

THE BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS

Staff Report

to the

Sunset Advisory Commission

April 20, 1978

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INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection (3) of the Texas Sunset Act and contains a review of the operations of the Texas Board of Licensure for Nursing Home Administrators. Termination of the Texas Board of Licensure for Nursing Home Administrators has been scheduled for September 1, 1979 unless it is continued by law.

The material contained in the report is divided into three major sections: background, review of operations and conclusions. The Background section contains a brief history of legislative intent and a discussion of the original need for the Texas Board of Licensure for Nursing Home Administrators. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified, and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria, from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations, based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the Legislature will be provided.

BACKGROUND

In recent years there has been an expansion and evolution of the nursing home industry. Once an option used chiefly for chronically-ill elderly people, nursing home residence has become an increasingly common alternative for families with aging relatives and for elderly persons without family support.

Figures published in July 1977 by the U.S. Department of Health, Education and Welfare reveal that from 1963 to 1974 the number of nursing homes in the United States increased by 23 percent while the number of nursing home beds increased by 131 percent. Information furnished by the Texas Department of Human Resources indicates that, in Texas, the number of Title XIX certified beds increased by 43 percent for the six year period, 1972 through 1977, with the average size of the homes expanding from 87 beds to 97.9 beds. From these figures, it is apparent that as the nursing home industry expanded the facilities themselves increased in size.

Nursing homes have evolved from small family-run organizations and "poor farms" into complex, sometimes large and diversified businesses. According to the Department of Human Resources, corporate ownership of nursing homes had increased to 69.7 percent by 1977, with 25.3 percent of all homes owned by nursing home "chains." As nursing homes became larger and more complex the attendant problems of management also increased. And the need for capable management became evident. Public attention directed at poorly managed nursing homes made this need even more manifest.

In recent years there has been a growing concern at both the federal and state levels for the quality of care received by nursing home residents. This concern has been reflected in the Medicaid legislation (Title XIX, Social Security Act) which has had the two-fold effect of increasing funding to nursing homes and increasing regulation by both federal and state governments.

Approximately 75 percent of the residents in Texas nursing homes receive Medicaid funds, according to the Department of Human Resources.

Trends in government funding of Texas nursing homes are illustrated by Exhibit i-1, which indicates that during the last ten years there has been a 500 percent increase in total funding which represents a radical change in governmental involvement in the nursing home industry.

EXHIBIT i-1
Medical Assistance*

<u>Total Incremental Increase</u>	<u>State Fiscal Year Ending</u>	<u>Total</u>	<u>Federal</u>	<u>State</u>
	8-31-68	\$121,890,159	\$97,707,067	\$24,183,092
21%	8-31-69	147,941,570	117,505,066	30,436,504
49%	8-31-70	220,450,677	156,188,852	64,261,826
31%	8-31-71	289,648,576	199,484,248	90,164,328
16%	8-31-72	337,377,352	218,941,895	118,435,457
16%	8-31-73	365,797,408	235,753,022	130,044,386
10%	8-31-74	403,488,092	257,883,928	145,604,165
24%	8-31-75	501,228,632	317,792,127	183,436,505
30%	8-31-76	652,765,689	416,192,985	236,572,704
14%	8-31-77	741,576,421	468,972,929	272,603,492

SOURCE: DPW Annual Report

*as paid and not as incurred

Another indication of governmental involvement in the industry has been the proliferation of federal and state regulations pertaining to nursing homes and nursing home personnel. A critical determinant of the quality of care received by residents is the quality of nursing home personnel at all levels. Of particular importance is the role of the nursing home administrator who is charged with the responsibility of general administration of the home, and thus the establishment and maintenance of general standards of quality for other personnel and the facility as a whole. Effective monitoring of the nursing home administrator is vital to the health and safety of nursing home residents because the closed environment in which they reside is susceptible to abuse. The American Nursing Home Association stated in their Nursing Home Fact Book, 1970-1971, that

In today's nursing home, the nursing home administrator sets the tone, establishes a program of quality care, and bears final responsibility for operation of the facility. It is very important, therefore, that his orientation and training prepare him to direct and administer a program which provides both the "nursing" and the "home" aspects of patient care.

The 1967 amendments to Title XIX (Medicaid) of the Social Security Act underscore the importance of competent nursing home administrators through an unusual federal regulation requiring state licensing of the occupation. The amendments required that those nursing homes wishing to receive Medicaid funds must have a licensed nursing home administrator by July 1, 1970, and charged state governments with the responsibility of licensing, regulating, and upgrading the occupation. The amendments additionally specified that the administrators be licensed under:

The agency of the state responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm patients.

In 1969 the Sixty-first Legislature, Regular Session in response to Title XIX requirements, passed The Nursing Home Administrators Licensure Act, Article 4442d, V.A.C.S. This statute incorporated much of the language found in the 1967 Title XIX amendments, particularly that dealing with the functions and duties of the Board. The Act authorized the Texas Board of Licensure for Nursing Home Administrators to license, regulate, and upgrade the nursing home administrator occupation.

Administration

The licensure act has as its primary purpose the protection of the public health, safety and welfare by insuring that only competent, qualified individuals are allowed to serve as nursing home administrators. The major objectives of the Board are to license qualified administrators in a manner which is consistent with federal and state requirements, to provide for courses of instruction and training to prepare individuals for licensing, and to regulate the nursing home administrator occupation by effectively enforcing standards of conduct.

The Board of Licensure for Nursing Home Administrators originally had nine members appointed for three-year terms. In 1971, the Sixty-second Legislature, Regular Session, amended the Act, decreasing membership to eight members and increasing the term of office to six years. Currently, the Board is composed of eight members, four of whom must be licensed nursing home administrators and of these one must be associated with, and representative of, a non-proprietary home. Additionally, one member must be a licensed physician and one member an educator in a relevant field. Representatives from the Texas State Department of Health and the Texas Department of Human Resources act as ex-officio members

of the Board. The gubernatorial appointments are to be made after consultation with "the associations and societies appropriate to the disciplines and professions representative of the vacancies to be filled."

The original act provided for the selection of a secretary who, while not a member of the Board, was to act as fiscal agent for the Board, and be bonded for at least \$25,000. The original statute has not been amended in this respect and continues in force. Additionally, the bulk of administrative duties were delegated to the secretary by the Board.

Funding

Board activities which generate revenue and provide funding for Board operations include examination and licensing. The original statute authorized the Board to hold their funds in local accounts outside the Treasury and Board expenses were not to be a charge against the general fund of the state.

In 1971 the statute was amended, requiring the deposit of all license fees in the State Treasury. Application fees and all other revenues received by the Board remained in the accounts outside the Treasury and thus, were not appropriated by the legislature. Currently, Board activities are supported through legislative appropriation and through use of revenues collected and held in the local fund. Revenue deposited in the Treasury is not diverted to the General Revenue Fund.

Responsibilities

The Board's primary responsibilities are those of licensing and enforcement. Authority has been granted to the Board to promulgate rules and regulations to ensure the effective administration of these responsibilities.

Licensing

Initially, the Board was faced with providing all Texas nursing homes with licensed administrators. Moreover, many individuals already functioning as

administrators did not meet licensing standards because of inadequate educational backgrounds.

Addressing these problems, federal guidelines permitted a two-year waiver of licensing requirements for those administrators who had served in that capacity for at least one year prior to enactment of the state statute. However, the state was required to make provision for training and instruction to enable those individuals to meet licensing requirements. Although federal funds were available to help defray the initial cost of instituting educational programs, the Texas Board did not choose to receive federal aid. After June 30, 1972 all nursing home administrators were required to be licensed by examination and to meet educational requirements.

To assist administrators who did not meet the one-year experience requirement, the Board formulated a one-year internship administrator-in-training (AIT) program. This program permitted individuals to fulfill the requirements necessary for licensure. Scheduled to be phased out, the program was reinstated in 1976 because of an apparent scarcity of administrators.

An initial plan, proposed by federal guidelines and adopted by the Board, set forth the following schedule of increasingly stringent educational requirements for licensing:

July 1, 1970 - High School diploma (or GED)
January 1, 1975 - 2 yrs of college
January 1, 1980 - Baccalaureate degree
January 1, 1985 - Master's degree

However, because of difficulties in implementation, the schedule has apparently been abandoned.

After a license is obtained, 40 hours of continued education are required biennially as a condition for license renewal. Until September 1977, continuing education seminars were provided solely by the Texas Nursing Home Association

and the Texas Association of Homes for the Aged. Other organizations wishing to conduct seminars had to apply, through the two organizations, for approval. However, in September 1977 the American College of Nursing Home Administrators was granted permission by the Board, on a trial basis, to conduct seminars by direct application to the Board for approval.

Enforcement

Enforcement responsibilities of the Board center upon the specific causes for disciplinary action detailed in the statute. This regulatory purview was expanded somewhat in 1975 by two amendments to the statute. The first amendment included gross negligence as a cause for disciplinary action. The second amendment allowed the Board to consider whether or not the non-compliance with Health Department requirements of the nursing home employing the administrator indicated failure of the administrator in meeting Board standards. To date, the stiffest penalty that the Board is authorized to use remains revocation of license. This power has been used once since the inception of the Board.

The Board has been active in the creation and fostering of the National Association of Boards of Examiners for Nursing Home Administrators, Inc. (NAB). Currently, the chairman and executive secretary of the Board hold office in the NAB.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the occupation of nursing home administrators within the United States, a survey of the 50 states was conducted to determine how this has been addressed in other states.

The need to regulate the occupation of nursing home administrators is currently expressed through licensing requirements imposed by all of the 50 states surveyed. From the standpoint of organizational patterns, 24 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 26 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 11 require that appointees be confirmed by the Legislature; and membership in four states is limited to persons who are licensed members of the occupation. In Texas, appointees are not confirmed by the Legislature and membership is not limited to persons who are licensed members of the occupation. Forty-eight percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states including Texas indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 17 of 50 states, indicated that these bodies were not solely supported by fees and charges of the agency.

Forty-eight of the states, regulating the occupation of nursing home administrators administer national examinations. The other states develop and

administer their own exam. Texas uses a national examination. The examination is required only once in all of the states, including Texas. In 33 states, licensees are required to renew their licenses annually. Texas licenses for a two-year period. Enforcement activities in all states, including Texas, involve investigation of complaints from consumers and others engaged in the occupation of nursing home administrators. Hearings are conducted inside the regulating agency in 35 states. In Texas, hearings are conducted by the Board.

States which regulate the occupation of nursing home administrators indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the Board of Licensure for Nursing Home Administrators and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operations could be achieved.

The Board of Licensure for Nursing Home Administrators is a self-supporting agency with operating costs financed out of the Nursing Home Administrator's Fund No. 137, maintained in the State Treasury, and funds deposited in a local bank account. The Board is responsible for the licensing and regulation of nursing home administrators in the State of Texas

Administration

For the purposes of the review, administration of the Board's operations is broken into two parts. The first relates to administration from the standpoint of overall policy guidance of the Board members in the utilization of funds available for the operations of the agency. The second relates to administration from the standpoint of the organization of the staff in the implementation of the specific responsibilities and duties. Each is discussed separately in the material which follows.

Board

The eight members of the board are responsible for overall guidance in implementation of the agency's statutory responsibilities. This responsibility is generally discharged through review and approval of an operating budget for the

agency, review of status reports presented by the staff concerning elements of operation, and through the hearings process. The review indicated no pattern of undue Board involvement in the day-to-day operations of the agency. The bulk of actual involvement, in an official capacity, with agency affairs is conducted through the regular and special meetings of the Board. Exhibits I-1 and I-2 detail attendance and reimbursement for these purposes. The variation between days of attendance and days of per diem received indicated in Exhibit I-1 may be explained by Board attendance at Education Committee, Application Review Committee, and Reciprocity Committee meetings which were not counted as Board meetings.

EXHIBIT I-1

Board Per Diem

	Amount of Per Diem Paid	Number of Days Per Diem Claimed	Amount of Per Diem Paid	Number of Days Per Diem Claimed
	<u>1976</u>		<u>1977</u>	
Atkinson	\$ -0-	-0-	\$ 175	7
Baker	500	20	375	15
Curry	425	17	350	14
Flynn	450	18	350	14
Maxwell	475	19	175	7
Millington	500	20	350	14
Sheffield	500	20	350	14
Health Dept. Designee (Howard Allen)	275	11	325	13
Human Resources Dept. Designee (Marlin Johnston*)	-0-	-0-	-0-	-0-

*Mr. Johnston elected not to receive a per diem.

EXHIBIT I-2

Board Member's Attendance
Fiscal Years 1975-1977
Board of Nursing Home Administrators

Current Board Members	Term of Office	Attendance at Meetings		
		1975 (10)	1976 (11)	1977 (10)
Virginia Atkinson (non-proprietary home representative)	January 31, 1977 to January 31, 1983	0	0	6
James P. Baker (nursing home adminis- trator representative)	Initial Appointee - January 31, 1983	10	11	10
Carroll Curry (nursing home adminis- trator representative)	June 71, 1971 to January 31, 1979*	4	9	10
Francis A. Flynn (educator)	Initial Appointee - January 31, 1979	10	11	4
Wilfred C. Millington, Chairman (physician)	Initial Appointee - January 31, 1981	10	9	8
William A. Sheffied, Vice- Chairman (nursing home administrator represen.)	January 31, 1975 to January 31, 1981	6	11	9
Commissioner of Health designee (Howard Allen)	May 1973 - N/A	10	7	8
Commissioner of Human Resources designee (Marlin Johnston)	January 1975 to February 1978	6	9	9
<hr/> Past Members <hr/>				
Virgil Maxwell	Initial Appointee - December 1976	10	11	0
Johnnie Benson	Initial Appointee - August 1975	8	0	0

*not consecutive

An analysis of Board travel revealed that out-of-state travel has been relatively extensive. This is primarily a result of the Board Chairman's attendance at NAB conventions and committee hearings. Board out of state travel expenses over the past four fiscal years have averaged 31 percent of total agency travel expense.

Staff Administration

The ongoing operations of the agency are carried out through an executive secretary, who serves at the pleasure of the Board, and support staff consisting of three full-time administrative assistants, plus part-time and seasonal help. Delegation of responsibility by the executive secretary has been extensive and appears to be made along clear cut lines which are adequately understood by the employees of the agency.

The staff of the agency performs general office operations and the primary functions of licensing and enforcement. Within the grouping of general office operations is included the basic administrative functions of record maintenance, accounting, and purchasing. With regard to record maintenance, the agency maintains routine files relating to general correspondence, personnel and financial records. In addition to these, files are maintained on licensees, administrators-in-training, complaints and investigations. The files relating to licensees were generally well maintained and computer support is used for data necessary to monitor the educational requirements for persons holding a license issued by the Board. However, the review of the complaint and investigation file indicated a lack of structure that makes any consistent review very difficult. Results of complaints and subsequent investigations must, in many instances, be pieced together from three separate and unrelated documents to achieve any understanding. This aspect is touched on again in Criterion 6 concerning complaints.

The accounting function is handled primarily by the agency's accounting clerk who maintains records both on funds in the Treasury and funds maintained in local accounts. According to the agency's most recent audit (1975) the agency's accounting procedures, in general, meet legal requirements.

However, certain problems were encountered during the 1975 audit. These areas of concern were detailed in a management letter to the agency issued July 5, 1976 by the State Auditor's Office. Items listed in the management letter which have not been implemented, but which would result in better management and accounting control, include suggestions for improvements in cash control procedures, in the posting of certain personnel records and maintenance of a mileage log for the executive secretary's leased automobile.

In the area of purchasing, for an agency this size records are maintained in an adequate fashion. Since the Board maintains funds outside the Treasury, not all restrictions relating to appropriated funds apply to items which are purchased through the local account. Of particular relevance are those restrictions on the use of appropriated funds for leasing of automobiles and purchasing services of outside counsel. The agency uses local funds to lease an automobile for use by the executive secretary. In leasing the automobile the agency did not use the services of the Board of Control to obtain the lease although those services were available. An examination of the fiscal data presented by the agency indicated that the three-year lease was negotiated in 1975 and was pre-paid in an amount totaling \$6,325. In addition to the pre-paid amount, repairs and maintenance over the three-year period totaled \$1,367 and automobile insurance totaled \$1,099. Additionally, city, county and state taxes were paid on the automobile and state license plates were purchased.

In February 1978, a new three-year lease was negotiated through bids presented to the agency. While the current lease was not pre-paid, at least one other bid presented was lower than the one accepted by the agency. The automobile leased was a 1978 Ford LTD Station Wagon with options including a C.B. radio. As indicated earlier, no mileage logs are maintained on the automobile and no analysis could be made concerning efficiency of usage in relation to travel reimbursement. The advantages of leasing were discussed with employees of the Board of Control who indicated that if automobiles were leased, it was only for short periods and that purchasing by the state usually resulted in greater efficiency than leasing. A 1978 Ford LTD station wagon can be purchased by the Board of Control for \$4,750 base price (which includes power brakes and steering) with, at the end of the car's useful life, a re-sale value of approximately \$1,500. For the 1978 lease, payments made by the agency will total \$6,588 with a purchase option at the end of the lease period of \$2,595. If the purchase option is exercised total payment for the automobile will equal \$9,183, or approximately 300 percent of the net cost of a car obtained through Board of Control purchase.

In the area of purchase of services, outside legal counsel is maintained. The terms of the agreement with the legal counsel include a \$300 a month retainer representing two days of working hours; the hours are non-cumulative and excess hours are billed at the rate of \$50 per hour. Over the past three years excess charges have averaged \$1,922 yearly. Since this item of expense is paid from the local fund the requirement placed on appropriated funds, that outside counsel must be approved by the Attorney General prior to expenditures for this purpose, does not apply.

As stated earlier, general office tasks are performed in support of operations in the agency's two basic functions, licensing and enforcement. Each involves

operational processes which were reviewed from the standpoint of administrative efficiency.

Administration of licensing functions represents the largest component of the agency's annual workload, and the particular elements of this function will be examined in greater detail throughout the remainder of this report. Licensing procedures include all tasks associated with examination, license renewal, and reciprocal registration. Examinations are administered at various times during the year. License renewal is on a biennial basis and is carried out between May and July during even-numbered years. This particular effort is scheduled to be computerized, which will eliminate funds used for seasonal and part-time help and provide an even work flow. Applications for examination, internship reports and applications for reciprocity are received and processed on a continuing basis throughout the year. Computer support is used in tracking data relative to the continuing education requirements of each administrator for license renewal. On site inspections are also made during the six month administrator-in-training (AIT) internship to determine if the AIT is actually working in the nursing home. These inspections are made by the executive secretary, who has developed a procedure through which he visits the facility primarily to determine if the AIT training is actually being performed. In reviewing this process it was determined that due to the large number of administrators-in-training and the normal constraints on the executive secretary's time, actual inspections in the facility were limited to approximately 30 minutes and that during the past 18 months no substantive problems had been uncovered as a result of these inspections. In an agency with such a small staff, utilization of time can be of critical importance. The procedure adopted in relation to these inspections does not appear to provide for an efficient use of time. It is doubtful that a 30 minute visit could be expected to disclose the

quality of training being received.

Processes developed for the area of enforcement are not documented or formalized. Therefore, no objective criteria exist for determining whether or not a complaint falls within the Board's jurisdiction. As a result, there does not appear to be a consistent pattern of complaint referral to other agencies, and in some instances, complaints dealing directly with the behavior of an administrator appear to have been inappropriately referred to the Department of Health. Other aspects of the enforcement function will be examined in more detail in Criterion 6.

Funding

Funds necessary to support the activities of the Board are derived from license fees and from application and examination fees. The current fee structure on which these revenues are based is shown in Exhibit I-3. Revenue arising from license fees must be deposited in the State Treasury. However, according to Attorney General's Opinion M-1193, other fees or moneys received by the Board must be deposited in a local fund. The opinion addressed the apparent conflict between Section 3(9) and Section 10 (6). Section 10 (6), enacted in 1969, states:

All fees or other monies received by said board under this law shall be deposited to the account of the board in federally insured accounts and shall be paid out on vouchers duly issued in a manner directed by the board. All monies so received and placed to the account of the board may be used by the board in defraying its expenses in carrying on the provisions of this law. No expenses incurred by said board shall be paid by the State.

Section 3 (9) reads: "All license fees shall be deposited in the state treasury." The Attorney General ruled that the later amendment repealed the older section only to the extent that license fees (as opposed to other fees and moneys) must be deposited in the treasury.

EXHIBIT I-3

Schedule of Current Fees

<u>Licensing</u>	<u>Statutory Limitations</u>	<u>Set by Board</u>
License	\$100	\$80
Renewal (biennial)	100	80
Application & Examination	70	70
Late Renewal	NA	10
Duplicate Licenses	NA	10
Reciprocal Licenses	\$100	\$80

These other funds, not subject to the limitations and restrictions imposed on funds appropriated from the State Treasury, are deposited in a local bank account and expended in a variety of ways. They are used to purchase legal and audit services, automobile lease maintenance and insurance credit card services including gasoline for the leased automobile and printing and office supplies. These funds also pay for a quarterly newsletter and roster. Additional rent, Board and staff travel expense, and purchases of equipment and furniture are occasionally financed from local funds.

Summaries and projections of revenues and expenditures for fiscal years 1973 to 1982 are presented in Exhibit I-4. It should be noted that the variance in revenues stems from biennial license renewal. The projected fund balance indicates that consideration could be given to a fee decrease.

EXHIBIT I-4

Revenues and Expenditures

Fiscal Year	Revenue			Expenditure			Balance	
	Treasury Funds	Local Funds	Total	Treasury Fund	Local Fund	Total		
1973							\$168,500	
1974	\$149,017	\$23,836	\$172,853	\$ 66,234	\$ 9,140	\$75,374	265,979	
1975	18,790	34,285	53,076	85,593	23,809	109,402	242,170	
1976	179,640	11,807	191,447	78,059	23,828	101,887	331,730	
1977	10,615	38,583	49,198	81,529	29,848	111,377	269,551	
			Projections					
1978	190,350	40,250	230,600	90,807	31,638	122,445	377,706	
1979	10,750	42,700	53,450	92,273	33,536	125,809	305,347	
1980	201,771	45,290	247,061	110,728	35,548	146,276	406,132	
1981	11,000	48,020	59,020	151,263	37,681	188,944	276,208	
1982	213,877	50,890	264,767	205,691	39,942	245,633	295,342	

An analysis of revenues and expenditures reflected in Exhibit I-4 shows a general pattern of increase, although the period from 1974 to 1975 reflects that expenditures decreased by seven percent. This was attributable to a marked decrease in the areas of printing, office supplies and postage. In all subsequent periods postage and office supplies did not fluctuate significantly. The printing variation may be partially a result of the printing of rosters.

As shown in more detail in Exhibit I-5, the major item of expense of the agency is personnel costs.

EXHIBIT I-5

Board of Licensure for Nursing Home Administrators
Expenditures for Fiscal Year 1977

<u>Personnel Costs</u>	<u>Amount</u>	
Salaries	\$47,084	.430
Seasonal Help	704	.006
Benefits	<u>6,663</u>	<u>.061</u>
	54,451	.497
	2,450	.020
Travel (Board & Employee)	<u>12,884</u>	<u>.120</u>
	15,334	.14
 <u>Operating Expenses</u>		
Car Insurance	401	.004
Car Repair	647	.006
Legal Fees	5,850	.053
Court Costs	237	.002
Other Professional Fees	2,050	.020
Printing	5,762	.050
Office Supplies	2,836	.030
Postage	2,341	.020
Postage Meter	132	.001
Telephone	4,667	.043
Other Repair	115	.001
Data Processing	362	.003
Office Rent	7,032	.060
Dues Publications & Bonds	2,596	.024
N.A.B. Exams	3,320	.030
Other Expenses	<u>1,426</u>	<u>.010</u>
	<u>39,774</u>	<u>.363</u>
Total	<u>\$109,559</u>	<u>1.00</u>

This pattern is generally typical of other licensing agencies of similar size, with the exception of automobile-related expenses and legal fees.

Summary

The examination of the efficiency of the Board's operations in terms of administration and funding indicates that in the area of administration the Board

members concern themselves with matters of policy and properly leave the day-to-day administrative tasks to the executive secretary. The staff, under the direction of this individual, understand the tasks to be performed and there are general lines of divisions of responsibility.

Within the general office operations performed by the agency there were two areas in which greater efficiencies could be achieved through strengthening the methods used in records management relative to complaints, implementation of additional cash control mechanisms, utilization of the Board of Control for all purchases and the Attorney General for legal counsel services.

In relation to the processes developed for monitoring the ongoing internship requirements of licensees, time devoted to this purpose does not seem efficient particularly in view of the small size of the agency and the need for more attention to enforcement activities relating to complaints.

Funding patterns and allocations were typical of an agency of this size, with the exception of the statutorily created local fund account. Over time this account has caused confusion and needless expenditure of time and effort on the part of the agency and the central accounting authorities of the state. The needs of the agency are not so unusual that a separate fund, exempted from the general restrictions placed on other state funds, is warranted.

Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used can reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files were reviewed to collect and verify selected data presented under this criterion.

In its self-evaluation report, the executive secretary of the agency states:

The objective of the Nursing Home Administrators' Board is to provide a better qualified Nursing Home Administrator each year. These objectives are constantly carried out with additional requirements and education, internships and continuing education programs and Preceptor certificate programs. It is the Agency's belief that through a better qualified Nursing Home Administrator, the better the management of Nursing homes, better patient care for patients and better service rendered to the consumer.

The above-stated objective of providing qualified administrators seems appropriate given the Board's statutorily defined "exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home..." The statute's charge to the agency implies that programs in the areas of administration, licensing and enforcement are to be carried out, and these elements are reflected in the self-evaluation report in the agency director's

statement and in the activities listed under Criterion 2. However, an examination and a comparison of these activities with the seven duties of the Board which are mandated by law, pointed out some areas in which additional efforts could be undertaken to improve agency effectiveness in meeting objectives as stated in the statute.

Article 4442d, V.A.C.S., charges the Board with the responsibility to perform the following seven duties:

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator and standards which must be met by licensees, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators and satisfactorily perform the duties of nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;

(7) conduct or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this Act, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are a sufficient number of courses conducted by others within this State to meet the needs of the State. In lieu thereof the board may approve courses conducted within and without the State as sufficient to meet the education and training requirements of this Act.

The agency's effectiveness in meeting these objectives will be discussed under the three broad headings of administration, licensing and enforcement.

Administration

Three statutory objectives relate to the administrative area of operations. These are 1) to develop and enforce standards to be followed by licensees and applicants, 2) to conduct or cause to be conducted courses of instruction and training sufficient to meet requirements of the enabling law, and 3) to conduct a continuing investigation of nursing homes and administrators with a view to improving licensing standards and enforcement.

Development of Standards

Activities in the area of development and enforcement of standards for licensees and applicants might be expected to include components of pre- and post-licensing educational requirements, as well as basic standards of conduct and performance for licensees. The Board has been active in developing educational requirements and has set out several alternative routes for licensure, depending upon type and length of education and major field of study. These requirements are described in further detail under Criterion 3.

In placing its emphasis on educational standards, however, the Board has not yet undertaken the development of standards for conduct and performance of licensees. A precise definition of the nursing home administrators' duties and roles has not been made and the responsibilities of administrators remain ambiguous. No

code of ethics for licensee behavior exists. Additionally, no mechanisms are currently in place for on-going monitoring of licensee performance.

A second administrative objective is to conduct or cause to be conducted courses of instruction and training sufficient to meet requirements of the enabling law. Toward this end, activities to develop and/or approve both pre- and post-licensing training would be expected.

In the pre-licensing area, the Board has supported the development of junior college associate degree programs in nursing home and long-term health care administration. While it has provided colleges with guidelines for their programs, the Board has not utilized any techniques for evaluation of the quality and effectiveness of the programs offered at various colleges. A profile of the pass-fail rates on Board examination of students graduated from different programs could be useful to the Board as a device to reflect the quality of instruction at different colleges.

Continuing education has received the larger degree of Board attention, and the system for earning needed credits in this area is more complicated. Forty hours of continuing education credit are required every two years as a prerequisite to license renewal. These credits may be earned in four ways: 1) participating in a semester-long community or other college course, 2) attending a short training seminar, 3) teaching a seminar, or 4) attendance at trade association chapter meetings. These training seminars are usually conducted for short periods of several days by trade associations and are frequently held out of the state or country.

It might be expected that Board objectives of upgrading the profession could be effectively served if greater emphasis were placed on weight of classroom hours

in conjunction with sustained periods of study. The Board, however, has developed a system in which all semester-long college courses receive a flat 10-hour credit, although classroom time exceeds 10 hours. Seminar participants receive credit on an hour-for-hour basis, thereby receiving more credit per hour of class time than students in college courses. Moreover, the Board promotes awareness among licensees for seminars by printing a list of approved seminars in its newsletter. It does not do so for semester-long college courses for which continuing education credit may be earned.

Allowing continuing education credit for teaching seminars is one way to make teaching them attractive and to ensure that courses are offered. However, one might expect a mechanism to be developed to ensure that such teachers earn a portion of their continuing education credit as students who are themselves learning new concepts and techniques.

An additional expectation of an effective continuing education requirement could be a stipulation that credit be given and courses encouraged to be offered in all areas relevant to the duties of nursing home administrators. The Board has approved four areas of study for which continuing education credit is granted; financial management, management theory, patient care and supplemental update. (The last category is a miscellaneous one in which national association workshops, gerontological society meetings, and courses on inflation control, employment of the handicapped and related subjects are offered.)

Limits are placed on the amount of credit an individual may earn in a single area of course work. However, the agency has not encouraged formulation of or required participation in courses on ethics or standards of administrator performance. Such courses might serve to increase or reinforce administrator awareness of implicit ethical responsibilities.

The third objective in this area relates to conducting a continuing study and investigation of nursing homes and administrators aimed at improving licensing standards and enforcement procedures and methods. The agency has undertaken no activities in this area to date.

One survey for which the Board handled licensee mailings and a trade association compiled the information was made under Texas Nursing Home Association auspices in 1976. Instead of upgrading licensing standards, however, the recommendation generated from this study suggested dropping the requirement for an associate degree and using the 200-hour course and Administrator-in-Training program in its place.

It should be noted that the only regular on-going statistical analysis of nursing home administrators in the state is performed by the Health Department. In addition to being useful in improving licensing standards and enforcement procedures and methods, such information could be a useful management tool for the agency head.

Licensing

The agency is charged with developing and applying appropriate techniques to determine whether an individual meets occupational standards and to issue licenses to persons who meet such standards. Qualifications for licensure would be expected to include both initial and on-going standards. Board emphasis, however, has been on initial requirements and in particular on examination and education. Continuing education requirements are in place and are covered in the Development of Standards section, above.

Testing

Applicants for licensure must pass three Board-administered examinations: 1) the National Association of Board's (NAB) exam, 2) the Texas Standards exam, and

3) a Board-administered oral "Suitability Examination." The Standards test, based on requirements of the Health Department and the Human Resources Department, is re-formulated by a psychometrician following each exam session.

One test of the effectiveness of examinations is considered to be the usefulness of the exam in screening unqualified applicants, as judged by the pass-fail rate. Information on this topic is presented in Exhibit II-1.

EXHIBIT II-1

Number and Percentage of Persons Passing the Standards and NAB Examinations for Calendar Years 1975 to 1978

		Standards Test		NAB Examination	
		Number	Percent	Number	Percent
1975	Pass	372	91	320	84
	Fail	36	9	61	16
	Total	408	100	381	100
1976	Pass	240	73	127	94
	Fail	89	27	8	6
	Total	329	100	135	100
1977	Pass	156	72	179	82
	Fail	60	28	39	18
	Total	216	100	218	100
1978	Pass	84	73	81	91
	Fail	31	27	8	9
	Total	115	100	89	100

This exhibit indicates that the pass rate for persons taking the NAB exam in the past three years is at least 10 percentage points higher than for the standards examination. Therefore, it would seem that the standards exam is the more effective device for screening applicants. While the subject matter covered by the two examinations is different, one individual psychometrician is responsible for developing both tests. It is conceivable that this person could incorporate more

challenging questions about topics covered on the NAB test into the Texas standards exam, thereby creating a single more effective device for screening applicants.

If it were deemed advisable to continue the use of two examinations, another alternative to the current arrangement exists. Another national examination, the Professional Examination Service (PES) exam is used by 15 other states as a licensing examination. The U.S. Department of Health, Education and Welfare (HEW) contracted with this company to create the examination, which is periodically reviewed and updated. Officials at HEW report that this is a considerably more stringent and comprehensive examination which tends to be used by states with high standards.

Education

An effective set of educational requirements could be expected to indicate courses of study which would allow adequate preparation of students for their future occupations. A clear connection between requirements and needed expertise could also be anticipated.

Actual Board requirements for education and training are shown in Criterion 3, Exhibit III-2. These rules make no consistent allowance for the substitution of education for experience in the field. This inconsistency could lead to a situation in which a person holding a master's degree in health care administration may be required to fulfill more special training requirements than a person holding an associate degree in long-term health care administration. At the master's degree level, persons with degrees in long-term health care administration have fewer requirements than persons with degrees in health care administration. The latter may be required by the Board to complete a six-month AIT internship, in addition

to the internship required for the degree, and additional special training or experience designated.

The Board objective of providing adequate educational and training requirements to ensure a standard quality of education among administrators may be achieved in a more effective manner.

One measure of effective implementation of an educational program would be an increase in the overall level of licensee education. While statistics are not available for periods prior to implementation of the Texas licensing law, regional statistics show that 31.7 percent of the nursing home administrators in the south in 1969 had a high school education. Figures on Texas administrators in 1977, eight years following the onset of licensing, show that 40 percent of all administrators have completed high school; 37 percent have had some college training.

These figures suggest that some gains have been made in this area which may be attributable to licensing laws. The Board had developed a timetable for increasing licensing requirements to the point that a master's degree would be required by 1980. Because of problems in meeting the need for an adequate supply of administrators, however, the Board has been unable to implement the scheduled increases in licensing requirements.

Enforcement

The Board is empowered to establish and carry out procedures to ensure compliance with the enabling statute, and to receive, investigate and take disciplinary action on complaints. To ensure compliance, an on-going monitoring activity could be expected to be performed. The Board has formulated no such plan for licensees, but does conduct routine investigations of administrators-in-training. These persons are serving an apprenticeship under the supervision of preceptors. The latter includes licensees who have attended preceptor training seminars and

received an additional Board-issued preceptor's certificate. The Board's enforcement activity involves a single unannounced visit during the six-month training period. This visit, which takes about 30 minutes, is conducted by the executive secretary. It would appear that either an effective preceptor training program, or an effective enforcement activity, could meet objectives in this area.

The bulk of Board enforcement activities, then, are not aimed at licensed administrators. However, the need for more stringent enforcement of post-licensing standards is apparent, given the role of the administrator in the area of long-term health care.

The lack of specific ethical and performance standards for licensees would lead to the conclusion that administrator performance cannot be directly addressed or assessed, given current enforcement efforts. This lack of a clear definition of administrator duties and responsibilities makes the achievement of the Board's enforcement objective unnecessarily difficult. Effectiveness of activities in this area is more thoroughly discussed under Criterion 6.

Summary

The agency has developed educational standards and requirements for applicants for licensure which have raised overall licensee educational levels. It has, however, developed no standards for licensee performance or ethics and has no monitoring or enforcement functions which could be expected to identify potential licensee deficiencies. The statutorily required mechanism to conduct continuing studies of administrators and nursing homes to improve standards and methods of enforcement has not been implemented.

Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) significant effects of this regulation on the public and the industry; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

In general, an analysis of more or less restrictive methods of regulation of an occupation may center on both pre- and post-licensing requirements. Any barriers to entry into an occupation, any standards of conduct for licensees and any enforcement sanctions against licensees can be considered as restrictive. These barriers would include any requirements for licensure such as defined levels of education, periods of internship or experience, payment of fees, personal characteristics and examination.

Subsequent to licensing, requirements may center on adherence to a prescribed standard of conduct and achievement of continuing education. Enforcement sanctions against licensees would include license revocation or suspension and, perhaps, civil penalties for violation of any pertinent rules.

Very few changes have been made in the Nursing Home Administrators Licensure Act since its enactment in 1969. In general, those changes reflect a shift towards more restrictive regulation. A brief summary of the changes is presented below.

Board Accountability

In 1971, the Sixty-second Legislature changed the composition of the Board by decreasing nursing home administrator representation to less than a majority, thereby bringing the Board into compliance with federal requirements. Under this change nursing home administrator representation was reduced from 56 percent to 50 percent. This attempt at a more equitable balance did not involve inclusion of consumer representation. Currently, a majority of the boards regulating nursing home administrators in the United States have one or more public members.

Another change made by the Sixty-second Legislature deleted the requirement that initial appointees to the Board be certified by the Director of Nursing and Convalescent Homes of the Health Department . It is interesting to note that at the time of enactment of the Nursing Home Administrators Act there existed a mechanism for certifying nursing home administrators.

The Sixty-second Legislature further changed the statute to specify that all license fees be deposited in the State Treasury. However, the Board was allowed to maintain a local fund account for revenues from application fees received.

Licensee Accountability

The Sixty- fourth Legislature amended the Act to broaden the regulatory purview of the agency by adding gross negligence as a ground for disciplinary action and by allowing the Board to consider the non-compliance of a nursing home with Department of Health regulations as a factor in determining the compliance of the administrator with the applicable standards for licensure. While the term "gross negligence" has been rather narrowly defined by the courts in some instances, the definition of this term is still broad enough to include many offenses not covered previously by the statute.

As the state agency responsible for the licensing and inspection of nursing

homes, the Texas Department of Health is a potentially valuable source of information on the activities of nursing home administrators. The Board was given the prerogative to determine what use, if any, would be made of information available to the Board from the Health Department. Under this provision it became possible, using Health Department reports and investigations, to identify those administrators not performing according to Board standards.

A more detailed description of the legislative changes is reflected in Exhibit III-1.

Less Restrictive Methods

Theoretically, any regulatory agency must operate under the constraints of providing free entry into the occupation and of ensuring the desired level of competence of licensees. Within legislative parameters, the agency has discretionary power to regulate the supply of licensees through the mechanism of licensing requirements.

An effective licensing function would be expected to result in an increase in the level of quality required for licensing, with the concurrent result of having a smaller number of people with the required qualifications. These results would be expected to operate to protect the health and well-being of the public. An indirect result of licensing, however, is an income re-distribution towards those persons obtaining an occupational license.

In the case of nursing home administrators, the demand for services of the occupation is largely constrained by government regulation of the occupation and industry. While the cost of services may vary with the supply of licensed administrators, there is no indication that any cost savings resulting from a large supply of labor would be passed on to the consumer.

EXHIBIT III-1

Changes in Board's Statute 1969-1977

Year	Licensing	Enforcement	Administration
1969	<p><u>Requirements:</u> Age 21, U.S. Citizen, high school graduate, good moral character, sound physical and mental health, must have completed course of training and instruction, and must pass examination.</p> <p><u>Renewal:</u> - Granted biennially as a matter of course.</p> <p><u>Fees:</u> - Application for exam - \$35 - License fee - not to exceed \$100 - Biennial renewal fee - not to exceed \$100</p>	<p><u>Regulation of:</u> Nursing Home Administrators</p> <p><u>Prohibitions:</u> 1. Willful or repeated violations of provisions of act or adopted rules. 2. Acting in a manner inconsistent with health and safety of patients. 3. Fraud in securing license. 4. Intemperate use of alcohol or drugs. 5. Certified insanity. 6. Conviction involving moral turpitude.</p> <p><u>Sanctions:</u> - Suspension or revocation of license. - Misdemeanor for unlicensed administrators to practice.</p>	<p><u>Composition:</u> - 9 members: 5 nursing home administrators, 1 physician, 1 educator, Commissioner of Public Health, Commissioner of Welfare. - Appointed by Governor following consultation with trade associations. - 3 year appointments.</p> <p><u>Board Responsibilities:</u> - To develop, impose and enforce standards. - To determine whether standards are met. - To develop, conduct and approve education. - To use enforcement powers as needed. - To conduct continuing study and investigation of licensees and nursing homes to improve licensing standards and procedures, and methods of enforcement.</p> <p><u>Revenue:</u> All fees or other monies deposited in local fund.</p>

EXHIBIT III-1
(cont.)

Year	Licensing	Enforcement	Administration
1971	<u>Fees:</u> Application fees increased to \$70.		<u>Board Composition:</u> - Board reduced to 8 members: 4 nursing home administrators, 1 physician, 1 educator, Health and Welfare Department Commissioners. - Terms expanded to 6 years. <u>Revenue:</u> All license fees deposited in State Treasury.
1973	<u>Fees:</u> - All fees waived for certain state employees. - Staggered renewal dates allowed.		
1975		<u>Prohibitions:</u> - Gross negligence clause added. - Non-compliance of nursing home with Department of Health requirements may be considered determinant of whether licensee meets standards for licensing.	

When the supply of nursing home administrators is modified, varied economic outcomes can be expected to occur, assuming a relatively constant demand. If licensing restrictions are lowered, the supply would be expected to increase, and the cost of nursing home administrator services (labor) would be expected to decline, resulting in benefits to the industry, detriments to those in the occupation (through lower salaries), and only an indirect impact on the public. If licensing restrictions are increased, the supply of administrators could be expected to decrease, and the cost of labor could be expected to rise. In such a case, industry profits would decline, income would be re-distributed to those with licenses, and the impact on the public would, again, be indirect.

One would expect the public to be better protected if the supply of administrators is restricted to highly qualified and competent individuals. This actual, indirect outcome would likely be affected by the number of persons licensed prior to the increased restrictions. The degree of public protection afforded by increased licensing restrictions would also be affected by other factors such as the extent of effective enforcement of relevant standards subsequent to licensing.

An examination of less restrictive methods of regulating nursing home administrators should consider the position of the administrator in terms of the importance of safeguarding the health and well-being of nursing home residents and the fact that more restrictive measures may well be the best means of protecting the public.

Regulation of nursing home administrators is carried out in all 50 states and presents a wide range of possible methods of regulation. In many cases the degree of restriction is within the discretionary power of the licensing agency. In Texas, for example, the Board has the power to determine and set standards for licensure within rather broad legislative guidelines through the promulgation of rules and

regulations. Alternative methods of regulation are presented below under the broad headings of education, internship and enforcement.

Education

In other states, educational requirements for licensure range from a high school diploma to a bachelor's degree with an additional 100 hours of relevant education. In Texas, various combinations of education and experience are accepted. A synopsis of Texas requirements is presented in Exhibit III-2.

While the Texas Board has moved towards establishment of an associate degree as the minimum requirement, an alternate route has been left open for those individuals who do not hold an associate degree. Those persons licensed without an associate degree must obtain at least 60 hours of academic credit within four years after receiving a license.

This flexibility contrasts with more rigid pre-licensing educational requirements in many other states. Four states do not allow licensing of persons who do not hold a bachelor's degree. Twenty-five others require an associate degree prior to licensing, as opposed to Texans, who have up to four years after licensing in which to fulfill that requirement. It would appear that the flexibility in educational requirements set forth by the Texas Board is less restrictive than that found in these other states.

After licensing, the Texas Board requires 20 hours of continuing education annually as a prerequisite for license renewal. In other states this requirement varies from no required continuing education to 50 hours required annually. Thirteen states have requirements greater than those in Texas; 26 states have fewer requirements. While the value of continuing education in increasing administrator expertise cannot be determined, it would appear that the Texas Board has opted for

EXHIBIT III-2

Synopsis of Requirements

	6 Month Internship	Recommended 200 Hr. Course	Required 200 Hr. Course	Exams	Special
Masters Degree - Long Term Health Care Adm.				X	
Masters Degree - Health Care Adm.	May be Required			X	(1)
Bachelors Degree - Long Term Health Care - with Internship	X	X		X	
Bachelors Degree in Related Field	X	X		X	
Bachelors in anything or 90 or more hours of academic credit	X		X	X	
Less than 60 hours of academic credit	X		X	X	(2)
Associate Degree - Long Term Health Care or its equivalent	X	X		X	
Prior July 1, 1975 Program					Continue from old program

(1) Special Training or experience as determined by Board.

(2) Attain at least 60 hours of academic credit of which 36 hours must be in Long Term Health Care Administration or related. Minimum rate of 12 hours academic credit per year. Four years will be maximum time to attain the required hours.

regulations which are more time-consuming and restrictive than those found in many other states. Moreover, the additional record-keeping required under this activity increases agency operational costs.

Internship

The internship period required by different states varies from none to two years. In Texas, a six-month internship is required of licensees, either as degree candidates in conjunction with their programs of study or as an administrator-in-training. Only those licensees with a master's degree in Long Term Health Care are exempted from this training requirement. Most individuals in Texas prefer the administrator-in-training internship. The most plausible explanation for this fact seems to be that administrators-in-training are paid while serving their internships. Although it can be argued that an administrator-in-training program provides a ready source of relatively low-cost labor for nursing homes, it can also provide an economically feasible means of entry into the field for some individuals who can work while completing academic requirements.

However, requiring an **internship for both a bachelor's and associate degree candidate** in the long term care field would not appear to give consideration to the additional education required for the bachelor's degree and could be considered both unnecessarily restrictive and counter productive to the upgrading of educational skills of licensees.

Enforcement

Civil penalties in Texas are limited to those affecting unlicensed individuals acting as administrators, making such action a misdemeanor punishable by imprisonment, fine or both. By contrast, in California, an operator of a skilled nursing facility or intermediate care facility is subject to criminal prosecution for willful or repeated violations of the Health and Safety code.

While economic sanctions, such as revocation of licenses, are used by many states to deter some potential abuse by nursing home administrators, other states have adopted more stringent penalties to protect the public from willful or repeated violations of health and safety standards.

Summary

Within the framework of federal requirements, the state has discretionary power to increase restrictive regulation over licensees. Given the importance of the nursing home administrator in terms of safeguarding the health and well-being of nursing home residents, more restrictive measures may well be the best means of protecting the public. However, one area of restrictiveness that, on the surface, seems to have little justification given the objectives of the agency, is the higher education requirement coupled with an additional apprenticeship in some fields.

Changes in the Board's enabling statute since its enactment in 1969 reflect a shift toward somewhat more restrictive regulation. In comparison with other states, however, Texas appears to fall within the middle range of the possible continuum of regulatory methods.

Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluating the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected through discussions with agency personnel, review of statutes and rules, and the identification of other agencies with the potential ability to offer these same services.

Regulatory Jurisdiction

The Board of Licensure for Nursing Home Administrators has the responsibility, as mandated by Article 4442d V.A.C.S., of regulating the occupation of nursing home administration. Thus, the agency's specific target population is licensed nursing home administrators in the State of Texas. The agency's implicit target population includes all potential licensees as well as those who are directly affected by the operations of the agency. This group would include students, applicants for reciprocal licensing, and interns.

Currently state law divides responsibilities for major aspects of regulation of nursing homes between the Department of Human Resources, the Department of

Health and the Board of Licensure for Nursing Home Administrators, as presented in Exhibit IV-1. Each agency, in carrying out its responsibilities, touches on areas related to the nursing home administrator.

In general, the Department of Human Resources and the Department of Health, through promulgation of detailed specifications for nursing homes concerning the physical plant requirements, staffing patterns, personnel qualifications, sanitation and dietary standards, implicitly determine the nature of the nursing home administrator's duties and concerns. While the two agencies share the function of setting standards, other aspects of nursing home regulation are unique (but still closely related) to each agency.

The Department of Human Resources, as the agency which administers the Medicaid (Title XIX) program, is responsible for certification of nursing homes which receive Medicaid funds and reimbursement for the provision of nursing care services. Nursing home standards promulgated by the Department of Human Resources are a direct reflection of Title XIX requirements. Currently, the Department of Health, under a contractual arrangement with the Department of Human Resources (DHR), performs initial certification and routine compliance investigation services subject to DHR requirements. The effect of this contractual arrangement between the two agencies has been a less fragmented regulation of the nursing home industry.

The Department of Health licenses nursing homes, setting minimum standards for facilities and personnel, performing inspections and holding public meetings to determine compliance with requirements. The Department also receives and investigates all complaints pertaining to nursing homes. Additionally, the Department of Health, as part of its contractual responsibilities to DHR, performs most of the medical and quality of care functions related to long-term care in the

EXHIBIT IV-1
Agency Comparison

	Department of Health	Department of Human Resources	Board of Licensure for Nursing Home Administrators
<u>Functions</u>	Licenses and Regulates nursing homes, maintenance of complaint registry, set minimum standards	Medicaid funds administration, sets standards based on HEW requirements, determines recipient eligibility	Licenses and regulates administrators
<u>Regulations</u>	Physical plant, sanitation, dietary, personnel, staffing patterns	same as Health Dept.	None for day to day activity, disciplinary grounds and licensing requirements
<u>Sanctions</u>	Facility license revocation	Vendor held on Medicaid funds, or cancellation of contract	License suspension or revocation
<u>Use of Sanctions</u>	FY 1976 FY 1977 FY 1978	23 Contract cancellations* 28 Contract cancellations 20 Contract cancellations	No licenses revoked No licenses revoked 1 license revoked

*Only one nursing home license has been revoked in this time, contract cancellation is regarded as an effective sanction.

state and reports to DHR instances of non-compliance with DHR requirements. DHR may then withhold Medicaid funds through a process called vendor-hold on funds or by cancellation of the nursing home contract from the nursing home until the deficiencies are corrected.

In general, the two agencies responsible for major aspects of regulation and funding of nursing home care implicitly determine the nature of nursing home administrator duties and provide an indirect measure of administrator performance. Moreover, the Department of Health has formulated standards pertaining directly to administrator conduct which are, in many cases, more stringent than the Board of Licensure standards. Included in the Department regulations are the requirements that the administrator "be of good moral character, be financially responsible, and have physical and mental capability to conduct the operations of the facility pursuant to standards, rules, and regulations adopted by the Texas Board of Health Resources." "Habitual drunkenness, addiction to narcotics, disorderly conduct, or the violation of any law involving moral turpitude" on the part of the administrator constitute grounds for withholding or revoking the facility state license. At the behest of the Department, the administrator may be required to secure an examination by a physician for both physical and mental debility. Moreover, the governing body of the facility must delegate to the administrator in writing full authority for the internal operation of the facility, and the facility license must be issued in the name of the administrator.

The Board of Licensure for Nursing Home Administrators does not address the issue of financial responsibility, and requirements for mental and physical health are limited to pre-licensure qualifications.

An integral part of any regulatory function is enforcement sanctions against violation of regulations; therefore, the effectiveness of regulation is, theoretically,

dependent upon the type of sanction imposed. If a nursing home administrator commits a serious violation of Department of Health regulations, technically there could be a three-fold effect--the Department of Health could revoke the facility license and, thus, its funding from the Department of Human Resources would be forfeited, and the administrator could be subject to civil penalties, as provided in Article 4442c V.A.C.S.

The Department of Health maintains a large investigatory staff for routine and complaint investigations and has established a central registry of complaints. Moreover, all nursing home personnel are required to sign a statement acknowledging criminal liability for failure to report abuses. This constitutes an additional area of overlap to the extent that deficiencies and abuses found in the home involve the administrator. Formal recognition was given this overlapping relationship when Article 4442d, V.A.C.S., was amended to allow the Board to consider Department of Health information pertaining to conditions found in the home as a determinant of the administrator's qualification for licensure.

Areas of cooperation between the two agencies include the use of Department of Health investigation reports in complaint hearings before the Board and in monitoring the activities of administrators placed on probation by the Board. Additionally, reports of the licensing status of administrators and facilities are exchanged between the two agencies.

It would appear, therefore, that the Department of Health has regulatory jurisdiction over the administrator in terms of individual qualifications, indirect performance evaluation and sanctions against violation of regulations. The performance of this function by the Department of Health appears to be a logical extension of the Department's role as the state agency regulating nursing homes.

Consolidation Potential

Since an autonomous Board of Licensure for Nursing Home Administrators is required by federal statute, no consideration will be given to complete abolishment. However, it should be noted that only 24 other states maintain an independent agency structure like the one found in Texas. The majority of the 26 other states have all administrative support functions (fiscal, clerical, data-processing and investigatory) provided to the regulatory Board by another agency, with the Board paying its pro rata share of expenses to the provider agency. In at least five other states, one or more services are provided to the regulatory Board through inter-agency contracts. The single most often used agency for this purpose is the Health Department.

One alternative which would maintain Board autonomy and still provide an efficient and effective method of regulation would be inter-agency contracts between the Board and the Department of Health, somewhat analogous to the arrangement with DHR. It would appear that the Board's enforcement function, particularly, could be strengthened through the use of the Department of Health investigative services. This would also lessen the amount of duplicative regulation by consolidation of the two functions in one agency.

Another alternative would be to place all administrative functions of the Board within the Department of Health including complete fiscal, investigatory and clerical support. Thirteen other states maintain this arrangement. If properly implemented, this option could have the effect of reducing costs due to the economies of scale found in larger organizations and of effectuating a more coordinated regulatory effort.

A third possible alternative also exists. Consolidation of all regulatory authority over administrators within the Board of Licensure could have the effect

of strengthening regulation. However, this action would run counter to the trend toward a less fragmented approach to regulation of the nursing home industry as a whole.

Summary

Since, by statute, the Health Department is required to regulate nursing home personnel and the Board of Licensure of Nursing Home Administrators is required to regulate nursing home administrators, both have promulgated rules and regulations for nursing home administrators. One result of this dual mandate is a duplication of regulatory effort. Although both have authority to regulate, the lack of clearly defined responsibilities may result in situations where each agency may hesitate to act on a matter which may be perceived as more "properly" a jurisdictional matter for the other. The degree of duplication and overlap between the Department of Health and the Board of Licensure for Nursing Home Administrators is such that the need for a less fragmented, more holistic, approach is evident. The feasibility of some degree of consolidation is also apparent when consideration is given to already existing Department of Health resources and functions.

Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on statutory changes which affect the operations of the agency. In the period covering the last three legislative sessions, the review focused on both proposed and adopted changes in the law; prior to that period, the staff review was limited to only adopted changes. In analyzing these changes, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

Review of the agency records showed that the Board has not proposed any legislation during the past three legislative sessions. Neither has it taken a stand for or against proposed amendments to the Board's enabling Act. It did, however, develop an agency position on several bills that were principally related to interests of nursing home owners and managers. Information on proposed legislation for the Sixty-third, Sixty-fourth and Sixty-fifth sessions is shown in Exhibit 5-1.

The Board's position on these proposed laws is documented in agency minutes. From information presented in the minutes, it was noted that the customary way for the Board's opinion to be translated into action has been for the agency to notify the Texas Nursing Home Association (TNHA), whose lobbyists could be used to influence legislative outcomes. While TNHA did not always support Board positions, lobbyists for that organization did work to ensure that the position advocated by the Board was heard. Another approach used in at least some instances was for all Board members to write legislators who were members of

EXHIBIT V-1

Tabular Synopsis of Proposed Legislative Changes

Session	Bill	Proposed Changes	Action
63rd	S.B. 177	Allowed licensing fee waivers for certain state employees acting as nursing home administrators. <u>No stand taken by Board.</u>	Adopted
64th	H.B. 1661	Changed Board composition to add a citizen member aged 60 years or older and reduced nursing home administrator members to three. <u>Opposed by Board.</u>	Failed
	S.B. 924	Added "gross negligence" as grounds for license revocation; added failure of nursing home to comply with Health Department standards as grounds for refusal to renew license. <u>No stand taken by Board.</u>	Adopted
65th	H.B. 938	Sunset legislation. <u>Opposed by Board.</u>	Adopted as S.B. 54
	H.B. 981	Prohibited use of criminal convictions to bar licensing and employment of ex-offenders. <u>Supported by Board.</u>	Failed
	H.B. 1446	Empowered governor to appoint all executive heads of agencies. <u>Opposed by Board.</u>	Failed
	H.B. 1525	Required cost and expense reports from nursing care facilities to be submitted to DHR before payment of medical assistance funds would be made. <u>Opposed by Board.</u>	Failed
	S.B. 154	Established penalties for obtaining welfare benefits and certain welfare information by fraudulent means. <u>Opposed by Board.</u>	Adopted
	S.B. 608	Required semi-annual meetings at all nursing homes to discuss conditions. <u>Opposed by Board.</u>	Failed

EXHIBIT V-1
(cont.)

Session	Bill	Proposed Changes	Action
	S.B. 665	Related to licensing of child care administrators at facilities for the mentally retarded as nursing home administrators. <u>Opposed by Board.</u>	Failed
	S.B. 906	Required inspections and investigations of nursing homes to be conducted with findings posted publicly on premises. <u>Opposed by Board.</u>	Failed

committees reviewing the bills in question.

Analysis by Session

During the Sixty-third session, one piece of legislation relating to nursing home administrator licensing was proposed.

Senate Bill 61. The Board took no stand on this bill, which was adopted by the legislature. This act allowed waiver of licensing fees for state employees acting as nursing home administrators.

The following pieces of legislation were introduced during the Sixty-fourth session.

House Bill 1661. This bill was opposed by the Board and was not adopted. The bill would have replaced one nursing home administrator on the Board with a senior citizen member. By adding to the Board a member of the general public who would be expected to have insight into the problems of old age and declining health, the legislature would have provided a mechanism for regular consumer input into Board decisions.

Senate Bill 924. Although the Board took no stand on this bill, it was enacted by the legislature. It amended the Board's enabling statute to include additional grounds for license revocation, suspension or non-renewal. Proof that a licensee had been grossly negligent in his duties as a nursing home administrator became grounds for disciplinary action. Failure of a nursing home to comply with Department of Health requirements for licensure of nursing homes could be considered by the Board in renewal of licenses. Because of the law's potential to increase licensee accountability to the Board and the general public, and although the Board took no position on its passage, this legislation could be considered to be in the interest of the public.

The following bills were introduced during the Sixty-fifth Legislative session.

House Bill 938. This bill was not adopted, however Sunset legislation was passed in the form of S.B. 54. The Board opposed this bill.

House Bill 981. The Board supported this legislation, which did not pass. Under this law, the use of criminal convictions as a basis for denying licensing and employment of ex-offenders would be prohibited.

House Bill 1446. This bill, opposed by the Board and failed at enactment, would have required the Governor to appoint all executive heads of state agencies.

House Bill 1525. Opposed by the Board (and one of the state's two nursing home associations), this bill failed at enactment. It would have required cost and expense reports to be submitted by nursing homes to the state agency handling payment of medical assistance funds prior to actual payment of those moneys. In addition, before setting the maximum permissible fees and rates for assistance payments, the department would have been required to conduct a cost study and analysis of nursing homes to determine reasonable costs and expenses incurred under prudent management for providing services consistent with minimum standards. The existence of this standard of reasonable costs would have allowed a desk audit to be made of a given establishment's costs relative to other homes' costs, thus giving an indication of quality of care delivered.

Senate Bill 154. This law, opposed by the agency, was adopted. It established penalties for obtaining welfare benefits and certain welfare information by fraudulent means.

Senate Bill 608. The agency opposed this bill, which failed at enactment. Under this law, semi-annual meetings of all interested persons for the purpose of discussing conditions at all nursing homes would have been required.

Senate Bill 665. This bill was opposed by the Board and was not enacted. The bill called for licensing as nursing home administrators, qualified persons licensed

as child care administrators by child care facilities for the mentally retarded. This became a concern because of standards promulgated under the Child Care Licensing Act which required some facilities to become nursing homes accredited as intermediate care facilities for the mentally retarded.

Senate Bill 906. The Board opposed this bill and which did not pass. It would have required regular inspections and investigations of nursing homes to be conducted, with findings posted publicly. This measure would have given consumers an added indicator to determine quality of care provided and would have given nursing home administrators an incentive to improve problem areas.

Summary

The agency has not been active in recommending or taking a position on legislative changes that directly affect agency operations. Board stance on several bills seems to favor a limitation on additional governmental involvement in and regulation of the activities of nursing homes in several areas of operation. The Board position on some bills appears to be in opposition to increased licensee or Board accountability to the general public.

Criterion 6

The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained through interviewing agency staff, examining complaint files, information supplied by the agency on complaints, and analyzing data presented in the agency's self-evaluation report.

Procedures for Handling Complaints

The procedure for handling complaints received by the Board is diagrammed in Exhibit VI-1.

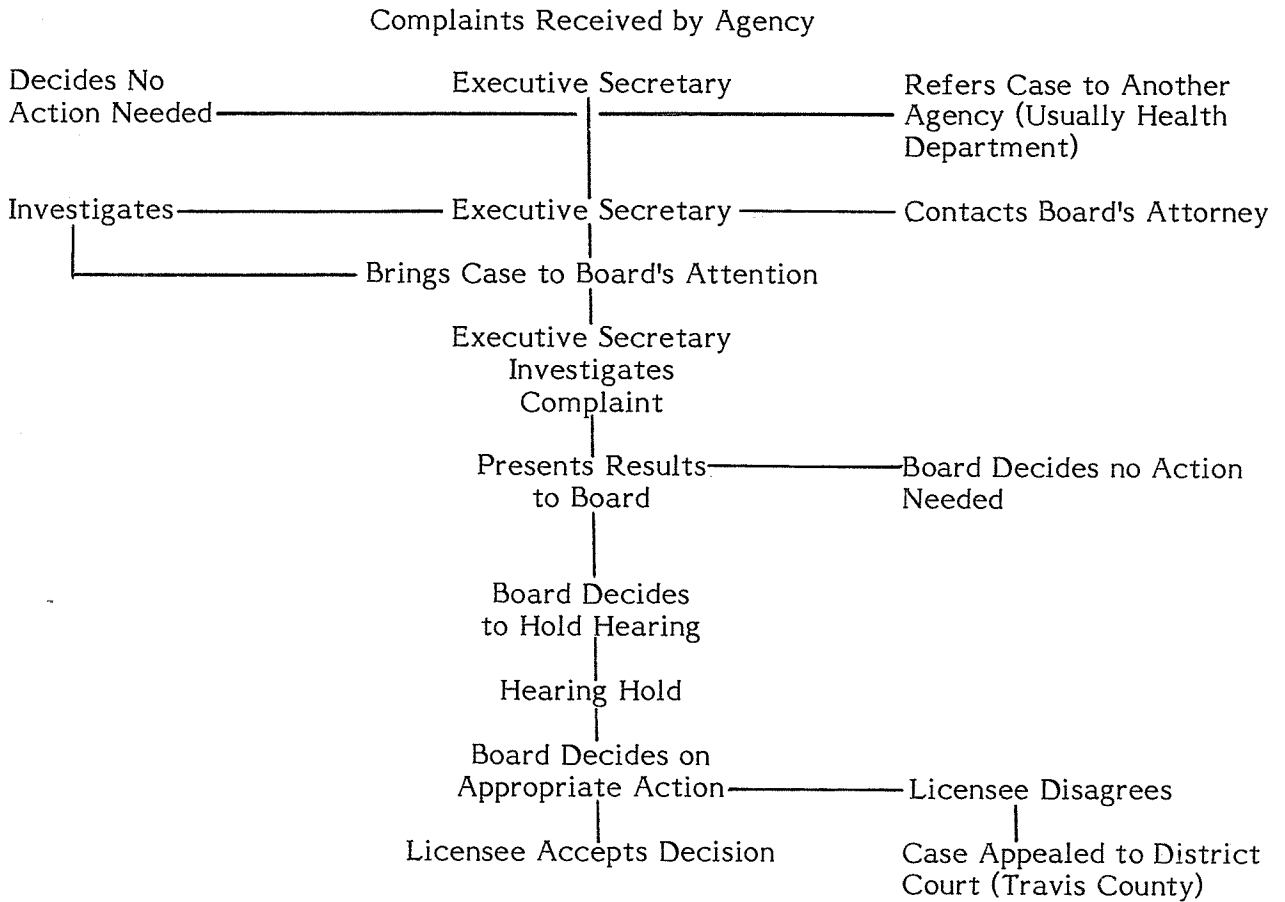
Personnel and Their Functions

As shown in this chart, the coordinator of complaint investigations is the executive secretary. The executive secretary presents both oral and written information to Board members at several steps in the process, is responsible for all correspondence relative to complaints, and performs investigations of complaints. Because the agency has developed no written procedural requirements for investigating and documenting evidence, the executive secretary's constant attention is needed to ensure thorough and objective investigations, proper documentation and maintenance of complaint files.

The performance of these tasks has not been accomplished in a consistently vigilant manner. One reason for conflicting figures on the number of complaints received, as shown in Exhibit VI-2, appears to be the absence of an effective and

EXHIBIT VI-1

Procedure for Handling Complaints



consistent filing procedure. Many files were incomplete. In many instances it was difficult or impossible to determine from documents maintained whether the Board had corresponded with the complainant or the complaining party, whether an investigation had occurred, whether the complaint had been brought to the Board's attention, or whether the Board had taken final action on a case. Complete working files on complaints would be useful to the agency head as a management tool in setting performance goals and developing time schedules. These files could also assist the Board in developing a consistent procedure for processing complaints and dealing with violators.

EXHIBIT VI-2

Number of Complaints

	Complaints In Minutes	Complaints In File	Complaints In Both
FY 1975	2	2	0
FY 1976	5	4	1
FY 1977	6	11	4

A review of the investigations performed by the executive secretary raised questions as to the effectiveness of investigative procedures in obtaining necessary information. In many cases outside sources were not used to corroborate potentially self-serving statements made by the administrator involved in the complaint.

In one instance, a patient allegedly had to be hospitalized for treatment of malnourishment. During the course of the investigation, apparently no attempt was made to verify this information with the hospital. In other cases the investigation

consisted solely of an interview with the administrator.

The lack of thoroughness often found in investigative procedures could be a result of the fact that the executive secretary is not a trained investigator. The Board is aware of the need for improvement in this area and has discussed on several occasions the need for a trained investigator. However, it is evidently felt that necessary funding is not available for a full-time staff member. One solution to this difficulty would be a contractual arrangement with the Department of Health for the provision of investigative services on an as-needed basis.

A second person crucial to proper handling of complaints and hearings is the Board attorney. Members of the Board and the executive secretary rely heavily on the attorney for advice on all facets of the complaint process. Board minutes and agency files reflect an active participation by legal counsel in discussions of complaints and sanctions.

Types and Frequency of Complaints

The incomplete nature of material maintained in agency complaint files made a thorough analysis of specific complaints impossible. The bulk of the analysis of the material presented in this section was derived from information gathered from Board minutes, other agencies, and the complaint file.

The material presented in Exhibit VI-2 indicates discrepancies between information found in the complaint file and in the Board minutes. For the past three fiscal years, of 17 complaints found in the file only five were presented to the Board for resolution. Of those five complaints, three involved criminal prosecution of the administrator and were referred to the agency from other state agencies.

Of those complaints available for review, the two most common types appear

to be patient abuse and malfeasance on the part of administrators. Malfeasance involves some mis-use of patient funds including embezzlement. Types of complaints received are summarized in Exhibit VI-3.

EXHIBIT VI-3

Type of Complaint

Type of Complaint	1975		1976		1977	
	From Complaint File	From Board Minutes	From Complaint File	From Board Minutes	From Complaint File	From Board Minutes
Misconduct	1		1		4	1
Patient Abuse		1	2	3		1
Patient Care	1		1	1	3	
Malfeasance				1	3	2
Felony Conviction	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{4}$	$\frac{1}{5}$	$\frac{1}{11}$	$\frac{2}{6}$

Board Action

The Board has statutory authority to revoke, suspend, or refuse to renew licenses after due notice and hearing. Results of Board action on complaints is presented in Exhibit VI-4. On those occasions when a license suspension has been probated, the Board has directed the executive secretary to review periodically the activities of the administrators on probation. This review is not done through on site visits by the executive secretary but is carried out through a review of Department of Health reports for information concerning the administrators. The usefulness of this type of review is doubtful as two administrators on probation were later indicted for falsification of personnel records and for patient abuse.

EXHIBIT VI-4

Board Action 1975 - 1978

Action

Type of Complaint	None	Voluntary License Surrender	License Suspension*	License Revocation
Misconduct	1			
Patient Abuse	2	1	2	
Patient Care	1			
Malfeasance	1		1	
Felony Conviction	$\frac{5}{5}$	$\frac{1}{2}$	$\frac{1}{4}$	$\frac{1}{1}$

Suspension was probated in three cases

Two complaint reports, reflected by the minutes, were presented to the Board by the Department of Human Resources but were not investigated. One of the complaints alleged actions involving patient abuse. The other involved allegations of malfeasance by an administrator while on probation. Actions taken by the Board on these two complaints could not be verified through documents in the Board files.

It should be noted that efforts have recently been made by the agency to maintain a log of all complaints received and to improve documentation relating to investigations. Moreover, improvements in communication between the Department of Health and the agency should result in more effective complaint handling.

Summary

While complaint reporting procedures appear to have improved, other aspects of complaint handling could be strengthened. In particular, these areas include the need for a trained investigator, closer scrutiny during the probation period, and more stringent follow-up on complaints.

Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The review under this criterion began with a determination of the statutory requirements regarding public participation both in the agency's enabling law and general statutes. The agency's procedures were reviewed to determine compliance with these statutes. The agency files and self-evaluation report were reviewed to determine the nature and extent of public participation and any results which might be attributed to public participation.

Public Participation

Interviews with agency personnel and reviews of agency documents indicate that the Board has not undertaken a specific effort to inform the general public of the agency's purposes, functions or activities. No seminars, conferences or training sessions open to the general public have been conducted or approved by the agency. No media advertising or publicity has been utilized. The agency distributes no consumer-oriented materials designed to inform the public of its operations.

The only publications of the agency are a roster of licensed administrators with current rules and regulations of the Board, and occasional newsletters. Both of these documents are printed as the need arises, rather than on a regular schedule, and are distributed free of charge to all licensees. Information on rules and regulations of the Health Department and Human Resources Department on which Board standards exams are based, is available from those two agencies and is not distributed by the Board under normal circumstances.

The Board reports that there is very little general public interest in the operations of the agency. Board minutes document the fact that public attendance at Board meetings is infrequent. Agency personnel report very few requests for general information. The development of bilingual capabilities for agency operations and publications has not been undertaken.

The Board must follow no statutory requirements for notification of the public of Board meetings and rule changes, except those enumerated in the Open Meetings Act. Formal notification is made through the Texas Register Division of the Office of the Secretary of State. The Texas Nursing Home Association (TNHA) and the Texas Association of Homes for the Aged (TAHA), trade organizations with ties to the agency, receive a letter each year outlining Board meeting times for the next 12 months. The executive secretary indicates that communication with these specialized groups is open and that their requests for information are generally granted.

There exists no advisory bodies to the Board through which interests of the general public could be focused. Current requirements for Board membership do not allow representation of the public. Such consumer representation is regarded with skepticism by the agency, apparently because of a feeling that public membership would hamper proper disposition of matters now handled by persons with occupational experience in the field.

Summary

In summary, there has been little effort in behalf of the agency to encourage participation in Board activities by members of the general public. It is unclear whether direct public input would increase were current opportunities for consumer participation increased.

Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals were examined through interviews and review of files.

Affirmative Action

The Texas Board of Licensure for Nursing Home Administrators filed an Affirmative Action Plan (AAP) with the Governor's Equal Employment Opportunity Office, covering the period January 1, 1974 to December 31, 1974. The plan has not been updated since that time. However, interviews with representatives of the Governor's EEO office indicated that the plan was acceptable for a small agency with little personnel turnover.

The agency's AAP covers the elements of plan development, communication and administration; job structuring and upward mobility; recruitment; selection, appointments and placement; and program evaluation. That plan included no provisions for training, a weakness the Governor's EEO office felt could be improved through an on-the-job training program. The plan also did not include a procedure for effectively handling employee grievances. The purpose of the plan was to

adhere to federal and state laws assuring equal employment opportunities to minorities and women. Because of the small size of the agency and minimal employee turnover, the effectiveness of the plan in meeting objectives stated in the 1974 plan cannot be determined.

Staff Composition

Agency staff consists of four employees: an executive secretary, an accounting clerk, a secretary, and a clerk-typist. No turnover among these full-time employees has taken place since 1976. Shown below is a breakdown of current agency personnel by category:

Executive Secretary	Full-time	Male	White
Accounting Clerk	Full-time	Female	White
Secretary	Full-time	Female	White
Clerk-typist	Full-time	Female	White

Rights of Privacy

According to the agency's executive secretary, records on a given employee may be accessible to that person only. This policy has not been formalized in any listing of agency procedures.

Charges of Discrimination

No charge of discrimination has been filed against the agency. Neither did information obtained during evaluation suggest that the agency has been involved in activities which would be classified as discriminatory.

Summary

In summary, the procedures and records of the agency in the area of affirmative action are generally adequate for a public agency of its size and scope. The development of a plan to process grievances and appeals, and a plan to ensure confidentiality of employee records would augment current practice.

Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

"It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest" (Article 6252-9b, V.A.C.S.).

As of January 1, 1974 the executive secretary is required to file a financial statement relating to his and his family's financial activity for the preceding year. This statement is to be filed with the Secretary of State and reviewed and updated in April each year (Sections 3 and 4, Article 6252-9b, V.A.C.S.). Board members are required to disclose business interests regulated by the state through affidavits filed with the Secretary of State (Sec. 5. 6252-9b, V.A.C.S.). In addition, Section 6

requires Board members to publicly disclose to the Board any personal or private interest in any measure, proposal, or decision pending before the Board in an Open Meeting (as defined in Article 6252-17, V.A.C.S.) and to refrain from voting or otherwise participating in the decision. This disclosure is to be entered in the minutes of the meeting.

Section 8(c), Article 6252-9b, V.A.C.S. reads as follows:

No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

No requirements relating to conflict of interest are included in the Board's enabling legislation.

Filing Compliance

As of March 1978, all Board members had filed affidavits and the executive secretary had filed a financial statement with the Secretary of State. All documents appear to conform with the specifications of the law. While no problems were found in these affidavits, it is important to note that no attempt was made to analyze the occupational and business interests of the six Board members. In the absence of such an analysis, no statement can be made concerning whether additional information should have been disclosed by these members.

Statements of compliance with Article 6252-9b V.A.C.S. and with relevant provisions of the appropriations bill have been filed by Board members and the agency staff with the executive secretary of the agency.

Disqualification Procedures

The Board has developed no consistent policy regarding Board members disqualifying themselves from participation in investigations, discussions, votes or

hearings in which they have or appear to have an interest.

In one instance, the Board member representing the Department of Human Resources was asked not to participate in a hearing dealing with a complaint filed and investigated by Department of Human Resources case workers. However, on other occasions Board members who were officers in various trade associations, voted on measures directly connected with those associations. While most of the items under consideration concerned provision of continuing education seminars, a rule change proposal concerning removal of the associate degree requirement was presented by the two trade associations and then approved by the Board. The trade associations have been active in providing a 200-hour course which may substitute for an associate degree.

Relationships with Industry

Employees

Of possible concern in this area is the degree and extent of employee participation in the National Association of Boards of Licensure for Nursing Home Administrators (NAB). Among other functions, this organization prepares and sells examination services to the state boards and conducts, for a fee, examination reviews for potential licensees.

The main impetus for the creation of the NAB came from the Texas Board. During the association's formative period, the Board authorized the use of agency staff to perform necessary functions and duties for the NAB. Material contained in the agency's files indicated that, in 1971, the Board's legal counsel stated that time spent on NAB business would be charged to the Board. While no documentation was available to indicate that such a charge was paid by the Board, it is illustrative of the close relationship between the Board and the NAB.

This relationship lessened over time and at a meeting of the Board in

September 1973 the removal of NAB files and office equipment from Board offices was approved. However, at that meeting the Board stated:

That the **Texas Board of Licensure** for Nursing Home Administrators fully authorizes, approves, and encourages continued staff participation in national activities, after the removal of the national files and other materials and office equipment, but only to the extent that such participation, **which shall be minor and secondary to Texas duties**, is made **essential** by the **Executive Secretary's** responsibilities as Executive Director of the National Association of Boards of Examiners for Nursing Home Administrators, as the Texas Board now recognizes that the great majority of staff work for the National Association will now be performed by employees of the National Association, rather than by the staff of the Texas Board of Licensure for Nursing Home Administrators.

It should be noted that Virginia Atkinson, Marlin Johnston, and William Sheffield were not members of the Board at this time.

While it would appear that most employees of the agency now play little or no role in NAB affairs, the executive secretary of the agency continues to serve as the executive director of the NAB. It was not possible to determine through documentation the amount of time spent by the executive secretary on NAB activities, only that he is a paid employee of the NAB.

The NAB office is now located across the hall from the agency, and the agency and the NAB share the same post office box and telephone. The executive secretary stated that the NAB pays for the post office box.

Board Members

The Board appears to be technically in compliance with the composition required by statute. A review of affidavits on file with the Secretary of State showed that the three Board representatives of proprietary homes all held interest in at least one nursing home. The physician representative had held some stock in a nursing home corporation but had placed the stock in a trust for his sons.

Currently, several members of the Board hold office in the trade associations which offer to licensees, for a fee, educational programs for fulfillment of the continuing education required by the Board. Another member of the Board acts as an education coordinator with one of the associations (no evidence was available to indicate that this is a paid position). Until September 1977, the two associations were the sole providers authorized to conduct the programs and other organizations wishing to provide continuing education programs to licensees had to apply to the associations for authorization to conduct seminars. In September 1977, the Board voted to allow the American College of Nursing Home Administrators to provide continuing education, on a trial basis, and to obtain seminar approval directly from the Board.

Summary

The review indicates that there is compliance with the financial disclosure provisions and that employees are informed of conflict of interest provisions. Formal written policies concerning conflicts of interest relating to employees' outside relationships have not been developed nor have clear guide lines been established in terms of permissible actions on the part of Board members in the conduct of official business of the Board.

In addition the close relationship between the Board, the national association and trade associations is questionable in terms of presenting to the public an objective arms-length stance from the regulated industry.

Criterion 10

The extent to which the agency complies with the Open Records Act and the Open Meetings Act.

Examination of elements under this criterion was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear. Records in the Office of the Secretary of State were reviewed on a selected basis to determine compliance with posting and informational requirements.

Open Records

Overall, the agency's records appear secure and well-organized. The agency reports that it makes available to the public all information regarding operations as required by the Open Records Act. The agency reports that it has never denied a formal and legitimate request for information.

In general, individual files (including letters of reference concerning moral character), are available to persons desiring to personally inspect their own records. Identification is required before access is allowed. However, no licensees

have access to their own actual examination records. Because complaint records are often kept apart from individual administrators' files, inspection of his personal files would not inform a licensee of particulars regarding complaints against him. Members of the general public or other licensees desiring to inspect administrator's files are not permitted to do so by order of the executive secretary.

No cases of complaints filed against the agency for refusing to provide requested information have been documented. The agency has never requested an Attorney General's Opinion on the provision of confidential information.

Communication between the Board and trade associations is not usually documented. Rather, it is customarily handled informally by telephone or personal contact. The fact that the executive secretary and several board members hold office in these associations further facilitates communication.

Open Meetings

The Texas Board of Licensure for Nursing Home Administrators is required by law to hold at least two meetings annually. Review of agency minutes shows that between five and eight meetings are customarily held by the Board each year. Regular meetings frequently include holding formal hearings, administering examinations required for licensure, and reviewing agency standards. In addition, individual Board members are frequent delegates to national association conferences, usually held out of state.

The agency reports that all Board meetings are open meetings and that closed executive sessions are held only for consideration of complaints. The executive secretary explained that the sensitive nature of many complaints and the necessity for ensuring confidentiality are the reasons for discussing such matters in closed session. It is unclear from Board minutes whether proper statutory authority is cited before the beginning of executive session, and whether

all decisions are voted on in open meeting.

No records, apart from Board minutes, are kept by the agency of public attendance at Board meetings. The agency reports that attendance at meetings usually consists only of Board members, staff, and those parties specifically involved in Board hearings and other activities.

In cases in which Board meetings include formal hearings, the Board's outside counsel is in attendance, and a court reporter is used. All hearings are, apparently conducted in accordance with the Texas Administrative Procedures Act.

Notification Procedures

The only formal procedure for advance public notification regarding scheduled Board meetings is through the Texas Register Division of the Secretary of State. All such notifications by the agency have been made in advance of the required time periods for regular and emergency sessions.

Anyone requesting an appearance before the Board is written a letter advising of the time and place. However, there is no media advertising by the agency or advance mail notification of registrants, nor is any required by statute.

Advance notification of licensees of Board meetings and examination actually takes place through the agency's newsletter. The Texas Nursing Home Association is given informal telephone notification for all meetings to be held during the year.

Accessibility

Most Board meetings and examinations are held in Austin for administrative convenience. The agency attempts to hold at least one examination per year at another location than Austin. No meetings of the Board have been held out of state during the past three years.

Rule Changes

All proposed rule changes are submitted to the Texas Register prior to formal consideration by the Board. In addition, proposed changes are sometimes listed in the Board's newsletter, which is printed as needed and sent to all licensees. When notice of such changes are printed, the nature of proposed changes is often stated in very general terms and details on each rule to be changed are usually not included. Following notification, final action is taken and recorded in the Texas Register. Revised rules are sent to all licensees. (Rule changes made in Health and Human Resources Department regulations, which all licensees must follow, are not handled by the Board.)

Prior to the existence of the Texas Register Division of the Secretary of State's Office, the Board promulgated and published rules independently. The 1975 Roster and By-Laws contains 26 agency rules, which were later adopted to fit the structure and format of the Texas Register.

The agency filed its existing rules with the Register on January 1, 1976. The current list of agency rules includes these regulations and six changes in the rules made on April 22, 1976 and October 25, 1976. These changes concern preceptorial qualifications; continuing education programs of study; requirements for licensure; conditional admission to examination, disqualification, re-examination; disciplinary action; and administrators-in-training.

Two rule changes have been adopted since the original agency publication of regulations. These changes were proposed on January 27, 1978 and adopted March 8, 1978. The change in pre-examination requirements mandates that all applications for licensure be received in the Board office at least one week prior to the examination to allow sufficient time for processing. The change approved in continuing education programs of study increased the amount of continuing

education required for license renewal from thirty to forty classroom hours.

Summary

In summary, the State Board of Licensure for Nursing Home Administrators appears to maintain an adequate system of record-keeping on licensees which is open to limited inspection by licensees themselves. Public inspection is limited to review of agency rules and publications.

Openness of public meetings implies both notification and accessibility. The procedures utilized by the Board for advance notification of Public meetings fulfill statutory requirements. Many of the public meetings, however, may be inaccessible to most members of the public and the regulated occupation. Notification of rule changes both before and after adoption appears to be adequate.

Criterion 11

The impact in terms of federal intervention of loss of federal funds if the agency is abolished.

The 1967 amendments to Title XIX (Medicaid) of the Social Security Act required that those states wishing to receive Medicaid funds have a program for licensure of nursing home administrators and also charged the states with the responsibility of licensing, regulating, and upgrading the profession. The guidelines additionally required that the administrators be licensed under the "the agency of the state responsible for licensing under the healing arts licensing act of the state, or, in the absence of such act or such an agency, a Board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients."

In 1969, the Sixty-first Legislature passed The Nursing Home Administrators Licensure Act, Article 4442d, V.A.C.S., incorporating much of the language found in the 1967 Title XIX amendments, particularly that dealing with the functions and duties of the Board. The Act authorized the Texas Board of Licensure for Nursing Home Administrators to license, regulate, and upgrade the nursing home administrator profession.

While Texas established an autonomous Board with a correspondent agency structure, many other states took a different approach. A review of all 50 states revealed that only 48 percent had the same structure as Texas with 26 percent placing complete jurisdiction within other agencies.

In all cases the Board is autonomous, but all administrative functions are handled by other agencies, usually the State Department of Health or an umbrella-type agency. No agencies were found licensing administrators under a "healing arts act".

Federal funds are not involved in administration of the Act directly. However, the indirect impact of the need for state compliance with Title XIX requirements regarding licensure of administrators must be considered. An indication of the importance of federal funds in this area may be obtained by a review of Exhibit i-1, first presented in the background.

The State of Colorado, during the Sunset review, obtained an opinion from the General Counsel of the Department of Health, Education and Welfare (HEW) pertaining to the Colorado Board of Licensure for Nursing Home Administrators. Initially, all administrative functions of the Board were being performed by the Colorado Department of Regulatory Agencies. The gist of the HEW opinion was that the Board could be placed within the Colorado Department of Health so long as the Board retained its autonomy and its policy-making powers. This opinion would appear to have set a precedent and, as such, has particular relevance to the Texas Sunset process.

In summary, while complete abolishment of the Board would have a detrimental effect on federal funding, a range of alternatives do exist within federal parameters.

EXHIBIT i-1
Medical Assistance*

<u>Total Incremental Increase</u>	<u>State Fiscal Year Ending</u>	<u>Total</u>	<u>Federal</u>	<u>State</u>
	8-31-68	\$121,890,159	\$97,707,067	\$24,183,092
21%	8-31-69	147,941,570	117,505,066	30,436,504
49%	8-31-70	220,450,677	156,188,852	64,261,826
31%	8-31-71	289,648,576	199,484,248	90,164,328
16%	8-31-72	337,377,352	218,941,895	118,435,457
16%	8-31-73	365,797,408	235,753,022	130,044,386
10%	8-31-74	403,488,092	257,883,928	145,604,165
24%	8-31-75	501,228,632	317,792,127	183,436,505
30%	8-31-76	652,765,689	416,192,985	236,572,704
14%	8-31-77	741,576,421	468,972,929	272,603,492

SOURCE: DPW Annual Report

*as paid and not as incurred

CONCLUSIONS

The impetus for the passage in 1969 of state legislation regulating nursing home administrators stemmed from federal requirements for state participation in Medicaid funding. Consequently, the Nursing Home Administrators Licensure Act embodies much of the language found in the relevant federal regulations, reflecting the basic requirement of an autonomous Board with policy-making power. The underlying objectives of the statutory mandate are to provide public protection by ensuring that licensees are competent and well-qualified and by ensuring that licensees comply with relevant standards of conduct.

The review contained in this report has centered on the areas of licensing, administration and enforcement to assess the result of the exercise of these powers on the objectives originally conceived under the statute. The evaluation of the Board of Licensure for Nursing Home Administrator's activities revealed several areas amenable to improvement.

One aspect of the Board's licensing function is to develop and impose standards for licensure which includes a determination of acceptable levels of education. Inconsistencies found in these minimum standards and the evident need for more stringent educational requirements suggests that consideration could be given to a revision of licensing standards.

To ensure protection of the public interest, regulatory agencies must maintain an independent stance towards the regulated industry or occupation. The administrative activities of the Board of Licensure for Nursing Home Administrators raises serious question as to the achievement by the Board of an appropriate degree of separation. Efforts to emphasize and delineate the Board's role as an agency of the state should be undertaken.

Components of an effective enforcement function include adequate documentation of all phases of the process, a thorough investigation of the charges contained in complaints and, if justified by the facts, an impartial and stringent application of sanctions against offenders. An evaluation of the areas described above indicated the need for a strengthening of enforcement efforts from receipt of a complaint to final disposition.

The foregoing suggests that the licensing, administration and enforcement objectives related to the functions performed by the Board have not been fully met.

If the legislature determines that the functions of the Board for Licensure of Nursing Home Administrators should continue, the following organizational changes could be considered to improve the achievement of objectives:

THE MAJOR ADMINISTRATIVE FUNCTIONS OF THE BOARD COULD BE CONSOLIDATED WITH THOSE OF THE DEPARTMENT OF HEALTH.

The Department of Health has the expertise and organizational structure to perform all administrative functions of the Board including secretarial, clerical, budgetary and investigatory services. This arrangement could serve to enhance efforts to increase regulatory effectiveness of the nursing home industry. Moreover, cost benefits and economies of scale could be expected to result.

Additionally, other steps should be considered regardless of the organizational form through which the regulation is carried out.

ALL FUNDS RECEIVED BY THE BOARD SHOULD BE DEPOSITED IN THE STATE TREASURY.

There appears to be difficulties in ensuring efficient disposition of funds held in the agency's local bank account. Greater fiscal accountability and more efficient management of funds could be accomplished by requiring all funds to be held in the State Treasury.

THE LEGISLATURE COULD CONSIDER MODIFYING BOARD COMPOSITION TO INCLUDE ONE OR MORE CONSUMER REPRESENTATIVES.

Implicitly, the underlying justification for the Board's existence is to protect the public, particularly aged residents of nursing homes. Currently, consumer groups representing the aged have no formal input into Board deliberations. Inclusion of a public member on the Board could have the beneficial effects of presenting public viewpoints and concerns, and of protecting consumer interests.

THE LEGISLATURE SHOULD CONSIDER AMENDING THE BOARD'S CURRENT STATUTE TO INCLUDE PROHIBITIONS WHICH WOULD PREVENT EMPLOYEES OF THE BOARD FROM ALSO BEING EMPLOYEES OF NURSING HOME ASSOCIATIONS.

The executive secretary of the Board is also employed by a trade association through which the Board purchases examination material and in addition, the association provides educational services to potential licensees in the form of examination preparation courses. Prohibition of such employment would serve to ensure the necessary appearance of independence of the agency in these areas.

WRITTEN PROCEDURES COULD BE DEVELOPED AND FOLLOWED FOR MANY AGENCY FUNCTIONS.

No written procedures currently exist in the following areas:

- 1) for handling potential conflicts of interest;
- 2) for release of information in agency files to the public;
and
- 3) for complaint processing and investigation.

NEWLY IMPLEMENTED COMPLAINT PROCEDURES SHOULD BE MAINTAINED AND EXPANDED.

Recently, the agency has attempted to record all complaints received, and to maintain more complete documentation of complaints in the complaint files. Additionally, complaint status reports are now presented to the Board at the regular Board meeting on a routine basis. These procedures should be continued and expanded to include a systematic investigation process.

THE FEASIBILITY OF OBTAINING THE SERVICES OF A TRAINED INVESTIGATOR, ON AN AS-NEEDED BASIS, SHOULD BE EXPLORED.

Currently, the executive secretary investigates complaints in addition to other administrative duties. Enforcement activities of the agency could be made more effective through the use of a trained investigator with the additional benefit of allowing the executive secretary to devote greater time and attention to managerial duties.