Sunset Evaluation Update: Nursing Home Administrators

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

THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.

2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.

3. *Sunset evaluations* are conducted of professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with a schedule and criteria established by statute.

4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.

5. *Health insurance analyses* are conducted on bills which propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.

6. *Special studies* are conducted when they are requested by both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.

THE AUDITOR
STATE OF HAWAII

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Report No. 93-7 October 1993

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunset Evaluation Update: Nursing Home Administrators

Summary

We evaluated the regulation of nursing home administrators under Chapter 457B, Hawaii Revised Statutes, and conclude that the public interest is best served by reenactment of the statute.

Nursing home administrators plan, organize, coordinate, and supervise health care and related services for nursing home residents. They manage the operations of skilled nursing facilities and nursing facilities (also known as intermediate care facilities). Most nursing home residents are single and over 75 years old; many will live in the facility for an extended period of time. The administrators are supposed to create an environment that would enhance the physical, mental, and psychological well-being of nursing home residents.

A seven-member Board of Examiners of Nursing Home Administrators regulates the occupation. The board is administratively attached to the Department of Commerce and Consumer Affairs, whose Professional and Vocational Licensing Division provides administrative services to the board.

Since our sunset evaluation update in 1985, improvements have been made in the regulatory program. Additional improvements are needed in several areas. The statute could be improved by defining a nursing home, requiring board representation of public members, clarifying experience requirements, strengthening grounds for disciplinary action, and allowing letters of recommendation from any licensed nursing home administrator. The administrative rules should be revised to remove the state laws examination requirement, set the length of internship training programs, and delete requirements for fitness, suitability, and photographs. The department could improve licensing operations by requiring notarized credentials, better documentation of applicant qualifications, and keeping accurate minutes of board meetings. Also, only completed applications should be brought to the board for action. An updated memorandum of understanding between the board and other state agencies would facilitate the sharing of information about the performance of nursing home administrators.

Recommendations and Response

The board agrees with our recommendation to reenact Chapter 457B, Hawaii Revised Statutes, to continue the regulation of nursing home administrators. The board also agrees that the statute should be amended to require public

representation on the board and to strengthen the grounds for disciplinary action. It does not agree with our recommendations to amend the statute to: (a) define a nursing home, (b) clarify experience requirements, and (c) allow five letters of recommendation from any licensed nursing home administrator. It believes that its administrative rules sufficiently define a nursing home and experience requirements. It defends the need for five letters of recommendation from nursing home administrators licensed in Hawaii on the basis that networking is an important element of the profession. Networking may be beneficial to nursing home administrators but does little for protecting the public's health, safety, and welfare.

Concerning our recommendations to amend its administrative rules, the board agrees that the length of internship training programs should be set in clock hours and that the requirements for fitness, suitability, and photographs should be deleted. It disagrees that a state laws examination should be removed because it feels that knowledge of Department of Health regulations is vital to all nursing home administrators. We believe that the need for an examination to prove familiarity with the rules is not necessary.

The board also agrees with our recommendations to improve the operations of the Professional and Vocational Licensing Division by requiring notarized documents and better documentation of applicant qualifications and to have only completed applications presented to the board. Based on additional information from the board, we modified our recommendation on the handling of incomplete applications. The board does not agree with our recommendation to improve departmental recordkeeping saying recordkeeping since 1990 has been accurate. We encourage the board to continue working with the department to see that records are accurately maintained. The board also agrees that its interagency memorandum of understanding could be updated to reflect departmental changes. The board should pursue efforts to work more closely with other agencies that also monitor the operation of nursing homes.

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Sunset Evaluation Update: Nursing Home Administrators

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

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 93-7
October 1993

Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to its date of repeal.

This report evaluates the regulation of nursing home administrators under Chapter 457B, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset law and whether there is a reasonable need to regulate nursing home administrators to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in the Appendix the draft legislation to improve the regulatory program.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Examiners of Nursing Home Administrators, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1
Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of nursing home administrators under Chapter 457B, HRS, complies with policies for occupational regulation in the Sunset Law.

Background on Nursing Home Administrators

Nursing home administrators plan, organize, coordinate, and supervise health care and related services for nursing home residents. They manage the operations of skilled nursing facilities and nursing facilities (also known as intermediate care facilities) serving more than 1.5 million individuals in the United States.[1] Most nursing home residents are single and over 75 years old; many will live in the facility for an extended period of time.[2] The administrators are supposed to create an environment that would enhance the physical, mental, and psychosocial well-being of nursing home residents. There are about 115 licensed nursing home administrators in Hawaii.[3]

All states license nursing home administrators and require them to pass an examination. The requirements for education and experience vary from state to state.

Regulatory program

Chapter 457B, HRS, governs the regulatory program, including licensing and disciplinary provisions for nursing home administrators. The program is placed under the Board of Examiners of Nursing Home Administrators, which is administratively attached to the Department of Commerce and Consumer Affairs. The board consists of seven members appointed by the governor who serve without compensation. No more than three may be nursing home administrators. An executive secretary in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations.

The department's Regulated Industries Complaints Office mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed

persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

Previous sunset report

Our previous sunset evaluation of nursing home administrators in 1985 recommended that Chapter 457B be reenacted to continue the licensing program.[4] To remedy problems with licensure standards, we recommended that the board amend its rules to clarify the education requirements, allow applicants to substitute for practical experience a master's degree in public health or experience in a related health administration area, and delete requirements for fitness and suitability.

We also recommended that the board develop specific performance standards for nursing home administrators and work more closely with other state agencies to collect information on the performance of licensed administrators. Finally, we recommended that the department revise the job description for executive secretaries to emphasize their role in educating and supporting boards and commissions.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of nursing home administrators complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate nursing home administrators to protect the health, safety, and welfare of the public;

2. Determine whether current regulatory requirements are appropriate for protecting the public;

3. Establish whether the regulatory program is being implemented effectively and efficiently; and

4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on nursing home administration and its regulation. We reviewed the statute and rules on nursing home administrators in Hawaii and changes in these since our last sunset evaluation in 1985.

We also reviewed complaints and evidence of potential harm to consumers. We interviewed members of the Board of Examiners of

Nursing Home Administrators, personnel from the Department of Commerce and Consumer Affairs, and practitioners in the field. We obtained information from the National Association of Boards of Examiners for Nursing Home Administrators and the Hawaii Long Term Care Association. At the department, we reviewed files on board operations, licensing, enforcement, and correspondence.

Our work was performed from February 1993 through September 1993 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

Some of the recommendations made in our 1985 sunset evaluation have been implemented. For example, applicants can now substitute a master's degree in public health for practical experience, and the board now collects information on the performance of licensed administrators from other agencies. But additional improvements are needed in the statutes, the rules, and the administration of the licensing program.

Summary of Findings

1. The State should continue regulating nursing home administrators to qualify for federal Medicaid funds.

2. The statute contains a number of licensing standards that are unclear, restrictive, or unnecessary.

3. Licensing operations could be improved by ensuring the authenticity of documents submitted by applicants, processing only completed applications, and keeping accurate board minutes.

4. The Department of Commerce and Consumer Affairs (DCCA) should work with other departments to share information on nursing homes and strengthen grounds for disciplinary actions.

State Should Continue to Regulate Nursing Home Administrators

Chapter 457B should be reenacted to continue the regulation of nursing home administrators. States that participate in the federal Medicaid program are required to establish licensing programs for nursing home administrators. If the licensing program were discontinued, the state would lose its federal Medicaid funding. Without Medicaid funding, the availability of health care services for families and individuals with low incomes would be dramatically reduced. Because the statute was previously reviewed and reenacted twice within a ten-year period, it falls within Section 26H-8(b), HRS, and the Legislature should consider reenacting it for ten years. In reenacting the statute, however, the Legislature should clarify the scope of regulation and provide for public members on the board.

No definition of nursing home

The statute does not include a definition of a nursing home. In the absence of a statutory definition, an applicant has limited information about the scope of regulation and licensing requirements for a nursing home administrator. Skilled nursing facilities and intermediate care

facilities are commonly referred to as nursing homes, but the board has also developed its own definition that encompasses facilities other than skilled nursing or intermediate care facilities.

The board's definition of a nursing home could be interpreted to include adult residential care homes which are regulated by the state health department. Adult residential care homes provide twenty-four-hour living accommodations to persons requiring at least minimal assistance in the activities of daily living, personal care services, protection and health care services, but who do not need the services of an intermediate care facility.[1]

No public representation on board

The Board of Examiners of Nursing Home Administrators has no public members who would represent the interests of residents of nursing homes. The statute provides that board members include but "not be limited to doctors, skilled nurses, hospital administrators, long term care facility administrators, physical therapists, occupational therapists, nutritionists, and gerontological social workers." The current board includes members who work for nursing homes, a long term adult day care facility, the state licensing program for adult residential care homes, and a veteran's administration outpatient clinic. Although there is no statutory requirement for public members, adding public members to the board would represent the interests of nursing home residents and their families, and thus better protect the interests of consumers.

Several Licensing Standards Are Unclear, Restrictive, or Unnecessary

Regulatory laws should be clear and contain only those provisions necessary to protect the public. We found that Chapter 457B does not set clear and unrestrictive experience and education requirements. In addition, the board's rules impose a state laws examination, fitness and suitability requirements, and a requirement for applicants' photograph, all of which are unnecessary.

Unclear experience requirements

Applicants must have practical, and may substitute administrative, experience for certain other licensing requirements but neither practical experience nor administrative experience are defined. Consequently, there is no assurance that applicants are held to uniform standards.

The statute permits applicants for licensure to substitute a master's degree in business administration, public health, or hospital administration with specialization in health services administration *for one year of practical experience*. What constitutes practical experience is not defined nor has the board developed rules setting clear standards for practical experience.

The statute also allows one year of *administrative experience in a health related area* to be substituted for one year of administrative experience in nursing home administration. But the statute has no requirement for nursing home administrative experience, nor is administrative experience defined.

Vague internship requirements

The board's adopted rules do not help to clarify the experience requirements. The current rules say that applicants can meet the practical experience requirement by completing a one year internship training program.

Board members have had difficulty approving internship training applications because the rules do not say how many hours should be included in the program. Other states vary in their requirements for training hours. Thirty-four states with internship programs vary their requirements from two months to one year. Three states require everyone to complete one year, nine require up to one year based on the applicant's qualifications, and 22 have lower requirements. About one-half of the states, including four that recently changed their requirements, set the length of training in clock hours. To clarify this requirement, the board should determine the requisite time an intern needs to become a sufficiently skilled administrator, then specify in its rules the number of hours that interns should complete.

Restrictive experience requirement

The statute requires applicants to have a baccalaureate degree from an accredited institution of higher education, but it allows the board to exempt applicants who have served eight years as assistant administrators (or the functional equivalent) in a nursing home, and who provide five letters of recommendation from nursing home administrators *licensed to practice in Hawaii*. The requirement of five written recommendations from persons licensed in the state is unfair to out-of-state applicants since it favors assistant administrators who work in Hawaii and probably know five Hawaii-licensed administrators. The written recommendations should not be limited to those from Hawaii-licensed nursing home administrators.

Confusing correspondence course requirement

The statute also allows the board to exempt "an applicant from completing the currently approved nursing home administrator's correspondence course if the board determines that the applicant's baccalaureate or post-baccalaureate formal education has imparted the knowledge and skills taught in the course." But there is no statutory requirement for a correspondence course, nor is there any explanation of what the course should cover.

Unnecessary law examination

The rules require applicants to pass a two-part written exam, consisting of a national licensing exam and a state laws exam. The board has been using the same state laws exam for the past five years. The executive secretary recently told the board that the exam is outdated, and may not be needed.

We agree with the executive secretary and believe that the current exam should be discontinued. The state laws exam is not needed to assure entry-level competency in the practice of nursing home administration. Most other licensing programs at DCCA have discontinued their state laws examinations.

Unnecessary fitness and suitability requirements

The rules require applicants to demonstrate fitness and suitability in several areas that "are to be considered minimum requirements and shall not be waived."[2]

To meet this requirement, most applicants must submit a statement of work performance attesting to their ability to understand and communicate information, assume administrative responsibilities, create a compassionate climate, and relate nursing home administration to the needs of ill or aged individuals. Applicants must also submit three letters attesting to their good moral character. However, the board has not enforced this requirement and its members feel the letters are unnecessary.

The Legislature repealed the statutory provisions relating to good character and suitability in 1983, but the board has not repealed its rules on fitness and suitability. We recommend that the board do so and conform with statutes.

Unnecessary photographs

The rules require applicants to submit a finished, unmounted photograph taken within three months of their application. The photograph serves no useful purpose and could be used to discriminate against applicants because it identifies the applicant's race, color, or national origin. The board should amend the rules to remove this requirement.

Licensing Operations Could be Improved

Program operations could be improved by authenticating application documents, processing only completed applications, and keeping accurate board minutes.

Documents not authenticated

The board seldom questions the authenticity of documents submitted by applicants. In our random sample, four of the six files had unnotarized photocopies of diplomas or letters of recommendation; two also had

information that was not verified—the applicants had merely submitted resumes to show they met key education or experience standards.

Some board members say they rely on the licensing division to authenticate documents and verify information. Others believe that the materials must be true and correct because applicants certify so in a notarized affidavit. The licensing clerk notes that the board requires only the "Application for Exam and License" form to be notarized.

The board should require photocopied credentials to be notarized and request more proof than a resume when considering applicant qualifications.

Incomplete applications

Board decisions on applications are often confused because incomplete application files are being reviewed. The board often defers decision making or provisionally approves applications. The board even conditionally admits applicants to the licensing examination although key information is missing from the files. In other instances, the executive secretary may approve applications that the board has not yet formally reviewed.

A policy in the licensing division's *Operational Manual for Boards and Commissions* states that "incomplete applications are not acceptable."[3] Nevertheless, the executive secretary places incomplete applications on the agenda with the explanation that the board does not meet every month and can ask for more information if needed. However, this creates board confusion because decisions must be adapted to the level of completeness of each file.

Meeting infrequently as it does, the board should use its time more efficiently. The executive secretary should ensure all application files are complete before the board review. The licensing division should work with the board to clarify guidelines for processing applications.

Inaccurate minutes

Minutes for several board meetings in 1990 were not properly approved. There is no record that the board approved the minutes for meetings held on August 13th and October 25th. The board did not properly approve the minutes for a meeting held on June 28th, and appears to have approved minutes that were never written for a November 9th meeting that was never held. If accurate records of minutes are not kept, the legality of decisions made during meetings could be undermined. The executive secretary should review the minutes and ask the board to correct any errors and omissions in the official record.

Departments Are Not Sharing Information

Several departments are supposed to share information about the performance of nursing home administrators. The statute requires the board to initiate and maintain cooperative arrangements with the long-term care ombudsman, the Department of Health, and the Department of Human Services. The board has entered into a memorandum of understanding with these agencies and the Regulated Industries Complaints Office (RICO).

The agencies agreed in the memorandum to send certain information to RICO, for example, complaints verified by the long-term care ombudsman, inspection of care reports prepared by the human services department, and letters recommending denial of Medicare certification prepared by the health department.

These agencies have not been sending information to RICO for a variety of reasons. The long-term care ombudsman feels that the grounds for disciplining nursing home administrators are too narrow to be effective, the human services department no longer prepares inspection of care reports, and the health department was not familiar with the agreement.

The board should work with the other agencies to first update then ensure compliance with the memorandum of understanding. To support this effort, the board should strengthen the grounds for discipline.

Inadequate grounds for disciplinary action

The statute does not establish any grounds for disciplining licensed nursing home administrators. However, the rules do include five standards of conduct that can be used to suspend or revoke an administrator's license. The board can suspend or revoke a license when an administrator has altered certain physician's orders, willfully departed from governmental regulations, committed fraud, fraudulently advertised nursing home services, or misrepresented material facts in renewing the license. But the standards require the State to prove that a licensed nursing home administrator has *personally* committed one of the acts listed in the rules.

The new *Professional and Vocational Licensing Act* (Chapter 436B, HRS) includes additional grounds that can be used to discipline licensed nursing home administrators. For example, the board can suspend, revoke, or condition the license of an administrator who fails to maintain a record of competency, trustworthiness, fair dealing, and financial integrity. The statute strengthens the board's ability to act, but it does not include grounds that relate specifically to the practice of nursing home administration.

The National Association of Boards of Examiners of Nursing Home Administrators is studying the issue, and it has developed a list of commonly accepted causes for action used by state licensing boards.[4] The board should use the list to recommend specific grounds for disciplinary action for legislative consideration if it chooses to reenact Chapter 457B.

Recommendations

1. The Legislature should reenact Chapter 457B to continue the regulation of nursing home administrators. In doing so, the Legislature should consider reenacting the statute for ten years.

2. In reenacting the statute, the Legislature should consider amending it to:

   a. Define a nursing home;

   b. Require board representation of public members who would represent the interests of nursing home residents;

   c. Clarify experience requirements;

   d. Allow eight years of experience as an assistant nursing home administrator as a substitute for a baccalaureate degree and five letters of recommendation from *any* licensed nursing home administrator; and

   e. Strengthen the grounds for disciplining nursing home administrators.

3. The Board of Examiners of Nursing Home Administrators should amend its rules to:

   a. Remove the state laws examination;

   b. Set the length of internship training programs in clock hours; and

   c. Delete the requirements for fitness, suitability, and photographs.

4. The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should improve licensing operations by:

   a. Requiring photocopied credentials to be notarized and ask for better documentation of applicant qualifications;

b. Bringing only completed applications to the board; and

c. Improving record keeping and accuracy for all minutes.

5. The board and the department should work closely with other agencies to implement a meaningful memorandum of understanding.

Notes

Chapter 1

1. National Association of Boards of Examiners for Nursing Home Adminstrators, *NAB Study Guide*, 2nd ed., Washington, D.C., 1992, p. 7.

2. Ibid.

3. Hawaii, Department of Commerce and Consumer Affairs, *PVL Division Backup Printout*, Honolulu, August 6, 1992, pp. 6694-6702; and Hawaii, Department of Commerce and Consumer Affairs, *Nursing Home Administrators* (license log), Honolulu, March 17, 1993.

4. Hawaii, Legislative Auditor, *Sunset Evaluation Update: Nursing Home Administrators*, Report No. 85-2, Honolulu, January 1985.

Chapter 2

1. Section 321-15.1, Hawaii Revised Statutes.

2. Section 16-90-7.15(c), Hawaii Administrative Rules.

3. Hawaii, Department of Commerce and Consumer Affairs, *Operational Manual for Boards and Commissions*, Honolulu, July 1992, p. 7.

4. National Association of Boards of Examiners for Nursing Home Administrators, "Authority To Refuse License To An Applicant Or To Discipline A Nursing Home Administrator," Washington, D.C., (undated).

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Board of Examiners of Nursing Home Administrators and to the Department of Commerce and Consumer Affairs on July 30, 1993. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2. The department did not submit a separate response.

The board agrees with our recommendation to reenact Chapter 457B, Hawaii Revised Statutes, to continue the regulation of nursing home administrators. The board also agrees that the statute should be amended to require public representation on the board and to strengthen the grounds for disciplinary action. It does not agree with our recommendations to amend the statute to: (a) define a nursing home, (b) clarify experience requirements, and (c) allow five letters of recommendation from any licensed nursing home administrator. It believes that its administrative rules sufficiently define a nursing home and experience requirements. It defends the need for five letters of recommendation from nursing home administrators licensed in Hawaii on the basis that networking is an important element of the profession. Networking may be beneficial to nursing home administrators but does little to protect the public's health, safety, and welfare.

The board agrees with our recommendations to amend its administrative rules to set the length of internship training programs in clock hours and to delete the requirements for fitness, suitability, and photographs. It disagrees that a state laws examination should be removed because it feels that knowledge of Department of Health regulations is vital to all nursing home administrators. We agree that nursing home administrators should be familiar with Department of Health regulations but an examination to prove familiarity with the rules is not necessary.

The board also agrees with our recommendations to require notarized documents and better documentation of applicant qualifications and to have only completed applications presented to the board. Based on additional information from the board, we have modified our recommendation on the handling of incomplete applications.

The board does not agree with our recommendation to improve departmental recordkeeping, saying recordkeeping since 1990 has been accurate. We encourage the board to continue working with the department to see that records are accurately maintained. The board also

agrees that its interagency memorandum of understanding could be updated to reflect departmental changes. The board should pursue efforts to work more closely with other agencies that also monitor the operation of nursing homes.

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MARION M. HIGA
State Auditor

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July 30, 1993

COPY

Mr. Gilbert A. Gima, Chair
Board of Examiners of Nursing Home
Administrators
Department of Commerce and Consumer Affairs
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Gima:

Enclosed for your information are 8 copies, numbered 9 to 16 of our draft report, Sunset Evaluation Update: Nursing Home Administrators. We ask that you telephone us by Tuesday, August 3, 1993, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Thursday, September 2, 1993.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa

Marion M. Higa
State Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR

CLIFFORD K. HIGA
DIRECTOR

NOE NOE TOM
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
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September 2, 1993

RECEIVED
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STATE OF HAWAII

The Honorable Marion M. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Mrs. Higa:

Thank you for providing the Board of Examiners of Nursing Home Administrators (Board) the opportunity to comment on the Sunset Evaluation Update on Nursing Home Administrators. The Board will comment on the recommendations as they appear on page 11 of the report, as well as on statements in the report relative to those recommendations.

"1. The Legislature should reenact Chapter 457B to continue the regulation of nursing home administrators. In doing so, the Legislature should consider amending the statute to do the following:

a. Define a nursing home;

b. Require a board representation of public members who would represent the interests of nursing home residents;

c. Clarify experience requirements;

d. Allow eight years of experience as an assistant nursing home administrator as a substitute for a baccalaureate degree and five letters of recommendation from any licensed nursing home administrator; and

e. Strengthen the grounds for disciplining nursing home administrators."

The Board agrees that Chapter 457B, HRS should be reenacted to continue the regulation of nursing home administrators.

1a. A definition for nursing home is already provided in the Board's rules (see §16-90-3, HAR). The Board has recently decided to amend the definition and change the title of "nursing home" to "licensed nursing facility". The amended definition is provided should you pursue a legislative bill on this subject (see Attachment 1). While we feel it may be unnecessary to have the definition in the statute (since it is in the rules), if you are to propose a definition then we request it be the definition developed by the Board.

1b. The Board is not opposed to adding public members, but would recommend you not limit public member representation to those who would represent the interests of nursing home residents. Instead, provide for additional "public members" without any indication of their interest or who they should represent. This would be consistent with the designation "public members" on other boards under the Department of Commerce and Consumer Affairs.

1c. Experience requirements are already provided on the Board's rules. The Board has recently decided to amend its rules to define "work experience" in more detail. The clarification you seek can be handled by amending the rules rather than including this detailed subject matter in the statute. We would question the need for a legislative proposal for this purpose. However, if you proceed then the provisions of sections 16-90-7.5 and 16-90-7.10 HAR should be incorporated. Further, to assist you, attached is a checklist of issues to be included when you draft a legislative proposal on clarifying experience requirements (see Attachment 2). Recognition of the provisions of 16-90-7.5 and 16-90-7.10 HAR and the checklist will ensure consistency with requirements decided upon by the Board.

Lastly, on this subject matter we do disagree with your finding that "practical experience" is not defined by the Board. Practical experience in the administration of a skilled nursing facility or intermediate care facility <u>is defined in §16-90-3, HAR</u>.

1d. We assume your focus is <u>not</u> on allowing experience substitution for education since the statute already provides for this. Instead it is the latter part of the recommendation that is your point, which is to allow required letters of recommendation from "any" licensed nursing home administrator. The Board is opposed to this

recommendation. The Board feels that both local and out-of-state candidates benefit by establishing a rapport with Hawaii nursing home administrators. Networking is an integral part of the nursing home administrator's duty to keep abreast with changes in law and the needs of society. The exchange of information and experiences can be invaluable to a newly licensed nursing home administrator. The implication is that the Board is discriminating against out-of-State nursing home administrators. The Board strongly refutes this generalization as there have been no findings to support it.

1e. The Board is in favor of taking the language from its rules relating to grounds for disciplinary sections (see §§16-90-42 and 16-90-43, HAR) and placing it in Chapter 457B. The Board is also in favor of considering the NAB's recommended list of grounds for disciplinary action.

"2. The Board of Examiners of Nursing Home Administrators should amend its rules to:

a. Remove the state laws examination;

b. Set the length of internship training programs in clock hours; and

c. Delete the requirements for fitness, suitability and photographs."

2a. The Board strongly opposes the removal of the state laws examination and feels that Chapter 94 is vital to the knowledge of all nursing home administrators.

2b. The Board agrees with setting internship training programs in clock hours.

2c. The Board agrees with deleting the requirements for fitness, suitability and photographs.

The Board wishes to address the below although it is directed to the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs.

"3. The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should improve licensing operations by doing the following:

a. Require photocopied credentials to be notarized and ask for better documentation of applicant qualifications;

b. Process only completed applications; and

c. Improve record keeping and accuracy for all minutes."

3a. The Board is in favor of requiring original or certified documents such as official transcripts, or to have photocopied credentials notarized. While this will place an additional burden on applicants it can be enforced subject to statutory authority to do so. We look towards your legislative proposal including the appropriate amendments to §457B-3.1, HRS. We do however wish to clarify for the record that documents received are filed in conjunction with the application form which must be notarized. The attestation before a notary states: "I hereby certify that the statements and information contained in this application and the documents attached are true and correct. I understand that misrepresentation is grounds for refusal or subsequent revocation of license." (emphasis added). Therefore it is inappropriate to infer that information received from applicants may not be authentic or unverified. Further, reliance on the attestation is common for most other licensure applications in lieu of requiring each attached document be an original, certified or notarized. The department informs us that this practice has not been questioned before.

3b. It would be more accurate if your recommendation read "only completed applications be brought before the Board" rather than the department should "process only completed applications". The latter is an inaccurate description of the process (see page 9 of your report). In 1991, the Board directed the Executive Secretary to present all applications received (even if they may be incomplete), to the Board for evaluation. The evaluation of the training or experience must be determined by the Board and not by the Executive Secretary. The Board disagrees with the recommendation and finds the current practice appropriate and what was delegated to the Executive Secretary in-line with the Board's powers. The Board had authorized the Executive Secretary to process applications of persons who provided evidence of possessing a masters degree in hospital administration, public health specializing in gerontology, or public health specializing in health administration plus a board-approved 3 credit course in administration of skilled nursing facility or an intermediate care facility. Evaluation of educational qualifications did not necessitate Board review.

3c. The Board finds its records since 1990 to be accurate. The oversights you noted in 1990 have long since been addressed. Your report lacks findings that there are current problems with the Board's record keeping.

"4. The board and the department should work closely with other agencies to implement a meaningful memorandum of understanding."

The Board agrees that the current interagency memorandum of understanding could be updated to reflect departmental changes. However, it is uncertain how it can be revised to "ensure compliance with the memorandum of understanding" as stated on page 10 of your report. The Board would welcome recommendations from your office to achieve your intentions.

We again wish to express appreciation for allowing us the opportunity to respond to your report and all the recommendations contained therein.

Very truly yours,

R. S. Choy

Chair

Attachments

"Nursing home" means a place authorized as such by the [appropriate licensing authority of this State] department of health for the care of patients requiring continued nursing or health care[, or both, such as a skilled nursing facility or an intermediate care facility] as a licensed nursing facility.

Attachment 1

NHA EXAMINATION APPLICANT CHECKLIST

Education (16-90-7.5):

___ Master's Degree in: hospital administration or public health specializing in gerontology or public health specializing in health administration and Board approved 3 credit course in administration of SNF or ICF.

or

1. _____ Baccalaureate degree

or

_____ 8 years within the past 10 as assistant administrator, in a nsg home and 5 letters from Hawaii licensed NHA recommending the applicant sit for the exam

and

2. _____ Correspondence course specializing in nursing home administration

or

_____ Board approved course of study/program from college/University

or

_____ 3 years within the past 5 exp. of administrative work experience in a health related area

Practical Experience (16-90-70.10):

____ 1 year administrative experience in an SNF or ICF

or

____ Administrator-in-training program meeting 16-90-37

or

____ Master's degree in: hospital administration or business administration or public health with specialization in health services administration

or

____ 1 year administrative experience in a health related area.

Fitness and Suitability (16-90-7.15):

____ Persons in the field: Employer's statement of work performance covering the last 12 months prior to the application.

____ Others: Employer evaluation/assessment of knowledge and training required of a nursing administrator.

7/90

Attachment 2

Proposed Legislation

SEVENTEENTH LEGISLATURE, 1994
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO NURSING HOME ADMINISTRATORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§26H-4 Repeal dates.** (a) The following chapters are
4 hereby repealed effective December 31, 1994:
5 (1) Chapter 447 (Dental Hygienists)
6 (2) Chapter 457 (Board of Nursing)
7 (3) Chapter 457A (Nurse Aides)
8 [(4) Chapter 457B (Board of Examiners of Nursing Home
9 Administrators)
10 (5)] (4) Chapter 461 (Board of Pharmacy)
11 [(6)] (5) Chapter 468L (Travel Agencies)
12 (b) The following chapters are hereby repealed effective
13 December 31, 1995:
14 (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
15 (2) Chapter 437B (Motor Vehicle Repair Industry Board)
16 (3) Chapter 440 (Boxing Commission)
17 (4) Chapter 445 Part V (Pawnbrokers)
18 (5) Chapter 448H (Elevator Mechanics Licensing Board)
19 (6) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

1 (7) Chapter 453 (Board of Medical Examiners
2 (8) Chapter 463E (Podiatry)
3 (c) The following chapters and sections are hereby repealed
4 effective December 31, 1996:
5 (1) Sections 321-13 to 321-15 (laboratory directors,
6 laboratory technologists, laboratory supervisors,
7 laboratory technicians, and sanitarians)
8 (2) Chapter 321, Part XXX, (Tattoo Artists)
9 (3) Chapter 321, Part XXXI, (Midwives)
10 (4) Sections 431:10A-116(4) and 432:1-605 (Mammogram
11 Screening)
12 (5) Chapter 448F (Electrologists)
13 (6) Chapter 466J (Board of Radiologic Technology)
14 (d) The following chapters are hereby repealed effective
15 December 31, 1997:
16 (1) Chapter 438 (Board of Barbers)
17 (2) Chapter 448 (Board of Dental Examiners)
18 (3) Chapter 455 (Board of Examiners in Naturopathy)
19 (4) Chapter 459 (Board of Examiners in Optometry)
20 (5) Chapter 460J (Pest Control Board)
21 (6) Chapter 462A (Pilotage)
22 (7) Chapter 471 (Board of Veterinary Examiners)

1 (e) The following chapters are hereby repealed effective
2 December 31, 1998:
3 (1) Chapter 373 (Commercial Employment Agencies)
4 (2) Chapter 441 (Cemetery and Funeral Trusts)
5 (3) Chapter 443B (Collection Agencies)
6 (4) Chapter 463 (Board of Private Detectives and Guards)
7 (5) Chapter 468 (Solicitors; Business of Taking Orders)
8 (f) The following chapters are hereby repealed effective
9 December 31, 1999:
10 (1) Chapter 436E (Board of Acupuncture)
11 (2) Chapter 442 (Board of Chiropractic Examiners)
12 (3) Chapter 444 (Contractors License Board)
13 (4) Chapter 448E (Board of Electricians and Plumbers)
14 (5) Chapter 452 (Board of Massage Therapy)
15 (6) Chapter 460 (Board of Osteopathic Examiners)
16 (7) Chapter 461J (Board of Physical Therapy)
17 (8) Chapter 464 (Professional Engineers, Architects,
18 Surveyors and Landscape Architects)
19 (9) Chapter 465 (Board of Psychology)
20 (10) Chapter 468E (Speech Pathology and Audiology)
21 (11) Chapter 514E (Time Sharing Plans)
22 (g) The following chapters are hereby repealed effective

1 December 31, 2000:

2 (1) Chapter 439 (Board of Cosmetology)

3 (2) Chapter 448F (Electrologists)

4 (3) Chapter 454 (Mortgage Brokers and Solicitors)

5 (4) Chapter 454D (Real Estate Collection Servicing Agents)

6 (5) Chapter 466 (Board of Public Accountancy)

7 (6) Chapter 467 (Real Estate Commission)

8 (h) The following chapter is hereby repealed effective

9 December 31, 2001:

10 (1) Chapter 458 (Board of Dispensing Opticians)

11 (i) The following chapter is hereby repealed effective

12 December 31, 2004:

13 (1) Chapter 457B (Board of Examiners of Nursing Home

14 Administrators)"

15 SECTION 2. Chapter 457B, Hawaii Revised Statutes, is

16 amended by adding eight new sections to be appropriately

17 designated and to read as follows:

18 "**§457B- Disciplinary action.** The board may impose

19 conditions or limitations upon a licensee's license after a

20 hearing conducted in accordance with chapter 91. The violation

21 of any condition or limitation on a licensee's license may be

22 cause to impose additional sanctions against the licensee.

1 Unless otherwise provided by law, any fine imposed by the board
2 after a hearing in accordance with chapter 91 shall be no less
3 than $100 for each violation, and each day's violation may be
4 deemed a separate violation.
5 **§457B- Grounds for refusal to renew, reinstate or restore**
6 **and for revocation, suspension, denial, or condition of licenses.**
7 The board may refuse to renew, reinstate or restore, or may
8 revoke, suspend, deny, or condition in any manner, any license
9 for any one or more of the following acts or conditions on the
10 part of the licensee or the applicant:
11 (1) Altering in any way the physician's order for any
12 patient's or resident's medical or therapeutic care
13 unless the orders are clearly hazardous to the patient
14 or resident, in which case the physician shall be
15 immediately notified;
16 (2) Defrauding any federal, state, county, or social
17 agency, business, or individual in the operation of a
18 nursing home;
19 (3) Knowingly departing from the federal, state, county
20 laws, ordinance, or rules relating to the operation and
21 maintenance of nursing homes;
22 (4) Engaging in false, fraudulent, or deceptive

1 advertising, or making false or improbable statements
2 regarding the services of the nursing home;
3 (5) Procuring or renewing a license through fraud,
4 misrepresentation of material fact, or deceit;
5 (6) Submitting or filing with the board any notice,
6 statement, or other document required under this
7 chapter which is false or which contains any material
8 misstatement of fact;
9 (7) Failure to report to the board in writing any
10 disciplinary decision issued against the licensee or
11 the applicant in another jurisdiction within thirty
12 days of the disciplinary decision;
13 (8) Failure to meet or maintain the conditions and
14 requirements necessary to qualify for the granting of a
15 license;
16 (9) Being addicted to, dependent on, or being a habitual
17 user of a narcotic, barbiturate, amphetamine,
18 hallucinogen, opium, or cocaine, or other drugs or
19 derivatives of a similar nature;
20 (10) Practicing as a nursing home administrator while
21 impaired by alcohol, drugs, or mental instability;
22 (11) Aiding and abetting an unlicensed person to directly or

1 indirectly perform activities requiring a license;
2 (12) Professional misconduct, incompetence, gross
3 negligence, or manifest incapacity in the practice of a
4 nursing home administrator;
5 (13) Failure to maintain a record or history of competency,
6 trustworthiness, fair dealing, and financial integrity;
7 (14) Conduct or practice contrary to recognized standards of
8 ethics for the profession of nursing home
9 administrator;
10 (15) Violating any condition or limitation upon which a
11 conditional or temporary license was issued;
12 (16) Engaging in business under a past or present license
13 issued pursuant to this chapter in a manner causing
14 injury to one or more members of the public;
15 (17) Failure to comply, observe, or adhere to any law in a
16 manner such that the board deems the applicant or
17 holder to be an unfit or improper person to hold a
18 license;
19 (18) Revocation, suspension, or other disciplinary action by
20 another state or federal agency against a licensee or
21 applicant for any reason provided by this chapter;
22 (19) Criminal conviction, whether by nolo contendere or

1 otherwise, of a penal crime directly related to the
2 qualifications, functions, or duties of nursing home
3 administrators;
4 (20) Employing, utilizing, or attempting to employ or
5 utilize at any time any person not licensed under this
6 chapter where licensure is required; or
7 (21) Violating this chapter or any rules or orders of the
8 board.
9 **§457B- Suspended license.** No license shall be suspended
10 by the board for a period exceeding five years. A person whose
11 license has been suspended may apply for reinstatement of the
12 license to the extent authorized by law and upon complete
13 compliance with any term or condition imposed by the order of
14 suspension. The application for reinstatement shall be
15 accompanied by all applicable fees.
16 **§457B- Revoked license.** A person may apply for a new
17 license after five years from the effective date of the
18 revocation of the license by filing an application and complying
19 with all current requirements for new applicants. The board may
20 waive any applicable education or examination requirements upon
21 being satisfied that the applicant whose license has been
22 previously revoked has submitted documentation that the applicant

1 has maintained equivalent knowledge, competence, and
2 qualifications through work experience, training, or education.
3 **§457B- Relinquishment no bar to jurisdiction.** The
4 forfeiture, nonrenewal, surrender, or voluntary relinquishment of
5 a license by a licensee shall not bar jurisdiction by the board
6 to proceed with any investigation, action, or proceeding to
7 revoke, suspend, condition, or limit the licensee's license or
8 fine the licensee.
9 **§457B- Summary suspension.** Notwithstanding any law to
10 the contrary, the board may summarily suspend or restrict a
11 license, subject to subsequent notice and hearing or other
12 adequate procedures, upon a specific determination that the
13 failure to take such an action may result in:
14 (1) An immediate and unreasonable threat to personal
15 safety; or
16 (2) Fraud or misrepresentation upon consumers;
17 and that, for the protection of the public from the possible
18 consequences of practices, the licensee's license should be
19 immediately suspended or restricted.
20 The board may order the summary suspension of the license
21 for a period not to exceed twenty days. The order of suspension
22 shall be served upon the licensee at the same time as the notice

1 of hearing for disciplinary action, and the hearing shall be
2 scheduled prior to the expiration of the order of suspension.
3 The period of suspension prior to the hearing shall not be
4 extended beyond twenty days except upon request of the licensee
5 for a reasonable continuance to adequately prepare the licensee's
6 defense. Any attempt by the licensee to continue the licensed
7 activity while the license has been summarily suspended shall of
8 itself be sufficient to warrant a permanent revocation of the
9 license and shall subject the licensee to all penalties
10 prescribed by this chapter or any rule or order of the board.
11 **§457B- Hearings.** Unless otherwise provided by law, in
12 every case in which the board refuses to issue, renew, restore,
13 or reinstate a license, or proposes to take disciplinary action
14 or other licensing sanctions against a licensee, the proceeding
15 before the board shall be conducted in accordance with chapter
16 91.
17 In all proceedings before it, the board and its members
18 shall have the same powers with respect to administering oaths,
19 compelling the attendance of witnesses and the production of
20 documentary evidence, and examining witnesses as are possessed by
21 circuit courts. In case of disobedience by any person of any
22 order of the board or a member, or of any subpoena issued by it

1 or a member, or the refusal of any witness to testify to any
2 matter regarding which the witness may be questioned lawfully,
3 any circuit judge, on application by the board or a member, shall
4 compel obedience as in the case of disobedience of the
5 requirements of a subpoena issued by a circuit court, or a
6 refusal to testify therein.
7 **§457B- Judicial review by circuit court.** Any person
8 aggrieved by a final decision and order of the board in a
9 "contested case", as defined in chapter 91, is entitled to
10 judicial review by the circuit court of the circuit in which the
11 board making the final decision and order has jurisdiction. The
12 review shall be as provided by chapter 91."
13 SECTION 3. Section 457B-2, Hawaii Revised Statutes, is
14 amended by adding three new definitions to be appropriately
15 inserted and to read as follows:
16 ""Administrative experience" means training and experience
17 as an administrator-in-training in a nursing home pursuant to
18 rules adopted by the board.
19 "Nursing home" means a skilled nursing facility or an
20 intermediate care facility.
21 "Practical experience" means the active responsibility of
22 planning, organizing, directing, and controlling the operation of

1 a nursing home at or above the level of assistant administrator
2 or its functional equivalent."
3 SECTION 4. Section 457B-3.1, Hawaii Revised Statutes, is
4 amended to read as follows:
5 "**§457B-3.1 Conditions concerning qualifications for**
6 **licensure examination.** (a) [The rules of the board regarding
7 the experience required of an applicant for licensure shall
8 provide that:] The board shall adopt rules setting minimum
9 experience qualifications for an applicant for licensure. Each
10 applicant shall satisfy at least one of the following:
11 (1) [A] One year of practical experience; provided that a
12 master of public health, master of business
13 administration, or a master of hospital administration
14 degree, with a specialization in health services
15 administration, obtained from an accredited institution
16 of higher education [shall] may be [substitutable for
17 one year of practical experience required of an
18 applicant; and] substituted; or
19 (2) One year of administrative experience; provided that
20 one year of administrative experience in a health
21 related area [shall] may be [accepted as equivalent to
22 any requirement for one year of administrative

1 experience in nursing home administration.]
2 substituted.
3 (b) [The rules of the board regarding the education
4 required of an applicant for licensure shall:] The board shall
5 also adopt rules setting minimum education qualifications as
6 follows:
7 (1) [Require a] A baccalaureate degree from an accredited
8 institution of higher education; provided that the
9 board shall seek the advice of the University of
10 Hawaii[, office of admissions,] regarding the degree-
11 conferring college or university's accreditation, and
12 that the board shall approve any degree recognized by
13 the University of Hawaii[.
14 (2) The board may exempt an applicant from completing the
15 currently approved nursing home administrator's
16 correspondence course if the board determines that the
17 applicant's baccalaureate or post-baccalaureate formal
18 education has imparted the knowledge and skills taught
19 in the course.]; and
20 [(3)] (2) The board may exempt an applicant from [the
21 requirements of] paragraph (1) if the board determines
22 that:

1 (A) Within the ten years immediately preceding the
2 application, the applicant has served for at least
3 eight years at the level of an assistant
4 administrator (or its functional equivalent) in a
5 nursing home; and
6 (B) At least five administrators currently licensed
7 either under this chapter or under the laws of
8 another state recommend in writing to the board
9 that the applicant be allowed to sit for the
10 licensing examination.
11 (c) The board, as qualifications for taking the licensure
12 examination, shall not require an applicant to furnish evidence
13 of absence of any physical or mental [impairments.] impairment."
14 SECTION 5. Section 457B-4, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:
16 "(a) The board shall consist of seven members who shall
17 serve for a term of four years. No member shall be appointed to
18 more than two full consecutive terms. The board shall be
19 composed of [persons] at least one public member representing the
20 interests of nursing home residents, and members representing
21 professions and institutions concerned with the care and
22 treatment of chronically ill or infirm elder patients, including

1 but not limited to doctors, skilled nurses, hospital
2 administrators, long term care facility administrators, physical
3 therapists, occupational therapists, nutritionists, and
4 gerontological social workers; provided that no more than three
5 members shall be nursing home administrators."
6 SECTION 6. No term of any member of the board of examiners
7 of nursing home administrators that has not expired as of the
8 effective date of this Act shall be affected by the inclusion of
9 public members to the board. The governor shall appoint to the
10 board one or more public members who shall represent the
11 interests of the residents of nursing homes upon the next
12 expiration of one or more current members' terms.
13 SECTION 7. Statutory material to be repealed is bracketed.
14 New statutory material is underscored.
15 SECTION 8. This Act shall take effect upon its approval.
16
17 INTRODUCED BY:_____