

**SUNSET EVALUATION UPDATE**  
**NURSING HOME ADMINISTRATORS**  
**Chapter 457B, Hawaii Revised Statutes**

**A Report to the Governor and the Legislature of the State of Hawaii**

**Submitted by the**  
**Legislative Auditor of the State of Hawaii**

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## FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report updates our sunset evaluation of the regulation of nursing home administrators under Chapter 457B, Hawaii Revised Statutes, which was conducted in 1981. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate the occupation to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the Board of Nursing Home Administrators, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

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**Sunset Evaluation Update**  
**NURSING HOME ADMINISTRATORS**

This report evaluates the regulation of nursing home administrators under Chapter 457B, Hawaii Revised Statutes, to determine whether the public interest is best served by reenactment, modification, or repeal of Chapter 457B. An evaluation of the regulation of nursing home administrators was first conducted by this office in 1981. Our findings and recommendations were reported in the *Sunset Evaluation Report, Nursing Home Administrators, Chapter 457B, Hawaii Revised Statutes*.<sup>1</sup> This update summarizes the information contained in the 1981 report. It then reports on developments since 1981 and presents our current findings and recommendations.

**Background on the Regulation of  
Nursing Home Administrators**

In 1967, Congress amended the Social Security Act to require mandatory state licensing of nursing home administrators. Studies had disclosed widespread abuses in the operation of nursing homes including unsanitary conditions, negligence leading to death or injury, reprisals against those who complain, and profiteering. There was concern that the federal government was paying for services that were of poor quality or for services that were not being given at all. The amendments were designed to strengthen state enforcement procedures and to assure quality care for public assistance recipients. Mandatory state licensing of nursing home administrators was seen as one means of alleviating the problems as "the operator or administrator of a nursing home is the key person in assuring that the care received by nursing-home patients is of a very high quality."<sup>2</sup>

1. State of Hawaii, Legislative Auditor, *Sunset Evaluation Report, Nursing Home Administrators, Chapter 457B, Hawaii Revised Statutes*, Report No. 81-4, January 1981.

2. U.S. Senate, Special Committee on Aging, *Developments in Aging 1967*, Washington, D.C., U.S. Government Printing Office, 1968, p. 87.

Federal regulations implementing the amendments require licensing to be done by the state agency responsible for licensing practitioners under the "healing arts act" of the state or by a state licensing board. If a board, it must be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or elderly patients.

To comply with federal regulations, the Hawaii Legislature enacted legislation in 1969 to make the Department of Health (DOH) responsible for licensing. However, the Governor's office advised the Legislature that the law did not meet federal requirements and in 1970, the Legislature established a Board of Examiners of Nursing Home Administrators. The 1970 law, Chapter 457B, restates federal regulations on the duties and powers of the board. These include the power and duty to:

- . develop, impose, and enforce standards to be met by applicants for licensing;
- . develop techniques, including examinations for determining whether applicants meet the standards;
- . issue, revoke, and suspend licenses;
- . establish and carry out procedures to insure that licensees comply with standards;
- . receive, investigate, and take appropriate action on charges filed against licensees;
- . conduct a continuing study and investigation of nursing homes and nursing home administrators with a view to improving standards for licensing and procedures and methods for enforcing standards; and
- . adopt such rules and regulations as may be necessary to carry out the purposes of the law.<sup>3</sup>

3. Section 457B-6, HRS.

The board is concerned primarily with the licensing of nursing home administrators. Several other state agencies are involved in implementing and enforcing other requirements of the federal Medicaid law with respect to nursing homes. The Department of Social Services and Housing (DSSH) is the designated state Medicaid agency with overall responsibility for ensuring compliance with federal conditions for participation and coverage. It contracts with DOH to certify nursing homes. DOH reviews staffing, personnel policies, patient care, medical direction, dietetic services, and other aspects of nursing homes.

The Department of the Attorney General is concerned with Medicaid fraud. The Executive Office of Aging serves as an advocate for residents of long-term care facilities and seeks to resolve residents' complaints on matters relating to their health, safety, and welfare. Finally, the Hawaii Medical Services Association, under a contract with the State, serves as a fiscal intermediary in paying claims and monitoring the utilization of Medicaid services.

### **Findings and Recommendations in the 1981 Sunset Evaluation Report**

Our evaluation of the regulation of nursing home administrators in 1981 resulted in the following findings:

1. Chapter 457B must remain in force if the State is to continue to participate in the federal Medicaid program.
2. There has been disparate treatment of applicants for admission to the licensing examination.
3. The board is not monitoring the activities of nursing home administrators.<sup>4</sup>

**Continued participation in Medicaid program.** We found that the State must continue to license nursing home administrators in order to participate in the Medicaid program. Should licensing be discontinued, the State would lose substantial federal funds. Such loss would have an adverse effect on those served by the program and the taxpayers of the State.

4. Legislative Auditor, *Sunset Evaluation Report, Nursing Home Administrators*, p. 15.

**Disparate treatment of applicants.** Our 1981 evaluation showed disparities in the board's treatment of applicants for licensure. Some applicants were permitted to take the examination for licensure while others, with similar qualifications, were denied admission to the examination.

The disparate treatment was attributable to vagueness in some of the rules then in force on pre-examination standards. For example, the rules provided that a Master of Public Health degree "may" be considered the equivalent of a one-year experience requirement. The use of the term "may" combined with the lack of specificity as to the area in which a Master of Public Health must be earned provided considerable flexibility to the board in reviewing applicants. The board adopted a case-by-case approach which resulted in instances of arbitrary decisionmaking.

**Monitoring of program.** The board is responsible for monitoring the operations of nursing homes and the performance of nursing home administrators in order to: (1) insure that licensees are complying with requirements set by the board and (2) set standards for licensing and improving procedures for enforcing the standards. The board is also responsible for revoking and suspending licensees who fail to comply with board standards. We found that the board did little of the foregoing, in part because other state agencies such as DOH and DSSH are also responsible for seeing that nursing homes meet state and federal standards.

**Recommendations and responses.** Based on our review, we recommended the following:

1. Chapter 457B be retained to insure continued federal Medicaid funding of the costs of nursing home care.

2. The Board of Examiners of Nursing Home Administrators establish clear standards for admission to the licensing examination and insure the equal treatment of all applicants.

3. The board monitor the operations of nursing home administrators to assist the board in establishing standards for licensing of nursing home administrators and for enforcing such standards.<sup>5</sup>

5. *Ibid.*, p. 21.

The board responded that it agreed that Chapter 457B should be retained to ensure Medicaid funding for nursing home care, and it also agreed that the operations of nursing home administrators should be monitored. However, the board said that our recommendations on the need for clear guidelines for admission to the licensing examination were largely irrelevant.

The Department of Regulatory Agencies, now the Department of Commerce and Consumer Affairs (DCCA), responded that it was in general agreement with the evaluations and observations made in the report.

### **Subsequent Developments**

In 1981, the Legislature held hearings to determine whether Chapter 457B should be extended or sunsetted. The Legislature noted that statewide aid received under the Medicaid program was then approximately \$20 million annually and said that compliance with federal requirements should be continued. It decided to extend the repeal date of the Board of Examiners of Nursing Home Administrators to December 31, 1984.<sup>6</sup>

The Legislature also amended Chapter 457B to change the composition of the board so that it would conform with the requirements of the federal Social Security Act. Instead of requiring two board members to be licensed nursing home administrators, the board now has to be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients. A majority of board members may not be representative of a single profession or category of institution. In application, this means that no more than three board members can be licensed nursing home administrators.

In 1983, further amendments were made to Chapter 457B. The amendments deleted references to gender and indefinite modifiers, the section on temporary licenses, and the requirement for good moral character.

6. The date was later extended to December 31, 1985, by Act 87, SLH 1981, which suspended all sunset reports for one year.

## **Current Findings and Recommendations**

Our latest evaluation of the regulation of nursing home administrators results in findings similar to those in the 1981 report. We find the following:

1. Chapter 457B should not be sunsetted. It must remain in force if the State is to continue to participate in the federal Medicaid program.
2. Pre-examination requirements, adopted by the board in 1980, are overly restrictive and the board is moving to make them even more restrictive.
3. The board's educational standards are applied inconsistently and need clarification.
4. Other licensing standards, such as the requirement that the applicant be free of physical and mental impairments, are overly vague and unnecessary.
5. The operations of the board can be improved if board members as well as the Department of Commerce and Consumer Affairs staff had a better understanding of their respective roles and responsibilities.
6. Board monitoring of nursing home administrators requires the development of more specific performance standards and the assistance of those state agencies involved in assessing nursing home care.

## **Need for Regulation**

In order for the State to continue to receive federal Medicaid assistance, it must continue to comply with the federal mandate to license nursing home administrators. Should licensing be discontinued, the State would lose substantial federal funds. Federal reimbursements for Medicaid in FY 1983-84 were approximately \$33 million. The loss of such a substantial sum would have a significant impact on the State's ability to care for the aged, the permanently disabled and the medically needy.

## **Licensure Standards**

Pre-examination requirements which were adopted by the board in 1980 have made Hawaii among the most restrictive states in the nation. Significant changes were made in both educational and experience qualifications that must be met before an applicant is eligible to take the national examination. Table 1 compares the current standards with those that were in effect prior to 1980.

Table 1  
Pre-examination Requirements for Admission to Examination

<i>Prior to 1980</i>	<i>After 1980</i>
Two years of college level study in an accredited institution of higher education.	Baccalaureate degree from an accredited institution.
Regular or specialized course approved by the board.	Same.
One year of practical experience in nursing home administration or in a related health area.	One year of practical experience in the administration of a skilled nursing facility or intermediate nursing facility or intermediate care facility, or one year of practical training as an administrator-in-training in a nursing home with a minimum of 50 authorized beds.
Master of Public Health degree may be considered to be equivalent to the one year of experience.	Master of Public Health degree in the specialized field of gerontology or administration of a health care facility including a minimum of three credit hours on the administration of a skilled nursing facility or intermediate care facility shall be deemed as meeting the <i>educational</i> requirements.

Sources: State of Hawaii, Title VII, Professional and Vocational Licensing, Department of Regulatory Agencies, Chapter 27, Nursing Home Administrators, Section 4.1, and State of Hawaii, Title 16, Department of Regulatory Agencies, Chapter 90, Rules Relating to Nursing Home Administrators, Chapter 457B, Hawaii Revised Statutes, Section 16-90-7.

Prior to 1980, an applicant would be eligible to take the examination with: (1) two years of college, (2) completion of a regular or specialized course of study approved by the board, and (3) one year of practical experience in a nursing home or in a related health administration area. A Master of Public Health degree was considered to be equivalent to one year of experience.

Today, an applicant must have: (1) a baccalaureate degree, (2) completed a regular or specialized course of study approved by the board, and (3) one year of practical experience in the administration of a skilled nursing facility (SNF) or an intermediate care facility (ICF) or one year of practical training as an administrator-in-training (AIT) in a licensed nursing home with a minimum of 50 authorized SNF or ICF beds.<sup>7</sup> A Master of Public Health degree is no longer considered to be equivalent to the experience requirement.

7. Licensed nursing homes are designated as skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) depending on the type of health care services provided to patients.

Applicants with Master of Public Health degrees now are treated no differently than those with baccalaureate degrees. They must still take a regular or specialized course of study approved by the board. They must also have the one year of practical experience or one year of training as an AIT.

A survey of licensing standards nationwide shows that Hawaii is one of only 19 states that requires a baccalaureate degree. In 11 states, a high school degree suffices and in 15 states, an associate degree is the standard. Hawaii is also one of only 13 states that requires a baccalaureate degree as well as additional educational or experience requirements for licensure, such as a period of practical experience or AIT training. Finally, Hawaii is one of the few states that requires both practical experience as well as a board approved training course.<sup>8</sup>

These pre-examination standards present a significant obstacle to those who wish to become licensed nursing home administrators. The more restrictive experience and educational requirements combine to produce the following undesirable effects:

- . they tend to create a single route of entry into the profession for Hawaii residents.
- . licensed administrators who direct licensed nursing homes have virtually complete control over the licensing of Hawaii applicants.
- . they place Hawaii applicants at a disadvantage to applicants from other states.

Although there is no evidence that these more restrictive standards are valid, the board is already moving towards even more restrictive experience requirements.

**Single route of access to profession.** Formerly, several alternate routes were available to those who wished to become licensed nursing home administrators. Applicants with Master of Public Health degrees could qualify as the degree was considered to be equivalent to the one year of experience. Applicants who had worked in administration in a related health administration field, such as in a hospital, could also satisfy the experience requirement.

8. National Association of Boards of Examiners for Nursing Home Administrators, Inc., *Summary of NAB State Licensure Board Survey*, June 1984.

These alternate avenues are now closed. Applicants with Master of Public Health degrees can no longer substitute the degree for experience. Applicants who have had experience in a related health administration area also no longer qualify. All applicants must have one year of experience in administering a nursing home or work as an administrator-in-training under a licensed nursing home administrator for a year. The experience must be gained in a SNF/ICF facility.

**Control over access by licensed nursing home administrators.** The only experience that qualifies under the board's rules is that gained in administering SNF/ICF facilities or in training as AITs in these facilities. The experience must include responsibilities for planning, organizing, directing, and controlling the operations of the nursing home.

Since control over administrative functions in nursing homes are in the hands of licensed nursing home administrators, in effect the current rules delegate control over entry into the profession to these licensed administrators. To a large extent, the licensed administrators determine who the employees will be or who will be allowed to train in the facilities. They also decide to whom they would be willing to delegate administrative responsibilities.

There is no defined, open access to gaining the kind of practical experience required by the board. Administrative positions in nursing homes are limited and are generally already filled. To gain experience as an AIT, an applicant must find a licensed nursing home administrator who would be willing to supervise the training for a year. Some licensed administrators have been willing to do this as a favor to those they know. There have been instances reported where applicants have had to work as AITs for no pay in order to gain the required experience.

These conditions make access to the profession particularly difficult for those from lower income groups. An applicant would have to go through four years of college earning little or no income. The applicant would have to endure still another year with little or no income in order to satisfy the experience requirement. In addition, the applicant must also take the additional course of study approved by the board.

Control over access to practical experience is further limited by the small number of nursing homes that meets the board's definition of a nursing home. The

facility must be a duly licensed nursing home with not less than 50 authorized SNF/ICF beds. There are only 16 nursing homes in the State with 50 or more beds which are required to have licensed administrators. There are three other nursing homes but these have less than 50 beds and need special board approval to qualify for the practical experience standard.<sup>9</sup>

**Hawaii residents at a disadvantage.** These restrictive requirements place Hawaii residents at a disadvantage when compared with applicants from other states. The board's rules allow the board to honor or "endorse" the license of applicants from other states by giving these applicants a Hawaii license if that state has standards comparable to those in Hawaii. These out-of-state licensees are generally experienced nursing home administrators when they apply for Hawaii licensure by endorsement. Since they are already experienced, the board does not require them to submit evidence that they had one year of practical experience in a licensed nursing home *prior to* their out-of-state licensure. At times, the board has also exempted these applicants from having had the regular or specialized course in nursing home administration.

The board applies more stringent standards for Hawaii applicants with comparable backgrounds. It requires all applicants, even those with experience in administering SNF/ICF facilities, to have had one year of practical experience in a nursing home and to meet all educational requirements.

For example, a Hawaii applicant who had administered a hospital with SNF facilities applied for licensure.<sup>10</sup> The applicant had a baccalaureate degree and had administered the hospital for four years. The applicant was informed that he was deficient in academic background and in practical experience, and was asked to submit additional information.

**No evidence that requirements are valid.** We had recommended in our 1981 report that the board monitor the performance of nursing home administrators to identify the appropriateness of its standards for licensure. We noted that the standards were becoming progressively more stringent without any substantiation

9. State of Hawaii, Department of Health, Hospital and Medical Facilities Branch, *Skilled Nursing/Intermediate Care Facilities*, March 13, 1984.

10. Hospital administrators are not required to be licensed.

of the relevance of these standards to competency. The problem is of even greater concern today because of the restrictiveness of the experience standard and the absence of substitutes for this requirement.

*Questionable validity of AIT program.* The relevance of the experience requirement becomes even more questionable in view of the weaknesses of the board's AIT program. The majority of applicants satisfy the experience requirement by becoming AITs. In these cases, applicants locate a licensed nursing home administrator who is willing to serve as their preceptor for the year long training program. The applicant must apply for board approval and the preceptor must submit a letter to the board giving particulars about the facility and the training, including subject matter and experience to be covered.

In turn, the board issues guidelines to the applicant which is a checklist on the desired content of the program. The checklist covers subject areas such as observation of the administrator's role/responsibilities, business office, housekeeping, activity program, etc. The board does not have clear standards for determining when a program is acceptable. The rules only say that the program will be of a character satisfactory to the board.

Another weakness is that there are no standards for preceptorship. Any licensed nursing home administrator may be a preceptor. Although the preceptor is required to submit quarterly reports, there is no required format for these reports. The quality and content of reports submitted by preceptors vary from one preceptor to another. One preceptor might go into details on areas covered during the quarter while another might simply report that the AIT had completed the quarter's training and was performing well. Moreover, the rules do not require the board to approve any of the reports issued by the preceptor.

The board does not monitor the progress of the training program and there is no way to determine whether the subject areas in the guidelines are actually covered by the AIT or not. Thus, there is no way to determine if the training was actually relevant to establishing minimum competency.

*No correlation with requirements for comparable positions.* That direct practical experience in a nursing home is not critical for competency is further demonstrated by the fact that hospital administrators are not required to be

As noted, the public has not been endangered from licensing those administrators who had qualified by substituting a Master of Public Health degree for practical experience or licensing those who had experience in related health administration areas or those with experience as directors of nursing.

To restore multiple entry into the profession, pre-examination requirements should allow for the substitution of a Master of Public Health degree with a specialization in health services administration for the practical experience. The board should also accept one year of administrative experience in a related health administration area as meeting the experience standard.

**Educational requirements need clarification.** There are several educational requirements which need to be clarified or revised. These are: (1) the requirements for a baccalaureate degree from an accredited institution of higher education, (2) the additional regular or specialized course in nursing home administration approved by the board, and (3) the meaning of the board's rule on Master of Public Health degrees.

*Baccalaureate degrees.* The board's rules require applicants to have a baccalaureate degree from an accredited institution of higher education. This has been interpreted by the board's executive secretary as being a school accredited by the educational authorities of the State in which the school is located. However, no standard reference source is used to verify which schools are accredited according to this definition.

There are various accrediting agencies for post-secondary education institutions. These range from regional accrediting associations to professional associations. The Admissions and Records Office at the University of Hawaii uses the term "accredited" to denote those colleges and universities that have been accredited by the regional accrediting associations, such as the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the Northwest Association of Schools and Colleges, etc. Reference sources listing postsecondary institutions and their accreditation are available. (For example, the *Higher Education Directory* published annually by Higher Education Publications Inc. or the American Council on Education's *Accredited Institutions of Postsecondary Education*.)

The situation is more complex for graduates from foreign institutions. Some countries have their own accrediting agencies while others do not. The admissions and records office at the university serves as its own accrediting body for these foreign colleges and schools and it could serve other state agencies in this capacity.

We note that a recent applicant with a baccalaureate degree from a foreign university was approved by the board even though the college that the applicant attended is not accredited by the country where that institution is located. This information would have been available if this matter had been verified with the university admissions and records office.

*Board approved courses.* To be eligible to take the examination, applicants must have completed a regular or specialized course in the administration of a SNF/ICF which has been approved by the board. According to the board's minutes, the board has approved three courses of study which satisfy this requirement. These are courses in: (1) Long-Term Health Care Administration, University of Missouri-Columbia Medical Center, (2) Supervisory Management for Long-Term Care Facilities, Catholic Hospital Association, St. Louis, Missouri, and (3) George Washington University correspondence courses for nursing home administrators.

The board has been inconsistent in applying this requirement. The board has approved applicants who have taken courses other than the three approved by the board and the board has exempted some applicants from this requirement.

Some applicants with Master of Public Health degrees who have not taken the course are approved while others are required to have completed the course. In addition, the board will endorse nursing home administrators licensed in other states who have not taken the course of study.

Here again, the board needs to examine the validity of the requirement and determine the rationale for it. The board should be able to identify some specific benefits that it expects applicants to derive from these courses. Once it is able to identify the specific skills or information to be gained, then it can answer questions such as whether applicants with Master of Public Health degrees have equivalent skills and knowledge or whether these courses are supplementary requirements that are needed to compensate for the lack of specific training in academic programs.

*Rule relating to Master of Public Health degrees needs revision.* The board's rule on Master of Public Health degrees says that "an applicant for examination for license as a nursing home administrator who has been awarded a master's degree in hospital administration or a master's degree in public health in the specialized field of gerontology or in the specialized field of administration of health care facilities, including a board approved course with a minimum credit of 3 semester hours on the subject area of administration of a skilled nursing facility or intermediate care facility, shall be deemed as having met the educational requirements herein provided. . . ."<sup>14</sup>

Here again, there are several problems. First of all, it should be noted that the University of Hawaii School of Public Health does not award any Master of Public Health degrees in hospital administration or specializations in gerontology or administration of health care facilities. The program most similar to the above which is now being offered is the Master of Public Health degree with a specialization in health services administration and planning. Secondly, the school does not offer any course on the administration of a skilled nursing facility or intermediate care facility. Finally, the school is not aware of any board approved course.

The board needs to review the intent and meaning of its rule on advanced degrees. At the least, the rule should be revised so that it corresponds with educational programs currently being offered in the State.

**Other vague and unnecessary requirements.** The board has several overly comprehensive and vague requirements which serve no useful purpose and should be removed.

*Mental and physical impairment.* The board's rules require the applicant to furnish evidence satisfactory to the board of the absence of any physical or mental impairment that might interfere with the performance of the duties of a nursing home administrator.<sup>15</sup>

14. Title 16, Chapter 90, Section 16-90-7(a)(4).

15. Title 16, Chapter 90, Section 16-90-8(b).

These requirements are so broad as to be virtually meaningless. Although the board does not specify what evidence it would consider to be satisfactory, most applicants submit a doctor's certificate stating that the applicant has no physical or mental impairment. What this actually certifies is not at all clear.

*Ability to understand and communicate.* In addition, the board requires proof of the applicant's ability to understand and communicate general and technical information necessary for the administration of a nursing home, to assume responsibilities for its administration and to relate the physical, psychological, spiritual, emotional, and social needs of ill and aged individuals to the administration of a nursing home.<sup>16</sup>

The evidence to be submitted in support of this are statements of work performance covering the prior calendar year from employers or from preceptors. No standard format is followed and the board is without clear criteria on how these reports should be assessed.

## **Board Operations**

Our review of board operations suggests that the board would operate more effectively if it had a better understanding of its duties and responsibilities and if it were given a better orientation as to these duties and the kinds of support it might expect from the DCCA.

Board members are generally public spirited citizens who are willing to give of their time and effort to public service. This effort should be appropriately supported and directed by the DCCA. New members should be given a thorough orientation on their duties and be made familiar with present and past policies of the department and the board. This is a primary responsibility of the executive secretaries who staff the boards. The executive secretaries need to make an extra effort to make sure that each board member has the necessary background and guidelines to make informed decisions. It should be noted that this orientation is needed not only at the beginning of each new member's term but should be followed through at all board meetings.

16. *Ibid.*

The executive secretaries must also make board members aware that they must be above reproach in all matters that might be construed as conflicts of interest or unfair treatment of applicants. For example, a board member also served as a preceptor after he was appointed to the board. This practice is questionable as it allows the board member to set standards for the AIT program, to monitor the program, and also to provide the service in a private capacity. The executive secretaries should be alert to the dangers in this kind of situation, caution the board member, and seek an opinion from the State Ethics Commission as to the propriety of this practice.

The executive secretaries must also ensure that board members are thoroughly familiar with the law and the rules and regulations governing the board. In one instance, a board member gave informal advice to an applicant which later proved to be incorrect. This led to conflict among the board members, a petition by the applicant, and a hearing on the matter. In this case, there was not only the possibility of conflict of interest and unfair treatment of an applicant but also lack of familiarity with board rules.

As part of this educational process, board members should know what kind of support and guidance they are entitled to receive from the department. Because of differing perceptions about what is actually happening at board meetings and differing expectations as to what board responsibilities are *vis-a-vis* those of the executive secretary, occasionally there has been conflict between the board and the executive secretary as well as factions within the board.

For this reason, the department should make clear to board members what they might expect in terms of staff support. Unfortunately, the need to create this mutual understanding and support has not been fully recognized by DCCA. In September 1983, a board member raised several matters of concern to him. Among these was the role of the board and the functions of the executive secretary. The board member requested a copy of the executive secretary's job description. The board member was informed that the job description was confidential and not available to board members.

The department's position was unnecessarily adversarial. It is difficult to determine what possible reason the department might have for maintaining that the job description is confidential, particularly when another board member reports that

he had received a copy of the job description in his orientation packet when he was sworn in as a new board member.

We had noted in an earlier report that DCCA's job description for its executive secretaries failed to emphasize services and responsiveness to the boards, nor was it even accurate. We had recommended that "[t]he department ensure that the board is given the support that it needs to function effectively by reassessing the job description and duties of its executive secretaries. At the same time, the department should develop policies to ensure that its executive secretaries provide more uniform and responsive services to their boards."<sup>17</sup> This recommendation is still relevant.

**Need to monitor operations of nursing homes.** Under both federal and state law, the board has the duty of conducting a continuing study and investigation of nursing homes for the purpose of improving licensing standards and their enforcement. We had noted in our 1981 report that the board had done little of this and had recommended that the board begin monitoring the operations of nursing homes by nursing home administrators.

The board has made a good faith but incomplete effort to live up to its responsibilities. It has contacted other boards of nursing home examiners to determine how this responsibility was being carried out in other states. It has also contacted the DOH and the DSSH to determine the respective roles of the two departments with respect to Medicaid inspections and how they could possibly aid the board. The board has also adopted rules on some general standards of conduct which would provide grounds for revocation or suspension of a license.

The board has yet to decide on what further action it should pursue. Interviews with board members show that they believe that funds must be made available before any monitoring can take place. They see monitoring as making visits to various nursing homes.

It may not be necessary for board members to visit nursing homes in order to study and investigate nursing homes. Instead, the board should clarify its standards in order to identify specific performance standards which might be used in monitoring the performance of nursing home administrators.

17. State of Hawaii, Legislative Auditor, *Sunset Evaluation Report, Nurses, Chapter 457, Hawaii Revised Statutes*, Report No. 84-4, January 1984, p. 27.

The DSSH has informed the board that it would be willing to evaluate nursing home administrators when its staff performs the inspection of care reviews of nursing homes for Medicaid funding if the board would provide it with a checklist. The board took the first step in this direction when it informed DSSH that it wished to adopt "informal procedures by which mutually beneficial information on the competency of nursing home administrators can be shared for administrative and regulatory purposes."<sup>18</sup> The board now has to develop and identify for DOH and DSSH some specific indicators of performance that might be grounds for further investigation or for possible revocation and suspension of licenses. DSSH and DOH could then forward information on violations of these standards to DCCA's Regulated Industries and Complaints Office for investigation.

We encourage the board to continue its efforts in the direction of developing clearer indicators of performance for nursing home administrators and to improve linkages with other agencies involved in the review of nursing homes.

### *Recommendations*

*We recommend the following:*

1. *Chapter 457B, Hawaii Revised Statutes, be reenacted.*
2. *The board's rules on pre-examination requirements be amended to allow for the following:*
  - . *the substitution of a Master of Public Health degree for one year of practical experience;*
  - . *one year of administrative experience in a related health administration area as qualifying for the experience requirement.*
3. *The board clarify its educational requirements by:*
  - . *defining what it means by "accredited" and seeking the advice of the University of Hawaii in this matter;*

18. Letter from Joseph D. Dipardo, Chairman, Board of Examiners of Nursing Home Administrators to Ann Goya, Nursing Consultant, Department of Social Services and Housing, March 18, 1983.

- identifying the knowledge and skills expected from the board approved course of study and assess whether this requirement should be applied to all applicants;*
  - revising and updating its rule on Master of Public Health degrees so that it corresponds with educational opportunities in the State.*
4. *The board delete from its rules Sections 16-90-8(b), (c), and (d) relating to an applicant's suitability and fitness to qualify for licensure by furnishing evidence of the absence of physical or mental impairments and evidence of the ability to understand, communicate, and assume responsibilities for the administration of a nursing home.*
5. *The Department of Commerce and Consumer Affairs revise its job description for its executive secretaries to emphasize education and support to boards and commissions and make these new job descriptions available to all board members.*
6. *The board develop specific performance standards for nursing home administrators to be used by the Department of Social Services and Housing in its inspection of care reviews of nursing homes and to continue to develop closer linkages with the Department of Social Services and Housing and the Department of Health for the sharing of information on the performance of nursing home administrators.*



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APPENDIX

RESPONSES OF AFFECTED AGENCIES

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## COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Update was transmitted on November 2, 1984 to the Board of Examiners of Nursing Home Administrators and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3.

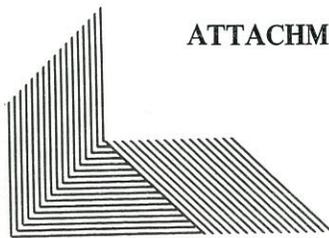
The board responded that it found the report comprehensive and agreed that the board's regulatory operations could be improved by implementing rule or operational changes in certain areas. It also stated that it plans to submit a full report on our recommendations to the 1985 Legislature.

The department responded to our recommendation that it place more emphasis on orientation of board members by noting that it has held orientation sessions in the past, and the department listed 23 items that it included in orientation packets given to board members. However, as we noted in our report, orientation of board members is needed not only at the beginning of their terms but should be followed through at all board meetings. Orientation is not merely a packet full of materials.

The department also said that our statement that a board member received a copy of the job description of the executive secretary was incorrect. The department says that what was given to the board member was a list of the executive secretary's duties and responsibilities. However, minutes of the board's meeting show that the board member who had requested the job description was inquiring about the secretary's functions, and this was referred to in the minutes as a "job description." This relatively minor point should not obscure the more basic issue that executive secretaries should provide responsive services to their boards.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR  
STATE OF HAWAII  
465 S. KING STREET, RM. 500  
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA  
AUDITOR

November 2, 1984

*C O P Y*

Mr. Steven A. Scott-Hosaka, Chairperson  
Board of Examiners of Nursing Home Administrators  
Department of Commerce and Consumer Affairs  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Mr. Scott-Hosaka:

Enclosed are eight preliminary copies, numbered 4 through 11, of our *Sunset Evaluation Update, Nursing Home Administrators, Chapter 457B, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Russel Nagata, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of nursing home administrators. If you have any comments on our recommendations, we would appreciate receiving them by December 3, 1984. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura  
Legislative Auditor

Enclosures

ATTACHMENT 2

GEORGE R. ARIYOSHI  
GOVERNOR



RUSSEL S. NAGATA  
DIRECTOR

DICK H. OKAJI  
LICENSING ADMINISTRATOR

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

STATE OF HAWAII  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

P. O. BOX 3469  
HONOLULU, HAWAII 96801

November 30, 1984

RECEIVED

DEC 3 9 13 AM '84

OFF. OF THE AUDITOR  
STATE OF HAWAII

The Honorable Clinton T. Tanimura  
Legislative Auditor  
The Office of the Auditor  
465 So. King Street, Room 500  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your sunset evaluation report on nursing home administrators.

We found the report comprehensive and agree that regulatory operations of the Board of Examiners of Nursing Home Administrators could be improved by implementing rule or operational changes in certain areas.

Since the report contains recommendations involving a number of issues, we will discuss them at our next meeting scheduled for January 10, 1985. Input from all members will be evaluated and consolidated and a full report on your recommendations will be presented to the 1985 Legislature.

Very truly yours,

STEVEN A. SCOTT-HOSAKA  
Chairman of the Board

ATTACHMENT 3



GEORGE R. ARIYOSHI  
GOVERNOR

RUSSEL S. NAGATA  
Director  
COMMISSIONER OF SECURITIES

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
1010 RICHARDS STREET  
P. O. BOX 541  
HONOLULU, HAWAII 96809

ROBERT A. ALM  
DEPUTY DIRECTOR

November 27, 1984

RECEIVED

Nov 29 2 33 PM '84

OFF. OF THE AUDITOR  
STATE OF HAWAII

Mr. Clinton T. Tanimura  
Legislative Auditor  
Office of the Auditor  
State of Hawaii  
465 South King Street, Room 500  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your sunset evaluation report on nursing home administrators.

Findings in your report make reference to the need by DCCA's staff and board members to have greater familiarity with their respective roles and responsibilities and that the department place more emphasis on orientation of board members.

The department has in the past held orientation seminars for new members whenever the budget has permitted. In all cases however, the department puts together a packet of orientation material containing a list of duties and function of the staff and the board as well as the nature of administrative and housekeeping services provided the boards. An executive secretary meets each new board member at the swearing-in-ceremony in the Executive Chamber and presents the member with the packet containing the following:

1. Roster of members of the board;
2. Roster of staff of the Professional & Vocational Licensing Division;
3. Minutes of the last two meetings of the board;
4. Licensing law and rules of the board;
5. Statement of the functions of boards and commissions and the division (details of duties and functions of staff and board listed);
6. Organizational chart of the Department of Commerce and Consumer Affairs;
7. Organizational chart of the Professional & Vocational Licensing Division;

8. Chart showing assignment of executive secretaries to boards and commissions;
9. Administrative supervision of boards and commissions placed within a department or subject to administrative supervision of the department head (Administrative Directive No. (11);
10. Director of Department of Commerce and Consumer Affairs -- jurisdiction, scope and authority (Section 26-9, HRS);
11. Complaint resolution flowchart;
12. Statement of functions of the Regulated Industries Complaints Office (RICO);
13. Travel rules (Dept. of Accounting & General Services);
14. Policies and procedures governing issuance and use of the State temporary parking permits issued to board and commission members;
15. Administrative Procedure Act (Chapter 91, HRS);
16. Public Agency Meetings and Records (Chapter 92, HRS -- applicable sections);
17. Term of office - board and commission members (Act 72, SLH);
18. Liability of government officers for acts and omissions (Attorney General Opinion);
19. Liability of board and commission members (Act 152, SLH 1984);
20. Adoption of rules flowchart;
21. Sunset Law - Hawaii Regulatory Licensing Reform Act (Chapter 26H, HRS);
22. Fair Information Practice (Confidentiality of Personal Records -- Chapter 92E, HRS); and
23. Workers' Compensation Law.

The executive secretary's job description has been recently updated and all references to investigation and complaint resolution had been deleted since this function was transferred to the Regulated Industries Complaints Office.

The question of accessibility of an executive secretary's job description has been raised in your report. While a list of the executive secretary's duties taken from that job description is made available to board members, a "copy" of the specific executive secretary's job description itself is not available as it contains employee salary information which is confidential.

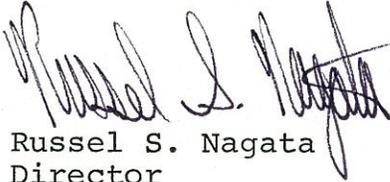
Mr. Clinton T. Tanimura  
November 27, 1984  
Page 3

A statement in the report that a board member received a "copy" of the executive secretary's job description when the member came on board is therefore incorrect. The board member was instead given a list of duties as described above along with other orientation material.

The department is also in the process of updating operations manuals for every board member which should assist both current and new members in keeping informed of their responsibilities as board members.

We fully agree with your conclusion that apprising board members of present and past policies of the department and the board should be one of the executive secretary's primary responsibilities and we will continue to work to improve the quality of service which we provide to the boards and commissions assigned to the department.

Very truly yours,



Russel S. Nagata  
Director