

1998 SUNSET REVIEW

Colorado Board of Examiners of Nursing Home Administrators

Colorado Department of Regulatory Agencies



Office of Policy and Research

October 15, 1998

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

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Board of Examiners of Nursing Home Administrators. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 1999 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes, which states in part:

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

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ."

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

Sincerely,

Joseph A. Garcia
Executive Director

Table of Contents

Executive Summary	1
Background	3
<i>Sunset Process/Methodology</i>	3
<i>Nursing Home Administrator - Scope of Practice</i>	3
<i>History</i>	4
Statutory Summary	6
Rule and Regulation Summary	9
Long Term Care Industry	11
<i>Ombudsman</i>	12
State Regulation of Nursing Homes	14
Licensure	16
<i>Licensing Standards In Other States</i>	20
Program Description	24
<i>Workload Statistics</i>	25
<i>Complaints</i>	25
<i>Investigations</i>	27
<i>Disciplinary Actions</i>	28
Sunset Analysis & Recommendations	29
<i>Recommendations</i>	34
<i>Administrative Recommendations</i>	38
Appendices	39
<i>Appendix A - Sunset Statutory Evaluation Criteria</i>	40
<i>Appendix B - 42 U.S.C. § 1396g</i>	41
<i>Appendix C - Colorado Nursing Home Administrator Statute</i>	43
<i>Appendix D - Survey Deficiency Guidelines</i>	55

Executive Summary

The Department of Regulatory Agencies (DORA) has concluded its Sunset Review of the Board of Examiners of Nursing Home Administrators (Board). The review found that there would be significant potential harm to the public by the unregulated practice of nursing home administration. Therefore, DORA recommends continuing the program to the year 2009.

Nursing home administrators (NHAs) supervise facilities that care for a segment of the state's population that is unable to care for itself. This population is at risk for physical, mental, emotional and economic abuse. The state should regulate those persons charged with the care of this population.

The report makes a total of four statutory and three administrative recommendations. In addition to continuing the licensing of NHAs by the Board, the report recommends modifications to the Board composition and requirements. The scope of practice of a NHA is very diverse and involves supervising and interacting with a variety of health care professionals. The public and profession would be well served by diversifying Board membership. The report also recommends changes to the requirements for Board membership that are consistent with appointments to other health care professional licensing boards, such as changing the appointment term to four years.

The General Assembly has provided for a number of options to qualify for licensure as a NHA. The language detailing these options is very complex. The report recommends streamlining the licensing requirements.

The final statutory recommendation is to remove unnecessary language from the Act which duplicates the intent of the state Administrative Procedure Act (APA). The APA contains sufficient due process provisions to protect licensees and the public. The Board should not have to comply with a separate provision that unnecessarily complicates the disciplinary process.

Administrative recommendations do not require legislative action by the General Assembly. The report recommends that the Board promulgate regulations providing additional flexibility for waiving or reducing the number of required hours in the Administrator in Training Program. The report also recommends the Board develop a closer working relationship with the State Long Term Care Ombudsman and to revise the application forms for NHAs to only request information relevant to regulatory requirements.

The Department of Regulatory Agencies makes the following recommendations:

- Recommendation 1:** Continue the Board of Examiners of Nursing Home Administrators and set a new sunset date of July 1, 2009. 34
- Recommendation 2:** Clarify and Modify Board composition and requirements: changing the appointment term to four years; changing the negligence definition; and changing the Board member qualifications. 36
- Recommendation 3:** Clarify the qualifications for licensure by examination and admittance to the AIT program. 37
- Recommendation 4:** Delete unnecessary and redundant provisions from the powers and duties of the Board. 37
- Administrative Recommendation 1:** The Board should be more flexible in granting waivers to the AIT program. 38
- Administrative Recommendation 2:** The Board should establish a closer working relationship with the State Long term care Ombudsman. 38
- Administrative Recommendation 3:** The Board should revise the application process to eliminate unnecessary requirements. 38

Background

Sunset Process/Methodology

The licensing of nursing home administrators authorized by §12-39-101, et. seq., of the Colorado Revised Statutes (C.R.S.), shall be terminated effective July 1, 1999 unless continued by the General Assembly. Pursuant to §24-34-104(9)(b), C.R.S., the Department of Regulatory Agencies is required to conduct a review of the Board of Examiners of Nursing Home Administrators (Board) performance in the operation of this program. During the review, the Board must demonstrate that there is a need for the program to continue, and that the regulation is the least restrictive form of regulation consistent with the public interest, in accordance with the Sunset Evaluation Criteria, found in Appendix A on page 40. The Board is located in the Department of Regulatory Agencies (DORA), Division of Registrations (Division).

The sunset review process included an analysis of the statutes and regulations promulgated under its authority, interviews with Board members, Division staff, licensees, other departments, and interested parties affected by the provision of the law. Research of current literature, related statutes, and the procedures in other states were also conducted.

Nursing Home Administrator - Scope of Practice

The Colorado Revised Statutes define a nursing home administrator (NHA) as an individual who is responsible for "...planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons." §12-39-102(2), C.R.S.. This is a very broad scope of practice and includes a variety of areas including: billing practices; housekeeping; facility maintenance; staffing; food preparation; recreational activities; the implementation of medical treatment plans; fire safety; and record keeping. All of these areas fall under the purview of a NHA.

NHA are not directly involved in the diagnoses or treatment of residents. However, the Administrator is required to establish procedures to ensure that residents receive proper medical treatment and that prescribed treatment plans are adhered to by the staff of the nursing home.

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

Background and History of Regulation

In some cases, it is difficult to determine when the NHA is responsible for certain deficiencies. For example, if a resident in a nursing home visits a physician and is prescribed a medication, the physician is responsible for the diagnoses and prescribing. The NHA may be responsible for ensuring the prescription is filled by a licensed pharmacist. A nurse is responsible for administering the medication, but the NHA is responsible for a quality assurance plan to assure that medications are properly documented on the resident's chart. If a nurse or another licensed health care professional is diverting patient drugs for their own use, the NHA cannot be held responsible. However, systems should be in place to detect missing medications, and the NHA is responsible for reporting and investigating any shortages.

History

In 1967, the Federal Social Security Act was amended to require states to establish licensing programs for NHAs. Portions of the Social Security Act were re-codified as part of the Omnibus Reconciliation Act (OBRA) reforms of 1984. The federal requirements for the licensing of NHAs can be found at 42 U.S.C. §1396g, included in this report as Appendix B on page 41.

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

Since its creation in 1969, the Board of Examiners of Nursing Home Administrators has undergone sunset reviews in 1977, 1982 and 1992. Each of these reviews noted that nursing homes are subject to regulation and or oversight by a variety of state and federal programs and agencies. The 1977 review recommended the Board be made advisory and transferred to the Health Facilities Division (HFD) of what is now the Colorado Department of Public Health and Environment (CDPHE) or, alternatively, to what is now the Department of Human Services, to reduce the fragmentation of regulation. The 1977 report also recommended:

- Increased public protection language in the legislative declaration;
- Increased educational requirements for licensees;
- A state examination to supplement the national examination;
- Mandatory continuing education;

Background and History of Regulation

- Closer supervision of the Administrator in Training Program; and
- Revised procedures for the issuance of temporary licenses.

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

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

The 1992 review noted improved cooperation between the Department of Health and the Board in the regulation of NHAs as a result of administrative recommendations contained in the 1982 review that were adopted by the two entities. The 1992 review recommended a thorough revision to the NHA licensing statute. Several legislative recommendations were enacted as a result of the 1992 review, including changing Board composition to its current seven-member format. The revisions clarified several vague provisions and updated the Board's disciplinary authority.

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

Initially, the only requirement to take the examination and become licensed as a NHA was graduation from high school. Sunset reviews have consistently recommended higher standards for licensure. The current qualifications for licensure are contained in §12-39-106, C.R.S. Qualifications include a bachelor's degree in a specific field, or successful completion of two years of college-level study in health care or hospital administration, combined with two years of Board approved experience. The Board is required to waive the college education requirement for applicants with satisfactory experience in nursing home administration.

The statute provides for an Administrator in Training (AIT) program to be administered by the Board. The AIT program is an opportunity for individuals without the required education or experience to become qualified for licensure as a NHA. The AIT program is discussed in more detail in the licensing section of this report.

Statutory Summary

The authorization for the Board of Examiners of Nursing Home Administrators (Board) is contained in Article 39 of Title 12, C.R.S. (Act). The Act begins with a legislative declaration stating two distinct intents. The first is to provide a measure of protection to residents of nursing homes through the regulation of NHAs; the second is to adequately fund the Board to allow it to carry out the functions of the Act.

The Act contains several definitions, including that of “Nursing Home Administrator” (NHA) as: “any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.” §12-39-102(2), C.R.S. The Act specifies when a license is required, and exempts the superintendents of the three state nursing homes and training schools at Grand Junction, Pueblo, and Wheat Ridge from licensing requirements.

The Board is composed of seven members, appointed by the Governor for three year terms. No Board member may serve more than two consecutive terms and may be removed by the Governor for negligence, incompetence, and unprofessional or willful misconduct. Three members must be licensed NHAs, no two may be from the same practice area, defined as: hospital administration; nonprofit facility administration; proprietary facility administration; and continuum of care administration; and at least one other member must be in the long term care industry. No more than three members of the Board may be officials or full-time employees of the state or a local government.

The Board is created as a Type I agency and is empowered to elect its own officers and promulgate rules and regulations to administer the Nursing Home Administrators Act. The Director of the Division of Registrations appoints an administrator and other staff to assist the Board in record-keeping and other administrative functions of the Board.

Section 105 defines the powers and duties of the Board. The Board is authorized to:

- adopt rules defining standards for nursing home administration;
- develop appropriate techniques, including examinations (which must be held at least twice each year) to determine whether an individual meets such standards;
- issue licenses to qualified individuals;
- revoke, suspend, withhold, or refuse to renew any previously issued license or to place a licensee on probation for any violation of the statute or regulations promulgated under the authority of the Board;
- conduct investigations, either on its own motion, or upon receipt of a complaint alleging violations of the Act; and

Summary of Statute and Rules

- issue subpoenas and administer oaths.

The Board is required by §12-39-105 (1)(a)(B)(VI), C.R.S., to prepare an annual report of activities for the Governor.

Section 105 also requires that any subpoena issued by the Board for patient records shall provide for the deletion of the patient name to protect the privacy of the patient. This section also details mitigating factors to be considered in any disciplinary action. The Board has broad authority to promulgate regulations to require practice standards for NHAs, including compliance with a variety of federal regulatory requirements.

Applicants for licensure are required to complete 2,000 hours of formal training as an Administrator in Training (AIT). The Board is required to promulgate rules for the proper training of AITs. All AITs must submit regular reports on training progress to the Board. Applicants with approved bachelor's or nursing degrees are exempt from the AIT program requirement. The Board may waive the AIT requirement for other applicants with any combination of experience and education the Board determines is sufficient to qualify as a NHA. All applicants for licensure must pass both a state and national examination. The licensing qualifications are discussed in more detail in the licensing section of the report. The chart on page 17 illustrates the 5 options available for admittance to the examination.

All licenses issued by the Board are valid for one year from the date of issuance. The Board may promulgate regulations for the renewal of expired licenses. The Board may issue temporary licenses for a period not to exceed six months to qualified individuals, except that hospital administrators may be granted a temporary license for up to 12 months. The program is cash funded, and the Board is required by §12-39-108(7), C.R.S., to establish licensing fees annually. Fees are transmitted to the State Treasurer and are subject to the appropriations of the General Assembly.

The Board is required to issue a license to any individual who holds a valid license in good standing from another state or United States Territory with substantially similar licensing requirements. Applicants for licensure by reciprocity must submit evidence that they were actively engaged in nursing home administration or in another approved health care occupation for one year immediately preceding the application. Licensed applicants actively engaged in the previous activities for three of the five years preceding the application are also approved for licensure by reciprocity. All applicants for a license by reciprocity must submit a license history from their previous state of licensure and obtain a satisfactory score on the Colorado examination. Reciprocity applicants must also submit licensing and disciplinary histories for any other health care license they have ever held.

Summary of Statute and Rules

Section 111 of the Act details grounds for disciplinary action against any licensee. All disciplinary actions must comply with the due process requirements of the Colorado Administrative Procedure Act. If the Board has reason to believe a licensee is mentally or physically unfit to practice, the Board may require the licensee to submit to a mental or physical examination by a physician designated by the Board. The Board is authorized to conduct hearings on any matter within its jurisdiction, or delegate any hearing to an Administrative Law Judge.

The Board may appoint temporary advisory committees to assist in the performance of Board duties. Members of temporary advisory committees and any witnesses called by the Board or any advisory committee are immune from any civil action brought by a licensee for any action taken by the advisory committee provided the individual operated in good faith.

It is unlawful for any person to practice as a NHA without a valid license issued by the Board. Violations of this provision are a class 3 misdemeanor. Subsequent violations by the same individual are a class 6 felony.

The Board may issue cease and desist orders for persons practicing nursing home administration without a license. The Board may apply for injunctive relief in any court of competent jurisdiction, through the Attorney General or a district attorney, to enjoin any person who does not possess a valid NHA's license from committing any act declared to be unlawful or prohibited by the Act.

Administrators of nursing homes operated exclusively for persons who rely solely on spiritual healing methods in accordance with the tenets of a church or religious denomination are exempt from licensure by the Board.

Rule and Regulation Summary

The Board is required to adopt regulations to effectively administer the licensing statute. The Board has promulgated several regulations to implement the Act. All rule making hearings are conducted in accordance with the Administrative Procedure Act (APA). The last rule making hearing was conducted in 1994.

Regulation 1 of the Board concerns the licensing examination. The Board has established a two-part examination process. The first part is the national examination, which is offered four times per year and is administered by a private company under a contract with the Board. A state examination consisting of questions developed by the Board in consultation with industry representatives and the DORA psychometrician is the second phase of the examination process. The primary focus of the state examination is state law and business practices as they relate to the Colorado statutes. The state examination may be taken in conjunction with the national examination.

Regulation 2 covers the procedures for obtaining a duplicate license in the event a license is lost, destroyed, or mutilated. Regulation 3 details the standards for licensure. These standards are a comprehensive guide for the responsibilities of a NHA. Standards require that the NHA must:

- exercise reasonable supervision over the activities of nursing home personnel;
- ensure quality of care and quality of life that is consistent with the health and safety of the residents in the facility;
- protect the residents' rights;
- provide appropriate systems to account for and to protect residents' personal funds and property within the facility; and
- comply with provision of the law, code, rules or regulation of any licensing or supervisory authority.

Regulation 4 governs the AIT program. In the program, a qualified AIT works under the direct supervision of a full-time, licensed NHA. The licensed NHA, known as a preceptor, provides practical training and experience to the AIT. Preceptors must evaluate and report on the performance of the AIT to the Board. AIT applicants for licensure must complete 2,000 hours under the supervision of a preceptor to be qualified to take the NHA examination. The three main areas of practice for the AIT program are;

1. Principles of administration including budgeting, accounting, records management, organization, personnel, and business management;
2. Medical, sociological, psychological, environmental and therapeutic aspects of patient/resident care; and

Rule and Regulation Summary

3. Federal, state and local laws, rules and regulations relating to the administration of a nursing home.

The Board considers requests for waivers of a portion of the AIT training period for candidates that have specific related experience in an area of concentration. Generally, one year of specific experience is considered equivalent to 500 hours of preceptor supervised training. Board regulations allow for waivers of 500 and 1,000 hours of preceptor supervised training. The regulations provide for preceptor qualifications, reporting and monitoring standards and procedures for interruption, discontinuance or disqualification from the program.

Regulation 5 provides for the issuance of temporary licenses. Federal law requires every nursing home to be supervised by a licensed NHA. The Board may grant temporary licenses to applicants for reciprocity, in emergency situations, or for hospital administrators.

The Board has delegated the authority to issue temporary licenses for periods not to exceed three months to the program administrator. Renewals of temporary licenses, or temporary licenses for periods of more than three months must be approved by the Board. The Board has also promulgated rules for the reinstatement of an expired license and requiring licensees to notify the Board within thirty days of any change in address.

Long Term Care Industry

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

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

Other homes devote the entire facility, or a portion of it, to residents who may require assistance with every facet of daily living: dressing, bathing, eating, and the use of sanitary facilities. Some of these residents may be bedridden and fed by a gastric-tube.

Colorado, like most states, has adopted federal standards for nursing homes. States may exceed federal standards in terms of facility staffing and quality of care, but may not go below the minimum standards established by the Federal Health Care and Financing Administration (HCFA). Colorado maintains the federal minimums for nursing homes.

While federal regulations require a licensing program by the state, they do not mandate the licensing criteria. As discussed in this report, licensing standards vary widely in the various states. The standards for licensure as a NHA in Colorado are comparable to those in most states.

Long Term Care Industry

Ombudsman

Each state is required by the Federal “Older Americans Act of 1965” to have a Long term care Ombudsman program. In Colorado, the program is contracted with The Legal Center for Persons with Disabilities by the Department of Human Services, Division of Aging and Adult Services.

The Ombudsman coordinates a network of 16 local Ombudsman and volunteers. The Ombudsman and volunteers visit nursing homes in their areas on a regular basis. The Ombudsman interacts with residents and their families to facilitate communication between the residents or families and the facility. The Ombudsman serves as a resource person and makes referrals to regulatory agencies when necessary. Occasionally, an Ombudsman may file a complaint with a regulatory agency on behalf of a resident.

Each year, the Ombudsman prepares a report containing statistics on complaints received by the office, and major issues identified in the long term care industry. The Annual Report makes recommendations for improvements in the long term care industry. These recommendations may include legislative or regulatory changes.

In 1996, the Ombudsman Annual Report identified three main issues in the long term care industry: staffing, managed care, and personal care boarding homes. The staffing issue is particularly relevant to nursing homes. There are currently no mandatory staffing ratios in nursing homes. The only staffing requirement is two hours of nursing care per resident per day. The 1996 Ombudsman report recommended minimum staffing levels of one nursing assistant to eight residents during the day, one nursing assistant to twelve residents in the evening, and one nursing assistant to fifteen residents at night.

In 1996, the Ombudsman reported 6,441 complaints by residents or family members of residents in nursing homes. These complaints ranged from abuse or neglect to billing practices. In most cases, the Ombudsman seeks to resolve complaints at the lowest possible level by establishing communication between the parties in question. In some situations, the Ombudsman may encourage the complaining party to contact a regulatory agency. No statistics are maintained on complaints filed by the Ombudsman with the Board. However, anecdotally, the number is believed to be very low.

Long Term Care Industry

In 1997, the Ombudsman reported 8,735 complaints, again in a variety of areas. The 1997 Annual Report identified four major issues in the long term care industry:

- The Growth of Board and Care/Assisted Living;
- The Lack of Ombudsman Resources;
- The Growth of Managed Care; and
- The Increasingly Difficult Problem of Staffing.

There is a common theme in the Ombudsman reports that were reviewed. Staffing in the long term care industry is a major issue. Turnover is high, resulting in issues such as consistency and quality of care. Turnover is also resource intensive for the industry. Time devoted to recruiting and training staff could be spent on other, more productive, areas.

The growth of the personal care and assisted living segments of the industry are another phenomena. Personal Care Boarding Homes (PCBH) are licensed by the state through the HFD. However, the administrators of the facilities are not regulated directly through any type of licensing or certification program. Many individuals in the LTC industry believe stricter regulation of the PCBH segment is necessary. The assisted living segment is also growing. This segment has even less regulation than PCBHs, again causing concern to many in the industry. However, an in-depth analysis of these issues is beyond the scope of this report.

State Regulation of Nursing Homes

The Colorado Department of Public Health and Environment (CDPHE) is required by the federal Health Care Financing Administration (HCFA) to conduct annual inspections (called surveys) of all licensed nursing homes. Surveys are unannounced and can last as long as five days. All surveys are conducted using standards and forms developed by HCFA. Facilities that do not meet all the HCFA standards are required to establish a plan of correction to bring the facility into compliance. A facility that is severely out of compliance, to the extent that residents' health and/or safety are seriously in jeopardy, may be placed under supervised management or have its license revoked.

License revocations are extremely rare. Other disciplinary options available to the CDPHE include suspending or terminating Medicaid certification, or fining the facility. The survey teams meet with the NHA while conducting a survey of a facility. The NHA is also the person responsible for creating and implementing any plan of correction required by a survey.

One problem noted by the Board, the Ombudsman, CDPHE representatives and others interested in the LTC industry is that NHAs are usually not the owners of the facilities. A growing trend in the health care industry is the consolidation of provider services in large corporations. The LTC segment of the health care industry is following that trend as more facilities are being opened or purchased by larger corporations.

Larger corporations can generate economies of scale and provide service at lower cost than smaller independently owned facilities. Some interested parties argue large corporations provide lower cost services at the expense of the quality of life of residents in the facilities. Since federal reimbursements are fixed for services, lower costs are not passed on to residents.

It was noted during the review of complaints filed with the Board that licensees frequently cited a lack of cooperation by corporate officials as the reason for deficiencies noted in investigations. Allegations by persons involved in the industry that facilities owned by large, out-of-state corporations are more concerned with bottom line profits than quality care of residents were frequently encountered during the course of this review. While these allegations are beyond the scope of the review, they do raise questions about the state of the long term care industry.

When the CDPHE completes a survey, a copy of the results is submitted to the NHA in charge of the facility for a response and plan of correction. If the survey contains significant deficiencies, the CDPHE forwards a copy of the survey to the Board. Neither the Board nor the CDPHE track the number of surveys forwarded to the Board, but reasonable estimates place the number at less than six per year.

State Regulation of Nursing Homes

Some Board members believe the Board should be receiving more surveys from the CDPHE and have requested reports containing less serious deficiencies be forwarded to the Board. The survey process consists of a team of surveyors, usually about five to six members, arriving unannounced at a LTC facility. Based on the actual census, determined the day the survey begins, a representative sample of residents is selected and a thorough review of their care is conducted. Team members interview residents and family members as well as spending two to three days observing the LTC staff interacting with the sample residents. Using federal guidelines, the food service, recreational activities, available therapies, treatment plans, medication records and administration is observed and evaluated.

Surveys compare actual conditions and operations to federal standards. The federal survey contains over 25 separate areas to be surveyed. Each of these areas may have several sub sections, called “tags” which may be found to meet or be below federal standards. Deficiencies in any tag area are reported in one of three categories, isolated, pattern, or widespread. Tags are also divided into four separate ranges of concern: no actual harm with the potential for minimal harm; no actual harm with the potential for more than minimal harm that is not immediate jeopardy; actual harm that is not immediate jeopardy; and immediate jeopardy to resident health or safety. These federal survey standards have been in place for over five years. A copy of the survey deficiency guidelines is included as Appendix D on page 55.

The federal standards rate overall deficiencies of a nursing home based on the category and ranges into levels of deficiency ranging from an A level, which is very minimal to L level, which is very severe. The CDPHE routinely forwards deficiencies at the H level and above to the Board. As previously stated, these result in approximately six investigations by the Board annually. The CDPHE estimates there are approximately 75 surveys with a level G deficiency each year.

The CDPHE surveys are public information and the Board may have access to any number of surveys. However, conducting an additional 75 investigations each year is beyond the current resources of the Board. Care should be exercised to screen the surveys for deficiencies within the scope of practice of the NHA. At the time of this review, the Board was establishing a task force to develop criteria and a reporting mechanism for the CDPHE. Preliminary findings show that not all G level deficiencies fall within the scope of practice of the NHA. However, some F level deficiencies may fall within the NHA scope of practice.

Previous reviews have been critical with regard to the cooperation between the CDPHE and the Board. This review found the CDPHE very willing to work with the Board on communicating a variety of data and information. Board members and the program administrator commented that the working relationship between the two regulatory entities has improved since the last review.

Licensure

The Nursing Home Administrator Act (ACT) is both a practice and a title protection act. The Act, in §12-39-103, C.R.S., requires that only those individuals licensed by the Board may practice or identify themselves as a NHA. In addition, §12-39-108, C.R.S., states that only those individuals licensed under the statute may use the title “nursing home administrator” or the abbreviation “N.H.A.”.

The statute provides alternative qualifications for admittance to the examination for licensure as a NHA. The Board is required to issue licenses to qualified individuals who meet educational requirements and pass Board approved examinations. This method is commonly referred to as “license by examination”. The Board issues licenses to individuals who meet certain education and experience requirements and successfully complete an AIT program. These applicants must also achieve a passing score on the Board-approved examination. A third method for licensure in Colorado is reciprocity. The reciprocity provision, contained in §12-39-110, C.R.S., requires the Board to issue a license to an applicant who is currently licensed in another state with substantially equivalent licensing requirements. Applicants for licensure by reciprocity must achieve a passing score on the state examination and demonstrate that their license in their home state is in good standing. All licenses are valid for one year from the date of issuance.

Licensure

NURSING HOME ADMINISTRATOR LICENSING STANDARDS

Minimum age, 21

Specific Degrees identified in statute or regulation for automatic admittance to the examination:

Bachelor's of Business Administration
 Bachelor's of Public Health Administration
 Bachelor's of Health Administration
 Bachelor's of Health Care Organization and Systems
 Bachelor's of Science in Nursing
 Master's of Long Term Care Management (Naropa Institute)

Option 1 for exam admittance:

An associate degree in a health care related field (i.e. nursing home administration, nursing, recreational therapy, occupational therapy), and two years of experience in supervision or administration in a nursing home or hospital.

Option 2 for exam admittance:

Two years of education in a health related field, and completion of the AIT program.

Option 3 for exam admittance:

A Bachelor's degree in a non-health related field, and completion of the AIT program.

Option 4 for exam admittance:

One year of college education in a health related field; three years of experience; and completion of the AIT program.

Option 5 for exam admittance:

No college education, four years of qualified experience, and completion of the AIT program.

Licensure

The Board issues two types of temporary licenses. The Board is required to issue a temporary license, for a period not to exceed 12 months, to any applicant who is employed as a hospital administrator by a general hospital licensed or certified by the CDPHE. The Board may also issue a temporary license to an applicant in an emergency situation. These temporary licenses may not be issued for a period to exceed six months. An example of an emergency situation is a facility that for any reason lost the services of the NHA of record. If the facility had another staff member, such as an AIT who was qualified for the examination, the Board could issue a temporary license until the next national examination was held.

Applicants for licensure are required to successfully pass both a national and a state examination. The Board determines the subject matter of the state examination. The Board has developed a 45-question examination. The examination questions pertain to statutory and regulatory requirements of NHAs as well as standards for health care facilities. The examination was developed in cooperation with the Board, industry representatives, and the CDPHE. There are three versions of the test, which are offered quarterly in conjunction with the national examination and more frequently if necessary. The questions are reviewed and evaluated annually for validity.

The Board has selected the *National Nursing Home Administrators Examination* as the required national examination in Colorado. This examination is offered quarterly nationwide. The Board has contracted with a private company for the administration of both the state and national examinations. The Board has authorized the program administrator to administer the state examination as needed for other applicants, such as those applying for licensure by reciprocity.

Approximately 75% of the licenses issued by the Board are issued by examination. The Board is required to admit to the examination any applicant who has a Bachelor's Degree in Business Administration, Public Health Administration, Health Administration, or any related degree approved by the Board. The Board has approved Bachelor's degrees in Health Care Organization and Systems, a Bachelor's of Science in Nursing or a Master's degree in Long term care Management as qualification for entrance to the examination.

Applicants with two years of college-level study, or an associate degree in a health-related field may be qualified for license by examination if they demonstrate two years of supervisory or administrative experience in a nursing home or hospital. Applicants who do not meet the standard education or education and experience model must successfully complete the AIT program prior to admittance to the examination.

Licensure

The AIT program provides an alternative for applicants who do not have the formal education or experience to qualify to sit for the examination immediately. Applicants who have two years of health-related college education but no experience, or who have four years of experience in health care administration but no education may apply for acceptance to the AIT program. The Board also accepts applicants into the AIT program that have a four-year degree in a field not related to health care.

Applicants to the AIT program must be employed in a nursing home and be supervised by an approved preceptor. To be approved as a preceptor, the supervisor must have been a licensed NHA in Colorado for at least one year with no disciplinary actions taken against his/her license.

The AIT applicant and preceptor must submit a training plan to the Board for approval. The plan must detail how the applicant will receive training and experience in all facets of nursing home administration over the 2,000 hour training period. The preceptor must agree to submit written evaluations of the applicant at least bi-monthly. There is no statutory or regulatory time limit to complete the 2,000 training hours. However, most AITs complete the training in less than two years. Once the training program is complete, the AIT is qualified to sit for the national and state examinations. Approximately 15% of the licenses issued annually use the AIT program for license qualification.

The Board is authorized to promulgate regulations to waive any portion of the AIT program for applicants the Board determines have sufficient prior experience or training. The Board has promulgated regulations providing criteria for waiving either 500 or 1,000 hours of formal AIT training. The regulations do not allow waiving any other increments of the AIT program.

Less than 10% of the applicants for licensure apply via reciprocity. Reciprocity is a term used to describe a practice of issuing licenses by agreement between two or more licensing jurisdictions. The reciprocity agreement requires the licensing jurisdictions to automatically qualify applicants of the reciprocating jurisdiction(s). Practically speaking, Colorado has a practice of licensure by endorsement. Under licensure by endorsement, applicants from a jurisdiction that has equivalent licensing requirements may obtain a Colorado license by completing the state examination, provided the applicant's license is in good standing. Licensure by endorsement does not require reciprocal recognition by another jurisdiction.

The Board is required to annually adjust the licensing fees to recover the direct and indirect costs of administering the program. A review of the budget for the past five years indicates the Board has adequately anticipated expenses and adjusted fees accordingly.

Licensure

The Board has delegated to the program administrator specific administrative and emergency functions. The program administrator may administer the state examination and issue licenses by reciprocity to applicants who meet all licensing requirements and have no disciplinary actions against their license, subject to ratification by the Board at its next regular meeting. The program administrator may admit qualified applicants to the national examination, subject to Board ratification at the next regular Board meeting. The program administrator may also issue a 90 day temporary license to a qualified individual if a nursing home in question terminates the licensed NHA or the licensed NHA resigns. The Board must approve any extension of a temporary license. Extensions may not exceed 90 days.

Licensing Standards In Other States

The level of education required by states to obtain a NHA license varies widely. Some states, such as Arkansas, require no formal education beyond high school. Others, such as California, require a Master's Degree, or a Bachelor's Degree with an internship program. Most states require some combination of education and experience prior to licensure as a NHA. Basic licensing requirements for the fifty states and the District of Columbia are summarized below:

Licensure Requirements			AIT Training		Exam		CE Hours Required
State	Education	Renewal	Period	*Cert.	National	State	
Alabama	BA and AIT	Annually	1000-2000 hours	Yes	Yes	Yes	24/yr.
Alaska	BA and 1 year experience	Biennially	None	--	Yes	No	None
Arizona	BA, courses, AIT	Biennially	1000 hours	No	Yes	Yes	50/2 years
Arkansas	AA, or HS + experience	Annually	New Program Pending	Yes	Yes	Yes	20/year
California	MA and experience or BA plus AIT	Biennially	1000 hours	Yes	Yes	Yes	40/2 years
Colorado	BA/AA and AIT/AA and experience	Annually	6-12 months	Yes	Yes	Yes	None
Connecticut	BA, courses, AIT/MA	Annually	500-900 hours	No	Yes	Yes	None
Delaware	BA and AIT/AA & RN + experience	Biennially	3-12 months	Yes	Yes	No	48/2 years
DC	BA degree/15 hour course/experience	Biennially	1 year	No	Yes	Yes	20/year
Florida	BA and intern or AIT	Biennially	1000-2000 hours	Yes	Yes	Yes	40/2 years
Georgia	MA and AIT or experience/BA, AIT	Biennially	6 months	Yes	Yes	Yes	40/2 years
Hawaii	BA with NHA courses and AIT	Biennially	1 year	Yes	Yes	No	None
Idaho	BA and AIT/HS and experience	Annually	1 year	Yes	Yes		20/year
Illinois	BA/AA and experience/NHA course	Biennially	None	--	Yes	Yes	36/2 years
Indiana	BA and AIT/AA LTC and AIT	Biennially	6 months	Yes	Yes	Yes	40/2 years
Iowa	AA in LTC/NHA course	Biennially	720 hours	No	Yes	Yes	36/2 years
Kansas	BA and 480 hour practicum	Biennially	480 hours	Yes	Yes	Yes	60/2 years

Licensure

Licensure Requirements			AIT Training		Exam		CE Hours Required
State	Education	Renewal	Period	*Cert.	National	State	
Kentucky	BA and 6 months experience	Biennially	None	--	Yes	No	30/2 years
Louisiana	AA or AIT	Biennially	6 months	Yes	Yes	Yes	30/2 years
Maine	BA, courses/BA in LTC	Annually	1040 hours	Yes	Yes	Yes	24/year
Maryland	BA or MA and AIT	Biennially	1 year	Yes	Yes	Yes	40/2 years
Massachusetts	MA in HCA/BA and AIT	Annually	1040 hours	Yes	Yes	No	30/2 years
Michigan	BA or MI RN license/ applicable courses	Biennially	None	--	Yes	Yes	36/2 years
Minnesota	BA with 9 courses in NHA	Annually	400	No	Yes	Yes	30/year
Missouri	Education and experience	Annually	300 hours	Yes	Yes	Yes	20/year
Mississippi	AA or experience in LTC	Biennially	6 months	Yes	Yes	Yes	40/2 years
Montana	3,600 points of education, experience	Annually	None	--	Yes	Yes	25/year
Nebraska	AA and courses, and AIT	Biennially	640 hours	Yes	Yes	Yes	50/2 years
Nevada	Education and experience	Biennially	1000 hours	No	Yes	No	40/2 years
New Hampshire	BA and courses and AIT	Biennially	12 months	No	Yes	Yes	25/year
New Jersey	BA and experience or AIT	Biennially	450-1750 hours	Yes	Yes	No	40/2 years
New Mexico	BA and NHA courses	Annually	None	--	Yes	No	24/year
New York	BA and experience	Biennially	1 year	Yes	Yes	No	48/2 years
North Carolina	2 year college/courses/AIT	Biennially	12 to 50 weeks	Yes	Yes	Yes	30/2 years
North Dakota	BA in LTC/BA courses	Annually	480 hours	--	No	--	25/year
Ohio	BA, AIT or MA, BA in NHA	Annually	3 to 9 months	No	Yes	Yes	20/year
Oklahoma	HS, NHA course; BA, MA	Annually	560 hours	Yes	Yes	Yes	30/2 years
Oregon	BA or BS	Biennially	960 hours	Yes	Yes	Yes	60/2 years
Pennsylvania	120 hour study/experience/training	Biennially	None	--	Yes	Yes	48/2 years
Rhode Island	BA with NHA courses and AIT	Biennially	350 hours	--	Yes	No	40/2 years
South Dakota	BA and AIT	Annually	6 months	Yes	Yes	Yes	20/year
South Carolina	BA in NHA and experience/BA and experience	Annually	None	--	Yes	Yes	20/year
Tennessee	BA or MA in LTC/BA and experience	Biennially	6-12 months	Yes	Yes	Yes	18/year
Texas	BA/practicum, NHA course	Biennially	1000 hours	Yes	Yes	Yes	40/2 years
Utah	BA with health admin. Courses	Biennially	1000 hours	No	Yes	No	40/2 years
Vermont	AA, and/or experience	Biennially	None	--	Yes	Yes	40/2 years
Virginia	BA in NHA and AIT	Annually	2080 hours	Yes	Yes	Yes	20/year
Washington	BA and AIT	Annually	500-1500 hours	Yes	Yes	Yes	54/3 years
West Virginia	BA in HA and experience	Annually	1 year	Yes	Yes	Yes	20/year
Wisconsin	AA NHA/course	Biennially	None	--	Yes	Yes	24/2 years
Wyoming	BA and AIT	Annually	6 months	No	Yes	No	25/year

Source: National Association of Boards of Examiners of Long Term Care Administrators

* AIT Preceptors certified by the Board

Licensure

The National Association of Boards of Examiners of Long term care Administrators supports more stringent licensing standards. The Association has supported national minimum standards to be adopted by the National Health Care Financing Administration. Changes to the current standards were originally proposed in 1992 and would require:

- A Bachelors degree in a field determined to be appropriate by the individual state;
- A 12-week internship program approved by the state;
- A passing score on a state approved examination; and
- 20 clock hours of mandatory continuing education (MCE) per year.

These proposed standards exceed what most states, including Colorado, currently require.

Some representatives of the NHA profession advocate stricter licensing requirements in Colorado, including mandatory continuing education for licensees in order to maintain licensure. Before a recommendation could be made to increase licensing requirements, a finding that the current standards are not sufficient to protect the public health would have to be made. One measure of the protection of the residents in nursing homes is the deficiencies cited by the agency conducting standardized HCFA certification surveys.

HCFA requires annual surveys of nursing homes to maintain certification for Medicaid reimbursement. Facilities in every state are surveyed using the same federal standards. Deviations from the standards are noted as deficiencies. These deficiencies range from minor (level B) to very severe (level L). While comparing deficiencies from states with various licensing criteria is not the only factor that should be considered, it is a fairly objective rating, and the only standard evaluation used nationally.

A comparison of deficiencies in 1997, by state, revealed a range of 1.37 to 14.6 deficiencies per licensed facility, with a national average of 4.75 deficiencies per facility. Five states averaged less than two deficiencies per facility: Maryland, 1.94; Colorado, 1.9; New York, 1.89; New Mexico, 1.79; and Vermont, 1.37. Five states averaged over eight deficiencies per facility: Nevada, 14.6; California, 10.45; Michigan, 8.54; South Carolina, 8.16; and Washington, 8.01. Three of the states with the highest number of average deficiencies per facility, California, South Carolina, and Washington, have licensing standards that exceed the minimum standards in Colorado. Of the five states with the lowest number of deficiencies per facility, only New Mexico has licensing standards more stringent than those in Colorado.

Licensure

Deficiencies at level H and above are those that are considered very serious, although lower level deficiencies can also be indicative of substandard performance by an NHA. The information provided by HCFA indicates Colorado had three level H or above deficiencies as of July 10, 1998. This equates to about 1% of all Colorado facilities.

Not surprisingly, those states with an overall low average number of deficiencies also had a low percentage of severe deficiencies: New Mexico, .081%; Maryland, .016%; Colorado, .013%; New York, .005%; and Vermont, 0%. States with high over all deficiencies tended to have higher severe deficiencies: Washington, .29% Nevada, .27%; California, .17%; South Carolina, .097%; and, Michigan, .056%.

Based on the information provided by HCFA on the deficiency reports from the various states, there seems to be little correlation between more stringent licensing standards and lower deficiencies on surveys. Colorado is one of only three states that does not require mandatory continuing education for NHAs. Two of the three states, Colorado and Connecticut, scored better than the national average for both overall deficiencies and severe deficiencies.

Program Description

The Board schedules four meetings each year, and may meet more frequently if necessary. To efficiently use resources, the Division allocates several different individuals to staff the Board on a part-time basis in addition to other duties. Total personnel dedicated to the Board for the past five years has been less than one full time equivalent (FTE). Currently, the Division personnel assigned to the Board are:

.5 FTE	administrative assistant;
.2 FTE	program administrator;
.1 FTE	legal assistant; and
.1 FTE	program assistant
.9 FTE	TOTAL

All revenues for the operation of the program are derived from licensing fees. Since the last review, licensing fees have ranged from a low of \$194 to a high of \$260 per year. The current fee for a nursing home NHA's license is \$209, for a one-year license.

Division staff process license applications, renewal applications, and reciprocity requests as delegated by the Board. The program administrator is authorized by the Board to approve applicants to sit for the examination, subject to approval by the Board at the next regular Board meeting. Approximately 70 individuals take the examination each year. The number of applicants for licensure has remained consistent for the past several years.

The Board issues approximately 70 new licenses each year, and renews just over 500 existing licenses annually. There are currently 550 licensed NHAs in Colorado. According to the CDPHE there are 229 licensed nursing homes in the state. This gives the state a ratio of 2.4 NHAs for each facility.

While some facilities may have more than one licensed NHA on staff, only one is designated as the facility NHA. CDPHE regulations require facilities to notify the Health Facilities Division (HFD) if there is a change in the NHA of record. Some licensees may have left the state but maintain a Colorado license or may be maintaining a license while practicing in another field. Workload statistics are contained in the charts on the following page. The statistics for examination include only those taking the national examination. Applicants for licensure by reciprocity do not have to repeat the national examination. Since not everyone who qualifies to sit for the national examination passes the examination, the number of licenses issued each year does not always reflect the number of examinations given. The number of licenses issued by reciprocity also affects the number of new licenses issued.

Program Description

Workload Statistics

Examinations

1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
60	68	72	85	74	80	74	53

New Licenses

1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
73	65	65	87	80	56	63	53

Renewals

1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
493	501	533	500	525	520	515	542

Active Licenses

1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
493	501	533	500	525	520	515	550

The Division staff also monitors the bi-monthly reports from AIT preceptors as required by the Board. Any exceptions to the Board-approved training program are noted and forwarded to a designated member of the Board for review. The designated Board member reports on exceptions at the next regularly scheduled Board meeting. There are no regular field audits or visits to monitor the AIT candidate or the designated preceptor to ensure compliance with the training program. Self-reporting is relied on for notification to the Board of any plan deviations.

Complaints

The Board receives complaints from a variety of sources. The Board may also initiate an investigation on its own. The most common source of a complaint against a NHA is a resident or family member of a resident. Other sources of complaints are employees, the HFD, and in rare cases, the Ombudsman. The following table identifies the number of complaints received by the Board for the past eight years.

1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
9	9	36	14	31	25	19	34

Program Description

Complaints must be in writing and are considered for action at the next regularly scheduled Board meeting. The program administrator has been delegated the ability to refer complaints that could present a current endangerment of the residents of a nursing home to the Complaints and Investigations (C&I) unit prior to consideration by the full Board.

The Board considers information contained in the complaint during its regular quarterly meeting. If the Board determines that the allegation, if substantiated, would be a violation of the statute or regulations, the Board will request the complaint be referred to the C&I unit. The Investigations Table below details the complaints referred to C&I for investigations. Some complaints actually received in one fiscal year may not be referred for investigations until the following fiscal year depending on the timing of the receipt of the complaint, the next scheduled Board meeting, and responses to the letter of inquiry.

The Board has developed a process with the HFD for situations involving a nursing home that receives an enforcement action from the HFD. When the Division receives a notice of enforcement action from the HFD, the program administrator sends a letter of inquiry to all NHAs employed at the facility in the previous 12 months. It is not uncommon for an investigation to reveal the NHA responsible for the enforcement action is no longer employed by the facility. The letter of inquiry is sent to the NHA(s) of the facility to notify the NHA(s) a complaint has been filed with the Board and requests information about the specifics alleged in the notice of enforcement. This process streamlines the investigation process and shortens the time period for the Board to impose disciplinary action if necessary or appropriate.

A member of the Board reviews all responses obtained by the program administrator. If the Board member determines a specific NHA may be responsible for the deficiencies resulting in the HFD enforcement action, the Board member refers the NHA(s) to the C&I unit for a complete investigation. All responses obtained by the program administrator are submitted to the C&I unit to be considered in the investigation. Since the Board meets quarterly, this process expedites the review of complaints that may be particularly egregious.

Program Description

Investigations

INVESTIGATION REFERRALS

FY	<i>Referred to C&I</i>	<i>Investigations Completed</i>
1990-91	13	13
1991-92	0	9
1992-93	2	12
1993-94	25	22
1994-95	32	34
1995-96	16	22
1996-97	6	21
1997-98*	22	20

*Partial year data

An investigator from the C&I unit will conduct an independent investigation into the allegations and prepare a report for the Board. When the Board receives the report from the C&I unit, it may request more information, dismiss the complaint, or refer the case to the Attorney General's office for disciplinary action.

One issue raised during the course of this review by some licensees is a concern that licensees who have a complaint filed against them are not specifically notified when the Board is considering the complaint. Another issue raised by these same individuals is that if the licensee does attend the Board meeting, they are not invited to address the Board regarding the complaint.

The Board is aware of these concerns and does not believe a change in practice is necessary. The Board, for a variety of reasons, including lack of jurisdiction and the possibility that the complaint, even if substantiated, would not be a violation, frequently dismisses complaints. Therefore, the Board does not believe it is necessary to invite the licensee to the Board meeting when the complaint is still in the preliminary stages.

All Board meetings are open to the public. Agendas, which include information about complaints, are sent to all interested parties. If a licensee desires to be informed about which complaints are going to be considered at a Board meeting, the agenda is available. However, unless licensees ask to be placed on the Board's mailing list, the licensee will not receive agendas.

The Board relies on the report of the C&I investigator in determining whether a complaint should be pursued for disciplinary action against a licensee. As part of the investigation, the C&I investigator interviews the licensee. If the Board decides to formally pursue disciplinary action against a licensee, the Administrative Procedure Act (APA) is followed. The APA requires that licensees be given the opportunity to represent themselves, or be represented by an attorney, at any formal proceeding initiated by the Board.

Program Description

In addition to the APA, the Board must comply with the provision of §12-39-105 (2), C.R.S. This section duplicates many of the requirements for due process contained in the APA. All licensing boards and the Attorney General's office, to ensure licensees are afforded due process in disciplinary actions, use the APA. The APA has a substantial history of judicial review and case law to support decisions. The provisions in §12-39-105 (2), C.R.S., do not have a similar case history.

The Board has several formal disciplinary options available to it, ranging from a letter of admonition (LOA) to revocation. The Board makes every effort to stipulate a settlement before a formal hearing. Stipulated settlements have many advantages. When the parties agree to a settlement, it is cost-effective for both the state and the respondent. Stipulated agreements can be flexible to address specific deficiencies in the performance of the NHA. Stipulated agreements usually involve a probationary period with monitoring and/or specific educational training to be completed in a definite timeframe. The following table identifies the disciplinary actions taken by the Board over the past eight years.

Disciplinary Actions

FY	<i>Revoke</i>	<i>Suspend</i>	<i>Probation</i>	<i>LOA</i>	<i>Other</i>	<i>Dismissed</i>
1990-91	0	0	1	1	1	3
1991-92	0	0	2	1	1	7
1992-93	0	1	3	0	0	13
1993-94	3	0	1	4	0	23
1994-95	0	0	2	8	0	17
1995-96	2	0	8	4	0	23
1996-97	0	0	5	7	0	7
1997-98*	1	0	1	5	0	17
TOTAL	6	1	23	27	2	110

*Partial year data

Sunset Analysis & Recommendations

ISSUES

Board

The first element of the sunset evaluation criteria is to consider whether regulation is necessary to protect the public, and whether conditions which led to the initial regulation have changed to warrant more, less, or the same degree of regulation.

The long term care industry has become more complex, and if anything, more regulated since the first licensing program was first established in 1969. The population the industry serves is at risk of harm without some level of protection offered by government regulation. To effectively manage a nursing home, provide quality care and services, and comply with increasing federal mandates, an NHA must have a high level of expertise.

The original driving force behind the regulation of NHAs was federal legislation that threatened state Medicaid and Medicare funds if the state did not adopt a licensing program. Since this federal mandate is still in place, the question of continuing licensure is not debatable. However, federal programs do not mandate the standards for licensure.

While all states have licensing programs, two, Alaska and Connecticut, issue licenses administratively, without the benefit of a Board. Other states have boards of varying sizes, composition, and location in state government. Originally, the Colorado Board consisted of nine members. One sunset review (1982) recommended reducing the Board to five members, and another (1977) recommended transferring licensing authority to the Executive Director of the CDPHE and reducing the Board's function to an advisory capacity.

Almost all interested parties contacted during this review advocated the continuance of the licensing program under the auspices of the Board. Not all parties agreed on the composition of the Board however. Some parties believe the increased complexity of nursing home operations necessitates increasing the size of the Board by increasing the number of NHAs on the Board.

Traditionally, professional licensing boards were created by legislatures at the urging of professional trade organizations. These professional trade organizations established the standards for licensure. Usually board members were appointed exclusively from the ranks of these organizations. Over time, the public perception of these boards was that they were little more than exclusive clubs for members of the trade organization. Boards were accused of protecting licensees rather than the public.

Sunset Analysis and Recommendations

The growing trend in professional licensing boards is to include more public members. This causes concern among licensees. Licensees believe it is difficult for board members who are not actively involved in the profession to understand the complexities of the industry. Some licensees believe a lay board is not responsive to the needs and desires of the regulated profession.

Decisions made by the Board are conducted in open hearings with input from the public. Professionals and industry experts have the opportunity to provide information and documentation to the Board. The Board also has the ability to establish working groups in order to obtain additional information from any source it deems appropriate. The argument to expand the number of licensees on the Board is not persuasive.

NHAs are responsible for monitoring a variety of health care related occupations. Some of these occupations such as the Director of Nursing, the Medical Director and the Consulting Pharmacist, are regulated professions. Others, such as dietitians, occupational or recreational therapists, are not regulated by the state. It may benefit the Board to have some additional representation from other professions involved in long term care.

Two other issues raised during the review concern qualifications of the licensees on the Board. The Act, in §12-39-104(2), C.R.S., provides that an NHA member of the Board may complete a term on the Board even if the licensee ceases to actively practice as a NHA. This same section allows Board members to be dismissed for cause, including missing three consecutive meetings. Most professional licensing boards have provisions for qualifications of licensee members of the board. These usually include residency requirements and some minimum length of time as a licensee. Most licensing statutes require the licensee to be actively engaged in the practice of the profession at the time of appointment. It is unusual for a licensing statute to require a licensee to remain actively engaged in the occupation for the duration of a term on a licensing board.

The Act in §12-39-104(2), C.R.S., allows for the removal of a Board member for

“...negligence, incompetence, unprofessional conduct, or willful misconduct. Actions constituting neglect of duty shall include but not be limited to the failure to attend three consecutive meetings in any one calendar year.”

Most statutes are not so specific as to enumerate the number of meetings a board member must attend in order to be considered negligent. This is also curious when combined with the very next provision of the same section of the statute, which states:

“(3) The board shall elect annually from its membership a chair and vice-chair. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.”

It appears to be the intent of the General Assembly to allow an appointed Board member to miss every meeting scheduled in a calendar year and maintain a position on the Board.

Sunset Analysis and Recommendations

This issue also needs clarification. The sunset report recommends appointment language consistent with that found in other licensing statutes.

Licensing

The General Assembly provided for a variety of avenues for licensure. It is clear the General Assembly intended the program to be flexible in granting licenses. Applicants with specific degrees identified by the statute or the Board are qualified to sit for the examination. Applicants with an approved level of education and/or experience are qualified for the examination. Individuals without the approved level of education and/or experience may enter an apprenticeship program, known as the AIT, to qualify for licensure.

The education and experience requirements for licensure are contained in §12-39-106 and §107, C.R.S. The qualifications are complex and confusing. It is clear however that the Board is allowed a great deal of latitude in granting licenses. Some individuals contacted for this review believe that more stringent licensing requirements are necessary, including minimum education requirements, mandatory internships, and mandatory continuing education.

The current qualifications for licensure allow an applicant with two years of education in a health-related field, or four years of experience in nursing home administration or a comparative area to enter the AIT program. Applicants with specifically identified bachelor's degrees, such as Business Administration, are exempt from the AIT requirement. Applicants with an associate degree in a health related-field, and two years of experience are also exempt from the AIT requirement.

The qualifications sections of the Act allow an applicant with two years of health related college education to qualify for the AIT program, which is essentially a one-year internship, to qualify for the examination. However, an individual with an associate's degree in a health related field, which is a two-year program, must obtain two years of experience to qualify for the examination. It also appears that individuals with a Bachelor's Degree in a non-related field are not qualified for the AIT program unless, they have four years of experience. The Board has adopted regulations for accepting applicants with degrees in fields not related to health care into the AIT program.

Sunset Analysis and Recommendations

An analysis of complaints investigated by the Board did not indicate a particular path being problematic from a disciplinary standpoint. Other states have a variety of standards for licensure. A comparison was made of survey deficiencies between states with more stringent licensing standards and those with less stringent licensing standards. While there are certainly other factors to consider when evaluating the variance in deficiencies in other states, there is no evidence of a correlation between higher licensing standards and a lower number of deficiencies.

Complaints or disciplinary actions can also be considered in comparing licensing standards. However, because states tabulate complaint data differently, and disciplinary actions also vary between jurisdictions it was determined federal surveys were the most consistent measure of the effectiveness of an individual states regulatory program.

Reciprocity

Section 12-39-110, C.R.S. establishes the criteria for licensing by reciprocity. This is a misleading term that refers to a practice that is no longer used in most state licensing programs. In fact, §12-39-110, C.R.S. actually closely describes licensing by endorsement. The language in this section should be amended to use the terminology and standards for licensing by endorsement.

A reciprocity agreement is an agreement between two or more licensing jurisdictions to accept license of the other jurisdiction. Licensees in one jurisdiction could work a reciprocating jurisdiction without complying with all procedures for a new license in the reciprocating jurisdiction. Reciprocal agreements have some benefit to licensees. An individual licensed in one jurisdiction does not have the expense of applying for multiple licenses and tracking different renewal dates. Reciprocal agreements depend upon the cooperation of other jurisdictions.

Endorsement does not depend upon a formal agreement. If an applicant is qualified for licensure, the applicant is licensed as soon as possible, regardless of the acceptance of the Colorado license in another jurisdiction. The concept and standards for licensing by endorsement provide a uniform standard for licensure for NHAs. Although the Act uses the term reciprocity, the language describes an endorsement process, which is a more effective measure.

Sunset Analysis and Recommendations

Administrative

There are some opportunities for improvement in the operation of the Board and program that do not require statutory changes. Some of these opportunities are somewhat intangible and difficult to quantify, others are more readily recognizable.

The working relationship and communication between the HFD in the CDPHE and the Board has improved since the last sunset. Continued cooperation between these two regulatory entities will better serve the public. The HFD collects a massive amount of data on individual nursing homes through the survey process. Those facilities that are being administered in an extremely substandard manner are referred to the Board for investigation of the licensed NHA.

It is possible that there are more NHAs in violation of licensing standards than are currently being reported by the HFD. The HFD is willing to provide data on all surveys. However, Board resources do not allow for a thorough review of over 300 surveys each year. The Board and the HFD have begun work to develop an effective reporting mechanism. This work should be continued, implemented when complete, and evaluated on a regular basis.

The Act allows the Board to waive any portion of the AIT training program the Board deems appropriate. The Board has established regulations for waiving either 500 or 1,000 of the required 2,000 hours of AIT training. The Board has also been very proactive in granting waivers, sometimes granting a waiver even if the applicant did not request one. There are situations where an applicant has education and experience beyond what is required to qualify for the AIT program, but not enough for a 500 hour waiver, or more than enough for a 500 hour waiver, but not enough for a 1,000 hour waiver. The Board has the authority to promulgate regulations for more incremental waivers and do so.

The application process for a NHA license contains some unnecessary requirements. For example, applicants are required to submit a recent photograph with their application. This photograph is used for identification purposes when the applicant sits for the examination. Positive identification is a valid concern in a licensing examination, since only the applicant should be allowed to sit for the examination to ensure the applicant is qualified for licensure. However, requiring valid identification before admittance to the examination is sufficient. Other licensing programs use this method and report satisfactory results. In fact, it is the system used by the State Department of Personnel for all state classified employment examinations.

Sunset Analysis and Recommendations

Another concern in the application process is that some of the questions asked on the application do not appear to be relevant or necessary. The statute lists in its grounds for denial, suspension, or revocation, a current addiction to a controlled substance. The application asks if the applicant has ever been treated for an addiction to a controlled substance. This question goes beyond the scope of the statutory authority. The Act allows the Board to deny a license based on a conviction of a felony. The application asks questions about any convictions related to controlled substances. Unless the conviction is a felony, the question is too broad in scope to be relevant to the licensing process. The Board should review application questions and narrow them to accurately reflect the statutory requirements for licensure.

Recommendations

Recommendation 1: Continue the Board of Examiners of Nursing Home Administrators and set a new sunset date of July 1, 2009.

The Sunset Criteria, contained in Appendix A asks the question “Whether regulation by the agency is necessary to protect the public health, safety and welfare;...”. Residents of nursing homes are residing there because they are not able to adequately care for themselves. As such, these residents are placing themselves, or are being placed by a guardian of some type, in the care of a LTC facility.

A resident in a nursing home receives care from an assortment of staff, ranging from highly skilled and licensed physicians, nurses and therapists to semi-skilled or unskilled staff. The NHA is the individual responsible for ensuring all of the staff and procedures necessary for proper care of the resident are in place and operating appropriately.

As the health care system in this country continues to evolve, and the population ages, attention will continue to be focused on nursing homes and the administration of these facilities. The state has an important role in ensuring the NHAs of nursing homes are competent and qualified. This is important to protect a segment of the population that is not capable of protecting themselves.

Once it has been established that the regulation of NHAs is necessary to protect the public, the second part of the initial sunset criteria question must be addressed: “Whether the conditions which led to the initial regulation have changed and whether other conditions have arisen which would warrant more, less or the same degree of regulations;...”. When deciding on the level of regulation for a profession, several factors should be considered: the potential for harm to the public; the severity of potential harm; the qualifications of the profession; private credentialing; other related or overlapping regulatory programs already existing; and alternatives to regulation.

Sunset Analysis and Recommendations

Residents in nursing homes are faced with the potential for severe physical, emotional, and financial harm. A qualified NHA has the ability to significantly reduce the potential for licensed professionals, semi or unskilled staff, or even visitors to abuse the trust a resident or the resident's guardian places in the facility to care for the resident.

Since there is a high potential for significant harm, a corresponding high level of regulation is justified. The NHA profession does not have a uniform standard of education or experience. The profession does not have a strong private certification process like some health care professionals. For these reasons, licensing, the most stringent form of state regulation, is the appropriate level of protection.

Some members of the profession argue that more stringent licensing standards should be adopted by the state. In the course of this review, licensing standards in other states were compared with complaint and deficiency data. There was no clear relationship between higher levels of education and experience and lower numbers of complaints or deficiencies on surveys.

Disciplinary actions by the Board were reviewed to determine if any relationship existed between higher levels of education and experience, and disciplinary actions. This comparison found that licensees who qualified for licensure with business degrees and no experience were no more likely to be disciplined than licensees with master's degrees in health care related fields.

Some individuals contacted for this report have suggested that the General Assembly should adopt a mandatory continuing education (MCE) requirement for NHAs. The belief among some professionals is that MCE benefits the public by increasing the competency level of licensees. Continuing education opportunities are available to NHAs on a voluntary basis. The Board does not monitor voluntary continuing education, so no data is available regarding the impact of continuing education on disciplinary actions or survey deficiencies in Colorado.

However, disciplinary actions and survey deficiency data in Colorado compares favorably with those states that have MCE programs. Unless compelling evidence exists that MCE is necessary to protect the public, a MCE program would not meet the statutory criterion for the least restrictive regulation consistent with the public interest.

DORA strongly supports continuing education as a way for professionals to improve their understanding of their chosen profession. Unless documentation exists to demonstrate continuing education is necessary to maintain professional competence, DORA has recommended continuing education be at the discretion of the individual professional. Therefore, this report does not recommend any changes to the current flexible licensing standards that have been adopted by the General Assembly.

Sunset Analysis and Recommendations

Recommendation 2: Clarify and Modify Board composition and requirements: changing the appointment term to four years; changing the negligence definition; and changing the Board member qualifications.

The Board currently consists of three licensed NHAs from diverse practice areas, one member who is a professional in the long term care industry, and three public members. The Act, in §12-39-104(2), C.R.S., establishes criteria for the removal of a licensee member of the Board and provides for a licensee member of the Board to serve out a term if the licensee ceases to practice as a NHA.

There is no question that long term care is not only a growing industry because of the aging population in this country, but it is becoming more complex as well. There is a trend in legislatures nationally to increase public representation on licensing boards. Representatives of the NHA profession indicated that the complexity of the industry necessitates increasing the representation of licensees on the Board.

The NHA Act is not consistent with most other licensing statutes in the areas of board member appointments and conduct. For example, the statute allows the Governor to remove a Board member for negligence, incompetence, unprofessional conduct, or willful misconduct. Failure to attend three consecutive meetings in one year is specifically defined as an example of neglect of duty. It is recommended that the statute be amended to delete language that defines neglect of duty as missing three consecutive meetings. To be consistent with other licensing programs, the Governor should have the discretion to define neglect of duty.

Appointments to the Board are for a period of three years. Most occupational board appointments are for four years. The General Assembly should amend the statute to provide for four-year board appointments.

NHAs oversee a complex facility and use the services of other health care professionals. These other professionals may or may not be licensed by the state. The statute currently requires one member of the Board to be a professional in the health care industry. While the licensing boards are generally well served by public members, the Board of Examiners of Nursing Home Administrators may be well served by representation of other professionals working in the long term care industry. Therefore, it is recommended that one public member position be replaced with a licensed professional from the long term care industry.

Sunset Analysis and Recommendations

Recommendation 3: Clarify the qualifications for licensure by examination and admittance to the AIT program.

The requirements for licensure contained in §12-39-106 and 107, C.R.S., are confusing and subject to various interpretations. It appears the General Assembly intended for there to be flexibility in the licensing of NHAs. The public has benefited from a flexible licensing program as evidenced that Colorado has a sufficient number of licensees for the number of facilities to be served.

The language in §106 and §107 should be amended to clearly state when an applicant is eligible to sit for the examination and when an applicant is eligible for the AIT program. The General Assembly should consider expanding the categories of associate degrees eligible for admittance to the AIT program to reflect those bachelor degrees that have proven to be effective screens for qualified NHAs.

Recommendation 4: Delete unnecessary and redundant provisions from the powers and duties of the Board.

The language in §12-39-105 (2), C.R.S., places requirements on the Board regarding procedures in considering disciplinary actions against a licensee. These requirements seem to be in place to ensure the licensee receives due process in any administrative hearing.

All licensing boards must follow the state Administrative Procedure Act (APA) in disciplining licensees. The APA, in §24-4-104(3), C.R.S., addresses the rights of the licensee to notice, representation, and an opportunity to provide a defense to the charges in a complaint. The Attorney General's Office and a wide variety of licensing boards have used the APA to initiate disciplinary action against licensees. There is extensive history and case law to support actions taken using the APA.

The use of separate language in a individual licensing act creates unnecessary confusion and may hamper the ability of the Board to protect the public. Some attorneys have argued that the supplemental language with which the Board must comply provides NHAs with a "right to cure" any deficiency prior to administering disciplinary action.

Licensing boards are always permitted to consider aggravating and mitigating circumstances in disciplinary actions. There is no evidence to indicate that the due process provisions of the APA are not adequate to protect the public and licensees. Therefore, the provisions in §12-39-105(2), C.R.S., should be repealed.

Sunset Analysis and Recommendations

Administrative Recommendations

Administrative Recommendation 1: The Board should be more flexible in granting waivers to the AIT program.

The statute allows the Board to waive all or a portion of the AIT requirements for applicants with education and or experience the Board deems appropriate. The Board has promulgated regulations for waiving either 500 or 1,000 hours of the mandatory 2,000 hour program.

The Board has been very proactive in granting waivers, even when the applicant has not specifically requested a waiver. There are frequently situations where an applicant has education or experience that could qualify for a waiver but falls outside the parameters for either 500 or 1,000 hours. The Board should promulgate regulations to take advantage of the additional flexibility that is permitted under the statute.

Administrative Recommendation 2: The Board should establish a closer working relationship with the State Long Term Care Ombudsman.

The state ombudsman program has staff and volunteers visiting every nursing home in the state on a regular basis. These individuals receive thousands of complaints each year, yet a review of over 100 complaints to the Board over the past four years revealed only one from an ombudsman.

The Board should conduct outreach to the state ombudsman and encourage open communication between the two programs. While the ombudsman program is not a direct regulatory program, the information obtained by the ombudsman could provide valuable insight for the Board and allow for better public protection.

Administrative Recommendation 3: The Board should revise the application process to eliminate unnecessary requirements.

The Board should review the application process and eliminate unnecessary provisions or requirements. For example, the application for licensure by examination requires the applicant to submit a recent photograph when a valid government issued identification, such as a driver's license would suffice. The Board should carefully review each application form and revise them so only necessary information is required.

Appendices

Appendix A - Sunset Statutory Evaluation Criteria

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

Appendix B - 42 U.S.C. § 1396g

State programs for licensing of administrators of nursing homes

(a) Nature of State program

For purposes of section 1396a(a)(29) of this title, a "State program for the licensing of administrators of nursing homes" is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing by State agency or board representative of concerned professions and institutions

Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) Functions and duties of State agency or board

It shall be the function and duty of such agency or board to -

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) Waiver of standards other than good character or suitability standards

No State shall be considered to have failed to comply with the provisions of section 1396a(a)(29) of this title because the agency or board of such State (established pursuant to subsection (b) of this section) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c) of this section.

(e) "Nursing home" and "nursing home administrator" defined

As used in this section, the term -

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a Christian Science sanatorium operated, or listed and certified, by The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.; and

(2) "nursing home administrator" means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

Appendix C - Colorado Nursing Home Administrator Statute

ARTICLE 39

Nursing Home Administrators

- 12-39-101. Legislative declaration.
- 12-39-102. Definitions.
- 12-39-103. Administrator license required.
- 12-39-103.5. State training school.
- 12-39-104. Board of examiners of nursing home administrators - creation - subject to termination.
- 12-39-105. Powers and duties of the board.
- 12-39-106. Qualifications for admission to examination.
- 12-39-107. Administrator-in-training.
- 12-39-108. Licenses.
- 12-39-109. Examinations.
- 12-39-110. Reciprocity.
- 12-39-111. Grounds for discipline.
- 12-39-112. Withholding or denial of license - hearing.
- 12-39-113. Mental and physical examination of licensees.
- 12-39-114. Disciplinary proceedings - administrative law judge - judicial review.
- 12-39-115. Temporary advisory committees - immunity.
- 12-39-116. Unlawful practices.
- 12-39-117. Cease and desist orders.
- 12-39-118. Injunctive proceedings.
- 12-39-119. Administration of nursing homes relying on treatment by spiritual means.
- 12-39-120. Records.
- 12-39-121. Repeal of article.

12-39-101. Legislative declaration. The general assembly declares that the intent of this article is to provide a measure of protection to the residents of nursing homes in this state who are aged or who have disabilities by establishing a means to regulate nursing home administrators to ensure quality administration and sound management of nursing homes. It is also the intent of the general assembly that the board of examiners of nursing home administrators be adequately funded to carry out the duties and functions specified by this article as well as the legislative intent expressed in this section.

12-39-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Board" means the board of examiners of nursing home administrators.
- (2) "Nursing home administrator" means any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.
- (3) "Nursing home administrator-in-training" means an individual registered with the board pursuant to the provisions of this article.

(4) "Nursing home facility" shall have the same meaning as that set forth in section 25-1-1002, C.R.S., and shall include nursing care facilities, whether proprietary or nonprofit, which are licensed under section 25-1-107 (1) (I) (I), C.R.S., or pursuant to the rules for nursing homes promulgated by the department of public health and environment. The term "nursing home" includes but is not limited to nursing homes owned or administered by the state government or any agency or political subdivision thereof.

(5) "Practice of nursing home administration" means the planning, organizing, directing, and control of the operation of a nursing home.

(6) "Reasonable grounds" means facts and circumstances sufficiently strong to warrant a prudent person to believe that the facts and circumstances are true.

12-39-103. Administrator license required. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that such person is a nursing home administrator, unless such person has been duly licensed as a nursing home administrator as required by this article.

12-39-103.5. State training school. The nursing home administrator in each of the three state home and training schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be the superintendent of such facility.

12-39-104. Board of examiners of nursing home administrators - creation - subject to termination. (1) There is hereby created a board of examiners of nursing home administrators in the division of registrations in the department of regulatory agencies, which board shall be composed of seven members as follows: three members shall be practicing nursing home administrators duly licensed under this article (which members shall be from the following areas of discipline, with no two members from the same area; hospital administration, nonprofit facility administration, proprietary facility administration, or continuum of care administration), one member shall be a professional in the long-term care industry, and three members shall be representative of the public at large. No more than three of the members of the board shall be officials or full-time employees of state government or local governments. The term of office for each member of the board shall be three years. No member of the board shall serve more than two consecutive terms. All the members of the board shall be residents of this state.

(2) Appointments to the board shall be made by the governor. The governor may remove any board member for negligence, incompetency, unprofessional conduct, or willful misconduct. Actions constituting neglect of duty shall include but not be limited to the failure to attend three consecutive meetings in any one calendar year. Appointments to fill vacancies shall be made for the remainder of the unexpired term. A member who is a practicing nursing home administrator shall serve for a full term even if, during such term, such member ceases to be a practicing nursing home administrator.

(3) The board shall elect annually from its membership a chair and vice-chair. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.

(4) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director thereof and the division of registrations as if the same were transferred to the department by a type 1 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(5) The director of the division of registrations in the department of regulatory agencies may appoint, subject to section 13 of article XII of the state constitution, a program administrator to the board. Such program administrator shall not be a member of the board, but shall have such powers and shall perform such duties as are prescribed by law and the rules and regulations of the board. Additional staff may be appointed by the director of the division of registrations to adequately assist the board and the program administrator in keeping records and in the performance of their duties. These employees, if any, shall be appointed and serve in accordance with section 13 of article XII of the state constitution.

(6) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of nursing home administrators created by this section.

(7) Members serving on the board of examiners of nursing home administrators as it existed prior to July 1, 1993, shall continue to serve until their successors are appointed.

12-39-105. Powers and duties of the board. (1) (a) The board has the following powers and duties:

(I) (A) By no later than July 1, 1994, the board shall adopt rules defining standards of nursing home administration, including the responsibilities and duties of nursing home administrators, consistent with this article. Such rules must be met by individuals in order to receive and retain a license and shall be designed to ensure that nursing home administrators are qualified by education and training in the appropriate field to serve as nursing home administrators.

(B) To develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(II) To issue licenses to individuals determined, after application of such techniques, to meet such standards specified in subparagraph (I) of this paragraph (a);

(III) To revoke, suspend, withhold, or refuse to renew any license previously issued by the board, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with section 12-39-111 (3) in any case where the individual holding any such license is determined to have failed to conform to the requirements of the standards provided in subparagraph (I) of this paragraph (a) or the grounds for discipline set forth in section 12-39-111;

(IV) To establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards specified in subparagraph (I) of this paragraph (a);

(V) To conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation following the filing of a signed complaint or any hearing, to administer oaths and issue subpoenas compelling the attendance and testimony of witnesses and the production of books, papers, or records relevant to an investigation or hearing;

(VI) To prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law to the board.

(b) Any subpoena issued under the authority of subparagraph (V) of paragraph (a) of this subsection (1) shall be enforceable by a district court. In order to aid the board in any such hearing or investigation the board, through any member or the program administrator thereof, shall have the power to issue subpoenas commanding the attendance of witnesses and the production of copies of any records containing information relevant to the practice of nursing home administration rendered by any licensee, including patient records of the institution and personal records of the licensee. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board, the custodian, or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (1).

(2) (a) The board shall consider without limitation all of the following in making any determination to initiate disciplinary action whether based on a specific complaint or as an outcome of survey results by the department of public health and environment:

(I) Any information provided to the board by the nursing home administrator;

(II) The facts as stated in reports received that occurred during the time a nursing home administrator was serving in the capacity of nursing home administrator in the facility;

(III) Whether the nursing home administrator could have or should have prevented the circumstances which resulted in the investigation.

(b) Prior to making a final determination to initiate action against a nursing home administrator, the board shall notify such administrator that the board is considering action and provide the administrator with an opportunity to show just cause why remedial or disciplinary action should not be initiated.

(3) (a) On or before July 1, 1994, the board shall develop rules and regulations, with input from long-term care facility provider associations, the department of public health and environment, the office of the state attorney general, and consumer representatives, concerning factors to be considered in determining performance which fails to meet generally accepted standards for nursing home administrators and whether or not remedial or disciplinary actions are warranted. The board may create an advisory committee to assist the board in developing standards that describe the responsibilities and duties of nursing home administrators.

(b) If after an investigation the board determines that there are reasonable grounds to believe that the performance of a licensed administrator is inconsistent with the health or safety of residents in the care of the facility in which the administrator works and is contrary to standards adopted by the board, the board may initiate disciplinary action as may be warranted.

(4) The board shall have the authority to make rules consistent with law as may be necessary for the proper performance of its duties and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the federal "Social Security Act", the federal rules promulgated thereunder, and other pertinent federal requirements.

12-39-106. Qualifications for admission to examination. (1) The board shall admit to examination for licensure as a nursing home administrator any applicant who pays a fee as determined by the board, who submits evidence of suitability prescribed by the board, and who is at least twenty-one years old; except that no applicant for a license as a nursing home administrator shall be admitted to such licensing examination, nor shall such applicant be entitled to or be granted a license as a nursing home administrator, unless such applicant submits written evidence, on forms provided by the board, of successful completion of two years of college level study in an accredited institution of higher education in areas relating to health care or hospital administration.

(2) Any person who applies for examination pursuant to subsection (1) of this section shall also be subject to the requirements of section 12-39-107.

(3) Any person who applies for examination pursuant to subsection (1) of this section, in lieu of the educational requirements provided for therein, may submit evidence satisfactory to the board that such applicant has obtained two years of satisfactory practical experience in nursing home administration or in a comparable health management and administrative area for each year of required college level study if in compliance with federal requirements.

12-39-107. Administrator-in-training. (1) Every applicant for a nursing home administrator license who has otherwise qualified under the provisions of section 12-39-106 shall be granted admission to the administrator-in-training program in accordance with the rules of the board. Upon successful completion of the two-thousand-hour training period, said applicant shall be eligible to take the examination.

(2) The administrator-in-training shall submit bi-monthly progress reports on forms provided by the board.

(3) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided by the board.

(4) The board shall, through rules and regulations, establish a monitoring mechanism that will provide oversight of the administrator-in-training program.

(5) This section shall not apply to the following:

(a) Individuals who have obtained a bachelor's degree in business administration, public health administration, health administration, or any other related degree or degrees deemed appropriate by the board;

(b) Individuals who have obtained an associate degree in a health care-related field and who have also obtained a minimum of two years experience in supervision or administration in a nursing home or hospital. For purposes of this section, a registered nurse who is a graduate of a three-year diploma program shall be considered to have met the associate degree requirement.

(6) The board may waive any portion required by subsection (1) of this section if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule or regulation of the board.

12-39-108. Licenses. (1) Any license issued by the board shall be valid for a period of one year from the date of issuance. Any such license shall be subject to renewal by the board pursuant to the standards set forth in section 24-4-104, C.R.S. If any licensee fails to renew such license prior to its expiration the license shall automatically expire. A nursing home administrator formerly licensed in this state may have an expired license reinstated, pursuant to rules and regulations established by the board.

(2) Any person holding a valid license as a nursing home administrator prior to July 1, 1993, shall be licensed under the provisions of this article without further application by said person.

(3) Only an individual who has qualified as a licensed nursing home administrator under the provisions of this article and who holds a valid current license pursuant to the provisions of this section has the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after such person's name.

(4) The board shall maintain a list of all licensed nursing home administrators, which list shall show: the place of residence, the name and age of each licensee, any action taken by the board, the number of the license issued to the licensee, and such other pertinent information as the board may deem necessary. The department shall keep a list of applicants who are denied.

(5) The board may issue a temporary license to an applicant for a period not to exceed six months. The board shall promulgate rules and regulations for the issuance of such a temporary license.

(6) A temporary license shall be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the department of public health and environment. Such temporary permit shall be granted for a period not to exceed twelve months and shall be void at such time the license holder is no longer employed by the general hospital.

(7) The board shall establish, pursuant to section 24-34-105, C.R.S., and publish annually a schedule of fees for the licensing of nursing home administrators.

(8) All moneys collected or received by the board shall be transmitted to the state treasurer who shall credit the same as provided in section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

(9) No nursing home administrator who has had a license revoked may apply for licensure before a one-year waiting period following the date of such revocation and must comply with all requirements established by rules and regulations of the board.

(10) Each licensee shall, within thirty days, notify the board of any conviction of a felony or the acceptance of a guilty plea or a plea of nolo contendere to a felony.

12-39-109. Examinations. (1) The board shall determine the subjects of the state examination for all applicants for licensure as nursing home administrators.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate. Any examination shall be prepared or approved by the board.

(3) The board shall have the authority to select and administer a national examination.

12-39-110. Reciprocity. (1) The board shall issue a license to any person duly licensed to practice nursing home administration in another state or territory of the United States who possesses credentials and qualifications which are substantially equivalent to the requirements of section 12-39-106 and who successfully completes the Colorado state examination provided in section 12-39-109. For purposes of this section, "state or territory" includes the District of Columbia and the commonwealth of Puerto Rico.

(2) An applicant for licensure under this section shall submit to the board, in a form prescribed by the board, all of the following:

(a) Evidence that the applicant holds a current, active license to practice nursing home administration issued by a state or territory of the United States other than Colorado. Such evidence shall include a license history from the state or territory that issued the license, indicating whether any disciplinary or other adverse actions are currently pending or have ever been taken in connection with that license and the final disposition of such actions, if any. If an applicant is or has been licensed in more than one state or territory other than Colorado, the applicant shall submit a license history or similar record as described in this paragraph (a) from each such state or territory.

(b) A license history or similar record, as described in paragraph (a) of this subsection (2), relating to any license or registration which the applicant holds or has held in any other health care occupation in any state or territory other than Colorado. For purposes of this section, "health care occupation" includes without limitation the practices of medicine, dentistry, psychiatry, psychology, nursing, physical therapy, gerontology, chiropractic, podiatry, midwifery, optometry, pharmacy, and any other practice in which individuals are treated for medical or psychological problems or conditions, as well as the rendition of any service supportive to or ancillary to those practices.

(c) Verification that the applicant has been engaged in the practice of nursing home administration, has taught in a health care administration program, or has served as a member of a nursing home survey or accreditation team for one year immediately preceding the date of application, or has been engaged in one of the services described in this paragraph (c) for three of the five years immediately preceding the date of application.

12-39-111. Grounds for discipline. (1) The board has the power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that such person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or pled guilty or nolo contendere to a felony. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be prima facie evidence of such conviction. In considering a possible revocation, suspension, or nonrenewal of a license or temporary license the board shall be governed by the provisions of section 24-5-101, C.R.S.

(c) Has had a license to practice nursing home administration or any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(d) Has violated or aided or abetted a violation of any provision of this article, any rule or regulation adopted under this article, or any lawful order of the board;

(e) Has committed or engaged in any act or omission which fails to meet generally accepted standards for such nursing home administration practice or licensure;

(f) Has falsified or made incorrect entries or failed to make essential entries on patient records;

(g) Is addicted to or dependent on alcohol or habit forming drugs as defined in section 12-22-102 (13), abuses or engages in the habitual or excessive use of any such habit forming drug or any controlled substance as defined in section 12-22-303 (7) or 18-18-102 (5), C.R.S., or participates in the unlawful use of controlled substances as specified in section 18-18-404, C.R.S.; except that the board has the discretion not to discipline the licensee if such person is participating, in good faith, in a program approved by the board designed to end such addiction or dependency;

(h) Has a physical or mental disability which renders the licensee unable to practice nursing home administration with reasonable skill and safety to the patients and which may endanger the health or safety of persons under such licensee's care;

(i) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(j) Has violated section 18-13-119, C.R.S., concerning the abuse of health insurance; or

(k) Has failed to post in the nursing home facility in a conspicuous place and in clearly legible type a notice giving the address and telephone number of the board and stating that complaints may be made to the board.

(2) The board need not find that the actions which are grounds for discipline were willful or negligent, but it may consider the same in determining the nature of disciplinary sanctions to be imposed.

(3) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the board, does not warrant formal action by the board but which should not be dismissed without merit, a letter of admonition may be sent by certified mail to the nursing home administrator against whom the complaint was made and a copy to the person making the complaint. When a letter of admonition is sent by certified mail by the board to a nursing home administrator against whom a complaint has been made, such nursing home administrator shall be advised of the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings, pursuant to article 4 of title 24, C.R.S.

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

12-39-112. Withholding or denial of license - hearing. The board has the authority, pursuant to article 4 of title 24, C.R.S., to determine whether an applicant for a license or a temporary license to practice as a nursing home administrator possesses the qualifications required by this article, or whether there are reasonable grounds to believe that such applicant has done any of the acts set forth in section 12-39-111 as grounds for discipline. As used in this section, "applicant" does not include a person seeking the renewal of a license.

12-39-113. Mental and physical examination of licensees. (1) (a) If the board has reasonable grounds to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-39-111 (1) (g) or (1) (h), it may require such person to submit to a mental or physical examination by a physician it designates. Upon the failure of such person to submit to such mental or physical examination, unless due to circumstances beyond such person's control, the board may suspend such person's license until such time as such person submits to the required examinations.

(b) Every licensee or temporary license holder by engaging in the practice of nursing home administration in this state or by applying for the renewal of a license or temporary license shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to such an examination shall contain the basis of the board's reasonable grounds to believe that the licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-39-111 (1) (g) or (1) (h). The licensee shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication.

(2) Nothing in this section shall prevent the licensee from submitting testimony or examination reports of a physician designated by the licensee that pertains to a condition described in section 12-39-111 (1) (g) or (1) (h) which may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.

(3) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

12-39-114. Disciplinary proceedings - administrative law judge - judicial review. (1) The board, through the department of regulatory agencies, has the authority to designate an administrative law judge to conduct hearings on any matter within the board's jurisdiction. Any designated administrative law judge shall have the powers and duties set forth in article 4 of title 24, C.R.S., and shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(2) Disciplinary proceedings may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts in violation of section 12-39-111.

(3) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge, at the board's discretion.

(4) No previously issued license to engage in the practice of nursing home administration shall be revoked or suspended until a hearing has been conducted pursuant to section 24-4-105, C.R.S., or, for emergency situations, pursuant to section 24-4-104 (4), C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation.

(5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(6) Complaints, investigations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this article and relating to disciplinary proceedings shall be exempt from the provision of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this article be open to public inspection; except that this exemption shall apply only when the board, or an administrative law judge acting on behalf of the board specifically determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, or if the licensee is violating section 12-39-111 (1) (g), participating in good faith in a program approved by the board or designed by the board to end any addiction or dependency specified in said section, and the licensee has not violated any provisions of the board order regarding participation in such a treatment program. If the board determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, then the final action of the board shall be open to the public without disclosing the name of the client or other recipient. Final board actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals in accordance with section 24-4-106 (11), C.R.S.

12-39-115. Temporary advisory committees - immunity. (1) The board may appoint temporary advisory committees, including temporary professional review committees, to assist in the performance of its duties with respect to individual investigations. Each temporary advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of temporary advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

(2) If a professional review committee is established pursuant to subsection (1) of this section to investigate the quality of care being given by a person licensed pursuant to this article, such committee shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(3) Any member of the board or professional review committee authorized by the board, and any witness appearing before the board or such professional review committee, shall be immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding, if such member or witness acts in good faith within the scope of the function of the board or committee, has made a reasonable effort to obtain the facts of the matter before the committee or board, and acts in the reasonable belief that the action taken is warranted by the facts.

12-39-116. Unlawful practices. (1) It is unlawful for any person:

(a) To practice as a nursing home administrator unless licensed therefor;

(b) To use in connection with such person's name any designations tending to imply that such person is a licensed nursing home administrator, unless such person in fact holds a valid license therefor;

(c) To practice as a nursing home administrator during a period when such person's license has been suspended or revoked;

(d) To sell, fraudulently obtain, or furnish a license to practice as a nursing home administrator, or to aid or abet therein.

(2) Any person who violates the provisions of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Any person who subsequently violates any provision of this section within three years after the date of the first conviction commits a class 6 felony and shall be punished as provided in section 18-1-105, C.R.S.

12-39-117. Cease and desist orders. If as the result of an investigation of a complaint by any person or on the board's own motion the board determines that any person is acting or has acted without the required license, the board may enter an order requiring such person to cease and desist from such violation. The order shall set forth the statutes and rules and regulations alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts immediately cease. No stay of a cease and desist order shall be issued before a hearing has been held at which both parties have had an opportunity to appear. Matters brought before a court pursuant to this section shall have preference over other matters on the calendar of the court.

12-39-118. Injunctive proceedings. The board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general or the district attorney in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active nursing home administrator's license from committing any act declared to be unlawful or prohibited by this article. In any action taken pursuant to this section the court shall not require the board to plead or prove irreparable injury or inadequacy of a remedy at law or to post a bond. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this

section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this article.

12-39-119. Administration of nursing homes relying on treatment by spiritual means. A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone, through prayer in accordance with the creed or tenets of a church or religious denomination, shall be exempt from the provisions of this article.

12-39-120. Records. The board shall keep formal records of all complaints it receives and of the final disposition of such complaints. The board shall be responsible for implementing a tracking system to facilitate the retrieval of such records.

12-39-121. Repeal of article. (1) This article is repealed, effective July 1, 1999.

(2) Prior to such repeal, the licensing functions of the board of examiners of nursing home administrators shall be reviewed as provided in section 24-34-104, C.R.S.

Appendix D - Survey Deficiency Guidelines

J PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	K PoC Required: Cat 3 Optional: Cat. 1 Optional: Cat. 2	L PoC Required: Cat 3 Optional: Cat. 2 Optional: Cat. 1
G PoC Required*: Cat. 2 Optional: Cat. 1	H PoC Required*: Cat. 2 Optional: Cat. 1	I PoC Required*: Cat. 2 Optional: Cat. 1 Optional: Temporary Management
D PoC Required*: Cat. 1 Optional: Cat. 2	E PoC Required*: Cat. 1 Optional: Cat. 2	F PoC Required*: Cat. 2 Optional: Cat. 1
A No PoC No Remedies Commitment to Correct Not on HCFA-2567	B PoC	C PoC

Isolated

Pattern

Widespread

Substandard quality of care is any deficiency in 42 CFR 483.13, Resident Behavior and Facility Practices, 42 CFR 483.15 Quality of Life, or 42 CFR 483.25, Quality of Care, that constitutes immediate jeopardy to resident health or safety; a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

Substandard compliance.

Remedy Categories

<i>Category 1 (Cat. 1)</i>	<i>Category 2 (Cat. 2)</i>	<i>Category 3 (Cat. 3)</i>
Directed Plan of Correction State Monitor; and/or Directed In-Service Training	Denial of Payment for New Admissions Denial of Payment for all Individuals imposed by HCFA; and/or CMPs: \$50 - \$3,000/day	Temporary Management Termination Optional: CMPs: #3,050 - \$10,000/day