection) of a nursing facility. Table 6 highlights the total number of complaints to the Board, as well as the nature of complaints in fiscal years 11-12 through 15-16.

Table 6
Number of Complaints Against NHAs in Fiscal Years 11-12 through 15-16

| Nature of Complaint | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 |
|------------------------------|----------|-----------|-----------|-----------|-----------|
| Practicing without a License | 0 | 0 | 1 | 12 | 2 |
| Standard of Practice | 5 | 10 | 2 | 8 | 4 |
| Improper Supervision | 0 | 0 | 1 | 0 | 0 |
| Aiding and Abetting | 0 | 0 | 2 | 0 | 2 |
| Unprofessional Conduct | 0 | 1 | 1 | 14 | 10 |
| Other (Criminal Activity) | 0 | 0 | 6 | 1 | 0 |
| Total | 5 | 11 | 13 | 35 | 18 |

Additionally, Table 7 delineates the total number of complaints the Board has received concerning AITs in the past five fiscal years.

Table 7
Total Number of AIT Complaints in Fiscal Years 11-12 through 15-16

| Fiscal Year | Total Number of AIT Complaints |
|-------------|--------------------------------|
| 11-12 | 0 |
| 12-13 | 0 |
| 13-14 | 1 |
| 14-15 | 2 |
| 15-16 | 0 |

As highlighted in Table 7, the total number of complaints received by the Board concerning AITs is relatively small. All three complaints were related to AITs practicing without the required credential. Two of the complaints were dismissed and one resulted in a cease and desist order.

Table 8 shows the total number of complaints against temporary licenses in fiscal years 11-12 through 15-16. Notably, the single complaint pertained to an emergency license for a person who was not a hospital administrator. The complaint was ultimately dismissed by the Board.

Table 8
Total Number of Temporary License Complaints in Fiscal Years 11-12 through 15-16

| Fiscal Year | Total Number of Temporary License Complaints |
|-------------|--|
| 11-12 | 0 |
| 12-13 | 0 |
| 13-14 | 0 |
| 14-15 | 1 |
| 15-16 | 0 |

Table 9 shows the total number of disciplinary actions imposed by the Board in the past five fiscal years. Notably, NHAs received all of the formal discipline.

Table 9
Total Number of Disciplinary Actions in Fiscal Years 11-12 through 15-16

| Type of Action | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 |
|--|----------|-----------|----------|-----------|-----------|
| Revocations | 0 | 1 | 1 | 0 | 1 |
| Suspensions | 0 | 0 | 0 | 0 | 0 |
| Revocations/Suspensions Held in Abeyance or Stayed or Stayed Suspended | 0 | 0 | 0 | 0 | 0 |
| Stipulations | 0 | 0 | 0 | 1 | 0 |
| Letters of Admonition | 0 | 1 | 1 | 0 | 0 |
| Other (Includes Cease and desist, Citations, Injunctions, etc.) | 1 | 11 | 1 | 0 | 0 |
| Total Disciplinary Actions | 1 | 13 | 3 | 1 | 1 |
| Dismissals | 2 | 6 | 1 | 31 | 10 |
| Letter of Concern | 1 | 2 | 0 | 3 | 5 |
| Total Dismissals | 3 | 8 | 1 | 34 | 15 |

As Table 9 indicates, the Board dismissed the vast majority of complaints against NHAs in the past five fiscal years. There are several possible reasons for the high dismissal rate. One of the most commonly used justifications for dismissing complaints is the fact that many nursing homes are owned by corporate entities and those entities failed to provide adequate resources for areas such as proper staffing levels.

Essentially, the Board reviews many complaints and determines that since, in its view, the corporation did not provide the NHA adequate resources; the NHA was not at fault. Instead, the Board tends to focus on whether the appropriate policies and procedures were in place to mitigate issues that could lead to situations where violations of the Act could occur.

Another explanation for the high dismissal rate is that many complaints are generated through deficiencies identified during a survey conducted by CDPHE staff. When the complaint comes before the Board, the NHA has corrected the deficiency and submitted a corrective action plan to CDPHE. Often, when the Board determines that the deficiency has been properly addressed and corrected, the complaint is dismissed.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The Board has the authority, in section 12-22-111, C.R.S., to deny, revoke or suspend an NHA license if the practitioner is convicted of a felony or if a court accepts a plea of nolo contendere to a felony. During the past five fiscal years, the Board did not deny, revoke or suspend any NHA licenses based on past criminal history.

Analysis and Recommendations

Recommendation 1 – Continue the Nursing Home Administrators Practice Act for seven years, until 2025.

Nursing Home Administrators (NHAs) are responsible for the overall operation of nursing home facilities. Specifically, NHAs are responsible for, among other things, evaluating a resident's needs, and they must possess a working knowledge of the physical and psychological effects of the aging process.⁵⁷ These competencies allow NHAs to implement the appropriate nursing care, drug administration or rehabilitation to successfully treat a resident or improve his or her standard of living.⁵⁸

NHAs hire appropriate staff to ensure that residents are afforded quality care. Further, NHAs are responsible for training employees so they are compliant with protocols and regulations, particularly related to counseling or interacting with residents and their families.⁵⁹

NHAs are also responsible for many financial aspects of nursing homes, which include, but are not limited to:⁶⁰

- Bookkeeping functions,
- Managing billing for residents and families,
- Analyzing and planning budget proposals,
- Communicating financial updates with other management professionals and board members, and
- Overseeing payroll protocols.

Further, NHAs are responsible for providing appropriate systems to account for and to protect residents' personal funds and property within the facility.⁶¹

There are three options available to secure an NHA license, including:

- By completing the administrator in training (AIT) program,
- By examination, and
- By endorsement.

Candidates who participate in the AIT program must complete an associate's degree in a healthcare related discipline and practice nursing home administration for 1,000 hours under the direct supervision of a licensed NHA preceptor.

⁵⁷ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

⁵⁸ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

⁵⁹ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

⁶⁰ Utica College. *Roles and Responsibilities of a Nursing Home Administrator*. Retrieved May 19, 2017, from <http://programs.online.utica.edu/articles/roles-and-responsibilities-of-a-nursing-home-administrator>

⁶¹ 3 CCR 717-1 Board of Examiners of Nursing Home Administrators Rules. Rule IV. A.11.

A candidate may also qualify for a NHA license if he or she possesses a bachelor's degree or higher in public health administration or health administration, a master's degree in management or business administration or any degree deemed appropriate by the Board.⁶²

A candidate is eligible for licensure by endorsement if he or she has a license in another state where the qualifications for licensure are substantially similar to Colorado's requirements.

Each of the aforementioned options for licensure requires a candidate to take, and pass, a national examination as well as a state-based examination.

There are also two types of temporary licenses, one for a hospital administrator and one for a person who is not a hospital administrator. Both of the licenses are available for emergency situations in which an NHA is terminated, dies or resigns from a nursing home. The Board is required to issue a temporary license to a hospital administrator if he or she meets the following requirements:⁶³

- Successfully completed the AIT program, or
- Qualifies for licensure by examination, endorsement or reinstatement.

The Board may issue a temporary license to a candidate who meets the above referenced requirements but is not a hospital administrator.

Once licensed, NHAs are under the purview of the Board of Examiners of Nursing Home Administrators (Board), and the Board is responsible for, among other things, imposing discipline on practitioners for violations of the Nursing Home Administrators Practice Act (Act) or applicable rules.

Each practice act that is subject to a sunset review receives a comprehensive review utilizing statutory criteria. In fact, the first sunset criterion asks whether regulation is necessary to protect the health, safety and welfare of the public.

During the five fiscal years evaluated for this sunset review, there were very few disciplinary actions imposed on NHAs. In fact, there were 53 complaints against NHAs in fiscal years 14-15 and 15-16, and the Board imposed discipline only twice.

There are many possible explanations for the high number of dismissals. First, the vast majority of complaints are initiated through deficiencies identified during the yearly surveys (inspections) conducted by Colorado Department of Public Health and Environment (CDPHE) staff of nursing facilities. When, during an inspection, CDPHE staff identifies a deficiency that warrants possible action by the Board, a complaint is forwarded to the Board. The Board often reviews the complaint and dismisses it if the deficiency has been addressed and corrected.

⁶² § 12-39-106(1)(b), C.R.S.

⁶³ 3 CCR § 717-1, Board of Examiners of Nursing Home Administrators Rules. Rule II C.3.b.i. and ii.

Also, NHAs are a unique regulated profession because they are responsible for a variety of staff within a nursing home facility, and if a problem occurs, the Board, oftentimes, expresses concern that the NHA is not afforded proper staffing levels by the corporate entity that owns the nursing home facility. Therefore, the Board, oftentimes, deems the deficiency (complaint) to be caused by inadequate staffing, not the poor actions of the NHA. Consequently, many of these complaints do not result in formal disciplinary action by the Board. In fact, the Board, in July 2017, sent a formal letter to a particular corporate entity expressing concerns concerning its business practices.

The Board rarely imposes discipline on NHAs for violations of the Act or applicable rules, which calls into question the need for formal regulation by the State of Colorado, including Board oversight. However, the federal Social Security Act requires states to create and enforce state regulatory oversight (licensing) of NHAs. Thus, NHAs are required to be regulated in every state, including Colorado.

Since regulatory oversight is required by federal law, the General Assembly should continue the regulation of NHAs by the Board for seven years, until 2025. Doing so will ensure that Colorado is in compliance with current federal requirements.

Recommendation 2 – Modify the composition of the Board from a professional member majority to a public member majority.

Even though state regulation of NHAs is required by federal law, the composition of the Board should be modified to ensure that violations of the Act or applicable rules are enforced by the Board.

Currently, the Board consists of five members:⁶⁴

- Three members who are practicing NHAs, at least one of whom is from a non-profit facility (NHAs must be licensed for at least three years);⁶⁵ and
- Two members of the public.

As stated in Recommendation 1 of this sunset report, the Board rarely imposes discipline on NHAs for violations of the Act or applicable rules. Sunset statutory criteria require the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff to review the following:⁶⁶

- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates; and

⁶⁴ §§ 12-39-104(1)(a)(I) and (III), C.R.S.

⁶⁵ § 12-39-104.5(1)(c), C.R.S.

⁶⁶ §§ 24-34-104(6)(b)(V) and (VII), C.R.S.

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- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

Recall that the Board dismisses the vast majority of complaints filed against NHAs. In fact, in fiscal years 14-15 and 15-16, there were a total of 53 complaints against NHAs, and the Board imposed discipline only twice.

Additionally, COPRRR staff attended several Board meetings during fiscal year 16-17, and the Board continued its pattern of dismissing the vast majority of complaints.

One of the arguments presented explaining why the Board decides not to impose formal discipline on practitioners is due to inadequate staffing levels allocated by corporate entities that own nursing home facilities. Although corporations providing inadequate funding for proper staffing of nursing home facilities is concerning, the central question for the Board when it receives a complaint by CDPHE or anyone from the public is whether a violation of the Act or rules occurred. If a violation occurred, NHAs should be subject to formal discipline by the Board. In the past five fiscal years, the Board has chosen to forgo imposing discipline on the vast majority of complaints concerning NHAs.

Since the Board rarely imposes discipline on NHAs for such reasons, it could be argued that the Board does not adequately represent the public interest. In fact, the Board appears to be self-serving to the profession rather than acting in the public interest. The data collected for this report suggests that the Board is protecting NHAs from receiving formal discipline when violations of the Act or applicable rules occur.

It is important to note that residents of nursing home facilities are often elderly and can be vulnerable to abuse. The Board, in most instances, failed to impose discipline on NHAs when a violation of the Act or applicable rules seemed apparent, which could compromise consumer protection of a vulnerable population.

As such, the General Assembly should modify the composition of the Board to include a public member majority. Doing so will address the issue of the Board appearing to protect licensed NHAs rather than protecting the public by imposing formal discipline when warranted. A public member majority Board may serve to objectively review complaints and impose appropriate discipline on NHAs when it is warranted, which is the hallmark responsibility of all regulatory boards, including this Board.

Importantly, the Board will maintain professional member representation, and will be able to address any technical regulatory issues/questions that a public member may not be familiar with concerning the practice of nursing home administration.

Therefore, the General Assembly should modify the composition of the Board from a professional member majority to a public member majority.