



## REGULATORY AGENCY ACTION

### BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel  
(916) 920-6481

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Division 31, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

#### MAJOR PROJECTS:

*DSS Releases Residential Care Facility Certification Study.* On February 28, the Department of Social Services (DSS) released its report entitled *Report to the Legislature on Implementation of an Administrator Certification Process for Residential Care Facilities for the Elderly*, which was prepared pursuant to AB 2323 (Hannigan) (Chapter 434, Statutes of 1989). (See CRLR Vol. 11, No. 1 (Winter 1991) p. 80; Vol. 10, No. 4 (Fall 1990) p. 96; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 112 for background information.) A residential care facility for the elderly (RCFE) is a group housing arrangement chosen voluntarily by residents aged six-

ty and over; approximately 4,200 RCFEs are licensed statewide. Residents are provided varying levels of care, ranging from independence to assisted living to nursing home care. RCFEs are licensed by DSS through its Community Care Licensing Division (CCLD).

The DSS advisory committee conducting the study unanimously recommended that the certification program for RCFE administrators be administered by CCLD instead of BENHA. This recommendation was based in part on the assumption that BENHA, the only state agency other than DSS which might be appropriate for the task, would need to modify its composition to represent the RCFE industry. Further, the committee perceived that BENHA did not have a strong desire to assume the function of administration of this certification program. The committee noted that DSS is required by law to establish a basic pre-licensure certification training program for new applicants; therefore, DSS will have established a preliminary system to approve programs, issue and track certificates, and conduct a statewide testing process. Also, CCLD has an established program which ensures coordination between the certification of individuals and the licensing of facilities.

According to the report, CCLD should contract with training program vendors to administer standardized testing as provided by DSS, issue certificates/cards, and provide initial and recertification training. The vendors would be approved based on standardized criteria developed by DSS.

The report recommends that the RCFE administrator certification program require forty hours of specific classroom instruction and passage of a written test; this program would apply to all RCFE administrators, with no exceptions. Administrator certification would be subject to renewal, based on the successful completion of twenty hours of continuing education in eight subject areas relating to the needs of RCFE residents. In addition, DSS recommends that all RCFE direct care staff receive ten hours of training within six months of the date of hire and annually thereafter in five areas of resident care.

The report also recommends a modified process for BENHA licensees who wish to obtain RCFE administrator certification. BENHA licensees would be required to attend a one-day course specific to elder care within a community care setting; a written test would not be required.

DSS further recommends legislation to provide initial and ongoing funding

for the implementation and maintenance of the program, clarify the duration of certification and renewal, and specify the minimum one-day training requirement for BENHA licensees.

*Little Hoover Commission Releases Separate Study of DSS' Regulation of RCFEs.* In February, the Commission on California State Government Organization and Economy (Little Hoover Commission) released a report entitled *The Snail's Pace of Reforming Residential Care Facilities for the Elderly*. The Commission has tracked the state's performance in ensuring the quality of RCFEs since 1983, and has made a total of seventeen substantive recommendations for change in three separate reports addressing RCFEs. The Commission's February report contained two criticisms of DSS' performance in regulating RCFEs. Initially, the Commission determined that DSS has not promulgated regulations quickly enough to keep up with legislative changes regarding RCFEs. The Commission recommended that DSS place top priority on completing regulatory packages for all laws that have been enacted as of January 1, 1991, and report to the Governor and the legislature on January 1, 1992 on the status of all necessary regulatory packages.

Second, the Commission found that DSS has failed to move quickly and effectively to stamp out unlicensed facilities, which the report states are a threat to the health, welfare, and safety of thousands of elderly citizens. The Commission recommended that DSS track its regional office campaign against unlicensed facilities and report the results to the Governor and legislature by January 1, 1992. (See *supra* agency report on LITTLE HOOVER COMMISSION for additional information on this report.)

*Nursing Home Reform Act Controversy.* The Nursing Home Reform Act (Act) was passed by Congress in December 1987, and became effective on October 1, 1990. This Act radically altered requirements for Medicaid- and Medicare-licensed nursing homes, focusing on improving the quality of care and life for nursing home residents. When the October 1990 deadline passed, California was one of five states alleged by the federal government to be in noncompliance with the Act's requirements. As a result, at this writing, the state is involved in litigation with the federal government and senior citizens groups regarding the implementation of the reforms.

In October 1990, a coalition of senior citizens groups filed a lawsuit against the state Department of Health Services (DHS) on behalf of elderly and disabled



nursing home residents, seeking an injunction to compel the state's compliance with regulations and "interpretive guidelines" adopted by the federal government to implement the Act. On January 11, U.S. District Court Judge Edward J. Garcia issued a preliminary injunction giving DHS thirty days to comply with the federal nursing home reforms. The judge also ordered the state to better protect nursing home residents from harmful use of physical restraints and behavioral drugs. On February 25, Judge Garcia issued a written decision, ordering state officials to immediately enforce the reforms.

Because it contends the state has not implemented federal regulations, the federal government has withheld at least \$24 million from DHS. Thus, on February 26, DHS filed a lawsuit against the U.S. Department of Health and Human Services and the Health Care Financing Administration (HCFA), claiming that federal officials failed to enact workable regulations to implement the Nursing Home Reform Act, and that the funds were improperly withheld. DHS also claimed it would cost \$400-\$600 million to comply with the federal regulations. If California remains in noncompliance with federal regulations, the federal government may decertify California nursing homes and federal financial contributions toward nursing home care (to the tune of \$1 billion annually in Medicare/Medicaid reimbursements) might be cut off.

Governor Pete Wilson supports DHS' refusal to implement the federal regulations, arguing that implementation will result in millions of dollars spent on paperwork rather than improved patient care. As a United States Senator, Wilson supported the nursing home reforms; however, he objects to the manner in which health officials are interpreting the law. In February, Wilson wrote to President Bush, asking for his assistance in settling the issue, and claiming that the federal government was improperly attempting to mandate standards on the states. However, on March 7, the federal government announced that it was sending over 100 investigators into California nursing homes to determine the extent of noncompliance.

On March 12, as this issue went to press, California and federal officials announced that they had reached a general agreement on the enforcement of the federal regulations. The agreement specifies that the state will work with federal officials on devising guidelines for implementation of the federal reforms. However, the agreement was criticized by advocates for nursing home residents,

who stated that they would ask Judge Garcia to penalize state officials who failed to comply with his February 25 order requiring strict compliance.

**NAB Preparing Five-Year Study.** Every five years, the National Association of Boards of Examiners of Nursing Home Administrators (NAB) sends questionnaires to nursing home administrators in each state in order to update its information regarding the knowledge and skills necessary to function effectively as a nursing home administrator. NAB expects to release the results of its study in June. It will use the information to update nursing home administrator examinations for certification at the state level.

#### LEGISLATION:

**AB 1615 (Hannigan).** Existing law provides that an RCFE administrator, if other than the licensee of the facility, is required to successfully complete a prescribed certification program for licensees of those facilities. As introduced March 8, this bill would repeal that provision on January 1, 1993, and would instead require that only persons who have successfully completed an unspecified approved certification program shall be RCFE administrators, on and after that date. This bill is pending in the Assembly Human Services Committee.

#### RECENT MEETINGS:

On February 14, BENHA conducted a special meeting to appoint a temporary executive officer to perform Ray Nikkel's duties until he returns from duty in the Persian Gulf. The Board appointed Luann Job, previously BENHA's secretary.

#### FUTURE MEETINGS:

To be announced.

#### BOARD OF OPTOMETRY

*Executive Officer: Karen Ollinger*  
(916) 739-4131

Pursuant to Business and Professions Code section 3000 *et seq.*, the Board of Optometry is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board establishes and enforces regulations pertaining to the practice of optometry, which are codified in Division 15, Title 16 of the California Code of Regulations (CCR). The Board's goal is to protect the consumer patient who might be subjected to injury resulting from unsatisfactory eye care by inept or untrustworthy practitioners.

The Board consists of nine members. Six are licensed optometrists and three are members of the community at large.

#### MAJOR PROJECTS:

**Board Implements Changes in Response to Critical Report.** Last year, the Board commissioned Ernst & Young to perform a management study of the Board's operations. The ensuing report found that chronic understaffing is a cause of major problems for the Board; determined that the Board's enforcement system is unreliable and inefficient; and criticized the Board's inability to offer the California examination twice per year, despite a legislative directive to do so. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 80-81 for background information.)

In response to the study, the Board submitted a budget change proposal to the Department of Finance, which subsequently approved a staff increase of 1.5 personnel years, as well as funding for a new automated phone system and additional computers. At the Board's February 11 meeting, Executive Officer Karen Ollinger reported that she had initiated the process to fill the new staff positions. Ollinger also reported that she had met with a representative of the company which will provide the Board's new telephone system, and that she was in the process of completing the paperwork for the new computer equipment (two personal computers, two terminals, and a printer).

**Foreign Graduates.** Pursuant to legislative mandate, the Board is assisting in the design of a refresher course for graduates of foreign optometric schools, which is expected to begin in September. The course, which will be offered through the UCLA Health Sciences Extension Program, will be funded by \$300,000 from the Board's reserve fund, despite the Board's desire to have the program funded through the state's General Fund. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 81; Vol. 10, No. 4 (Fall 1990) p. 97; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 113 for background information.) At the Board's February 11 meeting, Board President Stephen Chun noted that there may be conflict of interest problems with the Board's involvement in both the course administration and the testing of subsequent graduates.

Thirty students are expected to take this full-time, 18-month course; the students are predominantly from the Philippines. The course will cover the areas of clinical skills and basic clinical science, at an estimated cost of \$3,000 per student.