

BOARD OF NURSUNG HOME ADMINISTRATORS
Economic Affairs Committee review per HB 525

The Economic Affairs Committee asks the board respond to the following questions:

1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?
2. If your profession/occupation were not licensed, what public protection would be lost?
3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

The first 3 questions are answered by the federal mandate for state licensure of Nursing Home Administrators:

In 1965 President Johnson signed into law the Social Security Amendments which established the Medicare and Medicaid programs. Medicare contained provisions for nursing home benefits for extended care and the Medicaid program broadened the scope of medical assistance that states could make available to the poor and the medically needy. The Social Security Act was further amended in 1967. These amendments deal primarily with skilled nursing facilities receiving payments under a state Medicaid plan and established a new class of facilities entitled intermediate care facilities. It was this legislation that Senator Edward M. Kennedy offered an amendment to require states to establish programs for licensing nursing home administrators. Sections 1903(a)(29) and 1908 of the Social Security Act (42 USC 1396a(a)(29) and 1396g) mandate that a state plan for medical assistance include a state program for the licensing of administrators of nursing homes and spells out the requirements for such licensing. The regulations implementing these provisions are contained in the *Code of Federal Regulations* (42 CFR Parts 431.700 to 431-715).

The Federal Mandate notwithstanding, there are obvious public health & safety rationales for the public oversight of the nursing home administration profession. The residents of nursing homes include some of our most vulnerable populations, the elderly and disabled. Unfortunately, many of these residents do not benefit from frequent involvement or monitoring by friends or family. In fact, in many cases the nursing home is the payee/recipient of resident's social security or retirement earnings and manages their funds. While the vast majority of individuals pursuing a career in managing nursing homes are motivated by the intrinsic values of improving quality of life for their residents, nevertheless, there are temptations for the unscrupulous. Oversight by the DPHHS and the licensure board with appropriate sanctions for unprofessional behavior are appropriate and needed.

4. Does your board deal with unlicensed practice issues? If yes, what types of issues?

Practicing as a nursing home administrator without a license or with an expired license are the most common unlicensed practice issues to come before the board. The board notifies DPHHS, which has jurisdiction over nursing home facility licenses, when it learns that unlicensed individuals are working as administrators in licensed facilities, and requests an investigation by DPHHS. The board also pursues disciplinary action over the unlicensed individual.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living – what is your response?

Licensure as a NHA is a federal mandate. Unlicensed individuals who may be qualified must be licensed before they can practice in the profession. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession.

6. How does your board monitor bias among board member toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

The Business Standards Division sponsors a Board Member Training for all members to attend. There is training and instruction on how and when to recuse oneself when there might be a conflict of interest or bias. The board member composition also assures the public against bias with the inclusion of non-licensee public members, and the non-voting representation of the director of the DPHHS:

2-15-1735. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of six voting members appointed by the governor with the consent of the senate. Three members must be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members must be representatives of professions or institutions concerned with the care of chronically

ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of public health and human services or the director's designee is an ex officio, nonvoting member of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member must be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121

7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?

No. Federal law requires that the state administer the licensing of nursing home administrators. An association is a public, voluntary membership organization that is not a state agency. Furthermore, it is felt that the current licensure mechanism is the most practical, efficient and unbiased approach to meeting this requirement.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

Yes, for Medicaid and Medicare and health insurance, licensure is required along with facility licensure/certification by the state.

9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

Three board members are peers of the licensees they oversee and have knowledge of and expertise in the profession. Other board members include professional representatives of organizations that deal with the elderly and/or disabled. Finally, the board includes public representation of at least one individual age 55 or older. This broad representation ensures an unbiased and fair approach to disciplinary and other issues.

10. Is there an optimum ratio between licensees, board size, or public representation?

Yes, the board has 163 active members and 48 inactive members. The board composition that balances the number of licenses and public members while remaining small enough to function efficiently is optimal. The 7 member board which includes 1 non-voting member from DPHHS, fits this model very well.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? No, federal mandate requires state licensure (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

The Board, through the complaint process, monitors fraud on a licensee level Centers for Medicare and Medicaid Services (CMS) monitors fraud on the federal level. DPHHS has additional oversight over facilities.

12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? This board does not have overlapping scopes of practice. If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

Each profession has a specific scope of practice.

13. Should any board have the ability to limit use of certain terminology to only a licensee? (see for example under the Board of Psychologists, the exemption from definitions:

37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic"....

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

Federal law defines nursing home administrators and requires licensure by states.

Responses to Survey - Board of Nursing Home Administrators

Total responses: * 6

Highest Compliment	Ability to monitor on behalf of licensees - 1 Ability to keep profession from criticism because of bad actors -	Ability to streamline Continuing Ed - 2 None -
Biggest Complaint	Licensing fees too high - 2 Licensing renewal timelines too strict - Other: --A person dually licensed by Board of Nursing Home Administrators and Board of Nursing noted: gray area about what specific types of actions need to be reported; nursing board needs to adopt multi-state licensure process --Requirements for taking the board test is too general for long-term care requirements --*Not totally familiar with the boards role/s (respondent did not check "lack of information" but wrote about board role concerns. --I am selected every year during the random audit for NHA continuing education units. It should not say random but request that you send in your proof at the time of licensure.	Board's response to unlicensed practice - None - 2
Reasons the board is important: It is important to have licensure to protect the public from unqualified people from working and thereby injuring the public.		
Public Health -	Public Welfare -	Public Safety - 1
Scope of Practice:	Too Narrow -	All or combination - 3
Problems with other professions' scope of practice -	None 6	
What laws/regulations have caused the most problems?		
Other comments: Board effective in dealing with consumer complaint. Accompanying comment: A professional person who had their license suspended continued to work in the profession.		
Nonlicensee comments	Saying Board of Nursing Home Administrators Necessary for Public Health - 84, Public Safety - 54, Public Welfare - 51 All - 36	

as of 10/3/2011 **Note:** About 22 of those marking the importance of the board for public welfare, safety, or health marked all the boards for the same reason, indicating general support for licensure rather than specific support for the board.