

Appendix #8

Public Hearing Transcript from August 18, 2004

Written Comment Accepted until September 3, 2004

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH PROFESSIONS

IN RE: PUBLIC HEARING ON ASSISTED LIVING

AUGUST 18, 2004
ALCOA BUILDING, 6603 WEST BROAD STREET
5TH FLOOR, ROOM 2
RICHMOND, VIRGINIA 23230
9:00 A.M.

COPY

PRESENT:

Carol Stamey, Administrative Assistant
Robert A. Nebiker, Director, DHP
Elizabeth A. Carter, PH.D.
Executive Director for the Board
Mary M. Smith, Nursing Home Administrators, Presiding
Alan E. Mayer, Board Chair, Citizen Member
David H. Hettler, O.D., Optometry
Emily Wingfield, Esquire, Assistant Attorney General

SPEAKERS: PAGE:
CARLE, Andrew ----- 16
LATIMER, Joani ----- 56
SOBLE, Beverly ----- 3
STEGER, Dana ----- 12
WILKINS, Jason ----- 48

MS. SMITH: The purpose of this meeting is to study the need to regulate directors of assisted living facilities, the Regulatory Research Committee of the Virginia Board of Health Professions is holding this public hearing. Although general comment related to assisted living oversight is welcome, really the primary focus of this hearing is to obtain information relating to public health and safety issues, the fiscal impact which may result from the regulation of this group, and how the activities of the current state agencies which deal with assisted living-related issues may be affected.

We have currently four people who have asked to speak. And we're going to ask Beverly Soble with the Virginia Health Care Association to come up first.

MS. SOBLE: Good morning, Madam Chairman, members of the regulatory research committee, my name is Beverly Soble, Vice President of regulatory affairs from the Virginia Center for Assisted Living, the assisted living arm of the Virginia Health Care Association, which is the statewide long-term care association.

The May 23rd through 26th front

page series about assisted living facilities that was published in the Washington Post has certainly been a catalyst for highlighting the need for regulatory change for assisted living in Virginia. That series and subsequent articles in USA Today and the Richmond Times Dispatch has suddenly put ALF operations under the microscope. There's no doubt that there's now increased attention on the need for an in depth look at how assisted living facilities are regulated in Virginia and the need for accountability of those responsible for operation of those facilities. Increasingly residents in the facilities are more frail and vulnerable.

Our association is on record asking the Virginia Board of Health Professions to study requiring licensing of assisted living administrators. This action would serve to increase accountability for those caring for those individuals who have responsibility for the delivery and care of services for this vulnerable population. We need to institute a standard of professional practice for administrators and hold accountable -- hold them accountable for their actions or their inactions.

Administrators should be required

1 to demonstrate the knowledge, skills, and values
2 necessary to provide quality care to residents.
3 While there are currently more than 600 licensed
4 facilities in the Commonwealth with the capacity to
5 care for almost 35,000 residents, there is no
6 regulatory board or authority to which these
7 administrators are accountable to their professional
8 conduct nor is there a standard of practice to which
9 they must adhere.

10 Because there are no federal
11 requirements governing assisted living, each state
12 has the responsibility for regulating their
13 facilities and their administrator. A number of
14 other states have successfully initiated mechanisms
15 for requiring professional standards for the
16 administrators. Virginia has not yet opted to
17 regulate them. Unfortunately it took this front
18 page series to bring to the public's attention the
19 need to carefully examine the current lack of
20 professional standards for Virginia's directors of
21 facilities.

22 We believe it's extremely important
23 to have a system in place to insure that these
24 individuals, who are responsible for providing care
25 and oversight, meet specific qualifications. It's

1 you given any thought to which facilities -- would
2 it be all assisted living facilities you believe
3 should be required to have a licensed administrator,
4 or is there some threshold at which licensure would
5 be required or not required?

6 MS. SOBIE: The response would be
7 that all administrators be accountable in some
8 manner. We've only considered licensure.

9 MR. NEBIKER: Right. For a home
10 of any number of beds?

11 MS. SOBIE: For a home of any
12 number of beds.

13 Any other questions?

14 MS. SMITH: Thank you, Beverly.

15 Oh, I'm sorry. Mr. Mayer.

16 MR. MAYER: Have you considered
17 what the impact might be on the assisted living
18 industry if we had such licensure requirement for
19 the small as well as the large ones?

20 MS. SOBIE: I think the impact
21 would be an accountability factor regarding -- are
22 you talking about physical impact or are you talking
23 about -- I would think that we would allow a certain
24 period of time in which everyone could come up to
25 meet the standards. We do not even know in Virginia

1 our hope that the Board of Health Professions will
2 recommend licensure of assisted living facility
3 administrators and set standards for education,
4 specialized skills in training, experienced
5 continuing education requirements and professional
6 standards of practice to adequately protect the
7 public.

8 This could be accomplished by
9 expanding the current role and responsibilities of
10 the Board of Nursing Home Administrators by changing
11 it to a Board of long-term care administrators with
12 a change in the Board's mission and a composition of
13 the Board to administer the program. We would be
14 pleased to explore with the Board the possibility
15 also of a Dean status for those individuals who hold
16 licenses as nursing home administrators and also
17 serve as assisted living administrators.

18 Thank you for the opportunity to
19 offer comments today. We stand ready to work with
20 you to require regulation of administrators. I
21 would be pleased to respond to any questions you
22 might have.

23 MS. SMITH: Are there any
24 questions?

25 MR. NEBIKER: Good morning. Have

1 the characteristics of the population because that
2 data is not collected, particularly in the private
3 case sector the State only has information on the
4 public case.

5 MR. MAYER: Is there a possibility
6 that such a requirement would put some existing
7 assisted living facilities out of business?

8 MS. SOBIE: I would respond that
9 that would be the out-cry from some of the
10 facilities. I do not believe it would. I believe
11 that there would be greater public acceptance and
12 that there would be a body to which these people are
13 accountable which now there is not. And I believe
14 that some of them might even welcome the opportunity
15 to have a professional status. There's nothing now.

16 MR. MAYER: Well, along with
17 professional status would probably, wouldn't you
18 agree, be an increased demand for more money from
19 people that held these licenses and therefore might
20 make some facilities economically not viable? Is
21 that a possibility?

22 MS. SOBIE: It's my understanding
23 that there's going to be an effort before us to
24 increase the public pay reimbursement for assisted
25 living facilities. I think that this will in tandem

1 with some of these requirements. Certainly right
2 now for the 20 percent of the individuals in the
3 State who are in facilities that are for public pay,
4 and that's about 20 percent of them, I don't know
5 that that's an issue for them, but, yes, I think if
6 there is increase reimbursement I believe it would
7 have greater acceptance.

8 MR. MAYER: Well, you know, once
9 these people receive -- obtain professional status
10 and they put the certificate on the wall, isn't that
11 almost automatically going to result in demands for
12 higher pay?

13 MS. SOBLE: Are you talking about
14 the facilities that --

15 MR. MAYER: I'm talking about the
16 administrators.

17 MS. SOBLE: I can't answer that,
18 sir. But I will tell you that it's my observation
19 that a good number of the administrators in assisted
20 living facilities are already licensed as either
21 nursing home administrators, as nurses, or in
22 another professional capacity. And that has not led
23 to a greater demand for salary.

24 MR. HETTLER: Can you repeat for me
25 what organization you're representing?

1 MS. SOBLE: I represent the
2 Virginia Center of Assisted Living, which is the
3 Assisted Living Membership of the Virginia Health
4 Care Association.

5 MR. HETTLER: Are nursing homes a
6 part of that organization also?

7 MS. SOBLE: Yes.

8 MR. HETTLER: There doesn't seem to
9 be a big interplay between nursing homes and
10 assisted living centers; is that correct?

11 MS. SOBLE: I think there is in
12 many instances, because there are campuses that have
13 nursing facilities and assisted living and there is
14 the option of moving from one to the other. It's
15 not unusual.

16 MR. HETTLER: Do you think that --
17 my understanding is that if you're going to be
18 licensed as a nursing home administrator, if you're
19 working in an assisted living center that that
20 doesn't count towards the time that you need to get
21 licensed to do that; is that correct?

22 MS. SOBLE: As far as practical?

23 MR. HETTLER: Yes.

24 MS. SOBLE: That is correct. It
25 would have to be in a nursing facility.

11

1 MR. HETTLER: And I'm just
2 wondering if we should look at, as far as
3 regulation, for regulating assisted living directors
4 on whether there should be more interplay between
5 the directors of nursing homes and the directors of
6 assisted living centers as far as at least the
7 practical. They have to work so long in a
8 particular facility for so long, and I wonder if
9 we're not missing the boat on something like that.
10 And I would ask the Chairman if she has given any
11 thought to that.

12 MS. SMITH: I think I need you to
13 explain more. As far as nursing home administrators
14 doing some role in assisted living or vice versa?

15 MR. HETTLER: Well, as far as the
16 training purposes going to Mr. Mayer's comments
17 about whether it's going to put some people out of
18 business, my understanding is that to become a
19 licensed nursing home administrator you have to have
20 so much time working there before you can get
21 licensed. I believe that's correct.

22 MS. SMITH: That's correct.

23 MR. HETTLER: And if you work at an
24 assisted living center that time doesn't count
25 towards the time you need?

12

1 MS. SMITH: That's correct.

2 MR. HETTLER: And I'm wondering
3 since you have more experience than I in this and
4 whether we should be looking at combining either the
5 work experience or the time or looking at the scope
6 of licensure on one versus the other, because it
7 seems like there are a fair number of nursing home
8 administrators at work in assisted living. And I'm
9 wondering if there's a lot of difference in the
10 skills needed from one to the other.

11 MS. SMITH: I certainly think
12 that's something we can explore. Right now there is
13 no assisted living standards. So I think we have to
14 implement those first, which I think is the reason
15 for this public hearing. Right now we're just
16 looking at whether to do the study or not.

17 MR. HETTLER: Thank you.

18 MS. SMITH: Okay. Our next speaker
19 will be Dana Steger from the VANHA.

20 MS. STEGER: Good morning. My name
21 is Dana Steger with the Virginia Association of
22 Non-profit Homes for the Aging, VANHA. VANHA
23 represents 18,000 residents and over 100 non-profit
24 nursing assisted living and retirement communities
25 throughout Virginia. VANHA shares concerns about

1 the problems with the quality of care provided by
2 some assisted living facilities in Virginia and
3 recognizes that some of the facilities described in
4 the recent Washington Post articles do indeed exist.

5 However the vast majority of over
6 600 assisted living facilities in Virginia do
7 provide caring, nurturing, safe environments for
8 their residents. However VANHA supports the concept
9 of regulating directors of assisted living
10 facilities in order to attain the highest level of
11 care for residents. If the Board does move forward
12 with regulatory requirements we look forward to
13 providing additional comments and a position once a
14 proposal is developed.

15 However, at this time, we would ask
16 that such requirements not be any more restrictive
17 than they are for nursing home licensure. Therefore
18 any person who meets the qualifications for a
19 licensed nursing home administrator would also be
20 deemed qualified for assisted living facility
21 administrator license. And we would support any
22 additional continuing education requirements
23 accordingly. And we look forward to providing any
24 additional comments on such proposed licensure. And
25 we plan to submit written comments on the questions

1 that are being considered by the committee.

2 And that's all I have. Thank you
3 for the opportunity to speak before you.

4 MS. SMITH: Any questions?

5 MR. MAYER: Are the educational
6 requirements for an assisted living facility
7 director different in any way from a nursing home
8 administrator and, if so, how?

9 MS. STEGER: Yes, they are
10 different for that particular environment. As far
11 as the actual differences I could work with you on
12 that. I wouldn't be able to comment specifically at
13 this time, but because of the nature of the
14 environment they are different.

15 MR. MAYER: So they have different
16 educational requirements?

17 MS. STEGER: They do.

18 MR. MAYER: But you don't know
19 exactly just, even in general terms, how they would
20 differ? Yes. What's the difference?

21 MS. STEGER: Because -- Beverly,
22 would you be able to comment more on the differences
23 between the requirements?

24 MS. SOBLE: Certainly. Well, I
25 don't have the regulations in front of me. The

1 department of Social Services has established
2 educational criteria to be an administrator, and I
3 believe it's either 18 or 21 years old, GED, or if
4 they're an administrator in a higher level -- there
5 are two levels rights now, assisted living and below
6 that is residential. They may have to have two
7 years of post high school education.

8 MR. MAYER: In what field?

9 MS. SOBLE: I don't have it in
10 front of me, sir. So, I couldn't tell you.

11 MS. SMITH: It's on page 13 of the
12 packet that says eight of 37. It's the "regs."

13 The administrator shall have 20
14 hours of training related to management or
15 operations of a residential facility within a 12
16 month period when residents or when adults with
17 mental impairments reside in a facility at least
18 five of the required 20 hours shall focus on the
19 mentally impaired, which is different. The nursing
20 home administrators also have 20 hours a year but
21 they're more broad. They have to be approved by
22 NAP, which is the National Board. But it's
23 management and training basically along with areas
24 of clinical or social work that with the nursing
25 homes. So they're pretty similar.

1 MS. SOBLE: But there's no
2 practical required for assisted living
3 administrators.

4 MS. SMITH: That's correct.

5 MS. SOBLE: And there's no --

6 MR. MAYER: Is a college degree
7 required --

8 MS. SOBLE: No.

9 MR. MAYER: -- in either case?

10 MS. SMITH: No.

11 MR. MAYER: Thank you.

12 MS. SMITH: Any other questions?

13 MS. STEGER: Thank you.

14 MS. SMITH: Andrew Carle with
15 George Mason University.

16 MR. CARLE: Is this set up for
17 PowerPoint?

18 While Dr. Carter sets that up, I'm
19 Andrew Carle. I'm an assistant professor at George
20 Mason University. I'm the director of the program
21 in the assisted living administration. It's the
22 only program of its kind in the United States.
23 Virginia has it, which is nice, and I'll be happy to
24 talk more about that.

25 I have a PowerPoint, because I'm

1 used to talking in front of groups of PowerPoints,
 2 but I have some information I want to provide on
 3 this, both from the academic side, some information
 4 I think is helpful, some studies and information
 5 like that; but also as a professional because I've
 6 been a health care executive for 20 years. I was a
 7 hospital CEO before -- after that I was the
 8 executive in a vice president business in one of the
 9 top ten assisted living companies in the country.
 10 So I have an interest in this both academically and
 11 professionally.

12 This will take about 20 minutes or
 13 so. I apologize, but hopefully this information is
 14 useful. At the outset -- I want to talk a little
 15 bit about the media. I'm not going to go through
 16 this whole slide because I want to save time, but I
 17 do want to talk about the Washington Post series. I
 18 did provide to Dr. Carter, and she can get you
 19 copies, an article in a column I wrote to the
 20 Fairfax addition of the Washington Post.

21 If you haven't seen it it
 22 essentially comes down to this. It's a tragedy when
 23 bad things happen to good people. I mean we know
 24 that. But I've been in health care for 20 years.
 25 Bad things happen in nursing homes. Bad things

1 happen in hospitals. Bad things happen in doctor's
 2 offices. It's not okay. But what also is not okay
 3 is to indict an entire industry. And what we're
 4 seeing in assisted living right now is what we saw
 5 in nursing homes 40 years ago; this rush for people
 6 to come in pronounce it unregulated, pronounce it
 7 unsafe, and let's rush out and find some answers.

8 What I'm going to tell you, with
 9 all due respect to the nursing home industry, is I'm
 10 not sure we got it right that time. And I think we
 11 need to get it right this time, because a lot
 12 depends on it. Assisted living is actually pretty
 13 popular, and it is regulated by the way in all 50
 14 states. You never hear about that. It's popular.
 15 It's actually grown to out number nursing homes by
 16 more than two to one in this country. People need
 17 to know that. There's a reason for that. People
 18 like assisted living. There has been satisfaction
 19 surveys done on assisted living. This isn't
 20 something we guess at. That's when I saw a very
 21 scientific one done in 1999 that said that 82
 22 percent of the people, the actual consumers by the
 23 way not the reporters, actual consumers, 82 percent
 24 of them says assisted living met or exceeded their
 25 expectations. Eighty-three percent said they'd

1 refer a friend, which I think is important.

2 So assisted living is not something
 3 that consumers are having this big problem with. I
 4 think it does sell newspapers. I can tell you that
 5 assisted living has taken the United States -- this
 6 is getting kind of global, I apologize -- but what's
 7 been perceived as frankly, kind of, a floor model
 8 for housing and care of the elderly, it's a world
 9 class model. Other countries are actually now, that
 10 didn't really like our nursing homes or didn't like
 11 our system, other countries are now actually coming
 12 to the United States to study assisted living;
 13 England, Japan, and Italy, both of which have
 14 demographics molded in the United States; Australia,
 15 I toured a Russian delegation a few years ago. So
 16 you need to know that assisted living maybe isn't
 17 such a bad thing. Could be better? Sure. Is it
 18 dangerous? No. And so we need to think about that.

19 I do want to talk about licensure
 20 and certification because this is really what we're
 21 looking at. There's a couple of things I can tell
 22 you about licensure that I think are important.
 23 First of all no segment of the health care industry
 24 requires licensure of administrators other than
 25 nursing homes. I was a hospital CEO. I did not

1 have a license. Mr. Singleton is the present CEO
 2 over hospital system over in my neck of the woods, a
 3 five hospital nationally ranked system. He's been
 4 there I think about 20 years. To the best of my
 5 knowledge Mr. Singleton does not have a license.
 6 There are a couple of good reasons for that. Let me
 7 tell you what they are.

8 First of all a principle reason is
 9 administrators are non-invasive and non-clinical
 10 personnel. In my 20 years as a administrator I
 11 never diagnosed anyone. I never put a pill in their
 12 mouth. I never invaded their personal privacy or
 13 dignity. If that needed to be done I had licensed
 14 and certified people to do that. I had doctors. I
 15 had nurses. I had pharmacists. I had therapists.
 16 I had nurses-aids.

17 Another reason that we see for this
 18 is that its really been found to be not appropriate
 19 to hold administrators liable for the invasive
 20 actions of others. And that's why Singleton doesn't
 21 have a license at least in part, other than the fact
 22 that he doesn't put pills in people's mouths. And
 23 what we know is that the more organizations of
 24 people that can be sued what really happens is the
 25 more that will be sued. Who would be very, very

1 happy if you had another layer of licensure in
2 assisted living in the State? The insurance
3 companies, at least in the short run, because they
4 could sell more insurance; and the lawyers because
5 they would have one more person to sue. And that is
6 what's happening.

7 We know that there are nursing
8 facilities in Florida that are going out of
9 business. And they're not going out of business
10 because they have a negative operating budget. They
11 are actually making money in operations. They are
12 going out of business because they can't buy
13 insurance for both the facility and the staff. It's
14 expensive.

15 Moving on. There's another reason
16 and I dispute the idea that administrators are not
17 accountable and work under no standards of practice.
18 I used to tell my staff in my hospitals that I was
19 the most regulated person in the building because I
20 was. Because what you see in Virginia, for example,
21 in assisted living is you have 65 pages of
22 regulations covering every department and function
23 for that facility for it to maintain its license.
24 It also has responsibilities for federal and state
25 things like EEOC and American Disabilities and on an

1 math it's about a ten million dollar business to
2 start in an industry that is going to double in size
3 in the next 30 years, and that doesn't even factor
4 in annual turn over rates of about 20 percent for
5 administrators. So I don't blame the NAB for
6 looking into this. But I think we need to be up
7 front and honest about what's involved.

8 Let's talk about the NAB exam.
9 What you need to know is that it's always been and
10 they can tell you this up front, it's a test for
11 minimum competency in the field. Why is that
12 relevant? Well, because in 40 years there's been
13 not one empirical study, not any empirical evidence
14 to show that that licensing put in place 40 years
15 ago has done anything to improve the quality of care
16 in Richmond. Not one study. And they've done the
17 studies. What we do know is the highest test scores
18 on the exam, big surprise, fall to people who have a
19 college degree. People who already have a
20 Bachelor's or a Master's basically take the exam
21 because they've done four years of college and they
22 can take it and pretty much get through it.

23 We have seen some evidence of
24 something to the effect of the opposite and that's
25 what we call regression to the lowest common

1 on. And what I'm telling you is that the rules that
2 govern that facility govern the administrators. If
3 I couldn't maintain the license of my hospital for
4 my assisted living, if I couldn't get joint
5 commissions, accreditation and on and on and on I
6 was gone. Those rules govern me. Nobody was more
7 regulated than me.

8 So I'd like to share with you that
9 these administrators are not working without
10 standards of practice. They are working under the
11 most intense standards there are.

12 I want to talk about the NAB
13 because I know they're proposing this. This is not
14 a disparagement of the NAB. There's a lot of nice
15 people at the NAB. As you know they've administered
16 the nursing homes exams since 1967. Again, what
17 happened 40 years ago is much of what we're seeing a
18 lot of newspaper stories. Here's what I can tell
19 you. In the period between 1998 and 2000 NAB lost a
20 third of its business because people aren't going
21 into the nursing home administrator business any
22 more. It's too regulated. It's too out of control,
23 and there's other things that they can do. They
24 look at 35,000 assisted living communities in this
25 country, and I don't blame them at all because by my

1 denominator. Over four years what we've seen is
2 what was originally intended to be a minimum
3 competency exam has actually gravitated to become
4 the competency. And I have talked to nursing home
5 administrators, good ones, who have told me they are
6 very proud of their license and how great they did
7 on the exam. And what I share with them: "Did you
8 know it's a minimum competency exam?" Some of them
9 are actually stunned to learn that. It's not their
10 fault, but that's what happens over forty years.

11 So I'm not sure that a minimum
12 competency exam that has no empirical evidence of
13 improvement helps. I can tell you that in the case
14 of the assisted living exam you can complete it if
15 you take the four hour review course, where in South
16 Carolina where they are actually using the assisted
17 living exam, you don't even have to take the review
18 course. For \$130 you buy the NAB study guide and
19 then you can take the test. And what I'd like for
20 you to consider here is, is that what we want. Is
21 that a sugar pill to say that somebody goes to the
22 Hampton Inn for five days for a seminar, but they
23 buy a study guide and they take a test and now we
24 say they're okay to run a building. See I'm not
25 sure that testing people and setting them up at

1 minimum competency really accomplishes anything.
2 And if there's evidence of that then we should see
3 it.

4 There are some other issues with
5 the NAB exam for assisted living. And this
6 specifically goes to a question that was raised.
7 Are assisted living and nursing homes the same
8 thing? And you know what, they're really not.
9 They're not. The NAB exam follows the exact same
10 format as the nursing home exam. The problem with
11 that is that assisted livings do not follow the
12 exact same format as nursing homes. I'll give you
13 an example. One of the recommended study guides is
14 a nursing home test actually. It's been updated to
15 say assisted living. It has an entire chapter in
16 medicare reimbursement. This is the study guide for
17 the test. Medicare isn't reimbursed for assisted
18 living. So what's not in that text is any
19 information or very little information on the
20 hospitality services or marketing.

21 Now we know hospitality services
22 are important to people in assisted living. This is
23 the number one thing that attracts them to it. I
24 also know, and we're trying to do some studies on
25 this at George Mason, that probably half the

1 complaints we get about assisted living actually
2 have less to do with the quality of care that's
3 provided than miscommunication up front to the
4 families about what actually is provided in assisted
5 living. So I mean I don't know about the stories in
6 the Washington Post but most of the problems that I
7 see in assisted living have to do with poor
8 marketing, poor representation of what this product
9 actually is. And we're doing some studies in that
10 ourselves.

11 But what I'm saying is that you
12 won't find that information in the NAB exam. Now we
13 dedicate an entire portion, not a chapter, not a
14 lecture, an entire semester to sales and marketing
15 in assisted living in our graduate program, an
16 entire course. That's how important we think it is.

17 Finally, just to nit pick things,
18 they have on their website ten sample questions for
19 their assisted living exam. About a year ago I
20 clicked on and took that test. I'm pretty sure I
21 got all ten except the computer said I got nine.
22 And I went back and looked and actually one of their
23 answers is mis-recorded. And I checked it again two
24 days, and it's still not right.

25 So I don't think that we can just

1 say here's an exam, we're the NAB, we came up with a
2 test for assisted living, problem solved. I really
3 think we need to take a hard look at that. And
4 again I'm not trying to disparage nursing home
5 professionals. I've majored in long-term care.
6 They are hard working people. But you know what,
7 they're tired of the regulations.

8 Certifications; let's talk about
9 that real quick because that's the other choice.
10 There are about ten states that offer certification,
11 not licensure. I know this because Dr. Carter put
12 it in her PowerPoint and I stole it but I am
13 sourcing you now. Some states offer their own
14 training. That's at their own expense. They have
15 to create the training. They have to run it. There
16 is an expense to that on the State side. I can tell
17 you there's at least one private national
18 organization that offers training, and it's approved
19 in several States. One of the issues of
20 certification is pretty much the same thing. We
21 have to look at the academic integrity and the
22 professional integrity of these things, not just
23 putting the sugar pill on it.

24 Many of these certification courses
25 can be completed in a couple of hours or days. It

1 goes back to the same question as previously. Does
2 that really make it better, or does it really just
3 lower the denominator? Does the training intend to
4 substitute these courses for actual education and
5 experience? We see that regression. Our problem
6 with the national course work is it's actually
7 pretty good information, but it's a mail order
8 course. You send away for it in the mail and you do
9 it online. And it's completely self-taught and
10 self-tested. So what happens is you go to your
11 computer and you click through the pages. Now it's
12 supposed to be a forty hour course and if you were
13 really dedicated and interested you probably would
14 take forty hours for that information. But the
15 reality is that you can click forward to the
16 self-test at the end of each chapter, click back,
17 find the answers, click forward and fill them in,
18 and probably there's no one in this room who
19 couldn't complete that course in a day or afternoon.
20 You just can't say buy a study guide, take a test,
21 go online, do a correspondence course, and now
22 everything is better. I just really caution you.

23 Licensing and certification
24 overall; I think these are the problems we're
25 finding. First of all I think they provide a false

1 sense of security as I've just indicated. I think
 2 consumers think a person has a license, they don't
 3 know that they bought a study guide and took a test.
 4 I think administrators maybe over time begin to
 5 think that has more weight than it really does. I
 6 think providers might get a false sense of security
 7 and I think government gets a false sense of
 8 security. I think it adds an additional layer of
 9 bureaucracy and expense to the system. You guys are
 10 looking at that. It is expensive. The NAB exam, if
 11 the study guide is \$130, the test is a couple of
 12 hundred dollars; you're looking at four or \$500 to
 13 get into it. In South Carolina those administrators
 14 have to pay \$125 every year to renew their license.
 15 That's \$125 every year for as long as you're in the
 16 profession for a minimum competency test. I think
 17 it's good for the NAB. I think it's good for the
 18 certification organizations. I think it's good for
 19 the lawyers. There is no proven academic or
 20 professional integrity in these quick fix, take an
 21 exam, take a certification course. Now I know that
 22 sounds like an academian talking, but that's the
 23 reality. And I've shown you where there have been
 24 studies that have not shown that it's done anything.
 25 MR. MAYER: Excuse me. How do you

1 spell bureaucracy?
 2 MR. CARLE: I'm not sure. Spell
 3 check did that. I think the spell check couldn't
 4 find it.
 5 MR. MAYER: If you're going to slam
 6 it you'd better spell it right.
 7 MR. CARLE: Yeah. I'm sorry.
 8 I typed it about three times, and
 9 I'm not sure the spell check could find it.
 10 Actually the administrators what
 11 this comes down to and then I'll conclude, what
 12 administrators need and what hospital CEO's need and
 13 what accountants need and what teachers need, you go
 14 to school for this. That's what I think you need to
 15 look at. This needs to be a profession, not a quick
 16 fix. And they need to have the right amount of
 17 experience. There was a study done at the
 18 University of Albany. It just came out last month.
 19 I thought it was interesting. They created a 100
 20 point index for nursing home administrators.
 21 Now what they did for the first
 22 time was they said this is a 100 point index with
 23 what we think makes the best nursing home
 24 administrator. And here's what's very interesting
 25 on that. Only 13 percent of that was weighted

1 towards licensing. And that was based upon feedback
 2 from actual practicing nursing home administrators.
 3 They said they think licensing is worth about ten
 4 percent. And the NAB was involved in the study as
 5 well so if anything that number might be skewed up a
 6 little. Eighty-seven percent, which is more
 7 telling, was weighted towards education and
 8 experience. And if there were regulations it was
 9 only regulations to insure that they had the right
 10 education and the right experience. Now this is the
 11 study of the nursing home regulation.
 12 What I can tell you is this. I've
 13 got three suggestions. First of all if you're going
 14 to test people, fine, but test them on the
 15 regulations that are already in place to govern
 16 them. You don't need to add new ones. I did this
 17 with my company in Summerville. I created a 100
 18 question multiple choice, 100 question test on the
 19 Virginia regulations for assisted living
 20 communities. And what I told these administrators,
 21 and we never hired anybody with less than a
 22 Bachelor's degree, and what I told them was is we're
 23 not going to give you an eight or ten million dollar
 24 building until you show me that you know the rules
 25 that govern you.

1 So if you want to test people you
 2 don't need to go to out-source it you can do this
 3 yourself. I would volunteer to help you write this
 4 test. I already did it once. But what I'm saying
 5 is let's test them on the rules that are already in
 6 place for them. You don't need to add another
 7 layer. And you don't need to do anything different.
 8 Make sure they know the rules. Thirty-eight states
 9 in the district already do this even for nursing
 10 homes. I think it would eliminate a lot of your
 11 current problems, and I think it should apply to
 12 every single administrator in the state. But let's
 13 just test you on the 66 pages of rules we already
 14 have for you. We actually have 66 pages of
 15 regulations in this state for administrators to
 16 follow. We just need to test them on it. And I
 17 think that's a better answer in a lot of ways.
 18 Use education experience as the
 19 most important factors as I said. These are the
 20 current Virginia requirements for assisted living.
 21 You guys were asking a second ago. There is
 22 residential living, there's also assisted living.
 23 I've got to say with the residential living you guys
 24 have a very nice course in this State offered by a
 25 guy name Irvin Lamb. He has it. He was teaching at

1 a community school. Now he does it privately. But
2 I think when you get to assisted living you need to
3 maybe think about upgrading it. Right now you've
4 got to be 21 years old. You've got to have two
5 years of college or you can have one year of college
6 in human services or administration or a department
7 of a curriculum. I think that should be university.
8 You have to have one year of experience in a group
9 home.

10 Let me tell you what I think might
11 be something to consider. I'm not saying you should
12 do this. But, for example, should administration or
13 health care administration course work be required
14 for anything above residential living? In other
15 words right now when you say it you've got to have
16 two years of college. Well, a person could have
17 studied botany for two years and have two years of
18 college. When you really get to that assisted
19 living level I think the question becomes is that
20 really sufficient. So they study botany for two
21 years, they didn't even graduate, they bought the
22 NAB study guide, they took the test and passed it,
23 and they also drove the van at an assisted living
24 for a year. On your current regulations they can
25 now run a building. I'm not sure that gets it done.

1 So I think you've got to consider
2 whether or not three to nine credit hours of course
3 work for health care administration is an
4 unreasonable request of people at the assisted
5 living level. I'm not even saying they have to get
6 a college degree. We offer a graduate certificate;
7 five courses, 15 credit hours. But you know what
8 they're college courses. They're graduate level
9 courses approved by a university, and there is some
10 work involved in that.

11 But is that unreasonable to ask
12 when you get to that assisted living level? I'm not
13 sure. It helps people who don't have a degree, have
14 a degree in botany, or for example a lot of people
15 have degrees in nursing and have no background in
16 administration. This is the kind of thing that
17 maybe should help them get to that next level.
18 We've seen a lot of nurses in assisted living try to
19 become administrators, and it doesn't often work.
20 Some times it does because they are born leaders.
21 Some times it doesn't because as it turns out that's
22 why they became nurses, they didn't want to be
23 administrators. So I think if you want to be an
24 administrator maybe the professional coach would be
25 that you've got to be willing to study

1 administration.

2 Finally, when it comes to
3 experience, maybe that one year experience should
4 require health care supervisory experience rather
5 than just group care facility experience. I think
6 it's kind of nebulous in your regulations right now.
7 What you say is one year experience in a group home.
8 Well, driving the van? Answering the phones?
9 That's a big leap to becoming the administrator. I
10 think, you know, maybe that should be for the
11 assisted living level at least, maybe you should
12 require supervisory health care experience. They do
13 manage people if you have any budget.

14 Last on the suggestions, if you're
15 using education to fill in the gaps, and this is
16 what I've been saying, let universities and colleges
17 do the work for you. States shouldn't have to pay
18 for this. You shouldn't have to put together a
19 course. You shouldn't have to administer all these
20 other things. This is why we have universities.
21 And universities put together 16 week, whole
22 semester courses with lectures, with tests, with
23 exams, with assignments. Right now this State
24 offers the only curriculum in the United States in
25 assisted living at George Mason University. Of all

1 the states in this country you're one who actually
2 has a pretty good answer here already. And it's not
3 just George Mason; VCU, JMU, Mary Baldwin, they all
4 have courses in health care administration.

5 So should a person take a 40 hour
6 course and take a test and run a building, or should
7 they go to college for a semester? That's the
8 question.

9 In summary I think we need to avoid
10 a rush to conclusions. I don't think that we can
11 let the media and special interest groups rush into
12 assisted living. And that's what they're doing, and
13 that's what they're going to do. But that doesn't
14 mean that we should let them rush into assisted
15 living and repeat what happened in nursing homes.
16 Nursing homes were supposed to be something
17 different than they became. They were never
18 supposed to be that. When I came in the business
19 there was no assisted living. People lived in
20 nursing homes, and they were called residents. They
21 lived there. That was their home. But something
22 fell awry along the way and what happens is we can't
23 rush these conclusions because, frankly, somebody at
24 the Washington Post wants to get his Pulitzer
25 submitted. We have to look at the facts and make

1 sure if we come to conclusions they're the proper
2 conclusions. And we can't let special interest
3 groups that have a financial interest run it and
4 say, well, here's what you need to do and we just
5 happen to have the test, whether that test is
6 appropriate or not. I think we need to avoid the
7 rush to quick fixes.

8 These courses are not the same as
9 going to college. And obviously I keep coming back
10 to that. The bottom line is this. I think we need
11 to establish assisted living as a profession. You
12 can be a teacher in life. You can be an accountant.
13 You can be a nurse. You can be an assisted living
14 administrator or health care administrator. All
15 those things are professions. I'm way more proud of
16 my degree in health care administration than I am of
17 anything else. I don't need a minimum competency
18 test to tell me how hard I worked in graduate school
19 or actually to tell me how to run a hospital where
20 it wasn't required.

21 We need to elevate the profession.
22 We need to test them on the rules that are in place
23 for them and make sure they know them and then we
24 need to look at how they're going to go to college
25 and become better at it.

1 And I think that's it. So thank
2 you. I actually did better time wise than I
3 thought. And I'm sorry about the bureaucracy I just
4 don't know how to spell it.

5 MS. SMITH: Thank you. Before we
6 go to questions I have one point of clarity. On the
7 assisted living "regs" it does say you only have to
8 have one year of post-secondary education or at
9 least one year of administrator or supervisory
10 experience in caring for adults.

11 MR. CARLE: That's correct.

12 MS. SMITH: So you could not
13 currently drive the van. You had to be a supervisor
14 or something.

15 MR. CARLE: Well, no, it says you
16 have to have, unless I'm wrong, two years of college
17 "or" one year.

18 MS. SMITH: No. It says one year.

19 MR. CARLE: Is it "and" or "or"?

20 MS. SMITH: It's one year from a
21 secondary education "or" at least one year of
22 administrator experience. Is that correct?

23 MR. CARLE: I'm sorry. I was
24 talking about the AL level. I'm sorry. Page 51.

25 MS. SMITH: Okay.

1 MR. CARLE: Most of my comments,
2 what I'm saying is residential living is really
3 completely different.

4 MS. SMITH: Okay.

5 MR. CARLE: I think it's assisted
6 living where we really need to look at the
7 profession.

8 MS. SMITH: Okay. We were reading
9 the wrong page.

10 Are there any questions?

11 MR. NEBIKER: I've got one or two.
12 You seem to equate licensing with an examination.
13 I've been doing the freshman regulations for 30
14 years. I've never had that understanding.

15 MR. CARLE: Okay.

16 MR. NEBIKER: Licensing says it's
17 a legal term and it says in order to engage in these
18 acts you must hold a license. It doesn't say
19 necessarily that you have any training, education,
20 experience or pass an examination. That's the
21 Virginia legal way that plays out. That you require
22 two years of college in order to do certain things
23 that's a license even though there may or may not be
24 a test.

25 As I understand your presentation,

1 given that term, it is my understanding, accepting
2 that definition of licensing, your concern is that
3 it seems to be that it should be the exam that's the
4 or an exam possibly, at least not the NAPD exam,
5 should not be the criteria by which a license would
6 be issued; is that correct?

7 MR. CARLE: If I understand your
8 question, yes. Because what I'm saying is that
9 there are different ways to be licensed.

10 MR. NEBIKER: Right.

11 MR. CARLE: I think we're saying
12 the same thing. And what I'm saying is that people
13 use the word license and that sounds good. In fact
14 my wife said that to me last night at dinner, and I
15 said, yes, but you have to understand what that
16 means.

17 MR. NEBIKER: Right.

18 MR. CARLE: And what we're talking
19 about for assisted living is in South Carolina where
20 they are using the NAB exam for assisted living -- I
21 think one of the three or four states that is --
22 there's no review course. There's no college
23 course. You can buy their book for \$130. Now,
24 granted, that means you have to sit down and read
25 it, probably spend a little time in order to pass

1 the test. But that is the perimeter by which if you
2 then sit down and pass that test you can be
3 licensed. And what I'm saying is that that becomes
4 kind of this quick fix, what I call this kind of
5 sugar pill response to solving the problem.

6 The media likes the way it sounds.
7 But we have to look at it as professionals. Is
8 there any academic integrity in that? But also is
9 there any professional integrity in that? You know,
10 would I turn my building over to that person? I was
11 in the business. We built very nice buildings. I'm
12 not sure I would turn my building over to that
13 person. What I'm looking for is did you go to
14 college, are you taking this seriously, do you
15 understand what you're getting into, have you ever
16 had an accounting course, do you understand what
17 you're getting into; because it's expensive to me to
18 have these people fail. And it's expensive to the
19 residents when things go wrong. And on a personal
20 level it's harmful and dangerous to them.

21 So I just think that you know, and
22 again what we saw in the nursing homes was is after
23 40 years there is just not one study that shows that
24 that licensing had never existed, maybe early on it
25 may have made a difference, but as we stand here

1 MR. CARLE: You'd have to ask them.
2 What I can tell you is that the assisted living exam
3 they devised follows the same format as the nursing
4 home one, number one. Number two, not just me but
5 when a lot of us in the profession saw that we went,
6 no, they are different things. And I'll give you an
7 example from operations. We hired some people in my
8 company. That's 67 buildings. And we hired some
9 nursing home administrators and they were very, very
10 good. We also hired some nursing home
11 administrators who could not make that transfer from
12 this very bureaucratic regulated environment to this
13 very hospitality focused environment, I mean linens
14 on the table and fine china and these things that we
15 put a lot of value in. So what I'm saying is that
16 to make the assumption that you can make that leap
17 I'm not sure is true, number one.

18 Number two, a NAB exam was set up
19 to follow the same format. And what we said in the
20 field was where's the hospitality? Where's the
21 marketing that's so critical? I'm not talking about
22 building the building. I'm talking about the ethics
23 of marketing, of private sale exchange. And this
24 stuff didn't appear because they follow the same
25 format and again the example I gave you is that

1 today most people would tell you, you know, it's
2 kind of an extra layer.

3 MR. NEBIKER: Does a study exist
4 that demonstrates that having obtained college
5 course work?

6 MR. CARLE: Yes, I think the Albany
7 study basically says that. The Albany study says
8 look the people who scored the highest on the exam
9 have Bachelors and Masters degrees almost always in
10 health care administration. Well, I mean it's not a
11 big surprise.

12 MR. NEBIKER: On which exam was
13 that?

14 MR. CARLE: The NAB nursing home.

15 MR. NEBIKER: Do you know if
16 that's a criterion related examination?

17 MR. CARLE: It has categories and,
18 I mean, there are better people to speak to that
19 than me. Basically they have five or six categories
20 they created originally for nursing homes.

21 MR. NEBIKER: One more technical
22 testing question. Do you know if the NAPB exam, and
23 we'll find this out, they have one exam for nursing
24 home administrators and one for assisted living
25 facilities; are they based on separate job analysis?

1 they've got a study guide with a chapter on
2 Medicare. For us in the field to look and that and
3 go why would I have somebody studying a chapter on
4 Medicare? We just can't say that's the answer.

5 And I want to tell you one more
6 thing with the NAB. One of the recommendations is,
7 and I think this is very dangerous, is that they've
8 got a national recommendation that says that there
9 will be a national licensing requirement for
10 assisted living administrators. What the
11 recommendation says is that any administrator in
12 assisted living who refuses to take the exam and
13 within six months can be replaced by a licensed
14 nursing home administrator who has never even taken
15 the assisted living exam. That's what it says. Now
16 let's think about that. I was an executive in
17 assisted living and a hospital CEO, and whatever,
18 and have a Master's degree, but that says that I
19 could not work in -- I could not run an assisted
20 living community unless I took that exam. Minimum
21 proficiency. And if I refused to take it I could be
22 replaced by a nursing home administrator who has
23 never worked in an assisted living community in
24 their life. Now that's not fair. I don't think
25 that legal. But that's what they've recommended

1 nationally. And there was at least one draft
2 proposal in this State that had something like that
3 in there but I think has since disappeared.

4 But, I mean, we can't have a system
5 where the NAB benefits and the nursing home
6 administrators they all benefit and assisted living
7 administrators have to take a test that isn't even
8 maybe appropriate to the discipline and they have to
9 do all these things. First of all I don't think
10 there's that big a problem with the administrators
11 in this State. I think most of them, especially at
12 the assisted living level, probably have a
13 Bachelor's degree any way. The national study
14 showed that I think 65 to 70 percent of these upper
15 level communities have at least a Bachelor's or
16 Master's degree any way.

17 So I know it's a lot of information
18 but it's also a lot of food for thought.

19 MS. SMITH: When you saw these
20 upper level communities, are you talking about Sun
21 Rises --

22 MR. CARLE: No. I'm talking about
23 what in this State you define as assisted living
24 where you've got that little extra level of acuity.

25 MS. SMITH: I just have a couple of

1 questions. You're recommending education versus
2 licensing, and I understand where you're coming
3 from. What about the four to eight bed homes that
4 are currently --

5 MR. CARLE: I really thought about
6 that and you guys have more information on that than
7 me. I think that it was probably one day the
8 thought, okay, you know what, I'd say if an
9 operation has more than a million dollar operating
10 budget then I think that's a whole other category as
11 a business person. Another side of me thought,
12 well, but even if you have 12 beds and you call
13 yourself assisted living and you can meet those 66
14 pages of rules, why aren't you?

15 First of all I think it's very hard
16 for them to meet the 66 pages of rules. But if they
17 can is it appropriate for us to then penalize them?
18 So I'm kind of torn on it. I think it's something
19 you'd have to look at. I think in general what you
20 find is those smaller shops, when you get to that
21 page 51 and up in your "regs," really can't do that
22 supplemental stuff and a lot of them don't. I may
23 be wrong about that.

24 What I'm saying is whether you
25 do it by the size -- 30 residents or more is going

1 to be about a million dollar budget. Whether you do
2 it by the size or the operating budget or whatever
3 you have 66 pages of rules and I guess what I came
4 down to was, look, if a person can meet those 66
5 pages of rules, those are pretty good rules in this
6 State. They're not really unfair. They're not
7 overkill, and they're not really under kill.
8 They're actually a pretty solid set of rules you
9 have in this state. And if a person can meet them
10 then maybe that is assisted living. But they've got
11 to meet them, and they've got to show they know
12 them.

13 MS. SMITH: Okay. My other really
14 just for your explanation, you're saying that since
15 hospitals CEO's are not licensed assisted living
16 should not be licensed?

17 MR. CARLE: No. The point I was
18 trying to make is nobody in health care is licensed
19 except nursing home administrators, which is
20 something a lot of people don't think about.

21 MS. SMITH: How many assisted
22 living is the administrator feeding, caring for the
23 residents versus what Singleton does?

24 MR. CARLE: I don't know. I think
25 you need to look at that. My point was this, they

1 should be non-invasive and that is a very solid
2 point. They should be non-invasive. If they're
3 acting in an invasive capacity then maybe you need
4 to clarify that. I never fed anybody. I never
5 chopped up anybody's food. I was not going to go
6 there. That didn't mean I didn't help out to clear
7 the tables. But I mean even in hospitals the dining
8 room staff are licensed either. The support staff
9 is administrative staff and there's clinical staff.
10 And in hospitals you find a whole bunch of people
11 who don't have a license, a whole bunch of
12 department heads and a whole bunch of
13 administrators. But they know the rules.

14 MS. SMITH: Are there any more
15 questions?

16 MR. MAYER: Do you have copies of
17 your presentation?

18 MR. CARLE: I e-mailed it to Dr.
19 Carter, and I'm sure she can provide it.

20 Thank you.

21 MS. SMITH: Thank you.

22 Is there anyone else who wishes to
23 speak at this time?

24 MR. WILKINS: I'm Jason Wilkins.
25 And I'm the owner and director of Comfort Care Homes

1 in Richmond. And I just wanted to mention something
2 quickly about the smaller environment that would be
3 affected by anything that has to do with the
4 assisted living "regs." We own five homes in
5 residential neighborhoods and we generally just have
6 five people in each home. We have -- I'd like to
7 first tell you my background. I'm a history major.
8 We started this company and learned everything from
9 my nurses.

10 Am I a little bit too close to that
11 microphone?

12 MS. SMITH: No.

13 MR. WILKINS: Okay.

14 Anyway, the two problems we have
15 are keeping our homes full. And our problem is in
16 dealing with the State because whenever the big guys
17 screw up we have to -- the new "regs" that come out
18 are written specifically for the bigger guys. It's
19 hard to take us into consequence because we're the
20 only place now in the State that has secure locks
21 and only five people. So, just as an example, last
22 year we were told that we needed two people on 24
23 hours a day.

24 Anyway, let me get past the
25 regulation stuff and just get to the point. The

1 reason why we're able to give good care and the
2 reason why we were able to get an exception this
3 year from the State, which might be the first
4 staffing variance in the history of Virginia, was
5 because we're accountable to details. We have a one
6 to five ratio, 24 hours a day, and it works.

7 I don't think that my background
8 has been -- has anything to do with the care that we
9 give, but we had 54 family appearances at three
10 hearings at the general assembly this year. They
11 took their time to come out and testify that a
12 smaller model works. What the issue that we're
13 talking today about, it's not going to make or break
14 us in terms of whether we can stay in business, but
15 it is a movement towards making it very difficult
16 for us to give good care because it complicates, it
17 makes us spend more money. And when you've got a
18 one to five ratio and people are taking ownership in
19 these homes that is the main criteria I think that
20 makes our families so excited to use us. That has
21 nothing to do with my knowledge of a colostomy bag
22 or, you know, if I can get that right that's what
23 assisted living should be about.

24 And we are actually at a higher
25 acuity level because we just deal with people with

1 dementia. People that are lucid go to a big place,
2 you know, get as many activities as you can, but if
3 you have a specific memory loss situation we just
4 don't think it's a kind model to wake up to 50 faces
5 every day. So that's our reason for being in
6 business.

7 But I'd just like to encourage you
8 to at least take us into account insofar as that
9 dynamic of taking care of the details I think
10 creates good assisted living care and everything
11 else -- it's not that everything else is good, I
12 just don't know if it directly deals with the
13 issues.

14 And the things that happened in the
15 Post, I mean, even the worse things that happen
16 happened because I think people didn't have their
17 eye on the ball. I don't think it had anything to
18 do with whether they went to a certain school or
19 whether they took a certain type of exam.

20 Any questions?

21 MS. SMITH: Any questions?

22 MR. HETTLER: Yes. I have a couple
23 of questions. You have one staff member for five
24 residents?

25 MR. WILKINS: Yes.

1 MR. HETTLER: And you have five
2 residents at one home; is that correct?

3 MR. WILKINS: Yes.

4 MR. HETTLER: What do you do in the
5 middle of the night when a staff member doesn't show
6 up? How do you cover any shortages of staff?

7 MR. WILKINS: We have PRN, a
8 part-time list of about 20 people that can come in.
9 Our nurse and actually I can go in as well and cover
10 if there's like a really true family emergency. Our
11 folks work 24 hour shifts. So we only have two
12 people on in typically for a three to -- they don't
13 do two twenty-fours in a row, but they actually --
14 we have two full time people working six days out of
15 seven. And maybe I shouldn't get too much into
16 details, but the bottom line is that if somebody
17 from the administration can't cover a shift we also
18 have two or three people in the agencies that we've
19 trained and we have ready to go if our own folks
20 can't cover.

21 MR. HETTLER: If your people work
22 24 hour shifts are they sleeping at some point
23 during that 24 hours?

24 MR. WILKINS: It depends. We have
25 two homes with eight that we've extended, and if we

1 have people with needs who don't sleep through the
2 night we move them to an eight person home, and we
3 have somebody up for a 12 hour shift. The people
4 who are in a five person home they are up every two
5 or three hours to do bed checks. But you have to
6 remember these folks they have memory loss. They
7 don't necessarily, you know, they don't get up. We
8 know our residents. But basically they sleep.

9 Our care givers sleep at night
10 unless they're needed for the five people.

11 MR. HETTLER: Do you lock the doors
12 so they can't get out?

13 MR. WILKINS: Yes. Well, we have a
14 secure door in the front, and we have large fenced
15 in back yards. So you can't get out without
16 somebody giving you the code.

17 MR. HETTLER: Do your facilities
18 meet all the requirements that are in this document
19 of rules and regulations?

20 MR. WILKINS: Yes. Well, we do.
21 We just got an exception to one of those rules this
22 year that went into effect July 1.

23 MR. HETTLER: So I have 37 pages.
24 There's a lot of pages here. Does your facilities
25 meet all the requirements that are in here?

1 MR. WILKINS: Everything.
2 Everything.

3 MR. HETTLER: Are you telling us
4 that you're opposed to having the directors of your
5 facilities regulated?

6 MR. WILKINS: Regulated with this
7 new -- regulated just in general, or regulated with
8 this new provision to have a licensed administrator?

9 MR. HETTLER: The new one.

10 MR. WILKINS: I'm not excited about
11 it, but like I said we've got bigger fish to fry
12 with -- it's not the top two or three things that
13 are keeping me up at night, but it's a movement
14 towards I think adding expense to our operation and
15 writing it for the bigger places as opposed to maybe
16 solving issues that are happening in our homes.

17 MR. HETTLER: What are the top two
18 things that keep you awake at night?

19 MR. WILKINS: Stevens is
20 probably -- I'd like to say --

21 NOTE: Laughter.

22 MR. WILKINS: Basically I would
23 like to say the regulations I agree with the speaker
24 before. The regulations are good. There's
25 nothing -- you can't really grab those regulations

1 and say those are bad. The main thing that worries
2 me is when somebody gets caught in a bigger facility
3 and the State says let's create a special
4 legislative package to address this issue, because
5 usually that issue is not our issue, but we have the
6 same license so, you know, we may have to protect
7 our legislation that we passed this year. And the
8 other thing is probably just because we're
9 integrated into the neighborhoods we don't have
10 signs. So keeping the beds full is also the other
11 part that keeps up in business.

12 MR. HETTLER: Thank you.

13 MR. WILKINS: You bet.

14 MS. SMITH: Are there any other
15 questions?

16 Thank you.

17 MR. WILKINS: And can I just say
18 that for the people like us who are trying to exceed
19 the things that we think might be lesser, trying to
20 exceed people's expectations, I just ask that you
21 take that into account. Thanks.

22 MS. SMITH: Thank you.

23 MS. LATIMER: Thanks for the
24 opportunity to just make a brief comment. I'm Joani
25 Latimer with the State Long-term Care Office and we

1 are submitting written comments in support of the
2 idea of licensure of assisted living facility
3 administrators. I just felt the need to respond
4 just a little bit to a couple of things that came
5 out of Mr. Carle's presentation. I think one of the
6 things we have been cautioned here this morning, you
7 know, not to let the pressure of media and special
8 interest groups kind of rush us into some
9 conclusions and quick solutions on this thing. And
10 I'm the first one not to necessarily want a quick or
11 a simple solution. I think it's a multi-faceted
12 problem that we're looking at, but I think that the
13 licensure pieces are a very important part of that.
14 And frankly the special interest groups that are
15 pushing that along I don't think are the media or
16 some limited group out there, they're the residents
17 and the families.

18 From my experience we've just been
19 seeing many of the problems that we saw very
20 dramatically exposed in the Post series on a day to
21 day basis in facilities. And frankly to be
22 concerned about this option leading to some minimal
23 standard of qualifications would be a relief to me,
24 Residents and families who would just like to see
25 some bottom line. At least that's a necessary first

1 step to getting some level of professionalism and
2 education as a standard, as a given, among those who
3 are ultimately responsible for caring for some folks
4 who are pretty fragile and have some incredibly
5 complex needs.

6 And just the last thing I would say
7 is that I understand the argument about the value of
8 education and preparation as being the most
9 meaningful avenue to getting to some guarantee of a
10 quality of care. That's great. But I think there's
11 also -- there's a difference between creating
12 preparation and the opportunity therefore and
13 allowing some basic accountability in a system. And
14 that's really what we've lacked.

15 I have talked with so many family
16 members who have had just outrageous experiences and
17 this was certainly not reflective of the whole
18 industry. There's no question. But it is a reality
19 that's out there in far too many numbers. And those
20 folks, at the end of these discussions, want to know
21 why is there not somebody to whom the person who
22 runs this place is accountable so that there's an
23 oversight on the part of the State to actually
24 protect the individuals who can't stand up for
25 themselves and are extremely vulnerable.

1 So that I just wanted to briefly
2 kind of respond to what was said this morning and
3 share more detailed comments in writing with all of
4 you all. I appreciate the struggle that you're
5 having and looking carefully at the issue.

6 MS. SMITH: Does anybody have any
7 questions?

8 MR. NEBIKER: Do you keep track of
9 complaints you get?

10 MS. LATIMER: We do.

11 MR. NEBIKER: From that?

12 MS. LATIMER: Yes.

13 MR. NEBIKER: Can you share that
14 information?

15 MS. LATIMER: Definitely. In our
16 written comments, yes, I'll be glad to share a break
17 down of kind of the types of complaints that we have
18 and the numbers across the assisted living venue.

19 MR. NEBIKER: Thank you.

20 MS. SMITH: This is just and it's
21 probably antidotal, but part of the licensing of
22 assisted living administrators provides for a
23 registry, for lack of a better word, as the nursing
24 home administrators and CNA's currently have. So if
25 there is a violation it is public and there's not so

1 much of a moving from one facility to another if
2 there were problems in one facility. Do you know
3 anecdotally if that's the case at this point where
4 administrators may move from one facility to the
5 other?

6 MS. LATIMER: I think I can say
7 very confidently that we've experienced a lot of
8 problems in that regard. And there's been a very
9 limited avenue to effectively and certainly timely
10 deal with that before other residents are placed at
11 risk.

12 MS. SMITH: Thank you.
13 Is there anybody else who wishes to
14 speak?

15 Well, written comments are being
16 accepted through August 31 of 2004, and on the table
17 back there is the work plan. There's four
18 additional questions being asked of Social Services
19 to be presented to the research committee.

20 At this time we're going to end the
21 public comment and go into the committee meeting
22 which you may stay if you wish. We'll take a break
23 and then go right into the committee. Thank you.

24 NOTE: The hearing concluded at
25 10:30 a.m.

1 STATE OF VIRGINIA:

2
3 COUNTY OF CHESTERFIELD, TO-WIT:

4
5 I, PATRICIA B. HAMBRIGHT, Notary Public in
6 and for the State of Virginia at Large, do hereby
7 certify that the aforementioned appeared before me, and
8 that the foregoing is a true and correct and full
9 transcript of the testimony adduced.

10 I further certify that I am neither
11 counsel for, nor related to, or employed by, any of the
12 parties to the action in which this public hearing is
13 taken, and, further, that I am not a relative or
14 employee of any of counsel in the case, or interested
15 in the outcome.

16 WITNESS my hand this 18th day of August,
17 2004.

18 My commission expires December 31, 2004.

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Virginia Board of Health Professions
Study of Need to Regulate Directors of Assisted Living Facilities
Public Hearing

Comments by Andrew Carle
Assistant Professor – Director
Program in Assisted Living Admin.
George Mason University
August 18, 2004

Study to Regulate AL Administrators in Virginia - Two Areas:

1. Review of proposed current solutions for regulating administrators nationally.
2. Actual needs of administrators in terms of advancing the Profession.

State of Assisted Living:

Media:

- "Unregulated, unsafe industry."
- "Guest Column" regarding Washington Post series on AL in Virginia.

Actual:

- Regulated in all 50 states and DC.
- Has grown to outnumber nursing homes in U.S. by 2:1 as PREFERRED choice by elderly and family.
- Surveys indicate high satisfaction with AL by actual consumers (Residents & Family)
 - NIC Study 1999: 82% "met or exceeded" exp., 83% would "refer a friend".
- Has taken U.S. from perceived "poor" model for care & housing of elderly to "World Class".

1. Proposed solutions for regulating administrators:

Two most commonly proposed solutions:

- Licensure
- Certification

Issues with Licensure:

No segment of healthcare industry requires licensure of administrators – other than nursing homes.

- Hospitals, Ambulatory, Home Health, Hospice, Physician Group Practice, Managed Care/Ins., Pharmaceuticals, etc.

Reasons for Non-licensure:

- Administrators are "Non-Invasive/Non-Clinical" personnel.
 - Do not diagnose, administer med's, or physically invade individual's personal privacy or dignity.
 - Have licensed or certified personnel for this purpose.
 - Should not held liable for invasive actions of others.
 - "The more organizations and people that can be sued. The more that will be sued."
 - Some nursing facilities in Florida going out of business, not because of negative operating budget, but because can't buy insurance for BOTH the facility and staff.

Reasons for Non-licensure (con't):'

- Administrators already governed under License of Facility.
 - 65+ pages of regulations in Virginia, covering every department and function.
 - Additional responsibilities for OSHA, EEOC, ADA, Fair Housing Act, Fire & Life Safety, Zoning, etc.
 - "Most Regulated Person in the Facility"
 - Don't need additional layer of regulations on top of current duties and responsibilities.

Issues with Licensure – NAB:

- National Association of Boards of Examiners of Long Term Care Administrators
 - Have administered Nursing Home licensing exam since 1967.
- Have created and lobbying hard for Assisted Living version of exam.

Issues with NAB Exam:

Tests for "minimum competency" in the field:

- No empirical evidence that licensing improves quality of care in nursing homes.
 - Highest test scores for individuals who already have a Bachelors or Masters degree.
- Potential evidence that has resulted in "regression to lowest common denominator".
- Can be completed via brief review course, then exam.
 - In SC, no review course at all for AL exam

Issues with NAB exam and Assisted Living:

- NAB exam not appropriate to Assisted Living.
- Follows same format as nursing home exam:
 - *Ex:* Recommended study guide is previous nursing home text, with entire chapter on Medicare reimbursement. Little on hospitality services or marketing.
 - *Ex:* "10 Sample Questions" for AL exam on website includes one with an incorrect answer.

Certification:

- About 10 States. Some States offer their own self-created training (expense).
- At least one private national organization offers training that is accepted in several States.
- Issues with Certification courses:
 - Many can be completed in a few hours or days.
 - Tend to **substitute** for formal education and experience, resulting in "regression to lowest common denominator".
 - National coursework is by "Mail-order" or "Online":
 - Self Taught
 - Self Tested
 - No Peer or Third Party Review

Licensing and Certification – Overall:

- Can provide false sense of security for consumers, administrators, providers, and governments.
- Adds additional layer of beurocracy and expense to system.
- Provides no proven academic or professional integrity. May reduce quality.
- Good for NAB, private cert. organizations, and lawyers.

2. Actual Needs of Administrators:

- Education
- Experience

University at Albany Study "A Legal Practice Environment Index for Nursing Home Administrators in the Fifty States" (July, 2004):

- Created a 100-point quality index for nursing home administrators:
 - Only 13% weighted towards licensing examination, as indicated by practicing nursing home administrators.
 - 87% weighted towards education and experience, and regulation to ensure proper education and experience.

Three Suggestions:

1. If testing, test on knowledge of regulations ALREADY in place to govern administrators
 - Not adding new ones.
 - 38 States and District require passing exam focused on State regulations for nursing homes administrators.
 - Would eliminate many current problems.
 - Should apply to every AL administrator.
 - Good thing to offer constituents and media.

Suggestions – Con't:

2. Use education and experience requirements as most important factors:
 - Current VA requirements for "Assisted Living":
 - 21 years of age
 - Two years college, OR one year college in human services or administration, or dept. approved curricula.
 - One year group care facility experience.

Considerations:

- Should administration or health care administration coursework be required for services beyond "Residential Living"?
 - Would 3-9 credit hours of coursework in healthcare admin be unreasonable to fill-in "gaps" of those with different degrees/education?
- Should required 1-yr. experience include "healthcare supervisory and/or budgeting" vs. "group care facility" experience?

Suggestions – Con't:

3. If using education to fill-in gaps, let universities/colleges do the work, not private organizations or at state expense:
 - Virginia offers ONLY university curricula in U.S. in assisted living administration through George Mason University.
 - VCU, JMU, Marymount, Mary Baldwin College, DeVry all have programs in healthcare administration in Virginia.

Summary:

- Avoid rush to conclusions.
 - Can't let media and special interest groups do to AL what they did to nursing homes.
- Avoid rush to "quick fixes".
 - NAB/Cert. Courses are not the same as going to college.
- Establish assisted living administration as a "profession".
 - They are not part of the *problem*, they are part of the *solution*.

Questions...

MEMORANDUM

TO: Judith McGreal, Department of Social Services

FROM: Elizabeth Carter, Board of Health Professions

RE: Inspection Information on Assisted Living Facilities

DATE: August 11, 2004

CC: Robert A. Nebiker, Director, Department of Health Professions

As you know, the Board of Health Professions (BHP) is conducting a study into the need to regulate administrators of assisted living facilities in Virginia. As part of this study, we have discussed that there are certain questions relating to Virginia's assisted living facilities, their oversight, and characteristics of the residents which the DSS inspectors may best be able to answer. I ask that the inspectors be queried rather than the facilities themselves for four reasons: (1) concern over the perennial problem of low survey response rates, (2) potential respondent bias; (3) with over 600 facilities, the cost of sending and receiving surveys; and (4) the fact that DSS inspectors have the unique perspective of having observed what occurs in many facilities rather than one. The last point provides the study with cross-sectional views of what is occurring in Virginia's facilities as well as what goes on in each facility.

As such, I am asking for your assistance in obtaining answers to the following questions directly from the inspectors who inspect the respective facilities.

1. Is there someone in a supervisory capacity to oversee the care and safety of the residents 24-hours a day? Is there a need for such supervision?
Yes and yes
2. What are the characteristics of the residents at the facilities:
 - a. Do most need minimal assistance with activities of daily living?
Most need moderate assistance with ADLs
 - b. How typical is it that a greater level of assistance is required, including that for individuals with behavioral or substance abuse problems who may pose a danger to the other residents?
Very typical
What steps are taken to ensure the safety of others as well as themselves?
Staff supervision and monitoring, physician and case managers interventions when necessary
3. What is the typical process used to assess the resident to determine whether the facility can adequately meet the resident's needs.
Facility interview and assessment using the UAI and physical exam completed by the resident's physician
Is this "fit" re-evaluated periodically?
UAI completed annually or when there is a change in the resident's condition

4. Are there data available on medication errors and who makes them?

I'm not sure

If so, can you establish the backgrounds of those individuals who have made the errors? RN? LPN? Someone who has completed a training program to administer medications pursuant to §54.13408 (J)?

I have observed errors made by RNs, LPNs and trained medication tech/aid.

Page Two

Please contact me to discuss any questions that you have about the above questions and to work out the logistical details. As my study is due to be completed for presentation to the Board on October 21, I am requesting that the responses be provided to me no later than September 24, 2004. I may best be reached at (804) 662-7691, by fax at (804) 662-7098 or via e-mail at Elizabeth.Carter@dhp.virginia.gov. Thank you.

WRITTEN PUBLIC COMMENT

ON

**THE NEED TO REGULATE ADMINISTRATORS/DIRECTORS OF
ASSISTED LIVING FACILITIES**

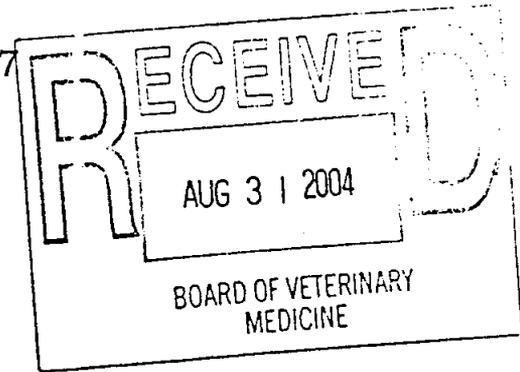
Comment received from August 18, 2004 through August 31, 2004*

ATTACHED CORRESPONDENCE FROM:

1. Mary Creath Payne, Chairman Health Care Committee, League of Women Voters
2. Andrew Carle, Assistant Professor & Program Director for the Assisted Living Administrator Program at George Mason University
3. Erica F. Wood, Legislative Chair, Northern Virginia Aging Network
4. Joani Latimer, State Long Term Care Ombudsman
5. Paul J. (Jack) Austin, Licensed Nursing Home Administrator
6. Shawn Dollins, Executive Director, Mountainside Senior Living
7. Randy Lindner, Executive Director, National Association of Boards of Examiners of Long Term Care Administrators (NAB) (copy of letter to Andrew Carle concerning Mr. Carle's August 18 presentation to the Regulatory Research Committee)
8. Susan Cantrell, Chairperson, Chesterfield Council on Aging
9. Dana L. Stegner, MA, JD, Legislative Affairs Legal Counsel, Virginia Association of Nonprofit Homes for the Aging
10. Andrew Carle's response to Mr. Lindner's letter (#7)
11. Diane Doumas, Chairman, Virginia Assisted Living Association
12. Georgia Weiss, President, Avalon Assisted Living Facilities

NOTE: Requests to extend the deadline for comment until September 3, 2004 were honored. All comments are included and presented in received chronological order.

Mary Creath Payne
1304 Whitby Road
Richmond, Virginia 23227
804-359-0687
mcpayne@comcast.net



August 26, 2004

Mary M. Smith
Board of Health Professions
Virginia Department of Health Professions
Alcoa Building, 5th floor
6603 West Broad Street
Richmond, Virginia 23230

Dear Ms. Smith:

As chairman of the Health Care Committee of the League of Women Voters of the Richmond Metropolitan Area (LWV) I am writing to support your upcoming study "to assess the degree of risk from the unregulated practice" regarding Assisted Living Facility administrators in Virginia.

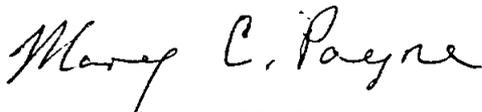
Although we are aware that many Assisted Living Facilities (ALF) are well run, LWV members are quite concerned about a number of other ALF's which are poorly managed, are not clean, and have administrators or "managers" who have limited knowledge of their duties. Some are moved fairly frequently from one facility to another by their owners. Some are attempting to serve mentally ill residents and have little or no training related to how to do that. Also there are residents in the ALF's who are quite limited in their "Activities of Daily Living" (ADL's) and are on the same level of ADL's as patients in Nursing Homes.

As you may know, Planning District 15, comprised of the City of Richmond and 7 surrounding counties, has the largest concentration of Assisted Living Facilities in Virginia, about 90 facilities. A number of League members have had family members, friends, and neighbors in these facilities or they live near the facilities and are aware of the needs of the residents. The LWV encourages you to visit some of these homes with Joani Latimer, the state Long-Term Ombudsman 644-2923, or the local Long-Term Ombudsman at the Area Agency on Aging, Debbie Kopecki at 343-3000, or with a member of the LWV Health Care Committee at 359-0687.

We believe that relevant and appropriate courses from an accredited college or institution should be required for ALF administrators/managers and can raise the level of care. Increasing the educational requirements and establishing licensure standards would certainly up grade the position to a more professional level. Some of the Olmstead Initiative recommendations may help also. But right now too many of the Assisted Living Facilities licensed by the Commonwealth of Virginia are not safe places to live.

Thank you for this opportunity to comment. If we can be of assistance to you please call.

Sincerely,

A handwritten signature in cursive script that reads "Mary C. Payne".

Mary C. Payne, Chairman
Health Care Committee
League of Women Voters
Metro Richmond

Cc Julia Flowers, President
LWVMR

Carter, Elizabeth A.

From: ANDREW CARLE [ACARLE@gmu.edu]
Sent: Friday, August 27, 2004 3:38 PM
To: Carter, Elizabeth A.
Subject: Written Comments on Study of Need to Regulate Assisted Living Directors

Dear Ms. Carter:

I wanted to thank the Board for allowing me to speak on August 18th regarding the above referenced issue.

As part of the written comment process, I wanted to briefly add to, as well as reiterate, points most critical to the study to regulate assisted living administrators in Virginia:

1. The Washington Post series was not reflective of the actual state of assisted living in Virginia, and administrators are not among needed areas for improvement:

The Post series was completed by searching for the most sensational stories available over a period of more than a decade, and from more than 100 million resident days of care provided in Virginia during that time. There is no evidence that administrators as a whole are a problem in the State - and the many dedicated, compassionate, and hard working administrators should not be penalized as a result of these stories - or to address alleged needs put forth by special interest groups. The State already is and should focus on real long-term issues related to improving assisted living care in Virginia, including:

- Improving reimbursement for Auxiliary Grant residents.
- Addressing issues of mixing chronically mentally ill adults with non mentally ill elderly.
- Increasing fines to a level that would block out unethical or unscrupulous providers.

Addressing these issues will do more to improve assisted living services in Virginia than adding further and unnecessary regulation to administrators.

2. Administrators in Virginia are already governed by more than 60 pages of regulations, pertinent to "standards of practice" for their position - through the licensing standards for their community.

Statements that administrators in the State have no "standards of practice" or accountability are incorrect. As discussed at the hearing, administrative personnel in all areas of healthcare are responsible for and governed by the licensing requirements of the facility. They should also not be held responsible for the invasive acts of clinical personnel in either case, and are not in any other area of the healthcare industry (other than nursing homes). Such a delineation will only provide an additional source of litigation and expense to the already over litigated and expensive health care system. It would also drive qualified professionals from the system at a time when many more will be needed in the next two generations.

3. Licensing or Certifying assisted living administrators through quick/self-study courses and exams will only provide a false sense of security to consumers, add a layer of expense to the system - and likely LOWER overall quality of care and safety in the long run.

There is no evidence that the current qualifications required of assisted living administrators in the State are inappropriate or out of line with those of other States. As discussed, the NAB exam itself is also not appropriate to the industry, and is biased in favor of nursing home personnel.

OVERALL:

8/27/2004

A suggested improvement related to the quality of administrator personnel in Virginia would be to require them to have knowledge of regulations already in place to govern them (as required in 38 other States and the District of Columbia). An additional consideration would be to review qualifications for administrative personnel relative to additional and/or specific education (university/college) and experience.

Thank you for your consideration of these comments.

Sincerely,

Andrew J. Carle, Assistant Professor
Director - Program in Assisted Living Administration
George Mason University

O) 703-993-1902

F) 703-993-4009

email: acarle@gmu.edu

web: www.assistedliving.gmu.edu

8/27/2004

NORTHERN VIRGINIA AGING NETWORK (NVAN)

a coalition of the local commissions on aging, area agencies on aging, and non-profit agencies providing services to the elderly

Alexandria
Commission on Aging

August 30, 2004

Arlington
Commission on Aging

Elizabeth Carter
Executive Director

Fairfax
Commission on Aging

Virginia Board of Health Professions
6603 W. Broad Street, Fifth Floor
Richmond VA 23230-1712

Falls Church
Senior Citizens' Commission

Loudoun
Commission on Aging

Dear Ms. Carter:

Prince William
Commission on Aging

I am writing to convey the support of the Northern Virginia Aging Network (NVAN) for the licensure of administrators of assisted living. NVAN includes the commissions on aging and area agencies on aging from Alexandria, Arlington, Fairfax, Falls Church, Loudoun and Prince William, as well as a number of regional service and advocacy organizations.

Please send
correspondence to:

NVAN
c/o Northern Virginia
Regional Commission
7535 Little River Turnpike
Suite 100
Annandale, Virginia 22003

703-642-0700
Fax: 703-642-5077

NVAN supports the concept of licensing of assisted living administrators as a method of moving toward greater accountability for the quality of resident care; and supports the creation of a Board of Long-Term Care Administrators to include licensing of both nursing home and assisted living administrators. Assisted living administrators should have relevant experience and should be required to complete a core training course approved by the Board, as well as continuing education units.



Thank you for the opportunity to comment.

Sincerely,
Erica F. Wood

Erica F. Wood
Legislative Chair

Northern Virginia Regional Commission
7535 Little River Tnpk., Suite 100, Annandale, VA 22003 703-642-0700

FAX TRANSMITTAL

TO: Elizabeth Carter

FAX #: 804-662-7098

FROM: Coralie Miller 703- 642-4636

OF PAGES: 2 with cover

DATE: Monday, August 30, 2004

COMMENTS:
Licensure of Administrators of Assisted Living.

Carter, Elizabeth A.

From: Joani Latimer [jlatimer@thev4a.org]
Sent: Tuesday, August 31, 2004 3:22 PM
To: Carter, Elizabeth A.
Cc: John Skirven; Jay W. DeBoer; Eldon James
Subject: Licensing Assisted Living Administrators



SLTCOP comments
to DHP re Lice...

Dear Dr. Carter:

Thank you for the opportunity to submit comments with reference to the proposed licensing of assisted living administrators. Please find my comments attached.

Joani Latimer
State Long-Term Care Ombudsman
V4A
530 E. Main Street, Suite 800
Richmond, VA 23219
Phone: (804) 644-2923

TO: Elizabeth A. Carter, Ph.D., Executive Director
Board of Health Professions

Mary Smith, NHA, Chair
Board of Health Professions Regulatory Research Committee

FROM: Joani F. Latimer, State Long-Term Care Ombudsman

RE: Licensing Assisted Living Administrators

DATE: August 30, 2004

Thank you for the opportunity to submit public comments regarding the proposal to license assisted living administrators under the Virginia Department of Health Professions. **The Office of the State Long-Term Care Ombudsman strongly recommends that assisted living administrators be required to be licensed by the Department of Health Professions. We recommend the creation of a Board of Long-Term Care Administrators that would have jurisdiction over the licensing and monitoring of both nursing home administrators and assisted living administrators.**

Program Experience

Under its authorizing federal legislation (Older Americans Act, Public Law 89-73) the Long-Term Care Ombudsman Program operates a statewide network of local ombudsmen serve as advocates for residents of nursing homes and assisted living facilities (as well as serving those 60 and older receiving long-term care services in the community). Our staff receive and investigate complaints made by or on behalf of residents of nursing homes and assisted living facilities, and as a result, have extensive knowledge regarding the kinds of problems residents experience.

Last year, the program investigated 422 complaints with reference to assisted living facilities (ALF's). The largest categories of complaints were in the areas of care inadequacies, abuse and neglect, facility conditions and supplies, residents' rights, and adequacy of staffing. The relatively smaller number of assisted living complaints (compared to the number of nursing home complaints) received by our program is largely a function of the difference in awareness (of ALF residents/families) of their basic rights and the availability of an advocate to help resolve problems, as well as the fact that there is a weaker 'infrastructure' to monitor conditions and refer residents for assistance. Some of those who live in facilities that are chronically plagued with some of the worst failures of

47.

care are those who lack family or friends to monitor the care, and who are often too mentally and/or physically frail to advocate on their own behalf. The vulnerability of such a frail and disabled population particularly argues in favor of the greater protection that would be afforded through licensing - and holding accountable - those who operate such facilities.

We need to 'raise the bar' on qualifications for persons seeking to obtain and maintain a license as an assisted living administrator.

In addition to increasing initial and ongoing educational and professional requirements for assisted living administrators, we strongly believe that the granting and continuation of a license to operate a long-term care facility should involve a careful review of the candidate's performance records and patterns of fiscal and operational management to assess 'fitness' as an administrator/operator. Implementation of such regulatory changes might allow a discrete time period for current owners/operators to come into compliance with standards, but should not allow for simple 'grandfathering' of current operators.

The need for raising minimum qualifications for licensure as an assisted living administrator is clear when one examines the complexity of care needs and medical conditions of assisted living residents. The need for a qualified administrator is particularly crucial in light of the minimal education and training required of direct care staff in these facilities.

Lack of administrator accountability is a major concern.

When ombudsmen talk with residents and their families who have experienced egregious examples of careless operations and irresponsible oversight that have placed residents at risk, residents and families are shocked to find that persons with such limited qualifications can be administrators or managers of assisted living facilities. They express disbelief and great concern that those 'in charge' are not licensed by the state so as to be held accountable for failures in care that place residents at great risk. The result (with which residents and families are far too familiar) is that the same reckless operator who places a whole facility population at risk may disappear from one troubled facility only to show up in another newly licensed one – sometimes bringing the same supervisory staff who were part of the administrative team providing substandard care in the previous facility.

While the examples of the serious and too frequent threats to the residents' well-being are the most concerning consequence of this failure in accountability, examples can be cited as well of cases in which residents and their families end up being financially exploited when an operator previously found to have seriously misused funds (thus essentially 'stealing' from residents) ends up in charge of resident and facility operating funds in a separate facility. Irrespective of whether law enforcement is successfully brought in to bring an end to the misappropriation of funds, residents are often left with no realistic recourse for recovery.

We need licensure of administrators to protect residents from those repeat offenders who continue to profit from poor performance.

In the story of assisted living in Virginia, many, many chapters could be written on one or two or three administrators/operators who have played a 'shell game' of fast and loose facility operation - buying and selling and leasing facilities under what was essentially a single operation, while care needs were neglected and residents became pawns in a 'fruit-basketed upset' of facility re-designations and relocations.

Until there is a mechanism for ensuring that those who own and operate these facilities are appropriately trained, screened (including review of fiscal and operational performance), and held accountable for substandard performance, our most frail and vulnerable citizens will be at risk. We require significant training and licensure for those who trim our nails and groom our pets. Surely we owe at least that much concern and protection to those whose very lives depend on the quality of the care they receive.

cc: Jay W. DeBoer, Commissioner, Department for the Aging
John Skirven, President, Va. Association of Area Agencies on Aging (V4A)
Eldon James, Executive Director, V4A

Carter, Elizabeth A.

From: Jack Austin [austin@mayfairedengroup.com]

Sent: Tuesday, August 31, 2004 10:49 AM

To: Carter, Elizabeth A.

Subject: Proposal to License AL Administrators

Are you aware of the cost impact of requiring Assisted Living Administrators to be licensed and to pass a NAB exam? I am a licensed NH Administrator and work for a company that manages 14 assisted living facilities in Virginia. In our process of hiring AL administrators, we have had a number of NH administrators to inquire, but oftentimes they are turned off by our salaries which are under \$50K, whereas they are expecting \$65K to \$75K from their experience at similar jobs in nursing homes. I don't fear the potential requirement to license AL administrators, as it will add some "status" to the profession, however, it will reduce the number of qualified applicants available for employment and drive the salaries up significantly, while probably having little or no impact on the actual quality of services to the residents of our AL facilities.

Paul J. (Jack) Austin

8/31/2004

6.

Carter, Elizabeth A.

From: Shawn Dollins [sdollins@jabacares.org]
Sent: Tuesday, August 31, 2004 1:09 PM
To: Carter, Elizabeth A.
Subject: Regulating Assisted Living Administrators

Please find my comments regarding regulating Assisted Living Administrators.

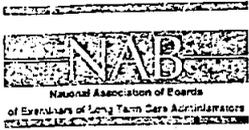
Assist Living Facilities do not render nursing care; I would agree that it is not necessary for ALF Administrators to have to pass the NAB exam.

Assisted Living Facilities do have "stand of practice" for the administrators to be held accountable. They are the Department of Social Services Regulations. Facilities may benefit if the number of annual visited by the State Regulator were increased.

The mix of young, old and mentally challenged should be monitored. Many facilities have to take any and everybody to overcome the financial burden the facility has. If the Medicaid reimbursement was so that a facility could meet a realistic annual budget there would be separate facilities available to meet each applicants needs.

Shawn A. Dollins, Executive Director
Mountainside Senior Living
P.O. Box 310
1220 Crozet Ave.
Crozet, Virginia 22932

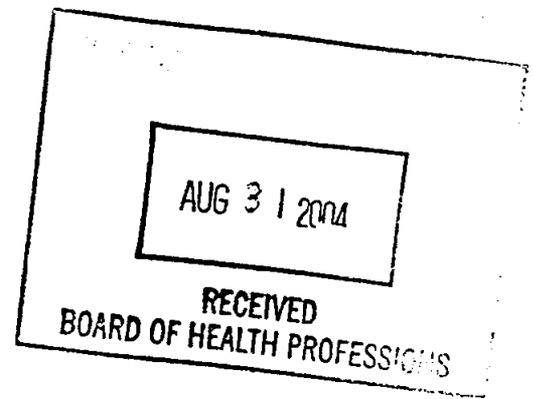
8/31/2004



National Association of
Boards of Examiners
of Long Term Care
Administrators
1444 I Street, NW, Suite 700
Washington, DC 20005-2210
Phone 202/712-9040
Fax 202/216-9646
www.nabweb.org
Email nab@bostrom.com

August 23, 2004

Andrew Carle
Assistant Professor - Director
Program in Assisted Living Administration
George Mason University
4400 University Drive
Fairfax, VA 22030-4444



Dear Mr. Carle:

I am writing to you on behalf of the National Association of Boards of Examiners of Long Term Care Administrators (NAB) in response to your recent presentation to the Virginia Board of Health Professions. Your presentation contained several misleading or untrue statements about the National Association of Boards of Examiners of Long Term Care Administrators and its programs and services. Although it appears from your presentation that you have first hand knowledge of the NAB and its programs, I cannot recall in my nine years as NAB's Executive Director that you have participated in any of NAB's meetings or in the development of our examination programs.

Because it appears that you misunderstand NAB's mission, please let me share it with you:

NAB is the national not-for-profit association serving jurisdictions that license, credential, and regulate long term care administrators. NAB protects public and consumer interests by establishing and advocating model competency standards, and by serving as a national resource of information.

The NAB has no regulatory authority on the federal or state level. The members of NAB are 52 state boards of examiners/agencies responsible for licensure of long term care administrators. The members of each state board and/or agency employees are also members of NAB. Many of our active members are administrators of nursing home and/or assisted living facilities. We also fund the participation of many assisted living administrators for item writing and committee work to assure the program's independence.

Below, I would like to clarify several inaccuracies or apparent misunderstandings from your presentation.

The NAB has administered the Nursing Home Administrators exam since 1967.

The information provided is incorrect. The organizational meeting of the NAB was held on January 25-26, 1971. It was not until November of 1971 that the NAB contracted with National Education and Evaluation Development Service to develop the NAB examination for Nursing Home Administrators. For several years the nation was split in half, using the NAB exam and one administered by Professional Examination Service.

The NAB has created and is lobbying hard for an Assisted Living version of the exam.

Fact: In 1996, in response to a request from two NAB member states, the NAB Board of Governors approved funding to explore and develop a knowledge based licensure examination for assisted living administrators. With support from the American Health Care Association (AHCA), American College of Health Care Administrators (ACHCA), and the American Association of Homes and Services for the Aging (AAHSA) the NAB conducted a national study of the role delineation of assisted living administrators. All members of the task forces and exam development item writers and committee members were assisted living administrators.

The NAB has made member states aware of this resource but has not actively lobbied to license assisted living administrators. The NAB's position has been to respond to requests for assistance in those states that have or are exploring licensure options.

In June of this year, the NAB approved funding to update the job analysis. Members of the task forces and participants in survey development review have been nominated by assisted living stakeholder organizations.

Issues with the NAB Exam

Tests for minimum competency in the field.

Licensure examinations are designed to measure "minimum competency" in the field. That is their purpose. It would not be appropriate to measure competency at the entry level on any other basis.

No empirical evidence that licensing improves quality of care in nursing homes.

There has been very little research on licensing and its impact on quality. Additional research is needed before solid conclusions can be drawn either way.

Potential evidence that has resulted in “regression to lowest common denominator”.

If this statement were true, it would not be as a result of the efforts of the NAB. The goal of the NAB has been to raise the bar on licensure standards over the years. The NAB went on record in 1992 to raise standards of education and training in response to standards proposed by CMS (a.k.a. HCFA). The NAB has continually issued recommendations to member states to raise the bar. The reasons these efforts have not been successful are primarily due to resistance from external stakeholders who resist competency standards for administrators.

Can be completed via brief review course, then exam.

Education and training should be championed by the professional and trade associations, and the academic community, not the NAB. The NAB job analysis provides a valid blueprint for educational content. For those states that license, it has been my experience that requirements get pushed down to the lowest possible denominator by other stakeholders, not by the regulators. The NAB has recommended education and training requirements similar to those proposed by the Assisted Living Work Group.

You state that the NAB exam is not appropriate to Assisted Living.

It is difficult for us to understand your position when you have not had exposure to the exam and have not participated as part of NAB’s exam development activities or committee work. As previously stated, the assisted living exam has been developed totally independent of the nursing home administrator’s exam and participants have been assisted living administrators. The job analysis was validated as appropriate to the role delineation of assisted living administrators through a national survey process.

Follows same format as nursing home exam.

It should come as no surprise that the format would be similar. The role is administrator, be it assisted living or nursing home, and many of the responsibilities fall within the same domains: human resources, finance, governance, and resident care/services. As you acknowledged in your presentation, this is not clinical, it is administration. Many of the principles of management and administration do span the continuum of long term care.

The *Study Guide* is not previous nursing home text. *The Study Guide for Assisted Living Administrators* was developed independently with original material for and by assisted living content experts. If there are some similarities, that would not be inconsistent with the reasoning stated in the previous paragraph.

You make reference to the University at Albany Study. It is unclear what conclusions you are drawing in reference to the percentages weighted toward examination versus education and experience. Based on the weighting, the panel has established that the emphasis should be on education and training. The examination is simply a method of measuring knowledge and entry level competency. We would assume that in your own academic environment that education and training is the primary emphasis of your program. However, we would also assume that there is some measure of knowledge retention, such as an examination requirement, to demonstrate a successful learning experience.

With regard to your suggestions.

The NAB is very supportive of strong education and training programs in long term care administration at the college/university level. In fact, NAB has established an accreditation program for undergraduate and graduate degree programs in long term care administration. The NAB does not offer education and/or training programs.

Summary

Unfortunately the rush to conclusions may be resulting because of the inaction of all stakeholders to proactively raise the bar voluntarily. We don't believe anyone wishes to impose a burdensome and punitive regulatory system on the assisted living industry. The solution is for stakeholders to "do the right thing" and self regulate. That will require a commitment to education, training and competency measures.

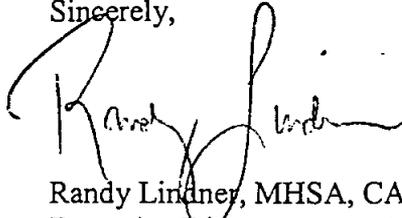
The Oregon Alliance is a good example of this type of proactive effort. The Alliance provides education programs that culminate with the NAB examination on a voluntary basis. This combination is recognized by Oregon regulatory agencies as meeting administrator requirements.

NAB's mission is not so different from what you propose. However, I would encourage you to learn more about our organization rather than represent NAB as having ill intent to impose unnecessary burden upon assisted living administrators for the purpose of economic gain. The fact is, the NAB invests far more in this member service than it returns.

Please join us at our upcoming Mid-Year Meeting in Scottsdale, Arizona from November 3-5, 2004, to learn more about the positive efforts of the NAB. You will find that many dedicated assisted living administrators are participating with a common desire to "do the right thing".

I would be happy to meet with you or to provide you with information about the NAB at your convenience.

Sincerely,



Randy Lindner, MHSA, CAE
Executive Director

- Cc: NAB Executive Committee
- NAB RC/AL Exam Committee Co-Chairs
- Virginia Department of Health Professions
 - The Honorable Alan E. Mayer, Chair
 - Elizabeth A. Carter, Ph.D., Executive Director
 - Elaine Yeatts, Regulatory Analyst
- Alex Mabin, Executive Director, Virginia Assisted Living Association
- Richard Grimes, President & CEO, Assisted Living Federation of America



Chesterfield Council on Aging

P.O. Box 3
Chesterfield, VA 23832
(804) 768-7770

August 30, 2004

Elizabeth A. Carter, Ph.D., Executive Director
Virginia Department of Health Professions
Board of Health Professions
6603 West Broad Street
Fifth Floor
Richmond, VA 23230

Dear Ms. Carter:

We thank you for the opportunity to submit public comments regarding the proposal to license assisted living administrators under the Virginia Department of Health Professions. The Chesterfield Council on Aging strongly supports the licensure of assisted living administrators and reform of the assisted living system in Virginia. We recommend the creation of a Board of Long Term Care Administrators that would have jurisdiction over the licensing and monitoring of both nursing home administrators and assisted living administrators. The Chesterfield Council on Aging formerly, the Chesterfield Long Term Care Council, is a community-based organization focused on the needs of older adults and adults with disabilities in Chesterfield County.

The Chesterfield Council on Aging supports the need for accountability of administrators through a form of professional licensure. Residents or family members of residents who have serious complaints regarding assisted living care have no way to hold the administration accountable. The council recommends a higher level of qualification for assisted living administrators to include increased education and training. Increased education and training is needed for all assisted living staff to meet the complex needs of today's assisted living residents, many of whom have cognitive impairments and multiple health care needs.

The Chesterfield Council on Aging recommends stricter, clearer standards of care, especially with regard to the levels and qualification of staff. For assisted

living reform to be successful there needs to be a sufficient number of trained and qualified staff who are supervised by persons of sufficient knowledge and skill.

On behalf of the Chesterfield Council on Aging, we strongly support the licensure of assisted living administrators. If you have any additional questions, please contact me at 897-8884.

Sincerely,



Susan Cantrell
Chairperson
Chesterfield Council on Aging

6
RECEIVED
ENFORCEMENT DIVISION
2004 AUG 31 PM 11:21

CHESTERFIELD COUNTY
P.O. Box 40
CHESTERFIELD, VIRGINIA 23832-0040
(804) 748-1211

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OFFICE OF THE SENIOR ADVOCATE

Telephone (804) 768-7878
Fax (804) 748-7915

TO Elizabeth A. Carter, Ph.D.
FROM Liane Peterson
DATE 8/31/04
RE Letter of Support for Licensure of AL
NUMBER OF PAGES 3 (including cover) administrator

Message:

Thank you -

9.

Carter, Elizabeth A.

From: Dana Steger [dana@vanha.org]
Sent: Wednesday, September 01, 2004 9:43 AM
To: Carter, Elizabeth A.
Subject: ALF Comments
Importance: High

Dear Dr. Carter:

Thank you so much for providing the Virginia Association of Nonprofit Homes for the Aging (VANHA) with the opportunity to comment on the Regulatory Research Committee (Committee) of the Virginia Board of Health Professions' study on the need to regulate directors of assisted living facilities. Please find attached VANHA's comments regarding the key questions the Committee will be considering during the study.

Sincerely,

Dana Steger
Legislative Affairs Legal Counsel

Fall Conference - Sept. 23 - Va Historical Society
Legislative E-Station: www.vanha.org

Dana L. Steger, MA, JD
Legislative Affairs Legal Counsel
Virginia Association of Nonprofit
Homes for the Aging (VANHA)
4201 Dominion Blvd., Suite 100
Glen Allen, VA 23060
(804) 965-5500
dana@vanha.org

Disclaimers:

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9/1/2004



August 31, 2004

Dana L. Steger
 Legislative Affairs Legal Counsel
 4201 Dominion Blvd., Suite 100
 Glen Allen, Virginia 23060

Dr. Elizabeth A. Carter
 Department of Health Professions
 6603 West Broad Street, 5th Floor
 Richmond, Virginia 23230-1712

Re: Study into the Need to Regulate Directors of Assisted Living Facilities

Dear Dr. Carter:

Thank you so much for providing the Virginia Association of Nonprofit Homes for the Aging (VANHA) with the opportunity to comment on the Regulatory Research Committee (Committee) of the Virginia Board of Health Professions' study on the need to regulate directors of assisted living facilities.

The mission of VANHA is to represent the interests of the not-for-profit facilities serving older adults in Virginia and to advocate for and educate its members through the ongoing development of an effective association. VANHA represents over 18,000 residents in over 100 nonprofit nursing, assisted living and retirement communities throughout Virginia. The Association members support the concept of regulating assisted living facility directors to provide enhanced responsibility and accountability of providers to attain the highest level of quality for residents. VANHA looks forward to providing additional comments if the Committee determines this occupation requires state regulation and licensure requirements are developed.

Please find below VANHA's comments regarding the key questions the Committee will be considering during the study.

What is the potential risk for harm to the consumer?

The potential risk to the consumer may be that some small facilities could be forced to close down due to the lack of approved leadership and increased liability. Therefore,

VANHA recommends allowing persons that currently hold assisted living facility director positions up to five years to meet the potential new licensure requirements.

What specialized skills and training do directors of assisted living facilities possess?

Assisted living facility directors possess specialized skills and training, including the ability to:

- handle the complexities of maintaining residents in a safe, secure environment while minimizing the restrictions upon their movement and their imposition into the right to privacy of fellow residents.
- successfully deal with the behaviors of an aging population, and adequately communicating their needs to staff.
- understand the tremendous amount of responsibility placed upon the direct care givers and the need for ongoing training, coaching and direct supervision of direct care staff.
- understand how to deal with ambulatory, yet memory impaired adults.

Finally, assisted living facility directors possess specialized skills and training in a variety of areas such as life safety, nursing, food service, decision-making, problem solving, financial and marketing, and applicable regulations and statutes.

To what degree is independent judgment required in their practices?

Independent judgment is required by assisted living directors on a daily basis as they rely upon their knowledge and experience and, in some cases, use nursing home policies to guide their decision-making.

Is their scope of practice distinguishable from other regulated occupations or professions?

Assisted living facility directors' scope of practice is distinguishable from other regulated occupations or professions because the directors deal with a variety of issues including legal and financial matters, aging issues including death and dying, and staff development. However, the scope of practice is not clearly distinguishable from the nursing home administrator level as the acuity level of assisted living residents continues to increase.

What would be the economic impact to the public if this group were regulated?

If assisted living facility directors were regulated, the economic impact to the public will likely result in increased costs to the facility which may result in higher resident fees. The increased costs include, but are not limited to, liability coverage, continuing education and certification requirements.

Are there alternatives other than state regulation of this occupation which would adequately protect the public?

The following are alternative options to regulating assisted living directors which would result in enhanced protections for assisted living residents:

- 1- Develop higher standards, including increased training, for licensing inspectors.
- 2- Enhance training for assisted living staff within troubled facilities.
- 3- Ensure appropriate aggressive assessment protocols are used that ensure persons are placed in the appropriate care setting based on their mental and physical needs.
- 4- Establish a website which permits the public to view facility inspection reports in a similar manner as the Centers for Medicare and Medicaid currently report on nursing homes – Nursing Home Compare.
- 5- Impose license probations and suspensions.
- 6- Develop an accountability process for assisted living facility owners.

Finally, if the research committee determines this occupation requires state regulation, what is the least restrictive level that is consistent with the protection of the public’s health, safety and welfare?

The following provisions should be implemented if the research committee determines that assisted living facility directors should be regulated:

- Any person who meets the qualifications for a licensed nursing home administrator should be deemed qualified for an assisted living facility administrator’s license with additional technical/continuing education training as appropriate; and
- Current assisted living facility directors should be given at least five years to meet the licensure requirements.

Again, VANHA appreciates the opportunity to comment on these extremely important issues. Please do not hesitate to contact me should you have any questions or concerns. I can be reached at 804-965-5500 or dana@vanha.org

Sincerely,

Dana L. Steger
Legislative Affairs Legal Counsel

Carter, Elizabeth A.

From: ANDREW CARLE [ACARLE@gmu.edu]
Sent: Thursday, September 02, 2004 12:38 PM
To: Carter, Elizabeth A.; alanmayer@cavtel.net; Yeatts, Elaine J.
Subject: Response to Letter from NAB



AL Licensing.NAB
Letter.Respon...

Dr. Carter:

I have attached a response to the letter I received from Randy Lindner, Executive Director of the NAB - and which the DHP also received. I realize the date for written comment on the study of assisted living administrators was tuesday, however I did not receive this letter until yesterday. I would understand if it is not possible for my response to be included in the written comment, but did want to provide a copy to those DHP individuals copied on it in either case.

Thank you for your continued efforts on this topic.

Andrew J. Carle, Assistant Professor
Director - Program in Assisted Living Administration
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Program in Assisted Living Administration

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August 31, 2004

Randy Lindner, Executive Director
National Association of Boards of Examiners
of Long Term Care Administrators
1444 "I" Street, NW
Suite 700
Washington, DC 20005-2210

Dear Mr. Lindner:

I have received your letter regarding my presentation on August 18th, to the Virginia Board of Health Professions, and specifically your concerns that I had made "several misleading or untrue statements" during this presentation about the NAB. As an educator, I would want to know if any information I had used for presentation purposes to the Board was incorrect, and would be happy to amend or redress any such errors. However, a review of your direct references does not suggest this to be the case.

Specifically:

- I stated that the NAB exam tests for minimum competency. You stated this to be true.
- I stated that there is no empirical evidence that licensing improves quality of care in nursing homes. You stated this to be true. While you additionally stated that more research is needed in this area, the NAB nursing home exam has been in use for over 30 years, more than sufficient time for such research to have been conducted, even if by the NAB. You do not suggest that what "little" research has been done has provided any evidence to counter this point.
- I stated that there is the potential that use of minimum competency examinations over time can result in "regression to the lowest common denominator". You suggest that such a result, if true, is not the fault of the NAB. However, I did not suggest the source of the problem, simply that it exists. You do not suggest that this statement is incorrect.
- I stated that the licensing process may consist of a brief review course, followed by the exam, and in at least one case, no review course at all. You do not deny this to be true.
- I stated that the NAB assisted living exam follows the same format as the nursing home exam. You stated this to be true.

- You indicate that *The Study Guide for Assisted Living Administrators* is not a previous nursing home text. However, the text referenced in my presentation was *Assisted Living Administration – The Knowledge Base*, by James E. Allen (Springer Publishing, 1999), and its tandem publication *The National Exam and Self-Study Guide – Assisted Living Administration*. Both of these publications include jacket cover recommendation of the text as a “must read” by Dan Rozell, Chair of the Educators Committee of NAB. This text does in fact include a chapter on Medicare reimbursement, and specifically a section on “Nursing Home Reimbursement Methodology” - which I cited - and which are not appropriate or applicable to assisted living.
- In regards to the University of Albany study, you indicate that, “Based on weighting, the panel established that the emphasis should be on education and training.” That is the conclusion I drew as well. I added that the study further weighted “licensing” as only 13% of the total index for quality of nursing home administrators – which is also true.
- I appreciate your referencing that the NAB did not provide nursing home administrator examination until 1971 and stand corrected on this date. The 1967 date referenced was taken from the University at Albany study, which cited initiation of the national requirement for licensing of nursing home administrators. In either case, the NAB nursing home exam has been place for more than 3 decades.

You do not reference, and therefore I assume, do not dispute that nursing home administrators are currently the only health care administrator personnel, of any kind, required to complete a licensing exam. Nor do you indicate that you are in disagreement that administrative personnel are, by job analysis, non-clinical, or that they already practice under and are accountable for the licensing regulations of the facility. You further agree that the real issue is university and college based curriculum for assisted living administrator personnel. However, while you indicate that the NAB accredits university programs in long term care, you do not indicate whether such accreditation requires instruction *specific* to the field of assisted living.

I appreciate your statement that the NAB is not actively lobbying for licensure of assisted living administrators. However, the NAB has been involved in this issue:

- The NAB provided a direct presentation two years ago to the Staffing committee of the Assisted Living Workgroup (established by the Senate Special Committee on Aging). Following this, a national recommendation supporting licensing of assisted living administrators via examination was, in fact, put into place (Recommendation S.11).
- The NAB, as you indicate, consists of State members – a number of whom have advocated for licensing in their State. This has included advocating for use of the NAB exam - which is currently required in three States (Idaho, Nevada and South Carolina).
- The NAB has invested significant time, energy, and resources in the development of an assisted living administrator exam. While it may have currently invested more than has been returned, it is derivative that such a requirement for the more than 35,000 assisted living administrators in the U.S. would result in substantial and long term financial gain to the NAB.

I believe my overall suggestion that the NAB has an active and fundamental interest in this process to be correct.

Summary:

While I appreciate and understand your defense of the NAB and its mission, I find no evidence that any of the substantive statements made by me to the Board were either misleading or untrue – and therefore stand by my presentation.

As I stated during the hearing, I believe testing assisted living administrators on State-specific facility regulations already in place (as is done in 38 states and the District of Columbia for nursing home administrators) would do more to enhance the actual quality and integrity of these personnel than a general minimum competency exam. I continue to believe this to be true.

I further believe that sufficient education and experience may negate the need for minimum competency testing, or for adding this additional layer of expense and bureaucracy to an already stressed and over regulated health care system. I believe this to be particularly true for the 40 States and the District of Columbia that *already require* at least two years of college to qualify as a nursing home administrator. This two year requirement is also the current standard for the “assisted living” level for administrator personnel in Virginia.

Finally, copies of your response were provided to both Alex Mabin of the Virginia Assisted Living Association, and Richard Grimes, Executive Director of the Assisted Living Federation of America. Please know that while I serve on the Board of Directors of VALA, my representation at the hearing was through the University’s Program in Assisted Living Administration, and was not intended to represent the formal interests of either of these organizations.

Thank you for your consideration of this information.

Sincerely,

Andrew Carle, Assistant Professor
Director – Program in Assisted Living Administration
George Mason University

Cc: Virginia Department of Health Professions
The Honorable Alan E. Mayer, Chair
Elizabeth A. Carter, Ph.D., Executive Director
Elaine Yeatts, Regulatory Analyst
Alex Mabin, Executive Director, VALA
Richard Grimes, President & CEO, ALFA



VALA

Virginia Assisted Living Association

September 3, 2004

Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Health Professions
6603 W. Broad Street, Fifth Floor
Richmond, Virginia 23230-1712

Dear Dr. Carter,

On behalf of the Board of Directors of the Virginia Assisted Living Association (VALA), I thank you for taking into consideration our comments regarding the recommendation to require licensure/certification of Assisted Living Administrators. The attached letter was sent to you in January of this year, and we appreciate the opportunity to reiterate our position.

I know we share the same goal to provide the best possible quality of care to the residents who reside in assisted living in the Commonwealth of Virginia. VALA's Board of Directors and all of its members, which include large and small providers across the state, are committed to working together with local and state agencies to meet and exceed expectations for quality services in the assisted living industry.

Thanks again for the opportunity to express our strong opinion regarding the addition of licensing requirements for Assisted Living Administrators.

Sincerely,

Diane Doumas
Chairman
Virginia Assisted Living Association



VALA

Virginia Assisted Living Association

11.

January 9, 2004

Elizabeth A. Carter, Ph.D
Executive Director for the
Virginia Board of Health Professions
6603 W. Broad Street, Fifth Floor
Richmond, VA 23230-1712

Dear Dr. Carter,

The Virginia Assisted Living Association Board of Directors, as representatives of the many Assisted Living Providers in the Commonwealth, would like to take this opportunity to comment on the current evaluation of the Virginia Department of Health Professions to regulate Assisted Living Administrators. As an Association, we are opposed to this recommendation as follows:

- At the state level, the Department of Social Services has established standards of education and experience for Administrators in Virginia, including a minimum of two years of college education and one year of experience in direct care supervision. It is our opinion that those standards are more than adequate, and the result has been a high quality of professional administrators statewide. The addition of further requirements, such as testing for minimum competency, would only add redundancy and a layer of expense to be passed on to consumers. State regulations also have specific guidelines requiring assisted living residents who exhibit any of the specified "prohibitive conditions" be placed in a skilled care setting.
- At the national level, the industry is adamantly opposed to licensing of administrators, including the Assisted Living Federation of America (ALFA) and National Center for Assisted Living (NCAL), associations which combined represent more than 10,000 direct care provider members nationwide.
- Assisted living administrators are non-clinical personnel, and therefore do not require the individualized regulation required of such staff. They do work under the auspices of, and are solely responsible for, the operational license of their facility. This includes responsibility for meeting the requirements of numerous federal, state and local regulatory agencies. We believe this current responsibility to be appropriate to their administrative duties and skills.

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E-mail: vala@alfa.org

Official State Affiliate of the Assisted Living Federation of America

- Other than nursing homes, no other health care administrator is required to be licensed including those for hospitals, urgent care centers, home health agencies, hospice organizations, and others. There is no evidence that the nursing home industry is safer or preferred among consumers based on the fact that their administrators are licensed.
- Other than the residents who qualify for the Auxiliary Grant program in Virginia, most of the residents in assisted living are paying privately, as opposed to the nursing home industry which is subsidized for the most part by government programs such as Medicare and Medicaid. The third party reimbursement system in nursing homes requires a unique regulatory structure that does not apply to assisted living.

We appreciate having the opportunity to openly express our opposition to the addition of licensing requirements for Assisted Living Administrators, and welcome the opportunity to work with you on this matter.

Respectfully submitted,



Diane Dumas
Chairman
Virginia Assisted Living Association

Virginia Assisted LMng Association -
11200 Waples Mill Rd Ste 150
Fairfax VA 22030-7407
Phone: 703-273-7614



Fax

To: Dr. Elizabeth A. Carter, Ph.D.	From: Kathy Selz
Fax: 804 662 7098	Date: September 3, 2004
Phone:	Pages: 3
Re: Licensure of AL Administrators	CC:

Urgent For Review Please Comment Please Reply Please Recycle

•Comments:

You will find included a statement from VALA regarding the views on licensure/certification of Assisted Living Administrators.

We'd like to thank you for this opportunity.

Kathy B Selz *kb selz*

Associate Executive Director

AVALON ASSISTED LIVING FACILITIES

7020 Armat Drive
Bethesda, MD 20817
(301) 656-8823

September 2, 2004

Elizabeth A. Carter, Ph.D.
Executive Director for the
Virginia Board of Health Professions
6603 W. Broad Street, Fifth Floor
Richmond, VA 23230-1712

Dear Ms. Carter:

I am the owner and operator of Avalon Assisted Living Facilities which provides assisted living care to people with memory loss in a small home like setting. I currently have five homes in the McLean/Falls Church area of Northern Virginia. Each home cares for eight residents and is licensed by the Department of Social Services. As a small provider and small business, I am concerned about the possibility of regulating assisted living administrators through licensing by the NAB.

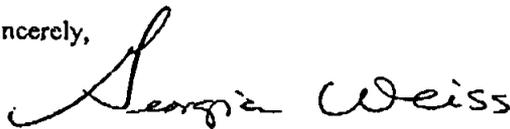
My goal is to provide quality care to residents at a reasonable price. The costs associated with training and licensing administrators would have to be passed along to consumers. I am also extremely worried that each eight bed home would be required to have a licensed administrator (compared to a larger facility which could have, for example, an administrator for fifty to a hundred residents or more). This issue could potentially put smaller providers out of business. Losing this alternative to the larger facilities is not in the interest of Virginia's assisted living residents or their families.

The current regulations promulgated by the Department of Social Services already established standards for administrators including at least two years of college education and at least one year of direct care experience as well as ongoing annual training. Administrators are accountable for making sure that the DSS regulations are being followed in their facilities. The State should make sure that administrators are enforcing these standards instead of adding another layer of training, regulatory oversight, and expense.

The problems highlighted in the recent articles in The Washington Post have to do with placing people with mental illness in the same facilities with the elderly, the low level of auxiliary grant reimbursement, lack of enforcement, and insufficient punitive fines, not the licensing of administrators. Regulators and lawmakers should be focusing on these issues.

I appreciate the opportunity to express these concerns and urge you to keep in mind the effect of additional regulations on small providers.

Sincerely,



Georgia Weiss, President

AVALON ASSISTED LIVING FACILITIES, INC.

FACSIMILE TRANSMITTAL SHEET

TO: Elizabeth Carter FROM: Georgia Weiss

COMPANY: Virginia Board of Health Professions DATE: Sept. 3, 2004

FAX NUMBER: 804-662-7098 TOTAL NO. OF PAGES INCLUDING COVER: 2

PHONE NUMBER: 804-662-9910 SENDER'S FAX NUMBER: (301) 365-0650

RE: Study on Regulating Assisted Living Administrators SENDER'S PHONE NUMBER: (301) 656-8823

NOTES/COMMENTS:

Thank you for considering these comments - Georgia Weiss