

ARIZONA STATE SENATE

RESEARCH STAFF



MICHAEL MADDEN
LEGISLATIVE RESEARCH ANALYST
HEALTH AND HUMAN SERVICES COMMITTEE
Telephone: (602) 926-3171

TO: JOINT LEGISLATIVE HEALTH AND
HUMAN SERVICES COMMITTEE OF
REFERENCE

DATE: January 19, 2024

SUBJECT: Sunset Review of the Arizona State Board of Examiners of Nursing Care Institution
Administrators and Assisted Living Facility Managers

Attached is the final report of the sunset review of the Arizona State Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers, which was conducted by the Joint Legislative Health and Human Services Committee of Reference.

This report has been distributed to the following individuals:

Governor of the State of Arizona
The Honorable Katie Hobbs

President of the Senate
Senator Warren Petersen

Speaker of the House of Representatives
Representative Ben Toma

Senator Thomas Shope, Co-Chair
Senator Janae Shamp
Senator Sonny Borrelli
Senator Eva Burch
Senator Sally Gonzales
Senator Theresa Hatathlie
Senator Justine Wadsack

Legislative Members

Representative Steve Montenegro, Co-Chair
Representative Barbara Parker
Representative Selina Bliss
Representative Patricia Contreras
Representative Matt Gress
Representative Alma Hernandez
Representative Christopher Mathis
Representative Beverly Pingerelli
Representative Amish Shah
Representative Julie Willoughby

CC: Senate Republican Staff
Senate Democratic Staff
Senate Research Staff
Senate Resource Center
House Republican Staff
House Democratic Staff
House Research Staff
House Chief Clerk

Arizona State Board of Examiners of Nursing Care
Institution and Assisted Living Facility Managers
Arizona State Library, Archives and Public Records

ARIZONA STATE BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS SUNSET REVIEW

Background

Pursuant to [A.R.S. § 41-2953](#), the Joint Legislative Audit Committee assigned the sunset review of the Arizona State Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (NCIA Board) to the Senate Health and Human Services Committee of Reference and House Health and Human Services Committee of Reference.

The NCIA Board was established to regulate nursing care institution administrators and assisted living facility managers in Arizona. Duties of the NCIA Board include: 1) adopting rules for licensing and certifying qualified applicants; 2) conducting examinations to determine applicant qualification; 3) adopting application, certification and examination fees; 4) conducting investigations or administrative hearings in response to complaints; 5) prescribing standards for assisted living facility training programs; and 6) reporting to the Legislature ([A.R.S. § 36-446.03](#)).

The NCIA Board consists of 11 members appointed by the Governor including: 1) 1 administrator who holds an active license in nursing care institution administration; 2) 1 manager who holds an active license in assisted living facility management; 3) 1 administrator of a nonprofit or faith-based skilled nursing facility; 4) 1 administrator of a proprietary skilled nursing facility; 5) 2 managers of an assisted living center; 6) 1 manager of an assisted living home; 7) 2 public members who are not affiliated with a nursing care institution or an assisted living facility; 8) 1 public member who represents an organization that advocates for the elderly; and 9) 1 person who is a family member of a resident in either a skilled nursing facility or an assisted living facility at the time the person is appointed to the NCIA Board. Members are appointed to two-year terms for members not affiliated with a nursing care institution or an assisted living facility, and three-year terms for members who are administrators of a nursing care institution or the manager of an assisted living facility. Members may not serve more than two consecutive terms ([A.R.S. § 36-446.02](#)).

The Board terminates on July 1, 2024, unless legislation is enacted for its continuation ([A.R.S. § 41-3024.03](#)).

Sunset Review Procedure

The Joint Legislative Health and Human Services Committee of Reference held a public meeting on Thursday, January 11, 2024, to review the sunset factors, the NCIA Board's responses to the sunset factors and receive public testimony.

Committee of Reference Recommendations

The Committee of Reference recommended that the Legislature continue the NCIA Board for eight years until July 1, 2032.

Appendices

- A. Meeting notice
- B. Committee minutes
- C. Committee materials
- D. Chairman's letter requesting NCIA Board's response to the agency factors
- E. NCIA Board's response to the agency factors pursuant to [A.R.S. § 41-2954](#)

Interim agendas can be obtained via the Internet at <http://www.azleg.gov/Interim-Committees>

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE
OPEN TO THE PUBLIC

**SENATE HEALTH AND HUMAN SERVICES COMMITTEE OF REFERENCE AND HOUSE
HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE**

Date: Thursday, January 11, 2024

Time: ~~2:00 P.M.~~ 11:30 A.M. or Upon adjournment of the Senate Natural Resources, Energy and Water Committee of Reference and House Government Committee of Reference and House Subcommittee on Budgetary Funding Formulas

Place: HHR 1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2024011024>

AGENDA

1. Call to Order
2. Roll Call
3. Introduction
4. Sunset Review of the Board of Nursing Care Institution Administrators and Assisted Living Facility Managers
 - a. Presentation by the Board of Nursing Care Institution Administrators and Assisted Living Facility Managers
 - b. Public Testimony
 - c. Discussion and Recommendation
5. Sunset Review of the Arizona State Board of Physical Therapy
 - a. Presentation by the Arizona State Board of Physical Therapy
 - b. Public Testimony
 - c. Discussion and Recommendation
6. Sunset Review of the Arizona Pioneers' Home, State Hospital for Miners with Disabilities
 - a. Presentation by the Arizona Pioneers' Home, State Hospital for Miners with Disabilities
 - b. Public Testimony
 - c. Discussion and Recommendation
7. Sunset Review of the Foster Care Review Board
 - a. Presentation by the Arizona Office of the Auditor General
 - b. Response by the Foster Care Review Board and the Arizona Administrative Office of the Courts.
 - c. Public Testimony
 - d. Discussion and Recommendation

8. Review of the Arizona Adult Protective Services System
 - a. Presentation by the Arizona Office of the Auditor General
 - b. Responses by the Arizona Department of Economic Security, Arizona Department of Health Services and Arizona Health Care Cost Containment System
 - c. Public Testimony
 - d. Discussion
9. Adjourn

Members:

Senator Thomas "T.J." Shope, Co-Chair
 Senator Sonny Borrelli
~~Senator Eva Burch~~
 Senator Sally Ann Gonzales
 Senator Theresa Hatathlie
 Senator Juan Mendez
 Senator Janae Shamp
 Senator Justine Wadsack

Representative Steve Montenegro, Co-Chair
 Representative Selina Bliss
 Representative Patricia Contreras
 Representative Matt Gress
 Representative Gail Griffin
 Representative Alma Hernandez
 Representative Christopher Mathis
 Representative Barbara Parker
~~Representative Beverly Pingerelli~~
 Representative Amish Shah
 Representative Julie Willoughby

01/04/2024
 01/09/2024
 hf

For questions regarding this agenda, please contact Senate Research Department.
 Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602) 926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA STATE LEGISLATURE

SENATE HEALTH AND HUMAN SERVICES COMMITTEE OF REFERENCE AND HOUSE HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE

Minutes of the Meeting
January 11, 2024

11:30 A.M. or Upon adjournment of the Senate Natural Resources, Energy and
Water Committee of Reference and House Government Committee of Reference
and House Subcommittee on Budgetary Funding Formulas, HHR1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2024011024>

Members Present:

Senator Thomas "T.J." Shope, Co-Chair
Senator Sally Ann Gonzales
Senator Juan Mendez
Senator Janae Shamp
Senator Justine Wadsack

Representative Steve Montenegro, Co-Chair
Representative Selina Bliss
Representative Patricia Contreras
Representative Matt Gress
Representative Gail Griffin
Representative Alma Hernandez*
Representative Christopher Mathis
Representative Barbara Parker
Representative Julie Willoughby

Members Excused:

Senator Sonny Borrelli
Senator Theresa Hatathlie

Representative Amish Shah*

The Speaker approved the following temporary appointments:

*Representative Lupe Contreras replaced Representative Amish Shah at 4:27 p.m.

*Representative Consuelo Hernandez replaced Representative Alma Hernandez at 4:27 p.m.

Staff:

Michael Madden, Senate Health and Human Services Research Analyst
Kaytie Sherman, Senate Health and Human Services Assistant Research Analyst
Dhaky Mullangi, Senate Health and Human Services Research Intern
Ahjahna Graham, House Health and Human Services Research Analyst
Montserrat Torres, House Health and Human Services Assistant Research Analyst
Kayla Thackeray, House Health and Human Services Research Intern

Co-Chair Shope called the meeting to order at 2:40 p.m. and attendance was noted.

INTRODUCTION

Senator Shope offered opening comments.

SUNSET REVIEW OF THE FOSTER CARE REVIEW BOARD

Presentation by the Arizona Office of the Auditor General

Jeff Gove, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona Foster Care Review Board, Performance Audit and Sunset Review" (Attachment A).

Response by the Foster Care Review Board and the Arizona Administrative Office of the Courts

Caroline Lutt-Owens, Director, Dependent Children Services Division, Administrative Office of the Courts, gave an overview of the Foster Care Review Board (FCRB), distributed and explained a PowerPoint presentation entitled "Foster Care Review Board, Advocating for Arizona's Most Vulnerable Citizens" (Attachment B).

Ms. Lutt-Owens answered questions posed by the Committee.

Public Testimony

Anna Young, Judge, Yavapai County Superior Court, gave an overview of the court process, the use of the Foster Care Review Board (FCRB) reports and answered questions posed by the Committee.

Kris Jacober, representing self, testified in support of continuation of the FCRB and answered questions posed by the Committee.

Kari Hancock Handley, representing self, testified in opposition to the continuation of the FCRB and answered questions posed by the Committee.

Peter Bartolini, representing self, testified in opposition to the continuation of the FCRB.

Arlene Willes, representing self, testified in opposition to the continuation of the FCRB and submitted a copy of her testimony (Attachment C).

Anika Robinson, representing self, testified in opposition to the continuation of the FCRB.

Bruce Brannan, representing self, testified in support of continuation of the FCRB and answered questions posed by the Committee.

Crystal Nuttle, representing self, testified on the foster care system and submitted a copy off her testimony (Attachment D).

Dan Crane, representing self, testified in support of continuation of the FCRB.

Kristy Dupree, representing self, testified in support of continuation of the FCRB.

Linda Bohling, representing self, testified in support of continuation of the FCRB.

Mr. Crane answered questions posed by the Committee.

Judge Young answered additional questions posed by the Committee.

Discussion and Recommendation

Representative Montenegro displayed on the screen and read Recommendation 2 for the Foster Care Review Board Sunset Review (Attachment E).

Lindsey Perry, Auditor General, answered questions posed by the Committee.

Representative Montenegro offered comments.

Representative Montenegro moved that the Senate Health and Human Services Committee of Reference and House Health and Human Services Committee of Reference approve the recommendations for the Arizona Foster Care Review Board (Attachment E) as presented on January 11, 2024 at 4:14 p.m.

Representative Parker offered a substitute motion that the Arizona Foster Care Review Board be terminated and all authority, duties, responsibilities and funding be transferred to the Casa of Arizona Office to further the purpose of the court appointed special advocate program. The motion FAILED with a roll call vote of 2-12-3-0 (Attachment 1).

Representative Montenegro's original motion CARRIED with a roll call vote of 13-1-3-0 (Attachment 2).

Representative Parker explained her vote.

RECESS

At 4:20 p.m. the Co-Chair Shope recessed the meeting to the sound of the gavel.

RECONVENE

At 4:27 p.m. the Co-Chair Shope called the meeting to order.

Representative Lupe Contreras replaced Representative Amish Shah.
Representative Consuelo Hernandez replaced Representative Alma Hernandez.

Daniel Butters, representing self, testified in support of continuation of the FCRB.

Morgan Butters representing self, testified in support of continuation of the FCRB.

The Committee offered comments.

SUNSET REVIEW OF THE BOARD OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Presentation by the Board of Nursing Care Institution Administrators and Assisted Living Facility Managers

Jack Confer, Executive Director, Nursing Care Board, gave an overview of the Board, distributed and explained a PowerPoint presentation entitled "Joint Health and Human Services Committee" (Attachment F) and answered questions posed by the Committee.

Public Testimony

Marie Isaacson, Arizona Leading Age, testified in support of the continuation of the Board of Nursing Care Institution Administrators (NCIA) and Assisted Living Facility Managers.

Karen Barno, Arizona Assisted Living Federation of America, testified in support of the continuation of the Board of Nursing Care Institution Administrators and Assisted Living Facility Managers.

Becky Hill, Family Representative, NCIA Board, testified in support of the continuation of the Board of Nursing Care Institution Administrators and Assisted Living Facility Managers.

Senator Gonzales submitted a letter from Maria Gomez Murphy (Attachment G).

Discussion and Recommendation

Representative Montenegro moved that the Senate Health and Human Services Committee of Reference and House Health and Human Services Committee of Reference recommends that the Board of Nursing Care Institution Administrators and Assisted Living Facility Managers be continued for 8 years until July 1, 2032. The motion CARRIED with a roll call vote 13-0-4-0 (Attachment 3).

Senator Shamp and Representative Griffin explained their vote.

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF PHYSICAL THERAPY

Presentation by the Arizona State Board of Physical Therapy

Judy Chepeus, Executive Director, Arizona State Board of Physical Therapy, distributed and explained a PowerPoint presentation entitled "Senate Health and Human Services Committee of Reference and House Health and Human Services Committee of Reference" (Attachment H) and answered questions posed by the Committee.

Public Testimony

Tom Dorn, Arizona Physical Therapy Association, testified in support of the continuation of the Arizona State Board of Physical Therapy.

Discussion and Recommendation

Representative Montenegro moved that the Senate Health and Human Services Committee of Reference and House Health and Human Services Committee of Reference recommends that the Arizona State Board of Physical Therapy be continued for 8 years until July 1, 2032. The motion CARRIED with a roll call vote 13-0-4-0 (Attachment 4).

SUNSET REVIEW OF THE ARIZONA PIONEERS' HOME, STATE HOSPITAL FOR MINERS WITH DISABILITIES

Presentation by the Arizona Pioneers' Home, State Hospital for Miners with Disabilities

Jessica Sullivan, Superintendent, State of Arizona Pioneers' Home, distributed and explained a packet of information entitled "Arizona Pioneers' Home, State of Arizona" (Attachment I).

Public Testimony

No public testimony took place.

Discussion and Recommendation

Representative Montenegro moved that the Senate Health and Human Services Committee of Reference and House Health and Human Services Committee of Reference recommends that the Arizona Pioneers' Home, State Hospital for Miners with Disabilities be continued for 8 years until July 1, 2032. The motion CARRIED with a roll call vote 13-0-4-0 (Attachment 5).

Representatives Bliss and Griffin explained their vote.

REVIEW OF THE ARIZONA ADULT PROTECTIVE SERVICES SYSTEM

Presentation by the Arizona Office of the Auditor General

Lindsey Perry, Auditor General, provided background information on the audit requirements of the Arizona Adult Protective Services System.

Senator Shope offered comments.

Michel Lahti, LeCroy & Milligan, distributed and explained a PowerPoint presentation entitled "Senate and House Health and Human Services Committees of Reference: Examining the Delivery of Services to Vulnerable Adults in the Arizona Adult Protective Services System" (Attachment J).

Representative Gress offered comments.

Responses by the Arizona Department of Economic Security, Arizona Department of Health Services and Arizona Health Care Cost Containment System

Molly McCarthy, Assistant Director, Aging and Adult Services, Arizona Department of Economic Security, distributed and explained a PowerPoint presentation entitled "Response - Adult Protective Services System Audit" (Attachment K) and answered questions posed by the Committee.

Jekenna Lebsock, Assistant Director, Division of Health Care Services, Arizona Health Care Cost Containment System, responded to the Auditor General's report.

Tom Salow, Assistant Director, Arizona Department of Health Services, responded to the Auditor General's Report and answered questions posed by the Committee.

Public Testimony

No public testimony took place.

Discussion

No discussion took place.

Attached are forms noting the individual who submitted a Speaker slip on the agenda items (Attachment L).

Attached is a list noting the individuals who registered their position on the agenda items (Attachment M).

There being no further business, the meeting was adjourned at 6:46 p.m.

Respectfully submitted,

Tracey Gardner
Committee Secretary

(Audio recordings and attachments are on file in the Secretary of the Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azleg.gov>)

Joint Health and Human Services Committee



Arizona State Board of Nursing Care Institution
Administrators and Assisted Living Facility
Managers

Jack Confer, Executive Director

January 2024

Current Board Membership

- Ken Kidder, President. (Administrator)
- Susan Archer, Vice-President (Assisted Living Manager)
- Pauline (Wally) Campbell, (Public Member)
- James “Ritch” Stevens, Board Member (Elder Advocacy Representative)
- Becky Brimhall (Public Member)
- Rebecca Hill, (Family Member)
- Kerri Felix, (Assisted Living Center Manager)
- Nathan Koford (Administrator)
- Jeffrey Cook (Assisted Living Manager)
- Vacant, Administrator Nonprofit or Faith Base Skill Nursing
- Vacant, Assisted Living Manager

Prior Update from NCIA Executive Director, Auditor General's Report

All deficiencies noted in the Auditor General's 18-Month Follow-up report haven't been acknowledged and current staff are being trained for compliance with policy and procedure. Several current requirements have not yet been completed; however, they will be finished before the end of this year. (slide from prior testimony 2021)

Status of 2020 Sunset Review - September 2023



Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers 42-Month Follow-Up Report

The February 2020 Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers performance audit and sunset review found that the Board did not ensure all license/certificate applicants met statutory requirements or that it timely investigated and adjudicated all complaints. The Board's status in implementing the recommendations is as follows:

Status of 17 recommendations

Implemented	16
Partially implemented in a different manner	1

Unless otherwise directed by the Joint Legislative Audit Committee, this report concludes our follow-up work on the Board's efforts to implement the recommendations from the February 2020 report.

New Legislation & Rule(s):

- Felony Bar – Administrators & Managers (ARS 36-446) definitions of Felony involving violence or financial fraud and offences involving domestic violence. [And 36-446.04 (5)] None issued.
- Administrator & Manager Fingerprinting (State & Federal) originally mandated for January 1, 2023 (ARS 36-446.03) [legislation last year to postpone to July 1, 2024 by Chairman Montenegro] Introduced Bill HB2243 this session



New Legislation & Rule(s):

- Staggered renewal dates for Administrator & Managers caregiver training program renewals
- Online Manager & Caregiver Training Programs

Complaint Stats, Then & Now

FY	Opened	Reviewed by Board	Probation or proceeded to a formal hearing	Letter of Concern	Dismissed	Still in Process
FY23 (July 1, 2022 - June 30, 2023)	670		96	88	212	274
FY22 (July 1, 2021 - June 30, 2022)	409		112	62	230	5
FY21 (July 1, 2020 - June 30, 2021)	92		41	10	41	0

Fiscal Year	Opened	Disciplinary Action	Letter of Concern	Dismissed	Revocation/Surrender
2024	454	56	55	189	7
2023	670	96	88	212	
2022	409	112	62	230	
2021	92	41	10	41	

Complaint Facts:

The NCIA Board received 733 complaints in calendar year 2023.

The Board currently has 2 FTE equivalent positions assigned to completing investigations.

The Board has asked for another FTE in its' current budget request to support investigations and compliance and is contingent upon the 22% fee increase pending before GRRC. (and budget approval this session)

Current Licensing Populations 2021 to 2023

	Then	Now
Caregiver Training Programs	53	43
Manager Training Programs	17	18
Assisted Living Manager	2169	2185
LTC Administrators	355	339
Temp Administrator	N/A	1
Temp Managers	N/A	18

Operational Changes

Elimination of Staff vacancies since July 2021
and turnover:

Licensing Specialist

Program and Project Specialist

Investigator (Contract)

Executive Director

Operations Manager (Deputy Director)

Executive Consultant

Administrative Assistant

Administrative Assistant (P/T)

General-Operational Changes

Licensing & Database Conversion (Salesforce to Thentia – Go Live last week)

Five Year Rule Review-Articles 6 & 7

22% Fee Increase – Rule Promulgation in progress

Suggestions Identified in the Boards' September 1, 2023 COR Response

- The Board would consider delegation of certain final case disposition(s) to the Executive Director or designee under an approved enforcement matrix if allowed by statute. The Board currently does not have the statutory authority to delegate these some of the functions as allowed by other similar health regulatory Board and Agencies. [A.R.S. 36-446.07 C & D] Specifically for complaint dismissal and standard non-disciplinary orders (Page 3)
- The Board's licensees and certificate holders might benefit from additional due process protections by allowing a Respondent and/or their legal representative to request an Informal or Formal Interview before the Board when they have pending disciplinary allegations against their license or certificate. Other health related regulatory Boards' currently hold the statutory authority for Formal Interview. (Page 3 & 4)

Suggestions Identified in the Boards' September 1, 2023 COR Response

- The Legislature could consider giving the Board the statutory authority for grounds for disciplinary and/or non-disciplinary action for license or certificate holders that fail to respond to initial complaint allegation notification(s) within twenty (20) business days. (Page 4)
- The Legislature could consider providing the Board statutory authority to issue non-disciplinary order(s) for completion of mandatory continuing education and reimbursement of investigative costs. (Page 4)

Specific Operational Changes

Recommendation #4

Work with DHS to establish a complaint referral system that expedites their referrals to the NCIA Board. (NCIA currently receives actions one time per month) [from Subcommittee meeting Fall of 2021] - not yet planned or implemented.

Questions?





Arizona State Legislature

1700 West Washington
Phoenix, Arizona 85007

June 27, 2023

Executive Director Jack Confer
Arizona Board of Nursing Care Institution Administrators and Assisted Living Facility Managers
1740 W. Adams, Ste. 2490
Phoenix, AZ 85007

Dear Executive Director Jack Confer:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by legislative committee of reference (COR). On completion of the sunset review, the COR recommends to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the Arizona Board of Nursing Care Institution Administrators and Assisted Living Facility Managers to the COR comprised of members of the Senate Health and Human Services Committee and the House of Representatives Health and Human Services Committee.

Pursuant to A.R.S. § 41-2954, the COR is required to consider certain sunset factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your agency's response to the factors listed below:

1. The key statutory objectives and purposes in establishing the agency.
2. The agency's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.
3. The extent to which the agency's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has provided appropriate public access to records, meetings and rulemakings, including soliciting public input in making rules and decisions.
6. The extent to which the agency timely investigated and resolved complaints that are within its jurisdiction.
7. The extent to which the level of regulation exercised by the agency is appropriate as compared to other states or best practices, or both.
8. The extent to which the agency has established safeguards against possible conflicts of interest.
9. The extent to which changes are necessary for the agency to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.
10. The extent to which the termination of the agency would significantly affect the public health, safety or welfare.

Additionally, please provide written responses to the following:

1. The extent to which the agency potentially creates unexpected negative consequences that may require additional review by the COR, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.
2. The extent to which the agency has addressed deficiencies in its enabling statutes.
3. The extent to which the agency has determined whether the Attorney General or any other agency in Arizona has the authority to prosecute or initiate actions.
4. The consequences of eliminating the agency or consolidating it with another agency.

Additionally, statute requires the COR to consider certain factors for each agency that administers an *occupational regulation*, which is defined as: 1) a statute, rule, practice, policy or other state law that allows an individual to use an occupational title or work in a lawful occupation; and 2) a government registration, government certification and occupational or professional license. An *occupational regulation* does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those state laws regulate an individual's personal qualification to perform a lawful occupation. If your agency falls under this category, please provide written responses to the following:

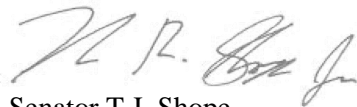
1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502.
2. The extent to which the failure to regulate a profession or occupation will result in:
 - a. the loss of insurance.
 - b. an impact to the ability to practice in other states or as required by federal law.
 - c. an impact to the required licensure or registration with the federal government.
 - d. the loss of constitutionally afforded practices.

Your response should be received by September 1, so that we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Michael Madden
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at (602) 926-3012 or Michael Madden, the Senate Health and Human Services Committee Research Analyst, at (602) 926-3072.

Sincerely,



Senator T.J. Shope
Senate Health and Human Services Committee, Chair

cc: Representative Steve Montengro, House Health and Human Services Committee, Chair
Ahjahna Graham, House Health and Human Services Committee, Analyst



**Board Of Examiners Of Nursing Care Institution Administrators And
Assisted Living Facility Managers**

1740 W. Adams Street, Suite 2490 Phoenix, Arizona 85007

Katie Hobbs
Governor

(602) 364-2273 phone
Email: information@nciaboard.us
Web Site: www.nciaboard.az.gov

Jack Confer
Executive Director

September 1, 2023

VIA ELECTRONIC MAIL

Michael Madden
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

RE: Sunset Factor Response, Arizona Board of Nursing Care Institution Administrators and Assisted Living Facility Managers (“Board”)

Pursuant to the provisions of A.R.S §41-2954, please find the Board’s initial response:

1. The key statutory objectives and purposes in establishing the agency.

The Arizona State Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) regulates nursing care institution administrators assisted living facility managers and training programs. The Board’s duties include: 1) adopting rules for licensing and certifying qualified applicants; 2) conducting examinations to determine applicant qualification; 3) adopting application, certification and examination fees; 4) conducting investigations or administrative hearings in response to complaints; 5) prescribing standards for assisted living facility training programs; and 6) reporting to the Legislature (A.R.S. § 36-446.03).

The primary purposes of licensing is three-fold: to ensure person(s) engaging in the profession of Long Term Care Administrator, Assisted Living Manager or a Manager/Caregiver Training Program possess the minimum knowledge and skills to perform the functions required; to ensure continuing competence; and that the Board take appropriate disciplinary action when a standard is violated. These three purposes all act for the assurance and protection of the public health, safety, and welfare.

2. The agency's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.

The Board reports the following statistics in support of its’ efficiency and effectiveness. In addition, has implemented all recommendations offered by the Office of the Auditor General from their 2021 Sunset Review and is awaiting their publication of the last follow-up item.

Licensing:

The Board's statutory requirement to license nursing care institution administrators, certify assisted living facility managers, and approve caregiver and manager training programs that meet the minimum requirements will continue. The Board meets monthly in a public forum to conduct its business. As of August 11, the Board has:

- 2108 certified assisted living facility managers
- 12 temporary certified assisted living facility managers
- 331 nursing care institution administrators
- 1 temporary nursing care institution administrators
- 44 assisted living facility caregiver training programs
- 12 assisted living facility manager training programs
- The Board will continue to meet the established licensing time frames.

Complaints/Investigations:

- The Board has developed and implemented policies and procedures to ensure the grounds for disciplinary action and the disciplinary processes are enforced in a timely manner.
- The Board continues to work with licensees and certificate holders to correct deficiencies or violations through the disciplinary process to ensure long term care and assisted living residents are protected. The Board would rather take corrective action by imposing remedial training or continuing education as opposed to punitive disciplinary actions to bring the licensee back into compliance.

For FY23 the Board did the following on complaints:

- 670 new complaints were opened
- 96 disciplinary action issued
- 212 were dismissed
- 88 non-disciplinary letter of concern

3. The extent to which the agency's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.

The Board has not identified any other local, state, federal or private-sector organization with similar or duplicative objectives as those of the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers.

The Board has never identified any organization, public or private, whose mission or objectives conflict with those of the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers.

4. The extent to which rules adopted by the agency are consistent with the legislative mandate.

The Board has not identified any conflicts or inconsistencies within their current Arizona Administrative Code. In addition, the Board will be conducting its 5 Year Rule review before the Governors' Regulatory Review Council this year. [Articles 6 & 7]

5. The extent to which the agency has provided appropriate public access to records, meetings and rulemakings, including soliciting public input in making rules and decisions.

The Board continues to provide appropriate access to public records, public board meeting and rule promulgation. We have not received any complaint(s) or concerns regarding access to these statutory mandates. The Board reports disciplinary actions on its' webpage and recently promulgated rules to provide online training for Assisted Living Managers and Caregivers. [Rule promulgation included stakeholder meetings, key association members and a communication plan to the regulated industry]

6. The extent to which the agency timely investigated and resolved complaints that are within its jurisdiction.

The Board instituted a policy decision to investigate all complaints referred to the Agency in late 2021 in response to concerns raised and eliminated any staff discretion to open or close all referrals received from the public or Arizona Department of Health Services. The Board continues to meet its’ obligations for complaint review and adjudication even though it is limited by staff and appropriation resources. The Board and State of Arizona has an opportunity to add appropriation resources to the Board in enhance the time frames and average turn-around time.

FY	Opened	Reviewed by Board	Probation or proceeded to a formal hearing	Letter of Concern	Dismissed	Still in Process
FY23 (July 1, 2022 - June 30, 2023)	670		96	88	212	274
FY22 (July 1, 2021 - June 30, 2022)	409		112	62	230	5
FY21 (July 1, 2020 - June 30, 2021)	92		41	10	41	0

7. The extent to which the level of regulation exercised by the agency is appropriate as compared to other states or best practices, or both.

The Board has not compared or studied its’ regulatory practices in comparison to other jurisdictions. The Board has established a caregiver training program that is intended to provide mandatory training to every caregiver working in nursing homes or assisted living facilities. Arizona is one of the few states to have this level of training in place and was one of the first State’s to require the type of training for caregivers.

The Board believes that if compared to similar regulatory agencies its’ best practices and regulatory programs are not dissimilar.

8. The extent to which the agency has established safeguards against possible conflicts of interest.

As required, the Board has established policy and procedure in place for both the Board and Staff. Conflict of Interest forms are signed and reviewed on a yearly basis and keep on file at the physical office location for review by the public if received/requested.

In addition, each public meeting and agenda specifically identifies an opportunity for Board Members to recuse themselves from an agenda item or case. The Board received legal advice from the Office of the Attorney General when and if potential conflict(s) of interest arise or recusal from cases are necessary.

9. The extent to which changes are necessary for the agency to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.

The Board has requested the Governor’s office to approve a 22% across the Board fee increase in order to support an increase in appropriation for additional staff and resources. The Board is unable to increase fees without promulgating administrative code and seeking approval from GRRC.

The Board would consider delegation of certain final case disposition(s) to the Executive Director or designee under an approved enforcement matrix if allowed by statute. The Board currently does not have the statutory authority to delegate these some of the functions as allowed by other similar health regulatory Board and Agencies. [A.R.S. 36-446.07 C & D]

The Board’s licensees and certificate holders might benefit from additional due process protections by allowing a Respondent and/or their legal representative to request an Informal or Formal interview before the Board when they

have pending disciplinary allegations against their license or certificate. Other health related regulatory Boards' currently hold the statutory authority for Formal Interview.

The Legislature could consider removing the requirement for an Assisted Living Manager applicant to have a minimum of 2,080 of paid work experience in a health-related field. [A.R.S. 32-466.04 C 4] The requirement may be duplicative in relation to the mandatory testing in the manager and caregiver examinations.

The Legislature could consider giving the Board the statutory authority for grounds for disciplinary and/or non-disciplinary action for license or certificate holders that fail to respond to initial complaint allegation notification(s) within twenty (20) business days.

The Legislature could consider providing the Board statutory authority to issue non-disciplinary order(s) for completion of mandatory continuing education.

10. The extent to which the termination of the agency would significantly affect the public health, safety or welfare.

Terminating the Board would significantly endanger the public health, safety, and welfare. The Board has imposed disciplinary action against a number of licensees and certificate holders who posed a threat to the public's health, safety and welfare by virtue of their conduct. Some of the unprofessional conduct committed by these licensees (or former licensees) include: abuse, neglect, exploitation, sexual misconduct, substandard care of residents, improper medication administration, and providing services outside their scope.

The Board has determined that elimination of the agency would place the public at risk for harm from incompetent and unethical skilled nursing facility administrators or assisted living managers. No alternative agency (local, state or federal) is currently in a position to assume the responsibility of determining and evaluating the qualifications associated with licensing of skilled nursing facility administrators or certifying assisted living managers. Nor is there an appropriate alternative agency prepared to investigate and enforce standards of practice and care for which the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers is currently responsible.

In addition, please find the Board responses to the following:

1. The extent to which the agency potentially creates unexpected negative consequences that may require additional review by the COR, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.

The Board has approved a 22% fee increase which is being passed on to our licensed population. The Board has a request pending before the Governors' office to promulgate these rules. While the Board does not necessarily consider this fee increase unexpected it could be viewed as a price or tax increase within the industry. The last fee increase occurred in 2009.

The Legislature could consider the indirect impact of the Federal Governments' HHS Proposal: Minimum Staffing Standards to Enhance Safety and Quality in Nursing Homes. The U.S. Department of Health and Human Services (HHS), through the Centers for Medicare & Medicaid Services (CMS), issued a proposed rule that seeks to establish comprehensive staffing requirements for nursing homes—including, for the first time, national minimum nurse staffing standards—to ensure access to safe, high-quality care for the over 1.2 million residents living in nursing

homes each day While the Board only regulates Administrators and Assisted Living Managers, these federal regulations could have a systemic affect to the entire industry,

2. The extent to which the agency has addressed deficiencies in its enabling statutes.

In the last two years the Board has requested, participated, and been successful amending Arizona Revised Statutes that address real and perceived deficiencies. The Board now has a Felony Bar statute and requires a nation-wide fingerprint background check.

3. The extent to which the agency has determined whether the Attorney General or any other agency in Arizona has the authority to prosecute or initiate actions.

The Board's only legal representative is the Office of the Attorney General. The Attorney General's Office serves as the Board Prosecutor and also provides Independent council when necessary.

4. The consequences of eliminating the agency or consolidating it with another agency.

Elimination of the Board could disqualify the state from participating in the federal Medicare/Medicaid funding programs as established by U.S. Code, Title 42, Chapter 7, Subchapter XIX, Section 1396a (a) (29) and 1396g. This would directly affect the public by eliminating a significant amount of federal funds.

The Board has taken a neutral position when the subject of consolidation has come up in Legislature and Executive processing's over the last couple year(s).

The Legislature should consider that consolidation into another agency or of the independent professions would not be in the best interest of the public, nor of the professions, for the following reasons:

- The Board is made up of professional long-term care administrators, assisted living facility managers and public members, thus giving both professional expertise and insight along with consumer input into the decision making process when a licensee is faced with a complaint regarding their professional conduct. Consolidation would dilute the professional component and eliminate the consumer input.
- Being an independent Board does not mean it operates inefficiently. The levels of bureaucracy are reduced and the chain of command is very short. Each employee is an expert in their specific area, such as investigations and licensing, thus requiring minimal management oversight. Because of this, decisions are made quickly, policies and procedures can be evaluated and changed in a short time, staff questions are answered immediately, consumer complaints are resolved rapidly, staff is immediately assessible to accurately answer both professional and consumers questions. Consolidation would increase bureaucracy, to resolve complaints.
- As a self-supporting regulatory 90/10 board it pays its own way to regulate the profession, with no cost to the taxpayers of Arizona, with 10% of revenue going to the State general fund. This structure gives consistency in providing services that protect the public, without struggling with general fund budget shortfalls and cuts, yet the legislature retains oversight.

Additionally, please find the following responses in relation to A.R.S. § 41-3502:

1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502.

The Board only exists for the exclusive purpose of protecting the public interest and does protect our professions/occupations from economic competition. The Board believes that there is credible evidence that if this

profession was not regulated there would be harm to the publics, health safety and welfare; the actual cost and benefit clearly exceeds the cost imposed on the regulated population; the public needs are reasonably expected to benefit government regulation and there are no know less restrictive regulations currently apparent.

2. The extent to which the failure to regulate a profession or occupation will result in:

a. the loss of insurance.

The Board is not aware that if the profession is unregulated it would result in the loss of insurance.

b. an impact to the ability to practice in other states or as required by federal law.

The Board is not aware that if the profession is unregulated it would impact practice in any other state.

c. an impact to the required licensure or registration with the federal government.

d. the loss of constitutionally afforded practices.

The Board is not aware that if the profession is unregulated it would impact licensure or registration with the federal government.

I look forward to any questions or comments that you may have! I can be contacted at 602-542-8156 or john.confer@aznciaboard.us

Thank you & Respectfully,



Jack Confer
Executive Director

Copy: Senator T.J. Shope , Senate Health and Human Services Committee, Chair
Representative Steve Montengro, House Health and Human Services Committee, Chair
Ahjahna Graham, House Health and Human Services Committee, Analyst