



**STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL**

**A PERFORMANCE AUDIT  
OF THE**

**ARIZONA BOARD OF EXAMINERS  
OF NURSING CARE INSTITUTION ADMINISTRATORS**

**MAY 1983**

**A REPORT TO THE  
ARIZONA STATE LEGISLATURE**



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AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

May 31, 1983

Members of the Arizona Legislature  
The Honorable Bruce Babbitt, Governor  
Dr. Theodore H. Koff, President  
Board of Examiners of Nursing Care Institution Administrators

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Examiners of Nursing Care Institution Administrators. This report is in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Board of Examiners of Nursing Care Institution Administrators is found on the yellow pages.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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Enclosure

OFFICE OF THE AUDITOR GENERAL

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REPORT 83-11

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## SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Examiners of Nursing Care Institution Administrators (NCIA) in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Arizona Board of Examiners of Nursing Care Institution Administrators (NCIA Board or "Board") was created in 1975 by A.R.S. §36-446 et seq as part of Federal requirements to receive Medicaid funding in Arizona (pursuant to Title XIX of the Social Security Act). The goal of the Board is to license competent and qualified people who will 1) administer nursing care facilities in accordance with the statutes governing nursing home licensure (A.R.S. §36-447 et seq) and 2) provide quality care to the residents. The Board is empowered to examine prospective licensees, receive and investigate complaints, censure licensees and deny, revoke or suspend licenses on grounds listed in §36-446.07.

We found that State regulation of nursing care institution administrators is necessary to satisfy Federal requirements. Currently, Federal Medicare provisions require that a state agency certify administrators' education and training. Further, the State will need to license nursing home administrators if the Legislature decides to reimburse for long-term care through its alternative-to-Medicaid program (the Arizona Health Care Cost Containment System, or AHCCCS) (see page 11).

The Board has not effectively monitored the performance of its licensees. The Board has not utilized information maintained by the Department of Health Services (DHS) which would help the Board monitor the performance of nursing home administrators. Instead, the Board has been preoccupied with establishing and maintaining licensure and continuing education standards. Without utilizing the DHS information, the Board's ability to identify incompetent administrators is severely limited. Statutes should be amended to authorize the Board to obtain and act on pertinent DHS information about nursing home conditions, including complaint investigation reports and annual inspection reports. The Board should also use this information when considering licensees' renewal applications (see page 17).

In addition, when compared to statutory requirements, the Board's membership appears to be overrepresented by the nursing profession. This condition may invalidate Board actions (see page 27).

## INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Examiners of Nursing Care Institution Administrators (NCIA) in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Arizona Board of Examiners of Nursing Care Institution Administrators (NCIA Board or "Board") was created in 1975 by A.R.S. §36-446 et seq as part of Federal requirements to receive Medicaid funding in Arizona (pursuant to Title XIX of the Social Security Act). The Board is composed of seven members, each appointed by the Governor for a three-year term. No member may serve for more than two consecutive three-year terms. Three members are required to be administrators, one representing a nonprofit skilled nursing facility, one representing a proprietary skilled nursing facility and one representing a personal care facility. The other four members must be ". . . representative of the professions concerned with the care and treatment of the chronically ill or the infirm elderly patients . . ." (A.R.S. §36-446.02.B.). However, no more than two of these four members may be from a single profession. The noninstitutional members of the Board are to have no direct financial interest in nursing care institutions.

The goal of the Board is to license competent and qualified people who will 1) administer nursing care facilities in accordance with the statutes governing nursing home licensure (A.R.S. §36-447 et seq) and 2) provide quality care to the residents. The Board is empowered to examine prospective licensees; receive and investigate complaints; censure licensees and deny, revoke or suspend licenses on grounds listed in §36-446.07.



The Department of Health Services (DHS) is also involved in the regulation of nursing homes. The DHS Bureau of Health Care Institution Licensure has the responsibility to license nursing home facilities. DHS licenses three levels of care in nursing care institutions: personal, intermediate and skilled (highest level) care. Institutions providing any of these levels of care must employ a licensed administrator. (DHS also licenses supervisory care homes, which do not provide nursing care and thus are not required to employ a licensed administrator.) DHS makes an annual inspection of each facility and performs the annual Medicare certification for the Federal government when requested. DHS receives and investigates most of the complaints related to nursing homes.

#### Qualifications for Licensure

The Board may approve an applicant for the national and State licensure examinations upon verification that the applicant is of good character and has satisfactorily completed either 1) a Board-approved education program consisting of an associate degree or its hourly equivalent in health instruction, 2) an associate degree or its hourly equivalent in any field plus 15 semester hours of health instruction, or 3) sufficient education and training in the field of health care facilities administration. If applicable, the Board must also certify an applicant's claim of licensure in other states.

Written examinations are conducted in Phoenix twice a year under the Board's supervision. The Board may waive the national exam for an applicant who has been licensed in another state with substantially equivalent requirements. The Board also has the power to grant a provisional license for a six-month period to a qualified applicant when an unexpected vacancy occurs at a nursing home.

Currently there are approximately 240 licensees. The Board is shifting from an annual to a biennial renewal cycle whereby licenses shall expire June 30 of each even-numbered year. The Board requires 25 hours of Board-approved continuing education courses annually. (With biennial renewal, the requirement will be 50 hours for the 2-year period.)

## Staffing and Funding

The Board has no full-time support staff. All support services (secretarial and clerical) are provided by the Arizona State Boards' Administrative Office (ASBAO), which was created in 1976. ASBAO also serves as the support staff for nine other State boards or commissions.

The Board is a "90-10" Board in that 10 percent of all receipts are deposited in the State General Fund and the balance in the NCIA Fund, which is used to defray expenses of the Board (subject to legislative appropriation). The source and disposition of funds for fiscal years 1981-82 through 1983-84 are shown below.

TABLE 1  
BOARD REVENUES AND EXPENDITURES  
FOR FISCAL YEARS 1981-82 THROUGH 1983-84

	<u>Actual 1981-82</u>	<u>Estimated 1982-83</u>	<u>Requested 1983-84</u>
Balance forward from previous years	\$16,400	\$14,500	\$14,300
Revenues:			
Exams, licenses, fees	18,300	22,800	38,800*
(10% General Fund)	<u>(1,800)</u>	<u>(2,300)</u>	<u>(3,900)</u>
90% NCIA Fund	16,500	20,500	34,900
Expenditures:			
Personal services	200	300	500
Professional and outside services	14,700	16,300	19,300
Travel -			
In-State	900	1,700	1,900
Out-of-State	400	-0-	900
Other operating	2,200	2,400	2,700
Equipment	-0-	-0-	-0-
Total program	<u>18,400</u>	<u>20,700</u>	<u>25,300</u>
Balance forward	<u>\$14,500</u>	<u>\$14,300</u>	<u>\$23,900</u>

Source: Budget request for fiscal year 1983-84

\* Large increase due to shift to biennial cycle, wherein licenses will be renewed June 30 of every even-numbered year.

Audit Scope and Purpose

The purpose of our audit was to determine whether

1. State licensure of nursing home administrators is necessary,
2. The Board is able to monitor effectively the activities of its licensees, and
3. The Board has maintained its minimum entry requirements and educational standards.

The Auditor General and staff express appreciation to the members of the Arizona Board of Examiners of Nursing Care Institution Administrators for their cooperation and assistance during the course of our audit.

## SUNSET FACTORS

In accordance with A.R.S. §§41-2351 through 41-2379, 11 factors were considered to determine, in part, whether the Board of Examiners of Nursing Care Institution Administrators should be continued or terminated.

### 1. Objective and purpose in establishing the Board

The statutes do not specify the purpose in establishing the NCIA Board. However, according to the Board president, the NCIA Board was established

". . . in response to federal legislation requiring that [Title XIX, or Medicaid] payments on behalf of patients are limited to facilities with State licensed administrators."

The Board's primary objective appears to be protecting the public health and welfare by ensuring the competence of its licensees, both initially and during their practices as administrators. The Board president described the Board's statutory authority and duties as follows:

"(1) Examining and licensing applicants (A.R.S. §36-446.01) meeting qualifications (A.R.S. §36-446.04).

"(2) Promulgating rules, regulations and standards for administering the statute in compliance with Title XIX of the Social Security Act and set fees not exceeding maximums set forth in the statute [A.R.S. §36-446.03].

"(3) Conduct examinations and investigations [A.R.S. §36-446.03] to determine compliance of Nursing Care Institution Administrators.

"(4) Take disciplinary action for violations of statute [A.R.S. §36-446.07].

"(5) Imposition of a requirement of continuing education for renewal of license [A.R.S. §36-446.07]."

2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which the Board has operated

The Board appears to have effectively maintained licensure and renewal standards by monitoring education and other minimum qualifications. In addition, the Board's approval of continuing education for renewal applicants should soon become more efficient, as the National Association of Boards of Examiners of Nursing Care Institution Administrators (NAB) has recently assumed responsibility for approving many training courses nationally. Currently, the Board reviews all courses submitted for approval on a case-by-case basis.

However, the Board needs to become more active in monitoring its licensees to ensure their continued competence while practicing as administrators. We recommend the Board and the Department of Health Services Bureau of Health Care Institution Licensure (DHS) establish procedures for sharing pertinent nursing home information (complaints and inspection results) which may reflect on the administrator's performance (see Finding II, page 17).

3. The extent to which the Board has operated within the public interest

According to the Board president:

"The Board has operated within the public interest by its careful adherence to the statutes, by its recommendation of changes in the statutes that protect the interests of nursing home patients and by aggressively pursuing the withholding of license from those who do not fully comply with the expectations of the statutes.

"The Board held two hearings last year on complaints by families of nursing home residents resulting in the delicensing of one administrator. More recently requests for renewal of license was denied to five applicants because of deficiencies in their continuing education requirements.

"The Board formulated a position it felt was in the public interest. The Board then solicited and received comments from the public and finally was successful through rule promulgation in overcoming a major deficiency which was seen as the absence of significant educational background for licensure."

However, as mentioned in Sunset Factor 2 and in Finding II, the Board needs to take a more active role in monitoring its licensees by obtaining information from DHS regarding nursing home deficiencies for which the administrator may be held responsible.

4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate

The Board revised its rules and regulations in 1982. These revised rules and regulations were approved by the Attorney General to ensure consistency with the statutes. In addition, it appears the Board's rules and regulations are consistent with Title XIX of the Social Security Act, as required in A.R.S. §36-446.03, subsection A, in that the Board has set and maintained minimum standards for entry and continuation of licensure.

The Board has yet to revise its rules and regulations based on 1982 statutory changes which added 1) definitive grounds for disciplinary action, including unprofessional conduct and 2) the ability to censure, place on probation or deny a license to any licensee found to be in violation of the statutes (A.R.S. §36-446.07). (Prior to this, the Board had authority only to suspend or revoke a license.)

5. The extent to which the Board has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

According to the president, the Board sends notices of rules hearings to representatives of two State and national organizations of nursing home administrators, along with copies of proposed rules. In addition, licensees receive notices of hearings and summaries of proposed rules. The Board publishes hearing notices in The Arizona Republic and posts notices in the State Senate press and media rooms.

6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction

The Board appears to have responded appropriately to the six complaints received in its six years of activity. Board action on one complaint resulted in the administrator giving up his license for five years. In addition, the president stated the Board has sought and obtained statutory changes to help it resolve complaints (see Sunset Factor 8). However, as recommended in Finding II, the Board could further improve its ability to monitor licensees by establishing a system of communication with DHS (see page 17).

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

The Board is authorized by A.R.S. §36-446.09, subsection B, to seek injunctive relief for violations of its statutes. The Attorney General is the Board's legal advisor and, according to the president, "renders such legal services as the Board requires pursuant to A.R.S. §41-192."

8. The extent to which the Agency has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

In 1982, the Board was successful in obtaining passage of legislation strengthening its ability to regulate licensees. A.R.S. §36-446.07 was amended to provide more definitive grounds for disciplinary action and to allow the Board to censure or place on probation any licensee found to be in violation of the statutes. Also, a definition of "unprofessional conduct" was added to A.R.S. §36-446.

In 1983, the Board sought legislative amendments which would 1) provide for compensation of Board members, 2) eliminate the restriction on establishing or handling a county patient's trust fund, and 3) allow the Board to reduce the fee amount for an administrator on inactive license status. House Bill 2365, which incorporated these changes, became law in April 1983.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the subsection

As discussed in Finding II (page 17), statutes should be amended to provide for information-sharing between the Board and DHS.

10. The extent to which the termination of the Board would significantly harm the public health, safety or welfare

Should the Legislature decide to include reimbursement for long-term care in the Arizona Health Care Cost Containment System (AHCCCS), State licensure of nursing care institution administrators will be required in order for Arizona to receive Federal Title XIX (Medicaid) funds. Even if AHCCCS does not include long-term care, Federal Title XVIII (Medicare) regulations require that some State agency certify



the education and training of nursing home administrators. Meeting this requirement by continuing the present licensing system appears desirable because 1) according to a Federal official, any changes in current licensure requirements may raise questions at the Federal level regarding Medicare funding; and 2) it is questionable that another agency could perform this function more economically than the Board. Finally, aside from Federal requirements regarding the need for licensure and the appropriate level of regulation, several aging services officials believe that administrator licensure has contributed to the recent improvement in the nursing home industry (see Finding I, page 11).

11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate

Based on the response to Sunset Factor 10, the current level of regulation appears appropriate.

## FINDING I

### STATE REGULATION OF NURSING CARE INSTITUTION ADMINISTRATORS SHOULD CONTINUE.

State regulation of nursing care institution administrators is necessary to satisfy Federal requirements. Administrators must be licensed if, in the future, the Legislature determines Arizona's alternative to Medicaid will provide reimbursement for long-term care. However, even if long-term care is not included in Arizona's Medicaid program, the Federal Medicare provisions require that a State agency certify the education and training of nursing home administrators. Aside from Federal requirements for regulation, several officials in the field of aging services have stated that administrator licensure has been important in improving nursing home conditions.

#### Background

The Federal government provides funding for nursing home care through Titles XVIII and XIX of the Social Security Act. Title XVIII (Medicare) funding is based on medical eligibility requirements, while Title XIX (Medicaid) funding is based on income eligibility. Medicare funding is available through several Arizona nursing homes; however, currently Arizona receives no Medicaid funding for long-term care.

In 1974, the Legislature established the Medical Assistance Program (A.R.S. §36-2171, et seq), an indigent health care program designed to receive and disburse Title XIX funds. The Board of Examiners of Nursing Care Institution Administrators was established in 1975 as part of Federal requirements for receiving Title XIX funding. The Legislature, however, never provided for the State-matching funds needed to qualify for Federal Medicaid monies; and in a 1981 Special Legislative Session, the Arizona Medical Assistance Program was stricken from the statutes.

In the same 1981 Special Session, the Legislature established the Arizona Health Care Cost Containment System (AHCCCS), a federally approved

alternative-to-Medicaid program designed to receive and disburse Title XIX funds. Currently, AHCCCS is in the pilot stage, and its continuation is subject to legislative approval. At present, AHCCCS does not provide for reimbursement to individuals receiving long-term (nursing home) care. If AHCCCS is continued, the Legislature will determine whether Arizona's alternative to Medicaid will reimburse for long-term care.

Medicare (Title XVIII) has reimbursed for limited forms of nursing care in Arizona skilled nursing facilities since 1966. According to a Department of Health Services (DHS) official, about 2 to 3 percent of Arizona's nursing home residents receive Medicare benefits.

State Licensure of Nursing Home  
Administrators is a Prerequisite  
for Receiving Title XIX (Medicaid)  
Funds for Long-Term Care

If AHCCCS reimburses for long-term care in the future, Arizona must require its administrators to be licensed. Medicaid regulation 42CFR 431.703 states:

"The State licensing program must provide that only nursing homes supervised by an administrator licensed in accordance with the requirements of this subpart may operate in the State."

Federal Title XVIII (Medicare)  
Requires States to Approve Education  
of Nursing Home Administrators

Even if AHCCCS does not reimburse for long-term care, Federal regulations governing Medicare certification require the states to regulate nursing home administrators. While state licensure is not directly required, the nursing home's governing body must appoint a qualified nursing home administrator, defined as one who is licensed as required by State law or, in the absence of a Medicaid program, has obtained appropriate education and training as approved by the responsible State agency. Medicare regulation 42CFR 405.1101(a) defines a qualified administrator as a person who

"(1) Is licensed as required by State law: or  
(2) If the State does not have a Medicaid program, and has no licensure requirement, is a high school graduate (or equivalent), has completed courses in administration or management approved by the appropriate State agency, and has 3 years of supervisory management experience in a skilled nursing facility or related health program. . . ." (emphasis added)

Thus, for Arizona nursing homes to continue to be able to qualify for Medicare reimbursement, some State agency must approve the course(s) of training for nursing home administrators. Meeting this requirement by continuing the present licensing system appears desirable for the following reasons:

- According to a Federal official, any changes in current licensure requirements could serve to raise questions at the Federal level regarding Medicare funding. At the very least, the U.S. Department of Health and Human Services (DHHS) would have to approve the new agency as appropriate to perform this education-approval function.
- It is questionable that another agency could perform the education-approval function more economically than the Board. The Board now operates with a budget of approximately \$20,000, all of which is recovered through licensure fees.

Officials Say Administrator  
Licensure Has Helped Improve  
Nursing Home Conditions

Several officials in the field of aging services believe that administrator licensure has been at least somewhat instrumental in improving nursing home conditions.

A Federal DHHS official said that State licensure of nursing home administrators was a "catch-up" move to adopt professional standards similar to those of other healing arts professions. Before the 1970s, he said, the administrator was the "weakest link in the [nursing home care] chain." Other components of the nursing home industry have been regulated for a long period of time. In Arizona, for example, nurses have been licensed since 1921, and nursing home facilities have been licensed since

1953. But the administrator, in charge of the facility's overall operations including staff, was not licensed until 1975. Typically, the DHHS official said, the administrator had no more than a high school education and had received no specific training.

Two State DHS officials noted they had seen much improvement in the nursing home industry in recent years and attributed this improvement, at least in part, to administrator licensure. One said licensure has meant that the administrator has met higher qualifications, is familiar with relevant laws and regulations and receives updated training through continuing education requirements.

An official from the Department of Economic Security Adult Protective Services (APS) stated that administrator licensure was necessary so that someone could be held accountable for setting standards in the nursing home. The APS official believes licensure helps ensure that administrators have the appropriate training and background.

Finally, the Board's president noted that Federal requirements for administrator licensure came as a result of Congressional hearings regarding poor care received by the elderly in nursing homes nationwide. In these hearings, Congress agreed that poor nursing home administration was a widespread problem. The Board president believes licensure has improved the quality of care received in nursing homes. He cited three factors which have set it apart from other types of administration, including that of hospitals:

- Nursing homes have had a long history of poor quality care.
- Their clientele is a vulnerable group and most will live out their lives at the nursing home.
- Until recently there has been no history of educational or training requirements to assure basic administrator competence.

The president stated that while education requirements will not guarantee a good administrator, it is a tool the Board uses to attempt to create an environment of caring and concern for nursing home residents.

## CONCLUSION

State licensure of nursing care institution administrators should be continued because

- Administrators must be licensed if, in the future, the Legislature determines the AHCCCS (Medicaid) program will provide reimbursement for long-term care and
- Even if AHCCCS does not reimburse for long-term care, administrators' education and training must be certified by a State agency according to Medicare regulations.

In addition, several officials in aging services believe that administrator licensure has been instrumental in improving nursing home conditions.

## RECOMMENDATION

The Legislature should renew the enabling statutes of the Board of Examiners of Nursing Care Institution Administrators.

## FINDING II

THE BOARD SHOULD OBTAIN AND UTILIZE DEPARTMENT OF HEALTH SERVICES' INFORMATION TO STRENGTHEN THE BOARD'S REGULATORY ABILITY.

The Board has not utilized information maintained by the Department of Health Services Bureau of Health Care Institution Licensure (DHS) which would aid in monitoring nursing home administrators' performance on the job. Although the two agencies' functions are strongly related, the Board has not solicited pertinent information from DHS regarding matters that affect the health and safety of nursing home patients. As a result, DHS has not referred any complaints to the Board in the past year, though it appears that several complaints should have been brought to the Board's attention. This lack of communication from DHS to the Board impairs the Board's ability to protect the public from incompetent or negligent administrators. The Board could strengthen its regulatory role by adopting some of the practices used in other states to obtain similar information.

### Board and DHS Duties Are Closely Related

The Board and the Bureau of Health Care Institution Licensure (DHS) have closely related responsibilities over nursing homes. DHS regulates the nursing home facility whereas the Board regulates the individual in charge of the facility's day-to-day operations.

DHS licenses and regulates the nursing care facilities in the State. In this capacity DHS licenses and annually inspects each facility. If the institution is certified for Medicare, DHS performs the annual inspection for certification. It receives and investigates complaints from the public as well as complaints referred from other agencies, such as county health departments, the Department of Economic Security, Adult Protective Services and state and county nursing home ombudsmen. Therefore, DHS acts

as the central agency responsible for investigating complaints against nursing care institutions, including complaints against nursing home personnel.

The Board, on the other hand, licenses and regulates the person responsible for the day-to-day administration of the nursing home. According to A.R.S. §36-446,

"1. 'Administrator' or 'nursing care institution administrator' means any individual who is charged with the general administration of a nursing care institution, whether or not such individual has an ownership interest in such institution and whether or not his or her functions and duties are shared with one or more other individuals." (emphasis added)

The Board is at least partially responsible for ensuring that DHS's nursing home licensure requirements are being met by the administrator. The Board examines applicants on DHS's facility licensure rules and regulations regarding delivery of nursing services. In addition, the Board has statutory authority to discipline a licensee for "unprofessional conduct," which could include an administrator's negligence or incompetence in carrying out the DHS requirements. The Board has the power to suspend, revoke, censure or place on probation an administrator who is found guilty of unprofessional conduct or any of several other violations.

Important Information Regarding  
Problems Is Not Being Solicited

Although DHS receives most information regarding nursing home conditions, the Board has not established either formal or informal means to obtain pertinent information. As a result, DHS has not forwarded any complaints or inspection reports to the Board in the past year, though it appears that several complaints and reports warranted the Board's attention. This lack of communication impairs the Board's ability to protect the public from incompetent or negligent administrators.



DHS is the repository for information regarding nursing home conditions. DHS receives numerous complaints from the public and inspects each nursing home annually. The Board, on the other hand, receives very few complaints and conducts no routine field surveillance activities. In fact, the Board has received only six complaints in its six years of activity (only one complaint in fiscal year 1981-82).

Our review of DHS records revealed several examples of the types of complaint investigations the Board should have received for its review. During fiscal year 1981-82 DHS received 34 substantiated complaints\* against 19 licensed nursing care institutions. According to the DHS records we reviewed, none of these complaints were referred to the NCIA Board. In addition, some annual inspection reports indicated substantial deficiencies in one or more areas of nursing home administration for which the administrator might be held responsible; however, none of these reports were forwarded to the Board. Since the administrator is charged with the general administration of a nursing care institution, any substantiated complaint, as well as annual inspection reports noting serious deficiencies, should be of interest to the Board.

Following are two examples of DHS complaint investigations about which the Board should have been informed.

#### Case 1

DHS was requested to investigate the death of a patient who had "entered the laundry, ingested and aspirated sodium hypochlorite (dry bleach), and died of bronchopneumonia." The primary purpose of this visit, as stated in the DHS report, was

"...to discuss procedures adopted by the facility to prevent a recurrence of such an accident and to observe and check if these procedures have indeed been implemented."

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\* DHS considers a complaint to be substantiated when it investigates and finds one or more code violations of DHS regulations.

The administrator told a DHS investigator that the following procedures had been implemented and that such an accident could never happen again:

1. Laundry doors would be shut at all times,
2. Someone would be staffing the laundry 24 hours a day, and
3. Detergents and other chemicals would be kept under lock.

However, upon investigation DHS found:

1. Laundry doors were open,
2. The laundry room was not staffed, and
3. Chemical solutions such as toilet bowl cleaners and detergents were in the unattended laundry.

DHS concluded that "no effective mechanism" had been developed to ensure the new procedures were implemented. We found no record that this case had been referred to the Board.

#### Case II

DHS responded to an extensive list of complaints against one nursing care facility. DHS sent in three teams of surveyors over a two-day period to review the facility's operation. Each team cited numerous violations in the inspection reports. Following are some of the substantiated complaints resulting from the DHS investigation:

- Unlocked room with external medications and germicides;
- Potential cross-contamination from using stock supplies for many residents;
- Thermometers not labeled clean or soiled;
- Sanitation problems in kitchenettes where water pitchers are prepared for residents;
- Cleaning agents found in unlocked areas;

- One unit having no acceptable method of cleaning bed pans;
- Lack of restorative nursing;\*
- Problems regarding communications with residents' families;
- Lack of supervision of resident nutrition; and
- Problems with food purchasing, resulting in insufficient amounts given to residents.

General comments in DHS investigative reports on this case revealed extensive evidence of poor housekeeping, poor maintenance and a general lack of concern for sanitary procedures on the part of the employees. In addition, the investigators had noted their general impression of the majority of patients was that they had little or no activity or interaction. Further, a surveyor termed as blatant the problems with infection control, restorative nursing, care of total care patients and communication with families.

Subsequently, the DHS bureau chief and acting assistant director met for two hours with the administrator and assistant administrator of the nursing home to discuss plans for correction. We found no evidence that the NCIA Board had been informed of this meeting.

Problems in the above two cases appear to reflect on the competence of the administrator. Since the Board does not receive this type of information, potential harm to the public may result from allowing an incompetent or negligent administrator to continue practicing.

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\* Restorative nursing is related to physical therapy and/or other rehabilitation of the patient.

According to a DHS official, DHS would refer complaints and inspection reports to the Board only if 1) the problem specifically involved the administrator, or 2) DHS determined that repeated deficiencies indicated a problem with the administrator. Apparently DHS concluded that the two cases above did not meet either of these criteria, since the Board did not receive these complaints or any inspection reports from DHS.\* However, in our opinion, cases such as those described earlier do reflect on the administrator's competence and therefore should be of interest to the Board. In fact, according to an official of the U.S. Department of Health and Human Services, Division of Health Standards and Qualification (DHHS), the Board should be taking action against a licensee if the nursing home in which he is employed has serious life-threatening deficiencies.

We should note that the Board has not requested DHS to forward complaint or inspection information to the Board. Since its creation in 1976, the Board has been preoccupied with establishing and raising standards for licensure and renewal and has done relatively little to monitor performance of licensees.

Linkages Between the Board  
and DHS Should Be Established

The Board could improve its ability to monitor licensee performance by establishing communication linkages with DHS. As shown by the practices of other states, several options have been used to accomplish this--including informal communications as well as formal, structural linkages. Arizona Board representatives indicated that State law should be amended to facilitate this sharing of information.

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\* It should be noted that the only complaint the Board received in fiscal year 1981-82 concerned an administrator's mishandling of funds. The Board disciplined the administrator by having him agree to give up his license for a period of five years.

Ohio and California have established informal linkages among agencies involved with nursing homes. For example, in Ohio the administrators board keeps copies of the health department's complaint investigation reports and annual survey reports showing deficiencies in each administrator's renewal file for the board's review. In both California and Ohio, the administrators board is notified of any action the health department is pursuing against a nursing home. In California, the board is invited to participate with the health department when administrative proceedings are initiated against a licensee. In this case the proceedings can result in disciplinary action against the administrator's license as well as the facility's license.

Florida statutes were recently amended to require that all annual nursing home inspection reports be forwarded from the health department to the administrators board.

A number of states have established formal, structural linkages to improve communication and coordination between the administrators boards and the health departments (or facility-licensing agency). In at least 10 states the health departments are represented on the administrators boards, and in at least 8 states the boards are located within the health departments. Table 2 lists these states and the status of each board regarding composition and location.

According to the Board and its Attorney General representative, the most acceptable option for Arizona would be to amend State law to 1) authorize the Board to act on information from DHS and other State agencies regarding nursing home administration problems and 2) require that DHS forward this information to the Board. The Board representatives were concerned that the current statutes (A.R.S. §36-446.07, subsection F) may not authorize the Board to act on information received from other State agencies.

TABLE 2

## BOARD COMPOSITIONS AND LOCATIONS IN 16 STATES

	<u>Health Department Represented on Board</u>	<u>Board Located in Health Department</u>
Arkansas	X	
Connecticut		X
Georgia	X*	
Iowa		X
Kansas		X
Kentucky	X*	
Massachusetts	X	
Montana	X*	
Nevada	X	
New Jersey		X
New York		X
North Dakota	X	X
Ohio	X	X
Oklahoma	X	
Tennessee		X
Texas	X*	
	<u>10</u>	<u>8</u>

\* Health department representative is an ex officio (nonvoting) member of board.

CONCLUSION

The Board has not utilized information maintained by DHS which would aid the Board in monitoring and regulating the nursing home administrator's performance on the job. Without this information, the Board's ability to protect the public from incompetent or negligent administrators is impaired.

RECOMMENDATIONS

1. The Legislature should amend State law as follows to strengthen the Board's regulatory ability:
  - Require that DHS forward to the Board substantiated complaints and annual investigation reports which reveal administrator-related problems. The Board, and not DHS, should define which problems are administrator related.\*
  - Authorize the Board to act on pertinent information from DHS and other State agencies regarding nursing home administration problems.
2. The Board should maintain a renewal file for each administrator which contains a history of any substantiated complaints and serious deficiency reports from DHS.

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\* In response to our recommendation, the Board president has already contacted DHS to discuss procedures for sharing information.

OTHER PERTINENT INFORMATION

The Board's current composition may threaten the legality of its decisions. The Board appears to be overrepresented by the nursing profession.

The Board consists of seven members appointed by the Governor. The Board's composition is strictly limited by A.R.S. §36-446.02, which states:

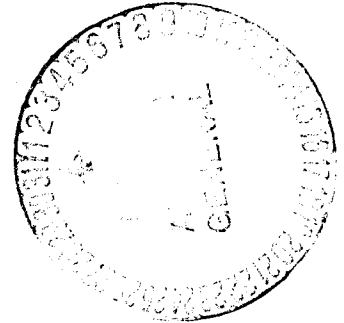
"B. The Board shall include one administrator of a nonprofit skilled nursing facility, one administrator of a proprietary skilled nursing facility, one administrator of a personal care facility and four members representative of the professions concerned with the care and treatment of the chronically ill or the infirm elderly patients. No more than two members of the Board shall be from a single profession."  
(emphasis added)

Thus, the statutes limit representation from any one profession to two members. However, currently there are three registered nurses on the Board. We were unable to obtain a definite explanation from the Governor's office for this overrepresentation because of turnover in the position responsible for appointments.

As evidenced by a similar situation in 1981, this overrepresentation could create a problem for the Board. In April 1981, the Board's composition was challenged because the three administrators on the Board represented nonprofit facilities and the proprietary segment of the industry was not represented. On its Attorney General representative's advice, the Board could not continue to operate until the Governor appointed a proprietary administrator in July 1981.



Board of Examiners for  
Nursing Care Institution Administrators  
1645 W. Jefferson, Room 312  
Phoenix, Arizona 85007



May 31, 1983

Mr. Douglas R. Norton, Auditor General  
State of Arizona  
111 West Monroe, Suite 600  
Phoenix, Arizona 85003

Dear Mr. Norton:

We have reviewed the revised preliminary report draft of the performance audit of the Arizona Board of Examiners of Nursing Care Institution Administrators.

It is the feeling of the Board that basically we have no problem with either of the two findings in the report. Currently, the Board only has statutory authority to suspend or revoke a license when someone elects to file a complaint and where the Board was able to obtain information that would show cause to suspend or revoke the license. Unless legislation is passed to give us the authority to act on our own in this capacity, we do not feel we have authority to monitor and/or regulate through independent action and investigation nursing home administrators performance on the job.

Thank you for allowing us our input to this draft.

Very truly yours,

BOARD OF EXAMINERS FOR NURSING CARE  
INSTITUTION ADMINSTRATORS

A handwritten signature in cursive script, appearing to read "Eric L. Johnston".

Eric L. Johnston  
Vice President

ELJ:gs