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February 4, 2019

The Honorable Rick Gray, Chair
Joint Legislative Audit Committee

The Honorable Anthony Kern, Co-Chair
Joint Legislative Audit Committee

Dear Senator Gray and Representative Kern:

Our Office has recently completed a 36-month followup of the performance audit report and sunset review released in September 2015 (Auditor General Report No. 15-115) of the Arizona Radiation Regulatory Agency (ARRA), Arizona Radiation Regulatory Hearing Board (Hearing Board), and Medical Radiologic Technology Board of Examiners (MRTBE) regarding the implementation status of the 69 audit recommendations (including subparts of the recommendations). Legislation in 2017 and 2018 eliminated ARRA, the Hearing Board, and the MRTBE, and transferred their authority, powers, duties, and responsibilities to the Arizona Department of Health Services (Department). Therefore, our Office has reviewed the Department's efforts to implement or continue to implement the recommendations from our performance audit report. As the attached grid indicates:

- 43 have been implemented or continue to be implemented.
- 3 were implemented in a different manner.
- 1 has been partially implemented.
- 12 are in the process of being implemented.
- 2 have not been implemented.
- 1 is not yet applicable.
- 7 are no longer applicable.

Unless otherwise directed by the Joint Legislative Audit Committee, this concludes our follow-up work on the September 2015 performance audit report and sunset review of ARRA, the Hearing Board, and the MRTBE.

Sincerely,
Dale Chapman, Director
Performance Audit Division

cc: Dr. Cara Christ, Director
Arizona Department of Health Services

Arizona Radiation Regulatory Agency

Auditor General Report No. 15-115

36-Month Follow-Up Report

Recommendation

Status/Additional Explanation

X-ray Inspections: ARRA's continued inability to perform timely x-ray facility inspections threatens public health and safety

1. ARRA should continue to identify and implement steps that will reduce inspectors' administrative work so that they can devote more time to conducting inspections.

Continued implementation at 36 months

2. ARRA should establish and coordinate with work groups to determine what inspection approach(es) it should adopt to ensure it can meet inspection frequencies. These work groups should comprise ARRA personnel as well as representatives from various external stakeholder groups and professional organizations who are affected by the x-ray inspection program. For example, depending on the facility type discussed, the work groups could include, but are not necessarily limited to:

Implemented at 24 months

- Representative(s) from hospitals;
- Representative(s) of medical, osteopathic, and/or naturopathic physicians, chiropractors, veterinarians, and podiatrists;
- Representative(s) of the dental community;
- Representative(s) of industrial and/or educational facility registrants;
- Representative(s) of certified technologists who operate x-ray machines; and
- Representative(s) of the general public.

3. ARRA should ensure that the work groups research the inspection approaches employed by other states, evaluate the various approaches, and determine what approach(es) ARRA should adopt to ensure that x-ray facilities are inspected in a timely manner. As part of their evaluation, the work groups should assess and develop recommendations regarding:

Implemented at 24 months

- The inspection approach(es) that will help ensure the public is adequately protected, such as using certified private inspectors, and what quality assurance processes would be needed to ensure that inspections are being adequately performed;
- What financial resources, including fees and appropriations, would be necessary to cover the cost of its recommended inspection approach(es);

Recommendation

Status/Additional Explanation

- What training requirements would be necessary to implement its recommended inspection approach(es); and
- The inspection frequencies and whether more or less frequent facility inspections are warranted.

4. Once the work groups have developed their recommendations, ARRA should evaluate them and implement the recommendations that will help ensure that the public is adequately protected, working with its Attorney General representative to make recommendations to the Legislature, as necessary.

Implementation in process

In response to the stakeholders' recommendations, the Arizona Department of Health Services (Department) has increased the number of inspector positions while reducing the number of administrative staff. Department staff reported reducing the inspection backlog to 16 percent of facilities being overdue for an inspection as of November 2018. We will conduct additional work related to the Department's ongoing efforts to perform timely inspections as part of its sunset review, which is due by October 1, 2019.

Certification: MRTBE should improve its process for issuing certificates

1. The MRTBE should develop and implement the following policies and procedures for reviewing and processing initial and renewal certificate applications:
- a. Administration and scoring of exams. Specifically:
- Prohibiting MRTBE staff from allowing applicants a second chance to answer questions they miss or allowing applicants to retake the entire test without reapplying;
 - Requiring applicants who fail examinations to reapply and repay the examination fee in order to retake the test as required by A.R.S. §32-2813(D); and
 - Directing staff on how to administer an examination.
- b. Accepting external certificates. Specifically:
- Requiring MRTBE staff to only accept certificates that are valid and current at the time of application; and
 - Developing procedures for verifying and documenting an applicant's external certificate prior to issuing a certificate.
- c. Establishing a reconciliation procedure to ensure that the correct certificate is issued based on the application.

No longer applicable

The Department uses exams from national certificate-granting bodies for each certificate type in place of administering and scoring its own exams.

Continued implementation at 36 months

Continued implementation at 36 months

Recommendation

Status/Additional Explanation

d. Ensuring applicants complete an MRTBE-approved school or training program. Specifically:

- Developing a method, in consultation with its Attorney General representative, for approving out-of-state schools and training programs;
- Requiring all applicants, including out-of-state applicants, to graduate from an MRTBE-approved school or training program as required by statute and rule.

e. Modifying its application forms to require applicants to provide appropriate documentation demonstrating completion of an MRTBE-approved school or training program and completion of high school or its equivalent.

f. Specifying what documentation must be submitted to demonstrate compliance with continuing education requirements and verifying and documenting a valid external certificate when it is submitted showing completion of the continuing education requirements.

g. Requiring that applicants renew their certificates on the appropriate renewal form prior to staff issuing the renewal.

Implemented in a different manner at 6 months

The Legislature enacted Laws 2016, Ch. 141, which amended A.R.S. §32-2812 to allow applicants to go to an out-of-state school of radiologic technology that is approved by other entities, including the Joint Review Committee on Education in Radiologic Technology, the American Registry of Radiologic Technologists, and the Nuclear Medicine Technology Certification Board.

Implemented at 36 months

Continued implementation at 36 months

Continued implementation at 36 months

2. The MRTBE should develop and implement oversight mechanisms to ensure that MRTBE management issues certificates only to applicants who meet the qualifications established in statute and rule. These oversight mechanisms could include requiring MRTBE management to submit management reports to the MRTBE that provide information about issued certificates and denied applications and/or periodic review of issued certificates by the MRTBE to ensure that MRTBE management issued the certificates to qualified applicants.

Implemented at 36 months

3. The MRTBE should develop and implement policies and procedures that establish a reconciliation procedure to ensure that data is entered into the database correctly.

Continued implementation at 36 months

Recommendation**Status/Additional Explanation**

4. The MRTBE should implement its new policy requiring staff to submit quarterly timeliness reports to the MRTBE.

Implementation in process

Although this recommendation was previously implemented, the Department reported it is taking additional steps to help ensure certificates are issued in a timely manner. For example, the Department is in the process of modifying its current system to generate certification timeliness reports. The Department also reported it plans to develop an online system to better manage the certification process, but it has not yet established a timeline for implementing this new online system.

5. The MRTBE should develop and implement procedures directing staff on how to prepare these reports, such as the information that should be included in these reports, and who is responsible for preparing and sending these reports.

Implementation in process

Although this recommendation was previously implemented, the Department continues to monitor certification timeliness and reported it plans to develop an online system to better manage the certification process in the future. See explanation for MRTBE Certification, Recommendation 4.

Complaint Resolution: MRTBE does not always adequately investigate and may inappropriately dismiss complaints

1. The MRTBE should ensure that its staff follow the MRTBE's established complaint investigation policies and procedures, which require staff to identify the certificate holder who is the subject of the complaint and document their investigative activities on each case.

Continued implementation at 36 months

2. The MRTBE should develop and implement complaint investigation policies and procedures requiring staff to make reasonable efforts to verify the certificate holder's response.

Implementation in process

The Department has developed guidance documents outlining the various steps in its complaint resolution process, including the investigation of complaints and determining whether the complaint is substantiated. As part of investigating complaints, Department staff also reported that they make reasonable efforts to verify the certificate holder's response. However, the Department was not able to provide sufficient documentation of these efforts.

3. The MRTBE should modify and implement its draft policy to provide direction on whether the MRTBE Chair should either dismiss a complaint or forward it to the MRTBE for review and require that the basis for the MRTBE Chair's decision be documented.

No longer applicable

Although this recommendation was previously implemented, it is no longer applicable because of legislative changes that eliminated the MRTBE.

4. The MRTBE should develop and implement policies and procedures that specify when it will charge a certificate holder with uncertified practice and when it will require the certificate holder to pay a late fee, as well as how staff should determine the duration of a certificate holder's uncertified practice.

Continued implementation at 36 months

Recommendation	Status/Additional Explanation
<p>5. The MRTBE should review and modify as necessary its new policy for disciplining individuals who practice uncertified for the first time and then adhere to this policy to ensure that it consistently disciplines instances of uncertified practice.</p>	<p>Implemented at 36 months</p>
<p>6. The MRTBE should implement the new policy it developed that requires staff to notify complainants of the results of an investigation within 30 days of the investigation's completion.</p>	<p>Implementation in process The Department adopted the guidance the MRTBE created that direct staff to notify complainants of the results of a completed investigation; however, we were unable to assess whether the Department has implemented this policy as no complaint-based investigations had been completed as of December 2018.</p>
<p>7. The MRTBE should meet frequently enough to ensure complaints are resolved within 180 days.</p>	<p>No longer applicable Although, this recommendation was previously implemented, the MRTBE has since been eliminated. However, the Department has taken steps to address the underlying concern related to this recommendation. Specifically, Department staff hold enforcement meetings on a weekly basis to help ensure complaints are resolved in a timely manner.</p>
<p>8. The MRTBE should develop and implement policies and procedures that:</p> <ul style="list-style-type: none"> a. Establish requirements for tracking and monitoring complaint timeliness and require staff to actively monitor the progress of complaint investigations and address the reasons for any delays; and b. Require staff to submit reports to the MRTBE at its meetings regarding complaint-processing timeliness to help the MRTBE identify and address factors in the complaint-handling process that may impact timeliness. 	<p>Implemented at 36 months</p> <p>Implementation in process Although the MRTBE has been eliminated, the Department has taken steps to address the underlying concern related to this recommendation. Specifically, Department staff hold enforcement meetings on a weekly basis to help ensure complaints are resolved in a timely manner. Also, see explanation for MRTBE Complaint Resolution, Recommendation 7.</p>
<p>9. The MRTBE should develop and implement an electronic tracking system, or modify its electronic complaint tracking log, to track the terms of consent agreements, including when these terms are required to be met.</p>	<p>Continued implementation at 36 months</p>
<p>10. The MRTBE should develop and implement policies and procedures for tracking certificate holder compliance with the terms of consent agreements. These policies and procedures should require staff to enter information into the electronic tracking system and regularly review the cases to ensure timely followup if a consent agreement requirement has not been satisfied in a timely manner.</p>	<p>Continued implementation at 36 months</p>

Recommendation

Status/Additional Explanation

11. The MRTBE should establish agreements with one or more outside organization(s) that provide drug-monitoring services and require certificate holders who have been ordered to complete random drug testing to use this outside organization(s) for these services. The MRTBE should also require that the certificate holders pay for their own drug testing.

Implementation in process

The Department reported that it is working to transfer the agreements that the MRTBE had established with outside organizations to provide drug-monitoring services.

Public Information: MRTBE's Web site has not always provided accurate certificate status

1. The MRTBE should ensure it provides accurate, complete, and timely information to the public by:
 - a. Developing and implementing a mechanism to ensure that certificates do not show as issued on its Web site when they have not been issued. For example, the MRTBE could develop and implement policies and procedures to direct staff not to enter information about an applicant into the database until after the certificate is approved or add a database feature that would not publish new certificates on its Web site until MRTBE management approves them;
 - b. Finalizing and implementing its public information policy for providing disciplinary, nondisciplinary, and dismissed complaint information over the phone; and
 - c. Modifying the notice on its Web site that requires the public to submit a notarized public records request to obtain information about certificate holders to instead inform the public that they can obtain information about certificate holders by contacting the MRTBE directly.

Continued implementation at 36 months

Implementation in process

The Department has developed guidance for providing disciplinary, nondisciplinary, and complaint information over the phone. However, the Department's guidance refers staff to a Department website, www.azcarecheck.com, which does not yet include enforcement information for certified medical radiologic technologists. The Department did not identify a date for when the website would include records for certified medical radiologic technologists.

Continued implementation at 36 months

Recommendation**Status/Additional Explanation****ARRA Sunset Factor 2: The extent to which ARRA and the Hearing Board have met their statutory objective and purpose and the efficiency with which they have operated.**

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1. ARRA should implement the recommendations of the Office of the Auditor General's May 2015 procedural review, conducted in conjunction with this audit. Specifically, ARRA should:
 - a. Maintain evidence of written quotations or written sole source determinations, as applicable, in the contract file; **Implemented at 6 months**
 - b. Consult with the State Procurement Office in making sole source determinations and request written permission before exceeding its delegated purchasing authority; **Implemented at 6 months**
 - c. Require that two personnel who do not have direct custodial responsibility for the assets perform a physical inventory annually, document the physical inventory results on the capital assets list, document management reviews and the property control officer's tests on the capital list to test the list's accuracy, and retain all documentation supporting the physical inventory; **Implemented at 24 months**
 - d. Use restricted monies only for their authorized purposes; **Partially implemented at 36 months**
We reviewed a sample of expenditures from July 1, 2017 through September 30, 2018, and found that, in general, restricted monies were used only for their authorized purposes. However, we identified one instance where an expenditure amount related to building improvements was allocated to a single restricted fund when the allocation should have been disbursed across multiple funds. Department staff reported that they were aware of the issue but were only able to use the one fund because it was the only fund with available appropriations.
 - e. Prepare detailed personnel activity reports demonstrating that the payroll costs ARRA charges for its employees to each funding source represent the actual time the employees worked on the project; and **Implemented at 6 months**
 - f. If ARRA distributes payroll costs based on budgeted amounts for interim accounting purposes, it should adjust payroll costs at least quarterly to reflect actual costs. **Implemented at 6 months**
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Recommendation

Status/Additional Explanation

2. In conjunction with establishing work groups to identify, research, and evaluate an alternative x-ray inspection approach(es) for ARRA as recommended on page 13, ARRA should also establish work groups to examine options for performing nonionizing inspections in a timely manner. In assessing these options, these work groups should:

- a. Include various stakeholders, such as nonionizing radiation experts and representatives from relevant professional associations;
- b. Research and evaluate the inspection approaches taken by other states, and make recommendations about what approach(es) ARRA should adopt; and
- c. Determine what financial resources, including fees and appropriations, would be necessary to cover the cost of the work groups' recommended inspection approach(es).

Implemented at 24 months

Implemented at 24 months

Implemented at 24 months

3. Once the work groups make their recommendations, ARRA should evaluate the work groups' recommendations and implement the recommendations that will help ensure that the public is adequately protected, working with its Attorney General representative to make recommendations to the Legislature, as necessary.

Implementation in process

In response to the stakeholders' recommendations, the Department has increased the number of inspector positions while reducing the number of administrative staff. Department staff reported reducing the inspection backlog to 28 percent of facilities being overdue for a nonionizing inspection as of November 2018. We will conduct additional work related to the Department's efforts to conduct timely nonionizing inspections as part of its sunset review, which is due by October 1, 2019.

4. ARRA should evaluate its registration requirements against accepted standards and practices.

Implementation in process

The Department compared its registration requirements against the Conference of Radiation Control Program Directors suggested state regulations and determined its requirements aligned with standard practices across the country. However, the Department has identified some areas where its registration requirements established in rule need to be updated for clarity and reported it is in the process of addressing these changes through the rulemaking process. The Department did not identify an anticipated date for when it would complete these changes.

5. Once ARRA determines what rules are necessary to protect the public health and safety, it should:

- a. Seek to remove unnecessary rules; and
- b. Update its registration forms.

Implementation in process

See explanation for ARRA Sunset Factors, Recommendation 4.

Not yet applicable

See explanation for ARRA Sunset Factors, Recommendation 4.

Recommendation	Status/Additional Explanation
6. ARRA should consult with its Attorney General representative to determine whether and when it can make the rule changes necessary to update its registration process, as well as the other rule changes suggested throughout this report.	Implemented at 24 months
7. ARRA should develop and implement policies and procedures for the practices it already has in place in its x-ray and nonionizing programs, such as instructions on the information and forms staff review for all types of x-ray and nonionizing registrations, and procedures for how the peer review process should be conducted.	Implemented at 36 months
8. ARRA should consistently and accurately track all dates regarding its timeliness in processing x-ray and nonionizing registration applications, such as the date an application is received, the date more information is requested and received, the date payment is requested and received, the date the registration is approved or denied, and the date the registration is mailed.	Implemented at 36 months
9. ARRA should develop and implement policies and procedures that require staff to periodically assess timeliness to ensure that ARRA is complying with its required time frames for processing and issuing x-ray and nonionizing registrations.	Continued implementation at 36 months
ARRA Sunset Factor 5: The extent to which ARRA and the Hearing Board have encouraged input from the public before adopting their rules and the extent to which they have informed the public as to their actions and their expected impact on the public.	
10. To comply with the State's open meeting law, the Hearing Board should ensure that it has meeting minutes with all required elements for all of its meetings and that it can provide a copy of its meeting minutes within 3 business days following its meetings, if requested.	No longer applicable Although this recommendation was previously implemented, the Hearing Board was terminated on July 1, 2018.
11. To comply fully with A.R.S. §41-1091.01, ARRA should post on its Web site the full text of each substantive policy statement currently in use, if practicable.	Continued implementation at 36 months
12. ARRA should update its notice that substantive policy statements are advisory only, consistent with the amended version of A.R.S. §41-1091.	Continued implementation at 36 months
13. ARRA should respond to public information requests in a timely manner.	Implemented at 6 months

Recommendation**Status/Additional Explanation****ARRA Sunset Factor 6: The extent to which ARRA and the Hearing Board have been able to investigate and resolve complaints that are within their jurisdiction.**

14. ARRA should develop and implement policies and procedures to require staff to track the dates when a complaint was resolved and determine the time it takes to resolve complaints.

Continued implementation at 36 months

ARRA Sunset Factor 9: The extent to which changes are necessary in the laws of ARRA and the Hearing Board to adequately comply with the factors listed in the sunset law.

15. To appropriately investigate and resolve complaints against cosmetic laser technicians, ARRA should work with its Attorney General representative to pursue one of two options:

- a. Seek an amendment to statute and rule to:
- Provide ARRA with the ability to issue civil penalties; and
 - Define unprofessional conduct.

Not implemented

See explanation for ARRA Sunset Factors, Recommendation 15b.

- b. Propose statutory changes to transfer the responsibility for regulating cosmetic laser technicians to the MRTBE. If ARRA decides to seek legislation to transfer the responsibility for regulating cosmetic laser technicians to the MRTBE, it should propose statutory changes to modify the membership of the MRTBE to include at least one certified cosmetic laser technician.

Implemented in a different manner at 36 months

With the elimination of ARRA and the MRTBE, the Department assumed responsibility for regulating cosmetic laser technicians. Although statute provides the Department with authority to investigate complaints and take appropriate disciplinary action, including certificate revocation, it does not provide the Department with explicit authority for issuing civil penalties or define unprofessional conduct.

16. Before the MRTBE takes on the responsibility of regulating cosmetic laser technicians, it should address the various issues with its performance that are discussed in this report.

Implementation in process

The Department is in the process of implementing the recommendations directed to the MRTBE but has not yet implemented all the recommendations

17. ARRA should work with its Attorney General representative to propose statutory and/or rule changes that would provide it with explicit authority to investigate complaints regarding sources of radiation.

No longer applicable

ARRA's Attorney General representative had previously determined that ARRA had explicit authority under Arizona Revised Statutes to investigate complaints regarding sources of radiation.

Recommendation**Status/Additional Explanation****MRTBE Sunset Factor 2: The extent to which the MRTBE has met its statutory objective and purpose and the efficiency with which it has operated.**

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| <p>1. The MRTBE does not have statutory authority to issue certificates for radiation therapy, computed tomography, and student mammography and should:</p> <ul style="list-style-type: none"> a. Consult with its Attorney General representative to identify the necessary statutory changes needed to give MRTBE the specific authority to issue these certificates; b. Work with the Legislature to make these changes; and c. Stop issuing these certificates until it has the authority to do so. | <p>Implemented at 6 months</p> <p>Implemented at 6 months</p> <p>No longer applicable
The Legislature enacted Laws 2016, Ch. 141, which authorized the issuance of certificates for radiation therapy, computed tomography, and student mammography effective August 2016.</p> |
| <p>2. The MRTBE should stop imposing the application requirements of AAC R12-2-301 on nuclear medicine and practical technologist in bone density applicants because these requirements do not apply to these applicants.</p> | <p>Implemented in a different manner at 6 months
The Legislature enacted Laws 2016, Ch. 141, which amended A.R.S. §32-2812 to require nuclear medicine and practical technologist in bone density applicants to comply with the same application requirements as other certificate applicants.</p> |
| <p>3. The MRTBE should develop and implement policies and procedures to help ensure that certificates are issued for the appropriate length of time.</p> | <p>Implemented at 36 months</p> |
| <p>4. The MRTBE should modify its initial application to require mammography applicants to demonstrate that they have completed the required initial training.</p> | <p>Implemented at 24 months</p> |
| <p>5. The MRTBE should develop and implement policies and procedures for obtaining the necessary inspection results from ARRA inspectors to show that renewal applicants have completed the required continuing education.</p> | <p>Not implemented
The Department reported that it has not yet implemented policies and procedures for obtaining the necessary inspection results from inspectors to show that renewal applicants have completed the required continuing education.</p> |

MRTBE Sunset Factor 4: The extent to which rules adopted by the MRTBE are consistent with the legislative mandate.

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| <p>6. The MRTBE should consult with its Attorney General representative and seek statutory authority to issue a radiation therapy technologist, a bone density technologist, and a computed tomography technologist certificate and/or modify the administrative rules for these certificate types.</p> | <p>Implemented at 6 months</p> |
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Recommendation**Status/Additional Explanation****MRTBE Sunset Factor 5: The extent to which the MRTBE has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

7. To comply fully with A.R.S. §41-1091.01, the MRTBE should post on its Web site the full text of each substantive policy statement currently in use, if practicable, and should update its advisory statement that substantive policy statements are advisory only to cite the new law.

No longer applicable

The Department does not have any substantive policy statements relating to medical radiologic technologists.

MRTBE Sunset Factor 9: The extent to which changes are necessary in the laws of the MRTBE to adequately comply with the factors listed in the sunset law.

8. The MRTBE, in consultation with its Attorney General representative, should propose the following statutory changes:

- a. Removing the requirement for it to approve high schools for radiologic technologist applicants;
- b. Removing the requirement that external certifying organizations be approved by the American Medical Association or the American Osteopathic Association; and
- c. Authorizing the MRTBE to charge an application fee for nuclear medicine certificates. Until it has the authority, the MRTBE should stop imposing this fee.

Implemented at 6 months**Implemented at 6 months****Implemented at 6 months**

9. The MRTBE should, in consultation with its Attorney General representative, propose statutory and/or rule changes specifically authorizing it to investigate complaints against certificate holders.

Implemented at 6 months