



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2022 Sunset Review

Nursing Home Administrators Practice Act



October 14, 2022



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2022

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

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Nursing Home Administrators Practice Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2023 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 265 of Title 12, C.R.S. The report also discusses the effectiveness of the Board of Examiners of Nursing Home Administrators in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director





Sunset Review: Nursing Home Administrators Practice Act

Background

What is regulated?

Nursing Home Administrators (NHAs) manage most aspects of nursing facilities from medical care and staffing to meal preparation and facility maintenance and sanitation and must also understand the physical and psychological needs of their residents. Prior to practicing as an NHA in Colorado, a person is required by both Colorado and federal law to be licensed.

Why is it regulated?

The high level of responsibility in so many areas necessitate that NHAs be competent administrators.

Who is regulated?

During fiscal year 20-21, there were 626 NHAs licensed by the Board of Examiners of Nursing Home Administrators (Board).

How is it regulated?

Prior to practicing as an NHA in Colorado, a person is required by both Colorado and federal law to be licensed. There are multiple ways to acquire a license. One may obtain a license through examination, by endorsement via the Occupational Credential Portability Program, or by completing the Administrator-in-Training (AIT) program.

What does it cost?

In fiscal year 20-21, total program expenditures were \$109,362, and the Division of Professions and Occupations allotted 0.80 full-time equivalent employees to program administration.

What disciplinary activity is there?

During the years reviewed, the Board received a total of 268 complaints and issued a total of 41 disciplinary actions, including 2 revocations/license surrenders, 2 license denials, 13 letters of admonition, and 24 other disciplinary actions that concern license stipulations or a stipulation in connection with another action.

Key Recommendations

- Continue the Board and Practice Act for five years, until 2028.
- Add to the grounds for discipline, failing to respond to the Board regarding a complaint.
- Repeal the requirement that letters of admonition be sent by certified mail.

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Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

**Table 1
Application of Sunset Criteria**

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> • Profile of the Profession. • History of Regulation. • Recommendation 1.
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	<ul style="list-style-type: none"> • Legal Framework.
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	<ul style="list-style-type: none"> • Legal Framework. • Program Description and Administration.
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> • Program Description and Administration. • Recommendation 3.
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	<ul style="list-style-type: none"> • Program Description and Administration.
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> • Profile of the Profession.
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	<ul style="list-style-type: none"> • Complaint Activity. • Disciplinary Activity. • Recommendation 2.
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> • Licensing. • Examinations. • Recommendation 1.

Sunset Criteria	Where Applied
(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	<ul style="list-style-type: none"> • Collateral Consequences.
(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> • Recommendations 1-2.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at coprrr.colorado.gov.

The functions of the Board of Examiners of Nursing Home Administrators (Board), as enumerated in Article 265 of Title 12, Colorado Revised Statutes (C.R.S.), relating to the regulation of Nursing Home Administrators (NHAs), shall terminate on September 1, 2023, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of NHAs should be continued and to evaluate the performance of the Board. During this review, the Board must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Division of Professions and Occupations staff, practitioners, and officials with state and national professional associations; and reviewed complaint file summaries, Colorado statutes and rules, and the laws of other states.

The major contacts made during this review include, but are not limited to:

- Centers for Medicare and Medicaid Services;
- Colorado Board of Examiners of Nursing Home Administrators members;
- Colorado Counsel of Black Nurses;
- Colorado Department of Human Services;
- Colorado Department of Public Health and Environment;
- Colorado Health Care Association and Center for Assisted Living;
- Colorado Nurses Association;
- Colorado Office of the Attorney General;
- Division of Professions and Occupations; and
- National Association of Long Term Care Administrator Boards.

In the spring of 2022, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all NHAs who are licensed by the Board. The survey was sent to 655 licensee email addresses; 4 emails were returned as undeliverable. The survey received 70 responses, which is a 10.8 percent response rate. Survey results may be found in Appendix A.

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

To understand the need for regulation, it is first necessary to recognize what the profession does, where they work, who they serve and any necessary qualifications.

Long-term care encompasses those services designed to meet a person's health and personal care needs. As the U.S. population ages, the need to care for older adults increases. Long-term care assists people with living as independently and safely as is practical. The care can be provided in different settings. Most long-term care is delivered by family and friends, but it is also provided in nursing homes.²

When care by family or friends is not enough, those who need full-time help may move to a residential facility where the long-term care is provided. Facility-based long-term care services include board and care homes, assisted living facilities, nursing homes, and continuing care retirement communities. Some facilities have dedicated programs for people with dementia.³

² U.S. Department of Health and Human Services-National Institute on Aging. *What is Long-Term Care?* Retrieved February 14, 2022, from www.nia.nih.gov/health/what-long-term-care

³ U.S. Department of Health and Human Services-National Institute on Aging. *Long-Term Care, Residential Facilities, Assisted Living, and Nursing Homes.* Retrieved February 14, 2022, from www.nia.nih.gov/health/residential-facilities-assisted-living-and-nursing-homes

Nursing homes, also called skilled nursing facilities, deliver services emphasizing medical care. The services usually consist of 24-hour supervision, nursing care, meals, and support completing everyday activities. Some people stay at a nursing home to recover from a hospital stay. Those residents need help with rehabilitation, such as physical, occupational, and speech therapy, and then the client is expected to go home. Nonetheless, most nursing home residents live in the facility permanently because of persistent physical or mental health conditions that require care and supervision.⁴ Typically, the issues that require residency are age-related.

The Colorado Department of Public Health and Environment (CDPHE) licenses nursing homes in Colorado. To receive a federal Medicare or Medicaid reimbursement for services, a facility must be certified by the state.⁵ CDPHE reports that there are 220 licensed facilities in Colorado and only five of those do not receive federal reimbursement dollars.

NHAs supervise all clinical and administrative matters in nursing homes. NHAs usually supervise facility staff, financial affairs, medical matters, facility operations, and any jobs essential to operating a nursing home.⁶ NHAs normally direct long-term care facilities such as nursing homes but may manage specialized facilities for patients with Alzheimer's disease or other conditions. NHAs also work in nonprofit or public sector organizations and perform advocacy for the industry.⁷

Generally, NHAs are multifaceted professionals. However, some NHAs focus on specific aspects of operations such as:⁸

- *Healthcare Financial Management.* These individuals focus on making a long-term care facility business successful. They maintain balance sheets that shift and contend with fluctuating reimbursement plans and everchanging operational costs.
- *Legal Issues in Healthcare.* These NHAs ensure facilities are in compliance with state and federal regulations and some advocate for changes in the industry.
- *Gerontology.* These NHAs understand the physical and psychological aging process. This understanding includes technical medical language and empathetic psychological language necessary to work with patients, families, and staff.
- *Personnel Management.* Leading and mentoring are vital components in successful facilities. NHAs must be competent in those components as well as hiring, training, scheduling, and evaluating staff.

⁴ *ibid.*

⁵ Centers for Medicare and Medicaid Services. Nursing Homes. Retrieved February 17, 2022, from www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/NHs

⁶ Utica University. *Becoming a Nursing Home Administrator*, Retrieved January 26, 2022, from programs.online.utica.edu/resources/article/becoming-nursing-home-administrator#:~:text=Nursing%20home%20administrators%20are%20responsible,run%20a%20nursing%20home%20facility.

⁷ Master's in Health Administration Online. *What Does a Nursing Home Administrator Do?* Retrieved February 14, 2022, from www.mhaonline.com/faq/what-does-a-nursing-home-administrator-do

⁸ *ibid.*

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- *Healthcare Informatics*. More long-term care facilities seek experts in data management, utilization, and securitization. These NHAs deal with a growing dependence on electronic health records in the industry.

A facility must employ a state-licensed NHA⁹ and requirements vary by state. However, in Colorado, a candidate must either obtain an associate's degree in a health-care related field with demonstration of required experience or successfully complete an administrator in training (AIT) program, in addition to passing the required examinations.

Many facility owners prefer an NHA with clinical experience. Many master's programs include a supervised experience component. Nevertheless, some individuals become NHAs with non-clinical backgrounds and gain necessary experience working in another health-care related business, working as an intern, or volunteering.

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession.

The U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook*, categorizes NHAs among Medical and Health Service Managers. The median annual wage for medical and health services managers was \$101,340 as of May 2021. Employment of medical and health services managers is projected to grow between 20 and 30 percent from 2020 to 2030, which is much faster than the average for all occupations.¹⁰

⁹ 42 U.S.C. § 1396g

¹⁰ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook-Medical and Health Services Managers*. Retrieved July 13, 2022, from www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-1

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

In 1967, Congress amended the federal Social Security Act to mandate that individual states establish licensing programs for nursing home administrators (NHAs). In 1969, the Colorado General Assembly passed Senate Bill 69-346 which contained the statutes to license NHAs. The original law included a nine-member regulatory board.

Since inception, the Colorado law has been amended many times, and COPRRR has conducted numerous sunset reviews, which have facilitated many changes. COPRRR completed sunset reviews in 1977, 1982, 1992, 1998 and 2008. Those sunset reviews recommended several changes, examples of which are:

- In 1992, the NHA sunset review, among other things, recommended reducing the size of the Board of Examiners of Nursing Home Administrators (Board) from nine to seven members.
- In 1998, the NHA sunset review recommended modifying the composition of the Board to include one public member that replaced a licensed professional from the long-term care industry. The 1998 sunset review also recommended amending the appointment of Board members from three-to four-year terms.
- In 2008, the NHA sunset review recommended the Board composition be reduced from eight to five members.

All these recommendations were enacted by the General Assembly.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Social Security Act

Section 1908(a) of the federal Social Security Act specifies that nursing homes must operate under the supervision of a licensed administrator. Further, state licensing standards must ensure that NHAs are of good character and are qualified through training or experience to serve as an NHA. Every licensing program must include examinations and reviews to determine if an individual meets required standards; a system to revoke or suspend licenses when an NHA has failed to conform to the standards; a procedure to assure that NHAs comply with standards and requirements; a method to receive, investigate, and act on any complaint concerning compliance with the requirements; and a process to study NHAs and facilities to improve licensing standards.

Colorado Law

The General Assembly established the Board to regulate NHAs to ensure quality administrations and sound management of nursing homes.¹¹ The Board is a type 1 board¹² the administration functions of which are carried out by the Division of Professions and Occupations (Division) within the Department of Regulatory agencies (DORA).¹³ The statutes that direct Board practices and professional regulation are contained in Article 265 of Title 12, C.R.S., hereafter referred to as the "Act."

The Governor is directed by the Act to appoint five members to the Board: Three members who are licensed practicing NHAs, who are Colorado residents and who have been practicing for at least three years (one of those members is required to be from a

¹¹ § 12-265-101, C.R.S.

¹² § 12-265-106(5), C.R.S.

¹³ § 12-265-106(6), C.R.S.

nonprofit facility); and two members of the public.¹⁴ The Governor may remove a Board member for negligence, incompetency, unprofessional conduct, or willful misconduct. Vacancies are filled by the Governor for the remainder of an unexpired term. The seat designated to a nonprofit NHA may be filled by any qualified NHA if the Governor makes a good-faith attempt to fill it as designated.¹⁵

The Board must hold at least two meetings per year and elect a chair and vice-chair each year.¹⁶

The Act empowers the Board to:¹⁷

- Adopt rules defining standards of practice;
 - The rules are to be developed with the input of long-term care facility provider associations, the Colorado Department of Public Health and Environment, the Office of the State Attorney General, and consumer representatives.¹⁸
- Develop a method of determining professional competency, including examination and qualification reviews;
- License qualified individuals;
- Conduct investigations and hold hearings to enforce the Act; and
- Institute discipline as warranted.¹⁹

The Board is required by the Act to keep formal records of all the complaints and the final disposition of the complaints. Further, it must develop a protocol for tracking and retrieving the records.²⁰

EXAMINATIONS

The Board determines the subject matter on which to examine those seeking a license and it may choose a national examination as the state's examination (in Colorado, both a state and national examination are required). The examinations are required by the Act to be administered at least twice per year.²¹ Applicants who have met education and experience prerequisites, must also pass the Board-approved national and state examinations.²²

¹⁴ §§ 12-265-106(1), C.R.S.

¹⁵ § 12-265-106(3), C.R.S.

¹⁶ § 12-265-106(4), C.R.S.

¹⁷ § 12-265-107(1), C.R.S.

¹⁸ § 12-265-107(2)(a), C.R.S.

¹⁹ § 12-265-107(2)(b), C.R.S.

²⁰ § 12-265-122, C.R.S.

²¹ §§ 12-265-111, C.R.S.

²² 3 CCR 717-1 § 1.5(B). State Board of Examiners of Nursing Home Administrators Rules.

To qualify for the NHA and the Colorado license examinations, an individual must be at least 21 years old, pay a fee, and:²³

- Pass an administrator-in-training program;
- Hold at least a bachelor's degree in public health administration or health administration, a master's degree in management or business administration, or other degree deemed acceptable by the Board; or
- Hold at least an associate's degree in a health-care-related field or a bachelor's degree in business or public administration in addition to at least one year of experience in administration in a nursing home or hospital that includes day-to-day, on-site duties supervising, directing, managing, monitoring, or controlling subordinates.

LICENSING

Only an individual licensed by the Board may use the title “nursing home administrator” or use the acronym “N.H.A.”²⁴ An NHA license must be renewed each year.²⁵ License fees are set each year and must approximate the direct and indirect costs of regulation.²⁶ The Board is required to keep a record of each licensee as well as a record of each applicant who was denied a license.

If a person practices as an NHA without being licensed by the Board, that person commits a class 2 misdemeanor for a first offense.²⁷ Penalties for a guilty verdict in first offense cases range from three months in jail, a \$250 fine, or both, to 364 days in jail, a \$1,000 fine, or both.²⁸ A second or any subsequent offense is a class 6 felony.²⁹ Penalties in such cases carry the possibilities of imprisonment, probation, community corrections, or work release, and a fine from \$1,000 to \$100,000.³⁰ Notwithstanding, a person who acts as an NHA in a facility exclusively for persons who rely upon treatment by spiritual means, through prayer in accordance with the creed or tenets of a church or religious denomination, are exempted from the Act.³¹

The Board may also seek an injunction from the Attorney General or the applicable district attorney to stop any person who does not possess a current, valid, or active NHA license from perpetrating an action that is unlawful or prohibited by the Act. In such an action, the court cannot require the Board to post a bond.³²

²³ § 12-265-108(1), C.R.S.

²⁴ § 12-265-110(2), C.R.S.

²⁵ 3 CCR 717-1 § 1.10, State Board of Examiners of Nursing Home Administrators Rules.

²⁶ § 12-20-105(2)(b), C.R.S.

²⁷ § 12-20-407(1)(a), C.R.S.

²⁸ § 18-1.3-501, C.R.S.

²⁹ § 12-20-407(1)(a), C.R.S.

³⁰ § 18-1.3-401, C.R.S.

³¹ § 12-265-121, C.R.S.

³² § 12-265-120, C.R.S.

Every licensee is required to notify the Board of any felony conviction, a plea of *nolo contendere* or guilty, to a felony within 30 days of the action.³³

The Act directs the Board to promulgate rules for the issuance of a temporary license. It may issue temporary licenses to applicants that are valid up to six months.³⁴ However, the Act also directs that a 12-month temporary license must be granted to an applicant employed as a hospital administrator in a general hospital certified by the Colorado Department of Public Health and Environment. This temporary license is void when the license holder is no longer employed by the hospital.³⁵

The Board is required to issue a license by endorsement to any applicant who satisfies the requirements of the Occupational Credential Portability Program.³⁶ The program removed the credential endorsement processes for some professions and occupations and allows credentials issued by another state, U.S. territory, or foreign country to be issued by endorsement.³⁷

ADMINISTRATOR-IN-TRAINING

The Act directs the Board to develop education and experience standards to attend an administrator-in-training program. The Act prohibits those standards from being more stringent than two years of college level study in health care, or two years of Board-approved experience for each year of required education.³⁸

Each administrator-in-training must be registered with the Board and report progress toward completing the 1,000 hours required to sit for licensing examinations. The Board may substitute prior experience for the administrator-in-training standards when it deems that it is adequate to fulfil the requirements.³⁹

DISCIPLINE

When there is credible evidence that a licensee is acting in a manner that endangers the health and safety of the public, or if a person is acting or has acted as an NHA without the license, the Board may issue a cease-and-desist order. The respondent may request a hearing within 10 days of receipt of the order.⁴⁰

The Board is also empowered by the Act to discipline those NHAs who, “have failed to conform to the standards” enumerated in the Act or associated rules.⁴¹ The Board may

³³ § 12-265-110(7), C.R.S.

³⁴ § 12-265-110(4), C.R.S.

³⁵ § 12-265-110(5), C.R.S.

³⁶ § 12-265-112, C.R.S.

³⁷ Department of Regulatory Agencies. *License Portability Program*. Retrieved June 8, 2022, from dpo.colorado.gov/LicensePortabilityProgram

³⁸ § 12-265-107(4), C.R.S.

³⁹ § 12-265-109, C.R.S.

⁴⁰ § 12-265-119, C.R.S.

⁴¹ § 12-265-107(1)(d), C.R.S.

issue a letter of admonition (by certified mail⁴²), place a licensee on probation or deny, refuse to renew, revoke, or suspend a license for violations.⁴³ The Board is prohibited from entering a deferred settlement, action, judgment, or prosecution when a complaint or investigation exposes a violation that warrants formal action.⁴⁴ However, when the Board determines a violation has occurred and orders that discipline be imposed, it may also require the licensee to participate in an applicable treatment or training program for reinstatement.⁴⁵

When a letter of admonition is issued, the licensee has the right to request, within 20 days, that the Board begin formal disciplinary proceedings to adjudicate the issue. When that occurs, the letter is vacated in lieu of the proceeding.⁴⁶ Additionally, in cases where the transgression does not warrant formal action but could lead to formal action if not corrected, the Board may dismiss the case and issue a confidential letter of concern.⁴⁷

If a licensee mistreats an at-risk adult while performing their professional duties, the Board must provide the license number to county adult protective services, when requested.⁴⁸

Among the violations enumerated in the Act, are those that involve the procurement and possession of a license, and that involve the standards by which an NHA must practice. Violations of the Act include:⁴⁹

- Acquiring, attempting to acquire, or helping a person acquire a license through fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;
- Pleading guilty or *nolo contendere* or being convicted of a felony;
 - When considering a revocation, suspension, or nonrenewal the Board is governed by statutes that govern criminal convictions and employment rights;
- Having a license to practice nursing home administration or any other health care occupation suspended or revoked in any jurisdiction;
- Helping violate or violating any provision of the Act, other applicable statutes, or any rule adopted by the Board;
- Failing to meet generally accepted standards of practice of NHAs;
- Not entering, or failing to enter accurate information on resident records;
- Violating the confidentiality of a resident;
- Committing abuse of health insurance;

⁴² § 12-265-113(3), C.R.S.

⁴³ § 12-20-404(1), C.R.S.

⁴⁴ § 12-20-404(2), C.R.S.

⁴⁵ § 12-265-113(4), C.R.S.

⁴⁶ § 12-20-404(4), C.R.S.

⁴⁷ § 12-20-404(5), C.R.S.

⁴⁸ § 12-20-404(7), C.R.S.

⁴⁹ § 12-265-113(1), C.R.S.

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- Failing to properly post the Board’s address and telephone number so complaints may be made to the Board;
 - Practicing without a license or attempting to use another person’s license;
 - Practicing under a suspended or revoked license;
 - Having a physical or an intellectual and developmental disability that may endanger the health or safety of those under the NHA’s care; and
 - Having a substance use disorder and not taking required steps with the Board to continue practicing.

Moreover, when the Board has reason to conclude that a licensee cannot practice with requisite skill and safety due to a physical, intellectual, or developmental disability, or a substance use disorder, it can require the licensee undergo a mental or physical examination. If the licensee fails to undergo the examination, the Board may suspend that person’s ability to practice.⁵⁰ These provisions cannot prevent the licensee from submitting physician, or other licensed health care professional, testimonies or reports concerning these conditions. Those testimonies and reports are to be considered in conjunction with, but not in lieu of, the Board’s designated evaluator.⁵¹ The results of any Board-ordered examination cannot be used as evidence in any other proceeding and cannot be made available to the public.⁵²

When the Board has reasonable grounds to believe that any violation of the Act has occurred, it may commence disciplinary proceedings. Proceedings may be conducted by the Board or an Administrative Law Judge (ALJ) if the Board chooses. All proceedings follow the provisions of applicable laws, including the State Administrative Procedure Act. If the Board or ALJ determines that it serves the complainant or another recipient of services, it may exempt proceedings and Board actions from any law requiring that proceedings be conducted publicly. However, all votes to impose discipline or dismiss a complaint must be conducted publicly, recording how each Board member voted. All Board decisions concerning disciplinary actions are subject to statutes that govern judicial review of regulator decisions.⁵³

The Board may engage temporary advisory committees to assist with investigations. Each temporary advisory committee must be comprised of at least three licensees with proficiency in the area under review. Temporary advisory committee members do not receive compensation but can be reimbursed for the actual and necessary expenses incurred in the performance of their duties. Members are immune from civil or criminal liability that result from participation.⁵⁴

⁵⁰ § 12-265-115(1), C.R.S.

⁵¹ § 12-265-115(2), C.R.S.

⁵² §§ 12-265-115(3) and 12-265-116(4)(a), C.R.S.

⁵³ §§ 12-265-115(4) and 115(6), C.R.S.

⁵⁴ § 12-265-117, C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures practices and any other circumstances, including budgetary, resource and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

Nursing Home Administrators (NHAs) are regulated by Board of Examiners of Nursing Home Administrators (Board). The Board is a type 1 board located in the Department of Regulatory Agencies (DORA).⁵⁵ The Governor appoints the Board's five members. Three members must be practicing NHAs, one from a nonprofit facility, and two members represent the public. Further, the Board is required by statute to meet at least two times per year.⁵⁶

The Board's administrative tasks are carried out by the staff of DORA's Division of Professions and Occupations (Division). In addition to staffing Board meetings, the Division issues licenses, conducts investigations, and executes day to day operations. In fiscal year 20-21, the Division allotted 0.80 full-time equivalent (FTE) employees to program administration. Table 2 lists the expenditures to operate the program for the fiscal years examined for this sunset review, fiscal years 16-17 through 20-21.

⁵⁵ A type 1 Board is administered under the direction and supervision of a principal department but exercises its powers, duties, and functions independently of the head of that department. In this case the duty of the Board is regulating NHAs.

⁵⁶ § 12-265-106(4), C.R.S.

**Table 2
Expenditures**

Fiscal Year	Total Program Expenditure	FTE
16-17	\$122,356	0.90
17-18	\$160,037	1.05
18-19	\$136,327	0.90
19-20	\$116,248	0.77
20-21	\$109,362	0.80

The FTE employed by the program are enumerated as follows:

Program Management II, 0.20 FTE - Manages and supervises Board activities including policy development, enforcement, licensing, administrative responsibilities, meetings, and subjects considered in the meetings.

Administrative Assistant III, 0.25 FTE - Performs case management, case summary preparation, and case research. Corresponds with the Colorado Department of Public Health and Environment regarding skilled nursing facility surveys.

Technician IV, 0.20 FTE - Performs administrative and technical support to the program concerning investigation, enforcement, education, licensing, discipline, and settlement matters.

Technician V, 0.15 FTE - Oversees practice monitoring, compliance, case management, statute and rule review, and Board materials.

These FTE do not include staffing in the centralized offices within the Division.

Licensing

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Prior to practicing as an NHA in Colorado, a person is required by both Colorado and federal law to be licensed. There are multiple ways to acquire a license. One may obtain a license through examination, by endorsement via the Occupational Credential Portability Program, or by completing the Administrator-in-Training (AIT) program.

Licensing requires a candidate to successfully complete either an AIT program, Health Services Executive (HSE) qualification, one of several enumerated degree programs, or a combination of approved education and experience.⁵⁷ Candidates who have completed requisite education are not required to complete the AIT program. The HSE qualification is issued by the National Association of Long Term Care Administrator Boards (NAB) and acts as a multistate qualification that is accepted by participating states.⁵⁸

The AIT program allows a candidate to obtain practical training and experience under the direct supervision of a licensed NHA preceptor.⁵⁹

The program requires two years of college level study at an approved educational institution in subject matter relating to health care, or two years of experience in nursing home administration or other health care management. The Board may approve experience for education; or waive education and experience for military training, experience, or education.⁶⁰

A Board-approved preceptor must be an actively practicing NHA who has been licensed at least three years and agrees to follow the AIT's agreement with the Board for any AIT under their supervision. The preceptor must be impartial and supervise no more than one AIT at a time, unless special permission is granted by the Board. A preceptor must assist the AIT in developing an AIT program plan. Every preceptor is required to follow their preceptor agreement with the Board and serves at the discretion of the Board.⁶¹

Table 3 enumerates the number of AITs credentialed as NHAs by the Board in the past five fiscal years.

⁵⁷ 3 CCR 717-1 § 1.7. State Board of Examiners of Nursing Home Administrators Rules.

⁵⁸ National Association of Long Term Care Administrator Boards. *Candidate Handbook*. p.4. Retrieved March 22, 2022, from www.nabweb.org/filebin/pdf/NAB_Handbook_October_2019_WEB.pdf

⁵⁹ 3 CCR 717-1 § 1.12(A). State Board of Examiners of Nursing Home Administrators Rules.

⁶⁰ 3 CCR 717-1 § 1.12(B). State Board of Examiners of Nursing Home Administrators Rules.

⁶¹ 3 CCR 717-1 § 1.12(E). State Board of Examiners of Nursing Home Administrators Rules.

Table 3
Total Number of Credentialed AITs

Fiscal Year	AITs becoming NHAs
16-17	10
17-18	9
18-19	13
19-20	9
20-21	8

The Board issued NHA licenses to an average of approximately 10 AITs per year during the time cohort examined. The fee to participate in the AIT program is \$250 per year.

Candidates for NHA licensure who have completed the required education and training are eligible to take the NAB examination as well as the Colorado State-Specific Nursing Home Administrators Examination (CO NHA).

An NHA who has been licensed by another state may obtain a license by endorsement through the Occupational Credential Portability Program. To qualify, the applicant must submit an application; provide education, examination, and experience information; and pay the licensing fee.⁶²

Table 4 enumerates the licenses issued by the Board.

Table 4
Licensing Information

Fiscal Year	Examination	Endorsement	Renewal	Total
16-17	71	17	532	598
17-18	59	17	554	614
18-19	63	20	560	620
19-20	58	15	585	636
20-21	47	16	572	626

Table 4 shows that the total number of licenses is rather steady, averaging approximately 618 per year and varying no more than six percent during the five-year time cohort examined for this sunset review. However, fiscal year 20-21 was the only year that there was a decline in the number of licenses renewed and the total number of licenses issued during the period analyzed for this report.

⁶² 3 CCR 717-1 § 1.8. State Board of Examiners of Nursing Home Administrators Rules.

The cost for an NHA license is \$250 and it must be renewed annually. There is a 60-day grace period after expiration for an NHA practicing on an expired license. Subsequently, a license is considered expired, and the licensee is ineligible to practice until the license has been reinstated.⁶³

Under certain circumstances the Board may issue a temporary license to a person who has submitted an NHA license application.

A temporary license may be issued for an emergency situation to an individual who has successfully completed an AIT program, or to an individual who has qualified for a license by examination, endorsement, or reinstatement and has applied for a license.

A temporary license can be issued for 90 days with one possible Program Director-issued 90-day extension for the following:⁶⁴

...[I]n the case of death of the administrator, termination of the administrator, resignation of the administrator, or other similar emergent circumstances. Promotion or transfer made at the discretion of the ownership, management, or facility governing board does not qualify as an emergency.

A Director of Nursing at a facility needing an emergency NHA license need not have applied for licensing prior to consideration.⁶⁵

A temporary license for a qualified hospital administrator may be issued in the cases listed above, for up to 12 months with one possible Program Director-issued six-month extension and an additional Board-issued 90-day extension.

Table 5 enumerates the temporary licenses issued by the Board during the time examined for this sunset review.

Table 5
Temporary Licenses

Fiscal Year	Temporary Licenses
16-17	20
17-18	19
18-19	18
19-20	7
20-21	25

⁶³ 3 CCR 717-1 § 1.10. State Board of Examiners of Nursing Home Administrators Rules.

⁶⁴ 3 CCR 717-1 § 1.9(B). State Board of Examiners of Nursing Home Administrators Rules.

⁶⁵ 3 CCR 717-1 § 1.9(A)(1). State Board of Examiners of Nursing Home Administrators Rules.

Table 5 shows that the number of temporary licenses issued decreased considerably during fiscal year 19-20, which coincides with the beginning of the COVID-19 pandemic. There was then a 32 percent increase from the pre-pandemic average of 19 per year. The fee for a temporary license is \$300.

Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

In addition to meeting the education and experience requirements for licensure, an applicant must successfully pass Board-approved national and state examinations.⁶⁶

The national examination employed by the Board is developed by the NAB. The NAB examination is currently a two-component examination but prior to fiscal year 17-18, the NAB examination was one examination with 150 items. In July 2017, the NAB began the two-component examination. Now one section is a 110-item Core of Knowledge Examination for Long Term Care Administrators. It has 100 scored and 10 unscored items. The second component is an NHA service examination consisting of 50 scored and 5 unscored items.⁶⁷ NAB has contracted with PSI Services to administer the examinations. The cost for the two examination components as of Spring 2022, was \$440.⁶⁸ PSI has several testing centers on the Front Range and the Western Slope of Colorado.

Table 6 shows the number of NAB examinations taken in Colorado, the passing rate of those taking the examination in Colorado, and the passing rate of those taking the examination across the country.

⁶⁶ 3 CCR 717-1 § 1.5(B). State Board of Examiners of Nursing Home Administrators Rules.

⁶⁷ National Association of Long Term Care Administrator Boards. *Candidate Handbook*. p.4. Retrieved March 22, 2022, from www.nabweb.org/filebin/pdf/NAB_Handbook_October_2019_WEB.pdf

⁶⁸ National Association of Long Term Care Administrator Boards. *Candidate Handbook*. p.7. Retrieved March 22, 2022, from www.nabweb.org/filebin/pdf/NAB_Handbook_October_2019_WEB.pdf

Table 6
NAB Examinations and Passing Rate

Fiscal Year	NAB Examinations	Colorado Passing	National Passing*		Colorado Passing	National Passing*
16-17	36	92%	61%**			
	CORE Section			NHA Section		
17-18	34	83%	88%	37	72%	61%
18-19	32	97%	85%	47	49%	67%
19-20	40	95%	87%	47	76%	66%
20-21	46	98%	83%	58	71%	64%

*The National scores are provided by the NAB and are listed by calendar year.

**The two-component examination was administered half of the year.

Table 6 indicates that those who take the NAB in Colorado tend to slightly outperform the national examinees.

The CO NHA is developed and maintained by the Board and the Board determines both its content and what constitutes a passing score.⁶⁹ The CO NHA has 45-50 multiple-choice questions and has four content areas:⁷⁰

- General Licensure Standards, 9-10 items (20 percent of the CO NHA);
- Nursing Care Facilities, 24-27 items (54 percent of the CO NHA);
- Intermediate Care Facilities for Individuals with Intellectual Disabilities, 2 items (4 percent of the CO NHA); and
- Board Statutes, Rules, and Regulations, 10-11 items (22 percent of the CO NHA).

The Board contracts with Iso-Quality Testing, Inc. to schedule, administer, score, and issue CO NHA results.⁷¹ The fee for the CO NHA as of Spring 2022 was \$125.⁷²

Table 7 shows the number of CO NHA examinations taken, with the passing rates, for the fiscal years examined.

⁶⁹Department of Regulatory Agencies. *State-Specific Nursing Home Administrators Examination [CO NHA] 2020*. p.4. Retrieved March 25, 2022, from dpo.colorado.gov/NursingHome/ApplicationsDocs

⁷⁰ Department of Regulatory Agencies. *State-Specific Nursing Home Administrators Examination [CO NHA] 2020*. p.27. Retrieved March 25, 2022, from dpo.colorado.gov/NursingHome/ApplicationsDocs

⁷¹ Department of Regulatory Agencies. *State-Specific Nursing Home Administrators Examination [CO NHA] 2020*. p.1. Retrieved March 25, 2022, from dpo.colorado.gov/NursingHome/ApplicationsDocs

⁷² Department of Regulatory Agencies. *State-Specific Nursing Home Administrators Examination [CO NHA] 2020*. p.9. Retrieved March 25, 2022, from dpo.colorado.gov/NursingHome/ApplicationsDocs

Table 7
CO NHA Examination Information

Fiscal Year	CO NHA Examinations	Percent Passing
16-17	37	89%
17-18	35	79%
18-19	46	52%
19-20	59	45%
20-21	57	73%

The data indicate that the passing rate for the CO NHA is highly inconsistent. Division staff had no explanation why this may have occurred.

Complaint Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Anyone can file a complaint against an NHA. However, most complaints come to the Board from the Colorado Department of Public Health and Environment (CDPHE). CDPHE regulates the facilities in which the NHAs work and has significant interactions with the licensees. Issues are generally uncovered during CDPHE-conducted and federally-mandated facility inspections called facility surveys. An NHA is responsible for all facets of facility administration and operation, from business operations and health care to facility maintenance. Therefore, when any deficiency is identified during a survey, a report is forwarded to the Board from CDPHE. Table 8 enumerates the total number of complaints received by the Board, as well as the nature of those complaints, during fiscal years 16-17 through 20-21.

**Table 8
Complaints**

Nature of Complaints	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
Practicing w/o a License	0	0	9	5	13
Standard of Practice	2	25	12	54	66
Fee Dispute	0	0	0	0	0
Scope of Practice	0	0	0	4	0
Sexual Misconduct	0	0	0	0	0
Substance Abuse	1	0	2	1	0
Theft	0	0	0	0	0
Felony Conviction	0	0	0	0	0
Unprofessional Conduct	14	1	6	2	21
Other	8	0	10	12	0
Total	25	26	39	78	100

Table 8 shows, as one might expect, that the number of complaints ballooned during the COVID-19 pandemic. Complaints increased fourfold from the beginning of the five-year time cohort to the end and most of those complaints involved Standards of Practice. Standards of Practice and Unprofessional Conduct violations include several issues that concern the physical facility and facility staffing. The increase in CDPHE surveys and complaints were primarily due to infection and control issues related to not following COVID-19 policies and protocols.

Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

As the regulator of NHAs, the Board may issue a letter of admonition; place a licensee on probation; or deny, refuse to renew, revoke, or suspend a license for violations of the licensing laws governing NHAs.⁷³ Table 9 enumerates the disciplinary actions taken by the Board.

**Table 9
Disciplinary Actions**

Type of Action	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
Revocation / Surrender	0	1	0	1	0
Suspension	0	0	0	0	0
Probation / Practice Limitation	0	0	0	0	0
Letter of Admonition	0	9	0	0	4
License Denied	0	0	0	2	0
Other	6	3	4	2	9
Total Disciplinary Actions	6	13	4	5	13
Dismiss	14	22	25	38	99
Letter of Concern	1	5	3	3	7
Total Dismissals	15	27	28	41	106

Comparing tables 8 and 9 illustrates several things, among them are that the number of actions taken, and the number of complaints does not add up. This may happen because a complaint and final action by the Board do not always occur in the same fiscal year and are, therefore, recorded in different fiscal years. It could also occur because a single complaint may involve in multiple allegations but only one final action.

There are two cases where an NHA surrendered their license rather than go through a hearing and possible revocation. The fiscal year 17-18 case was one in which the NHA did not complete Board-directed activities concerning a license stipulation. A stipulation is an action that puts a limitation or other condition on an NHA’s license, but they are still able to practice as long as they adhere to the stipulation. The fiscal year 19-20 case was similar, and the surrender became effective in April 2020.

The “Other” category generally contains actions that concern license stipulations or a stipulation in connection with another action.

⁷³ § 12-265-107, C.R.S.

The Board also issued several letters of concern (LOCs). An LOC is a dismissal and is a confidential action taken by the Board cautioning a licensee that their actions, while not warranting formal action, were not in line with professional expectations and should change.

Table 10 depicts the average time to case closure. Case lifespan is tabulated from the filing of the initial complaint through the closing of the complaint, or through the final agency action taken.

Table 10
Average Time to Closure

Fiscal Year	Number of Days
16-17	267
17-18	129
18-19	152
19-20	166
20-21	111

Table 10 demonstrates that the average time to handle a complaint has a very wide range, differing 156 days or approximately five months. The variation has to do with the nature and complexity of individual complaints as well as the nature and complexity of investigation and deliberation by the Board.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

Section 12-265-106(2)(b), C.R.S., prohibits a person who has been convicted of a felony from being appointed to the Board. Section 12-65-113(1)(b), C.R.S., provides that the Board may suspend, revoke, or not renew a license or temporary license for a guilty plea, a conviction, or a plea of *nolo contendere* to a felony.

The Division reported that no actions were taken, or licenses denied due to a criminal history during the period examined for this report.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the Nursing Home Administrators Practice Act for five years, until 2028.

Sunset reviews are ordered by Colorado law and proceed based on the criteria established in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). Recommendation 1 of sunset reviews typically addresses the first criterion which asks whether regulation is necessary to protect the public health, safety, and welfare.

The majority, but not all, of the people who live in nursing homes do so because of age-related issues. Nursing Home Administrators (NHAs) manage most aspects of nursing facilities, from medical care and staffing to meal preparation and facility maintenance and sanitation. Most residents cannot totally care for themselves so an NHA must also understand the physical and psychological needs of their residents, especially with respect to issues related to aging. The high level of responsibility in so many areas necessitate that NHAs to be competent administrators.

The U.S. Social Security Act (SSA) stipulates that nursing homes must be supervised by a state-licensed NHA who is of good character and is qualified to serve as such. The SSA also requires that licensing programs include examinations and investigations to determine if an individual meets required standards; a system to revoke or suspend licenses when an NHA has failed to conform to the standards; procedures to assure that NHAs comply with standards and requirements; a method to receive, investigate, and act on any complaint concerning compliance with the requirements; and a process to study NHAs and facilities to improve licensing standards.⁷⁴ The Centers for Medicare and Medicaid Services (CMS) require compliance with the SSA in order to receive federal reimbursement for services.⁷⁵

Colorado law requires that anyone who practices, or offers to practice, as an NHA must be duly licensed.⁷⁶ Article 265 of Title 12, C.R.S. (Act), establishes the Board of Examiners of Nursing Home Administrators (Board) as the entity that licenses NHAs and protects nursing home residents by enforcing sound management practices.⁷⁷ The Board is a type 1 board⁷⁸ the administrative functions of which are carried out by the Division

⁷⁴ 42 U.S.C. § 1396g

⁷⁵ Centers for Medicare and Medicaid Services. *Nursing Homes*. Retrieved February 17, 2022, from www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/NHs

⁷⁶ § 12-265-104, C.R.S.

⁷⁷ § 12-265-101, C.R.S.

⁷⁸ § 12-265-106(5), C.R.S.

of Professions and Occupations (Division) within the Department of Regulatory Agencies.⁷⁹ As such, the Board and Act satisfy the federal requirements.

The Colorado Department of Public Health and Environment (CDPHE) regulates nursing homes in Colorado and enforces both Colorado and federal law in those nursing homes. CDPHE surveys (inspects) the facilities for compliance with facility, healthcare, and personnel licensing requirements. It is the responsibility of the facility's designated NHA to ensure that the facility remains in compliance at all times. With all this responsibility, it is reasonable that each NHA should be held to the minimum level of competence that licensing attempts to verify. One important aspect of licensing is the ability to sanction or revoke a license if professional standards are not upheld. This aspect speaks directly to safeguarding the public because it is protected from ongoing incompetence and possible injury. Therefore, licensing NHAs protects the public health, safety, and welfare and should continue.

Notwithstanding, many of the stakeholders contacted during this sunset review spoke to the pressure under which an NHA operates. They are answerable to the Board, Division, SSA, CMS, CDPHE, facility owners, facility staff, and facility residents and their families. It is the NHA who is responsible in all situations and for all occurrences in a facility. Some NHAs come from a business background and others come from a medical background. All of these factors, plus pressure from the COVID-19 pandemic on resident and staff health, and staff supply, contribute to what stakeholders called a high level of burnout. Indeed, the data in Table 4 of this sunset report, show a slight decrease in the number of new licenses issued through examination, the number of renewals, and the total active licenses during fiscal year 20-21. The data are noteworthy because it is the only fiscal year in the time cohort examined for this sunset review in which the numbers decreased. Another factor to consider is that there are currently over 600 active NHA licenses and only 225 CDPHE-licensed facilities in Colorado. This may be because the majority of those licensed have chosen not to work as NHAs in Colorado, or they may work in other types of facilities. These are issues the General Assembly should keep in mind when considering ongoing regulation.

The eighth sunset criterion asks the General Assembly to consider if the scope of practice of the regulated occupation contributes to the optimum use of personnel. The CMS and the SSA dictate a license requirement for NHAs. However, the Board, CDPHE, and the General Assembly should monitor the situation to determine if any adjustment to the scope of practice is necessary to ensure that the number of licensees remains adequate to serve the public.

For all of these reasons, the General Assembly should continue the Board and Practice Act for only five years, until 2028.

⁷⁹ § 12-265-106(6), C.R.S.

Recommendation 2 - Add to the grounds for discipline, failing to respond to the Board regarding a complaint.

When the Board receives a complaint against a licensee, it sends a copy of the complaint to the licensee, who, in turn, has 30 days to respond in writing. Failing to respond to a complaint creates an administrative delay and hinders the investigative process, and it also poses a potential threat to consumers. While there may be extenuating circumstances that prevent a licensee from responding promptly, the Board should have the authority to discipline a licensee for failing to respond if it determines that it is necessary.

The seventh and tenth sunset criteria ask,

Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession; and

Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

By adding failure to respond to a complaint as a violation of the Act, a response not received within the timeframe specified would allow the Board to take actions to prevent potential consumer harm through the initiation of formal disciplinary proceedings when required.

Therefore, the General Assembly should establish as grounds for discipline failure to respond to the Board regarding a complaint.

Recommendation 3 - Repeal the requirement that letters of admonition be sent by certified mail.

Section 12-65-113(3), C.R.S., requires the Board to send letters of admonition to licensees via certified mail. While this delivery method allows the Division and the Board to verify that a delivery attempt was made, it does not guarantee that the addressee actually receives the letter. The addressee can decline to sign for or pick up the letter, and then she or he could claim notice was not received. This defeats the purpose of sending the letter by certified mail.

Certified mail also costs more than first-class mail.

Repealing the requirement that letters of admonition be sent via certified mail would save money and streamline the administrative process without compromising enforcement authority.

The fourth sunset criterion requires examination to determine,

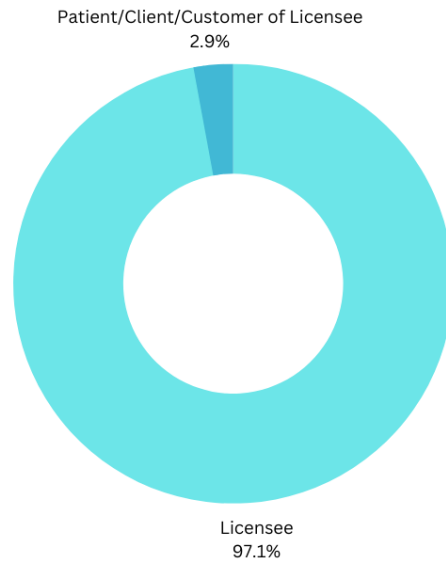
Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

The Act necessitates Division inefficiency. Therefore, the General Assembly should repeal the requirement that letters of admonition be sent by certified mail.

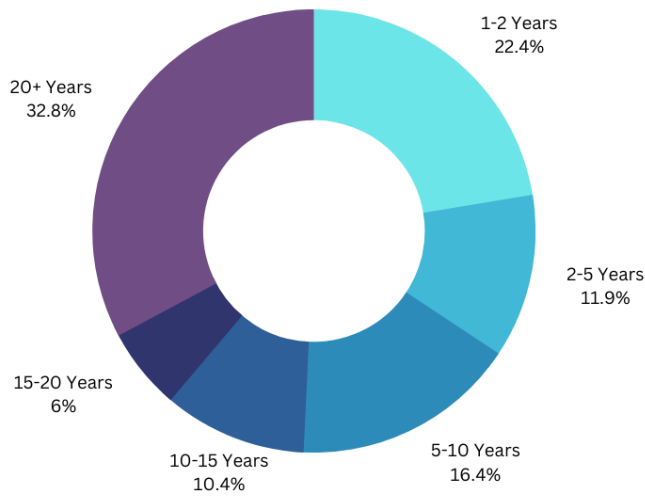
Appendix A - Customer Service Survey

In the spring of 2022, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all NHAs who are licensed by the Board. The survey was sent to 655 licensee email addresses; 4 emails were returned as undeliverable. The survey received 70 responses, which is a 10.8 percent response rate. Survey results may be found in the pages that follow.

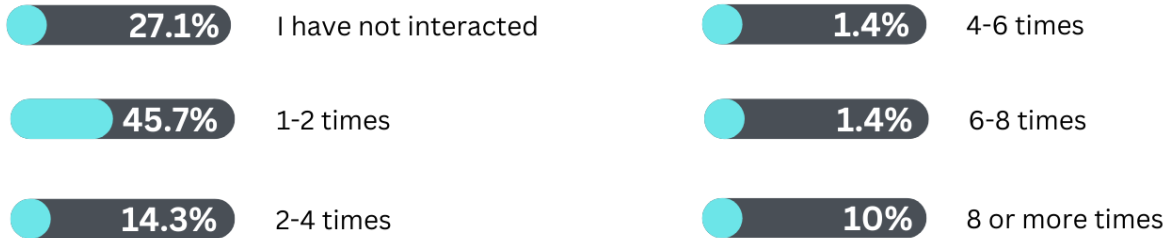
What is your relationship to the Board of Examiners of Nursing Home Administrators?



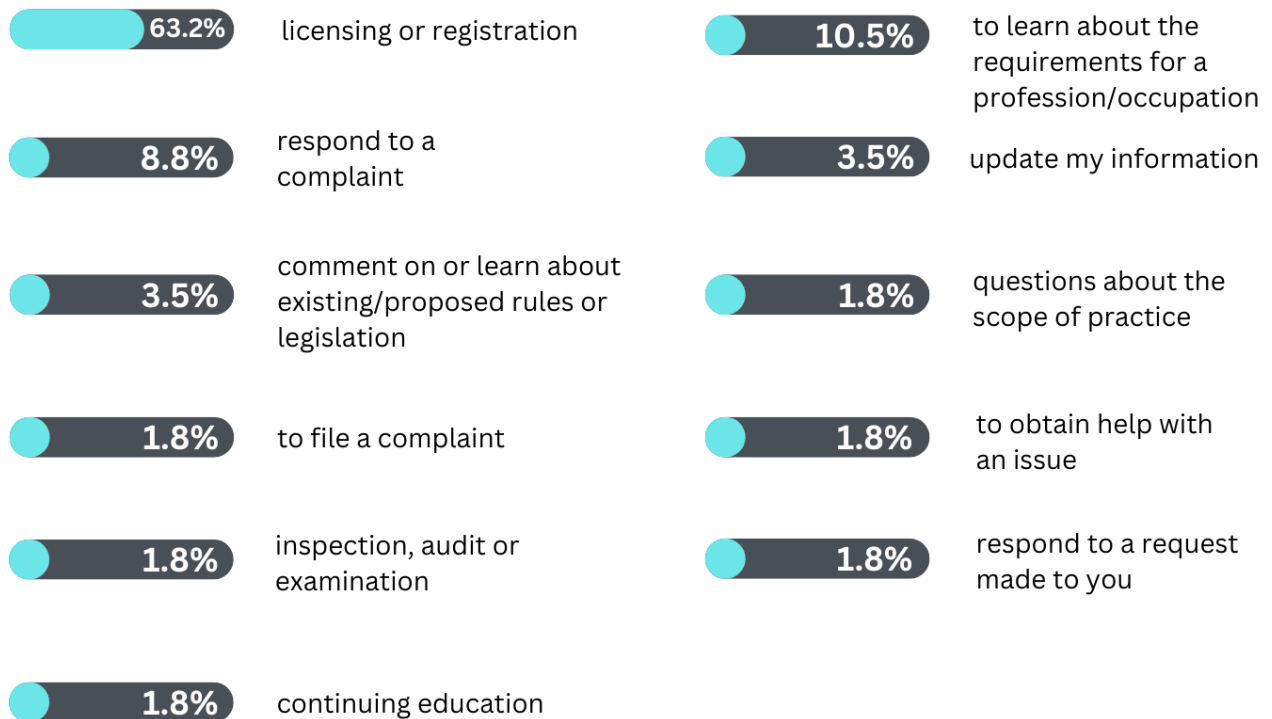
If you are a member of the profession or occupation that is regulated by the Board of Examiners of Nursing Home Administrators, please indicate your years of experience.



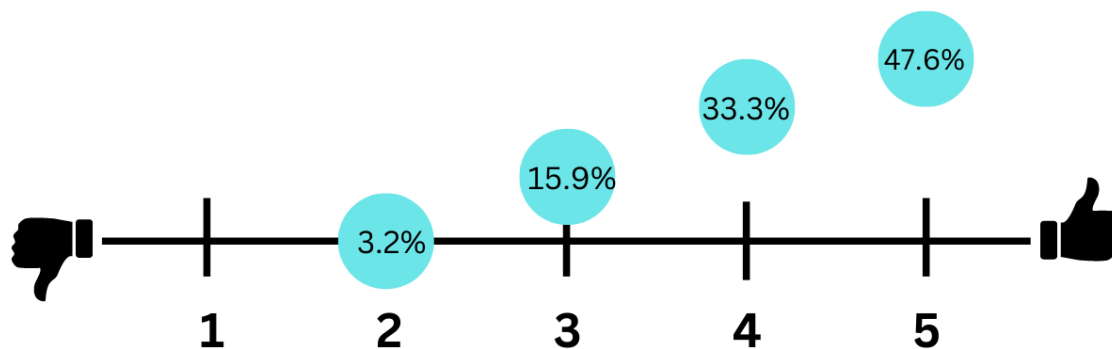
In the past year, how many times have you interacted with the Board of Examiners of Nursing Home Administrators. Please count all forms of interaction (telephone, e-mail, internet or website, regular mail, in person).



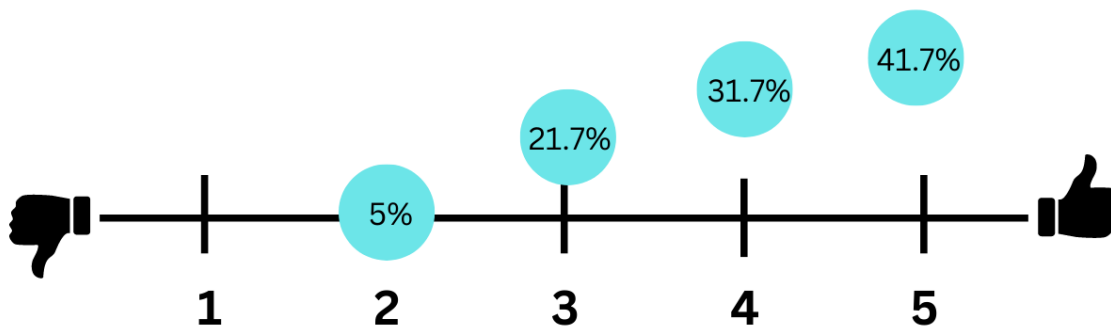
What was your primary purpose in interacting with the Board of Examiners of Nursing Home Administrators ?



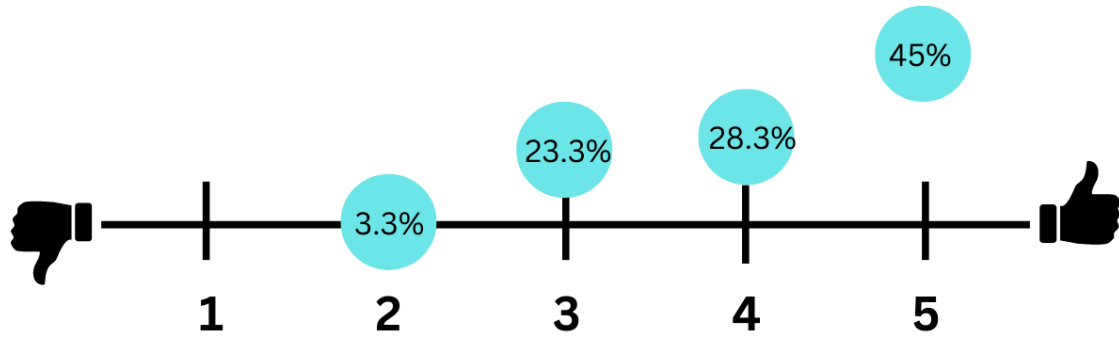
Overall please rate the service provided by the Board of Examiners of Nursing Home Administrators on a scale of 1 to 5 with 1 being unacceptable and 5 being very acceptable.



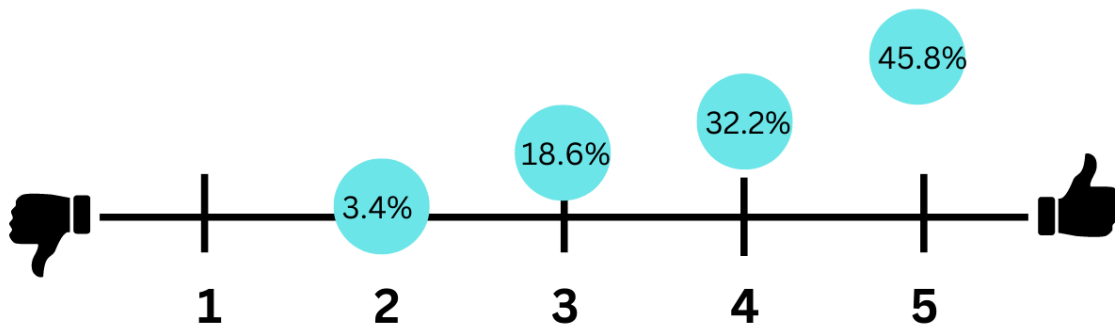
Please rate the usefulness of the Board of Examiners of Nursing Home Administrators website in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.



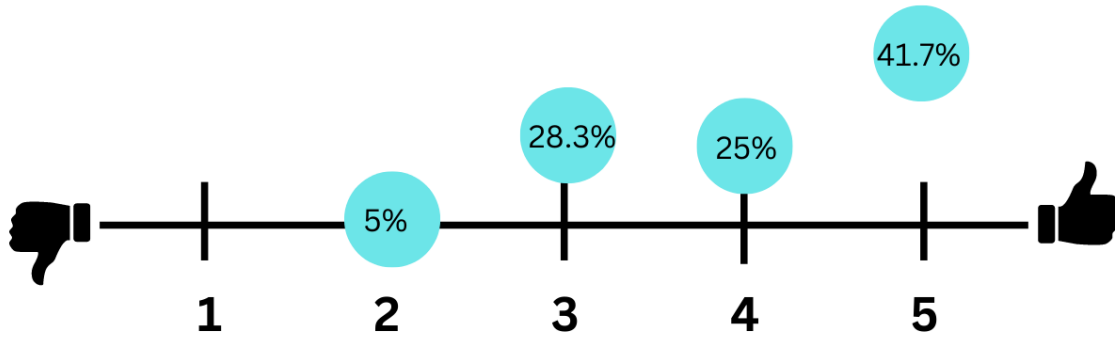
Please rate the usefulness of the Board of Examiners of Nursing Home Administrators communications in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.



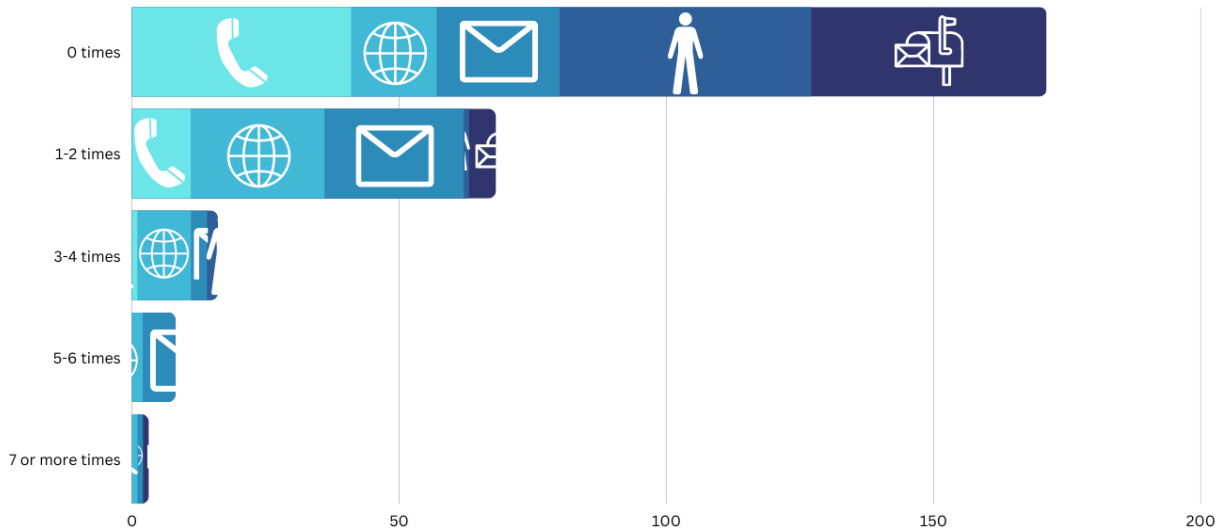
Regardless of the outcome of your most recent issue, do you feel the Board of Examiners of Nursing Home Administrators listened to your concerns? Please use a scale of 1 to 5, with 1 being none of my concerns were heard and 5 being all of my concerns were heard.



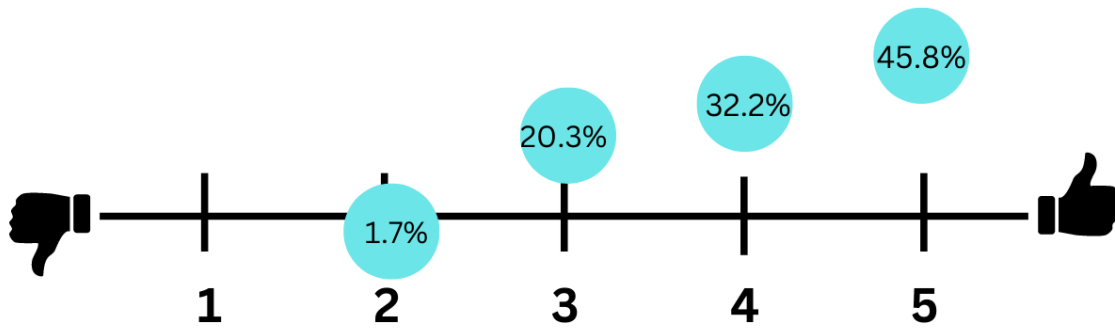
Please rate the timeliness of the Board of Examiners of Nursing Home Administrators in responding to your issues on a scale of 1 to 5 with 1 being very untimely and 5 being very timely.



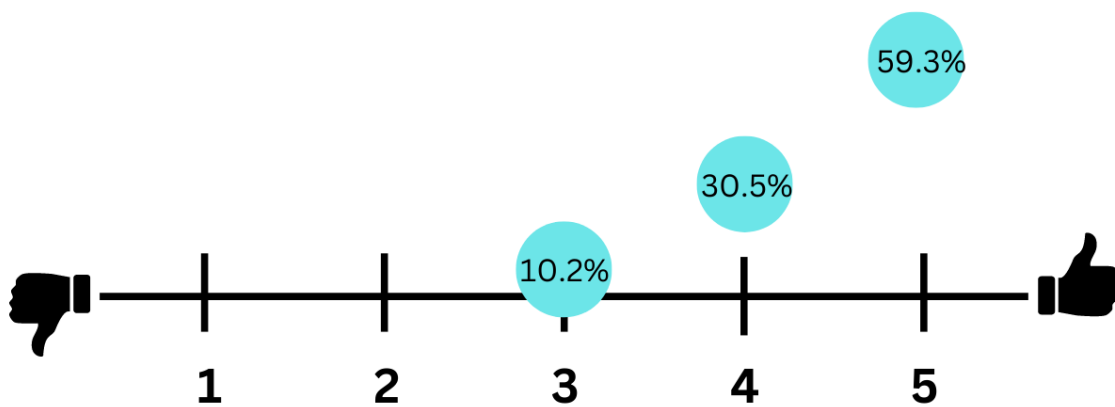
Please provide the number and types of interactions that were required to resolve or address your most recent issue. (Please select all applicable types of interactions used AND the number times for each type interaction selected.)



Please rate the helpfulness of the Board of Examiners of Nursing Home Administrators in resolving your issue or need with 1 being not very helpful and 5 being very helpful.



Please rate the professionalism of the program's staff on a scale of 1 to 5 with 1 being very unprofessional and 5 being very professional.



On a scale of 1 to 5 please rate the accuracy of information provided by the Board of Examiners of Nursing Home Administrators with 1 being not very accurate and 5 being very accurate.

