

STATE OF WEST VIRGINIA

REGULATORY BOARD EVALUATION

Nursing Home Administrators' Licensing Board

**While Regulation of the Practice
of Nursing Home Administration
is Necessary, the Licensure Board
is Not Necessary**

**Board does not Comply with
Significant Requirements of State Law**

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

**CHARLESTON, WEST VIRGINIA 25305
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August 2001

PE01-14-213

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August 2001

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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 Regulatory Board Evaluation of the *Nursing Home Administrator's Licensing Board*, which will be presented to the Joint Committee on Government Operations on Sunday, August 19, 2001. The issues covered herein are "While Regulation of the Practice of Nursing Home Administration is Necessary, the Licensure Board is Not Necessary;" and "The Board Does Not Comply with Significant Requirements of State Law".

We conducted an Exit Conference with the Nursing Home Administrator's Licensing Board 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 agency response from the Nursing Home Administrator's Licensing Board on July 31, 2001, and a response from the Department of Health and Human Resources on the Regulatory Board Evaluation of the Nursing Home Administrator's Licensing Board July 31, 2001.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in blue ink.

John Sylvia

JS/wsc

TABLE OF CONTENTS

Executive Summary	3
Review Objective, Scope and Methodology	5
Issue 1: While Regulation of the Practice of Nursing Home Administration is Necessary, the Licensure Board is Not Necessary	7
Issue 2: The Board does not Comply with Significant Requirements of State Law	11

LIST OF TABLES

Table 1: Substandard Care Notices Sent from OHFLAC to the Board	12
Table 2: Licensing Fees in West Virginia and Bordering States	13
Table 3: Board Expenditures, Revenue and Loan Balance	14
APPENDIX A: Transmittal Letters to Agencies: Nursing Home Administrators Licensing Board; and Department of Health and Human Resources	19
APPENDIX B: 50 States' Application and Licensing Fees	25
APPENDIX C: Agencies Response	29
West Virginia Nursing Home Administrators Licensing Board; and Department of Health and Human Resources	

Executive Summary

Issue 1: Regulation of Nursing Home Administrators Is Necessary, However It Would Be More Effective And Efficient For DHHR to Oversee This Profession Than For The Licensure Board.

This report is a *Regulatory Board Evaluation* which means that a determination of whether or not the board is necessary for the protection of public health and safety must be made. The primary finding of this regulatory review is that nursing home administrators should be regulated; however, the licensure board is not necessary to oversee this profession. This conclusion is based on the following reasons:

1. The board is financially unstable and has received over \$27,000 from DHHR to make payroll over the last several years.
2. The Board's complaint process has a major deficiency in that there is no record of what action the Board took on most complaints.
3. The Office of Health Facility Licensure and Certification (OHFLAC) provides oversight of the profession through its inspection of facilities.

Until recently, the federal government required that nursing home administrators be licensed, in order for states to receive Medicaid and Medicare funding for nursing home care. The federal regulation was amended and now states that: *[The administrator must be] licensed by the State where licensing is required...* Several states have already done away with licensure boards for nursing home administrators and regulate the profession through administrative offices associated with Public Health.

Recommendation 1:

The Legislative Auditor recommends that the Legislature consider terminating the Nursing Home Administrators Licensing Board and transferring this function to the Division of Public Health within the Department of Health and Human Resources.

Issue 2: The Board Does Not Comply with Significant Requirements of State Law.

All professional licensing boards are required to comply with the general provisions of state law, as well as the specific requirements in the board's own section of the state code. The Legislative Auditor found three major deficiencies in the Board's operation. First, evidence suggests that the Board does not comply with its procedures in having site visits of facilities when it receives

two Sub-Standard Care Notices from OHFLAC in a twenty-four month period, and there is a lack of documentation showing how the Board resolved these complaints if they were resolved at all. Second, the Board is not financially self-sufficient as required by law. Consequentially, DHHR has loaned the Board over \$27,000 to meet payroll, which is an inappropriate arrangement. Finally, the Board did not produce or submit annual reports tot he Governor or to the Legislature as required by state law.

Recommendation 2:

If the Legislature chooses not to terminate the Nursing Home Administrator's Licensing Board, the following are recommended:

- a) The Board should take the necessary action to become financially self sufficient which includes being able to pay back the DHHR loan balance within a reasonable amount of time.*
- b) The Department of Health and Human Resources should remove the Board from its payroll so as to eliminate the need for DHHR to loan the Board funds.*
- c) The Board should improve its documentation of how it resolved complaints against nursing home administrators including notifying administrators in writing of the resolution.*
- d) The Board should continue to file annual reports, as required by law. In these reports, the Board should provide accurate and complete financial information, by reporting the balance of the loan as well as payments to DHHR. In addition, the reports should provide all other information pursuant to WVC §30-1-12(b).*

Review Objective, Scope and Methodology

This Regulatory Board Evaluation of the *Nursing Home Administrators' Licensing Board* was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code* as amended. The Board requested authority to regulate *Assisted Living Administrators* by submitting a Sunrise Application. Although the Board was scheduled for a Regulatory Board Evaluation by 2008, the Legislative Auditor determined that the Board needed to be reviewed in conjunction with its Sunrise application.

Objective

As stated in the *Code*, a regulatory board review is to determine whether 1) continuation is in the public's interest, and 2) whether the Board is operating in compliance with applicable laws and rules.

Scope

The regulatory board evaluation covers the period from 1997 to 2000. The Legislative Auditor examined: complaint procedures and resolutions; substandard care notices; continuing education requirements; financial information; meeting minutes; annual reports and the licensing structures of other states. The Legislative Auditor also determined if the Board was compliant with the general requirements of Chapter 30 and with the Board's specific requirements within its governing statute.

Methodology

Information compiled in this report has been acquired from the West Virginia *Code*, interviews with the Board and its staff, annual reports, meeting minutes, complaints and expenditure schedules. This review was conducted in compliance with Generally Accepted Government Auditing Standards (GAGAS).

Issue 1: Regulation of Nursing Home Administrators Is Necessary, However It Would Be More Effective And Efficient For DHHR to Oversee This Profession Than For The Licensure Board.

This report is a *Regulatory Board Evaluation* which means that by law a determination of whether or not the board is necessary for the protection of public health and safety must be made. The primary finding of this regulatory review is that **nursing home administrators should be regulated; however, the licensure board is not necessary to oversee this profession.** The Board was created at a time when the Federal government required nursing home administrators to be licensed by the state in order for nursing homes to receive Medicaid reimbursement. However, federal law was recently amended to require licensure only if the state required licensure. Furthermore, in terms of effectiveness and efficiency, the Department of Health and Human Resources (DHHR) is in a better position to oversee this profession. This conclusion is based on the following reasons:

1. **The Board is financially unstable and has received over \$27,000 from DHHR to make payroll over the last several years.**
2. The Board's complaint process has a major deficiency in that there is no record of what action the Board took on most complaints.
3. The Office of Health Facility Licensure and Certification (OHFLAC) within DHHR has always provided oversight of the performance of nursing home administrators through its inspection of the facilities and receiving complaints. OHFLAC's inspection of facilities also includes an evaluation of the administrator. OHFLAC is at the forefront of nursing home oversight, not the Board. Since OHFLAC has first-hand knowledge of problems in nursing homes it can respond faster than the Board and is in a better position to effectively oversee this profession. It is inefficient to have two state agencies provide oversight of a profession. The primary distinct function that the Board performs is the administration of the licensing examinations, a responsibility which DHHR can assume.

Regulation of the Profession is Needed

In determining if there is a need for the Nursing Home Administrator's Licensing Board, a primary consideration is whether the unregulated practice of the profession clearly harms or endangers the health, safety or welfare of the public. Nursing Home Administrators are responsible for facilities and personnel who provide physical and medical attention for individuals who cannot completely care for themselves. Residents in nursing homes are elderly and have physical and mental impairments. There are federal and state requirements that the administrator must have

knowledge of to ensure the safety of the residents of the facility. It is clear that negligence or incompetence on the part of an administrator could endanger the lives of residents of nursing homes.

More Effective Oversight is Possible By DHHR than By The Board

The Legislative Auditor found that the Board is financially unstable and has received significant financial support from DHHR (this is discussed in greater detail in Issue 2). It also does not provide the outcome of its investigations of sub-standard care notices referred to it by OHFLAC (see Issue 2). OHFLAC is in a better position to provide more effective oversight of this profession. OHFLAC performs oversight reviews of nursing homes (and other health facilities) which are based on detailed facility licensing inspections, correspondence, complaint investigations, supporting licensure file data and the degree of compliance that facilities demonstrate. During certification reviews, the nursing home administrator is also evaluated to ensure that the care given in the facility is in accordance with professional standards and principles.

The Board has not received any complaints directly from the public over the last three years. This is likely explained by the fact that many complaints on nursing homes are received by the West Virginia Long Term Care Ombudsman. In fiscal year 1999, the Ombudsman spent 4,362 hours investigating 1,428 complaints involving nursing homes. Nursing facilities account for 75.9% of complaints received by the Ombudsman between October 1998 and September 1999. Also, Adult Protection Services within DHHR receives complaints on nursing homes. Over the last three years, the only complaints the Board has received are six sub-standard care notices from OHFLAC. As Issue 2 discusses in greater detail, there is no record of how these complaints were resolved or if they were resolved at all. **This illustrates that the Board is not at the forefront of nursing home regulation, instead it is other state agencies.**

Until recently, the federal government required that nursing home administrators be licensed, in order for states to receive Medicaid and Medicare funding for nursing home care. The federal regulation was amended and currently, 42 CFR 483.75(d)(2)(i) states that: *[The administrator must be] licensed by the State where licensing is required....* Therefore, the Health Care Finance Authority (HCFA) reported to the Legislative Auditor that it defers to the state in the matter of administrator licensing. HCFA does not require nursing home administrators to be licensed unless the state has such requirements. If the state of West Virginia changed the structure of licensure or completely did away with the licensure requirement, federal reimbursement of Medicaid and Medicare nursing home expenses would not change. **Since the Board was established out of a response to federal law requiring licensure, the Board's existence is not essential.**

The primary function the Board serves is the administration of the licensing examinations. The National Association of Boards of Examiners for Long Term Care Administrators (NAB) is a national association that offers a national exam and licensure. NAB develops the exams, testing guidelines and materials. It offers computer based testing at two sites in West Virginia: Charleston and Morgantown. The Board requires applicants to pass the NAB national exam. Although NAB also offers a West Virginia specific exam, the Board has opted to offer its own state exam directly

to applicants in addition to the national exam. An applicant is required to pass both the state and national exams to be eligible for a license to practice in the state of West Virginia. It is the Legislative Auditor's opinion that DHHR can administer the examination function.

Several states have already done away with licensure boards for nursing home administrators. California, Connecticut, Hawaii, New Jersey and Texas license nursing home administrators through administrative offices associated with public health. In determining the extent to which the Nursing Home Administrator's Licensing Board had operated in the public interest, the Alaskan Division of Legislative Audit stated:

We have determined that a public need for the Board of Nursing Home Administrators (BNA) has not been demonstrated. Public protection is provided by State licensing and certification of nursing homes in the State.

Conclusion

The Legislative Auditor has determined that since there is no federal requirement for Nursing Home Administrators to be regulated unless the state requires regulation, because the Board is financially unstable and it does not adequately document the results of its complaint investigations, and DHHR is in position to oversee this profession more effectively through its inspection of nursing home facilities, the Board is not necessary. In terms of effectiveness and efficiency DHHR should assume the responsibility of overseeing this profession to the extent it feels is necessary, that is by full licensure, certification or some other means.

Recommendation 1:

The Legislative Auditor recommends that the Legislature consider terminating the Nursing Home Administrator's Licensing Board and transferring this function to the Division of Public Health within the Department of Health and Human Resources.

Issue 2: The Board Does Not Comply with Significant Requirements of State Law.

All professional licensing boards are required to comply with the general provisions of state law, as well as the specific requirements in the board's own section of the state code. The Legislative Auditor found three major deficiencies in the Board's operation. First, evidence suggests that the Board does not comply with its procedures in having site visits of facilities when it receives two Sub-Standard Care Notices from OHFLAC in a twenty-four month period, and there is lack of documentation showing how the Board resolved these complaints if they were resolved at all. Second, the Board is not financially self sufficient as required by law. Consequently, DHHR has loaned the Board over \$27,000 to meet Board payroll which is an inappropriate arrangement. Finally, the Board did not produce or submit annual reports to the Governor or to the Legislature as required by state law.

The Board Does Not Sufficiently Investigate or Resolve Complaints Against Licensees.

The complaint process is an important tool for protecting the public and insuring that licensees maintain high standards of practice in their profession. The protection of the public interest must be balanced against the rights of those accused of impropriety. Although the Board does provide due process rights for applicants and licensees in its complaint process, it fails to document the Board's final decision or how the complaint was resolved.

The only complaints the Board has received over the last three years are in the form of Sub-Standard Care Notices received from OHFLAC. The Board has received six such notices during this time period. According to Board procedure, if the Board receives more than one notice on a facility in a twenty-four month period, a site visit is required. Table 1 shows that the Board is responsive and timely in notifying nursing home administrators when a Sub-Standard Care Notice has been received from OHFLAC. The Board also obtains the administrator's response to the complaint in a timely manner. However, Table 1 also shows that the Hidden Valley facility received two notices within a three month period, yet there is no documentation of a site visit as required by Board policy. Furthermore, there is no documentation on the outcome of these cases. There is no discussion in the minutes whether the Board disciplined an administrator or if the complaint was determined unsubstantiated. If a complaint was determined unsubstantiated or no violation occurred, the administrator should have been notified by the Board.

Table 1
Substandard Care Notices Sent from OHFLAC to the Board

Date of Sub Standard Care Notice	Letter from Board to Administrator	Date of Administrator's Response	Date of Board's response to Administrator's letter.	Facility Name
November 9, 2000	November 20, 2000	December 4, 2000	not provided	Valley View
October 3, 2000	October 16, 2000	October 26, 2000	October 30, 2000	Boone Health Care Center
October 4, 2000	October 16, 2000	October 16, 2000	not provided	Hidden Valley
August 22, 2000	September 15, 2000	September 27, 2000	not provided	Mingo Manor
August 1, 2000	August 3, 2000	August 7, 2000	August 20, 2000	Hidden Valley
August 1, 2000	August 3, 2000	August 8, 2000	August 10, 2000	Point Pleasant Center
February 12, 1999	March 22, 1999	March 30, 1999	not provided	Hollbrook

Source: 2001 PERD analysis of documents provided by the Nursing Home Administrator's Licensing Board.

In the case of the Hidden Valley notices, a resident died while improperly restrained. OHFLAC, in its investigation, found three other 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. The Board neither investigated the case, nor revoked the administrator's license because the administrator resigned. This administrator was not sanctioned and is therefore able to continue working as a nursing home administrator elsewhere.

The Board Is Not Financially Stable.

Chapter 30 boards are required by West Virginia code §30-1-6(c) to set fees which shall be sufficient to enable boards to effectively carry out their responsibilities. The Nursing Home Administrator's Licensing Board has set its fees by rule, however, the Board began having insufficient funds to cover payroll in late 1994. DHHR has transferred funds to the Board several times over the last several years so that the Board could meet its payroll. The Board's payroll is part of the DHHR Division of Health's payroll. Through FIMS, the state's EPICS system performs a *liquidity check* to ensure that general and special revenue funds contain enough cash to cover payroll. Because DHHR submitted the payrolls on a single cover sheet, the Board's inadequate funds would have caused all special and general revenue funded payrolls on the cover sheet to fail the EPICS system check. DHHR's transfer of funds allowed Board personnel and DHHR employees to receive paychecks on time.

The Board reports that it attempted to raise fees in 1994 and 1995. In 1997, the Legislature approved fee increases, which doubled the annual license fee to \$200. A comparison of West Virginia's current fee structure is available in Table 2.

Table 2
Licensing Fees in West Virginia and Bordering States

State	Number of Licensees	Application Fee	Renewal Fee
Kentucky	864	\$50	\$100 (biennial)
Maryland	600	\$100	\$100 (biennial)
Ohio	1985	\$150	\$210 (annual)
Pennsylvania	2161	\$30	\$108 (biennial)
Virginia	790	\$150	\$125 (annual)
West Virginia	257	\$400	\$200 (annual)

As seen in Table 2, application fees for nursing home administrator's are higher in West Virginia than in bordering states, while renewal fees are second highest. A national comparison shows that West Virginia has comparatively higher fees than most other states. Only Ohio and Washington have higher annual renewal fees. Three states have annual rates under \$20 and ten states have annual rates under \$50. (Licensing fee breakdowns for all states are available in Appendix C). The Board stated to the Legislative Auditor that:

In looking at the fee structure in surrounding States, we find our fees are higher due to having fewer administrators within our State in which to cover administrative costs.

With approximately 257 licensees paying \$200 annually for a license, the Board can depend on revenues of \$51,400. Despite the fee increase, the Board's revenue once again became insufficient in January 2000. Consequently, the Division of Health transferred funds in January, February and March of 2000. The total amount transferred over the last several years is over \$27,000, and the outstanding loan balance is \$19,932. These loans conflict with WVC §30-1-6 and WVC §30-25-7 which stipulate that the Board is to be self-sufficient and operate by the fees it collects. Meeting minutes indicate that in February 2000, the Chairman informed the Board that DHHR was no longer willing to cover the Board's deficit. DHHR suggested that the Board cut its expenses, specifically targeting the Board's rent. With the urging of DHHR, the Board moved its office into its Executive Director's home. Despite these actions, the Board is still unable to make payment on its loan from DHHR.

Revenue, expenditures, account balances and loan balances for the current and past four fiscal years are available in Table 3. From looking at the fiscal year-end account balances, it looks as if the Board is financially stable. However, much of the year-end balance is the result of funds loaned to the Board by DHHR, as can be seen from the loan balance that remains unpaid. Even if the amount of the agency's loan was subtracted from its account balance, the agency would still have money left over, yet the Board reports cash flow problems during the year.

**Table 3
Board Expenditures, Revenue and Loan Balance**

Fiscal Year	Revenue	Expenditures	Year End Balance	Loan Balance	Year End Balance minus Loan Balance
2001*	\$16,600	\$39,272	n/a	\$19,932	n/a
2000	\$66,061	\$63,086	\$27,158	\$19,932	\$7,226
1999	\$53,627	\$61,213	\$24,183	\$18,928	\$5,255
1998	\$63,303	\$58,468	\$31,769	\$17,928	\$13,841
1997	\$67,733	\$57,985	\$26,933	\$25,928	\$1,005

Source: Revenue, Expenditure and Year End Balance are from WVFIMS; Loan Balance was reported by the NHALB; Year End Balance minus Loan Balance is as calculated by PERD. * FY 01 is current until March 1, 2001.

Licensing Assisted Living Administrators to Raise Revenue

In addition to raising fees, the Board has investigated other options for increasing revenue. December 1999 Meeting Minutes indicate that a meeting took place between the Board Chairman, the Governor and DHHR officials. The topic of discussion was the licensure of Assisted Living Administrators. The Chairman reported that he, "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.” In June 2000, the Board again discussed the licensing of assisted living administrators. Minutes indicate that the Board felt that this was a good way to “acquire the much needed revenues....”

The Board Did Not Submit Annual Reports to the Governor and the Legislature.

Despite attending the State Auditor’s training session, the Board did not file annual reports until the Legislative Auditor requested the documents. The Director stated:

The NHAL Board has never received a request for an annual report before now. When recently learning of this report, the Board assumed that the Department of Health and Human Resources [was] handling this matter, this assumption based upon the DHHR handling all other financial reports pertaining to the Board.

The Board submitted a report to the Governor on February 12, 2001. The report indicates the number of licenses and permits issued during FY 2000; a roster of licensed administrators; and an itemized statement of receipts and disbursements for FY 2000. The reports do not mention the DHHR loan or outstanding balance, or the number of complaints and the Board’s final action of the complaints as required by law (§30-1-12(b)).

The Board Is in Compliance with the Following Requirements of Chapter 30:

- The Board conducts open public meetings.
- The Board maintains record of its proceedings;
- The Board’s address and telephone number are included in the state government listings of the Charleston area telephone directory;
- The Board maintains a roster of licensees;
- A Board member has attended the orientation session provided by the State Auditor’s Office;
- Officers are elected annually;
- The Board meets at least twice annually;
- The Board has established continuing education requirements as a prerequisite to license renewal;

Nursing home administrators must obtain at least twenty continuing education hours for renewal of their licenses. All continuing education hours must be approved by the National Continuing Education Review Service which is provided by the National Association of Boards of Examiners of Long Term Care Administrators (NAB). Confirmation is provided to the Board by individual providers. The Board retains confirmation documents and records the licensee hours.

Conclusion

The Nursing Home Administrator's Licensing Board has consistently failed to be self-sufficient, as required by state law. Its fees are among the highest in the nation and though it has not paid rent in over a year, it is still unable to repay the loan from DHHR. Its complaint process is deficient in that no evidence is available to show how the Board resolved complaints.

Recommendation 2:

If the Legislature chooses not to terminate the Nursing Home Administrator's Licensing Board, the following are recommended:

- a) The Board should take the necessary action to become financially self sufficient which includes being able to pay back the DHHR loan balance within a reasonable amount of time.
- b) The Department of Health and Human Resources should remove the Board from its payroll so as to eliminate the need for DHHR to loan the Board funds.
- c) The Board should improve its documentation of how it resolved complaints against nursing home administrators including notifying administrators in writing of the resolution.
- d) The Board should continue to file annual reports, as required by law. In these reports, the Board should provide accurate and complete financial information, by reporting the balance of the loan as well as payments to DHHR. In addition, the reports should provide all other information pursuant to WVC §30-1-12(b).

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
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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
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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

Fees 50 States' Application and Licensing

State	Application Fee	Original License	License Renewal Fee	Renewal Type	Temp./Emergency License
Alabama	\$125.00	\$100.00	\$100.00	Annual	\$600.00
Alaska	\$70.00	\$220.00	\$220.00	Biennial	\$65.00
Arizona	\$100.00	\$240.00	\$240.00	Biennial	\$250.00
Arkansas	\$100.00	\$100.00	\$100.00	Annual	\$0.00
California	\$25.00	\$0.00	\$190.00	Biennial	not issued
Colorado	n/a	fees change	each	July 1	
Connecticut	\$100.00	\$100.00	\$0.00	Annual	\$0.00
Delaware	\$25.00	Pro-rated	\$0.00	Biennial	not issued
District of Columbia	\$190.00	\$190.00	\$120.00	Biennial	not issued
Florida	\$250.00	\$185.00	\$235.00	Biennial	\$250.00
Georgia	\$425.00	\$0.00	\$125.00	Biennial	\$0.00
Hawaii	\$100.00	\$220.00	\$170.00	Biennial	\$100.00
Idaho	n/a	\$65.00	\$65.00	Annual	\$65.00
Illinois	n/a	\$320.25	\$100.00	Biennial	\$75.00
Indiana	\$30.00	n/a	\$20.00	Biennial	\$10.00
Iowa	\$50.00	\$0.00	\$90.00	Biennial	\$0.00
Kansas	\$100.00	\$100.00	\$100.00	Biennial	\$100.00
Kentucky	\$50.00	\$250.00	\$100.00	Biennial	\$50.00
Louisiana	\$275.00	\$75.00	\$75.00	Biennial	\$0.00
Maine	\$25.00	\$125.00	\$125.00	Annual	\$100.00
Maryland	\$100.00	\$100.00	\$100.00	Biennial	not issued
Massachusetts	\$25.00	\$25.00	\$25.00	Annual	not issued
Michigan	\$15.00	\$60.00	\$120.00	Biennial	\$25.00
Minnesota	\$150.00	\$200.00	\$200.00	Annual	\$250.00
Mississippi	\$75.00	\$350.00	\$350.00	Biennial	n/a

Missouri	\$100.00	\$150.00	\$50.00	Annual	\$0.00
Montana	\$30.00	\$120.00	\$60.00	Annual	\$0.00
Nebraska	\$0.00	\$351.00	\$252.00	Biennial	n/a
Nevada	\$150.00	\$200.00	\$200.00	Biennial	\$0.00
New Hampshire	\$150.00	\$0.00	\$150.00	Biennial	\$100.00
New Jersey	\$100.00	\$150.00	\$150.00	Biennial	not issued
New Mexico	\$225.00	\$0.00	\$125.00	Annual	\$0.00
New York	\$0.00	\$40.00	\$40.00	Biennial	\$40.00
North Carolina	n/a	\$325.00	\$325.00	Biennial	\$200.00
North Dakota	\$100.00	\$100.00	\$100.00	Annual	pro-rated
Ohio	\$150.00	\$210.00	\$210.00	Annual	\$100.00
Oklahoma	\$0.00	\$200.00	\$150.00	Annual	\$200.00
Oregon	\$200.00	\$200.00	\$300.00	Biennial	\$200.00
Pennsylvania	\$30.00	\$0.00	\$108.00	Biennial	\$150.00
Rhode Island	\$125.00	\$0.00	\$120.00	Biennial	\$0.00
South Carolina	\$200.00	\$150.00	\$150.00	Annual	\$400.00
South Dakota	\$100.00	\$0.00	\$75.00	Annual	\$100.00
Tennessee	\$360.00	n/a	\$190.00	Biennial	n/a
Texas	\$100.00	\$250.00	\$250.00	Biennial	\$0.00
Utah	\$60.00	\$60.00	\$40.00	Biennial	\$0.00
Vermont	\$150.00	\$150.00	\$325.00	Biennial	not issued
Virginia	\$150.00	\$0.00	\$125.00	Annual	\$0.00
Washington	\$325.00	\$190.00	\$295.00	Annual	n/a
West Virginia	\$400.00	\$0.00	\$200.00	Annual	\$200.00
Wisconsin	\$236.00	\$0.00	\$102.00	Biennial	not issued
Wyoming	\$250.00	\$0.00	\$300.00	Biennial	\$400.00

APPENDIX C

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



WV NURSING HOME ADMINISTRATORS LICENSING BOARD

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PHONE (304) 759-0722
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July 27, 2001

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

RECEIVED

JUL 31 2001

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

RE: Regulatory Board Evaluation, West Virginia Sunset Law,
Chapter 4, Article 10 of the West Virginia *Code* as amended for
the West Virginia Nursing Home Administrators Licensing Board

Dear Mr. Armentrout:

This letter is in response to your correspondence of July 11, 2001. The meeting held in your offices on July 12 was cordial and productive. However, the Regulatory Board Evaluation, while well-intended, is flawed and requires specific comment in order to provide another point of view for the Joint Committee on Government Operations.

To begin, the scope of the evaluation was said to be "... from 1997 to 2000 ...," page 3 under **Scope**. Yet, the financial analysis, page 10, indicates the review extended to "... late 1994." This is the first indication of several erroneous statements reflected in the document.

Moving to Issue 1, page 5, the allegation is made that the Board is financially unstable citing monies received from DHHR. Yet, when analyzing Table 3, page 11, Expenditures, Revenue and Loan Balance from 1997-2000, three of the four years reflected net gains with an overall gain for the period of \$9,972. As was pointed out during the meeting on July 12, on June 30, 2001, the year-end balance was \$16,024.76. The loans by DHHR, appropriate or otherwise, were made to help manage expense. It should not be overlooked that the decision-making authority to extend monies always rested with DHHR. The Board did and continues to believe the money should be repaid. In fact, monthly reimbursement transfers were made by DHHR until December 8, 1998, when the Board requested a temporary stop. This request was not challenged nor was any written proposal made to do anything other than what the Board had previously done—begin payment later. Had something been done by DHHR to say a different payback plan needed to be defined, the Board would have complied. However, this did not occur.



Mr. Brian Armentrout

July 27, 2001

2

In fiscal periods July through June, due to the way the Board receives its income through licensure fees, cash can be bare in winter months and improve in the spring. The Board has long desired to operate on an accrual rather than a cash basis, but that has not been the case nor would it be any different for DHHR if it were the licensing authority for administrators. Therefore, in order to have a balanced view for legislators to consider, this point is necessary.

Pertinent to the complaint process, this is likely the most blatant misunderstanding in the evaluation. As was pointed out in the meeting on July 12, allegations of substandard care issued by the Office of Health Facility Licensure and Certification (OHFLC) dealt with matters of agency practice grounded on federal standards defined under the Omnibus Budget Reconciliation Act (OBRA). To my understanding, these standards have no direct connection to West Virginia *Code* §30-25-7 or the regulations promulgated thereunder by Title 21, Legislative Rule, effective April 3, 2000, or previous editions.

The complaint process to which you elude is a board-defined and established policy/protocol which came into being on September 18, 1996 (Exhibit A). Its sole purpose is to deal with referrals of substandard care against facilities, not administrators. The Board's sole jurisdiction for dealing with complaints against administrators is found in Title 21, Legislative Rule, latest edition, April 3, 2000, Section 6.1 (Exhibit B). Therein, the parameters for suspension or revocation of license or permits are narrowly defined. Therefore, the case you endeavor to build on the subject of substandard care and the belief the Nursing Home Administrators Licensing Board failed to exercise its responsibility is without merit. Conversely, the Board appropriately discussed the issues, responded in accord with its protocol and remained in harmony with the narrowly defined course of action it had pertinent to sanctions against administrators, particularly the one that vacated the position at Hidden Valley. To have responded otherwise could have exposed the Board and State to wrongful action and litigation.

Going forward, yet remaining with Issue 1, third point, last sentence, page 5, it is indicated that the Board's distinct function is to administer licensure examinations. It is important to state that additional key responsibilities under *Code* and regulations are omitted as follows: issuing temporary permits when licensed administrators are transferring into West Virginia; issuing emergency permits when an administrator dies or is unable to continue to serve; processing applications for licensure by reciprocity when administrators transfer from other jurisdictions; receive, evaluate and approve administrators-in-training (AITs) including candidates and their preceptors. These duties are of significant importance in the licensing process.

On page 7, first full paragraph, the topic of states doing away with licensure boards is addressed. Assuming the document is accurate with six states named, that leaves forty-five jurisdictions which continue to believe boards have value. Therefore, I believe any prudent person would conclude there is not a title wave of activity in America to sunset boards. Clearly, our neighbors in Ohio, Pennsylvania, Maryland, Virginia, and Kentucky are not in the group.

Mr. Brian Armentrout

July 27, 2001

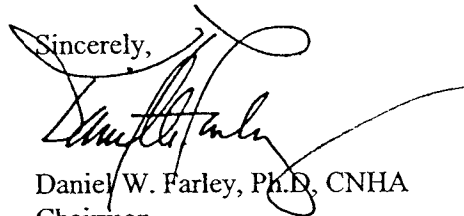
3

Another observation to be offered focuses on Table 2, page 10. As the chair of the Licensure Board and a practicing administrator, understanding numbers and their significance is critical to an entity's success. The table makes a major point. With West Virginia reflecting the fewest number of licensed administrators and yet needing to generate income sufficient to cover expense, there have been few options other than adjusting fees. Going forward, the Board knows it is approaching the time when additional increases are questionable. It further realizes that tactics employed in the past to cut expenses—i.e., relocation of the office to the director's home which was a staff/board decision—NOT a recommendation from DHHR, have all but exhausted ways to trim costs. Thus, as any business person knows, a prudent approach is to build supply. When achieved with insignificant increases in expense, fiscal well-being improves. The numbers for Virginia, Pennsylvania, and Ohio make the case. Thus, from a purely fiscal perspective, the Board's clientele need to grow. The challenge has and continues to be how to do it. This topic will be reviewed in the response to the Sunrise Application.

A final subject to be addressed is the matter of annual reports to the governor and legislature, page 12. As I recall, the first state auditor's training event was in June 1999. The Board's understanding was that any report due to the governor or legislature would be a part of the DHHR report similar to the understanding of the assistant clerk responsible for *Blue Book* listings. In personal conversations with this person, he, too, understood that the Nursing Home Administrators Licensing Board's listing was to have come from DHHR. An oversight for which he accepted full responsibility in writing on January 31, 2001. Therefore, to suggest absolute negligence on the part of the Licensing Board for failure to act is inaccurate.

In conclusion, if any part of this letter or the exhibits is misunderstood, I will be happy to address the misunderstandings either before or during the August interims in Canaan Valley.

Sincerely,



Daniel W. Farley, Ph.D, CNHA
Chairman

rw

Encs: Exhibits A and B



WV NURSING HOME ADMINISTRATORS LICENSING BOARD

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RECEIVED

MAR 31 2001

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Protocol – Substandard Care Deficiencies

As a result of sections 1819(a), (b), (c), (d) and 1919(a), (b), (c), and (d) of The Social Security Act, state survey agencies like the West Virginia Office of Health Facility Licensure and Certification (OHFLC) are required to advise state boards responsible for licensing nursing home administrators when a Medicare or Medicaid certified nursing facility is cited for deficiencies which constitutes substandard care. In as much as there are no further directives for interpretation as to how state licensure boards will manage such notifications, it is the prerogative of each state's board to define its protocol.

In view of the aforementioned circumstance, effective 9/18/96, it will be the policy of the West Virginia Nursing Home Administrators Licensing Board to follow a plan in discharging its duties. The plan will be comprised of these steps:

1. Upon notification from OHFLC, a certified letter will be sent to the administrator of record for the facility alleged to have offered substandard care. (Refer to Exhibit A.)
2. Upon receipt of the certified letter and within thirty days, under the direction of the chair of the West Virginian Nursing Home Administrators Licensing Board, an assessment by staff, members of the board, and/or a representative from the Attorney General's Office will be made pertinent to replies and/or other documents received from the OHFLC (i.e., HCFA-2567 Statement of Deficiencies and Plan of Correction, etc.) for the facility. From that point, further action by the board will depend on whether or not nursing home licensure regulations under appropriate laws of the State of West Virginia were violated. Presuming nothing is discovered in regard to a violation, a letter will be sent to the administrator of the facility thanking him or her for the information and the board's responsibilities will be fulfilled.

If an issue of substance with respect to substandard care is found which creates conflict with appropriate regulations under West Virginia law within forth-five days of receipt of the administrator's response, additional information will be sought either in writing or secured through a site visit to the facility.

After additional facts are available and evaluated by the board and/or a representative from the Attorney General's Office, within sixty days of receipt of the initial response from the administrator, the board will issue a written opinion to the administrator outlining;

- (a) results of the board's determination finding no substance or violation of regulations based on state law pertinent to him/her as a licensed nursing home administrator;
- (b) findings of fact do suggest conflicts with appropriate regulations based on West Virginia law governing the licensure of nursing home administrators. As a result, remedies will be defined to address all relevant circumstances.

Due to the fact the certified letter which will go to the administrator following notification from the OHFLC may not be answered, the Nursing Home Administrators Licensing Board, unless it has factual information that clearly shows a violation of nursing home licensure regulations based on appropriate state law, will take no further action.

If within twenty-four months of first being advised by the OHFLC, a second notice is received alleging substandard care in a facility under the direction of the same licensed nursing home administrator, at the direction of the chair of the board, within thirty days of notification by the OHFLC of repeat deficiencies constituting substandard care, board members will be deployed to the facility to meet personally with the administrator. Their mission will be to secure facts to be analyzed in making a determination as to whether or not violations of nursing home administrator licensure board regulations based on state law exist. Lack of response from the administrator to the certified letter following the first allegation of

substandard care will be noted. Such action on the part of the administrator coupled with the results of the on-site finding mission will be seriously considered pertinent to continued licensure of the individual in question.

From the time of initial notification by the OHFLC of alleged substandard care, all correspondence and records pertinent to the administrator in question will be retained for twenty-four months. During this period if a follow up visit by OHFLC determines repeat deficiencies of substandard care, an additional twenty-four months will constitute the period for which records on the incidence will be retained in the offices of the Nursing Home Administrators Licensing Board. If after either twenty-four or forty-eight months, depending upon the circumstance and there is no further allegation of substandard care, files will be destroyed.



WV NURSING HOME ADMINISTRATORS LICENSING BOARD

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2001

Dear M. :

RE: OHFLAC Sub-Standard Care Notice Dated 2001

Dear M. :

The purpose of this letter is to let you know the Office of Health Facility Licensure and Certification (OHFLAC) under the West Virginia Department of Health and Human Resources has exercised its duty under appropriate federal law and advised this licensure board that the facility under your jurisdiction, () 2001, as administrator has been alleged to have offered substandard care. As a result of this charge, it is the responsibility of this board to determine whether or not West Virginia Nursing Home Administrators Licensing Board regulations based on state law have been violated.

In order to assist the board in its work, within ten working days of receipt of this request; please supply to the board office by certified mail a one-page description that captures the essence of all allegations. In focussing on OHFLC's findings, be sure to identify the tag number for each deficiency.

After receipt and review of your reply, if in the board's opinion more information is required, a contact will be made either in writing or in person.

The principal interest of the board is to act prudently and sincerely in the best interest of you, the administrator; the residents under your charge; and the citizens of West Virginia. Therefore, your swift and absolute cooperation will be appreciated.

Sincerely,

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

DWF/as



21CSR1

TITLE 21
LEGISLATIVE RULE
WEST VIRGINIA NURSING HOME ADMINISTRATORS
LICENSING BOARD

RECEIVED

SERIES 1
NURSING HOME ADMINISTRATORS

JUL 31 2001

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

§21-1-1. General.

1.1. Scope. -- This rule establishes the requirements for licensing as a Nursing Home Administrator.

1.2. Authority. -- W. Va. Code §30-25-7.

1.3. Filing Date. -- April 3, 2000.

1.4. Effective Date. -- April 3, 2000.

§21-1-2. Definitions.

Whenever used in this Rule, unless the context or subject matter requires a different meaning, the following terms have their respective meanings:

2.1. "Applicant" means the person who submits an application for a license or permit pursuant to this Rule;

2.2. "Board" means the West Virginia Nursing Home Administrators Licensing Board as created in W. Va. Code §30-25-2;

2.3. "Examination" means both the national test and the state test that applicants are required to pass, unless specified otherwise;

2.4. "License" means the document issued by the Board which authorizes a person to perform the functions of a nursing home administrator as defined and directed in this Rule;

2.5. "Nursing Home Administrator-in-Training" (AIT) means an individual registered as such with the Board, under subsection 4.3. of this Rule;

2.6. "Practice of Nursing Home Administration" means that performance of any act or the making of any decision involved in the planning, organizing, directing and/or control of the operation of a nursing home;

2.7. "Reexamination" is a process whereby the applicant may petition the Board to retake either the National and/or State examination if the applicant has not passed the licensure exams; and

2.8. "Violation" means a failure to comply with W. Va. Code §§301, et seq. and 30-1-1 et seq or any provision of this Rule.

§21-1-3. Examinations.

3.1. Scheduling of examinations and reexaminations.

3.1.1. The Board shall hold examinations at least twice a year in April and October. Applicants for examination shall meet all pre-requirements for taking the examination as specified in this Rule. The Board shall notify applicants by mail of the date, time and place of the examination. Applicants may take the national or state test three (3) times. If an applicant fails the national examination for the third time, the applicant shall appear before the Board and present evidence of further education before the Board may consider that person eligible for reexamination.

3.1.2. A record stating in detail the results of the examination for each applicant shall be kept by the Board as a permanent record.

3.1.3. All cost or fees charged by the testing agency for the national examination are not covered in the initial application fee. An applicant shall pay all testing fees directly to the testing agency.

3.2. Pre-examination requirements:

3.2.1. The pre-examination requirements in this section do not apply to any person licensed as a nursing home administrator prior to May 10, 1986 who has maintained continuous licensure since that time.

3.2.2. The Board shall not admit or permit any person to take an examination for licensure as a nursing home administrator unless that person has submitted thirty (30) days prior to the examination day, an application for Board approval. The Board shall consider the application an application for licensure and also for examination and qualification. The application shall be in writing on forms provided by the Board and shall furnish evidence satisfactory to the Board that the applicant is:

3.2.2.a. over twenty-one (21) years of age; and

3.2.2.b. suitable and fit to be licensed and to practice as a nursing home administrator. A licensed physician shall submit evidence of the applicant's fitness and suitability directly to the Board on forms provided by the Board and shall include, among other things, evidence of the:

3.2.2.c. Absence of physical impairments to perform the duties of a nursing home administrator, which include good health and freedom from contagious disease; and

3.2.2.d. Absence of any mental impairment that would appear to the Board to be likely to interfere with the performance of the duties of a nursing home administrator.

3.2.3. The Board shall obtain letters of satisfactory performance covering at least the calendar year preceding the date of application from appropriate parties relating to the applicants ability to:

3.2.3.a. Understand and communicate general and technical information necessary to the administration and operation of a nursing home (i.e., applicable health and safety rules);

3.2.3.b. Assume responsibilities for the administration of a nursing home as evidenced by prior accredited activities and evaluations of prior services; and

3.2.3.c. relate the physical, psychological, spiritual, emotional and social needs of ill and/or aged individuals to the nursing home administration and create the compassionate climate necessary to meet the needs of the patients in the nursing home.

3.2.4. In addition to the completion of high school or secondary school education, the applicant shall have successfully completed a course of study in and been awarded a baccalaureate degree in:

3.2.4.a. nursing home administration, hospital administration, or other related field as determined by the Board. The applicant shall also have at least (1000) hours experience in an administrative position in a long term care setting. Related health administration fields include nursing, medicine, osteopathy, social work with a concentration in gerontology, psychology, etc. When an applicant has an approved degree, he or she shall verify with the Board that a minimum of twelve (12) college hours were earned in subjects specifically designated as health care management and/or health care administration. Verification allows the Board the flexibility to consider waiver of the Administrator-In-Training (AIT) program prior to approval of the applicant to take the national and state examinations leading to licensure as a Nursing Home Administrator. If the applicant fails to produce documentation satisfactory to the Board, he or she shall complete an Administrator-In-Training (AIT) program as specified in subsection 4.3. of this rule; or

3.2.4.b. a non-health administration field. The applicant shall also complete a one (1) year Administrator-In-Training (AIT) program as specified in subsection 4.3. of this rule. The Board may waive the Administrator-In-Training (AIT) program and approve the applicant to take the national and state examinations if:

3.2.4.c. the applicant possesses a baccalaureate degree in a non-related health care field (i.e., secondary education, accounting, marketing, etc.) but has worked in long-term care in the role of an assistant administrator or an equivalent position such as Director of Nursing, Assistant Director of Nursing, Social Services Director, for a period of three (3) years.

3.2.5. The applicant may not acquire his or her (1000) hour administrative work experience specified in subsection 3.2 of this section, by working on an emergency permit or by participation in an Administrator-In-Training Program.

3.2.6. The Board shall not permit an applicant for examination who has been convicted of a felony by any court in West Virginia, or by any court of the United States, to take the licensure examination. A criminal identification Bureau Report shall be requested by the Board from the West Virginia State Police, on all applicants for Administrator licensing.

3.2.7. The Board considers the pre-examination requirements for licensure set forth in this section as minimal and shall not waive them.

3.2.8. The Board may designate a time and place at which an applicant may be required to present himself or herself for inquiry as to his or her suitability for licensure.

3.3. Disqualification: Reexamination.

3.3.1. An applicant for examination who does not meet pre-examination requirements shall be given written notification by the Board by certified mail return receipt requested, of his or her disqualification and the reasons for the disqualification and of his or her right to a hearing within thirty (30) days.

3.3.2. An applicant for examination who does not meet pre-examination requirements may petition the Board in writing for a hearing and a review of his or her application within thirty (30) days of receipt of the notification of disqualification.

3.3.3. Where an applicant for examination has not met pre-examination requirements, he or she may submit a new application for qualification for examination. The applicant shall meet the requirements for licensing that are in force at the time of the reapplication.

3.4. Subjects for national examination.

3.4.1. Every applicant for licensure as a nursing home administrator, after meeting the requirements for qualification for licensure and examination as set forth in this Rule shall successfully pass a written national examination which may include, but not be limited to, the following subjects:

3.4.1.a. Resident Care Management

3.4.1.a.1. The applicant shall have a working knowledge of:

3.4.1.a.1.A. nursing services to maximize resident quality of life;

3.4.1.a.1.B. social service programs to maximize resident quality of life;

3.4.1.a.1.C. food service programs which meet the nutritional needs of residents, to maximize resident quality of life;

3.4.1.a.1.D. medical services to meet resident medical care needs, to maximize resident quality of life;

3.4.1.a.1.E. therapeutic recreational/activity programs to meet the needs, wants, and interests of residents, to maximize resident quality of life;

3.4.1.a.1.F. medical records programs to meet documentation requirements;

3.4.1.a.1.G. pharmaceutical programs to support medical care for residents to maximize resident quality of life; and

3.4.1.a.1.H. rehabilitation programs to maximize resident's optimal level of functioning

3.4.1.b. Personnel Management

3.4.1.b.1. The applicant shall have a working knowledge of:

3.4.1.b.1.A. the process of communication between management and all staff;

3.4.1.b.1.B. the recruitment, evaluation, and retention of individuals to provide resident care and services;

3.4.1.b.1.C. personnel policies, which are planned, implemented, and evaluated to comply with governmental entities, laws, and regulations; and

3.4.1.b.1.D. employee health and safety programs.

3.4.1.c. Financial Management

3.4.1.c.1. The applicant shall have a working knowledge of:

3.4.1.c.1.A. the budget process for facilities to allocate fiscal resources;

3.4.1.c.1.B. systems to monitor financial performance; and

3.4.1.c.1.C. financial audits and reporting systems.

3.4.1.d. Environmental Management

3.4.1.d.1. The applicant shall have a working knowledge of:

3.4.1.d.1.A. systems for maintaining and improving buildings, grounds and equipment;

3.4.1.d.1.B. programs that provide a clean, attractive, and home-like environment for residents, staff and visitors;

3.4.1.d.1.C. environmental safety programs that ensure the health, welfare, and safety of residents, staff, and visitors; and

3.4.1.d.1.D. emergency programs to protect the safety and welfare of residents, staff, and property.

3.4.1.e. Governance and Management

3.4.1.e.1. The applicant shall have a working knowledge of:

3.4.1.e.1.A. policies and procedures which maintain compliance with directives of governing entities;

3.4.1.e.1.B. the need to observe, monitor, and evaluate outcomes of all facility programs, policies, and procedures, to ensure effectiveness

3.4.1.e.1.C. the need to monitor and evaluate resident satisfaction with quality of care and quality of life, through communications with the resident, the resident's representatives or family, staff, volunteers, and governing entities to, maximize the resident's quality of life;

3.4.1.e.1.D. the need to implement, monitor and ensure the integration of resident rights with all aspects of operation;

3.4.1.e.1.E. the need to plan, implement and evaluate risk management programs;

3.4.1.e.1.F. the need to plan, implement and evaluate programs which inform residents and the community of the services offered; and

3.4.1.e.1.G. the need to plan, implement and promote integration between a facility and other community resources (e.g., educational institutions, hospitals, vendors).

3.5. Subjects for State examination.

3.5.1. Every applicant for licensure as a nursing home administrator after meeting the requirements for qualification for licensure and examination as set forth in this Rule shall successfully pass a written state examination which may include, but not be limited to, the following subjects:

3.5.1.a. Physical Equipment and Facilities;

3.5.1.b. Facility Governance and Management;

3.5.1.c. General Health and Safety;

3.5.1.d. General Residents Rights, Policies and Procedures;

3.5.1.e. Medical and Dental Service;

3.5.1.f. Nursing Service;

3.5.1.g. Dietetic Service;

3.5.1.h. Pharmaceutical Service;

3.5.1.i. Social Services and Activities; and

3.5.1.j. Plans for Care and Medical Records.

§21-1-4. Education, Training and Experience.

4.1. Registration of licensed and/or accredited education institutions and courses of study.

4.1.1. Any courses of study offered by a licensed and/or accredited educational institution, for the purpose of qualifying applicants for licensure as a nursing home administrator shall first be submitted to the Board for approval by the educational institution or by the applicant for licensure. In order for a course of study to be approved, it shall cover those subjects contained on the written national examination as provided for in subsection 3.4. of this rule.

4.2. Registration of continuing education programs.

4.2.1. On and after June 30, 1994 every licensed administrator shall obtain annually, at least twenty (20) clock hours of continuing education, through programs approved by the Board or by the National Association of Boards of Examiners of Long Term Care Administrators National Continuing Education Review Service (NCERS).

4.2.2. A Licensee seeking continuing education hours for completion of a college course in health care administration, may submit to the Board the syllabus of the completed course along with a copy of the official transcript verifying the final grade received. The Board may approve One (1) credited college course hour, to be applied as ten (10) continuing education hours.

4.3. Practical training and experience one (1) year Administrator-In-Training (AIT) Program.

4.3.1. The applicant has the option of acquiring his/her Administrator-In-Training Program under this rule or under the Board's approved program sponsored by the WV Chapter off the American College of Health Care Administrators (WV ACHCA).

4.3.2. Prior to entering the one (1) year nursing home Administrator-in-Training (AIT) program for the purpose of obtaining practical training and experience, the applicant shall apply for the Administrator-in-Training (AIT) permit on a form prescribed by the Board, and submit a fee of four hundred dollars (\$400.00) payable by certified check or money order to the West Virginia Nursing Home Administrators Licensing Board.

4.3.3. The Board shall not approve an application for an Administrator-in-Training (AIT) permit unless the applicant submits evidence satisfactory to the Board that he or she meets all preexamination requirements under this rule and that:

4.3.3.a. the training will be under the full-time supervision of a fully licensed nursing home administrator who has been licensed for at least three (3) years and licensed and practicing in West Virginia for at least the preceding year. The nursing home administrator must be approved by the Board as a preceptor, and accept the responsibility of training the applicant;

4.3.3.b. the training is of a grade and character satisfactory to the Board;

4.3.3.c. the training is to be obtained in a duly licensed nursing home which has been approved by the Board;

4.3.3.d. the training is to be served during eight (8) consecutive hours, except for regular days off, with a minimum of forty (40) hours weekly;

4.3.3.e. the trainee agreement form provided by the Board is signed by the nursing home Administrator-in-Training (AIT) and the preceptor and submitted to the Board for approval;

4.3.3.f. the nursing home Administrator-in-Training (AIT) has no outside employment during training hours or thereafter unless the employment is known of and approved by the preceptor.

4.3.a. Progress report

4.3.a.1. Every preceptor of every Administrator-in-Training (AIT) shall file quarterly forms provided by the Board and shall set forth an accurate record of the duties performed by the Administrator-in-Training (AIT) during the period covered by the report.

4.3.a.2. Every report filed by the preceptor of the nursing home Administrator-in-Training (AIT) shall be approved and signed by the preceptor and by the Administrator-in-Training (AIT).

4.3.a.3. If a preceptor of a nursing home Administrator-in-Training (AIT) fails to file quarterly reports for a period of two (2) years from the date of issuance of the in-training permit, the Board shall consider that the Administrator-in-Training (AIT) has abandoned his or her practical training and experience. In the event the Administrator-in-Training (AIT) thereafter seeks to qualify for a nursing home administrator license, the Board shall consider him or her as a new applicant, with no portion of training completed. The applicant shall meet the requirements for qualification for training, examination, and licensure that exist at the time of the new application.

4.3.a.4. A nursing home Administrator-in-Training (AIT) may take two (2) weeks leave for compulsory military training, vacation or sick leave each year without loss of credit for his or her required practical training and experience.

4.3.a.5. If an Administrator-in-Training (AIT) discontinues his or her training, the Preceptor and the Administrator-in-Training (AIT) are to report the discontinuance of the Administrator-in-Training Program to the Board, within 30 days after the discontinuance.

4.3.a.6. Change of preceptor of the nursing home Administrator-in-Training (AIT) in any nursing home shall be reported to the Board in writing by the preceptor and the Administrator-in-Training (AIT) within ten (10) days after the change of the supervision. The new administrator of the nursing home, if willing to continue the training program of the Administrator-in-Training (AIT), shall obtain Board approval for preceptorship.

4.3.a.7. The Board shall allow any person who was a duly authorized nursing home Administrator-in-Training (AIT) whose training and experience is interrupted by service in the Armed Forces of the United States, to resume his or her training and experience at any time within one (1) year after the date of his or her honorable discharge from active service.

4.3.a.8. The period for the training program as an Administrator-in-Training (AIT) shall last for a period of not more than one (1) year and shall be under the supervision of a preceptor who has been approved by the Board.

4.3.a.9. Alternating and rotating shifts of eight (8) working hours may be approved by the Board as being acceptable upon request by the Administrator-in-Training (AIT); provided, that at least fifty percent (50%) of the training hours will be served between the hours of 7:00 a.m. and 10:00 p.m. in regular steady, full time employment under the personal supervision of the nursing home administrator preceptor at the nursing home in which the nursing home Administrator-in-Training (AIT) is employed; and

4.3.a.10. the preceptor will provide full-time supervision for the Administrator-in-Training (AIT) and that the supervision is provided in the nursing home where the trainee is employed.

4.3.a.11. In the event that the Board determines that a preceptor has failed to provide the Administrator-in-Training (AIT) with the opportunity to adequately train himself or herself under the proper supervision in the administrative and operating functions of the nursing home, the Board shall cancel the preceptor's authorization to serve as preceptor, for a period of time prescribed by the Board.

4.3.a.12. When the preceptor's authorization is cancelled, the Administrator-In-Training (AIT)'s program will be suspended until such time as the Administrator-in-Training (AIT) locates another preceptor who is approved by the Board; after which time the Administrator-in-Training (AIT)'s training shall continue.

4.3.a.13. After an applicant for licensure completes the Administrator-in-Training (AIT) program, and before he or she sits for the licensing examination, the Board may appoint a committee to determine if the applicant has received training consistent with the guidelines established by the Board.

4.3.a.14. After completion of the Administrator-In-Training (AIT) Program, the Administrator-In-Training (AIT) shall pay all additional fees referred to in subdivision 3.1.3. of this rule.

§21-1-5. Licenses.

5.1. Qualifications for licenses

5.1.1. To be eligible for a license as a nursing home administrator an applicant shall:

5.1.1.a. meet all pre-examination requirements as set forth in subsection 3.2. of this Rule, as well as meet requirements of all other applicable Rules; and

5.1.1.b. pass the national and state examinations prescribed by the Board in the subject of nursing home administration.

5.2. Application for and issuance of license, renewal of licenses and display.

5.2.1. Any applicant for a nursing home administrator license shall submit an application, on forms prescribed by the Board containing information the Board may determine reasonable under this Rule, and pay the Board a license fee of Four Hundred Dollars (\$400.00) in the form of a certified check or money order. The Board shall return the fee, minus any costs incurred by the Board (i.e. processing fee), if it denies a license to the applicant.

5.2.2. Whenever the Board finds that an applicant meets all of the requirements of this Rule for a license as a nursing home administrator, it shall immediately issue a license to the applicant. If the Board finds the applicant does not meet the requirements, the Board shall contact the applicant in writing and give reasons for the denial of the license.

5.2.3. The license is valid for a period ending on June 30 each year and may be renewed without formal examination upon timely application for renewal on a form prescribed by the Board and payment to the Board of the renewal fee of Two Hundred Dollars (\$200.00) in the form of a certified check or money order. The Board may deny an application for renewal for any reason which would justify the denial of an original application for a license, or for failure to provide written verification of satisfactory attendance and completion of relevant continuing education as specified in subsection 4.2. of this rule.

5.2.4. The nursing home administrator license certificate shall be conspicuously displayed by the licensee at each nursing home for which he or she is the administrator.

5.2.5. Only a person who has qualified as a licensed nursing home administrator and who hold a valid current license certificate pursuant to the provisions of this Rule may use the title "Nursing Home Administrator" and the abbreviation of "N.H.A." after his or her name. No other person shall use or shall be designated by this title or this abbreviation or any other words, letters, etc., to, indicate he or she is licensed as a nursing home administrator.

5.2.6. A person who is a holder of an emergency permit or of an Administrator-in-Training (AIT) permit shall not be considered as meeting the requirements for licensure as a nursing home administrator and, therefore, may not use the title "Nursing Home Administrator" or the abbreviation of "N.H.A."

5.2.7. No person shall be or act as a nursing home administrator, except as provided by W. Va. Code §30-25-9, unless they hold a current valid license or permit issued pursuant to this Rule;

5.2.8. A listing of West Virginia's Nursing Home Administrators is available for a fee of \$50.00.

5.3. License Restrictions

5.3.1. The following restrictions apply to licensed nursing home administrators:

5.3.1.a. A licensed nursing home administrator shall not direct more than two (2) nursing homes at one time. An administrator may direct two (2) nursing homes which are within reasonable proximity. For the purposes of this section, reasonable proximity is defined as thirty (30) minutes driving time. An administrator may not direct more than a total of one hundred twenty (120) beds.

5.3.1.b. the administrator of two (2) nursing homes shall average not less than twenty (20) hours per week at each nursing home. The administrator shall have a competent and experienced assistant at each nursing home. The nursing home administrator shall document each period of service. The documentation shall be available to the Board request;

5.3.1.c. a nursing home administrator who is a registered professional nurse cannot serve the same nursing home both as a director of nursing services and administrator unless the nursing home has a licensed capacity of thirty (30) beds or less;

5.3.1.d. any administrator who is also director of nursing services or who has any other dual capacity in any other nursing home regardless of whether or not the second home is within reasonable proximity shall obtain prior Board approval to serve in that dual capacity; and

5.3.1.e. the nursing home administrator, upon receipt of a license, is responsible for any nursing home which he or she administers, while meeting all applicable state and federal laws and rules and regulations;

5.4. Emergency permit

5.4.1. If a licensed nursing home administrator dies or is unable to continue as the administrator for an unexpected cause, the owner or governing body or other appropriate person in charge of the nursing home involved may designate an acting authority as administrator. The Board may issue an emergency permit to the acting administrator if it finds the appointment will not endanger the safety of the occupants of the nursing home.

5.4.2. An emergency permit is valid for a maximum of six (6) months and is not renewable.

5.4.3. The fee for an emergency permit is Two Hundred Dollars (\$200.00) and shall be submitted in the form of a certified check or money order, and is non-refundable.

5.5. Temporary Permit.

5.5.1. The Board may issue a temporary permit for a period of ninety (90) days, to an applicant for a reciprocity license who has accepted employment in the State of West Virginia, but who must wait for the Board to meet to act on his or her application. The temporary permit may be renewed at the discretion of the Board.

5.5.2. The fee for a temporary permit is Two Hundred Dollars (\$200.00) and shall be submitted in the form of a certified check or money order, and is non-refundable.

5.6. Administrator-in-Training

5.6.1. Administrator-in-Training (AIT) permits shall be issued by the Board as outlined in subsection 4.3. of this Rule.

5.6.2. The fee for an Administrator-in-Training (AIT) permit is Four Hundred Dollars (\$400.00) and shall be submitted in the form of a certified check or money order.

5.7. Lost, mutilated or destroyed licenses

5.7.1. Upon receipt of satisfactory evidence that a license has been lost, mutilated or destroyed, the Board shall issue a duplicate license upon payment of a fee of Five Dollars (\$5.00).

5.8. Return of license

5.8.1. The administrator shall return the license certificate and/or duplicate copies to the Board immediately upon revocation of the license or request by the Board.

§21-1-6. Suspension or Revocation, Hearing and Judicial Review.

6.1. Suspension or revocation of license or permits.

6.1.1. The Board may at any time upon its own motion and shall upon verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or permit issued pursuant to this Rule.

6.1.2. The Board shall suspend or revoke any license or permit when it finds the licensee or holder of a temporary permit has:

6.1.2.a. obtained a license or permit by means of fraud or deceit; or

6.1.2.b. failed or refused to comply with the provisions of this Rule, or with the provisions of W. Va. Code §16-5C-1, et seq.

6.1.3. When the Board suspends or revokes a license of a licensee, it shall notify the Office of Health Facility Licensure and Certification (OHFLAC) of their actions.

6.2. Complaints and hearing procedures

6.2.1. Complaints

6.2.1.a. Any person, public officer, association or the Board may register a complaint against any licensee, Administrator-in-Training (AIT) or holder of an emergency or temporary permit for any of the reasons specified in subsection 6.1. of this Rule. The complaint, submitted to the Board shall be in writing and duly verified.

6.2.2. Preliminary hearings.

6.2.2.a. The Board, or any person or persons appointed by it, may hold a preliminary hearing to determine whether a formal hearing on the charges is necessary. The Board shall give the person against whom the complaint has been registered, written notice of the date, time and place of the preliminary hearing.

6.2.2.b. The Board may dismiss the complaint and take no action on the complaint, by formal hearing or otherwise. In that event the Board shall file and make a part of its record the complaint and the order dismissing the complaint. If the Board does not dismiss the complaint, it shall hold a formal hearing in accordance with subsection 6.3. of this Rule.

6.3. Procedures for hearing.

6.3.1. The Board may deny a license, renewal of a license or permit pursuant to W. Va. Code §§30-25-1 et seq and 30-1-1 et seq.

6.3.2. Whenever the Board denies an application for any original or renewal license or denies an application for an emergency permit it shall make and enter an order to that effect and serve a copy of the order on the applicant licensee, or permittee as the case may be, by certified mail, return receipt requested. If the applicant desires to challenge the Board's order denying the application, the applicant shall request a hearing. The request shall be made in writing to the Board within twenty (20) days after receipt of the order. Whenever the Board determines that there is probable cause to believe a permit holder or licensee has violated W. Va. Code §30-25-1 et seq. or any provision of this rule the Board shall serve upon the licensee, by certified mail, return receipt requested, a copy of the notice of hearing. The notice of hearing shall provide the licensee with notice of the charges being brought against him or her.

6.3.3. All of the pertinent provisions of W. Va. Code §§29A-5-1, and §30-1-1 et seq., apply to and govern the hearing and the administrative procedures in connection with and following the hearing.

6.3.4. Upon conclusion of the hearing, the Board may revoke the license of the licensee, or an emergency or temporary permit, or take other disciplinary action or dismiss the charges.

6.3.5. An order of suspension made by the Board may contain provisions regarding reinstatement of the license or permit.

6.3.6. The Board, in its discretion, may direct a rehearing or take additional evidence, and may rescind or affirm the prior order after the rehearing, but nothing in this section shall preclude appropriate relief under and pursuant to the laws providing for the review of an administrative determination by the courts of the state.

6.3.7. The order of the Board is final unless reversed, vacated or modified upon judicial review of the order in accordance with the provisions of subsection 6.4. of this Rule.

6.4. Judicial review; Appeal to Supreme Court of Appeals.

6.4.1. Any person adversely affected by an order of the Board rendered after a hearing held in accordance with the provisions of subsection 6.3. of this Rule, is entitled to judicial review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-1, et seq. apply to and govern the judicial review.

6.4.2. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of W. Va. Code §29A-6-1, et seq.

§21-1-7. Reciprocity.

7.1. The Board in its discretion, and subject to W. Va. Code §30-25-4 prescribing the qualifications for a nursing home administrator license, may grant a nursing home administrator license to an individual licensed in another state, who possesses the qualifications and meets the reasonable standards prescribed by the Board pursuant to W. Va. Code §30-25-7(a) and upon payment of a fee of Four Hundred Dollars (\$400.00).

7.1.1. Applicant's who are certified administrator's in good standing with the American College of Health Care Administrators (ACHCA); or

7.1.2. that the following conditions are met:

7.1.2.a. the other state maintains a system and standard of qualification and examination for a nursing home administrator license, which is at least as great as those required in West Virginia;

7.1.2.b. the other state gives similar recognition and reciprocity to nursing home administrators licenses of West Virginia; and

7.1.2.c. the applicant for reciprocity holds a current license as a nursing home administrator which has not been revoked or suspended.

7.1.3. a nursing home administrator licensed in this state seeking reciprocity/endorsement into another state and requiring Board verification of licensure, shall submit a fee of one hundred dollars (\$100.00) to the Board for this verification.

§21-1-8. Restoration.

8.1. The Board may restore a license after revocation upon submission of evidence satisfactory to the Board that the applicant for the restoration of a license has removed the disability.

8.2. Restoration after lapse.

8.2.1. The Board may reinstate a license which has lapsed during the first year immediately following the expiration date of a valid permanent administrator license. The Nursing Home Administrator with a lapsed license shall submit a formal request as well as an application for licensure along with the proper fee and meet the requirements for continuing education hours.

8.2.2. The nursing home administrator seeking reinstatement shall pay a late charge for reinstatement of license, in addition to the licensure renewal fee.

8.2.2.a. The Board shall impose the following reinstatement fees:

July 1, through September 30th one hundred dollars (\$100.00).

July 1, through December 31st two hundred dollars (\$200.00).

July 1, through March 31st three hundred dollars (\$300.00).

July 1, through June 30th four hundred dollars (\$400.00).

8.2.3. After one (1) year from the expiration date of his or her license, the Board shall consider the nursing home administrator in question as a new applicant and the applicant is subject to all of the provisions of this Rule.

§21-1-9. Refunds.

9.1. The Board shall refund to all applicants that choose to withdraw from the application process their entire application fee minus any processing fee. Refunds are applicable to fees for the following:

9.1.a. An Administrator-in-Training (AIT) application;

9.1.b. A licensure examination application; and

9.1.c. A reciprocity application.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bob Wise
Governor

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Paul L. Nusbaum
Secretary

July 31, 2001

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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.

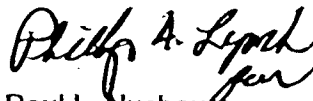
The Office of Health Facility Licensure and Certification (OHFLAC), as its name implies, has traditionally licensed facilities and not professionals. It may prove extremely unseemly and generate at least the perception of being unfair if OHFLAC licenses or certifies both the facility and the administrator.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