

STATE OF WEST VIRGINIA

**SUNRISE REPORT
ON THE**

LICENSING OF ASSISTED LIVING ADMINISTRATORS

**There Is Potential for Harm to Residents of Assisted
Living Facilities that Warrants Regulation of Assisted
Living Administrators**

**Regulating Assisted Living Administrators Would Be
More Effective and Efficient Through DHHR Than
By The Nursing Home Administrators' Licensing Board**

**NHALB's Sunrise Application Is Deficient and
Inaccurate in Many Areas**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

August 2001

JOINT STANDING COMMITTEE ON GOVERNMENT ORGANIZATION

House of Delegates

Vicki V. Douglas, Chair
Earnest (Earnie) H. Kuhn, Vice Chair
Frank T. Angotti, Jr.
Bonnie Brown
Greg A. Butcher
Joe DeLong
Timothy R. Ennis
Richard D. Flanigan
Barbara Hatfield
A. James Manchin
Dale Martin
Charlene J. Marshall
Warren R. McGraw II
Don C. Perdue
Paul E. Prunty
Dale Stephens
Kenneth D. Tucker
Scott G. Varner
Emily W. Yeager
Tom Azinger
Larry W. Border
John N. Ellem
Otis A. Leggett (Minority Chair)
John Overington
Ron Walters

Senate

Edwin J. Bowman, Chair
Billy Wayne Bailey Jr., Vice Chair
Mark Burnette
H. Truman Chafin
Lloyd G. Jackson II
Jeffrey V. Kessler
Brooks McCabe
Joseph M. Minard
Marie E. Redd
Larry L. Rowe
Herb Snyder
William R. Wooton
Donna J. Boley
Sarah M. Minear
Vic Sprouse

Aaron Allred, Legislative Auditor
Office of the Legislative Auditor

John Sylvia, Director
Performance Evaluation and Research Division

Brian Armentrout, Research Manager
Shannon Riley, Research Analyst

August 2001

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

August 19, 2001

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Sunrise Report on the *Licensing of Assisted Living Administrators*, which will be presented to the Joint Committee on Government Operations on Sunday, August 19, 2001. The issues covered herein are "There Is Potential for Harm to Residents of Assisted Living Facilities that Warrants Regulation of Assisted Living Administrators;" "Regulating Assisted Living Administrators Would Be More Effective and Efficient Through DHHR Than By The Nursing Home Administrators' Licensing Board;" and "NHALB's Sunrise Application Is Deficient and Inaccurate in Many Areas".

We conducted an exit conference with the Applicant on July 13, 2001, and we conducted an exit conference with the Department of Health and Human Resources on July 15, 2001. We received the Applicant's response on July 31, 2001, and a response from the Department of Health and Human Resources on July 31, 2001.

Let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

JS/wsc

TABLE OF CONTENTS

Finding 1:	There Is Potential for Harm to Residents of Assisted Living Facilities that Warrants Regulation of Assisted Living Administrators	3
Finding 2:	Regulating Assisted Living Administrators Would Be More Effective and Efficient Through DHHR Than By The Nursing Home Administrators' Licensing Board	5
Finding 3:	The NHALB's Sunrise Application Is Deficient and Inaccurate in Many Areas	9
Appendix A:	Transmittal Letters to Agencies West Virginia Nursing Home Administrators Licensing Board; and Department of Health and Human Resources	11
Appendix B:	Definition of Assisted Living Facilities	17
Appendix C:	Agencies Response West Virginia Nursing Home Administrators Licensing Board; and Department of Health and Human Resources	21

Sunrise Report on the Licensing of Assisted Living Administrators

Finding 1: There Is Potential for Harm to Residents of Assisted Living Facilities that Warrants Regulation of Assisted Living Administrators.

The Nursing Home Administrators' Licensing Board (NHALB) applied for licensure of *Assisted Living Administrators* under the state's Sunrise Law. "Assisted Living" is a generic term that is not defined or addressed in WV State Code or in Legislative Rules. It loosely refers to three types of facilities: *Personal Care Homes, Residential Board and Care Homes* and *Residential Care Communities*. The group of administrators affected by this application practice under Chapter 16, Articles 5D, 5H and 5N of the state code respectively. The statement which most often identifies these facilities is that they "provide personal services." A summary of the three types of facilities is provided in Appendix B. **The Legislative Auditor concludes that there is potential for harm in these facilities which warrants the need to have Assisted Living Administrators come under some form of regulation.**

Analysis of the Recommendation

One of the analysis requirements within the West Virginia Sunrise Legislation (WVC §30-1A-3) is to determine:

...Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public....

According to the applicant:

In the absence of regulations to qualify this occupational group for administrative practice, clients are at a risk since persons may or may not have management training exposure to clients of human behavior or organizational dynamics. Results can be heightened risk for abuse.

The NHALB also included within its application a letter from the Residential Program Manager for the WV Office of Health Facility and Licensure (OHFLAC) that provided an example of an incident that occurred in a assisted living facility. The letter stated the following:

The care home provider was negligent in complying not only with the RBC (Residential Board and Care) rules but also with the State Fire Code. Once compliance was achieved with the fire code, which required the installation of a fire alarm and sprinkler system in the home through the enforcement process, the

provider has continued to operate in violation of RBC rules as well as the Medication Administration Rule §16-50-1. This provider does not have a General Education Diploma (GED) and states that there is no intention of achieving this requirement. In a recent survey, the provider/administrator is administering medications which is in violation of the medication rule. Because of these actions, OHFLAC will continue with enforcement action against this provider because of continued non-compliance.

A letter from OHFLAC to the Legislative Auditor gave another example of harm regarding the same administrator. The letter stated the following:

The administrator/owner was not in the facility for two weeks and had not designated anyone to act as administrator. Residents were not being fed, because food companies would not deliver unless cash was received for payment. During the OHFLAC investigation, the administrator/owner sold the facility. The facility's new owner is in the process of correcting all violations. As of June 12, 2001, an administrative law judge has ordered the closure of the facility.

From these examples it can be seen that assisted living administrators are required to follow not only statutes that pertain to their facilities and the personnel who provide physical attention to individuals who cannot completely care for themselves but also other laws such as fire code requirements, education requirements, and other statutory requirements such as prohibiting the dispensing of medication by unqualified personnel.

Nationally, the number of people who will need help with daily activities is projected to increase by 51 per cent in the next 20 years. The number of licensed facilities has increased by 30 per cent since 1998. Today, more than 500,000 people, with an average age of 84, live in assisted living facilities across the nation. Most residents require help with at least three activities of daily living, such as eating, bathing, toileting, dressing and walking. One industry survey found that nearly half of residents suffered from mild dementia or early to mid-stage Alzheimer's disease.¹ Given the actual and potential harm to this vulnerable population, regulation of this profession is justified.

¹Lieberman, Trudy. "Is Assisted Living the Right Choice?" Consumer Reports Jan. 2001: 26.

Finding 2: Regulating Assisted Living Administrators Would Be More Effective and Efficient Through DHHR Than By The Nursing Home Administrators' Licensing Board.

Although it has been concluded that some form of regulation of assisted living administrators is needed, there are several reasons that suggest that DHHR through OHFLAC regulate this profession instead of the Nursing Home Administrators' Licensing Board. These reasons are as follows:

OHFLAC is currently required by law to provide some of the oversight of assisted living facilities. It inspects the facilities of assisted living administrators, the inspection also includes an evaluation of the administrator and a background check through the State Police, and it provides ten hours of training to administrators. Consequently, OHFLAC is in a better position to effectively oversee the administrators of these facilities and respond quicker to complaints than the Board. Any additional oversight responsibilities could be amended into the code. Licensure may not be necessary, but instead OHFLAC may only need to require certification through passing an examination, or administratively or statutorily require certain educational qualifications.

The Board is financially unstable and has received loans totaling over \$27,000 from DHHR to make payroll during the last several years. The Board still owes DHHR over \$19,000. Evidence suggests that a primary motive for wanting to regulate assisted living administrators is to receive additional revenue.

The Board's complaint process does an inadequate job in documenting the Board's final action on complaints it receives. The Board received six Substandard Card Notices from OHFLAC during the last three years; however, there is no evidence of the Board's final action in five of the six notices.

Analysis of the Recommendation

DHHR Is Mandated to Provide Oversight of Assisted Living Facilities

DHHR is mandated by West Virginia Code §16-5D, §16-5H and §16-5N to provide oversight of assisted living facilities. Oversight is conducted through the Office of Health Facility Licensure and Certification (OHFLAC). DHHR has the following authority concerning assisted living facilities:

1. License and inspect assisted living facilities.

2. Establish and enforce standards related to staffing, safety, sanitation, dietary services, and other requirements.
3. Investigate complaints.
4. Suspend or revoke facility licenses.
5. Offer and sponsor educational training to administrative, management and operational personnel of a facility. It performs oversight reviews which are based on detailed facility licensing inspections, correspondence, complaint investigations, supporting licensure file data and the degree of compliance that facilities demonstrate.

It is the Legislative Auditor's opinion that current law provides some measure of protection to residents of assisted living facilities through DHHR. It would be more efficient to extend DHHR's authority to include establishing credential or education requirements of the assisted living administrators. This additional measure combined with current law should be adequate protection to the public. OHFLAC is in a better position to protect the residents of these facilities and address complaints quicker than the Board. This is illustrated in that over the last three years the Board has received six complaints, all of which came from OHFLAC.

The Board is Not Financially Stable

One of the major reasons that the NHALB should not be permitted assume licensure of assisted living administrators is because of questions of its financial stability. The Board began having insufficient funds to cover payroll in 1994. As a result, DHHR has loaned the Board over \$27,000. Despite fee increases in 1997, the Board still owes an outstanding loan balance of \$19,932 to DHHR.

A review of meeting minutes from December 1996 to November 2000 indicates the following discussions regarding the Board's desire to license assisted living administrators:

*Dr. Farley informed the Board of his meeting with Governor Underwood, with Joan Ohl, Cabinet Secretary for DHHR, and Dr. Henry G. Taylor, Commissioner for the Bureau of Public Health also present. He explained, within this meeting, the question arose, what agency should oversee the credential/licensing of assisted living caretakers in personal care homes. Dr. Farley expressed the Board's interest in acting as an agent to credential those persons and said he received a favorable response from all present. **He further explained the potential economic benefits for the Board** and stated if in the future this situation should occur, **it would give the Board more justification for existence.** [December 2, 1999]*

*Dr. Farley informed the Board of his talks with Dr. Taylor, Commissioner of DHHR and John Wilkinson, Director of the Office of Health Facility Licensure [and] Certification regarding the need for licensing assisted living administrators, while conveying the Board's interest in overseeing this licensing. **He explained the board could acquire the much-needed revenues by overseeing the licensing of assisted living administrators.** He stated that both were in favor of the NHALB handling this licensing. He further stated that presently there is no national standard for assisted living administrators.... [June 1, 2000]*

The Legislative Auditor is concerned about the Board's ability to license assisted living administrators as well as the Board's motivation for wanting to do so.

The Board's Complaint Process is Inadequate

The Board has not received a direct complaint from the public against a nursing home administrator in three years. It receives its complaints in the form of sub-standard care notices that it receives from OHFLAC. In six of the seven the sub-standard care notice cases provided to Legislative Auditor, the Board failed to show the outcome of the investigation. A second sub standard care notice is discussed in the March 2, 2000 meeting minutes, however no documentation of this case was provided to the Legislative Auditor.

In one case in which a resident died while improperly restrained OHFLAC also found three residents who were also improperly restrained at the same facility. The Board contacted the administrator, who responded to the Board's request for *a one-page description that captures the essence of all allegations*. After reviewing the administrator's response, the Board determined that no further information was required. The Board contacted the administrator again after receiving a second Substandard Care Notice from OHFLAC. Because the administrator resigned, the Board neither investigated the case, nor revoked the administrator's license. This administrator was not sanctioned and still has her license and is able to continue working as a nursing home administrator.

Finding 3: The NHALB's Sunrise Application Is Deficient and Inaccurate in Many Areas.

The sunrise application for assisted living administrators prepared by the NHALB had deficiencies and inaccuracies. None of the individuals who signed the sunrise application worked in residential board and care facilities which constitutes the largest sub-group of assisted living administrators at approximately sixty percent of the potential licensees. The sunrise application, the Board stated, "There are no regulations for establishing and maintaining qualifications for persons practicing as assisted living administrators." This is inaccurate. There are statutes in the *Code*, WVC §16-5D pertains to personal care homes, WVC§16-5N pertains to residential board and care and WVC§16-5H pertains to residential care communities. There are also legislative rules, 64CSR14 addresses personal care homes, 64CSR65 addresses Residential Board and Care Homes and 64CSR75 addresses residential care communities. Both, state statutes and legislative rules are enforced by DHHR. The Board has yet to create or adopt an examination for assisted living administrators. It failed to identify that private credentialing does exist through the Assisted Living Federation of America (ALFA) which offers a national certification examination. It failed to provide a detailed fee structure conforming to financial requirements of financial autonomy. With regard to experience and examination requirements, the Board has yet to establish them. Also, the Board didn't provide a copy of proposed legislation with the sunrise application.

Recommendation 1

The Legislative Auditor recommends that the Nursing Home Administrators' Licensing Board not be permitted to assume licensure of assisted living administrators. The Legislature should consider extending the Department of Health and Human Resources' authority to include a credential or educational requirement for assisted living administrators.

APPENDIX A

Transmittal Letters to Agencies: West Virginia Nursing Home Administrators Licensing Board; and Department of Health and Human Resources

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

July 11, 2001

Alberta Slack, Director
WV Nursing Home Administrators Licensing Board
5303 Kensington Drive
Cross Lanes, West Virginia 25313

Dear Ms. Slack:

This is to confirm an exit conference to discuss the Regulatory Board Evaluation of the *Nursing Home Administrators Licensing Board* and the Sunrise Application for Assisted Living Administrators is scheduled with the Board's representatives on Thursday July 12, 2001 at 10:00 a.m. in our office. A copy of the Regulatory Board Evaluation is being transmitted so that you may review it before the meeting.

These reports will be presented to the Legislative Joint Committee on Government Operations during the August interims. A written response to the Regulatory Board Evaluation is due in our office by noon on Monday, July 23, 2001. If you or your staff have any questions regarding this matter, or are unable to attend this meeting, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Brian Armentrout".

Brian Armentrout
Research Manager

Attachment

Joint Committee on Government and Finance

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

July 11, 2001

Paul L. Nusbaum, Secretary
Department of Health and Human Resources
Building 3, Room 206
Charleston, West Virginia 25305

Dear Secretary Nusbaum:

This is to confirm our exit conference scheduled on Friday, July 13, 2001 to discuss the Regulatory Board Evaluation of the *Nursing Home Administrators Licensing Board* and the Sunrise Application for Assisted Living Administrators. We are transmitting a copy of the Regulatory Board Evaluation so that you may review it prior to the meeting.

These reports will be presented to the Legislative Joint Committee on Government Operations during the August interims. If you or your staff have any questions regarding this matter, or are unable to attend this meeting, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Brian Armentrout".

Brian Armentrout
Research Manager

Attachment

c: John M. Wilkinson, OHFLAC Director

Joint Committee on Government and Finance

APPENDIX B

Definition of Assisted Living Facilities

Personal Care Home: Individuals are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care. Residents of Personal Care Homes require a higher level of care than residents in other types of assisted living facilities;

Residential Board and Care Home: Individuals are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but are capable of self-preservation and are not bedfast. These residents require a moderate level of care and/or supervision;

Residential Care Communities: Only individuals capable of self preservation are admitted. A resident who becomes incapable of self-preservation subsequent to admission may remain in the residential care community for 90 days during a temporary illness or recovery from surgery if the resident does not require nursing care. These residents require the least amount of care and/or supervision.

APPENDIX C

Agencies Response: West Virginia Nursing Home Administrators Licensing Board; and Department of Health and Human Resources



WV NURSING HOME ADMINISTRATORS LICENSING BOARD

5303 KENSINGTON DRIVE

CROSS LANES, WEST VIRGINIA 25313

PHONE (304) 759-0722

FAX (304) 759-0724

July 27, 2001

RECEIVED

JUL 31 2001

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Mr. Brian Armentrout, Research Manager
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

RE: Sunrise Report on the Licensing of Assisted Living Administrators

Dear Mr. Armentrout:

In behalf of the West Virginia Nursing Home Administrators Licensing Board (WVNHAB), thank you and the members of the Performance Evaluation and Research Division (PERD) for the meeting held in your offices on July 12, 2001. The exchange was meaningful and hopefully enlightening to all concerned. Yet, since there was no indication our conversation would influence substantive change in the content of the draft of the Sunrise Report, I am assuming it will be finalized as presented and will be dispatched to the Joint Standing Committee on Government Organization for consideration in Canaan Valley in August.

Relative to Finding 1, pages 3 and 4, from my perspective, the point establishes the West Virginia Nursing Home Administrators Licensing Board's principal reason for choosing to begin a process that would lead to licensing assisted living administrators, executive directors, or managers. The Board believes practice in a profession is a privilege and not a natural right for individuals. Thus, licensing of such persons would be in the public's best interest. The Board endorses Finding 1.

Regarding Finding 2, pages 5 through 8, conclusions reached by your office are premature relative to allowing the Board sufficient time to fully develop the Sunrise Application. This position is taken for the following reasons: 1) When the Sunrise Application process was first introduced to the Board in September 2000, the concept was new to the Board and the Board's director. In a meeting with Ann W. Lambright, Esq., and Brenda Thompson, Esq., counsel for the Committee on Government Organization on September 6, 2000, the program was explained, saying that the Nursing Home Administrators Licensing Board was the first licensing board in West Virginia to undertake the challenge of completing the process. Both attorneys were straightforward and helpful in indicating the first step would be completion and filing of the application by December 1, 2000,



Mr. B. Armentrout
July 27, 2001
2

likely to be followed by various recommendations for improvement as it moved through various reviewing agents during 2001. I was assured assistance would be available along the way in a wholesome spirit of cooperation and good faith.

On February 14, 2001, a meeting was held in your offices with you, Ms. Shannon Riley and representatives from the Licensing Board to discuss the application. The exchange was informational. Following that meeting, varied contacts were made by Alberta Slack, director of the Licensing Board, with your office relative to the application. As I recall, Mrs. Slack was told some disposition should be available to the Board sometime in June 2001. As you know, findings were not released until your letter of July 9, 2001 was submitted indicating a meeting would be held in your offices on July 12, 2001 at 10:00 a.m. To say your timing was short would be an understatement. Further, upon reading the conclusions, I quickly realized the "good faith" and notion that the application was a work in progress as explained to me by attorneys Lambright and Thompson, apparently had changed. As I understand the position taken on page 5, you must have reviewed the Board's work as a final product with allegations to follow in Finding 3, page 9, which inappropriately strikes at the heart of the licensing Board's credibility.

In Finding 2, page 6, relative to the Board's financial challenges, consideration of the issue at this time in the Sunrise Application is hasty. In part, rationale can be found in the Regulatory Review Evaluation on the WVNHALB. It should be noted where the legislative auditor questioned the Board's motives, page 7, for wanting to license assisted living administrators (executive directors, managers), in reality, the financial logic is sound. Yet, the Board's major driving force for choosing to pursue the matter was pure and relative to its concern for the public trust for caring for people in need.

The decision around the Board's complaint process on page 7 is irrelevant to the Sunrise Application. The reason being, such standards are absolutely germane to nursing homes, not assisted living facilities. Also, at the appropriate time when draft legislation and regulations would be available, an appropriate product for assisted living speaking to complaints would be defined. Thus, to consider the topic now is imprudent.

Relating to Finding 3, page 9, the quote found in line five, beginning "There are no regulations . . ." was related to question 11 in the Sunrise Application. The point made in responding to the question focused on criteria for licensing to include testing, criminal record checks, formal education, etc. The statement made in the application was aimed at individuals and the need for legislation and regulations to address persons. The reply was not targeted toward organizations as the *Code* in Chapter 16 takes care of this matter.

Finally, on the subject of private credentialing, as stated, the Assisted Living Federation of America (ALFA) along with the National Association of Boards of Examiners of Long-Term Care Administrators (NAB) and the American College of Health Care Administrators (ACHCA), all offer

Mr. B. Armentrout

July 27, 2001

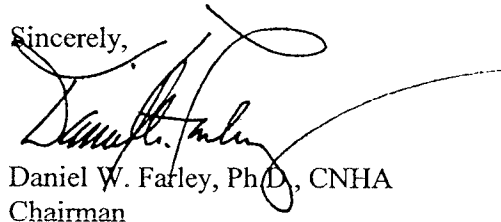
3

exams at the national level. Criteria measured is general to the field of assisted living and does not address WVNHALB's interest to measure an administrator's, executive director's, or manager's knowledge of specific regulations (WVC §16-5D, personal care; WVC §16-5H, residential board and care; WVC §16-5N, residential care communities) for the type of entity in which a person practices. In assisted living, unlike nursing homes, there is no national standard for administrators, executive directors, or managers to meet. The reason, as I recall, in the late 1960s, federal law established a baseline for nursing homes by change in the Social Security Act and the creation of the Medicaid program. To date, similar action has not occurred by the federal government for assisted living. Thus, the WVNHALB's reason for believing testing on state specific regulations for the type of facility operated is in the public's interest to make sure the administrator, executive director, or manager possesses knowledge required to operate a quality organization.

It is the hope of the Nursing Home Administrators Licensing Board that the Joint Standing Committee on Government Organization will set aside Recommendation 1 on page 9 and allow the Board to continue with its task to fully develop the Sunrise Application. With assistance and time to do the work as promised in the fall 2000, I am certain the Board will see that a complete and thorough application is the result.

If this letter generates questions requiring a reply prior to the August interims, please let me know. Otherwise, I will look to appear before the Committee in Canaan Valley and respond to inquiries.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel W. Farley", with a long, sweeping horizontal line extending to the right.

Daniel W. Farley, Ph.D., CNHA
Chairman

rw



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bob Wise
Governor

Office of the Secretary
State Capitol Complex, Building 3, Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-0684 Fax: (304) 558-1130

Paul L. Nusbaum
Secretary

July 31, 2001

Mr. Brian Armentrout, Research Manager
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

RECEIVED

JUL 31 2001

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Dear Mr. Armentrout:

Thank you for the opportunity to comment on the draft Sunrise Report on the licensing of assisted living administrators and the regulatory board evaluation of the Nursing Home Administrators' Licensing Board.

Sunrise Report on the Licensing of Assisted Living Administrators

The Department of Health and Human Resources (DHHR) concurs with the applicant and the Legislative Auditor that "there is a potential for harm to residents of assisted-living facilities that warrants regulation of assisted-living administrators." This could be accomplished by licensing individual administrators through an independent professional board. With passage of enacting legislation and the promulgation of rules, this could be done through the Nursing Home Administrators' Licensing Board, although a name change for that board would be required as well as some reorganization. Studied consideration should also be given to including administrators for residential board and care homes under the purview of this revamped board as RB&Cs are a critical piece of the long-term care continuum in West Virginia.

Regulatory Board Evaluation of the Nursing Home Administrator's Licensing Board (NHALB)

Likewise, we concur with both the NHALB and the Legislative Auditor that the regulation of nursing home administrators is necessary. While it may seem more efficient for DHHR to oversee this profession, additional consideration must be given to determine whether this is either more effective or desirable.

Mr. Brian Armentrout, Research Manager
Page Two
July 30, 2001

DHHR may not have the authority to oversee nursing home administrators unless through an independent board arrangement. According to 42 USC §1396g(b), "licensing of nursing home administrator will be carried out by the agency of the State responsible for licensing under the healing arts, or, in the absence of such act or such agency, a board representative of the professional and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section."

Definitions and further clarification are further provided in the Code of Federal Regulations at 42 CFR 431.700 - 715 which raise the question of whether DHHR has or can develop the structure needed to satisfy the federal oversight requirements without jeopardizing Medicaid reimbursement. For this reason more study of the proposal is suggested.

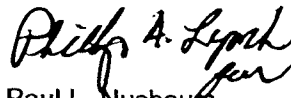
The Office of Health Facility Licensure and Certification (OHFLAC), as its name implies, has traditionally licensed facilities and not professionals. It may prove extremely unseemly and generate at least the perception of being unfair if OHFLAC licenses or certifies both the facility and the administrator. The possibility of perceived conflicts of interest seems apparent.

One must also consider whether there is created a potential bias for or against administrators in facilities that are not under enforcement by OHFLAC and those that are. Certainly having an independent body, as now exists, licensing administrators and having OHFLAC separately licensing facilities prevents any perception that a conflict of interest exists. In addition, while the audit report found that the NHALB did not perform optimally when investigating administrators, the continued separation of OHFLAC from NHALB provides for a second entity to protect some of the most vulnerable West Virginians.

If the board is reconfigured with an expanded scope, including complaint investigation, its fiscal soundness must be ensured.

Thank you again for the opportunity to comment on these important reports.

Sincerely,



Paul L. Nusbaum
Secretary

PLN/jw

cc: Henry G. Taylor, M.D., M.P.H.
John M. Wilkinson