

Preliminary Evaluation of the State Board of Examiners of Nursing Home Administrators

Recommendations:	Waive from full evaluation
	Repeal termination date
	Extend evaluation date by 10 years to July 1, 2024

Date Established: 1970

Most Recent Prior Evaluation: Preliminary evaluation, 2009
Waived from full evaluation and extended termination date by four years to July 1, 2017 (enacted by Chapter 24 of 2011); required follow-up report by October 1, 2011 (submitted)

Composition: Fourteen members (six licensed nursing home administrators; two individuals actively engaged in professions concerned with the care of the chronically ill, infirm, or aged; two consumer members; one geriatric physician or nurse practitioner; one geriatric social worker; the State Long-Term Care Ombudsman, and one *ex-officio* member from the Office of Health Care Quality)

Staff: One full-time (executive director) and one part-time (deputy director)
Other shared personnel support the board (assistant Attorney General, investigator, regulations coordinator, fiscal and information technology personnel)

Regulated Professions: Nursing home administrators (515 active full licenses held and 51 inactive licenses as of June 30, 2014)

Authorizing Statute: Title 9, Health Occupations Article

Evaluation Completed by: Kathleen Kennedy, Department of Legislative Services, 2014

Overview of Regulatory Activity

Federal law requires that both nursing homes and nursing home administrators in all states be regulated. In Maryland, 233 nursing homes are licensed and regulated by the Office of Health Care Quality (OHCQ) in the Department of Health and Mental Hygiene. Nursing home administrators, those individuals responsible for the daily management of nursing homes, are licensed and regulated by the State Board of Examiners of Nursing Home Administrators.

While there have been few legislative changes regarding regulation of nursing home administrators since the last preliminary sunset evaluation in 2009, there have been many regulatory changes. (See **Appendixes 1 and 2.**) The board has addressed or implemented all prior sunset recommendations and has been proactive in initiating significant improvements to board regulations, including streamlining the licensing process, increasing fees, and improving the timeliness of the disciplinary process. The board also amended regulations regarding the Administrator-in-Training (AIT) program by establishing a part-time AIT program. To date, no applicants have utilized the part-time option, but the full-time AIT program has 32 participants.

In total, the board regulates 515 nursing home administrators. While nursing homes are required to have one licensed nursing home administrator who is the administrator of record, nursing homes often employ more than one licensed nursing home administrator. Licenses are renewed on a biennial basis, with 250 new and renewal licenses issued in fiscal 2014. The current number of licensees is sufficient to meet need in the State. The board launched an online renewal system in 2010, which is utilized by most licensees, and recently computerized the State Standards examination so that both the State and national required examinations are now available online. (See **Appendix 3** for more detail regarding licensing activity.)

The board continues to receive a small number of complaints, but this number has increased slightly in recent years due to the board posting an easily accessible online complaint form. Many individuals mistakenly direct complaints regarding nursing home facilities to the board instead of OHCQ. The board also tracks OHCQ public disclosure reports that are prepared during inspection of a nursing facility. The board reviews all reports with a “G” level deficiency or higher (deficiencies range from A to L, with L being the most severe) and conducts full investigations where indicated. These reviews constitute a significant portion of the board’s complaint activity.

Few complaints ultimately require board disciplinary action and such actions are handled in a timely manner. In 2010, the board established a three-member disciplinary committee that reviews all complaints. This committee has allowed for better streamlining and continuity in complaint investigations and sanctioning, particularly during transition periods to new investigators. The board addressed all complaints within 180 days in fiscal 2012 through 2014. (See **Appendix 4** for more information regarding investigations and sanctions.)

The board is general funded but also has the authority to raise revenue through fees, which accrue to the general fund. (See **Appendix 5.**) The board doubled most of its fees in fiscal 2010, which provided a 35% increase in revenues in fiscal 2010 and a 13% increase in fiscal 2011. However, the fee increases were offset in part by a reduction in revenues due to switching the State Standards examination from a board-administered test to an online test proctored by a third party.

Since fiscal 2011, revenues have remained stable, covering more than 30% of expenditures in all years. However, the board's costs are increasing, driven by personnel costs, which increased slightly in all recent years. The board has a relatively small licensee base, and as such, it is unlikely that the board will ever be able to generate enough revenue to cover its expenses without making application and licensure fees cost-prohibitive for prospective and current nursing home administrators. Because the board is federally mandated and the amount of general funds required for board operations in recent years has been small (ranging from \$155,728 to \$200,139), it may be acceptable that the board is not self-sufficient.

Conclusion and Recommendations

Throughout this preliminary evaluation, the Department of Legislative Services (DLS) found that the board functions well to fulfill federally mandated requirements. The board appears to have made significant changes to improve the training, licensure, and disciplinary processes through regulations and satisfactorily addressed and implemented outstanding recommendations from past sunset evaluations. **DLS recommends that the Legislative Policy Committee waive the board from full evaluation. As termination of the board would put federal funding of Maryland nursing homes at risk, DLS recommends that the board's termination date be repealed, but the evaluation requirement be retained, with a preliminary evaluation undertaken in 10 years to ensure that the board continues to operate well.**

Policy Issue for Consideration

In Maryland, OHCQ regulates both assisted living and nursing home facilities, while the board regulates only nursing home administrators. State regulations (see COMAR 10.07.14.15, *et seq.*) set qualifications and training requirements for assisted living facility managers, but there is no licensure or certification requirement. Unlike nursing home administrators, there is no federal mandate for states to regulate assisted living facility managers in any standardized way. Some assisted living facilities are beginning to look more like nursing home facilities, and many facilities offer both types of care at the same location. At recent meetings, the board has discussed the possibility of licensing both assisted living facility managers and nursing home administrators. The board is likely well equipped in terms of experience and knowledge to take over regulation of assisted living facility managers. This may also allow more continuity of regulation and oversight between nursing home administrators and assisted living facility managers.

However, regulation of assisted living facility managers by the board would require legislation and more than quadruple the board's licensing workload. In fiscal 2013, there were 1,406 assisted living programs in the State, a number that has slowly increased since 2007. Thus, the board would need significantly more resources if it were to assume this responsibility. OHCQ is currently working on new regulations for assisted living facilities and the board will need to wait for these regulations to be promulgated before taking any possible action. **The board should continue to explore whether it is feasible and whether the State would benefit if the board were to assume responsibility for regulating and disciplining assisted living facility managers.**

Appendix 1.

Major Legislative Changes Since the 2009 Sunset Evaluation

<u>Year</u>	<u>Chapter(s)</u>	<u>Change</u>
2010	534	Sets standardized guidelines for all health occupations boards regarding the disciplinary process and sanctioning of licensees; board vacancies, membership, and training; the appointment of an executive director; information that must be posted on the board's website; data collection; and the role of the assistant Attorneys General in the disciplinary process.
2011	24	<p>Extends the board's termination date by four years to July 1, 2017.</p> <p>Requires the Department of Legislative Services to conduct a sunset review of the board by July 1, 2016.</p> <p>Adds the State Long-Term Care Ombudsmen to the board.</p>
2012	726/727	<p>Prohibits a nursing home or nursing home management firm from employing an individual, or retaining an individual as a consultant, who has surrendered a nursing home administrator license for specified disciplinary grounds or had his or her license revoked by the board.</p> <p>Prohibits the Department of Health and Mental Hygiene from reimbursing a nursing home if the facility or a "management firm" of the facility knowingly employs or retains as a consultant such an individual.</p>
2013	404	<p>Authorizes health occupations boards to develop secure, electronic systems for distributing renewed licenses, permits, certifications, and registrations.</p> <p>Establishes requirements for system operation and public accessibility.</p>

Source: Laws of Maryland

Appendix 2.

Major Regulatory Changes Since the 2009 Sunset Evaluation

<u>Year</u>	<u>COMAR Citation</u>	<u>Major Changes</u>
2010	10.33.01.02, .04-.10, .12-.15, .17, and .18	<p>Increase fees for biennial license renewal (\$100 to \$200); reinstatement (\$100 to \$200); duplicate of original license or license renewal (\$25 to \$50); inactive fee (\$50 to \$100); biennial inactive renewal (\$50 to \$100); and failure to notify the board of an address change (\$50 to \$100).</p> <p>Eliminate fees for Administrator-in-Training (AIT) program and application for approval of continuing education programs of study.</p>
2011	10.33.01.02, .07, and .12-.14	<p>Allow qualified individuals to join the AIT program on a part-time basis and perform 18 months of part-time training instead of one year of full-time training.</p> <p>Establish minimum per-day and per-week training hours for active AIT participants.</p> <p>Increase the minimum age for joining the AIT program from 18 to 21.</p> <p>Require that an AIT preceptor who has not precepted within the last five years, instead of three, recertify as a preceptor.</p>
2012	10.33.01.12, and .15-.29	<p>Establish sanctioning guidelines for disciplinary violations.</p> <p>Alter continuing education requirements.</p> <p>Establish that a licensee may be disciplined for falsifying continuing education records.</p> <p>Establish new procedures for addressing and investigating complaints, charging a licensee, and conducting disciplinary proceedings.</p>
2013	10.33.01.03, .08, and .13	<p>Reduce the number of annually required board meetings from eight to two.</p> <p>Increase the original license fee from \$100 to \$200.</p> <p>Eliminate the fees charged for taking the required State and national examinations.</p>

Source: Code of Maryland Regulations, *Maryland Register*

Appendix 3.
State Board of Examiners of Nursing Home Administrators
Licensing Activity
Fiscal 2010-2014

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>
Nursing Homes in Maryland	234	234	232	233	233
Renewal Licenses	237	233	249	244	228
Initial Licenses	24	23	26	15	22
Reactivation of Inactive Licenses	3	1	3	1	3
Reinstatement of Lapsed Licenses	1	6	2	2	0

Notes: Renewals and inactive status renewals are completed every other year. As a result, any one year of data does not reflect the total number of licensees. Data does not include licensees on inactive status.

Source: State Board of Examiners for Nursing Home Administrators; Office of Health Care Quality; Department of Legislative Services

Appendix 4.

Complaints Received or Opened and Disciplinary Actions Taken by the State Board of Examiners of Nursing Home Administrators Fiscal 2010-2014

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>
Complaints Received	2	4	12	5	21
Complaints Opened per an OHCQ Survey Finding ¹	1	5	3	5	6
Total Complaints Received or Opened	3	9	15	10	27
<i>Disposition of Complaints</i>					
Dismissed	1	5	8	5	5
Referred to Other Entity ²	1	0	6	2	18
Letter of Education	0	1	0	1	0
Letter of Surrender	0	1	0	0	0
AIT Program Cancelled	0	1	0	0	0
Consent Order	1	1	1	2	0
Suspension	0	1	0	1	0
Probation	1	1	1	1	0
Fine	0	0	0	2	0
Reprimand	0	0	0	1	0
Pending Investigation ³	0	0	0	0	4
Total Dispositions⁴	4	11	16	15	27

¹ The Office of Health Care Quality (OHCQ) completes a CMS 2567 report when a nursing home facility inspection results in a deficiency. In 2011, the board began tracking those reports with a “G” level or higher deficiency. The disciplinary committee reviews such reports and the most serious result in a complaint investigation.

² Complaints are often referred to OHCQ. The board has an easily accessible online complaint form, and many individuals mistakenly direct complaints regarding nursing home facilities to the board instead of OHCQ.

³ The board reports that the four pending complaints for fiscal 2014 were received late in the fiscal year; thus, the board did not have sufficient time to address them before the fiscal year ended.

⁴ Some complaints have multiple dispositions; thus, the total number of dispositions may exceed the total number of complaints.

Source: State Board of Examiners of Nursing Home Administrators

Appendix 5.

Financial History of the State Board of Examiners of Nursing Home Administrators Fiscal 2010-2015

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Total Revenues	\$56,496	\$63,785	\$63,815	\$63,815	\$61,300	\$63,179
Personnel Expenditures	120,164	121,727	143,372	164,266	169,814	161,784
Nonpersonnel Expenditures	35,564	47,858	35,015	32,810	30,325	34,004
Total Expenditures	\$155,728	\$169,585	\$178,387	\$197,076	\$200,139	\$195,788
Revenue Surplus/(Gap)	(99,232)	(105,800)	(114,572)	(133,261)	(138,839)	(132,609)
% Expenditures Covered by Revenues	36.3%	37.6%	35.8%	32.4%	30.6%	32.3%

Note: Numbers may not sum to total due to rounding. Fiscal 2015 revenue estimates are based on fiscal 2011 through 2014 experience and assume that the current fee schedule continues. Fiscal 2015 expenditures reflect the legislative appropriation and are subject to change. Personnel expenditures include the cost of shared salary personnel.

Source: State Board of Examiners of Nursing Home Administrators; Maryland State Budget Books

Appendix 6.
Written Comments of the
State Board of Examiners of Nursing Home Administrators



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

State Board of Examiners of Nursing Home Administrators

Patricia A. Hannigan, Executive Director

December 4, 2014

Mr. Warren Deschenaux
Director of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, MD 21401

Dear Mr. Deschenaux:

Thank you for the opportunity to review the draft of the preliminary evaluation of the State Board of Examiners of Nursing Home Administrators.

The Board is very pleased with the recommendation about repealing the termination date. The Board also appreciates the recommendations for a waiver from full evaluation and extending the evaluation date to July 1, 2024.

The Board would like to thank your office and particularly Ms. Kathleen Kennedy for her diligence and professionalism. It was a pleasure working with Ms. Kennedy during this process.

If you have any questions, please do not hesitate to contact the Board.

Sincerely,

Christine L. Mour
Board Chair

Eleanor L. Eines
Deputy Executive Director

cc: Secretary Joshua M. Sharfstein, M.D.
Mr. Karl S. Aro

410-764-4750 • Fax 410-358-9187

Toll Free 1-877-4MD-DHMH • TTY for Disabled – Maryland Relay Service 1-800-735-2258

Web Site: www.dhmh.state.md.us/bonha/

