



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

**2008 Sunset Review:
Board of Examiners of Nursing
Home Administrators**

October 15, 2008





Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2008

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Board of Examiners of Nursing Home Administrators (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2009 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall 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 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 Board 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,

D. Rico Munn
Executive Director





Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2008 Sunset Review: Colorado Board of Examiners of Nursing Home Administrators

Summary

What Is Regulated?

The practice of nursing home administration which includes the planning, organizing, directing, and operation of a nursing home facility.

Why Is It Regulated?

Nursing home administrators are regulated to provide quality administration and sound management of nursing homes to provide nursing home residents a measure of protection.

Who Is Regulated?

Colorado has 413 licensed nursing home administrators (NHAs).

How Is It Regulated?

The Board of Examiners of Nursing Home Administrators (Board) is located in the Division of Registrations (Division) of the Department of Regulatory Agencies (DORA). The Board is responsible for licensing qualified applicants, investigating complaints, initiating disciplinary actions, when appropriate, enjoining unlicensed practice, and adopting rules and regulations. The Board has the power to revoke, suspend, withhold, place on probation, refuse to renew, or issue a letter of admonition to a licensed NHA who is found to have violated the standards of practice.

The day-to-day duties of administering the program are carried out by the program director and staff. In order to be licensed as a nursing home administrator in Colorado, one must have successfully completed a bachelor's degree in business administration, public health administration, health administration, or any degree or degrees deemed appropriate by the Board. In lieu of the bachelor's degree, an applicant who has an associate's degree in a health care-related field with a minimum of two years experience in supervision or administration in a nursing home or hospital may apply for licensure. Applicants who have successfully completed the Administrator-in-Training program regulated by the Board may also sit for the examination.

What Does It Cost?

During fiscal year 06-07, the Board expenditures totaled \$276,025. There is 1.0 full-time equivalent employee dedicated to the Board.

What Disciplinary Activity Is There?

For the period fiscal year 02-03 through fiscal year 06-07, there were a total of 67 disciplinary actions taken by the Board.

Where Do I Get the Full Report?

The full sunset review can be found on the internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the regulation of nursing home administrators and the Board for nine years, until 2018.

The only government entity providing direct oversight and regulation of Colorado NHAs is the Board. The regulation and oversight of NHAs by the Board and staff of the Division should be continued to ensure that only suitable and qualified individuals are providing quality administrative services to the residents of Colorado's nursing homes.

Amend section 12-39-104(1)(a), Colorado Revised Statutes, to reduce the number of Board members from eight members to five members.

Currently, the Board has eight members. It is unusual for a deliberative body such as the Board to have an even number of members. While there is no evidence of significant problems occurring because of the even number of members, problems could clearly arise in the case of tie votes.

Amend section 12-39-106(1)(b), C.R.S., by repealing a bachelor's degree in business administration from the list of degrees that bypass the Administrator-in-Training program requirement.

A degree in business administration, without experience relating to the unique aspects of nursing home administration, does not necessarily equate with the duties and responsibilities inherent in managing a nursing facility. Other degrees, such as degrees in public health administration and health administration, recognize the need for an academic background directly related to health care in order to be exempt from Colorado's Administrator-in-Training requirement.

Major Contacts Made During This Review

Colorado Board of Examiners of Nursing Home Administrators
Colorado Department of Public Health and Environment
Colorado Health Care Association
Miles & Peters, Attorneys at Law
The Legal Center for People with Disabilities and Older People

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not 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:
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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 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;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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

Types of Regulation

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

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.

Regulation, then, has many positive and potentially negative consequences.

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

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

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. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The regulatory functions of the Board of Examiners of Nursing Home Administrators (Board) relating to Article 39 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2009, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA 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 regulation of nursing home administrators (NHAs) should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations (Division) located in DORA. During this review, the Board and the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board and Division staff, reviewed Board and Division records and minutes including complaint and disciplinary actions, interviewed professional association officials, interviewed related health care providers and administrators, reviewed Colorado statutes and Board rules, and reviewed the laws of other states.

Profile of the Profession

NHAs are an integral component of the care of residents of long-term care facilities. Colorado currently has the seventh fastest-growing aging population in the United States. In 2010, it is estimated that, in Colorado, there will be in excess of 770,000 individuals age 60 and above, an increase of approximately 39 percent over a 10-year period beginning with the year 2000. Many of these individuals will require long-term care at some point in their lives.

To assist Colorado's aging population, the Colorado Commission on Aging (CCOA) was established in 1964. The duties of the CCOA consist of the following:²

- To conduct, and encourage others to conduct, studies of problems of the state's older people.
- To assist government and private agencies to coordinate their efforts on behalf of the aging and aged in order that efforts are effective and non-duplicative on behalf of the state's older people.
- To promote and aid in the establishment of local programs and services for the aging and aged for the state's older people.
- To conduct promotional activities and programs of public education on problems of the aging.
- To review existing programs for the aging and make recommendations to the Governor and General Assembly for improvements.
- To advise and make recommendations to the Division of Aging and Adult Services on the problems of and programs for the state's older people.

Nursing homes are regulated through a variety of local, state, and federal agencies. Local governments are responsible for such issues as site selection, through the zoning process, and some health and safety issues such as fire safety inspections. The federal government has established standards for nursing homes. Nursing homes must comply with these federal standards in order to be reimbursed through federal programs such as Medicare and Medicaid. In most situations, the enforcement of federal standards is delegated to the states.

Nursing homes are one link in a continuum of care for a variety of clients. Nursing homes provide residential care for individuals of all ages requiring individual or skilled assistance to maintain quality of life. Nursing homes range in size and areas of specialty. Some homes specialize in individuals with advanced Alzheimer's disease or other forms of dementia. These individuals may be highly mobile but require secure environments to prevent wandering and potential injuries, either accidental, self-inflicted or due to a violent episode by one resident or another.

² Colorado Department of Human Services, Colorado Commission on Aging, Retrieved September 18, 2008, from http://www.cdhs.state.co.us/aas/commissiononaging_index.htm

Colorado Revised Statutes define an NHA as an individual who is responsible for:

...planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.³

This is a very broad scope of practice and includes a variety of areas including: billing practices, housekeeping, facility maintenance, staffing, food preparation and service, recreational activities, the implementation of medical treatment plans, fire safety, and recordkeeping. NHAs are not directly involved in the diagnoses or treatment of residents. However, the NHA is required to establish procedures to ensure that residents receive proper medical treatment and that prescribed treatment plans are adhered to by the staff of the nursing home.

All nursing homes are required to provide certain services for residents. These services include providing meals that meet dietary needs, recreational opportunities, assistance with medication administration when necessary, and preventive medical treatment. Some facilities also provide physical and other types of therapy. In most situations the NHA delegates the supervision of these services to other professionals.

In some cases, it is difficult to determine when the NHA is responsible for certain deficiencies. For example, if a resident in a nursing home visits a physician and is prescribed a medication, the physician is responsible for the diagnoses and prescribing. The NHA may be responsible for ensuring the prescription is filled by a licensed pharmacist. Generally, the facility's nursing staff is responsible for administering any medication; however, the NHA is responsible for enacting a quality assurance plan to assure that medications are at least properly documented on a resident's chart. If a nurse or another licensed health care professional is diverting patient drugs for their own use or otherwise, the NHA may not be held responsible. However, the NHA is responsible for reporting and investigating any drug diversions or shortages.

Colorado has 220 licensed nursing homes containing 20,265 beds, and 413 state-licensed NHAs.

The Board only regulates individual NHAs, not the actual nursing home facilities or the facilities' employees. Colorado nursing homes are licensed by the state through the Health Facilities and Emergency Medical Services Division (Health Facilities Division) of the Colorado Department of Public Health and Environment (CDPHE). Nursing homes also provide services to eligible federal Medicare and Medicaid beneficiaries and are expected to meet federal regulations. The Health Facilities Division generally enforces state and federal regulations through unannounced annual surveys and complaint investigations. However, the vast majority of the complaints relating to NHAs come to the Board through the survey reports generated by the CDPHE.

³ § 12-39-102(2), C.R.S.

Annual surveys generally take place every 9 to 15 months, with an average of approximately every 12 months. Complaint investigations are conducted when the Health Facilities Division receives a regulatory-related complaint that falls within its jurisdiction. These complaints may be generated by a family member, staff member, resident or friend. The Health Facilities Division investigates complaints relating to quality of life and quality of care at a facility, including residents' rights, abuse, dietary concerns, staffing and environmental concerns. The Health Facilities Division does not investigate complaints related to billing or insurance concerns.

The survey inspection team consists of investigators, usually trained in specific areas and including at least one registered nurse. The team evaluates whether the nursing home meets individual resident needs. In addition, fire safety specialists evaluate whether a nursing home meets standards for safe construction. When an inspection team finds that a home does not meet a specific regulation, it issues a deficiency citation.

The regulations cover a wide range of aspects of resident life, from specifying standards for the safe storage and preparation of food to protecting residents from physical or mental abuse or inadequate care practices. There are over 150 regulatory standards that nursing homes must meet at all times, although many are related.

All surveys are unannounced. Once in the facility, surveyors observe what is going on in the nursing home, review medical records and other documents, and interview residents, family members and nursing home staff. The surveyors summarize their observations to facility staff at the conclusion of the visit.

If deficiencies are found, the nursing home receives a letter and a survey form. It is given 10 days to respond to the deficiencies with a plan of correction. The plan of correction is reviewed for acceptance by the Health Facilities Division. A follow-up survey is conducted to verify the accurate and timely implementation of the plan of correction. If the survey contains significant deficiencies, the CDPHE forwards a copy of the survey to the Board.

The complaint investigator notifies the complainant of the investigation outcome and documents a summary of the investigation. The complainant receives a letter explaining the finding(s) of the investigation, as well as the summary of the investigation results. These summaries are also subsequently posted on the Health Facilities Division's web site.

In addition to the licensing of NHAs, and the regulation of facilities, through CDPHE, additional protection is afforded through the Colorado Long-Term Care Ombudsman Program, a statewide advocacy program for residents of long-term care or nursing home facilities. Every state is required by the federal "Older Americans Act of 1965" to have such a program.

The Colorado Long-Term Care Ombudsman Program was created in 1975 to address the need for independent, knowledgeable, and committed advocates for residents of nursing homes and assisted living residences statewide. Authorized under the federal Older Americans Act and codified in Colorado statutes, the Colorado Long-Term Care Ombudsman Program is administered by The Legal Center for People with Disabilities and Older People under a contractual agreement with the Colorado Department of Human Services, Division of Aging and Adult Services.

There are 16 regional statewide programs that operate within or in conjunction with the Regional Area Agency on Aging.

The stated mission of the Colorado Long-Term Care Ombudsman Program is to:

- Prevent the abuse, neglect, and exploitation of residents of Colorado's long-term care facilities;
- Protect the health, safety, and welfare, and rights of those residents;
- Preserve residents' independence, dignity, autonomy, and freedom of choice;
- Promote an environment where residents, family members, staff, and others can work creatively and cooperatively; and
- Produce significant improvements in the delivery of long-term care to all citizens of the state.

While the Colorado Long-Term Care Ombudsman Program does not typically interact directly with the Board, the Ombudsman program provides another layer of protection for residents.

History of Regulation

In 1967, the federal Social Security Act was amended to require states to establish licensing programs for NHAs. Portions of the Social Security Act were re-codified as part of the Omnibus Budget Reconciliation Act (OBRA) reforms of 1985.

In 1969, Colorado implemented the requirements of the Social Security Act by passing Senate Bill 69-346, the Nursing Home Administrators Act (Act). The Act created a nine-member Board to develop and administer a licensing program for NHAs. The nine-member Board consisted of five NHAs, three members of professions related to the care of chronically ill and infirm patients, and one member of the public at large.

Since its creation in 1969, the Board has undergone sunset reviews in 1977, 1982, 1992, and 1998. Each of these reviews noted that nursing homes are subject to regulation and/or oversight by a variety of state and federal programs and agencies. The 1977 review recommended the Board be made advisory and transferred to the Health Facilities Division's predecessor or, alternatively, to what is now the Department of Human Services, to reduce the fragmentation of regulation. The 1977 report also recommended:

- Increased public protection language in the legislative declaration;
- Increased educational requirements for licensees;
- A state examination to supplement the national examination;
- Mandatory continuing education;
- Closer supervision of the Administrator-in-Training Program; and
- Revised procedures for the issuance of temporary licenses.

The General Assembly adopted three of the six major recommendations of the review. The legislative declaration was modified, education requirements were increased, and the procedures for the issuance of temporary licenses were revised.

The 1982 review recommended reducing the size of the Board from nine to five members and again, transferring the Board to the CDPHE. Licensees and industry representatives opposed this recommendation and it was not implemented.

The 1992 review noted improved cooperation between the CDPHE and the Board in the regulation of NHAs as a result of administrative recommendations contained in the 1982 review that were adopted by the two entities. The 1992 review recommended a thorough revision to the NHA licensing statute and resulted in the repeal and reenactment of the entire statute. The revisions clarified several vague provisions and updated the Board's disciplinary authority.

The 1992 review also made recommendations for program improvements that did not require legislative action, such as improved recordkeeping and clarification of regulations. The Board and program staff of DORA implemented these recommendations. In fact, the only major recommendation in the 1992 review that was not adopted was a requirement that applicants for licensure have a four-year bachelor's degree in health or administration.

However, in 1999, following another sunset review in 1998, the General Assembly changed the educational requirements so that a candidate who had completed any of the following could sit for the licensing examination: an Administrator-in-Training program; a bachelor's degree in business administration, public health administration or health administration; or an associate's degree or higher in a health-related field, and at least two years experience in supervision or administration in a nursing home or hospital.

Additionally, the General Assembly increased the size of the Board to eight, by adding a second representative of the long-term care industry.

LEGAL FRAMEWORK

The regulation of nursing home administrators (NHAs), through the Board of Examiners of Nursing Home Administrators (Board), can be found in Article 39 of Title 12, Colorado Revised Statutes (C.R.S.). The statutory provisions begin with a legislative declaration containing two fundamental and distinct goals. The first stated goal is to provide that nursing home residents are afforded a measure of protection through the regulation of NHAs, which generally encompasses ensuring quality administration and sound management of nursing homes. The second legislative intent is to ensure that the Board is adequately funded to carry out the duties and functions relative to the first goal.⁴

The practice of nursing home administration includes the planning, organizing, directing, and control of operation of a nursing home facility.⁵ Nursing home facilities are facilities which provide skilled nursing home services or intermediate care nursing home services to patients.⁶ An NHA is defined as:

...any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.⁷

It is unlawful for any individual to practice nursing home administration in Colorado, or use any title, sign, card, or device to indicate that such person is an NHA, unless such person has been duly licensed as an NHA by the Board.⁸

A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone, through prayer in accordance with the creed or tenets of a church or religious denomination, is exempt from the provisions governing NHAs.⁹

The Board is currently composed of eight members¹⁰ appointed by the Governor to serve four-year terms.¹¹ Three Board members must be practicing NHAs licensed by the Board, and from the following areas of specialty, with no two members from the same area:¹²

- Hospital administration;
- Nonprofit facility administration;
- Proprietary facility administration; or
- Continuum of care administration.

⁴ § 12-39-101, C.R.S.

⁵ § 12-39-102(5), C.R.S.

⁶ § 25-1-1002(1), C.R.S.

⁷ § 12-39-102(2), C.R.S.

⁸ § 12-39-103, C.R.S.

⁹ § 12-39-119, C.R.S.

¹⁰ § 12-39-104(1)(a), C.R.S.

¹¹ § 12-39-104(1)(b), C.R.S.

¹² § 12-39-104(1)(a)(I), C.R.S.

Two Board members must be professionals from the long-term care industry,¹³ one of whom must be a licensed health care professional, and three Board members represent the public at large.¹⁴ No more than three members of the Board may be officials or full-time employees of the state or a local government.¹⁵ All Board members must be residents of Colorado, and no Board member may serve more than two consecutive terms.¹⁶ Board members may be removed from the Board by the Governor for negligence, incompetence, and unprofessional or willful misconduct.¹⁷

The Board is created as a Type I agency and is empowered to elect its own officers and promulgate rules and regulations to administer the NHA program.¹⁸ The Director of the Division of Registrations appoints an administrator and other staff to assist the Board in recordkeeping and other administrative functions of the Board.¹⁹

The statutory powers and duties of the Board include:

- Adopting rules defining standards for nursing home administration;²⁰
- Developing appropriate techniques, including examinations and investigations to determine whether an individual meets such standards;²¹
- Issuing licenses to qualified individuals;²²
- Revoking, suspending, withholding, or refusing to renew any previously issued license or placing a licensee on probation, or issuing a letter of admonition for any violation of the statute or regulations promulgated under the authority of the Board;²³ and
- Conducting investigations, holding hearings, and taking evidence in all matters relating to the exercise and performance of the powers and duties vested in the Board and, in connection with any investigation following the filing of a signed complaint or any hearing, to administer oaths and issue subpoenas compelling the attendance and testimony of witnesses and the production of books, papers, or records relevant to an investigation or hearing.²⁴

¹³ § 12-39-104(1)(a)(II), C.R.S.

¹⁴ § 12-39-104(1)(a)(III), C.R.S.

¹⁵ § 12-39-104(1)(b), C.R.S.

¹⁶ § 12-39-104(1)(b), C.R.S.

¹⁷ § 12-39-104(2), C.R.S.

¹⁸ § 12-39-104(4), C.R.S.

¹⁹ § 12-39-104(5), C.R.S.

²⁰ § 12-39-105(1)(a)(I)(A), C.R.S.

²¹ § 12-39-105(1)(a)(I)(B), C.R.S.

²² § 12-39-105(1)(a)(II), C.R.S.

²³ § 12-39-105(1)(a)(III), C.R.S.

²⁴ § 12-39-105(1)(a)(V), C.R.S.

The Board also has the authority to make rules consistent with law as may be necessary for the proper performance of its duties and to take such other actions as may be necessary to enable Colorado to meet the requirements set forth in the federal Social Security Act, the federal rules promulgated thereunder, and other pertinent federal requirements.²⁵

The Board must promulgate rules defining the criteria for the education and experience necessary for admittance to the Administrator-in-Training (AIT) program. Such criteria for the education and experience necessary for admittance to the AIT program must not exceed successful completion of two years of college level study in an accredited institution of higher education in areas relating to health care, or two years of Board-approved experience in nursing home administration or comparable health management experience for each year of required education.²⁶

An applicant for a nursing home administrator's license, who meets the Board's criteria for education and experience, may be granted admission into the nursing home AIT program. Upon successful completion of the 2,000-hour training period, said applicant is eligible to take the examination.²⁷ The Board may waive any portion of the training requirements if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule or regulation of the Board.²⁸

Any license issued by the Board is valid for a period determined pursuant to a schedule established by the Director of the Division of Registrations (Director). The Director may establish renewal fees and delinquency fees for license reinstatement. If a person fails to renew his or her license pursuant to the schedule established by the Director, such license expires.²⁹

Only an individual who has qualified as a licensed NHA and who holds a valid current license has the privilege of using the title "nursing home administrator," and the right to use the abbreviation "N.H.A." after his or her name.³⁰

²⁵ § 12-39-105(4), C.R.S.

²⁶ § 12-39-107.5, C.R.S.

²⁷ § 12-30-107(1), C.R.S.

²⁸ § 12-39-107(6), C.R.S.

²⁹ § 12-39-108(1), C.R.S.

³⁰ § 12-39-108(3), C.R.S.

The Board must maintain a list of all licensed NHAs. The list must show:³¹

- The licensee's place of residence,
- The name and age of each licensee,
- Actions taken by the Board,
- The number of the license issued to the licensee, and
- Any other pertinent information as the Board may deem necessary.

The Board may issue a temporary license to an applicant for a period not to exceed six months. The Board must promulgate rules and regulations governing the issuance of such a temporary license.³²

A temporary license must be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the Department of Public Health and Environment. Under this criteria, a temporary license is to be granted for a period not to exceed 12 months and is void at such time as the license holder is no longer employed by the general hospital.³³

The Board must establish, and publish annually, a schedule of fees for the licensing of NHAs.³⁴

No NHA who has had a license revoked may apply for licensure before a one-year waiting period following the date of such revocation, and then must comply with all requirements established by the Board.³⁵ Every licensee must notify the Board of any conviction of a felony or the acceptance of a guilty plea or a plea of *nolo contendere* to a felony within 30 days.³⁶

The Board determines the subjects of the state examination for all applicants for licensure as NHAs.³⁷ Examinations are held at least semiannually at such times and places as the Board designates. Any examination must be prepared or approved by the Board.³⁸ The Board also has the authority to select and administer a national examination.³⁹

The Board can issue a license to any person duly licensed to practice nursing home administration in another state or territory of the United States who possesses credentials and qualifications which are substantially equivalent to Colorado requirements, and who successfully completes the Colorado state examination.⁴⁰

³¹ § 12-39-108(4), C.R.S.

³² § 12-39-108(5), C.R.S.

³³ § 12-39-108(6), C.R.S.

³⁴ § 12-39-108(7), C.R.S.

³⁵ § 12-39-108(9), C.R.S.

³⁶ § 12-39-108(10), C.R.S.

³⁷ § 12-39-109(1), C.R.S.

³⁸ § 12-39-109(2), C.R.S.

³⁹ § 12-39-109(3), C.R.S.

⁴⁰ § 12-39-110(1), C.R.S.

The Board has the power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee upon proof that such person:⁴¹

- Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;
- Has been convicted of a felony or pled guilty or *nolo contendere* to a felony;
- Has had a license to practice nursing home administration or any other health care occupation suspended or revoked in any jurisdiction;
- Has violated or aided or abetted a violation of any provision of the NHA statute located in Article 39 of Title 12, C.R.S., or any rule or lawful order of the Board;
- Has committed or engaged in any act or omission which fails to meet generally accepted standards for nursing home administration practice or licensure;
- Has falsified or made incorrect entries or failed to make essential entries on patient records;
- Is addicted to or dependent on alcohol or habit-forming drugs, abuses or engages in the habitual or excessive use of any such habit-forming drug or any controlled substance or participates in the unlawful use of controlled substances. The Board has the discretion not to discipline the licensee if such person is participating, in good faith, in a program approved by the Board designed to end such addiction or dependency;
- Has a physical or mental disability which renders the licensee unable to practice nursing home administration with reasonable skill and safety to the patients and which may endanger the health or safety of persons under such licensee's care;
- Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;
- Has violated section 18-13-119, C.R.S., concerning the abuse of health insurance;
- Has failed to post in the nursing home facility, in a conspicuous place, and in clearly legible type, a notice giving the address and telephone number of the Board and stating that complaints may be made to the Board;
- Has practiced as an NHA without a license;
- Has used in connection with the person's name, any designations tending to imply that the person is a licensed NHA, unless the person in fact holds a valid license;
- Has practiced as an NHA during a period when the person's license has been suspended or revoked; or
- Has sold, fraudulently obtained, or furnished a license to practice as an NHA, or has aided or abetted therein.

⁴¹ § 12-39-111(1), C.R.S.

If the Board finds the charges proven and orders that discipline be imposed, it may also require the licensee to participate in a treatment program or course of training or education as a requirement for reinstatement as may be needed to correct any deficiency found in the formal disciplinary hearing.⁴²

The Board has the authority to determine whether a new applicant for a license or a temporary license to practice as an NHA possesses the qualifications required, or whether there are reasonable grounds to believe that such applicant has done any of the acts set forth as grounds for discipline.⁴³

Every licensee or temporary license holder, by engaging in the practice of nursing home administration in Colorado, or by applying for the renewal of a license or temporary license, is deemed to have given consent to submit to a mental or physical examination when so directed in writing by the Board. The direction to submit to such an examination must contain the basis of the Board's reasonable grounds to believe that the licensee is unable to practice with reasonable skill and safety to patients.⁴⁴

If the Board has reasonable grounds to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to patients, due to a drug-related problem or a physical or mental disability, the Board may require such person to submit to a mental or physical examination by a designated physician. Upon the failure of such person to submit to such mental or physical examination, unless due to circumstances beyond such person's control, the Board may suspend such person's license until such time as the licensee submits to the required examinations.⁴⁵

The results of any mental or physical examination ordered by the Board may not be used as evidence in any proceeding other than one before the Board, and may not be deemed public records nor made available to the public.⁴⁶

Disciplinary proceedings may be commenced when the Board has reasonable grounds to believe that a licensee under the Board's jurisdiction has committed acts that are grounds for discipline, and therefore, in violation of section 12-39-111, C.R.S.⁴⁷ The Board has the authority to designate an administrative law judge to conduct hearings on any matter within the Board's jurisdiction.⁴⁸

⁴² § 12-39-111(4), C.R.S.

⁴³ § 12-39-112, C.R.S.

⁴⁴ § 12-39-113(1)(b), C.R.S.

⁴⁵ § 12-39-113(1)(a), C.R.S.

⁴⁶ § 12-39-113(3), C.R.S.

⁴⁷ § 12-39-114(2), C.R.S.

⁴⁸ § 12-39-114(1), C.R.S.

No previously issued license to engage in the practice of nursing home administration may be revoked or suspended until a hearing has been conducted, or for emergency situations. The denial of an application to renew an existing license is treated in all respects as a license revocation; thus, the applicant's due process rights are protected.⁴⁹ Final Board actions and orders are subject to judicial review in the Colorado Court of Appeals.⁵⁰

Any person participating in good faith in the making of a complaint or report, or participating in any investigative or administrative disciplinary proceeding, is immune from any liability, civil or criminal, that otherwise might result by reason of such action.⁵¹

When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the Board and, in the opinion of the Board, the complaint should be dismissed, but the Board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.⁵²

In addition to administrative disciplinary actions, any person who practices or offers or attempts to practice as an NHA without a current active license commits a Class 2 misdemeanor, and any person who commits a second or subsequent offense commits a Class 6 felony.⁵³

If it appears to the Board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the Board may issue an order to cease and desist such activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.⁵⁴

The Board has also enacted a set of rules and regulations for NHAs. These rules are located in Volume 3 of the Colorado Code of Regulations.⁵⁵ These rules generally relate to licensure matters, and the AIT program.

⁴⁹ § 12-39-114(4), C.R.S.

⁵⁰ § 12-39-114(6), C.R.S.

⁵¹ § 12-39-114(5), C.R.S.

⁵² § 12-39-114(7), C.R.S.

⁵³ § 12-39-116(2), C.R.S.

⁵⁴ § 12-39-117(1)(a), C.R.S.

⁵⁵ 3 CCR 717-1

PROGRAM DESCRIPTION AND ADMINISTRATION

Agency Overview

For the purpose of regulating nursing home administrators (NHAs) in Colorado, the Colorado General Assembly created the Colorado Board of Examiners of Nursing Home Administrators (Board).

The Board is responsible for licensing qualified applicants, investigating complaints, initiating disciplinary actions when appropriate, enjoining unlicensed practice, and adopting rules and regulations. The day-to-day duties of administering the program are carried out by the program director and staff.

The Board currently consists of eight members, three of whom are public members, and five are professional/occupational members. The Board meets every other month, and the Board's responsibilities include:

- Developing and enforcing standards of conduct and practice;
- Disciplining licensees when appropriate;
- Examining, screening, and licensing qualified applicants; and
- Ensuring that licensees comply with generally accepted practices.

An NHA is required to become licensed by the Board prior to serving as an NHA in Colorado. The Board is cash funded, and the Board annually adjusts its licensure and renewal fees to reflect and cover the direct and indirect costs of the regulatory program.

Agency Fiscal Information

The licensing of NHAs is cash funded, meaning that NHA licensees pay for the program. Table 1 reflects the total expenditures and full-time equivalent (FTE) employees for this program over the past five fiscal years.

Table 1
Program Expenditures

Fiscal Year	Total Program Expenditure	FTE
02-03	\$237,458	1
03-04	\$289,415	1
04-05	\$302,012	1
05-06	\$486,170	1
06-07	\$276,025	1

The actual expenditures have fluctuated somewhat, with the highest total expenditure (\$486,170) in fiscal year 05-06, and the lowest total expenditure (\$237,458) in fiscal year 02-03. This disparity in total expenditures is apparently not related to staffing issues, but rather to the fact that in fiscal year 05-06, litigation costs drove up program expenditures.

The Division of Registrations (Division) indicates that measures have been instituted to attempt to hold down the legal service-related expenditures. First, the Board, through the Division, is more prone to utilize the Division's Office of Expedited Settlement (OES). Prior to the utilization of the OES, disciplinary matters were sent directly to the Office of the Attorney General (OAG) for resolution. Now, cases are sent first to the Division's OES for resolution. If the cases cannot be settled expeditiously, they are sent to the OAG for resolution through traditional legal channels. Additionally, the Colorado Department of Public Health and Environment's criterion for the scope and severity of survey deficiencies, resulting in automatic referrals to the Board, was modified to concentrate on the more serious deficiencies.

The total FTE allocated to the Board is 1.0 and includes a Program Director, currently a General Professional VI and a Program Assistant II. The Program Director and Program Assistant also staff and provide management and administrative assistance to several other programs within the Division. The FTE allocated to the Board has remained consistent over the past five fiscal years at 1.0.

The Program Director handles the day-to-day management of the Board, which includes rule and policy development, budget, personnel matters, licensure, and making recommendations to the Board. The Program Assistant is responsible for the administrative functions involved with, but not limited to, complaint processing, agenda preparations, some licensing matters, and post-disciplinary monitoring.

Licensing

The Board is responsible for licensing qualified applicants. In order to be licensed as an NHA in Colorado one must have successfully completed a bachelor's degree in business administration, public health administration, health administration, or any degree or degrees deemed appropriate by the Board. In lieu of the bachelor's degree, an applicant who has an associate's degree in a health care-related field with a minimum of two years experience in supervision or administration in a nursing home or hospital may apply for licensure. Applicants who have successfully completed the Administrator-in-Training program regulated by the Board may also sit for the examination.

Table 2 shows that the number of licensed NHAs has remained fairly consistent over the period covered by this review.

**Table 2
Number of Licenses**

Fiscal Year	Licensed by Examination	Licensed by Endorsement	Renewals and Reinstatements	Total Number of Licensees
02-03	32	7	534	551
03-04	27	6	399	538
04-05	34	11	413	545
05-06	25	8	343	478
06-07	25	19	304	435

Note: The number of new licensees plus the number of renewals and reinstatements will not equal the total number of licensees because NHAs renew their licenses at the end of the fiscal year (license expiration date is June 30). Consequently, many NHAs actually renew in the following fiscal year during the 60 day grace period.

Table 3 shows licensing fees, initial and renewal, paid by NHAs. In particular, renewal fees in fiscal year 06-07 rose from \$699 to \$945 because of litigation expenses.

**Table 3
Licensure Fees**

Fiscal Year	Initial Licensure	Renewal
03-04	\$126	\$324
04-05	\$126	\$344
05-06	\$126	\$699
06-07	\$126	\$945
07-08	\$200	\$671

Examination Information

One metric of the efficiency of an occupational licensing entity is the length of time that it takes for an applicant to secure a license. This is important because an individual cannot practice as an NHA until licensed. The examination data for fiscal year 02-03 through fiscal year 06-07 reveals that for an applicant for an original license, the average time from submission of the application to actual licensure is 147 calendar days. According to Board data, the same time frame for an application by endorsement from another state is 99 days.

There are two primary factors that influence the time it takes from submission of the application to actual licensure for both groups of applicants. First, once an applicant is approved for the national and state examinations, the application may be pending up to a full year while the applicant is completing the required examinations. The time it takes to pass both examinations can be significant, especially if the applicant is not successful on the first examination attempt. Second, most applicants apply for licensure through a combination of education and experience. The submission and review of this type of application takes more time than applications for those professions wherein graduation from an approved educational program is the entry route.

Table 4 indicates the number of state examinations administered to applicants seeking Colorado licensure, and the pass rate. These data include both first time and repeat test-takers.

**Table 4
Examinations and Pass Rate**

Fiscal Year	Number of Written Examinations	Pass Rate (%)
02-03	N/A	N/A
03-04	47	94%
04-05	52	92%
05-06	39	87%
06-07	57	82%

Inspections

The Board has no inspection authority. Please see the Profile of the Profession section beginning on page 5 of this sunset review for a discussion of the inspection of nursing homes by the Colorado Department of Public Health and Environment.

Complaints/Disciplinary Actions

Anyone – a physician, nurse, resident, employee or the Board itself - may file a complaint against an NHA. The Board has the power to revoke, suspend, withhold, place on probation, refuse to renew, or issue a letter of admonition to a licensed NHA who is found to have violated the standards of practice. The Board does not have the authority to levy fines

Table 5 displays the number of complaints received by the Board for the period under review.

**Table 5
Complaints Received**

Nature of Complaints	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Practicing Without a License	0	1	1	3	1
Standard of Practice	35	35	11	21	19
Substance Abuse	0	0	0	0	1
Felony Conviction/Action by other Board	2	1	0	0	0
Billing/Financial	1	1	0	3	0
Rule Violation	1	3	13	35	5
Fraud/Misrepresentation in Obtaining License	1	0	1	0	0

Table 6 displays the average number of days to process complaints according to the four different categories of complaints.

**Table 6
Average Time (Days) For Complaint Processing**

Fiscal Year	Dismissed Complaints	Complaints Resulting in Letters of Admonition	Complaints Resulting in a Stipulation / Settlement Agreement	Complaints Resulting in a Resolution Following a Hearing
04-05	283	481	914	None
05-06	440	91	862	None
06-07	309	490	973	None

The time frames reflected in Table 6 appear excessively long. Colorado citizens who file a complaint against an NHA may not find out the resolution of their case for almost three years in some cases.

The Board provided additional information regarding its complaint handling process.

The average days for complaint processing have been broken down into four categories to provide a better understanding of the complexities of the legal processes that the Board must follow. These complexities have a significant impact on the resolution time. The four categories and a description of each follow.

Dismissed Complaints: These complaints typically take the least amount of time to resolve because they have been determined to be without merit or reasonable cause to warrant further action. While some of these complaints will go through the investigative process, many are dismissed upon Board review of the complaint, response and supporting documentation.

Complaints Resulting in Letters of Admonition: These complaints are typically the least complex of those that result in a disciplinary action by the Board. They usually take significantly more time to resolve than a complaint that is dismissed. Complaints resulting in a letter of admonition will often undergo an investigation or review by an expert to provide the necessary support to issue a disciplinary action. It is also important to note that after the letter of admonition is issued, by law, the licensee has 20 days to reject the letter of admonition and request a hearing before an Administrative Law Judge (ALJ). If the licensee exercises his or her right to a hearing, this significantly increases the complaint resolution time.

Complaints Resulting in a Stipulation/Settlement Agreement: This category of complaint encompasses those cases in which the Board finds that public protection requires that the licensee practice only pursuant to specific terms and conditions, that the licensee's practice be restricted in some way, or that the licensee is not able to safely practice at this time. These complaints will undergo an investigation and/or expert review and will then be referred to the Division's Office of Expedited Settlement or the Office of the Attorney General (OAG) for resolution. Cases are settled prior to the hearing process and will typically be resolved in a shorter period of time than those cases that go through the hearing process. However, there are cases in which settlement does not occur until formal charges have been filed with the Office of Administrative Courts and other pre-hearing activities have occurred, such as depositions and discovery. Consequently, the time frame for resolution of these cases will vary greatly.

Complaints Resulting in Resolution Following a Hearing: This category of complaint resolution is the lengthiest due to the due process requirements and actual hearing procedure itself. When a complaint is not able to be resolved prior to hearing, the OAG files formal charges with the Office of Administrative Courts. A hearing date is then set and all of the pre-hearing legal proceedings are initiated, such as depositions, interrogatories, pre-hearing motions and pleadings are filed with the court, etc. It is common for cases to be continued for a variety of reasons so it is typically four to eight months after charges are filed before the case is actually heard. After the hearing itself the ALJ will take an average of 90 days to issue his or her decision in the case. However, this is not the final ruling. The ALJ's Initial Decision then goes back to the Board for review and a final determination. At that point, the parties have a period of time to file exceptions to the ALJ's decision before it is reviewed by the Board. The time that elapses from issuance of the Initial Decision by the ALJ and a final ruling by the Board will range between 90 and 180 days depending on the complexity of the case, the number of exceptions filed, and the timing of the Board's meetings. While this category of complaints is the smallest of the four outlined in this report in terms of overall numbers, these cases are vigorously contested and require a significant amount of time and resources to reach resolution.

Colorado law enumerates 15 grounds for discipline of a licensed NHA. Table 7 displays the Board's disciplinary activities as well as the number of complaints dismissed against licensees for the five fiscal-year period indicated.

The following table also shows that the Board issued four letters of concern in fiscal year 06-07. The issuance of a letter of concern is a power given to regulatory boards that allows them to respond to complaints in which no provable violation of the grounds for discipline can be established. Generally, the letter of concern to a licensee will contain a discussion of a specific fact pattern or practice that, in the opinion of the Board, may lead to substandard practice if continued.

**Table 7
Final Agency Actions**

Type of Action	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Revocation	1	0	0	0	0
Surrender of License	2	0	0	1	0
Suspension	0	0	1	0	0
Probation / Practice Limitation	5	8	9	4	11
Letter of Admonition	5	5	6	3	4
License Granted with Probation / Practice Limitations	0	0	0	0	0
License Denied	0	1	0	0	0
Injunction	0	1	0	0	0
Dismiss*	20	25	23	7	40
Total Disciplinary Actions	13	15	16	8	15

* Dismissals include confidential letters of concern which may be issued by the Board when initiation of formal disciplinary action is not warranted.

ANALYSIS AND RECOMMENDATIONS

Recommendation 1 - Continue the regulation of nursing home administrators and the Board of Examiners of Nursing Home Administrators for nine years, until 2018.

The only government entity providing direct oversight and regulation of Colorado nursing home administrators (NHAs) is the Colorado Board of Examiners of Nursing Home Administrators (Board) within the Division of Registrations (Division). Nursing homes are regulated by the federal government through the direct oversight of the Colorado Department of Public Health and Environment (CDPHE). This is accomplished by the CDPHE conducting periodic surveys of nursing home facilities, and documenting noted deficiencies related to most aspects and issues of resident care in nursing homes. Most nursing home employees are regulated by their own occupational boards, such as the Colorado Board of Nursing, Board of Medical Examiners, and other medically-related boards and agencies. However, neither the CDPHE nor the federal government regulate or license NHAs. Regulation of NHAs in Colorado is in the sole authority and control of the Board.

The regulation and oversight of NHAs by the Board and staff of the Division should be continued to ensure that only suitable and qualified individuals are providing quality administrative services to the residents of Colorado's nursing homes.

Recommendation 2 - Amend section 12-39-104(1)(a), Colorado Revised Statutes, to reduce the number of Board members from eight members to five members.

Currently, the Board has eight members, consisting of three NHA licensees (who must have been actively engaged as an NHA for the previous five years), two professional members from the long-term care industry, and three public members.

It is unusual for a deliberative body such as the Board to have an even number of members. While there is no evidence of significant problems occurring because of the even number of members, problems could clearly arise in the case of tie votes.

Also, the Board is rather large in comparison to the 413 actively licensed NHAs. While Board member compensation is relatively small, some cost savings can be achieved by creation of a smaller Board. This could be helpful to licensees who faced a \$945 renewal fee in fiscal year 06-07.

Therefore, this review recommends that the Board be reduced to five members: three licensed NHAs, and two public members. Removal of the representatives of the long-term care industry should not negatively impact the Board's performance. The Board's primary duty is regulation of NHAs and, if this recommendation is implemented, adequate representation by the three NHAs will continue.

Recommendation 3 – Repeal section 12-39-107(2), Colorado Revised Statutes, requiring an Administrator-in-Training to submit bi-monthly progress reports and specify that the Board may require periodic reports by rule.

Colorado law establishes an Administrator-in-Training (AIT) program as one avenue to licensure as an NHA. The statute requires that participants complete 2,000 hours of training and submit bi-monthly progress reports to the Board. As part of this sunset review, the Board requested that the statutory bi-monthly reporting requirement be changed to a requirement that participants submit monthly reports.

Statute also requires the Board to establish a monitoring mechanism of the program by rule. In fact, the Board has promulgated approximately six pages of rules to implement and oversee the AIT program.

This sunset report concludes that details of the program (such as how often participants must make progress reports to the Board, the contents of such reports and, indeed, the need for such reports at all) are better carried out through rulemaking rather than statute. It is possible that the need for reports to the Board could change again in the future and sunset reviews are conducted infrequently. This would leave the Board with only the option to seek legislation to correct the problem. By allowing these requirements to be established as needed by rule, participants, industry representatives, and other stakeholders can all provide direct input to the Board.

To effectuate this recommendation, section 12-39-107(2), Colorado Revised Statutes (C.R.S.), should be repealed and section 12-39-107(4), C.R.S., should be amended by the addition of language specifying that the Board's rulemaking authority includes requiring periodic reports to Board.

Recommendation 4 – Amend section 12-39-106(1)(b), C.R.S., by repealing a bachelor's degree in business administration from the list of degrees that bypass the AIT program requirement.

Section 12-39-106(1)(b), C.R.S., provides an individual with a degree in business administration with the ability to become licensed by examination without having to participate and complete any practicum requirement. However, a degree in business administration, without experience relating to the unique aspects of nursing home administration, does not necessarily equate with the duties and responsibilities inherent in managing a nursing facility. Generally, the curriculum for a degree in business administration does not necessarily contain or include health care related components, which are critical to the successful administration of nursing homes. Finally, the other degrees, public health administration and health administration, enumerated in the above-referenced subsection, appear to recognize the need for an academic background directly related to health care in order to be exempt from Colorado's AIT requirement.

Adoption of this recommendation would not preclude from licensure applicants holding a business administration degree but would simply require such applicants to complete the AIT program as do holders of other degrees.

Recommendation 5 - Amend section 12-39-106(1)(c), C.R.S., to repeal the supervision requirement.

Section 12-39-106(1)(c), C.R.S., requires that an applicant for licensure have an associate's degree or higher in a health care related field and a minimum of two years experience in supervision or administration in a nursing home or hospital. Some forms of general or limited supervisory roles do not qualify an applicant to become licensed by examination, thereby avoiding any practicum requirement. For example, some applicants have supervised only one other person, or have worked in a hospital setting in a department of limited scope such as medical records.

The problem the statute presents is that it appears to recognize a difference between supervision and administration for purposes of examination. As a result, applicants have petitioned the Board to accept two years of supervision in a small department (e.g. medical records, physical therapy, dietary, maintenance) and the concern of the Board is that such applicants, even if they pass the test, are unlikely to be prepared to run a nursing facility. For example, the Medical Records Director may only supervise one other individual in a nursing home. That person may not have had anything more than mere exposure to the other disciplines/departments within the nursing facility. If this person has worked in a nursing home for more than two years and has a health care-related degree (which could be defined broadly to include physical therapy, respiratory therapy, social work, psychology, etc.), it appears that this person would be able to sit for the examination. The concern of the Board is that the written examination does not adequately prepare such an individual to run a 100-bed facility supervising what could be 50 or more employees in various departments. As a result, residents may be put at risk inadvertently, as someone obtains on-the-job training.

In contrast, the term "administration" appears to include supervision as well as other elements involved in administration of a nursing home or hospital such as budgeting, establishing policies and procedures, and possibly interdisciplinary care planning.

To facilitate this recommendation, section 12-39-106(1)(c), C.R.S., should be amended by repealing the word "supervision."

Recommendation 6 – Repeal section 12-39-105(1)(VI)(a), C.R.S., requiring the Board to submit an annual report to the Governor.

Annual reports by regulatory boards to the Governor were once common but the General Assembly has gradually phased out this reporting requirement as other methods of conducting performance oversight have evolved. Detailed information about the Board is transmitted annually to the General Assembly via the Department of Regulatory Agencies' (DORA's) budget, and periodic sunset reviews provide research and analysis of Board performance.

Recommendation 7 – Grant the Board fining authority.

A key principle of effective regulation is establishing clear consequences for lack of compliance with the law. Administrative fining does just that. It is an enforcement tool currently used in other similar areas of state regulation.

This authority would give the Board greater flexibility in imposing penalties by allowing fines to be imposed in appropriate cases as an alternative, or in addition to probation or suspension of licenses. A fine imposes a penalty without affecting the licensee's ability to continue to work. This ability assists in tailoring the punishment to the violation, as a small fine can be levied for a minor violation without requiring action against the license itself.

Allowing the Board to assess fines would grant a powerful, cost-effective means of compelling compliance with the law.

For administrative fining to work effectively, the Board would need to develop a clear, meaningful fining structure, with maximum fines tailored to specific offenses, and establish a procedure guaranteeing due process.

Recommendation 8 - Statutory modifications.

Sunset reviews seek to identify areas of the statute under review that need “clean-up” amendments. These areas are identified through collaboration with board members, DORA staff, and the Assistant Attorney General of the Board:

Recommendation 8a - Repeal from sections 12-39-105(1)(a)(I)(A) and 12-39-105 (3)(a), C.R.S., “By no later than July 1, 1994.”

This is an outdated provision regarding specific Board duties that have been accomplished.

Recommendation 8b - Modify section 12-39-104(5), C.R.S., by changing the word “administrator” to “director.”

DORA has changed the title of the staff position that oversees this program.

Recommendation 8c - Repeal from section 12-39-104.5(1)(c), C.R.S., “in this state.”

Currently, Board membership requires that an NHA have been actively engaged as an NHA in Colorado for at least five years. This requirement creates an unnecessary restriction that may make it difficult to find Board members. Any Colorado-licensed NHA with the requisite experience and who meets the residency requirement should be permitted to serve on the Board if appointed by the Governor.

Recommendation 8d - Repeal the word “signed” (complaint) from section 12-39-105(1)(a)(V), C.R.S.

Limiting the investigatory powers of the Board to only situations in which a signed complaint has been filed may jeopardize public safety. The Board should be authorized to investigate whenever it has reason to believe that the law has been violated.

Recommendation 8e - Modify the terminology from “patient” to “resident” throughout the act.

This change more accurately reflects the population of a nursing home which will likely contain individuals who are not ill but simply cannot live independently.

Recommendation 8f - Modify section 12-39-106(2), C.R.S., by replacing “a written statement” with “evidence satisfactory to the Board.”

This section of the statute speaks to applying to take the examination for licensure. The current language is vague and may not cover appropriate documentation needed by the Board to evaluate an applicant’s qualifications.

Recommendation 8g - Repeal section 12-39-108(2), C.R.S., which states that “Any person holding a valid license as a nursing home administrator prior to July 1, 1993, shall be licensed under the provisions of this article without further application by said person.”

This language is outdated and should be repealed.

Recommendation 8h - Add language to section 12-39-113, C.R.S., “or other licensed health care professional” (in 4 separate lines).

This subsection grants the Board the authority to require a licensee or temporary license holder to submit to mental or physical examinations by a physician designated by the Board. Limiting the Board’s options to only physicians, especially in the case of mental examinations, is too limiting.