

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

1.7.09

DRAFT

LLS NO. 09-0233.01 Christy Chase

SUNSET BILL

Sunset Process - Senate Health and
Human Services Committee

SHORT TITLE: "Sunset Nursing Home Administrators Board"

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE BOARD OF EXAMINERS OF
102 NURSING HOME ADMINISTRATORS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Sunset Process - Senate Health and Human Services Committee. Implements the recommendations of the department of regulatory agencies in its sunset review of the board of examiners of nursing home administrators (board) as follows:

- *Recommendation 1.* Continues the board and its functions through July 1, 2018.
- *Recommendation 2.* Reduces the size of the board from 8

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

to 5 members by eliminating, as their terms expire, the two long-term care professional members, whose terms expire July 1, 2009, and July 1, 2011, and the one public member whose term expires July 1, 2011.

- *Recommendation 3.* Eliminates the requirement that participants in the administrator-in-training program (AIT program) submit bi-monthly progress reports to the board and instead allows the board, by rule, to determine the frequency of progress reports.
- *Recommendation 4.* Eliminates a bachelor's degree in business administration from the list of degrees that an applicant for a nursing home administrator license can hold in order to avoid participation in the AIT program as a prerequisite to licensure.
- *Recommendation 5.* Eliminates the ability for an applicant for licensure to have 2 years of experience in supervision in a nursing home or hospital, thereby requiring the 2 years of experience in administration in either of those settings, in order to avoid the AIT program as a prerequisite to licensure.
- *Recommendation 6.* Repeals the requirement that the board submit an annual report to the governor.
- *Recommendation 7.* Allows the board to impose fines, pursuant to a schedule of fines established by rule, when a licensee or temporary license holder commits an act constituting grounds for discipline.
- *Recommendation 8.* Makes technical revisions to eliminate obsolete provisions, correct erroneous references, allow nursing home administrators who have not engaged in the practice in Colorado for at least 5 years to serve on the board, allow complaints alleging violations of the law to be submitted to the board without a signature, and to allow mental or physical examinations of licensees or temporary license holders to be conducted by other licensed health care professionals who are not physicians.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **Recommendation 1**

3 **SECTION 1.** 12-39-121 (1), Colorado Revised Statutes, is
4 amended to read:

5 **12-39-121. Repeal of article.** (1) This article is repealed,

1 effective July 1, ~~2009~~ 2018.

2 **SECTION 2. Repeal.** 24-34-104 (40) (h), Colorado Revised
3 Statutes, is repealed as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (40) The following agencies, functions, or both, shall terminate on July
7 1, 2009:

8 (h) ~~The board of examiners of nursing home administrators,~~
9 ~~created pursuant to section 12-39-104, C.R.S.;~~

10 **SECTION 3.** 24-34-104 (49), Colorado Revised Statutes, is
11 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12 **24-34-104. General assembly review of regulatory agencies**
13 **and functions for termination, continuation, or reestablishment.**

14 (49) The following agencies, functions, or both, shall terminate on July
15 1, 2018:

16 (c) THE BOARD OF EXAMINERS OF NURSING HOME
17 ADMINISTRATORS CREATED PURSUANT TO SECTION 12-39-104, C.R.S.;

18 **Recommendation 2**

19 **SECTION 4.** The introductory portion to 12-39-104 (1) (a) and
20 12-39-104 (1) (a) (II) and (1) (a) (III), Colorado Revised Statutes, are
21 amended to read:

22 **12-39-104. Board of examiners of nursing home**
23 **administrators - creation - subject to termination - repeal.**

24 (1) (a) There is hereby created a board of examiners of nursing home
25 administrators in the division of registrations in the department of
26 regulatory agencies, which board shall be composed of ~~eight members as~~
27 ~~follows~~ THE FOLLOWING MEMBERS APPOINTED BY THE GOVERNOR:

1 (II) (A) Two members shall be professionals from the long-term
2 care industry, one of whom shall be a licensed health care professional.
3 and

4 (B) NOTWITHSTANDING SUB-SUBPARAGRAPH (A) OF THIS
5 SUBPARAGRAPH (II), UPON THE EXPIRATION OF THE TERM OF OFFICE OF
6 THE LONG-TERM CARE PROFESSIONAL MEMBER WHOSE TERM EXPIRES ON
7 JULY 1, 2009, THE BOARD SHALL HAVE ONE MEMBER WHO IS A
8 PROFESSIONAL FROM THE LONG-TERM CARE INDUSTRY.

9 (C) NOTWITHSTANDING SUB-SUBPARAGRAPH (A) OF THIS
10 SUBPARAGRAPH (II), UPON THE EXPIRATION OF THE TERM OF OFFICE OF
11 THE LONG-TERM CARE PROFESSIONAL MEMBER WHOSE TERM EXPIRES ON
12 JULY 1, 2011, THE BOARD SHALL NOT HAVE ANY MEMBERS WHO ARE
13 PROFESSIONALS FROM THE LONG-TERM CARE INDUSTRY.

14 (D) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1,
15 2011.

16 (III) Three members shall be representative of the public at large;
17 EXCEPT THAT UPON THE EXPIRATION OF THE TERM OF OFFICE OF THE ONE
18 MEMBER OF THE BOARD REPRESENTING THE PUBLIC WHOSE TERM EXPIRES
19 ON JULY 1, 2011, THE BOARD SHALL CONSIST OF TWO MEMBERS
20 REPRESENTATIVE OF THE PUBLIC AT LARGE.

21 **Recommendation 3**

22 **SECTION 5.** 12-39-107 (2), (4), and (6), Colorado Revised
23 Statutes, are amended to read:

24 **12-39-107. Administrator-in-training.** (2) The
25 ~~administrator-in-training shall submit bi-monthly progress reports on~~
26 ~~forms provided by the board:~~

27 (4) The board shall, ~~through rules and regulations~~ BY RULE,

1 establish a monitoring mechanism that will provide oversight of the
2 administrator-in-training program, INCLUDING A REQUIREMENT THAT AN
3 ADMINISTRATOR-IN-TRAINING SUBMIT PERIODIC PROGRESS REPORTS TO
4 THE BOARD.

5 (6) The board may waive any portion required by subsection (1)
6 of this section if it finds that the applicant has prior experience or training
7 sufficient to satisfy requirements established by rule or regulation of the
8 board.

9 **Recommendations 4 and 5**

10 **SECTION 6.** 12-39-106 (1) (b) and (1) (c), Colorado Revised
11 Statutes, are amended to read:

12 **12-39-106. Qualifications for admission to examination.**

13 (1) The board shall admit to examination for licensure as a nursing home
14 administrator any applicant who pays a fee as determined by the board,
15 who submits evidence of suitability prescribed by the board, who is
16 twenty-one years of age or older, and who provides written
17 documentation that the applicant meets one of the following
18 requirements:

19 (b) The applicant has successfully completed a bachelor's degree
20 in ~~business administration~~, public health administration, health
21 administration, or any degree or degrees deemed appropriate by the
22 board; or

23 (c) The applicant has successfully completed an associate's degree
24 or higher degree in a health-care related field and has a minimum of two
25 years experience in ~~supervision~~ or administration in a nursing home or
26 hospital. For the purposes of this section, a registered nurse who is a
27 graduate of a three-year diploma program shall be considered to have met

1 the associate degree requirement.

2 **Recommendation 6**

3 **SECTION 7. Repeal.** 12-39-105 (1) (a) (VI), Colorado Revised
4 Statutes, is repealed as follows:

5 **12-39-105. Powers and duties of the board - rules.** (1) (a) The
6 board has the following powers and duties:

7 (VI) ~~To prepare and transmit annually, in the form and manner~~
8 ~~prescribed by the heads of the principal departments pursuant to the~~
9 ~~provisions of section 24-1-136, C.R.S., a report accounting to the~~
10 ~~governor for the efficient discharge of all responsibilities assigned by law~~
11 ~~to the board.~~

12 **Recommendation 7**

13 **SECTION 8.** 12-39-105 (1) (a) (III), Colorado Revised Statutes,
14 is amended to read:

15 **12-39-105. Powers and duties of the board - rules.** (1) (a) The
16 board has the following powers and duties:

17 (III) To revoke, suspend, withhold, or refuse to renew any license
18 previously issued by the board, to place ~~on probation~~ a licensee or
19 temporary license holder ~~or ONPROBATION~~, to issue a letter of admonition
20 to a licensee in accordance with section 12-39-111 (3), OR IMPOSE A FINE
21 IN ACCORDANCE WITH SECTION 12-39-111 (6) in any case where the
22 individual holding any such license is determined to have failed to
23 conform to the ~~requirements of the standards provided in~~ DEVELOPED
24 PURSUANT TO subparagraph (I) of this paragraph (a) or ~~the~~ TO HAVE
25 COMMITTED AN ACT THAT CONSTITUTES grounds for discipline AS set
26 forth in section 12-39-111;

27 **SECTION 9.** 12-39-111, Colorado Revised Statutes, is amended

1 BY THE ADDITION OF A NEW SUBSECTION to read:

2 **12-39-111. Grounds for discipline - fines - rules.** (6) IN
3 ADDITION TO ANY OTHER DISCIPLINE THAT MAY BE IMPOSED PURSUANT TO
4 THIS SECTION, THE BOARD MAY IMPOSE A FINE OF NO LESS THAN TWO
5 HUNDRED FIFTY DOLLARS BUT NO MORE THAN ONE THOUSAND DOLLARS
6 PER VIOLATION ON ANY PERSON WHO VIOLATES THIS ARTICLE OR ANY
7 RULE ADOPTED PURSUANT TO THIS ARTICLE. THE BOARD SHALL ADOPT
8 RULES ESTABLISHING A FINE STRUCTURE AND THE CIRCUMSTANCES UNDER
9 WHICH FINES MAY BE IMPOSED. THE BOARD SHALL COMPLY WITH THE
10 PROCEDURES SET FORTH IN SECTION 12-39-114 PRIOR TO IMPOSING A FINE
11 ON A PERSON. ALL FINES COLLECTED PURSUANT TO THIS SUBSECTION (6)
12 SHALL BE TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT
13 THE SAME TO THE GENERAL FUND.

14 **Recommendation 8**

15 **SECTION 10.** 12-39-104 (5), Colorado Revised Statutes, is
16 amended to read:

17 **12-39-104. Board of examiners of nursing home**
18 **administrators - creation - subject to termination.** (5) The director of
19 the division of registrations in the department of regulatory agencies may
20 appoint, subject to section 13 of article XII of the state constitution, a
21 program ~~administrator~~ DIRECTOR to the board. ~~Such~~ THE program
22 ~~administrator~~ DIRECTOR shall not be a member of the board, but shall
23 have such powers and shall perform such duties as are prescribed by law
24 and the rules ~~and regulations~~ of the board. Additional staff may be
25 appointed by the director of the division of registrations to adequately
26 assist the board and the program ~~administrator~~ DIRECTOR in keeping
27 records and in the performance of their duties. These employees, if any,

1 shall be appointed and serve in accordance with section 13 of article XII
2 of the state constitution.

3 **SECTION 11.** 12-39-104.5 (1) (c), Colorado Revised Statutes, is
4 amended to read:

5 **12-39-104.5. Qualifications of board members.** (1) A nursing
6 home administrator shall be qualified to be appointed to the board if such
7 person:

8 (c) Has been actively engaged as a licensed nursing home
9 administrator ~~in this state~~ for at least five years.

10 **SECTION 12.** 12-39-105 (1) (a) (I) (A), (1) (a) (V), (1) (b), and
11 (3) (a), Colorado Revised Statutes, are amended to read:

12 **12-39-105. Powers and duties of the board - rules.** (1) (a) The
13 board has the following powers and duties:

14 (I) (A) ~~By no later than July 1, 1994, the board shall~~ TO adopt
15 rules defining standards of nursing home administration, including the
16 responsibilities and duties of nursing home administrators, consistent with
17 this article. ~~Such~~ THE STANDARDS ESTABLISHED IN THE rules ~~must~~ SHALL
18 be met by individuals in order to receive and retain a license and shall be
19 designed to ensure that nursing home administrators are qualified by
20 education and training in the appropriate field to serve as nursing home
21 administrators.

22 (V) To conduct investigations, hold hearings, and take evidence
23 in all matters relating to the exercise and performance of the powers and
24 duties vested in the board and, in connection with any investigation
25 following the filing of a ~~signed~~ complaint, AN INVESTIGATION INITIATED
26 BY THE BOARD, or any hearing, to administer oaths and issue subpoenas
27 compelling the attendance and testimony of witnesses and the production

1 of books, papers, or records relevant to an investigation or hearing;

2 (b) The board or an administrative law judge shall have the power
3 to administer oaths, take affirmations of witnesses, and issue subpoenas
4 to compel the attendance of witnesses and the production of all relevant
5 papers, books, records, documentary evidence, and materials in any
6 hearing, investigation, accusation, or other matter coming before the
7 board. The board may appoint an administrative law judge pursuant to
8 part 10 of article 30 of title 24, C.R.S., to take evidence and to make
9 findings and report them to the board. The person providing documents
10 shall prepare them from the original record and shall delete from the copy
11 provided pursuant to the subpoena the name of the patient RESIDENT, but
12 shall identify the patient RESIDENT by a numbered code, to be retained by
13 the custodian of the records from which the copies were made. Upon
14 certification of the custodian that the copies are true and complete except
15 for the patient's RESIDENT'S name, they shall be deemed authentic, subject
16 to the right to inspect the originals for the limited purpose of ascertaining
17 the accuracy of the copies. No privilege of confidentiality shall exist with
18 respect to ~~such~~ THE copies, and no liability shall lie against the board, the
19 custodian, or the custodian's authorized employee for furnishing or using
20 ~~such~~ THE copies in accordance with this subsection (1).

21 (3) (a) ~~On or before July 1, 1994,~~ The board shall develop rules,
22 ~~and regulations,~~ with input from long-term care facility provider
23 associations, the department of public health and environment, the office
24 of the state attorney general, and consumer representatives, concerning
25 factors to be considered in determining performance ~~which~~ THAT fails to
26 meet generally accepted standards for nursing home administrators and
27 whether or not remedial or disciplinary actions are warranted. The board

1 may create an advisory committee to assist the board in developing
2 standards that describe the responsibilities and duties of nursing home
3 administrators.

4 **SECTION 13.** 12-39-106 (2), Colorado Revised Statutes, is
5 amended to read:

6 **12-39-106. Qualifications for admission to examination.**

7 (2) ~~Failure~~ IF THE APPLICANT FAILS to provide ~~a written statement~~
8 EVIDENCE SATISFACTORY TO THE BOARD that the applicant meets the
9 requirements of subsection (1) of this section, ~~will make~~ the applicant
10 ~~ineligible for admittance~~ SHALL NOT BE ADMITTED to TAKE the licensing
11 examination, and the applicant shall not be entitled to or be granted a
12 license as a nursing home administrator.

13 **SECTION 14. Repeal.** 12-39-108 (2), Colorado Revised
14 Statutes, is repealed as follows:

15 **12-39-108. Licenses.** (2) ~~Any person holding a valid license as~~
16 ~~a nursing home administrator prior to July 1, 1993, shall be licensed~~
17 ~~under the provisions of this article without further application by said~~
18 ~~person.~~

19 **SECTION 15.** 12-39-111 (1) (f), (1) (h), and (1) (i), Colorado
20 Revised Statutes, are amended to read:

21 **12-39-111. Grounds for discipline.** (1) The board has the power
22 to revoke, suspend, withhold, or refuse to renew any license, to place on
23 probation a licensee or temporary license holder, or to issue a letter of
24 admonition to a licensee in accordance with the procedures set forth in
25 subsection (3) of this section, upon proof that such person:

26 (f) Has falsified or made incorrect entries or failed to make
27 essential entries on ~~patient~~ RESIDENT records;

1 (h) Has a physical or mental disability ~~which~~ THAT renders the
2 licensee unable to practice nursing home administration with reasonable
3 skill and safety to the ~~patients~~ RESIDENTS and ~~which~~ THAT may endanger
4 the health or safety of persons under ~~such~~ THE licensee's care;

5 (i) Has violated the confidentiality of information or knowledge
6 as prescribed by law concerning any ~~patient~~ RESIDENT;

7 **SECTION 16.** 12-39-113 (1) and (2), Colorado Revised Statutes,
8 are amended to read:

9 **12-39-113. Mental and physical examination of licensees.**

10 (1) (a) If the board has reasonable grounds to believe that a licensee or
11 temporary license holder is unable to practice with reasonable skill and
12 safety to ~~patients~~ RESIDENTS because of a condition described in section
13 12-39-111 (1) (g) or (1) (h), it may require ~~such~~ THE person to submit to
14 a mental or physical examination by a physician OR OTHER LICENSED
15 HEALTH CARE PROFESSIONAL it designates. Upon the failure of ~~such~~ THE
16 person to submit to ~~such~~ THE mental or physical examination, unless due
17 to circumstances beyond ~~such~~ THE person's control, the board may
18 suspend ~~such~~ THE person's license until ~~such time as~~ ~~such~~ THE person
19 submits to the required examinations.

20 (b) Every licensee or temporary license holder by engaging in the
21 practice of nursing home administration in this state or by applying for the
22 renewal of a license or temporary license shall be deemed to have given
23 consent to submit to a mental or physical examination when so directed
24 in writing by the board. The direction to submit to such an examination
25 shall contain the basis of the board's reasonable grounds to believe that
26 the licensee is unable to practice with reasonable skill and safety to
27 ~~patients~~ RESIDENTS because of a condition described in section 12-39-111

1 (1) (g) or (1) (h). The licensee shall be deemed to have waived all
2 objections to the admissibility of the examining physician's OR OTHER
3 LICENSED HEALTH CARE PROFESSIONAL'S testimony or examination reports
4 on the ground of privileged communication.

5 (2) Nothing in this section shall prevent the licensee from
6 submitting testimony or examination reports of a physician OR OTHER
7 LICENSED HEALTH CARE PROFESSIONAL designated by the licensee that
8 pertains to a condition described in section 12-39-111 (1) (g) or (1) (h)
9 which may be considered by the board in conjunction with, but not in lieu
10 of, testimony and examination reports of the physician OR OTHER
11 LICENSED HEALTH CARE PROFESSIONAL designated by the board.

12 **SECTION 17. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.