

ARIZONA STATE HOUSE OF REPRESENTATIVES
RESEARCH STAFF



TO: JOINT LEGISLATIVE AUDIT COMMITTEE

DATE: January 21, 2022

SUBJECT: Sunset Review of the Arizona
State Board of Nursing

Ahjahna Graham
Committee on Health and
Human Services
Telephone: (602) 926-3583

Attached is the final report of the sunset review of the Arizona State Board of Nursing which was conducted by the Senate Health and Human Services and House Health and Human Services Committees of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Douglas A. Ducey

President of the Senate
Senator Karen Fann

Speaker of the House of Representatives
Representative Russell Bowers

Senate Members
Senator Nancy Barto, Co-Chair
Senator Tyler Pace
Senator Rosanna Gabaldon
Senator Sally Ann Gonzales
Senator Wendy Rogers
Senator Thomas Shope
Senator Raquel Terán
Senator Kelly Townsend

House Members
Representative Joanne Osborne, Co-Chair
Representative Steve Kaiser
Representative Kelli Butler
Representative Joseph Chaplik
Representative Alma Hernandez
Representative Beverly Pingerelli
Representative Pamela Powers Hannley
Representative Amish Shah
Representative Justin Wilmeth

Arizona State Board of Nursing
Arizona State Library, Archives & Public Records
House Republican Staff
House Democratic Staff
House Research Staff

Senate Resource Center
Senate Republican Staff
Senate Democratic Staff
Senate Research Staff
Office of the Auditor General

Sunset Review of the
Arizona State Board of Nursing



Final Report

January 2022

SENATE MEMBERS

Senator Nancy Barto, Co-Chair
Senator Tyler Pace
Senator Rosanna Gabaldon
Senator Sally Ann Gonzales
Senator Wendy Rogers
Senator Thomas Shope
Senator Raquel Terán
Senator Kelly Townsend

HOUSE MEMBERS

Representative Joanne Osborne, Co-Chair
Representative Steve Kaiser
Representative Kelli Butler
Representative Joseph Chaplik
Representative Alma Hernandez
Representative Beverly Pingerelli
Representative Pamela Powers Hannley
Representative Amish Shah
Representative Justin Wilmeth

TABLE OF CONTENTS

- I. Report
 - a. Background
 - b. Summary of Committee Activity
 - c. Committee Recommendation
- II. Appendix
 - a. Minutes and reference materials from January 13, 2022, Senate Health and Human Services and House Health and Human Services Committees of Reference

Report 2022

Background

Pursuant to [A.R.S. § 41-2953](#), the Joint Legislative Audit Committee assigned the sunset review of the Arizona State Board of Nursing (Board) to the Senate Health and Human Services and House of Representatives Health and Human Services Committees of Reference for review.

Established in 1921, the Board was created to regulate the practice of nursing in Arizona. Duties of the Board include: 1) issuing and renewing licenses and certificates to qualified applicants; 2) investigating complaints; 3) administering disciplinary actions for violations of statutes and rules; 4) approving nursing education programs; and 5) providing information to the public about licensees and certificate holders. The mission of the Board is to protect and promote the welfare of the public by ensuring that each person holding a nursing license or certificate is competent to practice safely.

The Board is composed of 11 members appointed by the Governor for five-year terms as follows: 1) six registered nurses, including at least one registered nurse practitioner, clinical nurse specialist or certified registered nurse anesthetist; 2) one nursing assistant or a nursing assistant educator; 3) two public members; and 4) two licensed practical nurses ([A.R.S. §§ 32-1602](#), [32-1603](#), [32-1606](#), and [32-1663](#)).

The Board terminates on July 1, 2022, unless legislation is enacted for its continuation ([A.R.S. § 41-3022.04](#)).

Summary of Committee Activity

The Senate Health and Human Services and House Health and Human Services Committees of Reference met on January 13, 2022, to review the performance audit and sunset review conducted by the Auditor General, evaluate the Board's response to the sunset factors and receive public testimony.

Committee Recommendation

The Senate Health and Human Services and House Health and Human Services Committees of Reference recommended that the Board be continued for eight years until July 1, 2030.

Appendix A:

January 13, 2022, Senate Health and Human Services and House Health and
Human Services Committees of Reference
Minutes and Reference Materials

ARIZONA STATE LEGISLATURE

INTERIM JOINT MEETING NOTICE OPEN TO THE PUBLIC

HOUSE HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE AND SENATE HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE

Date: Thursday, January 13, 2022
Time: 9:30 A.M. or Upon Adjournment of Floor
Place: HHR 1

Members of the public may access a livestream of the meeting here:
<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022011007>

AGENDA

1. Call to Order
2. Roll Call
3. Sunset Review of the Arizona Acupuncture Board of Examiners
Presentation by the Arizona Acupuncture Board of Examiners
Public Testimony
Discussion and Recommendation
4. Sunset Review of the Arizona Board of Chiropractic Examiners
Presentation by the Arizona Board of Chiropractic Examiners
Public Testimony
Discussion and Recommendation
5. Sunset Review of the Arizona State Board of Dispensing Opticians
Presentation by the Arizona Office of the Auditor General
Response by the Arizona State Board of Dispensing Opticians
Public Testimony
Discussion and Recommendation
6. Sunset Review of the Arizona State Board of Nursing
Presentation by the Arizona Office of the Auditor General
Response by the Arizona State Board of Nursing
Public Testimony
Discussion and Recommendation

7. Sunset Review of the Arizona State Board of Pharmacy
Presentation by the Arizona Office of the Auditor General
Response by the Arizona State Board of Pharmacy
Public Testimony
Discussion and Recommendation
8. Adjourn

Members:

Senator Nancy Barto, Co-Chair
Senator Rosanna Gabaldon
Senator Sally Ann Gonzales
Senator Tyler Pace
Senator Wendy Rogers
Senator T.J. Shope
Senator Raquel Terán
Senator Kelly Townsend

Representative Joanne Osborne, Co-Chair
Representative Steve Kaiser
Representative Kelli Butler
Representative Joseph Chaplik
Representative Alma Hernandez
Representative Beverly Pingerelli
Representative Pamela Powers Hannley
Representative Amish Shah
Representative Justin Wilmeth

01/05/2022
01/06/2022

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People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032 or through Arizona Relay Service 7-1-1.

ARIZONA STATE LEGISLATURE

HOUSE HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE AND SENATE HEALTH AND HUMAN SERVICES COMMITTEE OF REFERENCE

Minutes of the Meeting

January 13, 2022

9:30 A.M., HHR1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022011007>

Members Present:

Senator Barto, Co-Chair
Senator Gabaldon
Senator Gonzales
Senator Rogers
Senator Shope
Senator Terán
Senator Townsend

Representative Osborne, Co-Chair
Representative Steve Kaiser
Representative Butler
Representative Chaplik
Representative Hernandez
Representative Pingerelli
Representative Powers Hannley
Representative Wilmeth

Members Excused:

Senator Tyler Pace

Members Absent:

Representative Shah

Staff:

Michael Madden, Health and Human Services Committee Analyst
Maelinn Chow, Health and Human Services Assistant Analyst
Ahjahna Graham, House Research Analyst
Jeremy Bassham, House Research Assistant Analyst
Bethany Graham, House Research Intern

Co-Chair Osborne called the meeting to order at 10:00 a.m. and attendance was noted by the committee secretary.

SUNSET REVIEW OF THE ARIZONA ACUPUNCTURE BOARD OF EXAMINERS

Presentation by the Arizona Acupuncture Board of Examiners

David Geriminsky, Agency Director, AZ Acupuncture Board, explained the Board, the Board's response to the Audit General's Audit and answered questions posed by the Committee.

Public Testimony

Shannon Whiteaker, Asian Medicine Acupuncturists of Arizona, testified in favor on the continuation for the Arizona Acupuncture Board of Examiners.

Marilyn Allen, Vice-President, American Acupuncture Association, testified in favor on the continuation for the Arizona Acupuncture Board of Examiners.

Discussion and Recommendation

Representative Butler asked questions regarding the Board.

Ms. Allen answered questions posed by the Committee.

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona Acupuncture Board of Examiners be continued for 8 years until July 2, 2030. The motion CARRIED with a roll call vote of 15-0-2 (Attachment 1).

SUNSET REVIEW OF THE ARIZONA BOARD OF CHIROPRACTIC EXAMINERS

Presentation by the Arizona Board of Chiropractic Examiners

Dr. Babak M. Nayeri, Executive Director, AZ Board of Chiropractic Examiners, distributed and explained, a PowerPoint presentation, entitled "Sunset Review" (Attachment A) and gave an overview of the Board.

The Committee discussed and offered comments for the presentation mentioned above.

Public Testimony

Dr. Richard Gaurino, Chair, Board of Chiropractic Examiners, testified in favor on the continuation of the Arizona Board of Chiropractic Examiners.

Discussion and Recommendation

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona Board of Chiropractic Examiners be continued for 8 years until July 1, 2030.

Senator Gabaldon made a substitution motion that the Joint Health and Human Services COR recommends that the Arizona Board of Chiropractic Examiners be continued for 4 years until July 1, 2026.

Senator Gabaldon explained her motion.

Representative Butler seconded the motion.

Senator Barto offered comments on her opposition to the substitute motion.

Representative Osborne called for the vote on the substitute motion.

The substitute motion FAILED with a roll call vote of 6-9-2 (Attachment 2).

Representative Osborne called for the vote on the motion made by Senator Barto.

The motion CARRIED with a roll call vote of 10-5-2 (Attachment 3).

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF DISPENSING OPTICIANS

Presentation by the Arizona Office of the Auditor General

Dale Chapman, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona State Board of Dispensing Opticians" (Attachment B).

Response by the Arizona State Board of Dispensing Opticians

Megan Darian, Executive Director, State Board of Dispensing Opticians, gave an update regarding the Board's response to the Auditor General's Performance Audit and Sunset Review.

Public Testimony

No public testimony took place.

Discussion and Recommendation

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona State Board of Dispensing Opticians be continued for 8 years until July 1, 2030. The motion CARRIED with a roll call vote of 13-0-4 (Attachment 4).

RECESS

At 11:09 a.m. the Chairman recessed the meeting to the sound of the gavel.

RECONVENE

At 11:18 a.m. the Chairman called the meeting to order.

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF NURSING

Presentation by the Arizona Office of the Auditor General

Dale Chapman, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona State Board of Nursing" (Attachment C).

Response by the Arizona State Board of Nursing

Joey Ridenour, Executive Director, Arizona State Board of Nursing, distributed and explained a handout entitled "Summary of Audit Recommendation (Attachment D) and gave overview of the Board and the work the Board has done.

The Committee discussed and offered comments on the response from Ms. Ridenour.

Public Testimony

Kathryn Busby, Arizona Nurses Association, testified in favor on the continuation and voiced her concerns.

The Committee discussed and asked questions regarding Ms. Busby's testimony.

Carol Schaeffer, Nursing Advocate, testified regarding the poor treatment that has been received from the Nursing Board and testified against the continuation of the Board.

Alice Minch, representing herself, testified regarding the poor treatment that has been received from the Board.

Discussion and Recommendation

The Committee discussed and commented on Ms. Minch's testimony.

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona State Board of Nursing be continued for 8 years until July 1, 2030. The motion CARRIED with a roll call vote of 14-0-3 (Attachment 5).

Senators Gabaldon, Gonzales, Townsend, Representatives Butler, Powers Hannley, Senator Barto and Representative Osborne explained their vote.

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF PHARMACY

Presentation by the Arizona Office of the Auditor General

Tanner Weigel, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona State Board of Pharmacy" (Attachment E).

Response by the Arizona State Board of Pharmacy

The Committee discussed and offered comments on the presentation mentioned above.

Kamlesh Gandhi, Executive Director, Arizona State Board of Pharmacy, gave an overview of the Board and its purpose.

Mr. Gandhi answered questions posed by the Committee.

Public Testimony

Mark Boesen, representing himself, testified in support on the continuation of the Board but encouraged continued work with the stakeholders. Mr. Boesen answered questions posed by the Committee.

Discussion and Recommendation

The Committee discussed and commented on Mr. Boesen's testimony.

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona State Board of Pharmacy be continued for 8 years until July1, 2030.

Representative Butler made a substitute motion that the Joint Health and Human Services COR recommends that the Arizona State Board of Pharmacy be continued for 4 years until July1, 2026.

Senator Gonzales seconded the motion.

Senator Barto offered comments against the four year substitute motion.

Representative Powers Hannley offered comments in support of the four year substitute motion.

Representative Osborne called for the vote on the substitute motion.

The substitute motion CARRIED with a roll call vote of 9-6-2 (Attachment 6).

Senators Gabaldon and Rogers, Representatives Butler, Chaplik and Osborne explained their vote.

Attached is a list noting the individuals who registered their position on the agenda items (Attachment F).

Attached are forms noting the individuals who submitted a Speaker slip on the agenda items (Attachment G).

There being no further business, the meeting was adjourned at 1:48 p.m.

Respectfully submitted,

Brisa Roman
Committee Secretary

(Audio recordings and attachments are on file in the Secretary of the Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azleg.gov>)



Arizona State Board of Nursing

Presenter: Dale Chapman

Date: January 13, 2022



Board regulates nursing practice in Arizona



As of June 2021, the Board had nearly 154,000 licensees and certificate holders

- Registered nurses
- Licensed practical nurses
- Advanced practice registered nurses
- Licensed and certified nursing assistants

Board met its statutory objective and purpose in several areas

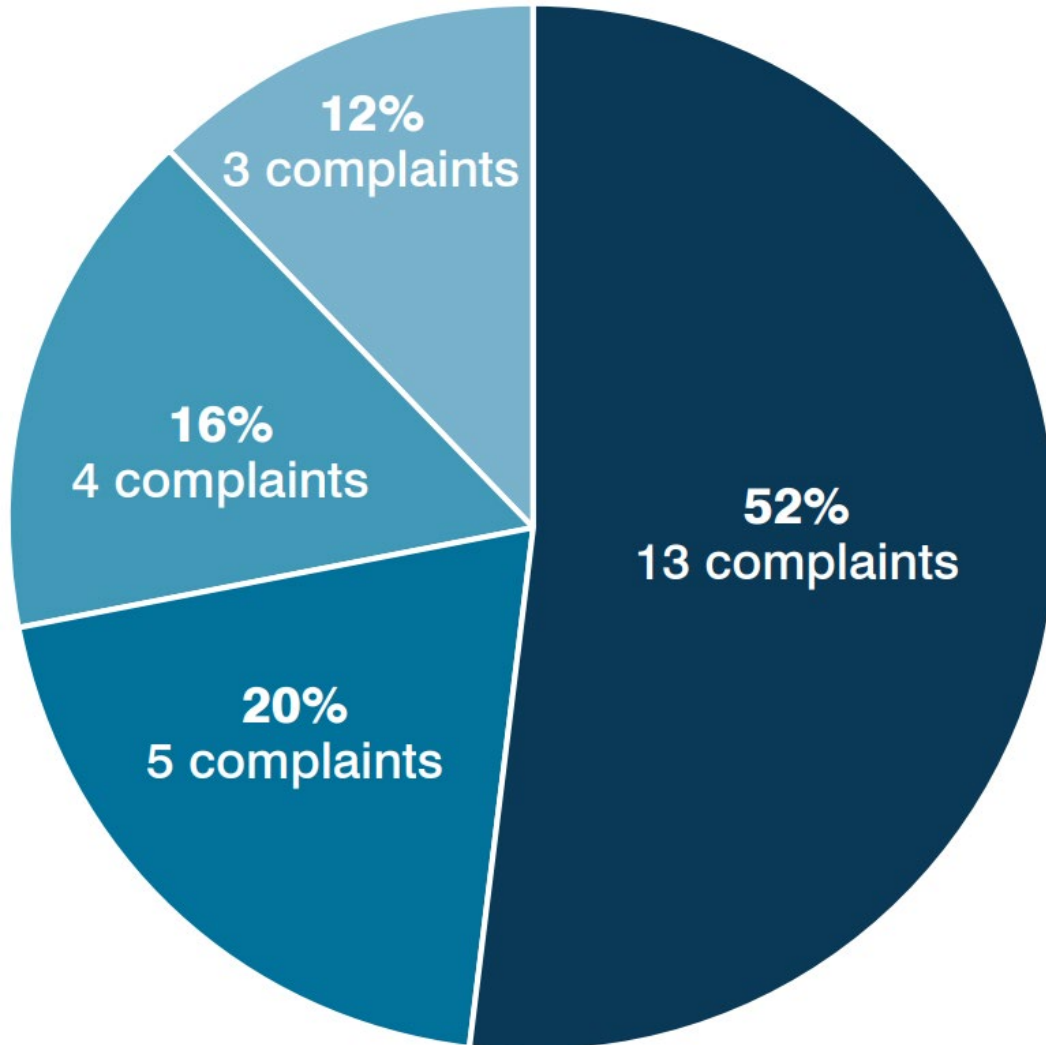
- Timely issued licenses/certificates we reviewed
- Generally ensured applicants met requirements
 - Did not ensure it received lawful presence documentation for 2 applicants

Board met its statutory objective and purpose in several areas



Followed complaint-handling polices and procedures

Problem identified: Untimely complaint resolution



- 1-180 days
- 181-210 days
- 211-310 days
- 311-435 days

Why this matters



- Untimely complaint resolution may affect patient safety
- Delays allow potentially unfit nurses or nursing assistants to continue practicing while under investigation

Cause of untimeliness



- Board attributed untimely complaint resolution to high investigative caseloads
- Board requested and received 3.5 FTE investigative staff positions for FY2022

Problem identified: State General Fund remittances



- Has not remitted all required revenues to State General fund, including 100 percent of civil and administrative penalties
- Estimated owing approximately \$348,000 in nonpenalty revenues to State General Fund
- Needs to also determine amount of penalty revenues it owes to State General Fund

Other problems identified and Board action taken



- Did not consistently comply with open meeting law requirements we reviewed
- Did not provide sufficient public information in response to anonymous phone calls we made
- Board's website did not reflect disciplinary or substantiated complaint information for most nursing assistants we reviewed

Key recommendations



- Resolve complaints within 180 days and determine if additional resources needed
- Determine and remit the correct revenue amount owed to State General Fund
- Remit 100 percent of future civil and administrative penalties
- Continue to implement new open meeting law and public information policies and procedures

Board response

- Agreed with findings and planned to implement our recommendations
- Our initial follow-up review will begin spring 2022



Arizona State Board of Nursing

Presenter: Dale Chapman

Date: January 13, 2022



Doug Ducey
Governor



Joey Ridenour
Executive Director

Arizona State Board of Nursing

1740 West Adams Street, Suite 2000

Phoenix, AZ 85007-2607

Phone: (602) 771-7800

Homepage: <http://www.azbn.gov>

SUMMARY OF AUDIT RECOMMENDATIONS

To: Joint Legislative Audit Committee Members
From: Joey Ridenour, RN MN, Executive Director
Date: January 10, 2022
Subject: ARIZONA STATE BOARD OF NURSING RESPONSE

Auditor General makes 11 recommendations to the Board

The Board should:

1. Investigate and adjudicate complaints within 180 days and, as necessary, use its complaint prioritization categories to focus its resources on resolving the highest risk complaints first (see Finding 1, pages 7 through 11, for more information).

Average Time Frame from Complaint Received to Complaint Closed or Case to Board (includes Do Not Open and all cases presented to Board including Summary Letter of Concern and those meeting Case Disposition Criteria) for complaints/cases closed during 2021-

1st half of 2021 (1/1/2021 to 6/30/2021): 249 days

2nd half of 2021 (7/1/2021 to 12/31/2021): 138 days

CY2021 (1/1/2021 to 12/31/2021): 191 days

Average Time Frame from Complaint Received to Complaint Closed or Final Adjudication (includes Do Not Open and all cases to final outcome including Summary Letter of Concern, Case Disposition Criteria and time until executed Consent Agreements or Board Orders including cases completed in hearings department} for complaints/cases closed during 2021-

1st half of 2021 (1/1/2021 to 6/30/2021): 238 days

2nd half of 2021 (7/1/2021 to 12/31/2021): 172 days

CY2021 (1/1/2021 to 12/31/2021): 202 days

2. Assess the impact of the requested investigator positions on its complaint-resolution timeliness and determine if it needs to request additional resources to resolve complaints within 180 days. If the Board determines that it needs additional resources, it should work with the Legislature to obtain these resources (see Finding 1, pages 7 through 11, for more information).

The OSPB and JLBC staff have been helpful with the 2023 Budget submittal and will continue to work with them this legislative year. The average number of cases per investigator as of January 10, 2022, is 66 which is a 52% decrease in each investigator caseload which will improve cycle time to meet the goal of 180 days.

3. Continue to implement its new policy to review and align Arizona APRN certificate expiration dates with the expiration date of the multi-state RN license issued by another state when the RN license expiration date is before the APRN certificate expiration date to ensure Arizona APRN certificate holders have an active RN license (see Sunset Factor 2, pages 12 through 16, for more information).

The policy was implemented along with monthly audits that ensure out-of-state nurses have active licenses.

4. Implement its new policy and procedures to periodically review the appropriateness of its fees (see Sunset Factor 2, pages 12 through 16, for more information).

Fees were reviewed in 2021 and the next review cycle will be in 2026.

The Current Cost Per RN & LPN License/Certificate is \$40 and has been \$40 a year since 1999. (One year cost [\$40] of a four-year renewal cycle is \$160).

The Average Cost of Regulation Per License/Certificate

The Average Cost of Regulation per License/Certificate was calculated by taking the Total Cost of Regulation (\$3,592,290) and dividing it by the number of Licensee/Certificate holders (118,564)

FY 2021 Cost Per License/Certificate (excluding CNA/LNA/CMA)

	Complaints	\$ 267,164.00
	Investigations	\$ 2,559,301.00
	Hearing	\$ 364,258.00
	Compliance	\$ 401,567.00
	Total Cost of Regulation	\$ 3,592,290.00
	Average Cost of Regulation Per License/Certificate*	\$ 30.30
	The Total Cost of RN/LP/APRN Licensing*	\$ 33.42
	Average Cost Per License/Certificate* for Licensing and Regulation (Per Year)	\$ 63.72
	Current Cost Per Year Per License/Certificate*	\$ 40.00

- As soon as possible, determine the correct amount that should be remitted to the States General Fund because of its misclassification of the fiscal year 2018 credit card revenues and unremitted civil and administrative penalties, including researching how long it has not remitted 100 percent of both penalties, and remit these monies to the States General Fund (see Sunset Factor 2, pages 12 through 16, for more information).

Using revenue reports from the Arizona Financial Information System (AFIS) for FY 16-21, a reconciliation was performed that calculated 100% of admin & civil penalties and 10% of all other revenue (except for federal grant funding) and compared the calculated amounts against the amounts previously transferred to the general fund. This resulted in a balance of \$435,536 that was transferred to the general fund.

- Ensure it remits 100 percent of future civil and administrative penalties to the States General Fund (see Sunset Factor 2, pages 12 through 16, for more information).

For FY 22 and forward, the same reconciliation process mentioned above (this is the same process used by the auditor) was incorporated regularly to reconcile the amounts remitted to the general fund with the calculated amounts due. This reconciliation, along with the AFIS revenue report, provides the support for the transfers to the general fund and is signed and dated by both Accountant 3 and the Fiscal Officer.

- Continue to implement its new conflict-of-interest policy (see Sunset Factor 3, pages 16 through 17, for more information).

Conflict of Interest Forms are signed upon appointment to the position and annually in January. All Aboard Members and Staff signed in 2021 and have again signed in 2022. Conflict of Interest forms are signed as needed at each Board Meeting.

8. Continue to implement its new open meeting law policies and procedures (see Sunset Factor 5, pages 18 through 21 for more information).

The board and three board committees comply with the open meeting statutes and board policies.

9. Continue to implement its new and revised public information policies and procedures (see Sunset Factor 5, pages 18 through 21 for more information).

Regarding information provided pursuant to public records requests, Auditors found that some information was provided, however when the Auditors asked if the nurse previously had problems with the Board, additional information regarding non-disciplinary actions and dismissed complaints was not provided. Upon learning of these concerns, Board staff promptly created and implemented new policies to ensure a more comprehensive provision of information, compliant with the Board's statutory requirements. Board staff also trained applicable customer service staff, and has continued to provide ongoing training.

Regarding the posting of Board and Board Committee meeting agendas, upon learning of the Auditor's concerns, Board staff again created and implemented new policies to ensure that accurate agendas were timely posted on the Board's website and physically at the Board's offices. Again, applicable staff were trained on the new procedures.

Similarly, with Board and Board Committee meeting minutes, Board staff also implemented a new policy and procedures regarding audio recording and posting of meeting audios to the Board's website. The meeting audio recordings constitute the Board's draft minutes.

10. Continue to follow its procedures for ensuring that disciplinary information for LNAs and substantiated complaint information for CNAs is accurately uploaded to its database and displayed on its website and update its written policies and procedures to reflect these procedures after its database is upgraded (see Sunset Factor 5, pages 18 through 21 for more information).

The board has assigned one staff person to upload all nursing assistant and nurse disciplines to the database for public access on the board website. Previously two persons were entering the data.

11. Conduct a risk-based review of its online information for LNAs and CNAs to ensure the information on its website is complete and accurate (see Sunset Factor 5, pages 18 through 21 for more information).

A risk-based review is in progress and will be done to ensure the nursing assistant information is complete and accurate by March 1, 2022

Additional information:

- A. To address the nursing shortage, over 3,311 Emergency Declaration 90-day licensure waivers have been issued since 3/20 (past nineteen months) and 1,059 are active as of 1/7/2022.**

Lost Revenue from COVID Waivers

On March 20, 2020, the state issued an Administrative Order for Emergency Measures for COVID-19, which allows the board, at the Board's discretion, to temporarily waive requirements for licensure for eligible nurses. The Lost Revenue from Covid Waivers was calculated as of August 2020 by multiplying the number of waivers issued (2,701) by the cost of an endorsement license (\$160).

Lost Revenue From COVID Waivers		\$ 432,160.00
COVID Waivers Issued to Date	2701	
Total Applications Submitted for COVID Waivers	3461	

- B. Fund balance after remittance to the general fund was completed**

The BNA continuing revenue appropriation had a beginning balance of \$6,611,300, the general fund transfer for FY16-21 was (\$435,536) which leaves a remaining fund balance of \$6,175,764. The annual operating expenditures is approximately \$5.1 million which results in a \$1 million fund balance.