

**1992 SUNSET REVIEW**

**OF THE**

**REGULATION OF NURSE AIDES**

**Submitted by the  
Colorado Department of Regulatory Agencies  
June 1992**

June 25, 1992

The Honorable Bob Schaffer  
Joint Sunrise/Sunset Review Committee Chairman  
Room 348, State Capitol Building  
Denver, Colorado 80203

Dear Senator Schaffer:

We have completed our evaluation of the Nurse Aide Program under the Colorado Board of Nursing and are pleased to submit this written report which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to section 24-34-104(8)(a), Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section... The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee, created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

The report discusses the question of whether there is need for the regulation provided under the Board of Nursing pursuant to section 12-38-101 et seq. C.R.S. The report also discusses the effectiveness of the regulatory program in carrying out the intention of the statute and makes recommendations for statutory and administrative changes if the program is continued.

Sincerely,

Steven V. Berson  
Executive Director

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## EXECUTIVE SUMMARY

The certification program for nurse aides was created in the State of Colorado under the Colorado Board of Nursing to meet the standards established by the Omnibus Budget Reconciliation Act of 1987 (Obra 87).

The Department of Regulatory Agencies has completed a sunset evaluation of the current program and has established a need for the continuation of this program. During the evaluation process, the need for statutory changes to improve and clarify programmatic concerns became evident. These recommendations include the following:

- \* Increase representation on the Nurse Aide Advisory Committee.
- \* Establish a definite term of office for Advisory Committee members.
- \* Require the Nurse Aide to respond to Letters of Admonition to request a formal hearing rather than requiring a formal hearing to be scheduled in all instances prior to documentation of a violation on the state registry.
- \* Establish length of time a nurse aide must wait prior to reapplication after revocation.
- \* Establish a separate fund for the Nurse Aide Program.
- \* Continue the oversight of home health aides through the Nurse Aide statute.
- \* Clarify funding responsibilities.

## I. SUNSET PROCESS

The regulation of nurse aides pursuant to C.R.S. 12-38-101 et. seq. is scheduled to terminate on July 1, 1993 unless continued by the General Assembly. During the year prior to that date, it is the responsibility of the Department of Regulatory Agencies to conduct a review and evaluation of that regulatory program.

During the process, the Colorado Board of Nursing must demonstrate that there is a need for the continued existence of the program and that the regulation it provides is the least restrictive consistent with the public interest. The Department's findings and recommendations are submitted via this report to the Joint Legislative Sunrise/Sunset Review Committee of the Colorado General Assembly. (Statutory criteria used in the sunset review may be found in Appendix A of this report).

The scope of this review was comprehensive in nature. A review of current state statutes and regulations, federal regulations, numerous articles and research documents was conducted. Multiple interviews with the Nurse Aide Advisory Committee, various interested professionals, consumers, nurse aides and home health aides were held. Staff of the Nurse Aide Program and the Assistant Attorney General assigned to represent the program were interviewed as well. Additionally, other state regulatory programs of nurse aides were reviewed.

This is the first sunset of this program, which was implemented three years after legislation was enacted to create the program in 1989.

## II. BACKGROUND

### Nurse Aides: The Profession

Nurse aides are essential to the quality of care offered to residents of nursing homes. On an average, the nursing staff of a long term care facility includes 15% registered nurses, another 14% licensed practical nurses, and a hefty 71% nurse aides. (Institute of Medicine, 1986) According to the Colorado Nurse Aide statute, a nurse aide can be one who works in a medical facility licensed by the Colorado Department of Health or one who provides home health services through a home health agency certified to receive Medicare/Medicaid funding. In Colorado, there are 12,186 nurse aides currently on the registry with approximately 25% representing home health aides.

It is these nursing home aides who provide six times as much personal care as registered nurses and five times as much as licensed practical nurses (Administration on Aging, 1980). Nurse aides provide the most intimate of care, including dressing, grooming, bathing, feeding and toileting. Based on the current funding structure, two hours of care are allotted for each nursing home resident daily. Not only must nurse aides do a majority of the care, they must do it fast. The profession of nurse aides is not an easy one. The work is hard and there is little glory in the performance of services. Although there are many residents of nursing homes who appreciate their care, there are also many residents who are demanding, verbally abusive and unappreciative of the work done.

Home health aides are equally essential to the quality of care delivered to their patients. Many elderly and disabled persons are able to remain in their homes in the community rather than being institutionalized because of the services provided by home health aides. These aides provide basic nursing assistance to individuals, often on a daily basis.

The Health Care Financing Administration projects that Americans will spend \$60 billion on home care by the year 2000, up 328% from \$14 billion in 1986. Medicare's prospective pricing system and technological advances have fueled the push for care delivered at home. The prospective pricing system provides a strong incentive to discharge patients more quickly because it pays a flat rate to hospitals for care based on a patient's diagnosis. In addition, a number of clients for home care are referred by agencies other than hospitals. Nursing homes, out patient centers, heart and lung centers and physicians, to name a few, have become a much greater source of referrals in the past several years. More than one half of all insurance companies cover home health care services in an added effort to contain costs.

In addition to complying with federal regulations, the Nurse Aide Program has provided another important service to residents of nursing homes and consumers of home health services. The National Citizens Coalition for Nursing Home Reform (N.C.C.N.H.R., 1985) concluded from a national survey that what nursing home residents value most is good staff. More specifically, residents put first on their list of priorities "staff attitude".

Attitude is followed by such areas as staff credentials and adequacy of staffing. Improved attitude is encouraged by recognizing the value of nurse aide services and by recognizing this occupation as a "profession".

As advancing age strips the elderly of their independence and authority and shrinks their social world, nurse aides assume a much greater role in the lives of the elderly. Credentials, training and skills of nurse aides become less important as the elderly come to appreciate assistance without complaint, willingness to listen, sympathy without condescension, and a respect for both the frailty and dignity of old age. Thus, attitudes and self esteem of the nurse aides play an important role in patient satisfaction.

In meeting with nurse aides from a variety of settings, a number of concerns were articulated. These concerns include low pay, lack of benefits, the number of injuries incurred on the job and the fear of dismissal for reporting complaints. All facilities do not have these problems but problems have been identified in a number of settings. Those concerns are primarily employer-employee concerns rather than regulatory concerns. Yet, it is important to the Nurse Aide that the legislature become aware of the problems with which they deal.

A 1989 Current Population Survey evaluated data on home care aides, nurse aides and hospital aides from a national prospective. It was found that every characteristic examined showed substantial differences among the three groups. (See Appendix B) One important difference is that the three types of aides fell into a clear economic continuum, with hospital aides tending to be most affluent, followed by nursing home aides and finally home health aides. This ranking was true whether the aides were ranked by family income, earnings or hourly wages. It was also found that home care aides and nursing home aides were less likely to have health insurance or pension plan coverage than hospital aides.

Although there is a continuum indicated in this survey, nurse aides often come from a poor socio-economic background with limited educational opportunity. With this background and the additional stresses of adult life, many nurse aides enter the profession with limited resources. Yet, nurse aides are expected to have patience, impulse control, excellent listening skills and more. Teaching basic assistance skills such as changing a bed or dressing a patient is not a particularly arduous task while teaching communication skills, and appropriate behavioral responses to inappropriate behavior is much more difficult.

Nurse aides are often the bottom rung on the professional ladder in a nursing home. There is disparity between expectations of nurse aides and the respect accorded them.

The Nurse Aide Program is an attempt by the federal government to improve the quality of care of nursing home residents by increasing the professionalism of this group by providing some basic training and evaluation of competency. There is an increasing awareness of the importance of the nurse aide in the overall care of the elderly and disabled population.

This is the first opportunity presented to nurse aides to improve the self image of their profession. The process of certification of nurse aides, including home health aides, has brought greater attention to their work. In fact, there is a real concern that as the home care industry grows, there will be a significant shortage of home care workers to provide these greatly needed services. Current data indicates that 12% of the home care workers are leaving the profession each year.

Another factor that affects the supply of both nursing home aides and home health aides is the fact that hospitals are again hiring aides. Hospital aides are not included in the statute, nor are there any federal regulations requiring training or competency evaluations. For a time, hospitals chose to hire licensed practical nurses and registered nurses. Because of the nursing shortage, hospitals have begun using nurse aides to provide some of the basic services to patients as a cost containment measure. Hospitals are requiring certified nurse aides who have been trained and have passed the competency testing. Because of the higher pay and better benefits, many nursing home and home health aides choose to enter this employment area. Hospitals have taken advantage of the federal mandates to improve their employment pool for hospital aides.

### **Historical Perspective**

The Nursing Home Reform Amendments of Obra 87 set a framework to achieve a higher standard of care in nursing homes. A number of analyses that occurred prior to the landmark Obra 87 Amendments provided some critical data which made the amendments necessary. In particular, it was found that Nurse Aides provided 90% of the hands-on care that nursing home residents receive. It was also found that nurse aides were often poorly trained.

In response to this discovery, the Nursing Home Reform Amendments mandated that nursing homes receiving Medicare/Medicaid funding use only nurse aides who, within four months of hiring, have completed a training and competency evaluation program or who are already competent as indicated by their listing on the state's registry. Aides have to be competent to perform duties to which they are assigned and must receive regular in-service education and performance reviews by the nursing home staff. The state aide registry includes information about confirmed incidents of abuse, neglect or misappropriation of residents' property by an aide.

In addition to discussing the nurse aide training and competency requirements, this report provides a brief review of additional reforms mandated by Obra 87 and its amendments. These additional requirements in nursing homes include:

- A. Licensed nurses must be available around the clock with registered nurses required at least one shift a day (Waivers are available.)
- B. Physician visits must occur every thirty days for 3 months and then every ninety days thereafter. (Physician assistants or nurse practitioners can provide this service under physician supervision.)

- C. A full-time social worker must be available if the facility has over 120 beds.
- D. A Quality Assessment and Assurance Committee must exist to identify problems and issues, identify solutions and implement plans to correct them.
- E. Activities programs must be created and directed by qualified people.
- F. Reasonable accommodations of residents' individual needs and preferences must be made.
- G. Access to information and people who can assist residents in meeting their needs must be made available.
- H. Freedom from abuse and chemical or physical restraints must be assured except for residents safety and as a last resort.
- I. Participation in a resident/family council to express grievances and get quick responses must be made available.
- J. Controls over transfers or discharges to prevent unnecessary disruption of residents must be developed.
- K. More information for residents on eligibility for funding and extra fees charged by the facility must be made available.

The Nurse Aide Program was created to ensure that the State of Colorado complied with federal mandates established through Obra 87 and thus guarantee continued federal funding of nursing care facilities. In addition, the General Assembly's concern about the delivery of care in nursing homes was a motivating factor.

In Colorado, nurse aides who are employed by nursing home facilities and home health aides who are employed by home health agencies receiving Medicare funds are regulated by the Colorado Board of Nursing. Although training requirements and competency evaluations vary according to the federal regulations upon which the requirements are based, the current framework for regulation of nurse aides and home health aides has been developed to ensure that the training and competency evaluations are mutually acceptable to all participants.

The following chart compares nurse aide and home health aide requirements pursuant to the associated federal regulations.

<b>NURSE AIDE</b>	<b>HOME HEALTH AIDE</b>
<b>WORK WITH RESIDENTS WITHIN A FACILITY</b>	<b>WORK WITH PATIENTS WITHIN THEIR HOME</b>
<b>REQUIRED TO TAKE A WRITTEN TEST AND COMPETENCY EVALUATION (SKILLS DEMONSTRATION)</b>	<b>REQUIRED ONLY TO TAKE A COMPETENCY TEST. THE COMPETENCY TEST CANNOT BE DONE THROUGH A SAMPLING METHOD, ALL AREAS LISTED IN FEDERAL REGULATIONS MUST BE COVERED.</b>
<b>REGISTRY OF NURSE AIDES REQUIRED.</b>	<b>NO STATE REGISTRY REQUIRED, MAY INCLUDE IF DIFFERENTIATED FROM NURSE AIDES. FEDERAL REGULATIONS DO NOT REQUIRE STATE CERTIFICATION, EXCEPT AS REQUIRED BY STATE LAW.</b>
<b>A FACILITY MUST ANNUALLY PROVIDE A MINIMUM OF 12 HOURS OF IN-SERVICE EDUCATION.</b>	<b>MUST RECEIVE AT LEAST 12 CONTACT HOURS OF EDUCATION PER CALENDAR YEAR.</b>
<b>SPECIFIC TOPICS ARE NOT INDICATED TO ALLOW FLEXIBILITY WITHIN FACILITIES FOR SPECIAL NEEDS OF THEIR STAFF.</b>	<b>IN-SERVICE TRAINING MAY BE PROVIDED WHILE THE AIDE IS FURNISHING CARE TO PATIENTS</b>
<b>LONG TERM CARE FACILITIES MUST COMPLETE A PERFORMANCE REVIEW OF EACH AIDE NO LESS FREQUENTLY THAN EVERY 12 MONTHS.</b>	<b>HOME HEALTH AGENCIES MUST COMPLETE A PERFORMANCE REVIEW OF EACH AIDE NO LESS FREQUENTLY THAN EVERY 12 MONTHS.</b>

As stated previously, in Colorado, an effort has been made to integrate the two health care entities described above. Thus, it allows the worker more professional freedom. Instead of meeting two sets of separate criteria, an aide can comply with Colorado state regulations and function as a nurse aide or home health aide. In Colorado, home health aides (HHAs) must have more regulation than required by the federal government but, in return, they are given flexibility in job opportunities and are provided additional oversight by the Colorado Board of Nursing.

The required training and evaluation are the responsibility of states. Nursing facilities have only the responsibility:

1. to hire only certified aides.
2. to check certain state registries.
3. to deliver annually a performance review and 12 hours of in-service education.

### III. FUNDING CHALLENGES

In the early development of this program, a Health Care Financing Administration (HCFA) Regional Identification Letter indicated that Medicare and Medicaid were to share costs equally and that "once the State allocates 50% of these costs to Medicare, Medicare will reimburse the State for 100% of the costs it is allocated."

As the program was formulated in Colorado in 1988, it was to have no general fund or tax impact. Each nurse aide was required to pay a portion of the costs incurred in the administration of this program. The fee amount was initially established at \$12 for the competency evaluation and for listing on the registry. This money was also to be used as the Medicaid match.

Colorado's efforts to comply with federal regulations and thereby continue receiving its Medicare and Medicaid monies have been admirable. Medicaid reimbursement has been forthcoming with no identified problems while Medicare reimbursement for competency evaluations has not yet occurred, creating funding shortfalls for this program. Since the initial mechanism was established, HCFA has revised its initial interpretation of the funding options to reflect what HCFA believes was Congress's intent, which was to have costs borne by Medicare administrative costs. This change implies that monies for the program be paid directly to nursing homes rather than to the state itself. On April 1, 1991, HCFA announced a rate increase of \$1.45 a day per patient to nursing facilities to cover the Medicare portion of the costs. This means that the State of Colorado could have to bill each nursing facility and ultimately could become a collection agency rather than the much easier method of billing Medicare and being reimbursed directly.

This is a contradiction of the earlier statements Colorado relied on. Three departments of state government, the Colorado Department of Health, the Colorado Department of Social Services, and the Colorado Department of Regulatory Agencies discussed the impact of this new interpretation and decided to contest this retroactive change.

An additional change in federal regulations mandated that no charge could be assessed directly against a nurse aide for the training and competency testing program. This eliminated all funding by fees and again had a significant impact on the funding base.

Because a nurse aide cannot be charged, there is not the same direct control over payment as in other professional licensing or certification programs where nonpayment would prevent the issuance of a license or certification.

It should be noted that Congress changed statutory provisions in 1988, 1989 and 1990. In addition, HCFA did not publish rules according to the schedule mandated by Obra 87. There have also been different opinions articulated by HCFA officials, both at the state and federal levels. Colorado has attempted and continues to attempt to comply with these mandated requirements and continues to experience barriers to these efforts.

The Departments of Health, Social Services and Regulatory Agencies in Colorado have been working cooperatively to resolve these problems. Efforts by state officials to establish a direct reimbursement procedure for Medicare dollars has been ongoing. To establish a billing system which takes into consideration the number of aides coming from each facility and the Medicare and Medicaid percentages of cost to be assessed for each facility is a complicated process. In addition, the mechanism must ultimately be approved by HCFA to ensure compliance with its interpretation of the federal requirements.

In this state, as previously noted, the Nurse Aide Program was established under the Colorado Board of Nursing in the Colorado Department of Regulatory Agencies. Because the mandate is directed at those departments dependant on federal Medicare/Medicaid funding, there is a question of who is ultimately responsible for the funding of this program, the Colorado Department of Regulatory Agencies as the subcontractor or the Colorado Departments of Health and Social Services as the direct contractors with the federal programs.

All three departments continue their cooperative efforts to resolve these funding problems as quickly as possible to ensure adequate federal support to this program. It is hoped that resolution of the funding dilemma will be achieved in the near future. As heard from a variety of sources, this program's funding has become another "federal fiasco" with which we must deal.

#### **IV. ANALYSIS OF COMPLAINTS AND DISCIPLINARY ACTIONS**

Although the Colorado Board of Nursing is statutorily authorized to provide oversight for the Nurse Aide Program, the Board has delegated the function of reviewing all complaints and recommending action to be taken to the Nurse Aide Advisory Committee in conjunction with ultimate Board ratification of all decisions.

The Nurse Aide Advisory Committee meets on a monthly basis to review nurse aide complaints. (The number of complaints considered by the Committee, the types of complaints and actions taken are presented in chart form on the next two pages.) At that time, committee members also review applications for certification and will either request additional information or approve or deny certification. Applicants must then receive passing scores on both the written and performance tests.

To provide a basis of evaluation, it becomes necessary to compare disposition of complaints by the Board of Nursing in the other professions over which the Board is authorized to provide oversight. From July 1990 through June of 1991, the Board of Nursing received 275 Reports of Investigation. Of these, 192 of the reports, out of a population of over 35,000 licensees, related to complaints against Registered Nurses, Licensed Practical Nurses or Psychiatric Technicians (other professions under the Board's authority) while 83 of the reports, out of a population of 12,000 certificate holders, related to complaints against nurse aides. It should be noted that in 1989-90, the Board received 130 Reports of Investigation for nurses indicating almost a 50% increase in the number of complaints filed against nurses in a particular year.

In reviewing the disposition of nurse aide cases, the Nursing Board took action on 49% of the aide complaints as compared to 63% of the nursing complaints. Staff believes that the higher dismissal rate reflects the newness of the program and the inevitable learning curve that must occur in the industry to become familiar with the disciplinary process. In summary, the Colorado Board of Nursing has issued 25 Letters of Admonition, has referred 34 cases to the Attorney General for revocation actions and denied certification to 11 applicants based on information provided. The number of actions pending is 28, indicating a backlog in investigations. Thus, action taken on complaints filed within the last year have not yet been completed.

The greatest percentage of complaints is in the area of abuse. These complaints range in severity from a nurse aide raising his/her voice to a patient to actual physical contact. Often the Director of Nursing is the initiator of a complaint after internal action, including termination, has been initiated. There is a noticeable tendency on the part of the nursing home administrator to terminate nurse aides at the time of the alleged incident prior to any formal investigation.

The Nurse Aide Advisory Committee has taken its responsibility seriously and has recommended a strong disciplinary response when violations occur. On occasion, the decision to revoke or suspend a nurse aide certification came more easily than observed in other health professions, but when considering the differences in education and training to enter the fields being compared, the significance becomes moot.

**NUMBER OF NURSE AIDE COMPLAINTS FILED  
BY MONTH AND ALLEGATION**

	<b>ABUSE</b>	<b>MISAPPROPRIATION</b>	<b>NEGLECT</b>	<b>OTHER</b>	<b>TOTAL</b>
<b>July 90</b>	8	0	2	10	20
<b>August 90</b>	1	1	0	2	4
<b>September 90</b>	8	1	1	6	16
<b>October 90</b>	12	0	0	3	15
<b>November 90</b>	9	1	0	3	13
<b>December 90</b>	6	3	1	3	13
<b>January 91</b>	12	2	0	7	21
<b>February 91</b>	7	2	4	4	17
<b>March 91</b>	9	2	1	9	21
<b>April 91</b>	11	0	0	3	14
<b>May 91</b>	3	0	1	3	7
<b>June 91</b>	4	1	3	0	8
<b>July 91</b>	8	0	2	0	10
<b>August 91</b>	6	3	7	1	17
<b>September 91</b>	7	1	1	1	10
<b>October 91</b>	6	0	2	1	9
<b>November 91</b>	13	0	3	4	20
<b>December 91</b>	11	1	1	5	18
<b>January 92</b>	4	1	1	5	11
<b>February 92</b>	15	1	0	6	22
<b>TOTAL</b>	<b>90</b>	<b>13</b>	<b>13</b>	<b>53</b>	<b>169</b>

## ACTION TAKEN ON COMPLAINTS

	ABUSE				NEGLECT				MISAPPROPRIATION				OTHER				PENDING	TOTAL
	DS	LOA	R	DN	DS	LOA	R	DN	DS	LOA	R	DN	DS	LOA	R	DN		
<b>July 90</b>	4				1	1							8	1		1	4	20
<b>August</b>			1						1				1		1			4
<b>September</b>	1	1	3		1							1	5	1			3	16
<b>October</b>	5	1	2	2									3				2	15
<b>November</b>	5	1	3						1				2		1			13
<b>December</b>	3	2			1				3				1			1	2	13
<b>January 91</b>	3	3	3	1					1		1		4	2	1		2	21
<b>February</b>	1	1	3			2	2				2		1	3			2	17
<b>March</b>	6	1		1		1					1	1	4	1	3	1	1	21
<b>April</b>																		
<b>May</b>	1					1									1		4	7
<b>June</b>	3					1	2				1						1	8
	<b>33</b>	<b>11</b>	<b>15</b>	<b>6</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>5</b>	<b>2</b>	<b>30</b>	<b>8</b>	<b>10</b>	<b>3</b>	<b>28</b>	<b>169</b>

**DS = DISMISSED**

**LOA = LETTER OF ADMONITION**

**R = REFER TO ATTORNEY GENERAL'S OFFICE**

**DN = DENY**

## V. REVIEW OF CURRENT STATUTE AND REGULATIONS

### Review of Statute

Nurse aides are licensed pursuant to 12-38-101 et seq. C.R.S. The legislative purpose of this statute is to protect and ensure the safety of the public in Colorado medical facilities. As defined by statute, a medical facility is a nursing facility or home health agency licensed or certified by the Department of Health to receive Medicare or Medicaid funds. This article is scheduled to repeal, effective July 1, 1993, subject to review as provided for in section 24-34-104, C.R.S.

Certification of nurse aides falls under the jurisdiction of the State Board of Nursing. The Board is composed of eleven governor-appointed, senate-approved members. The main duties of the Board include issuing certifications, ensuring compliance with all state and federal laws, recording names of all certified nurse aides and any related disciplinary actions. The Board also has the power to approve nurse aide training programs and to designate an advisory committee to assist with the Board's duties.

Every nurse aide applicant is required by Colorado law to pay a fee when applying for certification. However, charging a fee is no longer allowed according to federal regulations. A nurse aide may be certified by endorsement or by competency evaluation. When applying by endorsement, one must submit written evidence of current certification by another U.S. state and not be in violation of any act that would be grounds for discipline. If not certified by endorsement, one must pass a written or oral clinical competency evaluation upon completion of a nurse aide training program. The curriculum in such a program is designed to develop competency in areas such as communication and interpersonal skills, infection control, safety and emergency procedures, and promotion of patients' independence and rights. The clinical competency evaluation tests each applicant on knowledge of basic nursing and personal care skills, recognition of social needs and basic restorative services.

Each certificate to practice as a nurse aide must be renewed every other year and is subject to a renewal fee. The fee is also no longer allowed according to federal regulations. At this time, one must attest that he/she has been practicing as a paid nurse aide in the preceding twenty-four month period and has completed the ongoing required training. In addition, one must not be in violation of any statutory requirement. If so, the Board may suspend, revoke, or deny any certification. Such situations include, but are not limited to, attempting to procure a certificate by fraud or deceit, abusing or neglecting a patient in practice as a nurse aide, habitually abusing a drug, violating patient confidentiality, or misappropriating patient property. A certificate may also be suspended or denied if a physical or mental condition prevents a nurse aide from performing duties safely or with reasonable skill. A proceeding for discipline or competency is conducted by hearing officers before a certificate is revoked or suspended. The Board may also issue subpoenas for copied documents containing information relevant to the hearing.

The Board is authorized and has chosen to establish an advisory committee to help with its

duties related to nurse aides. The advisory committee is composed of five members. They include a certified nurse aide, a representative of the State Board of Nursing, a Department of Health employee, a representative for the concerns of senior citizens, and a representative for professional associations composed of medical facilities. This section creating the advisory committee is also subject to repeal July 1, 1993.

This article does not apply to the following situations: gratuitous care of friends or family members, a person for hire who does not represent himself/herself as a nurse aide, assistance in the case of an emergency, or any person acting within the scope of a license. There is also a four month exclusionary period for persons directly employed by a medical facility acting within the boundaries of their job description and pursuing their nurse aide certification.

### **Review of Regulations**

The Colorado Board of Nursing has promulgated a number of regulations to augment the statutory authority to regulate the nurse aide and home health aide profession. These rules address several broad areas which specifically authorize: procedures for approval; board responsibilities; criteria for evaluating training programs; the specific components of the curriculum; instructor credentials; educational facilities; clinical resources requirements for continuing approval; inactive programs; closing of program and criteria for changing administrative control. In addition, regulations specify procedures used in initial certification applications and certification renewals.

## **VI. SHOULD THE NURSE AIDE PROGRAM CONTINUE?**

The Nurse Aide Program was created in 1989 to ensure that Colorado meets the requirements of the Omnibus Budget Reconciliation Act of 1987. In addition, the legislative intent clearly establishes that the General Assembly wanted to protect the safety of the people of Colorado by ensuring that nurse aides were qualified to perform their services.

The key question of a sunset review is "whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulations have changed and whether other conditions have arisen which would warrant more, less or the same degree of regulation."

While attempting to answer these questions, it is important to acknowledge the regulatory impact of required compliance with a federal law. Hundreds of hours over the last three years have been expended to ensure that Medicare funding would be forthcoming. Changes in federal regulations and revised interpretations of these regulations have added an additional burden to the efforts to implement this program.

Various agencies of state government and the nurse aides themselves have been required to adjust their programs to comply with federal regulations. Yet, the program itself has successfully accomplished many of its goals. Training programs have been approved throughout the state to ensure access to training. The Nurse Aide Advisory Committee has worked hard to provide appropriate discipline and to ensure safety of consumers. The state registry is fully functional to document nurse aides in Colorado and disciplinary actions taken against them. Nurse aides have been recognized for the importance of their work and have moved towards improving their image and being recognized for the important role they play.

Thus, in addition to the continuing need to comply with Obra 87, the program has been an effective means of providing needed oversight of this profession.

## VII. RECOMMENDATIONS

Based on the foregoing discussion of the nurse aide regulatory program, the Department of Regulatory Agencies recommends the following:

### **RECOMMENDATION 1: CONTINUATION OF PROGRAM**

**The General Assembly should allow the certification of nurse aides pursuant to Sections 12-38.1-101 et. seq., C.R.S. to continue.**

If the General Assembly decides to continue regulation of nurse aides and home health aides, the following recommendations are made to improve the program.

### **RECOMMENDATION 2: CONTINUE OVERSIGHT OF HOME HEALTH AIDES THROUGH THIS PROGRAM**

**The General Assembly should not remove home health aides from this statute.**

**Discussion:** As previously indicated, each state is required to provide training to the nurse aides who are employed in nursing homes which receive Medicare/Medicaid reimbursement.

Home health aides, employed by home health agencies which receive Medicare/Medicaid reimbursement, are required to take a competency test that is comprehensive in nature. But this test does not have to be administered by the state. Each agency could administer its own competency evaluation.

Yet, in 1989, the General Assembly was encouraged to, and decided to, combine the two sets of federal requirements and create one regulatory oversight authority within the Colorado Board of Nursing to comply with both sets of federal regulations. The industry supported the decision for several reasons: the need for a standardized disciplinary mechanism for both nursing home nurse aides and home health aides, the desire to provide more employment options to this profession so that practitioners could move from home health aide to nursing home nurse aide with no additional requirements, the desire to have all participants on one registry and the desire to provide a mutually acceptable training opportunity for individuals with similar training needs.

The question of removing home health aides from the definition of nurse aides has arisen as an option to consider due to the increasing cost of the competency exam. Home health aides currently pay \$85 for their test, a portion of which is paid by the home health agency employing each aide. This cost will potentially more than double based on the additional costs of contracting for this service. The Board of Nursing has requested proposals for the performance of competency evaluations but the process has not yet been completed. This

information should be available for comment during the 1992 interim sunset hearing.

For those individuals who choose to participate in training prior to employment, the cost is borne either by the individual or some other funding source when available. Although the number who choose to enter this profession by training prior to employment is quite small, those who choose this profession are often of a low socio-economic background and could be prohibited from taking the training prior to employment. Some home health agencies have reported that the pool of certified nurse aides has grown so that they rarely have to employ an untrained, uncertified aide.

Although this is an argument to remove home health aides from the current statute, there are definite negative consequences that must be considered.

First, in this profession, movement between two employment areas is a definite benefit and many aides work in both the nursing home and home health setting. This ability to move increases job options and also enables many aides to work in both areas simultaneously increasing their potential to make a more substantial income.

Next, each agency would be responsible for training and competency testing which could increase training costs to the agencies, although these costs would probably be less than the increased cost of participation in the state program. Survey teams from the Colorado Department of Health would have to review each agency's training and competency programs, increasing the required survey time and the cost for each survey. This would also increase each agency's cost for administration time spent in the survey process.

Additionally, the \$1.45 increase in per visit reimbursement paid to home health agencies by the Colorado Department of Social Services for participation in the current program would be placed in jeopardy. The increase was appropriated to assist in paying for the competency evaluations which would no longer be required.

Last, the General Assembly decided to include both nursing home aides and home health aides in the original statute because of the similarities in their work and the need to provide protection to the elderly and handicapped population. This need has not changed.

These problems with eliminating HHAs from this program, especially limiting employment opportunities for this population and reducing oversight, outweigh the primary benefit - decreasing costs to home health agencies. The Colorado State Board of Nursing will, during the coming year, conduct a study on all issues relating to the development of an in-house state test. This potential change from a national testing source to an in-house test could have a significant impact on costs during the coming years. It should also be noted that the home health industry introduced a licensing bill to require licensure of home health agencies due to the need for consumer protection. To then object to continued regulation of the aides themselves is incongruous.

Therefore, the Department of Regulatory Agencies recommends that home health aides continue to be included in the Nurse Aide Program. It must be understood that the funding

issue has not been resolved at this time. As additional information is obtained relating to funding during the next few months, this recommendation could be modified.

**RECOMMENDATION 3: DO NOT REQUIRE DOCUMENTATION OF CONTINUING EDUCATION.**

**The General Assembly should not require the Board of Nursing to document contact hours or any educational requirements.**

**Discussion:** Initially, as the Nurse Aide Program was implemented, there was an expectation that contact hours and in-service training hours required by the federal regulations would be reported to the Colorado Board of Nursing. Many aides worked very hard to accrue the required hours. Many aides felt that this requirement was an additional incentive to the professionalization of their work.

Then in September of 1991, the federal government mandated that, although hours of contact or in-service training were required, the lack of those hours could not be used to prevent an aide from being placed on the state registry. The responsibility then became an agency responsibility rather than an aide responsibility.

Documentation of in-service training for nurse aides or contact hours for home health aides would now be reviewed during the survey process by the Colorado Department of Health but only if there is a negative outcome relating to patient care indicating a question of competency regarding the nurse aides in the facility. No reporting to the Colorado Board of Nursing is required. Because there are no consequences allowed by the federal regulations, reporting became unnecessary and fiscally unsound due to the expense of tracking this information.

Nurse aides reacted quite strongly to the changing requirements. They expressed concern that removing this reporting requirement was a step backwards in their efforts to promote professionalism within their ranks.

Agency representatives expressed concern that aides were no longer responsible for tracking their own hours and therefore, aides could appear for employment with no documentation of hours accrued during the calendar year prior to their employment in the new agency. Agency administrators were concerned about their ability to document the required training hours for aide employees who had been recently hired. This could impact on their ability to meet federal requirements during the Colorado Department of Health surveys and their concern about receiving deficiencies in this area. The Colorado Department of Health survey teams will potentially check for the information but do not foresee this as being a significant hindrance to a positive survey outcome because a period of time to document required training is built into the system.

The possibility of having aides report their hours on their renewal forms and, for a small fee, enabling agencies to request this information from the Board of Nursing was discussed. Because of the computerized system of maintaining records and the use of microfiche, this procedure is not feasible due to the expense.

The Department of Regulatory Agencies therefore recommends that agencies work voluntarily and cooperatively to coordinate a system of tracking. One option would be issuing certificates of completion to each aide who will present this information to a new employer if a new employment opportunity arises. However, state involvement in this required tracking of hours would be fiscally insupportable as an option.

**RECOMMENDATION 4: INCREASE NUMBER OF REPRESENTATIVES ON THE NURSE AIDE ADVISORY COMMITTEE.**

**The General Assembly should amend Section 12-38.1-110 C.R.S. by repealing the following:**

**"Such committee shall be composed of five members. One member shall be certified nurse aide, one member shall be a member of the State Board of Nursing, one member shall be a Department of Health employee, one member shall be from a group representing the concerns of senior citizens, and one member shall represent professional associations composed of medical facilities."**

**And enacting the following:**

**"Such committee shall be composed of seven members. One member shall be a nursing home nurse aide, one member shall be a home health aide, one member shall be a member of the State Board of Nursing, one member shall be Department of Health employee, one member shall be from a group representing the concerns of senior citizens, one member shall represent professional associations composed of medical facilities and one member shall represent training programs."**

**Discussion:** It has been found by the Division of Registrations that a seven member board or committee is more effective. If one or two members are absent, the makeup of the committee is still representative and able to make a valid judgement regarding recommendations for revocation or approval of certification. There is a concern that when two members are absent with a five member board or committee, the remaining three members do not adequately represent the profession as a whole. The additional expense will be insignificant when compared to the benefit of better ensuring a quorum and adequate representation.

**RECOMMENDATION 5: ESTABLISH A TERM OF OFFICE FOR ADVISORY COMMITTEE MEMBERS.**

**The Colorado Board of Nursing should establish through regulation a term of office for advisory committee members.**

**Discussion:** The Nurse Aide Advisory Committee appointed by the Board of Nursing has an important function in reviewing all applications and complaints to ultimately recommend to the Board of Nursing suspension, revocation, or other action. There is currently no term of office established. This means that members of this committee could function on the committee for an indefinite period of time. Due to the nature of their work, it is important that new committee members be appointed on a regular basis. It is also more conducive to potential members to have some indication of the period of time which they will serve. Thus, this recommendation will require the Board of Nursing to establish an ongoing system of evaluating advisory committee members and appointing new members.

**RECOMMENDATION 6: REQUIRE CERTIFICATE HOLDER TO REQUEST A HEARING IF THERE IS DISAGREEMENT CONCERNING A LETTER OF ADMONITION.**

**The General Assembly should amend Section 12-38.1-111 by adding the following:**

**“(3) When a complaint or investigation discloses an instance of misconduct which, in the opinion of the Board, does not warrant formal action by the Board but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the nurse aide against whom a complaint was made and a copy thereof to the person making the complaint. When the letter of admonition is sent by certified mail by the Board to a nurse aide complained against, such nurse aide shall be advised that he/she has the right to request in writing within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against him/her to adjudicate the propriety of the contact on which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be heard as a formal disciplinary proceeding.”**

**Discussion:** Currently, in order for documentation of a letter of admonition to be placed on the Nurse Aide Registry, it is required that a formal hearing occur. In a majority of the cases, the nurse aide does not respond at the formal hearing. There is no method now to prevent a formal hearing from being scheduled to enable this action to be placed on the registry. This recommendation will shift the burden to the certificate holder to request a formal hearing upon receiving a letter of admonition and disagreeing with its

content. Currently, the Assistant Attorney General is required to prepare all cases which increases the amount of legal time required and the associated costs although the preparation is often unnecessary because the aide does not appear at the hearing.

**RECOMMENDATION 7: ESTABLISH CERTIFICATION REQUIREMENTS FOR AN APPLICANT WHOSE CERTIFICATION IS REVOKED.**

**The General Assembly should amend Section 12-38.1-103 by adding the following:**

**"(5)(a) The Board shall not issue a certificate to a former holder of a certificate whose certificate was revoked unless the applicant meets the requirements of this article, has successfully completed an approved education program as required by the Board and has passed a competency evaluation.**

**(b) No nurse aide certificate holder who has had a certificate revoked may apply for recertification before a one year waiting period after such revocation."**

**Discussion:** This recommendation clarifies that an aide whose license is revoked must repeat the required training and competency evaluation. Based on the revocation there is an obvious need to require the aide to repeat training since he/she has not participated his/her profession for a year and has not reestablished his/her competency.

In addition, there is now no waiting period for a nurse aide after revocation prior to applying for recertification. An aide, therefore, can submit an application the day after revocation. The Board of Nursing is better assured of preventing an aide from practicing by suspending for a definite period of time. With this change, violation of the Nurse Aide statute will have consequences comparable to the Nurse Practice Act.

**RECOMMENDATION 8: PROVIDE TITLE PROTECTION TO CERTIFIED NURSE AIDES.**

**The General Assembly should amend Section 12-38.1-102 entitled "Definitions" in the following manner:**

**(3) "certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the board AND ONLY A PERSON WHO HOLDS A CERTIFICATION TO PRACTICE AS A NURSE AIDE IN THIS STATE PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL HAVE THE RIGHT TO USE THE TITLE "CERTIFIED NURSE AIDE" AND ITS ABBREVIATION, "C.N.A."**

**Discussion:** This amendment will provide title protection to those nurse aides who have participated in required training and passed the state approved competency evaluation. This will ensure that those holding themselves out as nurses aides certified by the state have in actuality completed the required training and been approved through the competency evaluation. This will provide some additional protections to those required to hire nurse aides who have completed this process. It also increases the professional status of those who have completed the program by providing a specific title for which they are known.

**RECOMMENDATION 9: AUTHORIZE CHARGING AN APPLICATION FEE FOR NURSE AIDE TRAINING PROGRAMS.**

The General Assembly should amend section 12-38.1-108 by adding the following:

**12-38.1-108. Approved nurse aide training programs.**

**(7) Every applicant for approval of a nurse aide training program shall accompany the application with the fee established pursuant to section 24-34-105, C.R.S., together with forms provided by the Board.**

**Discussion:** Board approval of every nurse aide training program is required. The Board also inspects and surveys each nurse aide training program it approves during the first year following such approval and every two years thereafter. A number of potential training programs have submitted their applications, then been evaluated and approved by the Board but ultimately have chosen not to offer any training. To attach a fee to this process will provide needed support for the training program evaluations and will also encourage facilities and other potential training programs to evaluate their interest and commitment to the process prior to submitting an application.

**RECOMMENDATION 10: ENABLE OTHER HEALTH CARE PROVIDERS TO RENEW CERTIFICATION BASED ON RESPONSIBILITIES PERFORMED DURING THE PREVIOUS 24 MONTHS THAT ENCOMPASS NURSE AIDE SERVICES.**

The General Assembly should amend section 12-38.1-109 entitled "Renewal of Certification" by adding the following:

**Each certificate to practice as a nurse aide shall be renewed biennially upon payment of a specified renewal fee established pursuant to section 24-34-105, C.R.S. and pursuant to federal regulations. The board may reduce such fee if federal funds are available. Such fee shall not be subject to the provisions of section**

**24-34-104.4, C.R.S. At the time of such renewal, the nurse aide shall submit proof to the board, as required by federal law or regulation, that s/he has performed nurse aide services for pay during the preceding 24 month period and shall attest that s/he has completed the required ongoing training or to the completion of a new training program approved under the provisions of this article during the preceding 4 months. IF A NURSE AIDE HAS PERFORMED SERVICES ENCOMPASSING NURSE AIDE SERVICES AS ESTABLISHED THROUGH RULES AND REGULATIONS FOR PAY DURING THE PRECEDING 24 MONTH PERIOD, THE NURSE AIDE MAY BE APPROVED FOR RECERTIFICATION.**

**Discussion:** In addition, the current wording of this particular section of the nurse aide statute implies that the nurse aide must work in paid nurse aide services during the preceding 24 months to be allowed to recertify without training and a competency evaluation. There are situations in which individuals are certified nurse aides and are also nursing students, for example. The addition of the above indicated sentence will allow those who are functioning in a similar capacity, but are not specifically entitled nurse aides to recertify based on performing nurse aide functions in other capacities.

The federal government has issued new regulations which mandate that a nurse aide cannot be removed from the registry for noncompliance with ongoing training requirements. Therefore, removal of the above indicated phrase ensures state compliance with federal regulations.

**RECOMMENDATION 11: ALLOW NURSE AIDES WHO COMPLETE A NEW TRAINING PROGRAM WITHIN 24 MONTHS OF RENEWAL TO BE ELIGIBLE FOR RECERTIFICATION.**

**The General Assembly should amend section 12-38.1-109 to state the following:**

**"...At the time of each renewal, the nurse aide shall submit proof to the board, as required by federal law or regulation, that s/he has performed nurse aide services for pay during the preceding 24 month period or proof of the completion of a new training program approved under the provisions of this article during the preceding 24 months..."**

**Discussion:** Currently, a nurse aide must complete a training program during the four months prior to recertification or work in the area for 8 hours during the preceding four months. Obviously, a 75 hour training program during the 24 month period would be of at least equal if not greater value than 8 hours of paid employment. Therefore, changing the period of time available to complete a training program to 24 months would be a more reasonable time

period.

Additionally, removing the requirement that the aide attest to completion of ongoing training is no longer allowed to be used as a basis for recertification by federal regulation.

**RECOMMENDATION 12: (E) ADD ANY CONDUCT WHICH CONSTITUTES A CRIME TO "GROUNDS FOR DISCIPLINE".**

**The General Assembly should amend section 12-38.1-111, C.R.S. by adding the following words:**

**“(m) Has engaged in any conduct which would constitute a crime as defined in title 18, C.R.S. and which conduct relates to such person's employment as a nurse aide. In conjunction with any disciplinary proceeding pertaining to this paragraph (n), the Board shall be governed by the provisions of section 24-5-101, C.R.S.**

**Discussion:** Although federal regulation currently requires that misappropriation of patient property is grounds for discipline and must be documented on the state registry, there is no requirement to include facility property as grounds for discipline. It can be assumed that misappropriating patient property is a more serious offense, yet misappropriating facility property is also a violation that is an unacceptable practice in a nursing home setting or in a home. Also, other crimes should be considered valid grounds for discipline or a consideration of discipline based on the circumstances. By adding the above indicated statement, a nurse aide can be disciplined for stealing from the nursing home regardless of the amount while, with the current statute, the nurse aide would have to be convicted to consider it a grounds for discipline. There have been situations during the past three years in which nurse aides have stolen facility property and have been immune from discipline.

**RECOMMENDATION 13: PLACE FUNDING RESPONSIBILITY ON THE CONTRACTORS WITH THE FEDERAL GOVERNMENT.**

**The General Assembly should add the following to section 12-38.1-103:**

**Certification - State Board of Nursing.**

**(5) The department of social services shall maintain regular communications with the federal government and the department of regulatory agencies to ensure that the nurse aide program is funded at an adequate level by Medicaid payments.**

**(6) The department of health shall maintain regular communications with the federal government and the department of regulatory agencies to ensure that the nurse aide program is funded at an adequate level by Medicare payments**

**Discussion:** The Colorado Department of Health is dependent on Medicare funding for the support of many of its programs and the Colorado Department of Social Services is dependant on Medicaid funding for the support of many of its programs. In the case of Nurse Aides, the General Assembly decided that the Colorado Board of Nursing had the needed expertise to provide competent oversight of this program. Yet, those departments which provide the needed assurances to the federal government that the mandate of Obra 87 is being met are the primary contractors. These agencies are both closely linked to the federal system, are in ongoing communication, are mandated to provide required reporting and are dependent for funding on compliance with Obra 87. Thus, these relationships clearly support the belief that each department act as the liaison with the federal government and take responsibility for the needed funding of the Nurse Aide Program. The Colorado Board of Nursing has provided the required oversight but is not in a position to take the lead in the funding battles, nor should it be.

**RECOMMENDATION 14: REQUIRE MEDICAL FACILITIES TO INFORM THE COLORADO BOARD OF NURSING OF THE RESULTS OF COLORADO BUREAU OF INVESTIGATION REPORTS.**

**The General Assembly should require all medical facilities as defined in section 12-38.1-102 (4) to report results of Colorado Bureau of Investigations (CBI) reports when the employer reasonably believes that the information would be grounds for discipline under Colorado Law.**

**Discussion:** There has been media attention drawn to the fact that approximately 37% of the nurse aide applicants have provided incorrect information on their applications when asked if they have ever been convicted of a felony offense. To do a CBI check for criminal records on each applicant would be prohibitively expensive, especially because the costs cannot be assessed to the nurse aides themselves because of the federal prohibitions. Each background check would cost \$17.00. This burden is more appropriately placed on the employer, who is directly responsible for resident safety. At this time, there are some agencies performing the service as a precondition for employment. Yet, when the information indicates a felony conviction, the employer will terminate the nurse aide but will not necessarily inform the Colorado Board of Nursing to ensure disciplinary action. This recommendation will ensure that reporting occurs.

**RECOMMENDATION 15: CREATE CONSEQUENCES FOR MEDICAL FACILITIES WHICH FAIL TO REPORT RESULTS OF CBI BACKGROUND CHECKS.**

**The General Assembly should establish that medical facilities must report the required CBI report results within 30 days of receiving the information. An initial violation of this section shall result in a letter of admonition to the medical facility from the Colorado Board of Nursing. Any subsequent violation of this section shall result in a \$100 fine to be paid to the**

## **Colorado General Fund.**

**Discussion:** This section is recommended to provide consequences for noncompliance with reporting requirements as established in Recommendation 14. Establishing consequences is essential to ensure compliance and to provide necessary tools for enforcement.

### **RECOMMENDATION 16: INCREASE HOURS OF TRAINING TO INCLUDE MORE SPECIFIC INFORMATION ON PREVENTION OF ABUSE.**

**The Colorado Board of Nursing should increase training requirements from 75 to 80 hours by adding five hours of training in the area of interpersonal skills. The expanded content should include additional experiential training in dealing with behavioral problems of patients.**

**Discussion:** The most significant area of documented violations to the Nurse Aide statute is in the area of patient abuse. The significant amount of patient contact, the limited staffing that sometimes occurs, and the lack of training on how to handle difficult patients often places aides in a situation where they need greater knowledge of response options. Many aides come from dysfunctional family settings where impulse control is not learned. This reality makes it critical to focus more attention on providing behavioral responses to different situations in hopes of providing options other than abuse.

### **RECOMMENDATION 17: MAKE STATUTE GENDER NEUTRAL.**

**The General Assembly should direct drafters to revise language to ensure gender neutrality.**

**Discussion:** All statutes are being revised to ensure that gender neutral language is used.

### **RECOMMENDATION 18: TREAT A CERTIFICATE HOLDER WHO SURRENDERS HIS/HER CERTIFICATE AS ONE WHO HAS HAD HIS/HER CERTIFICATE REVOKED.**

**The General Assembly should amend section 12-38.1-115 by adding the following:**

**No nurse aide certificate holder who has surrendered his/her certificate may reapply for recertification before a one year waiting period after such surrender.**

**Discussion:** A certificate holder may surrender his/her certificate prior to the initiation of a formal investigation or hearing. In that situation, the certificate holder should be treated as one whose certificate has been revoked because, for all purposes, the certificate holder has assumed a revocation would have occurred had the investigation and hearing proceeded to

completion.

**RECOMMENDATION 19: REVISE PENALTY FOR PRACTICING THE PROFESSION OF CERTIFIED NURSE AIDE WITHOUT REQUIRED CERTIFICATION.**

The General Assembly should revise section 12-38.1-118(2) to read as follows:

(2) Any person who violates the provisions of subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. ~~Any person who subsequently violates any provision of subsection (1) of this section within three years after the date of the first conviction under this section commits a class 5 felony and shall be punished as provided in section 18-1-105, C.R.S.~~ **AND ANY PERSON COMMITTING A SECOND OR SUBSEQUENT OFFENSE COMMITS A CLASS 6 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-105, C.R.S.**

**Discussion:** This change in wording is recommended to update consequences as criminal statutes have been revised to include a class 6 felony. This is the standard for practicing in a medical area without a license and will conform this section to other medical professions.

**RECOMMENDATION 20: REVISE STATUTE TO ACCURATELY STATE THAT THE FEDERAL GOVERNMENT CERTIFIES FACILITIES RATHER THAN THE COLORADO DEPARTMENT OF HEALTH.**

The General Assembly should revise section 12-38.1-102 Definitions to read in part:

(4) "Medical facility" means a nursing facility licensed by the department of health or certified by the ~~department of health~~ federal government to receive medicare or medicaid funds..."

**Discussion:** The Colorado Department of Health is the agency that provides licenses to health facilities but all certification is a responsibility of the federal Health Care Financing Administration. This change is recommended to accurately describe the responsibilities of the Colorado Health Department and the federal government.

## APPENDIX A

### **SUNSET STATUTORY EVALUATION CRITERIA**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulations;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.