

STATE OF WEST VIRGINIA

**SUNRISE REPORT
ON THE**

LICENSING OF ASSISTED LIVING ADMINISTRATORS

**There Is Potential for Harm to Residents of Assisted
Living Facilities that Warrants Regulation of Assisted
Living Administrators**

**Regulating Assisted Living Administrators Would Be
More Effective and Efficient Through DHHR Than
By The Nursing Home Administrators' Licensing Board**

**NHALB's Sunrise Application Is Deficient and
Inaccurate in Many Areas**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

August 2001

PE01-15-215

JOINT STANDING COMMITTEE ON GOVERNMENT ORGANIZATION

House of Delegates

Vicki V. Douglas, Chair
Earnest (Earnie) H. Kuhn, Vice Chair
Frank T. Angotti, Jr.
Bonnie Brown
Greg A. Butcher
Joe DeLong
Timothy R. Ennis
Richard D. Flanigan
Barbara Hatfield
A. James Manchin
Dale Martin
Charlene J. Marshall
Warren R. McGraw II
Don C. Perdue
Paul E. Prunty
Dale Stephens
Kenneth D. Tucker
Scott G. Varner
Emily W. Yeager
Tom Azinger
Larry W. Border
John N. Ellem
Otis A. Leggett (Minority Chair)
John Overington
Ron Walters

Senate

Edwin J. Bowman, Chair
Billy Wayne Bailey Jr., Vice Chair
Mark Burnette
H. Truman Chafin
Lloyd G. Jackson II
Jeffrey V. Kessler
Brooks McCabe
Joseph M. Minard
Marie E. Redd
Larry L. Rowe
Herb Snyder
William R. Wooton
Donna J. Boley
Sarah M. Minear
Vic Sprouse

Aaron Allred, Legislative Auditor
Office of the Legislative Auditor

John Sylvia, Director
Performance Evaluation and Research Division

Brian Armentrout, Research Manager
Shannon Riley, Research Analyst

August 2001

STATE OF WEST VIRGINIA

**SUNRISE REPORT
ON THE**

LICENSING OF ASSISTED LIVING ADMINISTRATORS

**There Is Potential for Harm to Residents of Assisted
Living Facilities that Warrants Regulation of Assisted
Living Administrators**

**Regulating Assisted Living Administrators Would Be
More Effective and Efficient Through DHHR Than
By The Nursing Home Administrators' Licensing Board**

**NHALB's Sunrise Application Is Deficient and
Inaccurate in Many Areas**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

TABLE OF CONTENTS

| | | |
|--------------------|---|----|
| Finding 1: | There Is Potential for Harm to Residents of Assisted Living Facilities that Warrants Regulation of Assisted Living Administrators | 3 |
| Finding 2: | Regulating Assisted Living Administrators Would Be More Effective and Efficient Through DHHR Than By The Nursing Home Administrators' Licensing Board | 5 |
| Finding 3: | The NHALB's Sunrise Application Is Deficient and Inaccurate in Many Areas | 9 |
| Appendix A: | Transmittal Letters to Agencies West Virginia Nursing Home Administrators Licensing Board; and Department of Health and Human Resources | 11 |
| Appendix B: | Definition of Assisted Living Facilities | 17 |
| Appendix C: | Agencies Response West Virginia Nursing Home Administrators Licensing Board; and Department of Health and Human Resources | 21 |

**Sunrise Report
on the
Licensing of Assisted Living Administrators**

Finding 1: There Is Potential for Harm to Residents of Assisted Living Facilities that Warrants Regulation of Assisted Living Administrators.

The Nursing Home Administrators' Licensing Board (NHALB) applied for licensure of *Assisted Living Administrators* under the state's Sunrise Law. "Assisted Living" is a generic term that is not defined or addressed in WV State Code or in Legislative Rules. It loosely refers to three types of facilities: *Personal Care Homes*, *Residential Board and Care Homes* and *Residential Care Communities*. The group of administrators affected by this application practice under Chapter 16, Articles 5D, 5H and 5N of the state code respectively. The statement which most often identifies these facilities is that they "provide personal services." A summary of the three types of facilities is provided in Appendix B. **The Legislative Auditor concludes that there is potential for harm in these facilities which warrants the need to have Assisted Living Administrators come under some form of regulation.**

Analysis of the Recommendation

One of the analysis requirements within the West Virginia Sunrise Legislation (WVC §30-1A-3) is to determine:

...Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public....

According to the applicant:

In the absence of regulations to qualify this occupational group for administrative practice, clients are at a risk since persons may or may not have management training exposure to clients of human behavior or organizational dynamics. Results can be heightened risk for abuse.

The NHALB also included within its application a letter from the Residential Program Manager for the WV Office of Health Facility and Licensure (OHFLAC) that provided an example of an incident that occurred in a assisted living facility. The letter stated the following:

The care home provider was negligent in complying not only with the RBC (Residential Board and Care) rules but also with the State Fire Code. Once compliance was achieved with the fire code, which required the installation of a fire alarm and sprinkler system in the home through the enforcement process, the

provider has continued to operate in violation of RBC rules as well as the Medication Administration Rule §16-50-1. This provider does not have a General Education Diploma (GED) and states that there is no intention of achieving this requirement. In a recent survey, the provider/administrator is administering medications which is in violation of the medication rule. Because of these actions, OHFLAC will continue with enforcement action against this provider because of continued non-compliance.

A letter from OHFLAC to the Legislative Auditor gave another example of harm regarding the same administrator. The letter stated the following:

The administrator/owner was not in the facility for two weeks and had not designated anyone to act as administrator. Residents were not being fed, because food companies would not deliver unless cash was received for payment. During the OHFLAC investigation, the administrator/owner sold the facility. The facility's new owner is in the process of correcting all violations. As of June 12, 2001, an administrative law judge has ordered the closure of the facility.

From these examples it can be seen that assisted living administrators are required to follow not only statutes that pertain to their facilities and the personnel who provide physical attention to individuals who cannot completely care for themselves but also other laws such as fire code requirements, education requirements, and other statutory requirements such as prohibiting the dispensing of medication by unqualified personnel.

Nationally, the number of people who will need help with daily activities is projected to increase by 51 per cent in the next 20 years. The number of licensed facilities has increased by 30 per cent since 1998. Today, more than 500,000 people, with an average age of 84, live in assisted living facilities across the nation. Most residents require help with at least three activities of daily living, such as eating, bathing, toileting, dressing and walking. One industry survey found that nearly half of residents suffered from mild dementia or early to mid-stage Alzheimer's disease.¹ Given the actual and potential harm to this vulnerable population, regulation of this profession is justified.

¹Lieberman, Trudy. "Is Assisted Living the Right Choice?" Consumer Reports Jan. 2001: 26.

Finding 2: Regulating Assisted Living Administrators Would Be More Effective and Efficient Through DHHR Than By The Nursing Home Administrators' Licensing Board.

Although it has been concluded that some form of regulation of assisted living administrators is needed, there are several reasons that suggest that DHHR through OHFLAC regulate this profession instead of the Nursing Home Administrators' Licensing Board. These reasons are as follows:

OHFLAC is currently required by law to provide some of the oversight of assisted living facilities. It inspects the facilities of assisted living administrators, the inspection also includes an evaluation of the administrator and a background check through the State Police, and it provides ten hours of training to administrators. Consequently, OHFLAC is in a better position to effectively oversee the administrators of these facilities and respond quicker to complaints than the Board. Any additional oversight responsibilities could be amended into the code. Licensure may not be necessary, but instead OHFLAC may only need to require certification through passing an examination, or administratively or statutorily require certain educational qualifications.

The Board is financially unstable and has received loans totaling over \$27,000 from DHHR to make payroll during the last several years. The Board still owes DHHR over \$19,000. Evidence suggests that a primary motive for wanting to regulate assisted living administrators is to receive additional revenue.

The Board's complaint process does an inadequate job in documenting the Board's final action on complaints it receives. The Board received six Substandard Card Notices from OHFLAC during the last three years; however, there is no evidence of the Board's final action in five of the six notices.

Analysis of the Recommendation

DHHR Is Mandated to Provide Oversight of Assisted Living Facilities

DHHR is mandated by West Virginia Code §16-5D, §16-5H and §16-5N to provide oversight of assisted living facilities. Oversight is conducted through the Office of Health Facility Licensure and Certification (OHFLAC). DHHR has the following authority concerning assisted living facilities:

1. License and inspect assisted living facilities.
2. Establish and enforce standards related to staffing, safety, sanitation, dietary

services, and other requirements.

3. Investigate complaints.
4. Suspend or revoke facility licenses.
5. Offer and sponsor educational training to administrative, management and operational personnel of a facility. It performs oversight reviews which are based on detailed facility licensing inspections, correspondence, complaint investigations, supporting licensure file data and the degree of compliance that facilities demonstrate.

It is the Legislative Auditor's opinion that current law provides some measure of protection to residents of assisted living facilities through DHHR. It would be more efficient to extend DHHR's authority to include establishing credential or education requirements of the assisted living administrators. This additional measure combined with current law should be adequate protection to the public. OHFLAC is in a better position to protect the residents of these facilities and address complaints quicker than the Board. This is illustrated in that over the last three years the Board has received six complaints, all of which came from OHFLAC.

The Board is Not Financially Stable

One of the major reasons that the NHALB should not be permitted assume licensure of assisted living administrators is because of questions of its financial stability. The Board began having insufficient funds to cover payroll in 1994. As a result, DHHR has loaned the Board over \$27,000. Despite fee increases in 1997, the Board still owes an outstanding loan balance of \$19,932 to DHHR.

A review of meeting minutes from December 1996 to November 2000 indicates the following discussions regarding the Board's desire to license assisted living administrators:

*Dr. Farley informed the Board of his meeting with Governor Underwood, with Joan Ohl, Cabinet Secretary for DHHR, and Dr. Henry G. Taylor, Commissioner for the Bureau of Public Health also present. He explained, within this meeting, the question arose, what agency should oversee the credential/licensing of assisted living caretakers in personal care homes. Dr. Farley expressed the Board's interest in acting as an agent to credential those persons and said he received a favorable response from all present. **He further explained the potential economic benefits for the Board** and stated if in the future this situation should occur, **it would give the Board more justification for existence.** [December 2, 1999]*

*Dr. Farley informed the Board of his talks with Dr. Taylor, Commissioner of DHHR and John Wilkinson, Director of the Office of Health Facility Licensure [and] Certification regarding the need for licensing assisted living administrators, while conveying the Board's interest in overseeing this licensing. **He explained the board could acquire the much-needed revenues by overseeing the licensing of assisted living administrators.** He stated that both were in favor of the NHALB handling this licensing. He further stated that presently there is no national standard for assisted living administrators.... [June 1, 2000]*

The Legislative Auditor is concerned about the Board's ability to license assisted living administrators as well as the Board's motivation for wanting to do so.

The Board's Complaint Process is Inadequate

The Board has not received a direct complaint from the public against a nursing home administrator in three years. It receives its complaints in the form of sub-standard care notices that it receives from OHFLAC. In six of the seven the sub-standard care notice cases provided to Legislative Auditor, the Board failed to show the outcome of the investigation. A second sub standard care notice is discussed in the March 2, 2000 meeting minutes, however no documentation of this case was provided to the Legislative Auditor.

In one case in which a resident died while improperly restrained OHFLAC also found three residents who were also improperly restrained at the same facility. The Board contacted the administrator, who responded to the Board's request for *a one-page description that captures the essence of all allegations*. After reviewing the administrator's response, the Board determined that no further information was required. The Board contacted the administrator again after receiving a second Substandard Care Notice from OHFLAC. Because the administrator resigned, the Board neither investigated the case, nor revoked the administrator's license. This administrator was not sanctioned and still has her license and is able to continue working as a nursing home administrator.

Finding 3: The NHALB’s Sunrise Application Is Deficient and Inaccurate in Many Areas.

The sunrise application for assisted living administrators prepared by the NHALB had deficiencies and inaccuracies. None of the individuals who signed the sunrise application worked in residential board and care facilities which constitutes the largest sub-group of assisted living administrators at approximately sixty percent of the potential licensees. The sunrise application, the Board stated, “There are no regulations for establishing and maintaining qualifications for persons practicing as assisted living administrators.” This is inaccurate. There are statutes in the Code, WVC §16-5D pertains to personal care homes, WVC§16-5N pertains to residential board and care and WVC§16-5H pertains to residential care communities. There are also legislative rules, 64CSR14 addresses personal care homes, 64CSR65 addresses Residential Board and Care Homes and 64CSR75 addresses residential care communities. Both, state statutes and legislative rules are enforced by DHHR. The Board has yet to create or adopt an examination for assisted living administrators. It failed to identify that private credentialing does exist through the Assisted Living Federation of America (ALFA) which offers a national certification examination. It failed to provide a detailed fee structure conforming to financial requirements of financial autonomy. With regard to experience and examination requirements, the Board has yet to establish them. Also, the Board didn’t provide a copy of proposed legislation with the sunrise application.

Recommendation 1

The Legislative Auditor recommends that the Nursing Home Administrators’ Licensing Board not be permitted to assume licensure of assisted living administrators. The Legislature should consider extending the Department of Health and Human Resources’ authority to include a credential or educational requirement for assisted living administrators.