

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

Board did not ensure all license/certificate applicants met statutory requirements and timely investigate and adjudicate all complaints

Performance Audit and
Sunset Review

February 2020
Report 20-101

A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





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February 25, 2020

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Allen Imig, Executive Director
Arizona Board of Examiners of Nursing Care Institution Administrators
and Assisted Living Facility Managers

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers*. This report is in response to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers agrees with all the findings and plans to implement all the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Lindsey Perry, CPA, CFE
Auditor General

cc: Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers members



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

CONCLUSION: The Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) regulates nursing care institution administrators (licensed administrators) and assisted living facility managers (certified managers) in Arizona through licensure and certification, investigating and resolving complaints, and providing information to the public about the status of licenses and certificates. We found that the Board should verify that license/certificate applicants meet statutory requirements to legally work in Arizona and possess a valid fingerprint clearance card, investigate and adjudicate complaints in a timely manner, and provide accurate information to the public. Additionally, the Board should ensure that it accurately, consistently, and fairly assesses and charges for reimbursement of investigative costs as part of its disciplinary process.

Board issued or renewed some administrator and manager licenses/certificates despite not ensuring some requirements were met

Statute requires the Board to verify an applicant's lawful presence in the U.S. and ensure that the applicant's fingerprint clearance card is valid before issuing or renewing a license or certificate. We reviewed random samples of 17 initial administrator license applications and 15 initial manager certificate applications and identified deficiencies in 12 of these applications regarding lawful presence requirements and/or possessing a valid fingerprint clearance card. Meeting these requirements confirms that applicants are legally authorized to work in Arizona and that, as of the date Board staff check the fingerprint

clearance card's validity, applicants have not been convicted of a precluding criminal offense. This is important because some licensed administrators and certified managers work with vulnerable populations.

Recommendation

The Board should continue to implement its new policies and procedures to ensure applicants meet requirements for lawful presence and fingerprint clearance card validity.

Board has not timely investigated and adjudicated some complaints, which may have put residents at risk

The Board did not investigate and adjudicate in a timely manner 5 of the random sample of 20 complaints against licensed administrators and certified managers we reviewed. Specifically, the Board took between 223 and 589 days to investigate and adjudicate these 5 complaints. Untimely complaint investigation and adjudication may put some

Board did not ensure 12 of 32 applicants met all licensure/certification requirements¹



¹ One of these applicant files lacked both an ID with a photograph and evidence of fingerprint clearance card validity.



residents at risk because it allows licensed administrators and certified managers alleged to have violated Board statutes and rules to continue working while under investigation, even though they may be unfit to do so.

Recommendation

The Board should:

- Work with the Arizona Department of Health Services (DHS) to timely obtain names of responsible certified managers associated with assisted living facilities where DHS has identified deficiencies.
- Implement and further revise its complaint handling policies and procedures to monitor Board staff compliance with policies and procedures and regularly generate management reports on complaint processing timeliness.

Board did not provide adequate public information in response to anonymous phone calls we made

Accurate and complete information about licensed administrators and certified managers helps the public make informed decisions about selecting a safe environment for themselves and/or their loved ones. We placed 3 anonymous phone calls to the Board's offices and requested information about 1 licensed administrator and 2 certified managers, and Board staff provided inaccurate or insufficient information for all 3 phone calls.



The Board provided inaccurate or insufficient information for all 3 anonymous calls we made.

Recommendation

The Board should continue to implement and ensure its staff comply with its newly revised policies and procedures for providing public information over the phone.

Other Board action needed

As reported in the Sunset Factors section of the report, we identified the following area for improvement:

Board should accurately, consistently, and fairly assess reimbursement of complaint investigative costs—When the Board disciplines a licensed administrator or certified manager in response to a complaint, it typically seeks reimbursement for its investigative costs through a consent agreement. However, we found no evidence that the reimbursement amount is based on the actual costs the Board incurs to investigate the complaint or that it consistently and fairly assesses this reimbursement. Without policies and procedures for accurately determining and assessing complaint investigation costs, the Board cannot demonstrate that it is recouping the actual costs of its investigation and consistently seeking this reimbursement.

Recommendation

The Board should conduct a review of its costs for investigating complaints that includes determining direct and indirect costs, establishing an hourly rate for investigations, and determining a method for tracking the staff time and activities for investigating each complaint.



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The Office of the Auditor General has completed a performance audit and sunset review of the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board). This report addresses the Board's processes for issuing and renewing nursing care institution administrator licenses and assisted living facility manager certificates, investigating and adjudicating complaints, and providing information to the public, and provides responses to the statutory sunset factors.

Mission and responsibilities

The Board was established in 1975 to regulate nursing care institution administrators (licensed administrators) and fulfill the federal Medicaid requirement for states to regulate administrators before receiving federal Medicaid monies. In 1990, the Legislature added certification and regulation of assisted living facility managers (certified managers) to the Board's responsibilities (see textbox). The Board's mission is to protect the health, welfare, and safety of Arizona citizens who seek and use the services of nursing care institution administrators and assisted living facility managers. Its responsibilities include:

- Issuing licenses and certificates that must be renewed every 2 years to qualified administrators and managers.
- Investigating and adjudicating complaints against licensed administrators and certified managers.
- Providing information about licensed administrators and certified managers to the public.
- Setting curriculum standards and approving and annually renewing assisted living facility manager and assisted living facility caregiver training programs.
- Approving and annually renewing providers of Administrator-in-Training (AIT) programs, which are training programs for individuals preparing to be licensed as an administrator for a nursing care institution, when programs have not already been accredited by a national organization (see Sunset Factor 2, pages 18 through 19, for more information on AIT program provider approval).¹

Licensed administrators are charged with the general administration of a nursing care institution—also known as a nursing home—that provides care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician. In Arizona, licensed administrators must have a specified master's degree or a college degree and complete a national or Board-approved administrator training program.

Certified managers have responsibility for the administration or management of an assisted living facility, which is a residential care institution that provides services such as residential placement, supervisory care, and personal care for persons who do not need continuous nursing services. In Arizona, certified managers must have a high school diploma or GED and complete Board-approved training programs or hold a healthcare related license as specified by law. According to the Board, assisted living facilities provide health-related services, such as assistance with bathing or managing medications, rather than medical services.

Source: Auditor General staff review of Arizona Revised Statutes, Title 36, Chapter 4 and Arizona Administrative Code, Title 4, Chapter 33, and discussions with Board staff.

¹ Arizona Administrative Code (AAC) R4-33-301(B) requires the Board to review and approve AIT program providers that have not already been approved by the National Association of Long Term Care Administrators Boards (NAB). According to the NAB, it is an organization that supports and participates in collaborative initiatives with the NAB Foundation to enhance the quality of care in long-term care communities in the interest of public protection.

As of October 2019, the Board reported 337 actively licensed administrators and 2,093 actively certified managers in Arizona.

Organization and staffing

As required by Arizona Revised Statutes (A.R.S.) §36-446.02, the Board consists of 9 governor-appointed members. This includes 3 licensed administrators, 4 certified managers, and 2 public members who are not affiliated with a nursing care institution or an assisted living facility.² Board members who are administrators or managers of a nursing care institution or an assisted living facility serve 3-year terms, and Board members who are not affiliated with a nursing care institution or the manager of an assisted living facility, such as the 2 public members, serve 2-year terms. Board members are eligible to serve 2 consecutive terms. As of January 2020, the Board reported that it had 3 members who continue to serve without being reappointed and 1 public member vacancy since October 2019. One of the 3 Board members that continues to serve without current appointments has served continuously since 2004; the second Board member has served since 2005 with a 2-year break in his service between 2009 and 2011; and the third Board member has served since being appointed to complete another appointee's term in 2017. Board staff explained that potential candidates have applied to serve on the Board, but as of January 2020, the Governor's office has not appointed a member to fill the 1 remaining public member vacancy, which has been vacant since October 2019.

The Board was appropriated 6 staff positions for fiscal year 2020. As of December 2019, 4 positions were filled by an executive director, licensing specialist, chief investigator, and administrative assistant. The Board had 2 vacant staff positions—a programs and projects specialist and an administrative assistant.³

Budget

The Board does not receive any State General Fund appropriations. Rather, the Board's revenues consist primarily of administrator licensing and manager certification fees. Statute requires the Board to remit all monies collected from civil penalties and 10 percent of all other revenues, including licensing and certification fees, to the State General Fund, with the Board retaining the remaining 90 percent of these revenues. In addition, the Board received or estimates it will receive an average of more than \$15,600 annually in fiscal years 2018 through 2020 from reimbursements for complaint investigation costs paid by licensed administrators and certified managers who are disciplined by the Board and agree to pay their complaint investigation costs.⁴ For fiscal years 2018 through 2020, most of the Board's revenues consisted of or will consist of licensing and related fees, and most of its expenditures were or will be for personnel costs (see Table 1, page 3, for additional information).

² Administrators serving on the Board must include 1 administrator of a nonprofit or faith-based skilled nursing facility, 1 administrator of a proprietary skilled nursing facility, and 1 licensed administrator with an active Arizona license. Managers serving on the Board must include 2 managers of an assisted living center that has 11 or more residents, 1 manager of an assisted living home that has 10 or fewer residents, and 1 certified manager with an active Arizona license.

³ Board staff explained that these positions remain open due to several factors, including a lack of available office space and the need to ensure sufficient funding before hiring additional staff.

⁴ A.R.S. §35-142.01(A) states that reimbursements for expenditures may be deposited in the account from which the expenditure was incurred.

Table 1
Schedule of revenues, expenditures, transfers, and changes in fund balance
Fiscal years 2018 through 2020
(Unaudited)

	2018 (Actual)	2019 (Actual)	2020 (Estimate)
Revenues			
Licensing and fees ¹	\$327,053	\$450,977	\$331,425
Charges for goods and services ²	74,048	70,722	72,917
Complaint investigation cost reimbursements ³	16,675	13,200	17,000
Interest income	6,068	7,468	5,600
Fines, forfeits, and penalties		150	500
Other ⁴	18,302	19,966	18,825
Total gross revenues	442,146	562,483	446,267
Remittances to the State General Fund ⁵	(41,924)	(53,452)	(42,817)
Total net revenues	400,222	509,031	403,450
Expenditures and transfers			
Payroll and related benefits	343,369	352,190	360,121
Professional and outside services		3,030	4,000
Travel	4,078	4,527	5,593
Other operating ⁶	40,373	62,151	73,209
Furniture and equipment	6,319	808	6,000
Total expenditures	394,139	422,706	448,923
Transfers to the Arizona Department of Administration ⁷	35,400	0	0
Total expenditures and transfers	429,539	422,706	448,923
Excess of revenues over (under) expenditures	(29,317)	86,325	(45,473)
Fund balance, beginning of year	403,430	374,113	460,438
Fund balance, end of year	\$374,113	\$460,438	\$414,965

¹ Licensing and related fee revenue varies between fiscal years as licenses and certificates are issued and renewed for 2 years.

² Charges for goods are for publications and reproductions. Charges for services are for State jurisprudence examination fees.

³ According to the Board, complaint investigation cost reimbursements are composed of payments from licensed administrators and certified managers who are disciplined and reimburse the Board for the cost of their complaint investigation.

⁴ According to the Board, other revenues are composed of various revenues including credit card convenience fees and charges for duplicate licenses and certificates.

⁵ As required by A.R.S. §36-446.08, the Board is required to remit 100 percent of civil penalties and 10 percent of monies it collects pursuant to A.R.S., Title 36, Art. 6, to the State General Fund. Reimbursements and interest income are not included in the Board's remittances to the State General Fund.

⁶ Other operating expenditures are composed of various expenditures including building rent, insurance costs, information technology services, postage costs, and office supplies.

⁷ Consisted of one-time transfers to the Arizona Department of Administration in fiscal year 2018 for a State-wide information technology system project and office relocation costs.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* and the *State of Arizona Annual Financial Report* for fiscal years 2018 and 2019 and Board-provided financial information for fiscal year 2020.



Board issued or renewed some administrator and manager licenses/certificates despite not ensuring some requirements were met

To receive and renew licenses/certificates, applicants must meet statutory requirements to legally work in Arizona and submit a valid fingerprint clearance card

Statute requires the Board to verify an applicant's lawful presence in the U.S. and ensure that the applicant's fingerprint clearance card is valid before issuing or renewing a license or certificate. Specifically:

- Statute requires all licensing boards in Arizona to obtain documentation that establishes citizenship or alien status in the U.S. for an applicant, such as a passport, which includes a photo.⁵ However, if the documentation submitted does not contain the individual's photograph, such as a birth certificate, a government-issued document that contains a photograph must also be submitted. Ensuring applicants submit appropriate documentation confirms that the individual is legally authorized to work in Arizona.
- The Board issues an initial license or certificate to applicants who have a valid fingerprint clearance card (see textbox).⁶ Statute requires that a licensed administrator and a certified manager maintain a valid fingerprint clearance card throughout the duration of the licensing or certification period.⁷ Obtaining available information about whether applicants have been convicted of a criminal offense is important because some licensed administrators and certified managers work with vulnerable populations, such as elderly individuals who require nursing services on a continuing basis or those who need assistance with daily living activities. Additionally, confirming the validity of fingerprint clearance cards ensures applicants for initial and renewal licenses and certificates have complied with the requirement to have or maintain a valid card.

Fingerprint clearance card—A card that the Arizona Department of Public Safety (DPS) issues indicating that the cardholder is not awaiting trial for or has not been convicted of committing certain precluding criminal offenses, such as sexual assault, forgery, and concealed weapon violations. DPS issues this card based on its review of an applicant's criminal history record information. The card is valid for 6 years; however, if a cardholder is arrested for a precluding offense during this time period, DPS is authorized to suspend the card. DPS is also required to notify the cardholder and the entity if the cardholder is employed or licensed by an entity that is statutorily authorized to receive notification that the card is suspended pending the outcome of the arrest.

Source: Auditor General staff review of A.R.S. §41-1758 et seq. and communication with DPS staff.

Confirming the validity of the fingerprint clearance card is also important both at initial licensure/certification and at renewal because a fingerprint clearance card may no longer be valid if a cardholder is arrested for a precluding

⁵ A.R.S. §41-1080.

⁶ A.R.S. §36-446.04, AAC R4-33-201(3) and R4-33-401(A)(5).

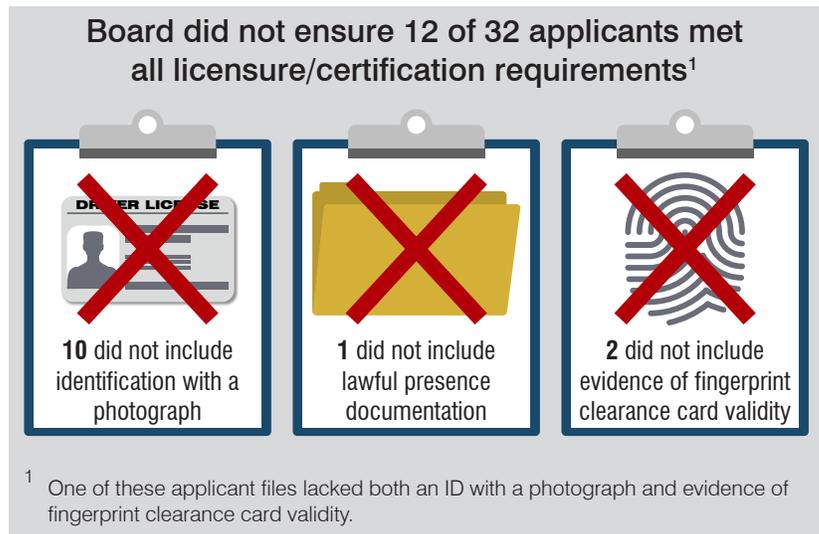
⁷ A.R.S. §36-446.04(B) and (D).

offense. In these cases, DPS is authorized to suspend the card and notify agencies that are statutorily authorized to receive notification, such as the Board. However, DPS will only send a notification if the cardholder's original fingerprint clearance card application indicated that the Board should be notified.^{8,9} According to DPS, fingerprint clearance card validity can be confirmed by entering the fingerprint clearance card number into a webpage on the DPS website.

Board issued and renewed some licenses/certificates without adequate lawful presence documentation or verifying fingerprint clearance card validity

Based on our review of random samples of initial and renewal license and certification applications, we found that the Board had not ensured that all applicants we reviewed met all requirements for licensure or certification (see Appendix A, pages a-1 through a-2, for additional information on our random samples).¹⁰ Specifically:

- **Board did not ensure 12 of 32 initial applicants we reviewed provided adequate lawful presence documentation and a valid fingerprint clearance card**—We reviewed random samples of 17 of the 37 initial administrator license applications and 15 of the 195 initial manager certificate applications that the Board received during fiscal year 2018 and found that the Board did not ensure that 12 of these 32 applicants met statutory and rule requirements regarding lawful presence and/or possessing a valid fingerprint clearance card.
- **Board did not verify fingerprint clearance card validity at renewal for all 10 applicants we reviewed**—We reviewed a random sample of 5 administrator license renewal applications and a random sample of 5 manager certificate renewal applications that the Board received in fiscal years 2016 and 2017, respectively, and found that Board staff did not confirm the validity of these applicants' fingerprint clearance cards before renewing their licenses and certificates.¹¹



For the 2 initial license applicants and all 10 of the renewal applicants whose fingerprint clearance cards the Board had not verified, we used the DPS website to confirm that all 12 had a valid fingerprint clearance card as of April 2019.

⁸ A.R.S. §§41-1758 and 41-1758.04 authorizes the Board to receive DPS notification of a precluding arrest.

⁹ Board staff explained that when DPS notifies the Board it has suspended a fingerprint clearance card, the Board immediately suspends the cardholder's license or certificate, notifies the administrator or manager, and typically negotiates a consent agreement that includes suspension until the matter is resolved. According to staff, as of June 2019, the Board had 3 manager certificates that were suspended as a result of DPS fingerprint clearance card suspensions.

¹⁰ The random samples of renewal applications we reviewed consisted of 5 of 50 administrator license applications and 5 of 109 manager certificate applications the Board selected for continuing education audits in fiscal years 2016 and 2017, respectively (see Sunset Factor 2, pages 19 through 20, for additional information on continuing education audits).

¹¹ Renewals are biennial with administrators renewing in even-numbered years and managers renewing in odd-numbered years.

During audit, Board took some steps to address gaps in procedures and practices for ensuring applicants meet lawful presence and fingerprint clearance card requirements

At the time of our review, the Board lacked policies and procedures for ensuring that applicants met lawful presence requirements and for verifying the validity of fingerprint clearance cards. However, during the audit, the Board developed and reported implementing policies and procedures to help Board staff identify acceptable documentation applicants must submit to demonstrate lawful presence. The procedures include a list of acceptable documents that applicants can submit to meet statutory requirements for lawful presence and specify that a government-issued document with a photo must be submitted. In addition, the procedures include guidance for determining whether a driver license issued by another state can be used to demonstrate lawful presence because some states' driver licenses cannot be used for this purpose. For example, the Board's policy indicates it does not accept driver licenses from states that it has identified as issuing driver licenses without requiring documentation to demonstrate lawful presence to obtain that state's driver license. As a result, the Board should not be accepting driver licenses from states such as Utah that provide a driver license without documentation of lawful presence.

During the audit, the Board also revised and reported implementing policies and procedures that require Board staff to verify the validity of an applicant's fingerprint clearance card through the DPS website and to document this verification prior to issuing a new license or certificate. According to Board staff, their practice had been to verify the validity of initial applicants' fingerprint clearance cards on the DPS website; however, as previously explained, we found that the Board did not consistently perform this step. Board staff reported that they now document the validity of fingerprint clearance cards before issuing a new license or certificate.

Further, during the audit, the Board adopted license and certificate renewal policies and procedures that require its staff to verify the validity of fingerprint clearance cards through the DPS website and to document this verification before renewing licenses and certificates. Board staff implemented the new process to verify validity of fingerprint clearance cards when it renewed manager certifications in fiscal year 2019 and identified 2 renewal applicants whose fingerprint clearance cards were no longer valid. As a result, the Board notified these managers that they had 15 days to provide the Board with a valid card or their renewal applications would be withdrawn, and they would have to begin the renewal process again when they presented a valid card. As of July 2019, the status for both managers' certificates are "expired" in the Board's online licensing system. Board staff also reported that the Board will use this new process when it renews administrators in fiscal year 2020.

Recommendations

The Board should continue to implement:

1. Its new policies and procedures to ensure initial administrator and manager applicants submit the required documentation to demonstrate lawful presence.
2. Its revised policies and procedures for verifying the validity of an initial and renewal applicant's fingerprint clearance card and documenting this verification prior to initially issuing or renewing a license or certificate.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.



Board has not timely investigated and adjudicated some complaints, which may have put residents at risk

Board is responsible for investigating and adjudicating complaints against administrators and managers

Statutes require the Board to investigate and adjudicate complaints against licensed administrators and certified managers alleging violations of statute or rule.¹² As a result of its complaint investigation, if the Board determines that a licensed administrator or certified manager has violated statute or rule, it may pursue disciplinary actions, such as suspending or revoking the administrator's license or the manager's certificate (see textbox, page 23, for examples of disciplinary and nondisciplinary actions available to the Board).¹³

Although the public may submit complaints against licensed administrators and certified managers to the Board, many of the complaints the Board investigates arise from its monthly review of Arizona Department of Health Services (DHS) reports (see textbox for additional information on DHS' monthly report to the Board). According to the Board, in fiscal year 2018, 185 of the 197 complaints it investigated, or 94 percent, originated from its review of DHS reports. Specifically, when the Board receives a DHS report, the Board and/or the Board's executive director review it to determine whether the Board has jurisdiction and if the deficiencies specified in the report warrant opening a complaint against the licensed administrator or certified manager.¹⁴ This initial step begins the

DHS monthly report—DHS is responsible for licensing, inspecting, and regulating nursing care institutions and assisted living facilities that are overseen by licensed administrators and certified managers. DHS is required to perform regular inspections (surveys) of these facilities during which a DHS surveyor will check for health and safety issues. According to DHS, the surveyor tours the facility; conducts interviews; and reviews facility policies and procedures, resident medical records, and personnel records. At the Board's request, DHS compiles specific information from its surveys into a monthly report (DHS report) that it provides to the Board. The DHS report identifies specific deficiencies, such as failure to ensure medication is appropriately administered or to ensure the resident's legal rights are considered when making medical decisions. Based on the Board's and/or the executive director's review of the DHS report, the Board may determine that some identified deficiencies resulted from the unprofessional conduct of a licensed administrator or certified manager and open a complaint to investigate the alleged unprofessional conduct (see Figure 1, page 10, for additional information on the Board's complaint process).

Source: Auditor General staff review of Board documentation and correspondence with DHS staff.

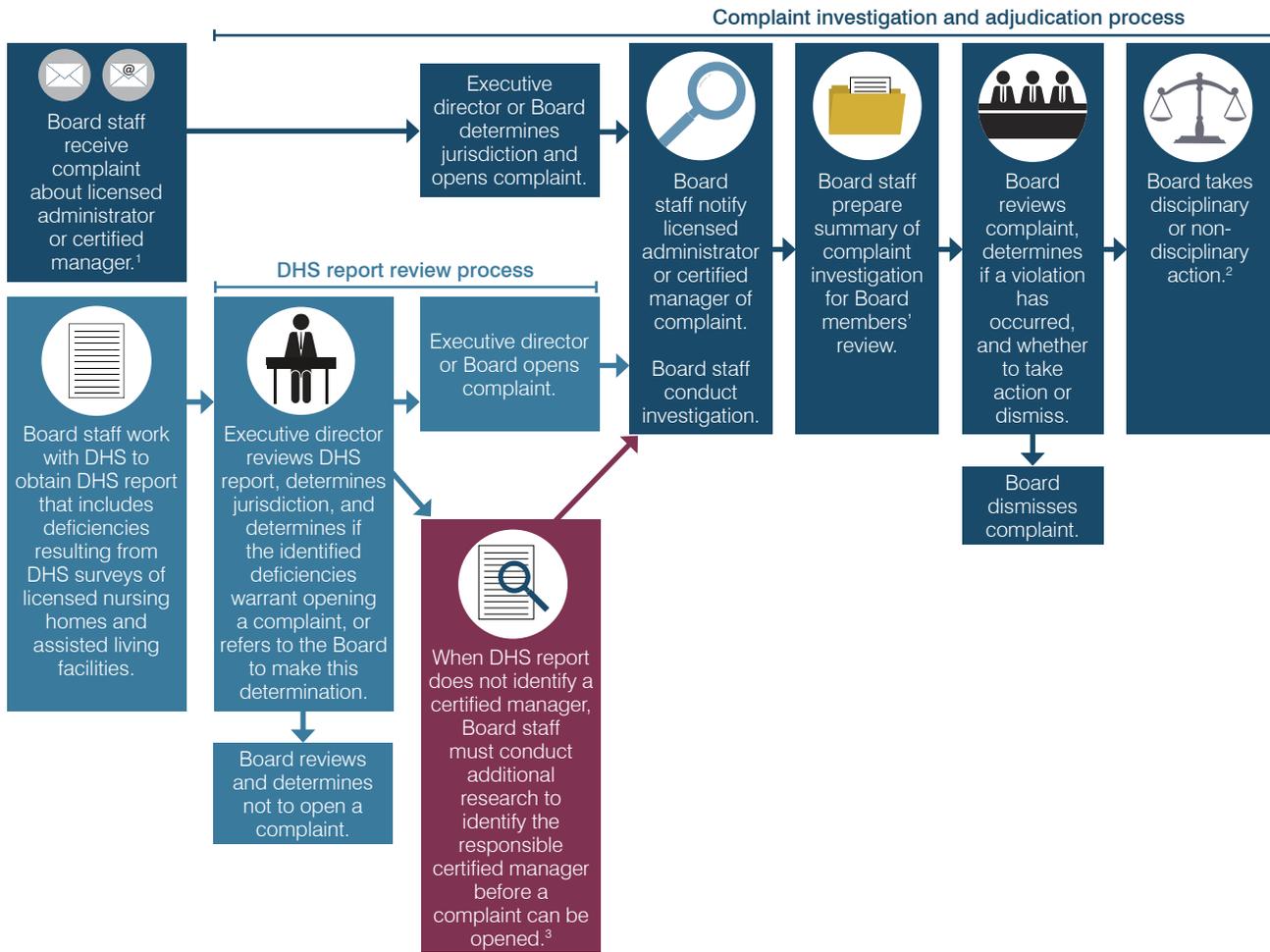
¹² A.R.S. §§36-446.03(E)(F)(G) and 36-446.07.

¹³ If the Board determines that the public's health, safety, or welfare imperatively require emergency action, A.R.S. §41-1064(C) directs the Board to document this information in its order and gives it the authority to immediately suspend the license or certificate. Additionally, the Board must notify the administrator or manager of the suspension, and according to Board staff, it would hold a hearing on the matter in accordance with the Arizona Administrative Procedures Act.

¹⁴ The Board's executive director reported that he opens complaints when the DHS report has identified several repeat violations or multiple deficiencies in different areas that could cause harm. He requests the Board review the DHS report when it identifies deficiencies in areas that are related to administrative issues, such as documentation or record keeping, to determine if a complaint should be opened.

complaint handling process for complaints originating from DHS reports, and once opened, these complaints proceed through the Board's regular complaint handling process (see Figure 1 for additional information on the Board's complaint investigation and adjudication process, including its review of DHS reports).

Figure 1
Board's complaint receipt, DHS report review process, and complaint investigation and adjudication process



¹ Board staff explained that the Board accepts only written complaints. If an individual calls the Board's office to file a complaint, the individual will be directed to the Board's website to file the complaint electronically or staff will mail a paper copy of the complaint form upon request.

² For examples of the Board's disciplinary and nondisciplinary options, see textbox on page 23.

³ This step applies only to certified managers because Board staff explained that DHS reports include the licensed administrators' names, thereby eliminating the need for additional research by Board staff. According to the Board, there have not been any instances where it could not identify the responsible certified manager after performing additional research.

Source: Auditor General staff review of the Board's complaint handling procedures and interviews with Board staff.

Board did not resolve some complaints in a timely manner

To evaluate the Board's timeliness in investigating and adjudicating complaints, we reviewed a random sample of 20 of the 197 complaints against licensed administrators and certified managers that the Board opened in fiscal year 2018 and found the Board did not process all 20 complaints in a timely manner (see Appendix A, pages

a-1 through a-2, for additional information on our sample).¹⁵ Specifically, we have determined that Arizona health regulatory boards should investigate and adjudicate complaints within 180 days of receiving them. Although the Board investigated and adjudicated 15 of these 20 complaints within 180 days, the Board took between 223 and 589 calendar days to investigate and adjudicate the remaining 5 complaints. The Board dismissed 1 of these 5 complaints but substantiated the allegations in the other 4 complaints, revoking 2 manager’s certificates and entering into consent agreements with 2 certified managers—1 of which included a voluntary revocation of the manager’s certificate.



For complaints reviewed, Board’s untimely complaint processes may have put some residents at risk

The Board’s untimely complaint investigation and adjudication may put some residents at risk if delays allow a licensed administrator or certified manager alleged to have violated Board statutes and rules to continue working while under investigation, even though they may be unfit to do so. For example, 1 of the 5 untimely complaints we reviewed alleged that a certified manager did not ensure that the assisted living facility had working fire alarms and appropriate hot water temperatures, both of which are violations that were identified in a previous DHS survey.¹⁶ The Board sent an initial notice of complaint to the certified manager in July 2017. When the certified manager did not respond, the Board waited for more than 4 months to send a second complaint notice, which the certified manager responded to 45 days later. The Board ultimately offered a consent agreement immediately revoking the manager’s certificate, which the manager signed in March 2018—261 days after the Board began investigating the complaint, during which time the certified manager continued working without receiving discipline.

Some complaint handling delays occurred during the Board’s DHS report review process

The Board’s complaint processing delays for 2 of the 5 untimely complaints we reviewed resulted from Board staff’s additional work when incorrect information was provided in the DHS report and the Board’s inadequate monitoring of its DHS report review process (see Figure 1, page 10, for additional information on the DHS report review process). The Board took 223 and 405 days to resolve these complaints. However, delays of 43 and 157 days occurred during the Board’s DHS report review process, respectively, when Board staff needed to conduct additional research to confirm the name of the responsible certified manager for the first complaint and when the Board did not ensure it completed each step of its DHS report review process for the second complaint. Specifically:

- **Board staff did not timely identify the responsible certified manager**—After receiving a DHS report, Board staff took 43 days to open a complaint that alleged unprofessional conduct, including failure to document an alternate caregiver when the manager is not present at the facility, which could potentially result in inadequate care if residents’ needs are not met. Board staff indicated that the delay occurred because the DHS report included a misspelling of the certified manager’s name, and Board staff had to conduct additional research to confirm the correct name. However, the Board’s executive director indicated that only 1 staff member was conducting this research, and he had a considerable workload during this time, which contributed to the 43 days it took the Board to identify the responsible certified manager.

¹⁵ This random sample includes 2 of the 13 complaints opened against licensed administrators and 18 of the 184 complaints opened against certified managers in fiscal year 2018. Nineteen of the 20 complaints originated from deficiencies identified in DHS surveys.

¹⁶ According to the Board, it was not notified of the previous violations. The Board revoked this manager’s certificate based on substantiating violations of the Board’s statutes and rules.

- **Board did not monitor subsequent steps in its DHS report review process after its review of the DHS report**—After receiving the DHS report, the Board took 157 days to open a complaint alleging unprofessional conduct against the licensed administrator, including inadequate patient treatment. Board staff could not explain the delay in opening the complaint and initiating its investigation even though the DHS report included the information the Board needed to do so.

Additionally, even though the Board investigated and adjudicated the other 15 cases in our random sample in less than 180 days, for 3 of these complaints, the Board took between 45 and 95 days to complete its DHS report review process. Board staff explained that delays may occur when a DHS report does not include the correct name of the responsible certified manager, as was the case in the complaint previously cited. In addition, the name that appears on the DHS report for assisted living facilities is the facility’s designated point of contact, which may be a certified manager or could be the owner of the facility or a caregiver.¹⁷ Without the name of the certified manager responsible for the deficiencies identified in the DHS report, Board staff reported they must take additional steps to identify the responsible certified manager, such as by contacting multiple DHS staff members and/or the owner of the assisted living facility to obtain this information. Although the Board has worked with DHS to include specific information in the DHS report that is needed for the Board’s complaint investigation process, such as identifying instances when services provided in nursing care institutions and assisted living facilities did not meet professional quality of care standards, the 2 agencies have not developed a process to ensure DHS also provides the name of the responsible certified manager.

According to DHS staff, its State licensing surveyors obtain the name of the certified manager when they conduct survey inspections and enter it into the notes section of its database. However, DHS staff explained that because the certified manager’s name is recorded in a notes section of the database instead of an independent database field that can be included in a report, the database cannot recognize and include this information in the DHS reports it provides to the Board.

Board did not track complaints to ensure they progressed timely through each step of the complaint handling process

In addition to the delays that have occurred during the Board’s DHS report review process, we identified additional factors that contributed to delays for all 5 untimely complaints. Specifically, the Board:

- **Failed to take action when certified managers did not respond to initial complaint notice**—For 4 of the 5 complaints, the Board sent an initial complaint notice to the certified managers requesting their response to the allegations within 10 days but did not take timely action when these managers failed to respond within the 10 days. For 3 of these 4 complaints, the Board waited between 66 and 319 days to send a second notice requesting the certified manager’s response to the complaint allegations after the manager did not respond to the first notice. For the fourth complaint, although the Board did not follow up with the manager when it did not receive a timely response, the manager sent a response 49 days after the Board sent the initial complaint notice. These 4 complaints were open for a total of 261, 589, 223, and 228 days, respectively.

Board staff indicated that they did not have a process for tracking when licensed administrators and certified managers did not respond to complaint notices in a timely manner.

- **Did not actively investigate 1 complaint for more than 2 months**—For the fifth untimely complaint, Board staff did not actively investigate this complaint until September 2018, more than 2 months after it received the licensed administrator’s timely response to the complaint notice in June 2018. Board staff explained that because of a communication oversight, they did not see the administrator’s response for over 2 months, at which time they then resumed the complaint investigation. The complaint was open for a total of 405 days.

¹⁷ According to Board staff, identifying the responsible administrator from DHS reports is not an issue because the licensed administrator is the designated point of contact for nursing care institutions.

- **Did not follow up with 1 certified manager who did not sign and return a disciplinary consent agreement**—For the previously mentioned complaint that was open for a total of 228 days, we identified an additional factor contributing to the Board’s delay in investigating and adjudicating this complaint. Specifically, although Board staff reported they initially followed up with the certified manager 35 days after she failed to sign and return a consent agreement offered by the Board, the certified manager did not return the signed document for another 50 days. In addition, after receiving the signed document, the Board took another 7 days to finalize it. This resulted in a total of 92 days for the Board to finalize the consent agreement with the certified manager. Finally, although the certified manager signed the consent agreement, she failed to comply with the terms of the agreement, and the Board revoked her certificate in August 2019.

Board took steps during the audit to improve complaint handling timeliness, but additional actions needed

During the audit, the Board developed a policy and procedure for its DHS report review process. Although the policy includes some time frames, such as the number of days for staff to determine jurisdiction and to open a complaint, the policy does not include a requirement for monitoring Board staff compliance with the policy.

In addition, the Board revised its complaint handling policies and procedures to address some of the deficiencies we identified. For example, the revised policies and procedures include time frames for completing various complaint handling steps, such as determining whether the Board has jurisdiction and entering complaint information the Board received into the Board’s database within 5 days so that it can track staff progress in completing the individual steps of its complaint handling process. The Board’s revised complaint handling policies and procedures also indicate that the Board will send only 1 complaint notice through email and regular mail to a licensed administrator or certified manager. If the licensed administrator or certified manager does not provide a response or fails to request an extension to provide a response, the Board will proceed with its complaint investigation process. Finally, the policies and procedures also specify a 10-day time frame for a licensed administrator or certified manager to return a signed consent agreement to the Board or it will move to a formal hearing.¹⁸

Although the Board’s revised complaint handling policies and procedures include time frames, it lacks a process to ensure time frames are monitored. For example, the Board has not included a requirement to regularly generate and review management reports to ensure the complaint handling process is proceeding in a timely manner or identify where a complaint may be stalled in the process. In addition, although Board staff provide a monthly report to the Board that includes complaint information, such as how many complaints were opened and resolved during the month, this report does not indicate how long complaints have been open or include reasons for complaint handling delays.

Recommendations

The Board should:

3. Work with DHS to develop a process for obtaining in a timely manner the names of the responsible certified managers associated with the assisted living facilities identified in DHS reports.
4. Revise and implement its DHS report review policies and procedures to incorporate a requirement for monitoring Board staff compliance with these policies and procedures.
5. Implement and further revise its complaint handling policies and procedures to include the following requirements:
 - a. Monitoring Board staff compliance with these policies and procedures.

¹⁸ The Board explained that a letter is sent with the consent agreement notifying the administrator or manager that they have 10 days to return the document.

- b. Regularly generating and reviewing management reports that provide information on the timeliness of the complaint handling process.
- c. Generating monthly Board reports that include complaint handling timeliness information, such as how long complaints have been open and reasons for any complaint handling delays.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.



Board did not provide adequate public information in response to anonymous phone calls we made

Board required to make certain information available to public

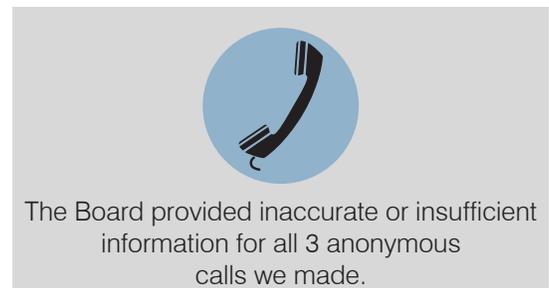
Accurate and complete information about licensed administrators and certified managers helps the public make informed decisions about selecting a safe environment for themselves and/or their loved ones. Statutes require health profession regulatory boards, including the Board, to make certain licensee and certificate holder information available to the public.¹⁹ The public may obtain this information in several ways. For example, the public may contact the Board by phone to request the name, practice address, and/or complaint information for a licensee or certificate holder. In addition, statute requires the Board to make all disciplinary actions against licensees and certificate holders available on its website, and the Board may direct callers to its website to obtain specific details about disciplinary actions. Finally, statute requires health profession regulatory boards to display a statement on their website that a person may obtain public records related to any licensee or certificate holder, including dismissed complaints, by contacting the Board directly, such as by visiting the Board's offices or contacting the Board by phone.²⁰ The Board has included this required statement on its website.

Statute also prohibits health profession regulatory boards from disclosing some types of information to the public, such as pending complaints or investigations.²¹ In addition, although statute prohibits regulatory boards from posting information about dismissed complaints on its website, it requires that a record of the dismissed complaint be available to the public upon request.

Board staff provided inaccurate or insufficient information in response to anonymous phone calls we made

We placed 3 anonymous phone calls to the Board's offices and requested information about 1 licensed administrator and 2 certified managers with varying disciplinary histories to test the Board's compliance with statute and its procedures for providing helpful, accurate, and appropriate information to the public.²² We found that for all 3 phone calls, Board staff provided inaccurate or insufficient information. Specifically:

- For our first call, Board staff stated that the certified manager was under investigation. Although this information was inaccurate because the manager was not the subject of an active investigation but rather had already entered



¹⁹ A.R.S. §§32-3209 and 32-3214.

²⁰ A.R.S. §32-3214(C).

²¹ A.R.S. §32-3214(A).

²² We made 2 calls in January 2019 to request complaint history information about a licensed administrator with a dismissed complaint and a certified manager with an active consent agreement and 1 call in April 2019 to request complaint history information about a certified manager whose certificate was revoked.

into a consent agreement, Board staff provided information over the phone that would have been prohibited to share if it had been true. Specifically, statute prohibits regulatory boards from disclosing information about pending investigations to the public.²³ In addition, Board staff did not inform us that this certified manager had a consent agreement or that we could obtain the disciplinary information for this manager on the Board's website.

- For the second call, although Board staff disclosed that a complaint was dismissed for 1 licensed administrator, when we asked about obtaining more information about the dismissed complaint, Board staff indicated she could not provide any additional information and did not inform us that additional information is available for inspection at the Board's office during business hours. Statute specifies that additional information regarding dismissed complaints should be available to the public by contacting the Board directly.²⁴
- For the third call, although Board staff reported that 1 manager's certificate was revoked, when we asked how we could obtain more information about the revocation, Board staff did not provide any further information over the phone or direct us to the Board's website for the additional information. Instead, Board staff advised that we go to and observe the assisted living facility.

Finally, Board staff did not take reasonable steps to make themselves available to provide public information. Specifically, Board staff did not answer the phone when we called 2 separate times on 1 day, and we could not leave a message requesting a return call either time because the phone system indicated that the Board's voicemail was full.

During audit, Board revised its policies and guidance to help staff improve provision of appropriate public information

At the time of our review, the Board's policies and procedures for providing public information did not include guidance for helping ensure staff provide appropriate and accurate public information. However, during the audit, Board staff revised its policies and procedures for providing public information to address the identified deficiencies. Specifically, the Board's revised policies and procedures include guidance for Board staff indicating they may not disclose information about a pending complaint or investigation to the public. Additionally, the revised policies and procedures include scripts for staff to follow when providing specific information over the phone, such as information requests regarding closed complaints with disciplinary actions and dismissed complaints.

Finally, Board staff explained that in response to learning we were not able to leave a message in the Board's voicemail on 2 separate occasions, all staff received training on the importance of ensuring that the public is able to access voicemail at all times.

Recommendation

6. The Board should continue to implement and ensure staff compliance with its newly revised policies and procedures for providing public information over the phone.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

²³ A.R.S. §32-3214(A).

²⁴ A.R.S. §32-3214.



In accordance with A.R.S. §41-2954, the Legislature should consider the following factors in determining whether the Board should be continued or terminated. The analysis of the Sunset Factors also includes findings and recommendations not discussed earlier in the report.

Sunset factor 1: The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.

The Board was established in 1975, and its mission is to protect the health, safety, and welfare of Arizona citizens who seek and use the services of licensed administrators and certified managers. The regulation of licensed administrators helps satisfy federal laws that require each state to license administrators of nursing homes in order to receive federal funding for medical assistance programs, such as Medicaid. The Board is required to issue licenses and certificates to qualified administrator and manager applicants, respectively, and to investigate and adjudicate complaints against licensed administrators and certified managers. The Board also provides information to the public on license and certificate status as well as administrators' and managers' disciplinary history. Finally, statute requires the Board to approve administrator-in-training (AIT) programs and assisted living facility caregiver and manager training programs, and rule prescribes standards for these programs (see Sunset Factor 2, pages 18 through 20, for additional information on these program approvals).²⁵

According to the National Association of Long Term Care Administrator Boards (NAB), all 50 states and the District of Columbia regulate administrators through licensure. Although the National Center for Assisted Living (NCAL) reported that all states regulate services provided in assisted living facilities, we did not identify any nationally recognized standards that states follow to regulate the position that oversees assisted living facilities, which is the certified manager position in Arizona.^{26,27} We also did not identify any states that met the Board's objective and purpose through a private enterprise. Specifically, we contacted and reviewed statutes and websites for 5 states—California, Nevada, New Mexico, Connecticut, and Kentucky—and found that none used private enterprises to regulate licensed administrators or the position that oversees assisted living facilities (see Appendix A, pages a-1 through a-2, for more information on sample selection).

Sunset factor 2: The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

The Board met some of its statutory objective and purpose by issuing and renewing administrator licenses and manager certificates for applicants that met key qualifications in rule and did so in a timely manner for all those we reviewed with the exception of 1 initial administrator license application. It also, in a timely manner, approved and renewed the AIT program provider and approved and renewed assisted living facility manager and assisted living facility caregiver training programs we reviewed that complied with rule requirements. Specifically, the Board:

- **Issued initial and renewal administrator licenses and manager certificates to applicants we reviewed who met key qualifications required by rule**—Rule requires administrator and manager applicants to meet education and examination requirements for licensure and certification (see Sunset Factor 11, pages 25 through 26, for additional information on these requirements). We reviewed random samples of 17 of the

²⁵ A.R.S. §36-446.04(A)(2) and (C)(2) and AAC R4-33-301, R4-33-302, R4-33-602, R4-33-702, and R4-33-703.1.

²⁶ The NCAL supports assisted living communities through national advocacy, education, networking, and professional development as part of the American Health Care Association, a national association of long-term and post-acute care providers.

²⁷ See Sunset Factor 11, page 26, for additional information on the position that oversees assisted living facilities.

37 initial administrator license applications and 15 of the 195 initial manager certificate applications the Board received in fiscal year 2018 and found the Board appropriately determined that 29 applicants met education and exam requirements as established in rule and appropriately denied 3 applicants based on their failing to pass all testing requirements (see Finding 1, pages 5 through 7, for additional information regarding our review of the Board's licensing and certification processes).

Additionally, rule requires licensed administrators and certified managers to complete continuing education hours prior to license or certificate renewal and, if requested by the Board, to provide required documentation to support completing the continuing education hours.^{28,29} For the 10 renewal applications we reviewed—including a random sample of 5 of 50 administrator renewal applications and a random sample of 5 of 109 manager renewal applications the Board selected for continuing education audits in fiscal years 2016 and 2017, respectively—we found that the Board ensured all 10 applicants provided documentation to support the required number of continuing education hours for renewal.

- **Issued or denied all but 1 initial administrator license and manager certificates and all renewals we reviewed in a timely manner**—AAC R4-33-103(D) requires the Board to approve or deny initial administrator license and manager certificate applications within 135 days, including 105 days for the applicant to complete the required examinations, unless an extension is requested.³⁰ We found that for the random samples of 32 initial administrator and manager applications we reviewed, the Board processed all but 1 of these applications within the time frames established in rule. For the application the Board did not process in a timely manner, Board staff reported sending a letter notifying the applicant that her application was complete and that she was scheduled to take the State exam and approved to take the national examination. However, according to Board staff, the applicant stated she did not receive this letter. Because this delay reduced the time remaining for the applicant to complete examination requirements for licensure, the Board adjusted the time frame to ensure the applicant had all 105 days allowed in rule. As a result, the Board exceeded its overall time frame to approve this license by 10 days.

Additionally, AAC R4-33-103(A)(D) requires the Board to approve or deny renewal applications for administrator licenses and manager certificates within 75 days. For the random samples of 10 renewal applications we reviewed, the Board processed these renewals within the required time frame.

- **Approved AIT program provider initial and renewal applications we reviewed in a timely manner**—Rule requires the Board to review and approve new AIT program provider applications and to renew the provider annually.^{31,32} We reviewed the initial and most recent renewal applications for the 1 Board-approved AIT program provider in the State and found the Board ensured that the AIT program provider submitted the required documentation for approval.

In addition, rule requires the Board to review an initial application for an AIT program provider within 60 days and for the provider to submit a renewal application for the Board's approval prior to the program's annual

²⁸ AAC R4-33-501(A) requires licensed administrators to complete a minimum of 50 continuing education hours and certified managers to complete 24 hours during the 2-year period to renew a license or certificate. However, new licensees and certificate holders may be required to complete fewer hours during their first license or certificate renewal period because rule states that the Board shall prorate the number of continuing education hours required during the initial licensure and certification period based on the number of months remaining in the biennial period.

²⁹ AAC R4-33-503.

³⁰ A.R.S. §41-1075(B) states that by mutual agreement between an agency and an applicant, the substantive review time frame, which is part of the overall application processing time frame, may be extended but may not increase the overall time frame by more than 25 percent. Three of the 32 files we reviewed included a request for an extension during the substantive review time frame.

³¹ AAC R4-33-301(B) requires the Board to review and approve AIT program providers that the NAB has not already approved. According to the NAB, it is an organization that supports and participates in collaborative initiatives with the NAB Foundation to enhance the quality of care in long-term care communities in the interest of public protection. NAB's membership includes regulatory boards and agencies that are responsible for licensing long-term care administrators in all 50 states and the District of Columbia. As of fiscal year 2019, all 13 NAB-approved AIT programs are located in other states, and the Board has approved 1 AIT program provider in Arizona.

³² AAC R4-33-301(C)(D).

expiration date.³³ We found that the Board reviewed and approved the initial application within the time frame established in rule and that the Board received the required documentation for the most recent renewal from the provider and approved the renewal before the provider's annual expiration date.

- **Ensured all 4 manager training program applicants we reviewed submitted required documentation with initial and renewal applications**—Rule requires the Board to review and approve assisted living facility manager training programs and assisted living facility caregiver training programs and to renew these programs annually.³⁴ We randomly selected and reviewed initial applications for 4 Board-approved manager training programs—2 of the 12 assisted living facility manager training programs and 2 of the 44 assisted living facility caregiver training programs. For these 4 programs, we found the Board ensured that training program applicants submitted the required documentation for program approval, such as a written training program description, prior to approving the initial applications. In addition, we reviewed the most recent annual renewal applications for 2 of the 4 training programs, which included 1 assisted living facility manager training program and 1 assisted living facility caregiver training program.³⁵ We found that the Board ensured both applicants submitted the required documentation for renewal.
- **Approved all but 1 of the 4 manager training program initial applications we reviewed within the required time frame and approved in a timely manner both manager training program renewal applications**—Rule requires the Board to approve initial assisted living facility manager training program and assisted living facility caregiver training program applications within 120 days.³⁶ However, the Board did not approve 1 of the 4 training program applications we reviewed within the required 120 days. Specifically, the Board took 166 days to review and approve the program's application. This delay occurred because Board staff took 147 days to conduct the initial application review and schedule the application for Board review and approval. The executive director explained that he was the only staff person who reviewed training program applications, and this delay resulted from several conflicts happening during the time the Board received this application for review, including being out of the office for several weeks, testing of the Board's new online e-licensing system, and relocating the Board's offices. As of October 2019, the Board reported that another staff person has now been trained to review these applications. This should help ensure that the Board timely reviews all applications.

Rule also requires the Board to approve renewal applications for assisted living facility manager training programs and assisted living facility caregiver training programs within 120 days.³⁷ We found that the Board approved both renewal applications we reviewed within the required time frames.

However, we identified some areas where the Board has not fully met its objective and purpose. Specifically, the Board:

- **Did not conduct continuing education audits for licensed administrators renewing in 2018 to confirm administrators met continuing education requirements for license renewal**—AAC R4-33-503 requires the Board to provide notice of an audit of continuing education records to a random sample of licensed administrators and certified managers at the time of their biennial renewal. Continuing education audits help ensure that licensed administrators and certified managers comply with continuing education requirements to maintain licensure and certification. However, the Board did not conduct a continuing education audit for licensed administrators that renewed in 2018. According to Board staff, it began using a new online e-licensing system in May 2018 when it was processing its 2018 administrator renewal applications and had not received training on how to generate a random sample of renewals for audit from the online system or

³³ AAC R4-33-103(D) and R4-33-301(D).

³⁴ AAC R4-33-604(D), R4-33-605 (A), R4-33-704(D), and R4-33-705(A).

³⁵ The other 2 training programs—1 assisted living facility manager training program and 1 assisted living facility caregiver training program—were new programs that had yet to submit applications for annual renewal.

³⁶ AAC R4-33-103(A). This rule also indicates that AIT programs must be approved in 60 days.

³⁷ AAC R4-33-103.

how to direct the online system to send a notice of continuing education audit to potential auditees. Rule specifies that the notice of continuing education audit be sent to a random sample of renewing licensed administrators and certified managers at the same time the Board sends the renewal notice requesting that the renewing administrator or manager provide the required continuing education documentation with their renewal documentation.³⁸ This rule prevents the Board from conducting the continuing education audits after the renewal period and, as a result, the Board must wait until the 2020 renewal cycle to audit continuing education for administrators.

To avoid a situation in the future that might impede its ability to perform required continuing education audits, the Board would need to revise the applicable rules to provide it with greater flexibility in performing continuing education audits. In doing so, the Board would need to seek an exemption to the rule-making moratorium.³⁹ Although the moratorium restricts rule making without the prior written approval of the Governor's Office, it provides justification for exceptions to the rule-making moratorium, such as eliminating rules that are antiquated, redundant or otherwise no longer necessary for the operation of State government.

- **Did not document its onsite and/or telephonic evaluations of the 4 manager training program applicants we reviewed**—Rule requires the Board to conduct an onsite evaluation before approving initial applications for assisted living facility manager training programs and assisted living facility caregiver training programs.⁴⁰ In addition, prior to renewing these manager training programs, rule requires the Board to conduct either an onsite or telephonic evaluation.⁴¹ For the 4 initial applications and 2 renewal applications we reviewed, the Board did not document conducting these evaluations.

In December 2019, the Board developed and revised policies and procedures for reviewing and approving initial and renewal applications for assisted living facility manager training programs and assisted living facility caregiver training programs to address the deficiencies we identified during the audit. The newly developed policies and procedures for initial approval indicate that Board staff will conduct and document site evaluations prior to approving the training program. In addition, the new policies and procedures for renewing these training programs include a requirement for staff to conduct and document evaluations in a manner that aligns with rule requirements.

Finally, as discussed in Finding 1, the Board issued or renewed some administrator and manager licenses/certificates despite not ensuring that applicants met all statutory requirements. We recommended that the Board continue to implement its new policies and procedures to ensure applicants meet all statutory and rule requirements for initial and renewal licensure and certification, including confirming applicants submit required documentation to demonstrate lawful presence and verifying validity of an initial and renewal applicant's fingerprint clearance card (see Finding 1, pages 5 through 7).

Recommendations

The Board should:

7. Work with its Assistant Attorney General to obtain an exemption to the rule-making moratorium and, contingent on receiving an exemption, modify its rules to provide the Board with greater flexibility to conduct continuing education audits between renewal cycles for licensed administrators and certified managers.

³⁸ AAC R4-33-503.

³⁹ Executive Order 2020-02 established the rule-making moratorium on January 13, 2020.

⁴⁰ AAC R4-33-604(D) and R4-33-704(D). AAC R4-33-301 does not include a requirement for the Board to conduct onsite or telephonic evaluations to approve AIT program providers.

⁴¹ AAC R4-33-605(C)(D)(E) and R4-33-705(C)(D)(E) indicate that an onsite evaluation of these training programs is required at least every 4 years. Additionally, a telephonic evaluation is required for annual renewal; however, for those programs that did not receive any deficiencies during the onsite evaluation and if the Board has not received any complaints about the program prior to renewal, the Board may conduct telephonic evaluations every 2 years.

8. Implement its new policies and procedures for ensuring that assisted living facility manager training programs and assisted living facility caregiver training programs receive onsite or telephonic evaluations when these training programs are approved and renewed pursuant to rule requirements.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.

Sunset factor 3: The extent to which the Board serves the entire State rather than specific interests.

The Board serves the entire State by licensing and certifying qualified administrator and manager applicants who practice throughout Arizona (see Finding 1, pages 5 through 7, for additional information about licensing applicants) and investigating and adjudicating complaints against licensed administrators and certified managers (see Finding 2, pages 9 through 14, for additional information about investigating and adjudicating complaints).

In addition, the Board has taken some steps to ensure its decisions are free of conflicts of interest. Specifically, when Board members formally recuse themselves during a Board meeting, the Board's minutes document the recusal, and the member documents the reason(s) for recusal on the Board's Recusal Disclosure Form. Board staff explained that recusal forms are retained by the Board and that these forms are available to the public upon request. Additionally, the Board reported that its Assistant Attorney General provides training to all appointed Board members explaining the requirement for Board members to recuse themselves from discussion and voting on any matter during Board meetings if they have a conflict of interest.

However, Board staff reported that the Board does not require its members or staff to sign an annual conflict-of-interest disclosure statement. A.R.S. §38-503 requires public officers and employees of public agencies to make known in the agency's official records any substantial interest and to refrain from voting in decisions in which they have a conflict of interest. Additionally, A.R.S. §38-509 requires agencies to maintain a special file that contains all documents necessary to memorialize all disclosures of substantial interest is available for public inspection. Finally, although not required by statute, best practices indicate that conflict-of-interest disclosure statements should be signed annually. Signing a conflict-of-interest disclosure statement annually reminds employees/public officers of the importance of complying with conflict-of-interest laws and helps ensure that potential conflicts of interest are disclosed if an employee's or public officer's circumstances change. A completed conflict-of-interest disclosure form would enable Board members and staff to disclose any potential financial and/or personal interests that the Board could then make available for public inspection. According to Board staff, the Board lacks policies and procedures for disclosing conflicts of interest, maintaining a special file to document disclosures of substantial interest as required by statute, and managing any disclosed potential conflicts of interest.

Recommendation

9. The Board should develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including (1) requiring Board members and staff to annually disclose certain interests in the Board's official records through a signed form, (2) maintaining completed forms in a special file available for public inspection, and (3) implementing a process for managing any disclosed potential conflicts of interest to ensure the conflict will not interfere with the performance of Board member and staff duties.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

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

Our review of the Board's statutes and rules found that the Board has adopted rules when statutorily required to do so. According to A.R.S. §36-446.03(A), the Board has the statutory authority to adopt rules to carry out its statutory duties, which include licensing administrators and certifying managers. The Board most recently revised its rules in 2018 to increase the number of individuals qualified for licensure by making it easier for licensed administrators in other states to obtain licensure in Arizona and also made changes to the assisted living caregiver training requirements, including establishing a first-time student examination pass rate for owners

programs. Additionally, after receiving an exemption from the governor's rule-making moratorium, the Board opened a notice of proposed rulemaking in August 2019 to clarify rule requirements for licensure by reciprocity, remove the requirement for notarization of an applicant's signature on initial and renewal license and certificate applications, require a completed certificate of training to be submitted with initial certificate applications, and correct typographical errors.

Sunset factor 5: The extent to which the Board 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.

We evaluated the extent to which the Board has encouraged input from the public and informed the public of its actions and their expected impact on the public and found the following:

- **Board involved the public in adopting rules**—The Board provided opportunities for public input as part of the rulemaking it finalized in 2018. Specifically, the Board published notices of proposed rulemaking in the Arizona Administrative Register, listing the name of Board staff who could be contacted to provide input about the proposed rulemaking, allowed the public to submit written comments on proposed rule changes, and conducted an oral proceeding where the public could provide input at least 30 days after the Board published the notice.
- **Board complied with various provisions of State's open meeting law for meetings we reviewed**—The Board complied with various provisions of the State's open meeting law for its 3 monthly Board meetings held between November 2018 and January 2019. For example, as required by open meeting law, the Board posted meeting notices and agendas on its website at least 24 hours in advance and posted the meeting notices at the physical location where the Board's website stated they would be posted. The Board also provided meeting minutes or an audio recording to us within 3 business days following the Board meetings. Finally, the Board meeting notices and written minutes we reviewed complied with the provisions of open meeting law we tested, such as providing the date and time of the meeting on both the meeting notices and written minutes.
- **Board provided incomplete and/or inaccurate online licensing information but is taking steps to ensure information it provides is both complete and accurate**—In January 2019, we compared the Board's online licensing information to the Board's complaint files for a random sample of 18 certified manager complaints opened in fiscal year 2018 (see Appendix A, pages a-1 through a-2, for additional information on the sample).⁴² Based on this comparison, we found that the Board's online licensing system included incomplete and/or inaccurate information for 7 of these certified managers, such as not accurately indicating that these certified managers had received disciplinary action, inaccurately listing 2 certified managers' certificates as active and in good standing even though the managers were on probation, and/or not including copies of the consent agreement. Without accurate and complete information, the public may not be able to make informed decisions about selecting a safe environment for themselves and/or their loved ones.

Board staff cited several factors for the inaccurate or incomplete information, including errors and other issues with implementing the Board's new online licensing system in May 2018 and inadequate training on how to enter information into the online licensing system. In addition, the Board had inadequate policies and procedures for ensuring the accuracy of information in the online licensing system. During the audit, the Board addressed the specific information deficiencies we identified and revised its complaint handling policies and procedures to require Board staff to review the online record to verify that the correct information is available to the public.

⁴² We also compared the Board's online licensing information to the Board's complaint files for 2 administrators also included in our random sample of complaint files but did not identify any discrepancies (see Appendix A, pages a-1 through a-2, for additional information on the sample).

Finally, as discussed in Finding 3, the Board provided inaccurate or insufficient information in response to our phone calls. We recommended that the Board continue to implement its newly revised policies and procedures for providing public information over the phone and ensure staff compliance with these policies and procedures (see Finding 3, pages 15 through 16).

Recommendations

The Board should:

10. Continue to implement its newly revised complaint handling policies and procedures to ensure its online licensing information provides accurate information to the public.
11. Conduct a risk-based review of its online licensing information to ensure the information is complete and accurate.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.

Sunset factor 6: The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.

The Board has statutory authority to investigate and adjudicate complaints within its jurisdiction and has various disciplinary and nondisciplinary options available to address statute and/or rule violations (see textbox).

We reviewed a random sample of 20 of the 197 complaints the Board opened in fiscal year 2018 (see Appendix A, pages a-1 to a-2, for more information on the random sample) and found that for these complaints, the Board appropriately determined jurisdiction and investigated and adjudicated the complaints in accordance with its policies and procedures.

We identified 1 area of the Board's investigation and adjudication process that needs improvement. Specifically, when the Board disciplines a licensed administrator or certified manager in response to a complaint, it typically seeks reimbursement for its investigative costs through a consent agreement. However, we found that the Board may be misrepresenting the actual complaint investigation costs that it attempts to recover. Specifically, when the Board includes a reimbursement for its complaint investigative costs in its consent agreement terms, we found no evidence that this amount is based on the actual costs incurred to investigate the complaint. Board staff indicated that it has not developed a methodology for tracking Board staff time and overhead costs related to investigating complaints. In addition, Board staff reported that although they may recommend an amount for the reimbursement of investigative costs to be included in the consent agreement, the Board may choose to increase, decrease, or remove the amount. Without policies and procedures for accurately determining its complaint investigation costs and then seeking reimbursement based on these costs, the Board cannot demonstrate that it is recouping the actual cost of its investigation and not undercharging or overcharging for these costs.

In addition, the Board cannot demonstrate that it has charged investigative cost reimbursements consistently and fairly across its consent agreements. For example, the Board offered consent agreements to certified managers in 8 of the 20 complaints we reviewed and included complaint investigation cost reimbursement amounts in 7 of these consent agreements that varied between \$100 and \$500. It did not require a reimbursement in the other consent agreement. The Board's complaint files lacked any documentation demonstrating the basis for the amounts assessed, and Board staff could not provide any documentation explaining why the Board decided not

Examples of the Board's disciplinary and nondisciplinary options

Disciplinary actions:

- Censure
- Civil penalty (not to exceed \$500)
- Probation
- Suspension of license or certificate
- Revocation of license or certificate

Nondisciplinary actions:

- Letter of concern

Source: Auditor General staff analysis of A.R.S. §36-446.07 and the Arizona Agency Handbook.

to require a reimbursement of its complaint investigation costs in the 1 consent agreement. Our review of the Board's revenues also identified an investigative cost reimbursement of \$1,500 that 1 certified manager paid; however, the complaint file lacked documentation to support this amount. Without policies and procedures for determining when its consent agreements will include a reimbursement for investigative costs, the Board cannot demonstrate that it is accurately and consistently including this reimbursement across its consent agreements.

Finally, as discussed in Finding 2, the Board had not investigated and adjudicated some complaints in a timely manner. We recommended that the Board work with DHS to develop a timely process for obtaining the names of the managers associated with the assisted living facilities from DHS reports and further revise and implement its DHS report review and complaint handling policies and procedures to include a requirement for monitoring Board staff compliance with these policies and procedures, generating and reviewing management reports, and providing complaint-handling processing information to the Board for its review (see Finding 2, pages 9 through 14).

Recommendations

The Board should:

12. Conduct a review of its costs for investigating complaints by taking the following steps:
 - a. Develop a method for determining direct and indirect costs associated with complaint investigations.
 - b. After developing this cost methodology, establish an hourly rate for investigations.
 - c. Establish a method for tracking and documenting staff time and activities to investigate each complaint.
13. Develop and implement policies and procedures for Board members and staff that include implementing the cost methodology, tracking Board staff time and overhead costs, and documenting justification for the amounts charged to provide guidance for when the reimbursement of investigative costs should be included in the consent agreement.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.

Sunset factor 7: The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

The Attorney General serves as the Board's legal advisor and provides legal services as the Board requires according to A.R.S. §41-192(A)(1). Further, various enabling statutes provide the Attorney General's Office and the County Attorney with authority to pursue criminal and civil actions in superior court for violations of specified Board statutes/rules. Although Board staff reported the Board has not encountered instances of unlawful practice as an administrator or manager or unlawful use of a title indicating an individual is an administrator or manager, staff confirmed that if this occurred, they would refer these matters to the appropriate county attorney's office.

Sunset factor 8: The extent to which the Board has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate

The Board reported that it has pursued revisions to its statutes to better carry out its mission and has identified additional statutory changes that would clarify fingerprint clearance card requirements for applicants and remove an outdated qualification provision. Specifically:

- Statute requires the Board to issue an administrator license or manager certificate to individuals who have a valid fingerprint clearance card, provide proof of submitting an application for a fingerprint clearance card, or submit proof that the applicant qualifies for a good cause exception hearing.⁴³ However, statute also requires a licensed administrator and certified manager to maintain a valid fingerprint clearance card throughout the

⁴³ A.R.S. §36-446.04(A) and (C).

period of licensure/certification.⁴⁴ Board staff explained that statute is confusing and may result in an undue burden for applicants who pay to apply for licensure or certification by submitting evidence that they applied for a fingerprint clearance card or qualify for a good cause exception hearing, but then later learn they are not eligible to obtain a fingerprint clearance card and subsequently cannot qualify for a license or certificate. As a result, the Board indicated it plans to request a statutory revision specifying that proof of a valid fingerprint clearance card is required at the time of application and at the time the Board issues a license or certificate.

- Statute requires certified manager applicants to complete Board-approved training and to submit documentation to support obtaining 2,080 hours of paid work experience in a health-related field in the 5 years preceding application submission.⁴⁵ However, Board staff noted that this work experience requirement may not add value because the work in some health-related fields may not directly relate to work in assisted living facilities. Additionally, Board staff reported that the Board sets standards for the curriculum used in the assisted living facility manager training programs and in the assisted living facility caregiver training programs and that the curriculum for both training programs reflects industry best practices and provides the training needed to work as a certified manager. As a result, the Board indicated it plans to request a statutory change to remove the work experience requirement.

Board staff reported they anticipate discussing these changes with Board members and working with legislators to pursue applicable changes to statute during the first regular legislative session of 2020.

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

We did not identify any needed changes to the Board's statutes.

Sunset factor 10: The extent to which the termination of the Board would significantly affect the public health, safety, or welfare.

Terminating the Board would affect the public's health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board's regulations help protect the public by requiring that licensed administrators and certified managers are appropriately qualified to provide services. The Board further protects the public by receiving and investigating complaints against licensed administrators and certified managers and has the authority to take appropriate disciplinary action when allegations have been substantiated. For example, the Board investigated a complaint against a certified manager based on a DHS report that identified 25 deficiencies, including failure to ensure medication for 2 residents was administered in compliance with a medication order. The Board's subsequent investigation substantiated that the certified manager had violated statute, which resulted in the Board offering the manager a consent agreement. The certified manager signed the consent agreement, agreeing to a 3-month probationary period, which included several requirements the manager had to fulfill, such as successfully completing a Board-approved, 40-hour assisted living facility manager training course and passing the State jurisprudence examination.

Finally, if the Board were terminated and the licensing and regulation of administrators was not transferred to another agency, it would disqualify the State from receiving funding for federal medical assistance programs.⁴⁶

Sunset factor 11: The extent to which the level of regulation exercised by the Board compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.

We found that the level of regulation the Board exercises appears appropriate and is similar to the level of regulation in other states we reviewed. Specifically, we judgmentally selected for review 5 states that license

⁴⁴ A.R.S. §36-446.04(B) and (D).

⁴⁵ A.R.S. §36-446.04(C)(2)(4).

⁴⁶ 42 USC 1396a(a)(29) & 42 USC 1396g, which requires a "program for the licensing of administrators of nursing homes."

administrators—California, Connecticut, Kentucky, Nevada, and New Mexico—and found that the requirements for administrator licensure in these states is similar to Arizona.⁴⁷ For example:

- **National examination**—Arizona and the 5 states reviewed require administrator license applicants to pass a national examination administered by the NAB.
- **State examination**—Arizona, California, and Connecticut require administrator license applicants to pass a state examination.
- **Education**—Arizona and the 5 states reviewed allow administrator license applicants to obtain a license with a bachelor’s degree and additional training. In addition, Arizona and California allow applicants for licensure to apply with alternative education plus experience and completion of an AIT program. Specifically, Arizona allows applicants to meet licensure requirements with an associate degree and current licensure as a registered nurse when they have worked as a nurse in Arizona for 5 of the previous 7 years.⁴⁸ Similarly, California requires current licensure as a registered nurse with 10 years of work experience with the most recent 5 years being in a supervisory or director of nursing position.⁴⁹
- **Fingerprint-based background checks**—Arizona requires applicants to submit fingerprints to the State to conduct a background check in order to obtain a fingerprint clearance card.⁵⁰ California and Nevada also require applicants to submit fingerprints for a fingerprint-based background check.
- **Continuing education**—Arizona and the 5 states reviewed require administrators to complete continuing education hours to renew their licenses.

Additionally, we found that the position that oversees assisted living facilities varies significantly between states, and a national board does not set standards for regulating this position. For example, 3 of the 5 states we reviewed do not license or certify individuals to oversee assisted living facilities in the same way Arizona certifies managers. Specifically, Connecticut requires a registered nurse to oversee assisted living facilities, and Kentucky and New Mexico require facility license applicants to document compliance with statutory staffing requirements as part of the assisted living facility licensing process. However, 2 of the 5 states we reviewed—California and Nevada—also license or certify individuals who oversee assisted living facilities and regulatory requirements for the licensed or certified individuals in these 2 states are similar to Arizona’s regulation of certified managers. For example:

- **Examination**—Arizona and California require applicants to obtain a passing score on a state examination to be licensed or certified. Additionally, although Nevada does not have a state examination requirement, it requires applicants to pass an examination that is administered by the NAB to be licensed.
- **Education**—Arizona, California, and Nevada require a minimum of a high school diploma or GED to be licensed or certified.
- **Fingerprint-based background checks**—Arizona requires applicants to submit fingerprints to the State to conduct a background check in order to obtain a fingerprint clearance card. California and Nevada also require applicants to submit fingerprints for a fingerprint-based background check.
- **Continuing education**—Arizona, California, and Nevada require continuing education hours to maintain licensure or certification.

⁴⁷ Because all states license and regulate administrators in a similar manner, for our review of both positions, we focused our selection of states on those that represent a variety of regulation practices for the position that oversees assisted living facilities based on information in NCAL’s 2018 Assisted Living State Regulatory Review.

⁴⁸ AAC R4-33-201.

⁴⁹ One educational option to obtain a registered nurse license in California is with an associate degree.

⁵⁰ For additional information on the fingerprint clearance card, see Finding 1, page 5, textbox.

Sunset factor 12: The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.

The Board does not use private contractors in the performance of most of its duties; however, it paid for assistance with rule-writing in fiscal years 2017 and 2019.

We also contacted agencies or boards in 5 states—California, Connecticut, Nevada, New Mexico, and Kentucky—to obtain information regarding their use of contractors for regulatory activities. All 5 states indicated they did not use private contractors.

We did not identify any additional areas where the Board should consider using private contractors.



SUMMARY OF RECOMMENDATIONS

The Auditor General makes 13 recommendations to the Board

The Board should:

1. Continue to implement its new policies and procedures to ensure initial administrator and manager applicants submit the required documentation to demonstrate lawful presence (see Finding 1, pages 5 through 7, for more information).
2. Continue to implement its revised policies and procedures for verifying the validity of an initial and renewal applicant's fingerprint clearance card and documenting this verification prior to initially issuing or renewing a license or certificate (see Finding 1, pages 5 through 7, for more information).
3. Work with DHS to develop a process for obtaining in a timely manner the names of the responsible certified managers associated with the assisted living facilities identified in DHS reports (see Finding 2, pages 9 through 14, for more information).
4. Revise and implement its DHS report review policies and procedures to incorporate a requirement for monitoring Board staff compliance with these policies and procedures (see Finding 2, pages 9 through 14, for more information).
5. Implement and further revise its complaint handling policies and procedures to include the following requirements:
 - a. Monitoring Board staff compliance with these policies and procedures.
 - b. Regularly generating and reviewing management reports that provide information on the timeliness of the complaint handling process.
 - c. Generating monthly Board reports that include complaint handling timeliness information, such as how long complaints have been open and reasons for any complaint handling delays (see Finding 2, pages 9 through 14, for more information).
6. Continue to implement and ensure staff compliance with its newly revised policies and procedures for providing public information over the phone (see Finding 3, pages 15 through 16, for more information).
7. Work with its Assistant Attorney General to obtain an exemption to the rule-making moratorium and contingent on receiving an exemption, modify its rules to provide the Board with greater flexibility to conduct continuing education audits between renewal cycles for licensed administrators and certified managers (see Sunset Factor 2, pages 17 through 21, for more information).
8. Implement its new policies and procedures for ensuring that assisted living facility manager training programs and assisted living facility caregiver training programs receive onsite or telephonic evaluations when these training programs are approved and renewed pursuant to rule requirements (see Sunset Factor 2, pages 17 through 21, for more information).
9. Develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including (1) requiring Board members and staff to annually disclose certain interests in the Board's official records through a signed form, (2) maintaining completed forms in a special file available for

public inspection, and (3) implementing a process for managing any disclosed potential conflicts of interest to ensure the conflict will not interfere with the performance of Board member and staff duties (see Sunset Factor 3, page 21, for more information).

10. Continue to implement its newly revised complaint handling policies and procedures to ensure its online licensing information provides accurate information to the public (see Sunset Factor 5, pages 22 through 23, for more information).
11. Conduct a risk-based review of its online licensing information to ensure the information is complete and accurate (see Sunset Factor 5, pages 22 through 23, for more information).
12. Conduct a review of its costs for investigating complaints by taking the following steps:
 - a. Develop a method for determining direct and indirect costs associated with complaint investigations.
 - b. After developing this cost methodology, establish an hourly rate for investigations.
 - c. Establish a method for tracking and documenting staff time and activities to investigate each complaint (see Sunset Factor 6, pages 23 through 24, for more information).
13. Develop and implement policies and procedures for Board members and staff that include implementing the cost methodology, tracking Board staff time and overhead costs, and documenting justification for the amounts charged to provide guidance for when the reimbursement of investigative costs should be included in the consent agreement (see Sunset Factor 6, pages 23 through 24, for more information).



Objectives, scope, and methodology

The Office of the Auditor General has conducted a performance audit and sunset review of the Board pursuant to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq. This audit addresses the Board's processes to issue and renew licenses and certificates, resolve complaints, and provide information to the public. It also includes responses to the statutory sunset factors.

We used various methods to study the issues in this performance audit and sunset review of the Board. These methods included reviewing Board statutes, rules, and policies and procedures; interviewing Board members and staff; and reviewing information from the Board's website. We also attended and reviewed minutes or audio recordings from 3 public meetings of the Board and its executive sessions held between November 2018 and January 2019. In addition, we used the following specific methods to meet the audit objectives:

- To determine whether the Board issued initial licenses and certificates to qualified applicants in a timely manner, we randomly selected and reviewed samples of 17 of the 37 administrator applications for initial licensure and 15 of the 195 manager applications for initial certification the Board received in fiscal year 2018. Additionally, to determine whether the Board renewed licenses and certificates according to its rules and followed its procedures for auditing the continuing education requirements for renewed licenses and certificates, we selected and reviewed a random sample of 5 of 50 administrator renewal applications the Board selected for continuing education audits in fiscal year 2016 and 5 of 109 manager renewal applications the Board selected for continuing education audits in fiscal year 2017. Further, we reviewed documentation licensees and certificate holders submitted for the continuing education audits and the Board's initial and renewal license and certificate application forms to determine if they were consistent with statute and rule requirements.
- To assess whether the Board appropriately investigated and adjudicated complaints in a timely manner, we randomly selected and reviewed 20 of the 197 administrator and manager complaints the Board opened in fiscal year 2018.⁵¹ Further, we reviewed the processes that Board staff use to open and review complaints that originate from DHS substandard care surveys and to track complaints.
- To assess whether the Board provided appropriate information to the public, we judgmentally selected 3 licensees—1 administrator and 2 managers—from the random sample of complaints we reviewed and placed 3 anonymous phone calls to Board staff in January and April 2019 requesting information about the licensee and certificate holders and compared the information provided to Board records. We also reviewed information regarding the random sample of 20 administrators and managers who received complaints in fiscal year 2018 to assess whether the information provided on the Board's website matched the Board's files and was consistent with statutory requirements.
- To obtain information for the Introduction, we reviewed Board information regarding Board member vacancies as of December 2019 and the number of active licensees and certificate holders as of October 2019. In addition, we compiled and analyzed unaudited information from the AFIS

⁵¹ We selected our random sample from a list the Board provided of 198 complaints that it indicated it opened in fiscal year 2018, but upon further review, the Board reported it incorrectly included 1 on this list because it did not have jurisdiction and did not open a complaint.

Accounting Event Transaction File and the *State of Arizona Annual Financial Report* for fiscal years 2018 through 2019 and Board-provided financial information for fiscal year 2020.

- To obtain information for the Sunset Factors, we reviewed information in the Arizona Administrative Register regarding the Board's most recent rulemakings from October 2018 and assessed the Board's compliance with various provisions of the State's open meeting law for 3 Board meetings held between November 2018 and January 2019. In addition, to assess the Board's compliance with the State's conflict-of-interest laws, we reviewed statute, the Board's recusal disclosure form, and best practices from the Organisation for Economic Co-operation and Development.⁵² Finally, we judgmentally selected 5 states—California, Connecticut, Kentucky, New Mexico, and Nevada—and reviewed their regulation of licensed administrators and the position that oversees assisted living facilities.⁵³ We also contacted staff from entities in these states and obtained information about their use of private contractors.
- To determine whether the Board initially approved and renewed qualified training programs for administrators and managers, we selected the 1 Administrator-in-Training (AIT) program provider in Arizona, randomly selected 2 of the 12 assisted living facility manager training programs, and randomly selected 2 of the 44 assisted living facility caregiver training programs for review.⁵⁴ We reviewed documentation from initial and renewal applications submitted by the State's AIT program provider and by the training program owners. Further, we reviewed the Board's processes to determine if the Board's initial approvals and renewals of these programs were consistent with statute and rule requirements.
- Our work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with Board statutes and rules, and where applicable, testing its compliance with these policies and procedures. We reported our conclusions on these internal controls and, where applicable, Board efforts to improve its controls in Findings 1 through 3, as well as Sunset Factors 2 and 6 of the report.

We selected the previously indicated audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

We conducted this performance audit and sunset review of the Board in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express their appreciation to the Board and its Executive Director and staff for their cooperation and assistance throughout the audit.

⁵² Organisation for Economic Co-operation and Development. (2003). Guidelines for managing conflict of interest in the public service. Retrieved 5/8/2019 from <http://www.oecd.org/gov/ethics/2957360.pdf>.

⁵³ Because all states license and regulate administrators in a similar manner, for our review of both positions, we focused our selection of states on those that represent a variety of regulation practices for the position that oversees assisted living facilities based on information in NCAL's 2018 Assisted Living State Regulatory Review.

⁵⁴ We obtained the lists of Board-approved assisted living facility manager and caregiver training programs as of February 2019 from the Board's website.

BOARD RESPONSE



**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Douglas A. Ducey
Governor

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Allen Imig
Executive Director

February 18, 2020

Ms. Lindsey Perry, Auditor General
Office of the Auditor General
2910 N. 44th St., Suite 410
Phoenix, AZ 85018

Dear Ms. Perry:

The Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) respectfully submits its response to the performance audit and sunset review of the Board by the Office of the Auditor General.

The Board continually strives to perform at our best and would welcome any constructive feedback to help us to improve our processes.

On behalf of the Board and staff we would like to thank the Auditor General Staff for their professional conduct and guidance offered to the Board staff during the audit process.

Sincerely,

Allen Imig
Executive Director

Finding 1: Board issued or renewed some administrator and manager licenses/certificates despite not ensuring some requirements were met

Recommendation 1: The Board should continue to implement its new policies and procedures to ensure initial administrator and manager applicants submit the required documentation to demonstrate lawful presence.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will continue to implement its policy and procedure to ensure lawful presence is documented.

Recommendation 2: The Board should continue to implement its revised policies and procedures for verifying the validity of an initial and renewal applicant's fingerprint clearance card and documenting this verification prior to initially issuing or renewing a license or certificate.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will continue to implement its policy and procedure to verify the validity of an initial applicant or renewal applicant's fingerprint clearance card.

Finding 2: Board has not timely investigated and adjudicated some complaints, which may have put residents at risk

Recommendation 3: The Board should work with DHS to develop a process for obtaining in a timely manner the names of the responsible certified managers associated with the assisted living facilities identified in DHS reports.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will work with DHS to develop a process to timely identify the responsible facility manager from the DHS reports.

Recommendation 4: The Board should revise and implement its DHS report review policies and procedures to incorporate a requirement for monitoring Board staff compliance with these policies and procedures.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will revise and implement its DHS report review policy and procedure to monitor Board staff compliance with the policy and procedure.

Recommendation 5: The Board should implement and further revise its complaint handling policies and procedures to include the following requirements:

Recommendation 5a: Monitoring Board staff compliance with these policies and procedures.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement and revise its complaint handling policy and procedure to monitor Board staff compliance.

Recommendation 5b: Regularly generating and reviewing management reports that provide information on the timeliness of the complaint handling process.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: A complaint management report will be generated monthly and presented to the Board regarding complaint timeliness.

Recommendation 5c: Generating monthly Board reports that include complaint handling timeliness information, such as how long complaints have been open and reasons for any complaint handling delays.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: A monthly report will be presented to the Board including timeliness information on complaints and any reasons for delays.

Finding 3: Board did not provide adequate public information in response to anonymous phone calls we made

Recommendation 6: The Board should continue to implement and ensure staff compliance with its newly revised policies and procedures for providing public information over the phone.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will continue to implement the policy and procedure to ensure staff compliance.

Sunset Factor 2: The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

Recommendation 7: The Board should work with its Assistant Attorney General to obtain an exemption to the rule-making moratorium and, contingent on receiving an exemption, modify its rules to provide the Board with greater flexibility to conduct continuing education audits between renewal cycles for licensed administrators and certified managers.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will work to obtain a rule-making exemption to amend rules that give the Board more flexibility to conduct continuing education audits other than at renewal time.

Recommendation 8: The Board should implement its new policies and procedures for ensuring that assisted living facility manager training programs and assisted living facility caregiver training programs receive onsite or telephonic evaluations when these training programs are approved and renewed pursuant to rule requirements.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has implemented its new policy and procedure regarding onsite or telephonic evaluations prior to training programs initial approval or renewal.

Sunset Factor 3: The extent to which the Board serves the entire State rather than specific interests.

Recommendation 9: The Board should develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including (1) requiring Board members and staff to annually disclose certain interests in the Board's official records through a signed form, (2) maintaining completed forms in a special file available for public inspection, and (3) implementing a process for managing any disclosed potential conflicts of interest to ensure the conflict will not interfere with the performance of Board member and staff duties.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will develop and implement a policy and procedure to address potential conflicts of interest in accordance with State laws.

Sunset Factor 5: The extent to which the Board 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.

Recommendation 10: The Board should continue to implement its newly revised complaint handling policies and procedures to ensure its online licensing information provides accurate information to the public.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board continues to implement its complaint handling policy and procedure to provide the public with accurate information.

Recommendation 11: The Board should conduct a risk-based review of its online licensing information to ensure the information is complete and accurate.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board conducted a risk-based review of its online licensing information to make sure it is complete and accurate. The continued implementation of the complaint handling policy and procedure ensures its online licensing information to the public is accurate.

Sunset Factor 6: The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.

Recommendation 12: The Board should conduct a review of its costs for investigating complaints by taking the following steps:

Recommendation 12a: Develop a method for determining direct and indirect costs associated with complaint investigations.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will develop a cost methodology in determining direct and indirect costs associated with complaint investigations.

Recommendation 12b: After developing this cost methodology, establish an hourly rate for investigations.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will establish an hourly rate for investigations based on the cost methodology.

Recommendation 12c: Establish a method for tracking and documenting staff time and activities to investigate each complaint.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will establish a method of documenting and tracking staff time related to the investigation of each complaint.

Recommendation 13: The Board should develop and implement policies and procedures for Board members and staff that include implementing the cost methodology, tracking Board staff time and overhead costs, and documenting justification for the amounts charged to provide guidance for when the reimbursement of investigative costs should be included in the consent agreement.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will develop and implement policies and procedures for Board members and staff as outlined in recommendation 13.

