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# COLORADO REVISED STATUTES

## Title 12 **Professions and Occupations**

### Article 39 **Nursing Home Administrators**

Effective July 1, 2010

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**12-39-101. Legislative declaration.**

The general assembly declares that the intent of this article is to provide a measure of protection to the residents of nursing homes in this state who are aged or who have disabilities by establishing a means to regulate nursing home administrators to ensure quality administration and sound management of nursing homes. It is also the intent of the general assembly that the board of examiners of nursing home administrators be adequately funded to carry out the duties and functions specified by this article as well as the legislative intent expressed in this section.

**12-39-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Board" means the board of examiners of nursing home administrators.

(2) "Nursing home administrator" means any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.

(3) "Nursing home administrator-in-training" means an individual registered with the board pursuant to the provisions of this article.

(4) "Nursing home facility" shall have the same meaning as that set forth in section 25-1-1002, C.R.S., and shall include nursing care facilities, whether proprietary or nonprofit, which are licensed under section 25-1.5-103 (1) (a) (I), C.R.S., or pursuant to the rules for nursing homes promulgated by the department of public health and environment. The term "nursing home" includes but is not limited to nursing homes owned or administered by the state government or any agency or political subdivision thereof.

(5) "Practice of nursing home administration" means the planning, organizing, directing, and control of the operation of a nursing home.

(6) "Reasonable grounds" means facts and circumstances sufficiently strong to warrant a prudent person to believe that the facts and circumstances are true.

**12-39-103. Administrator license required.**

No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that such person is a nursing home administrator, unless such person has been duly licensed as a nursing home administrator as required by this article.

**12-39-103.5. State training school.**

The nursing home administrator in each of the three state home and training schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be the superintendent of such facility.

**12-39-104. Board of examiners of nursing home administrators - creation - subject to termination - repeal.**

(1) (a) There is hereby created a board of examiners of nursing home administrators in the division of registrations in the department of regulatory agencies, which board shall be composed of the following members appointed by the governor:

(I) Three members shall be practicing nursing home administrators duly licensed under this article and shall be from the following areas of discipline, with no two members from the same area:

- (A) Hospital administration;
- (B) Nonprofit facility administration;
- (C) Proprietary facility administration; or
- (D) Continuum of care administration;

(II) (A) Two members shall be professionals from the long-term care industry, one of whom shall be a licensed health care professional.

(B) Notwithstanding sub-subparagraph (A) of this subparagraph (II), upon the expiration of the term of office of the long-term care professional member whose term expires on July 1, 2009, the board shall have one member who is a professional from the long-term care industry.

(C) Notwithstanding sub-subparagraph (A) of this subparagraph (II), upon the expiration of the term of office of the long-term care professional member whose term expires on July 1, 2011, the board shall not have any members who are professionals from the long-term care industry.

(D) This subparagraph (II) is repealed, effective July 1, 2011.

(III) Three members shall be representative of the public at large; except that upon the expiration of the term of office of the one member of the board representing the public whose term expires on July 1, 2011, the board shall consist of two members representative of the public at large.

(b) No more than three of the members of the board shall be officials or full-time employees of state government or local governments. The term of office for each member of the board shall be four years. No member of the board shall serve more than two consecutive terms. All the members of the board shall be residents of this state.

(2) Appointments to the board shall be made by the governor. The governor may remove any board member for negligence, incompetency, unprofessional conduct, or willful misconduct. Actions constituting neglect of duty shall include but not be limited to three unexcused absences from scheduled meetings in any one calendar year. Appointments to fill vacancies shall be made for the remainder of the unexpired term. A member who is a practicing nursing home administrator or long-term care professional shall serve for a full term only if, during such term, such member is actively employed as a practicing member of his or her profession without a lapse of employment greater than one hundred twenty days.

(3) The board shall elect annually from its membership a chair and vice-chair. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.

(4) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director thereof and the division of registrations as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(5) The director of the division of registrations in the department of regulatory agencies may appoint, subject to section 13 of article XII of the state constitution, a program director to the board. The program director shall not be a member of the board, but shall have such powers and shall perform such duties as are prescribed by law and the rules of the board. Additional staff may be appointed by the director of the division of registrations to adequately assist the board and the program director in keeping records and in the performance of their duties. These employees, if any, shall be appointed and serve in accordance with section 13 of article XII of the state constitution.

(6) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of nursing home administrators created by this section.

(7) Repealed.

**12-39-104.5. Qualifications of board members.**

(1) A nursing home administrator shall be qualified to be appointed to the board if such person:

(a) Is a legal resident of Colorado;

(b) Is currently licensed as a nursing home administrator;

(c) Has been actively engaged as a licensed nursing home administrator for at least five years.

(2) Notwithstanding subsection (1) of this section, a person convicted of a felony in Colorado or any other state or of violating this article or any law governing the practice of nursing home administrators shall not be appointed to or serve on the board.

**12-39-105. Powers and duties of the board - rules.**

(1) (a) The board has the following powers and duties:

(I) (A) To adopt rules defining standards of nursing home administration, including the responsibilities and duties of nursing home administrators, consistent with this article. The standards established in the rules shall be met by individuals in order to receive and retain a license and shall be designed to ensure that nursing home administrators are qualified by education and training in the appropriate field to serve as nursing home administrators.

(B) To develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(II) To issue licenses to individuals determined, after application of such techniques, to meet such standards specified in subparagraph (I) of this paragraph (a);

(III) To revoke, suspend, withhold, or refuse to renew any license previously issued by the board, to place a licensee or temporary license holder on probation, or to issue a letter of admonition to a licensee in accordance with section 12-39-111 (3) in any case where the individual holding any such license is determined to have failed to conform to the standards developed pursuant to subparagraph (I) of this paragraph (a) or to have committed an act that constitutes grounds for discipline as set forth in section 12-39-111;

(IV) To establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards specified in subparagraph (I) of this paragraph (a);

(V) To conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation following the filing of a signed complaint, an investigation initiated by the board, or any hearing, to administer oaths and issue subpoenas compelling the attendance and testimony of witnesses and the production of books, papers, or records relevant to an investigation or hearing;

(VI) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1023, § 6, effective May 4, 2009.)

(b) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing documents shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the resident, but shall identify the resident by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the resident's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to the copies, and no liability shall lie against the board, the custodian, or the custodian's authorized employee for furnishing or using the copies in accordance with this subsection (1).

(c) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so

ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(2) Repealed.

(3) (a) The board shall develop rules, with input from long-term care facility provider associations, the department of public health and environment, the office of the state attorney general, and consumer representatives, concerning factors to be considered in determining performance that fails to meet generally accepted standards for nursing home administrators and whether or not remedial or disciplinary actions are warranted. The board may create an advisory committee to assist the board in developing standards that describe the responsibilities and duties of nursing home administrators.

(b) If after an investigation the board determines that there are reasonable grounds to believe that the performance of a licensed administrator is inconsistent with the health or safety of residents in the care of the facility in which the administrator works and is contrary to standards adopted by the board, the board may initiate disciplinary action as may be warranted.

(4) The board shall have the authority to make rules consistent with law as may be necessary for the proper performance of its duties and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the federal "Social Security Act", the federal rules promulgated thereunder, and other pertinent federal requirements.

**12-39-106. Qualifications for admission to examination.**

(1) The board shall admit to examination for licensure as a nursing home administrator any applicant who pays a fee as determined by the board, who submits evidence of suitability prescribed by the board, who is twenty-one years of age or older, and who provides written documentation that the applicant meets one of the following requirements:

(a) The applicant has successfully completed the administrator-in-training program pursuant to section 12-39-107; or

(b) The applicant has successfully completed a bachelor's degree in public health administration, health administration, or any degree or degrees deemed appropriate by the board; or

(c) The applicant has successfully completed an associate's degree or higher degree in a health care-related field and has a minimum of two years experience in administration in a nursing home or hospital. For the purposes of this section, a registered nurse who is a graduate of a three-year diploma program shall be considered to have met the associate degree requirement.

(2) If the applicant fails to provide evidence satisfactory to the board that the applicant meets the requirements of subsection (1) of this section, the applicant shall not be admitted to take the licensing examination, and the applicant shall not be entitled to or be granted a license as a nursing home administrator.

(3) (Deleted by amendment, L. 99, p. 361, § 4, effective July 1, 1999.)

**12-39-107. Administrator-in-training.**

(1) An applicant for a nursing home administrator's license who meets the board's criteria for education and experience, pursuant to section 12-39-107.5, may be granted admission into the nursing home administrator-in-training program. Upon successful completion of the two-thousand-hour training period, said applicant shall be eligible to take the examination.

(2) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1024, § 8, effective May 4, 2009.)

(3) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided by the board.

(4) The board shall, by rule, establish a monitoring mechanism that will provide oversight of the administrator-in-training program, including a requirement that an administrator-in-training submit periodic progress reports to the board.

(5) (Deleted by amendment, L. 99, p. 362, § 5, effective July 1, 1999.)

(6) The board may waive any portion required by subsection (1) of this section if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule of the board.

**12-39-107.5. Board to promulgate rules.**

The board shall promulgate rules defining the criteria for the education and experience necessary for admittance to the administrator-in-training program. The board shall furnish copies of the appropriate rules to members of the public upon request. Such criteria for the education and experience necessary for admittance to the administrator-in-training program shall not exceed successful completion of two years of college level study in an accredited institution of higher education in areas relating to health care or two years of board approved experience in nursing home administration or comparable health management experience for each year of required education.

**12-39-108. Licenses.**

(1) Any license issued by the board shall be valid for a period determined pursuant to a schedule established by the director of the division of registrations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of registrations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of registrations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) Repealed.

(3) Only an individual who has qualified as a licensed nursing home administrator under the provisions of this article and who holds a valid current license pursuant to the provisions of this section has the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after such person's name.

(4) The board shall maintain a list of all licensed nursing home administrators, which list shall show: the place of residence, the name and age of each licensee, any action taken by the board, the number of the license issued to the licensee, and such other pertinent information as the board may deem necessary. The department shall keep a list of applicants who are denied.

(5) The board may issue a temporary license to an applicant for a period not to exceed six months. The board shall promulgate rules and regulations for the issuance of such a temporary license.

(6) A temporary license shall be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the department of public health and environment. Such temporary permit shall be granted for a period not to exceed twelve months and shall be void at such time the license holder is no longer employed by the general hospital.

(7) The board shall establish, pursuant to section 24-34-105, C.R.S., and publish annually a schedule of fees for the licensing of nursing home administrators.

(8) All moneys collected or received by the board shall be transmitted to the state treasurer who shall credit the same as provided in section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

(9) No nursing home administrator who has had a license revoked may apply for licensure before a one-year waiting period following the date of such revocation and must comply with all requirements established by rules and regulations of the board.

(10) Each licensee shall, within thirty days, notify the board of any conviction of a felony or the acceptance of a guilty plea or a plea of nolo contendere to a felony.

**12-39-109. Examinations.**

(1) The board shall determine the subjects of the state examination for all applicants for licensure as nursing home administrators.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate. Any examination shall be prepared or approved by the board.

(3) The board shall have the authority to select and administer a national examination.

**12-39-110. Endorsement.**

(1) The board shall issue a license to any person duly licensed to practice nursing home administration in another state or territory of the United States who possesses credentials and qualifications which are substantially equivalent to the requirements of section 12-39-106 and who successfully completes the Colorado state examination provided in section 12-39-109. For purposes of this section, "state or territory" includes the District of Columbia and the commonwealth of Puerto Rico.

(2) An applicant for licensure under this section shall submit to the board, in a form prescribed by the board, all of the following:

**Editor's note:** This version of the introductory portion to subsection (2) is effective until July 1, 2011.

(2) An applicant for licensure under this section shall submit to the board, in a manner prescribed by the board, all of the following:

**Editor's note:** This version of the introductory portion to subsection (2) is effective July 1, 2011.

(a) Evidence that the applicant holds a current, active license to practice nursing home administration issued by a state or territory of the United States other than Colorado. Such evidence shall include a license history from the state or territory that issued the license, indicating whether any disciplinary or other adverse actions are currently pending or have ever been taken in connection with that license and the final disposition of such actions, if any. If an applicant is or has been licensed in more than one state or territory other than Colorado, the applicant shall submit a license history or similar record as described in this paragraph (a) from each such state or territory.

(b) A license history or similar record, as described in paragraph (a) of this subsection (2), relating to any license or registration which the applicant holds or has held in any other health care occupation in any state or territory other than Colorado. For purposes of this section, "health care occupation" includes without limitation the practices of medicine, dentistry, psychiatry, psychology, nursing, physical therapy, gerontology, chiropractic, podiatry, midwifery, optometry, pharmacy, and any other practice in which individuals are treated for medical or psychological problems or conditions, as well as the rendition of any service supportive to or ancillary to those practices.

(c) Verification that the applicant has been engaged in the practice of nursing home administration, has taught in a health care administration program, or has served as a member of a nursing home survey or accreditation team for one year immediately preceding the date of application, or has been engaged in one of the services described in this paragraph (c) for three of the five years immediately preceding the date of application.

**Editor's note:** This version of paragraph (c) is effective until July 1, 2011.

(c) (I) Verification that the applicant has been engaged in the practice of nursing home administration, has taught in a health care administration program, or has served as a member of a nursing home survey or accreditation team for one year immediately preceding the date of the receipt of the application, or has been engaged in one of the services described in this subparagraph (I) for three of the five years immediately preceding the date of the receipt of the application; or

(II) Evidence that the applicant has demonstrated competency as a nursing home administrator as determined by the board.

**12-39-111. Grounds for discipline.**

(1) The board has the power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that such person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or pled guilty or nolo contendere to a felony. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be prima facie evidence of such conviction. In considering a possible revocation, suspension, or nonrenewal of a license or temporary license the board shall be governed by the provisions of section 24-5-101, C.R.S.

(c) Has had a license to practice nursing home administration or any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(d) Has violated or aided or abetted a violation of any provision of this article, any rule or regulation adopted under this article, or any lawful order of the board;

(e) Has committed or engaged in any act or omission which fails to meet generally accepted standards for such nursing home administration practice or licensure;

(f) Has falsified or made incorrect entries or failed to make essential entries on resident records;

(g) Is addicted to or dependent on alcohol or habit-forming drugs, abuses or engages in the habitual or excessive use of any such habit-forming drug or any controlled substance as defined in section 12-22-303 (7) or 18-18-102 (5), C.R.S., or participates in the unlawful use of controlled substances as specified in section 18-18-404, C.R.S.; except that the board has the discretion not to discipline the licensee if such person is participating, in good faith, in a program approved by the board designed to end such addiction or dependency;

(h) Has a physical or mental disability that renders the licensee unable to practice nursing home administration with reasonable skill and safety to the residents and that may endanger the health or safety of persons under the licensee's care;

(i) Has violated the confidentiality of information or knowledge as prescribed by law concerning any resident;

(j) Has violated section 18-13-119, C.R.S., concerning the abuse of health insurance;

(k) Has failed to post in the nursing home facility in a conspicuous place and in clearly legible type a notice giving the address and telephone number of the board and stating that complaints may be made to the board;

(l) Has practiced as a nursing home administrator without a license;

(m) Has used in connection with the person's name any designations tending to imply that the person is a licensed nursing home administrator, unless the person in fact holds a valid license;

(n) Has practiced as a nursing home administrator during a period when the person's license has been suspended or revoked; or

(o) Has sold, fraudulently obtained, or furnished a license to practice as a nursing home administrator, or has aided or abetted therein.

(2) The board need not find that the actions which are grounds for discipline were willful or negligent, but it may consider the same in determining the nature of disciplinary sanctions to be imposed.

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(4) If the board finds the charges proven and orders that discipline be imposed, it may also require the licensee to participate in a treatment program or course of training or education as a requirement for reinstatement as may be needed to correct any deficiency found in the hearing.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

**12-39-112. Withholding or denial of license - hearing.**

The board has the authority, pursuant to article 4 of title 24, C.R.S., to determine whether an applicant for a license or a temporary license to practice as a nursing home administrator possesses the qualifications required by this article, or whether there are reasonable grounds to believe that such applicant has done any of the acts set forth in section 12-39-111 as grounds for discipline. As used in this section, "applicant" does not include a person seeking the renewal of a license.

**12-39-113. Mental and physical examination of licensees.**

(1) (a) If the board has reasonable grounds to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-39-111 (1) (g) or (1) (h), it may require the person to submit to a mental

or physical examination by a physician or other licensed health care professional it designates. Upon the failure of the person to submit to the mental or physical examination, unless due to circumstances beyond the person's control, the board may suspend the person's license until the person submits to the required examinations.

(b) Every licensee or temporary license holder by engaging in the practice of nursing home administration in this state or by applying for the renewal of a license or temporary license shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to such an examination shall contain the basis of the board's reasonable grounds to believe that the licensee is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-39-111 (1) (g) or (1) (h). The licensee shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health care professional's testimony or examination reports on the ground of privileged communication.

(2) Nothing in this section shall prevent the licensee from submitting testimony or examination reports of a physician or other licensed health care professional designated by the licensee that pertains to a condition described in section 12-39-111 (1) (g) or (1) (h) that may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician or other licensed health care professional designated by the board.

(3) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

**12-39-114. Disciplinary proceedings - administrative law judge - judicial review.**

(1) The board, through the department of regulatory agencies, has the authority to designate an administrative law judge to conduct hearings on any matter within the board's jurisdiction. Any designated administrative law judge shall have the powers and duties set forth in article 4 of title 24, C.R.S., and shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(2) Disciplinary proceedings may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts in violation of section 12-39-111.

(3) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge, at the board's discretion.

(4) No previously issued license to engage in the practice of nursing home administration shall be revoked or suspended until a hearing has been conducted pursuant to section 24-4-105, C.R.S., or, for emergency situations, pursuant to section 24-4-104 (4), C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation.

(5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(6) Complaints, investigations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this article and relating to disciplinary proceedings shall be exempt from the provision of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this article be open to public inspection; except that this exemption shall apply only when the board, or an administrative law judge acting on behalf of the board specifically determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, or if the licensee is violating section 12-39-111 (1) (g), participating in good faith in a program approved by the board or designed by the board to end any addiction or dependency specified in said section, and the licensee has not violated any provisions of the board order regarding participation in such a treatment program. If the board determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, then the final action of the board shall be open to the public without disclosing the name of the client or other recipient. Final board actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals in accordance with section 24-4-106 (11), C.R.S.

(7) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

**12-39-115. Temporary advisory committees - immunity.**

(1) The board may appoint temporary advisory committees, including temporary professional review committees, to assist in the performance of its duties with respect to individual investigations. Each temporary advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of temporary advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

(2) If a professional review committee is established pursuant to subsection (1) of this section to investigate the quality of care being given by a person licensed pursuant to this article, such committee shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(3) Any member of the board or of a professional review committee, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to

this article shall be immune from any civil or criminal liability that may result from such participation.

**12-39-116. Unauthorized practice - penalties.**

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a nursing home administrator without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person who commits a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

**12-39-117. Cease-and-desist orders.**

(1) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-39-114 (6).

**12-39-118. Injunctive proceedings.**

The board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general or the district attorney in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active nursing home administrator's license from committing any act declared to be unlawful or prohibited by this article. In any action taken pursuant to this section the court shall not require the board to plead or prove irreparable injury or inadequacy of a remedy at law or to post a bond. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this article.

**12-39-119. Administration of nursing homes relying on treatment by spiritual means.**

A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone, through prayer in accordance with the creed or tenets of a church or religious denomination, shall be exempt from the provisions of this article.

**12-39-120. Records.**

The board shall keep formal records of all complaints it receives and of the final disposition of such complaints. The board shall be responsible for implementing a tracking system to facilitate the retrieval of such records.

**12-39-121. Repeal of article.**

(1) This article is repealed, effective July 1, 2018.

(2) Prior to such repeal, the licensing functions of the board of examiners of nursing home administrators shall be reviewed as provided in section 24-34-104, C.R.S.

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## **RELATED STATUTES**

Title 18

*Criminal Code*

Article 13

*Miscellaneous Offenses*

### **18-13-119. Health care providers - abuse of health insurance.**

(1) The general assembly hereby finds, determines, and declares that:

(a) Business practices that have the effect of eliminating the need for actual payment by the recipient of health care of required copayments and deductibles in health benefit plans interfere with contractual obligations entered into between the insured and the insurer relating to such payments;

(b) Such interference is not in the public interest when it is conducted as a regular business practice because it has the effect of increasing health care costs by removing the incentive that copayments and deductibles create in making the consumer a cost-conscious purchaser of health care; and

(c) Advertising of such practices may aggravate the adverse financial and other impacts upon recipients of health care.

(2) Therefore, the general assembly declares that such business practices are illegal and that violation thereof or the advertising thereof shall be grounds for disciplinary actions. The general assembly further declares that nothing contained in this section shall be construed to otherwise prohibit advertising by health care providers.

(3) Except as otherwise provided in subsections (5) and (6) of this section, if the effect is to eliminate the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan, a person who provides health care commits abuse of health insurance if he knowingly:

(a) Accepts from any third-party payor, as payment in full for services rendered, the amount the third-party payor covers; or

(b) Submits a fee to a third-party payor which is higher than the fee he has agreed to accept from the insured patient with the understanding of waiving the required deductible or copayment.

(4) Abuse of health insurance is a class 1 petty offense.

(5) (a) Reimbursements made pursuant to articles 4 and 15 of title 26, C.R.S., federal medicare laws for inpatient hospitalization, and mental health services purchased in accordance with article 66 of title 27, C.R.S., are exempt from the provisions of this section.

(b) Health care services are exempt from the provisions of this section if such health care services are provided:

(I) In accordance with a contract or agreement between an employer and an employee or employees and the contract includes, as a part of an employee's salary or employment benefits, terms that authorize a practice that would otherwise be prohibited by subsection (3) of this section; or

(II) In accordance with a contract or agreement between a town, city, city and county, or municipality or a special health assurance district pursuant to section 31-15-302 (1), C.R.S., under terms that authorize a practice that would otherwise be prohibited by subsection (3) of this section.

(6) (a) The waiver of any required deductible or copayment for charitable purposes is exempt from the provisions of subsection (3) of this section if:

(I) The person who provides the health care determines that the services are necessary for the immediate health and welfare of the patient; and

(II) The waiver is made on a case-by-case basis and the person who provides the health care determines that payment of the deductible or copayment would create a substantial financial hardship for the patient; and

(III) The waiver is not a regular business practice of the person who provides the health care.

(b) Any person who provides health care and who waives the deductible or copayment for more than one-fourth of his patients during any calendar year, excluding patients covered by subsection (5) of this section, or who advertises through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that he will accept from any third-party payor, as payment in full for services rendered, the amount the third-party payor covers shall be presumed to be engaged in waiving the deductible or copayment as a regular business practice.

(7) Repealed.