

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

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date by Four Years to July 1, 2017**

**Require Follow-up Report by October 1, 2011**

## **The Sunset Review Process**

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Examiners of Nursing Home Administrators (BENHA) was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. BENHA last underwent a full evaluation as part of sunset review in 2001. Based on that evaluation, DLS recommended an extension of the board’s termination date to July 1, 2013. Chapter 184 of 2002 extended the termination date of the board as recommended and required the board to report on implementation of other recommendations of the evaluation by October 1, 2002, and on the board’s evaluation of the Administrator-in-Training (AIT) program by October 1, 2003.

In conducting this preliminary evaluation, DLS staff reviewed annual reports from fiscal 2007 and 2008; board meeting minutes from the last three years; recent complaint, licensing, and fiscal information; and various other information provided by BENHA and the Department of Health and Mental Hygiene (DHMH). DLS staff also reviewed prior sunset evaluations, required follow-up reports from Chapter 184, a report of the 2006 Workgroup on the

Licensure of Nursing Home Administrators, and a report of the 2008 Task Force on the Discipline of Health Care Professionals and Improved Patient Care.

Additionally, DLS staff interviewed the board chairman and executive director. Telephone interviews were conducted with several board members, staff from the Department of Aging, the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities, the Office of Health Care Quality (OHCQ), and the two major long-term care trade associations – Health Facilities Association of Maryland and LifeSpan. The National Association of Long Term Care Administrator Boards (NAB) and the National Conference of State Legislatures were also contacted.

BENHA reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 3**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

## **Regulation of Nursing Home Administration Required by Federal Law, but Varies Among States**

Federal law requires that both nursing homes and nursing home administrators in all states be regulated.<sup>1</sup> In Maryland, about 230 nursing homes are licensed and regulated by OHCQ in DHMH, while nursing home administrators, those individuals responsible for the daily management of nursing homes, are licensed and regulated by BENHA.

Although state programs for licensure of nursing home administrators are required under federal law, specific licensure requirements such as age, education, training, and other requirements vary by state. In Maryland, to become licensed as a nursing home administrator an individual must be age 21 or older, have a bachelor's degree or master's degree, complete a 100-hour course in health care administration (if the individual's educational background is not in health care administration), complete an approved 12-month AIT program, and be of good moral character. The AIT program may be reduced based on certain types of prior experience. Individuals must also pass both a national and State examination. According to NAB, Maryland's requirements in terms of age and education level are similar to those in other states; however, Maryland has a relatively lengthy required AIT training period.

As required under board regulations, all applicants for licensure must complete a 12-month AIT program, unless credit for prior experience is awarded. AIT programs must be approved by the board, including the facility at which the training will take place and the preceptor (*i.e.*, mentor) who will oversee the applicant. Each AIT program must include

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<sup>1</sup>The requirement is listed in § 1902 of Title 19 of the Social Security Act. Specific requirements for state programs are listed in § 1908 of Title 19 of the Social Security Act.

at least 40 hours of training per week in no more than two facilities, one of which must have at least 75 beds. No more than six months of the program may be spent at a family-owned facility.

## **The State Board of Examiners of Nursing Home Administrators**

The board was created by the General Assembly in 1970 and is under the direction of the Office of the Secretary of Health and Mental Hygiene. Federal regulations require the board to:

- develop, impose, and enforce licensure standards;
- develop and apply appropriate techniques for applicants for licensure and investigation of credentials;
- issue, deny, suspend, or revoke licenses, as appropriate;
- investigate and take appropriation action with respect to any complaint; and
- conduct a continuing study and investigation of nursing homes and administrators to improving licensing standards and enforcement of those standards (42 USC 1396(g) and *Code of Federal Regulations*, § 431.700-715).

These requirements are reflected in State law and regulations.

All members of the board are appointed by the Governor. There is a four-year term limit, and no board member may serve more than two consecutive full terms. Federal regulations prohibit the board from comprising a majority of members from any one profession and require the board be composed of representatives of professions concerned with the treatment and care of the elderly or chronically ill (*Code of Federal Regulations*, § 431.706). BENHA typically meets once a month.

BENHA currently has eight committees: complaint investigation, credentials, education, examination, HIV-infected practitioners policy, legislative rules and regulations, monitoring for training programs, and nursing home administrator rehabilitation. For some committees, such as complaint investigation and monitoring for training programs, all board members are involved as needed. Other committees, such as credentials and education, have a set membership.

## **Statutory Changes Affecting the Board Since the 2001 Sunset Review**

As shown in **Exhibit 1**, few statutory changes have occurred since the 2001 sunset evaluation. Only three statutory changes have occurred, other than those included as part of

Chapter 184 of 2002, which extended the board's termination date. Despite the small number of statutory changes, the potential impact on board operations of some of these changes is substantial.

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**Exhibit 1**  
**Major Legislative Changes Since the 2001 Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	184	<p>Extends the termination date of the board by 10 years to July 1, 2013.</p> <p>Requires that prosecutions for misdemeanor offenses under the Maryland Nursing Home Administrators Licensing Act take place within three years after commitment of the offense.</p> <p>Prohibits individuals from supervising, directing, inducing, or aiding an unlicensed individual to practice as a nursing home administrator.</p>
2005	247	<p>Requires appropriate nursing home authorities – if a licensee leaves or is removed from office – to notify the board of the designated nursing home administrator.</p> <p>Authorizes the board to create an inactive status for licensees.</p> <p>Authorizes the board to impose a civil fine of up to \$1,000 for a first violation and \$5,000 for subsequent offenses under certain conditions, with revenues payable to the general fund.</p> <p>Specifies that an order of the board may not be stayed pending judicial review.</p> <p>Authorizes the board to issue a cease and desist order for practicing without a license or supervising or aiding an unauthorized person to practice as a nursing home administrator.</p>
2006	583	<p>Requires a study of licensure requirements, composition of the board, quorum requirements of the board, and makes recommendations related to these areas.</p>
2008	84	<p>Increases the minimum age for a licensee from 18 to 21.</p>
2009	71	<p>Increases the number of board members from 11 to 13 and alters the composition of board membership.</p> <p>Requires the board executive director to have at least a bachelor's degree.</p> <p>Requires the board to appoint, and the Secretary of Health and Mental Hygiene to confirm, the board's executive director.</p>

Source: Laws of Maryland

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## **2009 Session Law Substantially Altered Board Composition**

In recent years, the board has been composed of five licensed nursing home administrators who are actively practicing, four consumer members, and two members from related health professions. Among other changes, Chapter 71 of 2009 substantially altered the composition of the board effective October 1, 2009. Chapter 71:

- increases board size from 11 to 13 members;
- increases from five to six the number of nursing home administrators on the board;
- requires one of the nursing home administrators on the board to have experience with the Eden Alternative Green House or a similar program;
- decreases the number of consumer members from four to two;
- requires one of the consumer members to have or have had a family member in a nursing home;
- adds one physician or nurse practitioner specializing in geriatrics;
- adds one geriatric social worker; and
- adds one *ex-officio* member from OHCQ.

The board chairman explained that the transition to the new board composition is expected to be staggered. Some changes were expected to be implemented in October 2009, with the remaining changes to occur following the expiration of the terms of two consumer members in April 2010. With staggered implementation and delays in the appointment of the additional board members, the impact of the changes will not be felt by the board immediately following the effective date of the legislation. However, it is not clear how the change in board composition, particularly the potential impact of the reduction in the number of consumer members, will impact the functioning of the board long term.

## **Impact of 2005 Establishment of Inactive Status Remains Unclear**

Among other actions, Chapter 247 of 2005 authorized the board to develop an inactive status for licensees. Inactive status is available for two years but is renewable if the licensee completes a reactivation application, meets the renewal requirements, has not practiced while on inactive status, pays the necessary fees, has been on inactive status for less than five years, and is

otherwise eligible for licensure. If the licensee has been on inactive status for five years or longer, the licensee must reapply, pay all necessary fees, complete a refresher AIT program, and pass the State's standards exam.

To date, the number of applications for inactive status has remained relatively low. As of December 2009, the number of licensees on inactive status was 50. The introduction of inactive status does not appear to have substantially changed the number of licenses renewed. However, because this is a relatively recent change, the full impact of inactive status on the number of active licensees and the number of renewals may not yet be fully felt.

### **Number of New Licenses Issued Reflects National Trend**

The board's primary purpose is to issue and renew licenses for nursing home administrators. Licenses are issued for a two-year period with approximately half of licensees renewing in even fiscal years and the remainder in odd fiscal years. With limited exceptions, all nursing homes in Maryland must have one licensed nursing home administrator who is the administrator of record. However, nursing homes may employ more than one licensed nursing home administrator. These individuals may function in roles such as director of nursing or assistant director.

As shown in **Exhibit 2**, the total number of licensed nursing home administrators exceeds the number of nursing homes in the State. Although the overall number of licensees is more than sufficient, the number of new licenses issued has decreased in recent years. The number of renewal licenses has remained relatively stable. In fiscal 2005, the number of new licenses issued was 42. In fiscal 2009, this figure declined to only 17. The board's executive director indicated that the decline in new licenses is largely related to a decrease in the number of individuals in the AIT program. During fiscal 2007, the number of AIT program participants ranged between 26 and 31, but in fiscal 2009 ranged only between 14 and 16. While approved by the board, AIT participants are not licensed.

The executive director also indicated that the decline in licensees reflects a national trend. A representative of NAB indicated that decreases in the number of new licensees have been occurring since 1998, evidenced by declines in the number of persons taking the national exam. The representative noted, however, that this has become more stable recently.

**Exhibit 2**  
**Nursing Home Administrators Licensing Activity**  
**Fiscal 2005-2009**

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Nursing Homes in Maryland	242	236	236	233	234
Renewal Licenses	220	253	239	253	237
New Licenses	42	32	32	29	17
Inactive Applications*	0	22	13	29	23
Reinstated Licenses	0	0	2	0	7

\*Inactive status licenses were authorized under Chapter 247 of 2005 and took effect on October 1, 2005.

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. Reinstated licenses may include inactive status licensees who have reactivated or lapsed licenses that are reinstated.

Source: State Board of Examiners of Nursing Home Administrators; Office of Health Care Quality

The 2001 sunset evaluation recommended that the board evaluate the potential of a shortfall in nursing home administrators. The number of active licensees is reported at each board meeting, and the current number of active licenses appears sufficient to meet the need. In addition, the executive director explained that the board receives notification of all changes in administrators of record at nursing homes. While this is effective in ensuring all nursing homes employ a licensed nursing home administrator as required, the board should continue to closely monitor licensing trends, particularly the number of applications for inactive status, and the number of renewal and new licenses to ensure that the number of licensed nursing home administrators continues to remain at a level that will meet the needs of nursing homes in Maryland.

### **Few Complaints Received, but Resolution Sometimes Delayed**

The second principal function of BENHA is to investigate complaints against nursing home administrators and take disciplinary action where warranted. BENHA has a formal complaint investigation procedure, which has recently been posted to its web site. This procedure explains the process and types of outcomes available (*e.g.*, referral to another entity, closure, investigation, letters of agreement, charges, and other formal action). Under this procedure, complaints are reviewed immediately to determine if there is a basis to proceed to an investigation and if the complaint is under the board's jurisdiction. If a complaint is found to have merit, it is forwarded to the board investigator. If a violation of law or regulation is

identified, informal or formal disciplinary action may be taken by the board. If formal action is taken, information on the action is reported in the board newsletter and posted on the board web site.

As shown in **Exhibit 3**, BENHA received few complaints between fiscal 2005 and 2009. The complaints received by the board during this time cover a variety of areas including issues related to patient care and nursing, licensee conduct, and AIT program activities. Of the complaints received by the board, many were ultimately referred to OHCQ or the Maryland Board of Nursing or dismissed. The complaints referred to OHCQ and the Maryland Board of Nursing generally related to issues of patient care or nursing-related complaints.

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**Exhibit 3**  
**Action Taken by the Board on New Complaints Received**  
**Fiscal 2005-2009**

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Number of Complaints Received	4	9	10	12	9
Disposition of Complaint					
Under Investigation	0	0	1	0	0
Referred to Another Entity*	2	3	3	9	3
Dismissed	1	2	4	2	6
Letter of Education	0	0	1	0	0
License Surrender	1	0	1	0	0
Consent Order	0	0	0	1	0
Suspension	0	1	0	0	0
Returned to Board by AAG Prosecutor	0	2	0	0	0
Referred to OAG	0	1	0	0	0

\*Includes the Office of Health Care Quality and Board of Nursing

Notes: Complaints do not include deficiency survey reports received by the Office of Health Care Quality. Complaint disposition is the final disposition as of June 30, 2009 and does not necessarily represent an action taken during any given fiscal year. Dismissed complaints are those complaints that are investigated and dismissed, reviewed by the board and dismissed, and those handled administratively.

Source: State Board of Examiners of Nursing Home Administrators

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While only a few complaints received are ultimately investigated, the board has experienced difficulties resolving some complaints due to delays in investigation. As of December 2009, one complaint received in fiscal 2007 related to embezzlement remained under investigation by appropriate local authorities. Board action is not expected to occur until after



local authorities have completed the investigation. In addition, the investigations for two complaints received in fiscal 2006 (one complaint of fraud and one complaint of abuse) were only recently completed and had action taken by the board. Delays of this length in complaint resolution are particularly concerning because nursing home administrators are typically able to continue to work in the profession while under investigation.

While delays may occur due to the availability of witnesses, the time needed to gather information, and following referral of the completed investigation, the primary cause of investigation delays for BENHA appears to stem from vacancies and turnover in the board's investigator position.

From 1993 to April 2007, BENHA had an agreement with the State Board of Physical Therapy Examiners for the use of investigative services. In calendar 2006, the board experienced some difficulties in obtaining use of the investigator due to other workload. Since the end of the agreement, the board has been able to obtain use of an investigator, either on a contractual basis or through a shared position with other health occupations boards. The current investigator began with the board in July 2008. At that time, there were three outstanding complaint investigations.

The executive director advises that the complaint from fiscal 2007 is under investigation pending completion of a criminal investigation. The results from the investigation of the two outstanding fiscal 2006 complaints were brought before the board at its September 2009 meeting. The board voted to dismiss one of the charges and to refer the second case to the Office of the Attorney General for prosecution.

## **Board Is General Funded**

BENHA is funded by an appropriation from the general fund but also has the authority to raise revenue through fees. All fee revenue collected by the board is likewise credited to the general fund. As shown in **Exhibit 4**, the board did not generate enough revenue from fiscal 2005 through 2009 to cover the board's expenses. The percentage of the board's expenditures covered by fee revenue was less than 30% in all years and less than 25% in fiscal 2007 and 2008.

The board's revenues, while fluctuating, remained relatively stable between fiscal 2004 and 2009. The board's expenses, however, increased from fiscal 2004 through 2008. The board's expenses are driven by personnel costs, which increased in all recent years except fiscal 2009. In fiscal 2009, the board's deputy director position, which was vacant most of the fiscal year, was reduced to a part-time position in cost containment actions taken by the Board of Public Works in October 2008. This action is expected to keep personnel costs at a lower level going forward. Despite the decrease in expenditures, the board generated substantially less revenue in fiscal 2009 than needed to cover its expenditures.

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**Exhibit 4**  
**Fiscal History of the**  
**State Board of Examiners of Nursing Home Administrators**  
**Fiscal 2005-2010**

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Projected FY 2010</u>
<b>Total Revenues</b>	\$45,780	\$56,400	\$44,840	\$48,450	\$41,930	\$41,930
<b>Total Expenditures</b>	174,839	191,783	203,440	229,833	145,981	177,070
Personnel	151,163	161,859	173,216	195,696	100,315	135,803
Nonpersonnel	23,676	29,924	29,824	34,137	45,666	41,267
<b>Revenue Surplus/(Gap)</b>	(129,059)	(135,383)	(158,600)	(181,383)	(104,051)	(135,140)
<b>% of Expenditures Covered by Revenues</b>	26.2%	29.4%	22.0%	21.1%	28.7%	23.7%

Note: Numbers may not sum to total due to rounding. Fiscal 2010 revenue estimates are based on fiscal 2009 experience and assume that the current fee schedule continues. Fiscal 2010 actual revenues are likely to increase if proposed regulation changes are approved. Fiscal 2010 expenditures reflect the legislative appropriation and are subject to change.

Source: State Board of Examiners of Nursing Home Administrators; Department of Health and Mental Hygiene; Maryland State Budget Books

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### **Board Proposing Changes to Fee Schedule**

The board is considering revising its current fee schedule, which would enhance the contribution to the general fund. A comparison of the current fee schedule and the proposed fee schedule are shown in **Exhibit 5**.

The goal of the General Assembly is that health occupations boards be self-sufficient; indeed all other health occupations boards must be due to their special fund status. However, due to the number of licensees it is unlikely that BENHA can recoup sufficient revenues for the general fund to cover its expenditures while maintaining fees at a level that would not cause a barrier to new licensees. Because the board is federally mandated and the amount of general funds required for board operations in recent years has been small (ranging from \$104,051 to \$181,383), it may be acceptable that the board is not self-sufficient.

**Exhibit 5**  
**Schedule of Fees**  
**State Board Examiners of Nursing Home Administrators**

<u>Type of Fee</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Initial Application	\$100	\$100
Original License	\$100	\$100
Biennial License Renewal	\$100	\$200
Reinstatement	\$100	\$200
Duplicate License	\$25	\$50
Inactive Status*	\$50	\$100
Biennial Inactive Renewal*	\$50	\$100
Reactivation Application* <sup>1</sup>	\$100	\$100
Reactivation* <sup>2</sup>	\$100	\$100
Administrator-in-Training Program	\$50	\$0
Approval of Continuing Education Programs of Study	\$50	\$0
Fine for failure to notify board of changes in name, home address, or change in name or address of employer within 30 days	\$50	\$100
NAB Examination Administration <sup>3</sup>	\$100	\$100
State Standards Examination	\$125	\$125

\*Indicates a new fee since the previous sunset evaluation.

<sup>1</sup>Paid at the time of application to reactivate.

<sup>2</sup>Paid following board approval for reactivation.

<sup>3</sup>A separate charge is paid to NAB for taking the exam. This fee is a processing fee paid to the board.

NAB: National Association of Boards of Examiners of Long Term Care Administrators, Inc.

Source: Code of Maryland Regulations, 10.33.01.08; State Board of Examiners of Nursing Home Administrators

Nevertheless, the fee changes under consideration can be expected to help reduce the board's impact on the general fund. DLS estimates that, if these changes had been in effect in fiscal 2009, the revenue generated by the board would have been nearly \$20,000 higher (\$61,730), though still well below the board's expenditures. At this level of revenue, the board would have covered approximately 32.1% of its expenditures in fiscal 2009. The actual increase in revenue and related increased coverage of expenditures is subject to change based on the types of fees collected and level of expenditures in any given year.

## **Board Slow to Implement Prior Recommendations**

The 2001 sunset evaluation included 11 recommendations in addition to extension of the board's termination date. The General Assembly acted to implement some of these recommendations in Chapter 184 of 2002, Chapter 247 of 2005, and Chapter 71 of 2009. The board has taken action on most – though not all – of the recommendations of the 2001 evaluation. **Appendix 1** summarizes action taken on those recommendations.

One example of a recommendation implemented by the board is the submission of a follow-up report on the AIT program submitted in 2003. To prepare this report, the board conducted a survey of licensed nursing home administrators who received their license after 1998 and had completed an AIT program in Maryland. The survey focused on the quality and length of the training, the educational requirements for licensure, and prior credit experience. Based on the results of the survey, the board concluded that the AIT program as it existed at that time was adequate to meet the needs of persons in the program. The report contained no recommendations for change but indicated areas such as quality of care in the training facilities could be examined through follow-up actions.

Conversely, two recommendations from the 2001 sunset evaluation have not been addressed by the board to date – the relationship of the board with the Department of Aging's Long Term Care Ombudsman Program and alteration of required continuing education units.

The 2001 sunset evaluation recommended adding *ex-officio* members to the board from OHCQ and the ombudsman program. A similar recommendation was made in the 1991 sunset evaluation. While Chapter 71 of 2009 added an *ex-officio* member from OHCQ to the board, it did not create an *ex-officio* member from the ombudsman program or the Department of Aging.

One of the responsibilities of the ombudsman program is to accept and resolve complaints related to residents of long-term care facilities. The former ombudsman indicates, however, that complaints received through that program regarding nursing home administrators are usually resolved through mechanisms other than the board (*e.g.*, directly with the corporation). To the extent that the program receives complaints regarding nursing home administrators, a formal relationship between the organizations could be beneficial.

Although no longer doing so, the executive director reports that in the past the board provided notices for the board meetings to the Department of Aging. However, it does not appear that there has been attendance by representatives of the ombudsman program. Representatives of the Department of Aging and the board acknowledge that there could be potential benefits in a relationship between the organizations.

The 2001 sunset evaluation also recommended the board require continuing education units in areas of deficiency. No changes have since been made to formally require certain areas of continuing education units based on areas of deficiency.

A second set of recommendations that BENHA has been slow to implement comes from the 2006 report of the Workgroup on the Licensure of Nursing Home Administrators. This report was required by Chapter 583 of 2006, which required BENHA in conjunction with the Health Facilities Association of Maryland, Mid-Atlantic LifeSpan, and any other nursing home provider designated by the board to:

- review current standards for licensure, including educational and experience requirements;
- review board composition and quorum requirements; and
- make recommendations for statutory or regulatory changes related to these areas.

The Act did not require the board to make any changes following this report. Of the nine recommendations contained in the workgroup report, the board has acted on only four, with three of the five recommendations to be addressed as part of pending regulatory revisions. **Appendix 2** summarizes the implementation of the recommendations of the workgroup report.

Examples of recommendations where no change in regulation has occurred are the recommendations to allow AITs to spend more than six months of their training at a family-owned facility and to increase the time period of temporary licensure from 90 days to six months. While not all recommendations have been acted on, the board appears to be moving in the direction of implementing these recommendations.

## **Planned Changes May Alter Functioning of Board**

### **Disciplinary Process**

The 2001 sunset evaluation report recommended that BENHA determine how to keep a record of deficiencies found in survey reports from OHCQ by nursing home administrator and how to implement a program to investigate patterns in these deficiencies. The 2002 follow-up report submitted by the board indicated that the board intended to complete these actions.

As of December 2009, these actions had not been implemented. However, the board advises that two related changes are expected to occur in the disciplinary process in the coming year which should address this recommendation. These changes involve the formation of a disciplinary committee and the creation of a database to track deficiency survey reports provided by OHCQ by nursing home administrator. The exact responsibilities of the disciplinary committee are not expected to be finalized until a later date; however, the board chairman indicated that expected responsibilities would be to review deficiency survey reports as well as to

track trends by nursing home administrator. The implementation date of these two changes is not yet known.

Implementation of this database may allow the board to address an outstanding recommendation from the 2001 sunset evaluation, which recommended the board require continuing education units in areas found to be deficient. The board was to utilize OHCQ reports as one of the means of determining the specific areas.

### **Online License Renewal**

At its March 2009 meeting, the board decided to move toward an online renewal process. The board indicated at the time of the decision that licensees would still have the option of renewing with a paper form. While the board initially anticipated that an online renewal process could be available July 1, 2009, as a result of resource and other barriers, the online renewal process is not yet available.

### **Regulatory Review and Evaluation Process Underway**

The Regulatory Review and Evaluation process requires that every eight years chapters of the Code of Maryland Regulations (COMAR) be reviewed and evaluated to ensure that all regulations are necessary, meet statutory authority, follow judicial opinions, are not obsolete, and do not need other amendments. As part of this process, the board has reviewed its regulations and submitted proposed regulations to the Joint Committee on Administrative, Executive and Legislative Review (AELR). The regulations were published in the *Maryland Register* in November 2009.

Some of the changes under consideration are minor, including those intended to update terminology, conform regulations to existing law, or streamline regulation; however, some may have more significant impacts. These proposed changes include:

- increasing license fees related to renewal licenses, duplicate licenses, inactive licenses, and reinstatement and reactivation, and eliminating fees for continuing education unit approval and AIT application (see Exhibit 5);
- eliminating board involvement in the continuing education unit approval process to be replaced with approval through NAB;
- altering the AIT program to clarify requirements, including the minimum size of facility (60 beds), specific areas in which AITs are expected to train, and program reporting requirements;

- making adjustments to the preceptor certification, including a requirement for recertification if an individual has not precepted an AIT within a three-year period and requiring that a preceptor have spent a minimum length of time (two of last three years) as a full-time nursing home administrator prior to being a preceptor;
- adding to the list of actions that can lead to a disciplinary action failure to act to promote the safety, health, and life of a resident; and
- requiring three nursing home administrator members of the board to be present at a disciplinary hearing.

Some of these proposed changes were recommended either in the 2001 sunset evaluation (*i.e.*, a fee change) or the 2006 report of the Workgroup on the Licensure of Nursing Home Administrators. In addition, the board indicates that it has accepted NAB approval of continuing education units since 1994. To streamline the approval process, the board has chosen to remove itself from the approval process entirely instead of having two approval processes.

The proposed changes have not yet been finalized; however, they have the potential to impact how the board functions in terms of committee structure, review of the AIT program, and determination of disciplinary action.

## **Recommendations**

The regulation of nursing home administrators is federally mandated; thus, discontinuing the board would put federal funding of nursing homes in the State at risk. Licensing and regulation of nursing home administrators is also necessary to ensure the proper administration of these facilities.

Throughout this preliminary evaluation, DLS found that the board generally functions well to fulfill federally mandated requirements. While the board has experienced some difficulties in completing complaint investigations, the hiring of a shared investigator has enabled some outstanding complaints to move closer to resolution. Also, the board has begun to make changes to improve the training, licensure, and disciplinary processes through regulations, though changes are not yet final. Even so, the board continues to face additional challenges noted in the 2001 sunset evaluation such as not generating sufficient revenues to cover expenditures; however, this is likely to continue even if proposed fee changes are implemented. Furthermore, the board has been slow to implement several of the recommendations posed by past sunset evaluations and other reports.

The board is in the process of implementing substantial changes that will impact its operations. These changes include alterations to the composition of the board as a result of

Chapter 71 of 2009, pending regulatory changes, movement to an online renewal process, and changes the board intends to make regarding its disciplinary process. To enable the board to have adequate time to implement these changes and account for the substantial changes to the board composition, additional time prior to the next review is needed. **Therefore, the Department of Legislative Services recommends that LPC waive the State Board of Examiners of Nursing Home Administrators from full evaluation at this time; the board's termination date be extended by four years; and another preliminary evaluation be undertaken in five years to review the impact of changes in board composition, regulations, and the licensing and disciplinary processes.**

**DLS also recommends that the board submit a follow-up report to the Senate Finance Committee and the House Health and Government Operations Committee by October 1, 2011, on:**

- a plan to improve the timeliness and functioning of its disciplinary process, including the complaint investigation process;
- a jointly developed plan to improve communication between the board and the Department of Aging's Long Term Care Ombudsman Program;
- a review of trends in licensing, with a focus on new licenses issued, the stability of renewal of licenses, and licenses on inactive status;
- implementation of an online renewal process;
- implementation of the planned database to track deficiency survey reports;
- implementation of new and revised regulations proposed through the Regulatory Review and Evaluation Process in 2009, with a particular emphasis on those relating to the AIT program, the disciplinary process, and new causes for disciplinary action; and
- the additional revenue generated from alterations to the fee structure through the proposed regulatory changes.



## Appendix 1: Status of the Implementation of 2001 Sunset Evaluation Recommendations

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<u>Recommendation</u>	<u>Status of Implementation</u>
<p>1. The State Board of Examiners of Nursing Home Administrators (BENHA) should be continued, and its termination date should be extended by 10 years to July 1, 2013. The board should report to the Senate Finance and House Environmental Matters committees on or before October 1, 2002, on the implementation of the recommendations contained in the sunset evaluation.</p>	<p>Chapter 184 of 2002 extended the sunset.</p> <p>Follow-up report submitted.</p>
<p>2. Statute should be amended to establish two <i>ex-officio</i> seats on the board: one representative from the State ombudsman program in the Department of Aging and one representative from the Office of Health Care Quality (OHCQ).</p>	<p>Chapter 71 of 2009 added an <i>ex-officio</i> member from OHCQ.</p> <p>No <i>ex-officio</i> member has been added for the ombudsman program.</p>
<p>3. The board should evaluate the Administrator-in-Training (AIT) program and examine how it could make the AIT program more effective. The evaluation should address such issues as:</p> <ul style="list-style-type: none"> <li>• the appropriate length of time for an AIT program;</li> <li>• giving more credit for related experience and/or appropriate education; and</li> <li>• how an AIT program can incorporate more quality of care training.</li> </ul> <p>The board should report to the Senate Finance and House Environmental Matters committees on its evaluation of the AIT program and its recommendations on or before October 1, 2003.</p>	<p>Report submitted as required.</p>

**Recommendation**

**Status of Implementation**

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| 4. The board should continue to use its own standards examination to test for Maryland-specific knowledge and should not pursue use of the National Association of Long Term Care Administrator Boards version of the state standards exam.   | Board continues to use State examination.  |
| 5. The board should require specific continuing education units (CEUs) to improve knowledge in areas that are found to be deficient. The board should identify specific subject areas in which nursing home administrators may be undertrained, designate CEUs required to meet these needs, and issue regulations to implement the new requirements. The board may utilize many resources, such as reports from OHCQ nursing home inspections, to determine what course work is most needed. | No action taken.   |
| 6. The board should develop a plan to improve communication with licensees. Improvements should include making better use of newsletters by including summaries of new legislation, outcomes of disciplinary actions, a summary of complaints filed with the board, and a summary of survey deficiencies reported to the board.   | Newsletters incorporate information on final disciplinary action.<br><br>In July 2009, the board's web site was redesigned and now includes information on final disciplinary action,  |
| 7. The board should evaluate the potential of a shortage of nursing home administrators by monitoring the number of practicing licensees. If the board detects a shortage, it should address the issue by implementing a program to attract and retain licensees.   | Board receives information on all changes in nursing home administrators of record at nursing homes in Maryland.<br><br>The number of active licensees is reported at each board meeting.<br><br>Based on licensing information provided by BENHA, there does not appear to be a shortage of nursing home administrators at this time. |

### Recommendation

### Status of Implementation

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| 8. The board should not wait until OHCQ completes its investigation to initiate an investigation against a nursing home administrator. The board should develop protocols on when it is appropriate to initiate an investigation after receiving an OHCQ deficiency survey report, what actions are appropriate to address the administrator responsible for an OHCQ deficiency report, and how the board can keep a record of each licensee's survey deficiencies and implement a program for investigating a pattern of deficiencies. | Board is moving in this direction with planned disciplinary committee and database.  |
| 9. The board should develop a plan to make it easier for consumers to file complaints. The plan should at least address: <ul style="list-style-type: none"><li>• changing its voice mail message to notify callers that it will take complaints about nursing home administrators;</li><li>• taking complaints via telephone; and</li><li>• including on its web site a complaint form and instructions for filing a complaint with the board.</li></ul>  | Complaint form on web site.  |
| 10. The board should work with the Office of the Attorney General and the State's Attorney's Office to examine the complaint investigation and resolution process and determine how to conclude investigations in a more timely manner and ensure that prosecution is initiated when warranted.   | Few complaints move to formal action and delays in current investigations appear to be due to other factors, but the board's executive director indicated that the board is working to address this issue. |
| 11. The statute of limitations should be expanded for prosecuting misdemeanor offenses under the Health Occupations Article, bringing the limitation period for nursing home administrators more in line with the statute limiting the prosecution of the unauthorized practice of medicine. In addition, the definition of unauthorized practice should be amended to include individuals who knowingly induce, aid, direct, or supervise an unlicensed nursing home administrator.  | Chapter 184 of 2002 implemented this recommendation.<br><br>Chapter 247 of 2005 further clarified the law related to unauthorized practice.  |

**Recommendation**

**Status of Implementation**

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| 12. The board should develop a plan to raise fees so that its contribution to the general fund is more significant. It is unlikely that the board's revenues could equal expenses because the number of licensees is too small, but the board could close the gap between revenue and expenses. The board should focus on increasing renewal fees and possibly reinstatement fees so as to not make initial application and licensure cost-prohibitive for prospective administrators. The board should implement regulations increasing fees as required. | The board is proposing changes as part of the Regulatory Review and Evaluation Process. |
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Notes: Table produced through interpretation of information from interviews, follow-up reports, and various other information provided by BENHA and BENHA staff.

Source: State Board of Examiners of Nursing Home Administrators; Department of Legislative Services; Laws of Maryland

## **Appendix 2: Status of the Implementation of Recommendations from the 2006 Workgroup on Licensure of Nursing Home Administrators**

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<u><b>Recommendation</b></u>	<u><b>Status of Implementation</b></u>
Administrator-in-Training (AIT) programs should not be exclusively full time.	No change has been made in regulation at this time, but the board voted to allow part-time programs in November 2009 and plans to draft regulations implementing this change.
AIT programs that include more than six months at a family-owned facility should not be prohibited.	No change in regulation. See board comments for explanation.
AIT programs should not be limited to facilities with 76 beds or more.	Proposed regulations would lower the minimum size of facilities to 60 beds.
AIT programs should provide credit for time that potential applicants have spent with a single employer, not just a single facility. Credit for experience should not be left strictly to the discretion of the board.	Explanation of prior experience credit is provided in COMAR and clarified through proposed regulations. However, credit is still at the discretion of the board.
Maryland should adopt the “Principles of Interstate Licensure Endorsement” advocated by the National Association of Boards of Nursing Home Examiners of Long Term Care Administrators.	No change in regulation. See board comments for explanation.
AIT preceptors who have not precepted a candidate within five years should be required to be either evaluated by the board to ensure the preceptor has actively practiced on a regular basis and has the core of knowledge consistent with current standards of practice, or has successfully completed a board-approved preceptor course.	Proposed regulations include requirements that a preceptor must have been employed full time as a nursing home administrator for two of the preceding three years before application and, if not, that the preceptor recertify by completing a board-approved training course.

**Recommendation**

**Status of Implementation**

The board should refer disciplinary matters to the Office of Administrative Hearings, so as to better ensure due process protections for individuals facing the revocation or suspension of their license.

No direct change in regulation as the board already has this authority, but proposed regulations include a requirement that at least three nursing home administrators be present at a disciplinary hearing.

Temporary licenses should be permitted for up to six months, not the 90 days currently allowed, so as to bring Maryland law in line with federal regulations.

No change to regulation. See board comments for explanation.

The minimum age for a nursing home administrator should be 21, not 18.

Chapter 84 of 2008 implemented this change.

Notes: Table produced through interpretation of information from interviews and various other information provided by BENHA and BENHA staff.

Source: State Board of Examiners of Nursing Home Administrators; Department of Legislative Services; Laws of Maryland

**Appendix 3. Written Comments of the  
State Board of Examiners of Nursing Home Administrators**

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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 – John M. Colmers, Secretary

State Board of Examiners of Nursing Home Administrators

Patricia A. Hannigan, Executive Director

November 23, 2009

Ms. Jennifer B. Chasse  
Senior Policy Analyst  
Department of Legislative Services  
90 State Circle  
Annapolis, MD 21401-1991

Dear Ms. Chasse:

Thank you for the draft copy of the preliminary evaluation for the Board of Examiners of Nursing Home Administrators. The Board appreciates the recommendations for waiver from full evaluation, extending the termination date to July 1, 2017, and the follow-up report due by October 1, 2011.

After careful review of the facts, the Board wishes to make two comments. In Appendix #2, in the Status of Implementation column, it is indicated that no changes were made in regulations concerning AIT programs being conducted in family-owned facilities, adopting the “Principles of Interstate Licensure Endorsement” advocated by the National Association of Long Term Care Administrator Boards, and extending temporary licenses up to six months.

No changes were made in regulations because after careful consideration during the Workgroup discussions Legislatively mandated in August 2006, and again during the regulatory review conducted by the Board in April 2009, the Board feels there should be limits as to how much time a trainee can spend in a family-owned or family-operated nursing facility. The Board also believes there is no benefit in adopting the “Principles of Interstate Licensure Endorsement.” All principles are covered in the Board’s regulations, and should this language be incorporated, and there are amendments to the “Principles,” the regulations would become outdated. The Board also felt that there should be no changes to the 90 day limit for appointing a nonlicensed person to serve in the capacity of acting nursing home administrator (There is no “temporary license” in Maryland) under an unexpected cause, with an allowable 30 day extension. It was felt in 2006 and again in 2009 that four months is adequate time to recruit a new administrator. Due to the medically fragile population in nursing homes, it is felt that six months is too long of a period of time to have a facility managed by an unlicensed individual without the proper training. Unexpected cause is not addressed in regulations, but is in law under Title 9 of the Annotated Code of Maryland (§9-301).

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Ms. Jennifer B. Chasse  
November 23, 2009  
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Stating there is “no change in regulation” could lead one to believe that the Board did not act on these recommendations, when in fact the Board performed a careful review, held lengthy discussions, and ultimately deemed that amending the regulations would not benefit trainees, licensed nursing home administrators, or the residents of nursing homes. It is recommended that in lieu of “no change in regulation” use instead the phrase “Board is not in agreement with this recommendation.”

In the first recommendation under Appendix 2, the Status of Implementation indicates “No change has been made, but the board has indicated a willingness to consider proposals” for the recommendation that training programs should not be exclusively full time. The Board has voted unanimously to amend the regulations to allow for a part-time training program, and is starting the process for drafting amendments to its regulations.

The Board would like to extend it’s thanks and appreciation to your office and Tanya Zimmerman for all of her work during this review. It was a pleasure working with Ms. Zimmerman.

If you have any question, please do not hesitate to contact this office.

Sincerely yours,



Patricia A. Hannigan  
Executive Director

cc. Secretary John M. Colmers  
Mr. Karl S. Aro