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REGULATORY BOARD REVIEW

NURSING HOME ADMINISTRATOR'S LICENSING BOARD

AUDIT OVERVIEW

The Regulation of Nursing Home Administrators Is Needed to Protect the Public; However, This Can Be Done More Effectively by DHHR

The West Virginia Nursing Home Administrators Licensing Board Is In Compliance With Several of the General Provisions of Chapter 30



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EXECUTIVE SUMMARY

Issue 1: The Regulation of Nursing Home Administrators Is Needed to Protect the Public; However This Can Be Done More Effectively by DHHR.

This report is a Regulatory Board Review required by law and is used to determine if there is a need for continuation of the West Virginia Board of Nursing Home Administrators (Board). The Board currently has licensed 219 nursing home administrators. According to the National Association of Long Term Care Administrators Board (NAB), all 50 states have a regulatory board process, and 7 states utilize alternative agencies instead of boards to regulate the profession. According to West Virginia Code a nursing home administrator is a professional who is required to be licensed by the state and is responsible for planning, organizing, directing and controlling a nursing home. Although nursing home administrators do not provide direct nursing treatment, they can negatively affect patient care through mismanagement of the facility. In order to continue to provide protection to the public it is the Legislative Auditor's opinion that regulation of the profession is needed.

According to the National Association of Long Term Care Administrators Board (NAB), all 50 states have a regulatory board process, and 7 states utilize alternative agencies instead of boards to regulate the profession.

The Legislative Auditor reviewed the West Virginia Board of Nursing Home Administrators to determine if a board was necessary to oversee this profession. The primary issue is that with this Board being in Chapter 30, which requires financial self-sufficiency and public accessibility, the Board has had to create a relatively high fee structure because of the small number of licensees. If the Board is taken out of Chapter 30 and its regulatory function placed within the DHHR's Bureau for Public Health (Bureau), then financial self-sufficiency would not be required of the Bureau, office space and public accessibility would be provided by the Bureau, and the fee structure could be lowered while maintaining the same level of safety. Therefore, the Legislative Auditor recommends that the Legislature should consider terminating the Board and transferring its duties to the Bureau for Public Health within the Department of Health and Human Resources.

Issue 2: The West Virginia Board of Nursing Home Administrators is in Compliance With Several of the General Provisions of Chapter 30.

In issue 1, the Legislative Auditor recommends that the West Virginia Nursing Home Administrators Licensing Board be terminated,

and that the profession be regulated within the Department of Health and Human Resources. However, the Legislative Auditor also reviewed the performance of the existing Board. The Board is in compliance with several of the general provisions of Chapter 30 of the West Virginia Code. A previous Regulatory Board Review in 2001 found that the Board was not financially self-sufficient. Since that time, the Board has increased its licensure fees by \$200 and its permit fees by \$100, resulting in a cash balance of over \$200,000. After review of the general provisions, rules and state code, the Legislative Auditor found five areas that should be addressed by the Board. Currently the Board operates out of the Executive Director's residence. It is the Legislative Auditor's opinion that operating out of a residential home restricts public access. Therefore the Legislative Auditor recommends that the Board seek office space in a public building where the public has access. It is also the Legislative Auditor's opinion that this should be incorporated into West Virginia Code and required for every Chapter 30 Board. According to West Virginia Code §30-1-8(k), rules are to be promulgated specifying the resolution procedure for all complaints. The Board has two types of complaints but only has a legislative rule specifying the resolution procedure for one. The Board utilizes an internal policy for the other. The Board should take the appropriate steps to incorporate its policy into legislative rule.

A previous Regulatory Board Review in 2001 found that the Board was not financially self-sufficient. Since that time, the Board has increased its licensure fees by \$200 and its permit fees by \$100, resulting in a cash balance of over \$200,000.

According to the Board's legislative rule, the Board is required to offer suggestions for the complaint resolution to the complainant if the complaint is deemed out of the Board's jurisdiction. After review of the complaints, in two cases suggestions were not made to the complainants by the Board. The Board should comply with legislative rule and offer further suggestions for the resolution of complaints if the complaint is deemed out of its jurisdiction. Currently the Board is not able to utilize the Federal Bureau of Investigation (FBI) for criminal background checks. The Legislature should consider amending code to enable the Board to conduct criminal background checks through the FBI. Finally, the Board does not have the appropriate number of board members. The Board should continue to contact the Governor's office to appoint the appropriate number of board members.

Recommendations:

1. *The Legislative Auditor recommends that the Legislature consider terminating the West Virginia Board of Nursing Home Administrators and transferring this function to the Bureau for Public Health within the Department of Health and Human Resources.*

If recommendation 1 is not accepted, then the Legislative Auditor makes the following recommendations relating to the Board:

2. *The Legislative Auditor recommends the Legislature should consider a change in West Virginia Code and require every board to maintain a permanent public office space to conduct Board business.*
3. *The Legislative Auditor recommends the Board of Nursing Home Administrators seek office space in a public building where the public has access.*
4. *The Legislative Auditor recommends that the Board of Nursing Home Administrators take the appropriate steps to incorporate its policy of handling substandard quality of care notices from the West Virginia Office of Health Facility Licensure into legislative rule.*
5. *The Legislative Auditor recommends that the Board follow legislative rule and offer resolution suggestions to the complainant if the complaint is out of the board's jurisdiction.*
6. *The Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable specifically the Board of Nursing Home Administrators to conduct criminal background checks, through both the State Police and the National Criminal Investigative Center, on all applicants for licenses and existing licensees according to a schedule determined by the Board.*
7. *It is the Legislative Auditor's opinion that the Board should continue to pursue contact with the Governor's office in order to fulfill the appropriate number of board members.*

OBJECTIVE, SCOPE & METHODOLOGY

This Regulatory Board Review of the Board of Nursing Home Administrators is required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10 of the West Virginia Code, as amended.

Objective

The objective of this review is to determine if the Board of Nursing Home Administrators is necessary for protecting the public interest and whether or not the Board is operating in compliance with the general provisions of Chapter 30 of the West Virginia Code and other applicable laws and rules.

Scope

The scope of this audit focuses on years 2005 to 2009. Financial information was reviewed from the period of the last regulatory board review, and covered fiscal years 2001 through 2009.

Methodology

The Performance Evaluation and Research Division compiled information from the Board of Nursing Home Administrators for years 2005 to 2009 regarding complaints and Board meeting minutes. The Board also provided the current Board roster and register, as well as answering questions relating to the changes made within the Board since the last Regulatory Board Review in 2001. Information was gathered from the surrounding states' regulatory boards for the profession and the National Association of Long Term Care Administrators Board. The Legislative Auditor also utilized information from the Federal Bureau of Investigation and a 2005 report from the United States Bureau of Justice Statistics to review the advantages of federal criminal background checks on applicants.

ISSUE 1

The Regulation of Nursing Home Administrators Is Needed to Protect the Public; However This Can Be Done More Effectively by DHHR.

All States License Nursing Home Administrators

The Nursing Home Administrator’s Licensing Board was created in 1969 after the passage of House Bill 839. According to West Virginia Nursing Home Administrators Licensing Board, there are currently 219 licensed nursing home administrators in West Virginia in 2009. Furthermore, the National Association of Long Term Care Administrators Board (NAB), reports that there are 134 nursing home facilities within West Virginia.

According to West Virginia Nursing Home Administrators Licensing Board, there are currently 219 licensed nursing home administrators in West Virginia in 2009.

The NAB reports that all 50 states regulate the industry of nursing home administrators or long term care administrators. The surrounding states utilize nursing home administrator boards to regulate the profession. However, Table 1 shows the states that use a state agency to regulate the profession:

Table 1	
State Nursing Home Administrators Licensing Agencies	
State	Agency
Alaska	Department of Commerce, Community, and Economic Development
California	Department of Public Health
Connecticut	Department of Public Health
Illinois	Department of Financial and Professional Regulation
Texas	Department of Aging and Disability Services
Utah	Division of Occupational and Professional Licensure
Vermont	Office of Professional Regulation

Source: National Association of Long Term Care Administrators Boards

West Virginia Code §64-13-2 Requires the State Licensure of Nursing Home Administrators

According to Title 42 Part 483.75 of the federal regulations regarding the requirements for long term care facilities, in order to

receive Medicaid and Medicare reimbursement the governing body for nursing home facilities must appoint an administrator “...*who is licensed by the State where licensing is required.*” Title 64 Series 13 of the West Virginia Nursing Home Licensure rule indicates a nursing home facility is to be administered by “*A person licensed in the State of West Virginia as a nursing home administrator who is responsible for the day to day operation of the nursing home.*” Therefore, since West Virginia is a state where licensing is required, each nursing home facility is required to have a licensed administrator in order to receive reimbursement for Medicaid and Medicare charges.

Therefore, since West Virginia is a state where licensing is required, each nursing home facility is required to have a licensed administrator in order to receive reimbursement for Medicaid and Medicare charges.

Regulation Presently Occurs Through the West Virginia Nursing Home Administrators Licensing Board

West Virginia presently regulates nursing home administrators through the Nursing Home Administrators Licensing Board whose role is to do the following:

- Review applications and license applicants;
- Provide a statewide examination;
- Provide a statewide criminal background check;
- Monitor administrators-in-training (AITs)
- Issue emergency permits and temporary permits;
- Document state-required continuing education credits for licensees;
- Receive complaints against licensees;
- Follow appropriate complaint procedures to conclude a complaint.

In order to be eligible for a West Virginia nursing home administrator's license, the applicant must pass both the national examination and the state examination, and have 1,000 hours of work experience.

The Board is presently responsible for regulating **licensed nursing home administrators, administrators-in training, emergency permit holders, temporary permit holders and emeritus status administrators.** License applicants must also pass a national examination administered by the National Association of Long Term Care Administrators Board. In order to be eligible for a West Virginia nursing home administrator's license, the applicant must pass both the national examination and the state examination, and have 1,000 hours of work experience.

From 2005 through 2009 the Board handled three complaints against nursing home administrators within West Virginia. The need for regulation of nursing home administrators was reinforced by an April 2007 incident involving an administrator in a Mercer County facility. In the 2007 event, the complaint alleges that the administrator tampered with medical supplies and acted inappropriately at the facility. As a result of an investigation by the Board, the administrator's license was revoked. The other two complaints provided by the Board did not lead to a revocation of any licenses, but the 2007 event illustrates the need to license this profession to ensure public safety.

From 2005 through 2009 the Board handled three complaints against nursing home administrators within West Virginia.

Board Functions Should Be Transferred to the Department of Health and Human Resources (DHHR)

In a 2001 Regulatory Board Evaluation, the Legislative Auditor reviewed the West Virginia Nursing Home Administrator's Licensing Board to determine if a board was necessary to protect the public and if the licensure board was necessary to oversee this profession. The Legislative Auditor determined that regulation of the profession was needed due to the responsibilities of nursing home administrators. However, the Legislative Auditor found the Board to be financially unstable. The Board's year-end cash balance required obtaining funds from DHHR to cover its payroll expenses. At the time of the report the Board had not received a complaint directly from the public in the prior three years. The Legislative Auditor also noted that since NAB offers the national computer-based testing at two sites in West Virginia and also offers a state specific exam, DHHR could administer the examination function of the Board. The report determined that there is a need for public protection but there was no public need for the Nursing Home Administrators Licensing Board. The Legislative Auditor recommended the Legislature consider terminating the Board and transferring this function to the Bureau for Public Health within DHHR.

According to National Association of Long Term Care Administrators Board, 7 states license nursing home administrators through a variety of administrative offices.

The idea of utilizing other agencies to regulate the profession is not new. According to National Association of Long Term Care Administrators Board, 7 states license nursing home administrators through a variety of administrative offices (see Table 1). Nursing home facilities in West Virginia are reviewed and licensed by the Office of Health Facility Licensure and Certification (OHFLAC). OHFLAC is

located within the Bureau for Public Health, as a separate office, and performs reviews of nursing homes and provides licensure for the nursing home facility. OHFLAC is required to provide annual inspections of licensed nursing home facilities. If during the inspection, the deficiencies cited meet the federal definition of substandard quality of care, OHFLAC separately reports the facilities administrator of record to the West Virginia Nursing Home Administrators Licensing Board in order for the Board to conduct an investigation into the administrator's conduct. According to OHFLAC the office has also referred facilities and administrators to other agencies including, "...*West Virginia Medicaid Fraud Control Unit and the US DHHS Office of Inspector General's Office of Investigations.*"

After review of all provided documentation by the Board, it is the Legislative Auditor's opinion that regulation of the profession is needed. However, the Board's functions (reviewing applications, providing criminal background checks, monitoring administrators-in training, issuing permits, documenting continuing education credits, and conducting appropriate complaint procedures) could be handled by DHHR. **It is the Legislative Auditor's opinion that the Legislature should consider terminating the West Virginia Nursing Home Administrators Licensing Board and transferring the functions of this board to the Bureau for Public Health within the Department of Health and Human Resources.**

After review of all provided documentation by the Board, it is the Legislative Auditor's opinion that regulation of the profession is needed.

Conclusion

Currently, the West Virginia Nursing Home Administrators Board licenses approximately 219 individuals in the state. The Legislative Auditor finds that licensure of the profession is required by the state and necessary to protect the public. Regulating nursing home administrators is needed due to the close proximity each administrator has with onsite medication and the ability to affect the safety of nursing home residents. Without regulation, nursing home administrators could create a risk to the public by tampering with medical supplies, mismanaging medications and/or allowing the overmedication of residents or simply mismanaging a facility.

The Legislative Auditor reviewed the Board to determine if the Board was necessary to oversee this profession. According to NAB, 7 other states utilize a state agency to regulate the profession. The

Legislative Auditor believes the Board is not necessary to oversee this profession. The primary issue is that with this Board being in Chapter 30, which requires financial self-sufficiency and public accessibility, the Board has had to create a relatively high fee structure because of the small number of licensees. If the Board is taken out of Chapter 30 and its regulatory function placed within the DHHR's Bureau for Public Health (Bureau), then financial self-sufficiency would not be required of the Bureau, office space and public accessibility would be provided by the Bureau, and the fee structure could be lowered while maintaining the same level of safety. Therefore, the Legislative Auditor recommends that the Legislature should consider terminating the Board and transferring its duties to the Bureau for Public Health within DHHR.

Recommendation

1. *The Legislative Auditor recommends that the Legislature consider terminating the West Virginia Nursing Home Administrators Licensing Board and transferring this function to the Bureau for Public Health within the Department of Health and Human Resources.*

ISSUE 2

The West Virginia Nursing Home Administrators Licensing Board Is In Compliance With Several of the General Provisions of Chapter 30.

The West Virginia Nursing Home Administrators Licensing Board is in satisfactory compliance with several of the general provisions of Chapter 30. These requirements that are found in the general provisions of Chapter 30 are important for the effective operation of the Board. The Board is in compliance with the following general provisions:

- The Chair or Chief Financial officer must attend an orientation session conducted by the State Auditor (§30-1-2a(b));
- The Board has adopted an official seal (§30-1-4);
- The Board meets at least once annually (§30-1-5(a));
- The Board's complaints are investigated and resolved with due process (§30-1-5(b)); (30-1-8);
- Rules have been promulgated specifying the investigation and resolution procedure of all complaints (§30-1-8(h));
- The Board must be financially self-sufficient in carrying out its responsibilities (§30-1-6(c));
- The Board has established continuing education (§30-1-7a);
- The Board has a register of all applicants with the appropriate information specified in code (§30-1-12(a)), such as the date of application, name, age, education and other qualifications of residence, examination required, license granted or denied, suspensions, etc.;
- An annual report has been submitted to the Governor and Legislature describing transactions for the preceding two years, and budget data (§30-1-12(c));
- A roster has been prepared and maintained of all licensees that includes name, and office address (§30-1-13).

The West Virginia Nursing Home Administrators Licensing Board is in satisfactory compliance with several of the general provisions of Chapter 30.

The Board Is Financially Self-Sufficient Primarily Due to a Substantial Increase in License and Permit Fees

The Legislative Auditor conducted a Performance Review of the Nursing Home Administrators Board in 2001. The report noted that the Board began having insufficient funds to cover payroll in late 1994. According to the report, *“The West Virginia Department of Health and Human Resources (DHHR) transferred funds to the Board several times over the last several years so that the Board could meet its payroll.”* The transfer of funds allowed Board personnel and DHHR employees to receive their paychecks on time. From FY 1997-2000, the Board was averaging only about \$2,000 more in revenue than it was spending, thus creating the need for DHHR loans. In 1997, the Board increased the annual renewal fees to \$200. Despite the increase in fees, the Board’s revenue became insufficient again in January 2000. DHHR consequently, transferred funds in January, February and March of 2000. By March 1, 2001 the outstanding loan balance to DHHR was over \$19,000.

From FY 1997-2000, the Board was averaging only about \$2,000 more in revenue than it was spending, thus creating the need for DHHR loans.

Since the 2001 report, the Board has become self-sufficient (see Table 2). The Board has not had to request from DHHR a loan since 2001. With the additional revenue, the Board repaid \$10,500 back to DHHR and then received a Debt Dismissal letter from DHHR’s Secretary, the Attorney General and the Department of Administration’s Secretary. The letter was signed by all parties prior to the \$10,500 repayment by the Board, which left \$13,116.55 of debt being dismissed by DHHR in good faith.

Since the 2001 report, the Board has become self-sufficient. The Board has not had to request from DHHR a loan since 2001.

Table 2
Nursing Home Administrators Licensing Board Operating Budget
FY 2001-2009

Fiscal Year	Revenue	Expenditures	Cash Balance
2001	\$53,930	\$61,928	\$19,159
2002	\$76,787	\$63,555	\$32,390
2003	\$93,920	\$59,757	\$66,553
2004	\$94,820	\$57,820	\$103,552
2005	\$76,745	\$60,665	\$119,631
2006	\$92,860	\$62,587	\$149,904
2007	\$82,145	\$67,105	\$164,943
2008	\$85,275	\$69,135	\$181,083
2009	\$91,115	\$69,639	\$202,559

Source: *West Virginia Digest of Revenue Sources, FY 2006-2009, West Virginia Legislative Auditor’s Office.*
 Yearly sums do not add up to the total due to not rounding up.

Beginning in FY 2002, the revenue stream began to change for the Board. Effective March 2002, the Board increased the initial licensure fees and the renewal fees for licensed nursing home administrators and the remaining permit holders. The profession within the state is comprised of state licensed nursing home administrators, administrators-in training, emergency permit holders, temporary permit holders and emeritus status administrators. The Board has 219 licensed nursing home administrators that have met the following requirements:

- A baccalaureate degree in Nursing Home Administration, Hospital Administration, or other related field as determined by the board;
- A passing score from the national examination from NAB;
- A passing score from the West Virginia State Examination;
- At least 1,000 hours of experience in an administration position in a long-term setting;
- Completed the fingerprint background check from the West Virginia State Police.

Effective March 2002, the Board increased the initial licensure fees and the renewal fees for licensed nursing home administrators and the remaining permit holders.

Administrators-In Training (AIT) possess a baccalaureate degree in a non-health care administration field. After the required one year training program under full-time supervision from a licensed nursing home administrator, and passage of the NAB national test for national certification, the individual may apply to become state licensed. Once licensed, every licensed administrator shall obtain at least 20 clock hours of continuing education, through NAB or programs approved by the Board.

Emergency Permits are issued by the Board if a licensed nursing home administrator dies or is unable to continue and the nursing home designates an acting authority as administrator. The board may issue the emergency permit to an acting administrator if it finds the individual will not endanger the safety of the residents. The emergency permit is valid for six months and is not renewable.

Temporary Permits are granted to applicants who have worked in another state, accepted employment in West Virginia, and are waiting for the Board to act on their application. The Temporary Permit is valid

for 90 days but may be renewed at the discretion of the Board.

An Emeritus Status Administrator is a retired nursing home administrator recognized by the Board to have at least 20 years of practice with the last 10 years being in West Virginia. According to legislative rule, Emeritus Status Administrators may, upon approval by the Board, be permitted to work a limited practice not to exceed an average of 40 hours per week for 6 months cumulative per year.

Table 3 shows the current license and renewal fees for the licensees and permit holders.

Table 3				
FY 2001 and 2009 Licensure Fees				
Type of Administrator	FY 2001 License Fee	Renewal Fee	FY 2009 License Fee	Renewal Fee
*Nursing Home Administrator (219)	\$400	\$200	\$600	\$300
Administrator-In-Training (4)	\$400	\$200	\$600	\$300
Emergency Permit (5)	\$200	Good for 6 months, not renewable	\$300	Good for 6 months, not renewable
Temporary Permit (17)	\$200	Good for 90 days for a reciprocity license.	\$300	Good for 90 days for a reciprocity license.
**Emeritus Status Administrator (5)	\$0	\$0	\$0	\$100

Source: Nursing Home Administrators Licensing Board Series 1 Legislative Rule.
**Reciprocity licensees are included in Nursing Home Administrator total.*
***Emeritus Status Administrator status was not effective until March 31, 2008.*

Table 4 demonstrates that the application and renewal fees for nursing home administrators are higher in West Virginia than in bordering states. The annual renewal fees for the nursing home administrators alone account for over \$65,000 in revenue.

State	Number of Nursing Home Administrator Licensees	Application Fee	Renewal Fee
Kentucky	801	\$150	\$100 (annual)
Maryland	545	\$100	\$100 (biennial)
Ohio	2070	\$250	\$250 (annual)
Pennsylvania	1853	\$40	\$297 (biennial)
Virginia	770	\$150	\$125 (annual)
West Virginia	219	\$600	\$300 (annual)

Source: State Boards of Nursing Home Administration and the National Association of Nursing Home Administrator Boards.

Although the Legislative Auditor understands that the Board needed to raise fees substantially in order to become financially self-sufficient, the higher fee schedule has resulted in a relatively large cash balance that is nearly three times the Board's annual actual expenditures. **The Legislative Auditor is concerned that the fee schedule may now be excessive for licensees.** The Legislature has put in Code a mechanism that is intended to prevent boards from accumulating an excessive amount in cash balances. According to West Virginia Code §30-1-10 (a), "... when the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund." The Legislative Auditor inquired of the West Virginia State Treasurer's Office if an amount from the Board's operating fund was transferred to the state general fund. The State Treasurer's Office reported "*Based upon our calculations we do not believe any transfers were necessary as of 6-30-09 to general revenue for the Nursing Home Administrators Board.*"

The Legislative Auditor is concerned that the fee schedule may now be excessive for licensees.

The Legislative Auditor has in the past reported that the statutory language in §30-1-10 is broad with respect with the term "annual budget" and as a result this mechanism does not work properly. The

Treasurer's Office has based its calculations on boards' cash balance on the "budgeted" amount that boards report on their expenditure schedules. However, the budgeted amount is oftentimes significantly higher than actual expenditures. In this case, the Board's budgeted amount (\$98,788) is nearly \$30,000 higher than actual expenditures (\$69,639). This is the reason that the Treasurer's Office did not transfer any funds to the state general fund. The Legislative Auditor has previously recommended to the Legislature alternative mechanisms in transferring funds to the state general fund from boards with excessive balances, including having the calculation based on an average of actual annual expenditures. It should be noted that the Board has discussed the possibility of lowering fees for one year but this has not been an officially proposed motion.

Operating Out of a Residential Home Restricts Public Access

At the urging of DHHR, the Board moved its office into its Executive Director's home in Winfield, WV effective May 2000. The Board does not pay rent for its office space which has also contributed to the Board becoming financially self-sufficient.¹ The Legislative Auditor takes issue with a board operating out of a residential home. This arrangement does not provide a location that enables the public to adequately communicate with the Board. The Legislative Auditor has previously recommended in similar incidences that boards seek office space in a publicly accessible building. Attempts have been made to have this recommendation placed in statute. Senate Bill 511 was introduced during the 2008 Legislature that sought a change to West Virginia Code §30-1-12 (c). The drafted bill was to increase public access by mandating that "...every board shall maintain a permanent public office space to conduct board business..." The bill did not pass but the Legislative Auditor stands by the previous report recommendations and Senate Bill 511. **It is the Legislative Auditor's opinion that the Legislature should consider a change in code and require every board to maintain a permanent public office space to conduct board business.** The Board currently has adequate funds to provide for office space in a public facility.

The Legislative Auditor has previously recommended to the Legislature alternative mechanisms in transferring funds to the state general fund from boards with excessive balances, including having the calculation based on an average of actual annual expenditures.

The Legislative Auditor takes issue with a board operating out of a residential home. This arrangement does not provide a location that enables the public to adequately communicate with the Board.

¹ It should be noted that the Board did not have a budgeted amount for rent in its expenditure schedule.

This will increase rent and utility costs, which will lower the Board's cash balance. However, depending on the cost of a public office, the Board should still be able to maintain a sufficient cash balance. **It is the Legislative Auditor's opinion that the Nursing Home Administrators Board should seek office space in a public building where the public has access.**

The Board Does Not Have a Legislative Rule for the Investigation and Resolution of Substandard Quality of Care Complaints

According to West Virginia Code §30-1-8(k), rules are to be promulgated specifying the investigation and resolution procedure of **all** complaints. The Board of Nursing Home Administrators is unique in that it has two types of complaints. One complaint is directly made against a nursing home administrator to the Board by any person, firm corporation, member of the Board, or public officer. The Board has specific legislative rules that dictate the procedures for the Board to follow to resolve a complaint directed against a nursing home administrator. The Board also receives complaints from the West Virginia Office of Health Facility Licensure (OHFLAC) when a nursing facility is cited for deficiencies which constitute substandard quality of care.

According to the United States Social Security Act, state agencies such as OHFLAC are required to notify "*...any State board responsible for the licensing of the nursing facility administrator of the facility.*" There are no further directions as to how state agencies should handle the notifications. Therefore, the Board has instituted a board policy regarding the handling of substandard quality-of-care complaints. Since FY 2005 there have been 13 notices of substandard quality-of-care received from OHFLAC. In each case, after review by the Board, it was determined that no licensure regulations were violated by the on-site nursing home administrator. While the Board is to be commended for forming a policy and handling the 13 substandard quality-of-care complaints according to the policy, it is the Legislative Auditor's opinion that in order for the Board to be in full compliance with this provision its policy should become part of legislative rule. **The Legislative Auditor recommends the Board of Nursing Home Administrators take the appropriate steps to incorporate its policy of handling substandard quality-of-care notices from OHFLAC into legislative rule.**

The Board of Nursing Home Administrators is unique in that it has two types of complaints.

While the Board is to be commended for forming a policy and handling the 13 substandard quality-of-care complaints according to the policy, it is the Legislative Auditor's opinion that in order for the Board to be in full compliance with this provision its policy should become part of legislative rule.

The Board Should Offer Resolution Suggestions to Complainants

Since FY 2005, the Board has had complaints against three individuals. According to West Virginia Legislative Rule §21-2-5(1), complaints can be made by any person, firm, corporation, member of the Board, or public officer. The complaints can be against a nursing home administrator, administrator-in-training, permit holder or applicant with a violation of state code or of the rules of the Board. Upon receipt of the complaint, the Board is to do one of the following:

- Acknowledge to the complainant that the matter will be reviewed by the Board.
- Acknowledge to the complainant that the complaint is outside the jurisdiction of the Board.
- Acknowledge to the complainant that more information will be required in order to adequately review the complaint.

The Board is required to submit a status report to the complainant within six months who then has 30 days to respond, or waive the right to do so. According to West Virginia Code §30-1-5-(c) within one year of the status reports return receipt date the Board is to “...*issue a final ruling, unless the party filing the complaint and the board agree in writing to extend the time for the final ruling.*”

The three complaint files were reviewed by the Legislative Auditor. The Board is in compliance with the Chapter 30 provision of resolving each with due process. One complaint required the Board to hold an emergency meeting to review the complainant's documentation. Due to the severity of the complaint, after a formal hearing the Board revoked the administrator's license. Two complaints fell under West Virginia Legislative Rule §21-2-5(6.2) and were considered outside the jurisdiction of the board. According to West Virginia Legislative Rule §21-2-5(6.2) if the complaint is outside the board's jurisdiction the Board shall issue to the complainant “...*suggestions as to how the complainant might best obtain a resolution of his or her problem.*” The Legislative Auditor concluded after review of the documentation provided that the Board did not follow legislative rule and offer alternative suggestions to the complainant as to how to resolve his or her case. In order to better assist the public, when the complaints are outside the Board's jurisdiction, the

According to West Virginia Legislative Rule §21-2-5(1), complaints can be made by any person, firm, corporation, member of the Board, or public officer.

The three complaint files were reviewed by the Legislative Auditor. The Board is in compliance with the Chapter 30 provision of resolving each with due process.

The Legislative Auditor concluded after review of the documentation provided that the Board did not follow legislative rule and offer alternative suggestions to the complainant as to how to resolve his or her case.

Board should provide complainants with an outside agency contact name or number that may help in their complaint resolution. **The Legislative Auditor recommends the Board follow legislative rule and offer resolution suggestions to the complainant if the complaint is out of the Board's jurisdiction.**

The Board Requires State Background Checks but not Federal Background Checks

According to the Board, *“All licensure applicants submit a background check card to the Board; the Board office mails this along with a cover letter and pre-stamped envelope to the West Virginia State Police.”* It is the Legislative Auditor's opinion that all applicants should have a state background checks but also a national background check. The Board is unable to utilize the National Criminal Investigation Center (NCIC) for further background checks outside of the state. The criminal history of an applicant could be a valuable tool for the Board to protect the public. The Legislative Auditor is concerned that by not being able to conduct a national criminal background check, the Board may allow a previous criminal offender to obtain a nursing home administrator's license. While persons convicted of a felony are not allowed to obtain a license, the Nursing Home Administrator's Board is unable to determine whether any applicant has a felony conviction in states other than West Virginia. The Criminal Justice Information Services (CJIS), in Clarksburg, West Virginia is home to the Federal Bureau of Investigations (FBI) automated fingerprint system. The cost of each fingerprint is \$18 which could be paid from the application fee.

The Board is unable to utilize the national criminal fingerprinting system without appropriate legislation. According to Public Law 92-544, a state can only utilize the national fingerprinting process by enacting legislation *“...that designates specific licensing or employment purposes for which state and local government agencies may submit fingerprints to the FBI and receive FBI-maintained criminal history record information (CHRI).”* The board should request the Legislature to amend its section of code for the purpose of conducting national criminal background checks. If amended by the Legislature, **the Legislative Auditor recommends that the Board of Nursing Home Administrators conduct national background checks for new applicants and for current licensees according to a schedule developed by the Board, in order to further protect the public.**

The Legislative Auditor is concerned that by not being able to conduct a national criminal background check, the Board may allow a previous criminal offender to obtain a nursing home administrator's license.

The Board is unable to utilize the national criminal fingerprinting system without appropriate legislation.

The Board Meets Regularly But Does Not Have the Appropriate Number of Board Members

The Board is complying with the Chapter 30 provision of meeting at least once per year. According to West Virginia Code §30-25-2, the board shall consist of 11 members, “...all of whom except a lay member, as provided for in section four-a, article one, chapter thirty of this code, shall be appointed by the governor, by and with the advice and consent of the Senate.” Currently the board has only 7 members, one who is seeking reappointment. According to the Director “*The difficulty in filling appointments lies within the Governor’s Office as he must approve and officially sign all appointments to the Board. The Board has no authority regarding appointments.*” **It is the Legislative Auditor’s opinion that the Board should continue to pursue contact with the Governor’s Office in order to fulfill the appropriate number of board members.**

Conclusion

In Issue 1, the Legislative Auditor recommends that the West Virginia Nursing Home Administrators Licensing Board be terminated, and that the profession be regulated within the Department of Health and Human Resources. However, the Legislative Auditor also reviewed the performance of the existing Board. The West Virginia Nursing Home Administrators Board is in compliance with several of the general provisions of Chapter 30 of the West Virginia Code. The Legislative Auditor found only two general provisions of Chapter 30 in which the Board is not in compliance. The Board has become financially self-sufficient by substantially increasing license and permit fees. The Board also moved its office into the Executive Director’s home in May 2000. According to West Virginia Code §30-1-12(c), every Board shall be accessible to the public. The Board does not pay rent for its office space which has also assisted the Board in becoming financially self-sufficient. However, the Legislative Auditor takes issue with this arrangement. The Legislative Auditor recommends the Board seek office space in a public building where the public has access. It is the Legislative Auditor’s opinion that the Legislature should consider a change in code and require every board to maintain a permanent public office space for board business. According to West Virginia Code §30-1-8(k), rules are to be promulgated specifying the investigation and resolution procedure of all complaints. The Board

currently has two types of complaints but rules for only one. The Board should incorporate its policy for substandard quality of care notices into legislative rule. After review of the Board's legislative rules and code the Legislative Auditor identified three actions that the Board should take and one action that the Legislature should consider. The Board should comply with legislative rule and offer a suggestion for resolution to a complainant if the complaint is considered out of the Board's jurisdiction. The Board of Nursing Home Administrators should incorporate its existing policy of handling substandard quality-of-care notices from OHFLAC into legislative rule. The Board should continue to contact the Governor's office to appoint the appropriate number of board members. Finally, the Legislature should consider amending code to enable the Board to conduct criminal background checks through the FBI. If the West Virginia Nursing Home Administrators Licensing Board is continued, the Legislative Auditor makes the following recommendations.

Recommendations

If the Legislature does not implement recommendation 1, the following recommendations are made:

2. *The Legislative Auditor recommends that the Legislature should consider a change in West Virginia Code and require every board to maintain a permanent public office space to conduct board business.*
3. *The Legislative Auditor recommends that the Board of Nursing Home Administrators seek office space in a public building where the public has access.*
4. *The Legislative Auditor recommends that the Board of Nursing Home Administrators take the appropriate steps to incorporate its policy of handling substandard quality of care notices from the West Virginia Office of Health Facility Licensure into legislative rule.*
5. *The Legislative Auditor recommends that the Board follow legislative rule and offer resolution suggestions to the complainant if the complaint is out of the Board's jurisdiction.*

6. *The Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable specifically the Board of Nursing Home Administrators to conduct criminal background checks, through both the State Police and the National Criminal Investigative Center, on all applicants for licenses and existing licensees according to a schedule determined by the Board.*

7. *It is the Legislative Auditor's opinion that the Board should continue to pursue contact with the Governor's Office in order to fulfill the appropriate number of board members.*

Appendix A: Transmittal Letters

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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



John Sylvia
Director

December 23, 2009

Alberta Slack, Director
West Virginia Nursing Home Administrators Board
P.O. Box 522
Winfield, WV 25213

Dear Ms. Slack:

This is to transmit a draft copy of the Regulatory Board Review of the West Virginia Nursing Home Administrators Board. This report is scheduled to be presented during the January 10-12, 2010 interim meetings of the Joint Committee on Government Operations, and Joint Committee on Government Organizations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If your agency would like to have an exit conference to discuss any concerns you may have please notify by December 30, 2009. In addition, we need your written response by noon on January 5, 2010 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, January 7, 2010 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Enclosure

JS/bcb

Joint Committee on Government and Finance

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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



John Sylvia
Director

January, 4, 2010

Chris Curtis, M.P.H
Acting Commissioner
West Virginia Bureau for Public Health
Room 702
Capitol Street
Charleston, WV 25301-3712

Dear Ms. Curtis:

This is to transmit a draft copy of the Regulatory Board Review of the West Virginia Nursing Home Administrators Board. This report is scheduled to be presented during the January 10-12, 2010 interim meetings of the Joint Committee on Government Operations, and Joint Committee on Government Organizations. We will inform you of the exact time and location once the information becomes available.

On page 7 of the report the Legislative Auditor recommends terminating the Board and transferring the functions of the Board to the Bureau for Public Health. Therefore, we need your written response to this recommendation by noon on Thursday, January 7, 2010 in order for it to be included in the final report. We request that your personnel not disclose the report to anyone not affiliated with your agency. If you have any questions or concerns, please call Brandon Burton, Senior Research Analyst, at 304-347-4894. Thank you for your cooperation.

Sincerely,

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

John Sylvia

cc: Patsy A. Hardy, Cabinet Secretary
West Virginia Department of Health and Human Resources

Enclosure

JS/bcb

Joint Committee on Government and Finance

Appendix B: Agency Responses

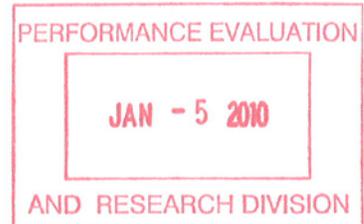


WV NURSING HOME ADMINISTRATORS LICENSING BOARD

P.O. BOX 522
WINFIELD, WEST VIRGINIA 25213
PHONE (304) 586-4070
FAX (304) 586-4079

January 4, 2010

John Sylvia, Director
WV Legislature Performance Evaluation
And Research Division
Bldg. 1, Room W-314
1900 Kanawha Blvd. East
Charleston, WV 25305



Dear Mr. Sylvia:

Thank you for allowing the Board an exit conference on January 4, 2010 via conference call with the following present: Dr. Daniel W. Farley, Chairman, NHALB, Stacy DeLong, Asst. Atty. Gen. Legal Counsel for the Board, Brandon Burton, Senior Analyst, Gail Higgins, Audit Manager, Alhertha Slack, Director, NHALB and John Sylvia, WV PERD, Director.

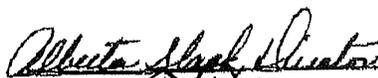
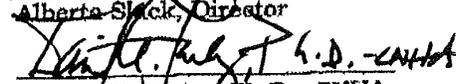
The following are the Board's exceptions to the Executive Summary and the Recommendation contained therein:

1. The Executive Summary suggests the dissolution of the Board. The Board takes exception to this recommendation.
 - a. The Board takes exception to the claim that the Board is not economically self-sufficient. During the exit conference, the recommendation was defended by stating that the board is not fiscally independent because the Board does not have independent office space. The report specifically delineates that at the current time, the Board has in excess of \$200,000 in its coffer, more than enough to secure office space.
 - b. The Board takes exception to the dissolution of the Board due to the lack of complaints against Licensed Administrators. This is a positive attribute not negative. The low number of complaints received against nursing home administrators indicate that the Board is doing an excellent job of painstaking credentialing of applicants. The Board has established high standards for licensing. Not only is a specific educational degree required but supervisory work experience in a nursing home, passage of the Federal and State Examination, criminal record check, etc. Not all states require these high standards; some not even baccalaureate degree, state examinations, or any criminal record checks. The Board believes the high standards they have set for licensing

produces a higher quality nursing home administrator, knowledgeable and experienced as a professional whose duty it is to protect the public. This alone provides for fewer complaints against a licensee.

- c. The Board takes exception to the suggestion that DHHR, Bureau of Health (OHFLAC), oversee the licensing of Nursing Home Administrators. The Board feels that if this were done, there would be a perceived conflict of interest because DHHR's Bureau of Health, (OHFLAC) would be licensing both the nursing homes and nursing home administrators. In "2001" Paul Nusbaum, secretary of DHHR addressed this issue in a letter to Brian Armentrout, Research Manager, Dr. Henry G. Taylor, Commissioner and John Wilkinson, Director of OHFLAC. He stated "DHHR may not have the authority to oversee nursing home administrators unless through an independent board arrangement". He goes on to question whether DHHR has or can develop the structure needed to satisfy the federal oversight requirements without jeopardizing Medicaid reimbursement. He continued to question whether a potential for bias would be created for or against administrators in facilities that are not under enforcement by OHFLAC and those that are. Having an independent body as we now have, ensures no conflict of interest in licensing nursing home administrators. The separation of OHFLAC and the Board as the independent licensing body ensures a second entity is protecting the public with no prejudice.
2. The Board takes exception to the recommendation regarding incorporating the Sub-standard Quality of Care Policy into the Board's rules as it is beyond the control of the Board.
3. The Board takes exception to table 1. The Board believes that the data contained therein is inaccurate.
4. The Board takes exception with the comments concerning the fee structure of the licensing renewal and application fees. After reviewing the licensing fees of the surrounding states of PA, OH, KY and VA, the fees may be lower, they have a higher volume of applicants and renewals, therefore providing for more revenue for their Boards. The fee structure is set in legislative rule, and therefore, beyond the control of the Board

Sincerely,


 Alberta Slack, Director

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

xc: Stacy DeLong, Asst. Atty. Gen., Counsel



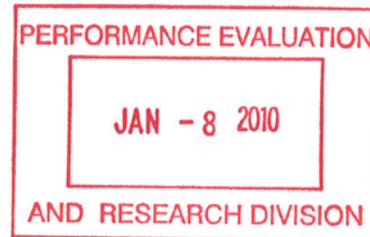
STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH

Joe Manchin III
Governor

Commissioner's Office
350 Capitol Street, Room 702
Charleston, West Virginia 25301-3712
Telephone: (304) 558-2971 Fax: (304) 558-1035

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

January 8, 2010



Mr. John Sylvia, Director
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

RE: Report on the West Virginia Nursing Home
Administrators Licensing Board (hereinafter
NHALB)

Dear Mr. Sylvia:

In response to your January 4, 2010 letter, my staff and I have reviewed the above-mentioned report. I understand that this report is on the agenda at the January 12th meeting of the Joint Committee on Government Operations and Organizations. We will have representatives from the Bureau present at the meeting to address the committee's questions.

First let me thank you for the opportunity to review the report and recommendations from your review of the NHALB. The first recommendation in the report is that the NHALB be terminated and all of the duties transferred to the Bureau for Public Health. That is a bold step and, in our view, may not be necessary to eliminate this Board in order to move in the direction of accomplishing some of the recommendations outlined in the Executive Summary.

The Bureau respectfully disagrees with the first recommendation.

We would like to offer a less drastic alternative which would require the Department of Health and Human Resources, Bureau for Public Health, to become more involved with the operation of the NHALB without having to enact a new law to transfer all of the Board's functions and duties to BPH. I did not see any reference in the PERD report to the section in state code that requires the Bureau to participate in the governance of this Board. West Virginia Code §16-1-7 provides as follows:

Mr. John Silvia
January 8, 2010
Page Two

“§16-1-7. Duties and powers of the commissioner; service on advisory councils, boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.

(a) The commissioner shall serve on the following business, profession or occupation licensing boards:

- (1) The West Virginia board of barbers and cosmetologists;
- (2) The West Virginia board of chiropractic examiners;
- (3) The West Virginia board of hearing aid dealers;
- (4) The West Virginia board of medicine;
- (5) The West Virginia nursing home administrators licensing board;
- (6) The West Virginia radiologic technology board of examiners;
- (7) The West Virginia board of registration for sanitarians; and
- (8) Any other licensing board or commission as directed by the secretary.”

Also, subsection (c) of that section further provides:

“(c) Notwithstanding any other provision of this code to the contrary, the commissioner may, at his or her discretion, designate in writing a representative to serve in his or her stead at the meetings and in the duties of all boards and commissions on which the commissioner is designated as an ex officio member. The appropriately designated representative or proxy may act with the full power and authority of the commissioner in voting, acting upon matters concerning the public health and welfare and any other business that is properly the duty of any board or commission, with the representative serving as proxy for the commissioner at his or her will and pleasure: *Provided*, That the provisions of this section do not apply to the medical licensing board, the air quality board or any other board, commission or body on which the commissioner is designated by this code as chairman ex officio, secretary ex officio or any board, commission or body on which the commissioner is designated by this code as being that person whose signature must appear on licenses, minutes or other documents necessary to carry out the intents and purposes of the board, commission or body.

In fairness, the article governing the NHALB, §30-25-1, et seq., makes no mention of the Commissioner's duty to serve on the Board. Section §16-1-7, in the Public Health chapter, was enacted in 2000. Thirty-three years ago, in 1977, the Legislature repealed former article §16-5D-1 et seq., relating to nursing home administrators and enacted §30-25-1 et seq. to move this activity out of Public Health and into the Chapter on Professions and Occupations. The most recent amendments to the NHALB code were made in 1996. Furthermore, the Commissioner of BPH has apparently not served on or sent a designee to meetings of this Board over the past decade. We propose to change that situation and to

Mr. John Silvia
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Page Three

designate a representative from the Bureau for Public Health to serve actively on the board to help improve the performance of the Board.

The Bureau for Public Health may be able to assist the NHALB with establishing an office in a public building and with other matters mentioned in the PERD recommendations.

The majority of states do not house the regulation of nursing home administrators within the state public health agency. The variety of approaches would seem to support the existing structure of the West Virginia method of licensing the Administrators through an independent Board. We believe that it would be unwise to move this licensing program to the Office of Health Facility License and Certification (OHFLAC) in the Bureau because they have the legal duty to license these facilities, and the potential for an appearance of impropriety or conflict of interest is great if they were required to do both.

The report makes the recommendation to terminate the Board and transfer its functions to the Bureau. However, this would entail myriad issues and details. We are concerned about the allocation of costs, location and supervision of staff, oversight and chain of command questions and the public perception of the independence of decisions and disciplinary actions that may be taken by the licensing agency, to name just a few of the issues that would have to be resolved.

In summary, rather than assume responsibility for the NHALB, we would like to begin participating more directly in decisions and actions of the Board through our statutory representation at all board meetings; and to work with them to improve performance in the areas identified by the PERD report. We would also like to be involved in the drafting of any legislation to effect changes to the Board.

Thank you for the opportunity to comment on this report.

Sincerely,



Chris Curtis, M.P.H.
Acting Commissioner

CC/ks

cc Patsy A. Hardy



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

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