Sunset Advisory Commission

Staff Report with Final Results

Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

2016–2017
85th Legislature

Sunset Advisory Commission

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Cover Photo: The iron perimeter fence was installed in the 1890s, a few years after the completion of the Texas State Capitol. The fence surrounds approximately 22 acres of the Capitol Grounds but only on the east, west, and south sides due to the addition of the Capitol Extension to the north in the early 1990s. Photo Credit: Janet Wood

Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

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How to Read Sunset Reports

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and action into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading**.)

1. Sunset Staff Evaluation Phase

   Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

   First Version: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. Sunset Commission Deliberation Phase

   The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the Commission meets again to vote on which changes to recommend to the full Legislature.

   Second Version: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. Legislative Action Phase

   The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

   Third Version: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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Final Results

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Summary

Under the administrative umbrella of the executive council, the Texas Board of Physical Therapy Examiners (PT board) and the Texas Board of Occupational Therapy Examiners (OT board) have not only escaped Sunset review for 23 years, but significantly, the regulations they oversee have escaped the fate of most other allied health professions in Texas — consolidation into a larger agency. While Sunset staff and commission members considered such a measure, the commission ultimately concluded that the best approach for physical and occupational therapy regulation in the state is to remain as an independent agency. As a result of the Sunset review, Senate Bill 317 continues the executive council, PT board, and OT board for 12 years.

With the understanding that regulation needs to be tailored to reflect only what is needed to protect the public, the Sunset Commission found no need to continue the requirement to register physical and occupational therapy facilities as registration serves no public safety purpose. Senate Bill 317 discontinues this requirement effective September 2019. In addition, to take advantage of regulatory flexibility and help promote mobility of physical therapy professionals across state lines and improve client access to care, the bill enacts the Physical Therapy Licensure Compact. Finally, other recommendations in Senate Bill 317 update agency statutes and practices to reflect current standards and circumstances to help focus the agency's regulatory effort.

The following material summarizes results of the Sunset review of the executive council, PT board, and OT board, including management actions directed to the agency that do not require legislative action.

Issue 1 — *Deregistration of Facilities*

Recommendation 1.1, Modified — Starting in September 2019, discontinue the registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.

Issue 2 — *Licensure Mobility*

Recommendation 2.1, Adopted — Adopt the Physical Therapy Licensure Compact.

Recommendation 2.2, Adopted — Provide clear statutory authority for licensure by endorsement.

Recommendation 2.3, Adopted — Clarify that occupational therapy assistants licensed in other states may practice in this state temporarily under the same conditions as occupational therapists.

Recommendation 2.4, Adopted — Remove provisions prescribing educational requirements beyond completion of an accredited program or substantially equivalent to an accredited program.

Issue 3 — *Licensing and Enforcement*

Recommendation 3.1, Adopted — Clarify statutes to reflect current standards and conditions.

Recommendation 3.2, Adopted — Continue the authority of the Texas Board of Occupational Therapy Examiners (OT board) and Texas Board of Physical Therapy Examiners (PT board) to delegate to other entities the responsibility of approving continuing education and continuing competence. However, require the boards to adopt rules relating to the approval of continuing competence or continuing education courses inclusive of a request for proposal and bid process and implement that process within 12 months and no less than once every four years thereafter.

Recommendation 3.3, Adopted — Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.

Recommendation 3.4, Adopted — Require the boards to develop a disciplinary matrix.

Recommendation 3.5, Adopted — Remove the subjective "good moral character" standard as a criterion for foreign-trained licensure applicants.

Recommendation 3.6, Adopted — Direct the OT board to adopt rules to specify the types of criminal activities that may result in denial, suspension, or revocation of a license. (Management action – nonstatutory)

Recommendation 3.7, Adopted — Direct the OT board to grant administrative dismissal to staff for low-level misdemeanor offenses. (Management action – nonstatutory)

Recommendation 3.8, Adopted — Direct the agency to develop a formal process to refer non-jurisdictional complaints to the appropriate agency. (Management action – nonstatutory)

Issue 4 — *Continue*

Recommendation 4.1, Adopted — Continue the executive council, PT board, and OT board for 12 years.

Recommendation 4.2, Adopted — Update for the executive council, PT board, and OT board the standard Sunset across-the-board requirement related to board member training to ensure board members are adequately trained on their responsibilities and the limits of their authority, and apply the other Sunset across-the-board requirements for

- conflicts of interest;
- governor designation of the presiding officer;
- grounds for removal of members from policymaking bodies;
- policies to separate policymaking and staff functions; and
- alternative rulemaking and dispute resolution.

Provision Added by the Legislature

Physical therapy license expiration — Require physical therapist and physical therapist assistant licenses to expire at least every two years, as determined by PT board rule.

Fiscal Implication Summary

Since Texas collects fees to register, but not regulate, physical and occupational therapy facilities, a negative fiscal impact will result to the state over the next five years.

Based on revenue generated from facility registration fees in fiscal year 2016, the provision to discontinue the registration of physical and occupational therapy facilities will result in the loss of approximately $1,063,000 per year to the General Revenue Fund, beginning in fiscal year 2020. The estimated savings of $42,500 from the cost to administer facility regulation could be put to better use.

Executive Council of Physical Therapy and Occupational Therapy Examiners

Fiscal Year	Loss to the General Revenue Fund
2018	$0
2019	$0
2020	$1,063,000
2021	$1,063,000
2022	$1,063,000

Sunset Commission Decisions

January 2017

Sunset Commission Decisions

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Executive Council of Physical Therapy and Occupational Therapy Examiners, as well as modifications raised during the public hearing.

Under the administrative umbrella of the executive council, the Texas Board of Physical Therapy Examiners (PT board) and the Texas Board of Occupational Therapy Examiners (OT board) have not only escaped Sunset review for 23 years, but significantly, the regulations they oversee have escaped the fate of most other allied health professions in Texas — consolidation into a larger agency. While Sunset staff and commission members considered such a measure, the commission ultimately concluded that the best approach for physical and occupational therapy regulation in the state is to remain as an independent agency and recommends continuing the executive council, PT board, and OT board for 12 years.

With the understanding that regulation needs to be tailored to reflect only what is needed to protect the public, the Sunset Commission found no need to continue the requirement to register physical and occupational therapy facilities that serves no public safety purpose. In addition, taking advantage of regulatory flexibility through an interstate licensing compact would help promote mobility of physical therapy professionals across state lines to improve client access to care. Finally, updating agency statutes and practices to reflect current standards and circumstances would help focus the agency's regulatory effort.

Issue 1

The Requirement to Register Physical Therapy and Occupational Therapy Facilities Is Unnecessary.

Recommendation 1.1, Adopted — Discontinue the registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.

Issue 2

The Physical and Occupational Therapy Statutes Unnecessarily Impede Increasingly Mobile Workforces.

Recommendation 2.1, Adopted — Adopt the Physical Therapy Licensure Compact.

Recommendation 2.2, Adopted — Provide clear statutory authority for licensure by endorsement.

Recommendation 2.3, Adopted — Clarify that occupational therapy assistants licensed in other states may practice in this state temporarily under the same conditions as occupational therapists.

Recommendation 2.4, Adopted — Remove provisions prescribing educational requirements beyond completion of an accredited program or substantially equivalent to an accredited program.

Issue 3

Key Elements of the Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.

Recommendation 3.1, Adopted — Clarify statutes to reflect current standards and conditions.

Recommendation 3.2, Modified — In lieu of the staff recommendation, continue the authority of the Texas Board of Occupational Therapy Examiners (OT board) and Texas Board of Physical Therapy Examiners (PT board) to delegate to other entities the responsibility of approving continuing education and continuing competence, and require the boards to adopt rules relating to the approval of continuing competence or continuing education courses inclusive of a request for proposal and bid process and implement that process within 12 months, and no less than once every four years thereafter.

Recommendation 3.3, Adopted — Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.

Recommendation 3.4, Adopted — Require the boards to develop a disciplinary matrix.

Recommendation 3.5, Adopted — Remove the "good moral character" standard as a criterion for foreign-trained licensure applicants.

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Recommendation 3.7, Adopted — Direct the OT board to grant administrative dismissal to staff for low-level misdemeanor offenses. (Management action – nonstatutory)

Recommendation 3.8, Adopted — Direct the agency to develop a formal process to refer non-jurisdictional complaints to the appropriate agency. (Management action – nonstatutory)

Issue 4

The State Has a Continuing Need to Regulate Physical Therapy and Occupational Therapy.

Recommendation 4.1, Adopted — Continue the state's regulation of physical and occupational therapy. As part of the consideration of the *Health Licensing Consolidation Project Sunset Staff Report*, the commission recommends continuing the executive council, PT board, and OT board for 12 years.

Recommendation 4.2, Modified — Apply the standard Sunset across-the-board requirements to the executive council, PT board, and OT board, as modified to apply the newly updated Sunset across-the-board recommendation on board member training.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would result in a negative fiscal impact to the state over the next five years from ending the unnecessary registration requirement for physical and occupational therapy facilities.

Based on revenue generated from facility registration fees in fiscal year 2015, the recommendation to discontinue the registration of physical and occupational therapy facilities would result in the loss of approximately $966,000 per year to the General Revenue Fund, beginning in fiscal year 2018. The estimated savings of $42,500 from the cost to administer facility regulation could be put to better use.

Executive Council of Physical Therapy and Occupational Therapy Examiners

Fiscal Year	Loss to the General Revenue Fund
2018	$966,000
2019	$966,000
2020	$966,000
2021	$966,000
2022	$966,000

Summary of Sunset Staff Recommendations

Summary

The Executive Council of Physical Therapy and Occupational Therapy Examiners is an agency that seems to fly under the radar. This agency responsible for regulating physical and occupational therapy has not only escaped Sunset review for 23 years, but significantly, the regulations it oversees have escaped the fate of most other allied health professions in Texas. Physical and occupational therapy still merit state regulation, even if they do not present quite the same level of risk as the other health professions of medicine, dentistry, pharmacy, and nursing. The question is whether regulation justifies an independent agency structure. The regulation of many other allied health professions previously housed at the Department of State Health Services (DSHS) were moved to the Texas Department of Licensing and Regulation (TDLR) and the Texas Medical Board as part of last session's reconfiguration of the state's health and human services system. The regulation of physical and occupational therapy would appear to be a good candidate for such a move, too, to be administered with their therapy-related kin like speech-language pathology, athletic training, and massage therapy.

Physical and occupational therapy merit continued state regulation to protect the public.

However, one reason the executive council has flown under the radar is that it has been a stable, well-run agency, with an experienced, capable staff. The oversight structure, with separate boards for physical therapy and occupational therapy and an executive council made up of members of the two boards and chaired by a member of the public, may be a bit unwieldy, but provides a synergy that benefits the regulations. Ultimately, the cost of transferring these regulations to TDLR, largely to upgrade computer systems, and the ongoing effort by both TDLR and the medical board to assimilate 17 regulatory programs from DSHS, tipped the scales in favor of recommending continuing the agency with its current structure, and avoiding the upheaval inherent in such a transfer.

With the understanding of the lower risk associated with the practice of physical and occupational therapy, regulation needs to be tailored to reflect only what is needed to protect the public. To this end, Sunset staff found no need to continue the requirement to register physical and occupational therapy facilities that serves no public safety purpose. In addition, taking advantage of regulatory flexibility through an interstate licensing compact would help promote mobility of physical therapy professionals across state lines to improve client access to care. Finally, updating agency statutes and practices to reflect current standards and circumstances would help focus the agency's regulatory effort.

The following material summarizes Sunset staff recommendations on the Texas Board of Occupational Therapy Examiners (OT board), Texas Board of Physical Therapy Examiners (PT board), and Executive Council of Physical Therapy and Occupational Therapy Examiners.

Issues and Recommendations

Issue 1

The Requirement to Register Physical Therapy and Occupational Therapy Facilities Is Unnecessary.

The Legislature added the requirement to register physical and occupational therapy facilities the last time the two regulatory boards went through Sunset reviews back in 1993. Physical and occupational therapy services in Texas can only be provided in a facility registered by the executive council, and the facility must have a therapist-in-charge responsible for compliance with registration requirements. Statute exempts healthcare and other facilities where physical and occupational therapy services are provided but fall under other regulatory jurisdictions.

The registration requirement serves no valid purpose. Due to the nature of physical therapy and occupational therapy, the facilities in which these disciplines are practiced do not present the type of risk seen in other facilities that typically justify registration. Likewise, nothing in the agency's complaint or enforcement data indicates public safety concerns related to these facilities. While the registration was designed to gain accountability over people and entities outside the agency's jurisdiction who might be providing services illegally, in practice, the sanctions have fallen exclusively on the physical and occupational therapy licensees that facilities employ, even though they have no responsibility for registration. The relatively severe penalties for practicing in an unregistered facility also exist despite no proof of harm for what amounts to a paperwork violation. While the registration fees create a windfall to the state, their one-size-fits-all approach is more of a financial hardship on small facility owners without the means of larger corporate-owned facilities. The facility registration does not require a lot of staff effort, but time spent should be on needed, useful activities.

Key Recommendation

- Discontinue the registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.

Issue 2

The Physical and Occupational Therapy Statutes Unnecessarily Impede Increasingly Mobile Workforces.

Physical and occupational therapy practitioners are among the health professionals whose numbers are insufficient to meet present and future needs in Texas. While agencies generally do not overtly address shortages of practitioners, their policies and processes can have a significant impact on the ability of people to enter a profession. Licensing agencies must ensure that policies and processes for licensing only relate to the ability to do the work safely and do not impose unnecessary barriers to entry. Standard national approaches for considering education, prior experience, and examination in licensing physical or occupational therapists mean that all practitioners effectively have the same basic qualifications wherever they practice. Common licensure requirements among the states provide the opportunity to consider interstate licensure compacts, such as one proposed for physical therapy to facilitate the movement of qualified licensees to and from Texas.

Key Recommendations

- Adopt the Physical Therapy Licensure Compact.
- Provide clear statutory authority for licensure by endorsement.

Issue 3

Key Elements of the Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.

In reviewing the regulatory functions of the executive council, PT board, and OT board, Sunset staff found that certain administrative, licensing, and enforcement processes in the executive council's and boards' statutes and operations do not match model standards developed over many years of Sunset reviews of regulatory agencies or common practices of comparable agencies. Specifically, the PT board's process for turning its continuing competence approval program over to the Texas Physical Therapy Association is an inappropriate delegation of its governmental duties.

Key Recommendations

- Remove the boards' authority to delegate to other entities the responsibility of approving continuing education and continuing competence while clarifying their authority to preapprove course providers.
- Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.

Issue 4

The State Has a Continuing Need to Regulate Physical Therapy and Occupational Therapy.

In the broadest sense, physical and occupational therapy are healthcare professions providing rehabilitation and other services that deal with the proper functioning and movement of the body and the performance of the tasks and functions of everyday life. The current agency was established through Sunset legislation in 1993 merging the regulation of physical and occupational therapy and their separate boards under the oversight of the executive council.

Texas, like all other states, regulates physical and occupational therapy because of the potential for harm to patients. Physical and occupational therapy professionals have direct physical contact with patients, many of whom are from vulnerable populations, and these professionals do not work under the supervision of a physician or other healthcare practitioner. The demand for physical and occupational therapy services is likely to increase with the aging of the population and the greater need for rehabilitative and therapeutic services. While ample reason exists for regulating allied health professions like physical and occupational therapy under an umbrella agency structure rather than as an independent agency, suitable options are not currently available to justify the added cost and disruption of such a transfer.

Key Recommendation

- Continue the Texas Board of Physical Therapy Examiners and Texas Board of Occupational Therapy Examiners under the administration of the Executive Council of Physical and Occupational Therapy Examiners until 2029.

Fiscal Implication Summary

Overall, recommendations in this report would result in a small negative fiscal impact to the state over the next five years from ending the registration requirement for physical and occupational therapy facilities.

Issue 1 — Based on revenue generated from facility registration fees in fiscal year 2015, the recommendation to discontinue the registration of physical and occupational therapy facilities would result in the loss of approximately $966,000 per year to the General Revenue Fund, beginning in fiscal year 2018.

Executive Council of Physical Therapy and Occupational Therapy Examiners

Fiscal Year	Loss to the General Revenue Fund
2018	$966,000
2019	$966,000
2020	$966,000
2021	$966,000
2022	$966,000

Agency at a Glance
April 2016

Agency at a Glance

The Legislature established the Texas Board of Physical Therapy Examiners (PT board) as an independent agency in 1971 and the Texas Advisory Board of Occupational Therapy in 1983 as a licensing board housed within the Texas Rehabilitation Commission. In 1993, the Legislature created the Executive Council of Physical Therapy and Occupational Therapy Examiners to provide administrative support and executive oversight to the PT board and the newly created Texas Board of Occupational Therapy Examiners (OT board).

Physical therapy is a form of health care that prevents, identifies, corrects, or alleviates acute or prolonged movement dysfunction or pain of anatomic or physiologic origin.[1]

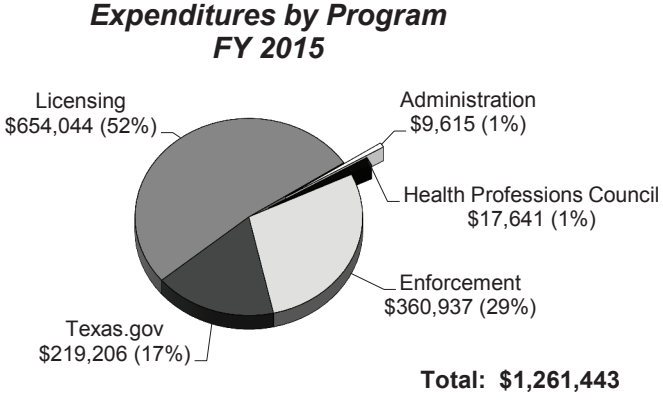
Occupational therapy is the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community and other settings.[2]

The boards protect public health and safety by licensing and regulating physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, and registering physical therapy and occupational therapy facilities. To fulfill these missions, the executive council carries out the following key activities:

- Issues and renews physical and occupational therapy licenses and facility registrations[3]
- Investigates and enforces violations of the physical therapy and occupational therapy practice acts and board rules[4]
- Establishes fees and approves proposals for rule changes from the PT board and OT board[5]

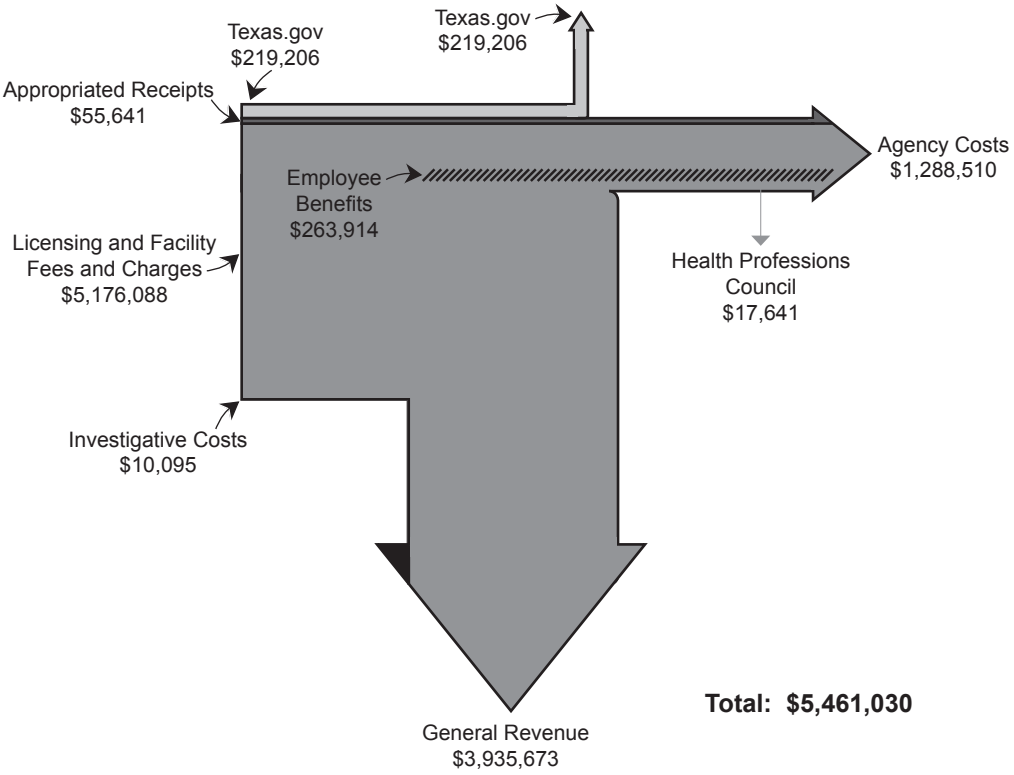
Key Facts

- **Executive council and boards**. The PT and OT boards are each composed of nine governor-appointed members. The PT board includes six physical therapists and three public members. The OT board includes four occupational therapists, two occupational therapy assistants, and three public members. The executive council consists of a presiding officer, who is a member of the public appointed by the governor, and a public member and a licensee member from each of the boards.
- **Funding**. In fiscal year 2015, the agency operated on appropriations of almost $1.3 million, with more than 95 percent coming from general revenue generated through fees paid by physical and occupational therapy licensees and facility registrants. The remainder comes from appropriated receipts from sales of mailing lists and email addresses. The pie chart, *Expenditures by Program*, breaks out the agency's spending by major program areas.



The agency generates revenue through fees far in excess of what is needed to cover agency expenditures. As shown in the chart, *Flow of Executive Council of Physical Therapy and Occupational Therapy Examiners Revenue and Expenditures*, the executive council generated revenue of almost $5.5 million mainly from licensing and facility registration fees and a small amount of appropriated receipts. After accounting for the agency's costs and payments to Texas.gov and the Health Professions Council, excess revenue of more than $3.9 million was deposited to the General Revenue Fund. A description of the executive council's use of historically underutilized businesses in purchasing goods and services and commodities for fiscal years 2013 to 2015 is included in Appendix A, *Historically Underutilized Businesses Statistics*.

Flow of Executive Council of Physical Therapy and Occupational Therapy Examiners Revenue and Expenditures – FY 2015



- **Staffing**. The executive council provides administrative support to the boards and currently employs 20 staff: an executive director, coordinators for each board, three accounting staff, a business manager, three investigators, and ten licensing employees. All staff work out of Austin. The agency has no field staff. A comparison of the agency's workforce composition to the statewide civilian workforce for the past three years is included in Appendix B, *Equal Employment Opportunity Statistics*.

- **Licensing**. The executive council processes license applications and renewals for the two boards. Applicants for licensure must meet certain education requirements, pass a national examination and a state jurisprudence examination, and report any criminal history for investigation. Licensees must renew their licenses biennially, and the agency audits five percent of renewals every quarter to ensure compliance with continuing competency and continuing education requirements. At the end of fiscal year 2015, the PT board licensed 16,076 physical therapists and 8,336 physical therapist assistants, while the OT board licensed 9,174 occupational therapists and 4,811 occupational therapy assistants.

- **Facility registration**. The agency also registered 2,637 physical therapy facilities and 1,469 occupational therapy facilities in fiscal year 2015. Facilities housed within or belonging to another regulated entity, such as a hospital or school, are exempt from registering with the executive council.

- **Enforcement**. Executive council staff investigates possible violations of the physical and occupational therapy statutes and rules by licensed and unlicensed individuals. Investigators receive complaints from licensees, members of the public, and licensing staff, and present their findings to the investigations committees of the PT and OT boards. They also notify violators and complainants of the investigation outcome, draft agreed orders on disciplinary actions for the boards' approval, and monitor compliance with disciplinary actions. In fiscal year 2015, the agency received 524 physical therapy-related complaints, and resolved 448, leading to 54 disciplinary actions; and the agency received 246 occupational therapy-related complaints, resolving 211, resulting in 39 disciplinary actions. The table, *Enforcement Actions*, details this information for 2015. The boards can impose administrative penalties, sanctions on a license or facility, community service, cease-and-desist orders, and refer certain violations for criminal proceedings if necessary.

Enforcement Actions – FY 2015

	Physical Therapy	Occupational Therapy
Jurisdictional complaints received	524	246
Jurisdictional complaints resolved	448	211
Complaint Types		
Drugs or criminal history	194	118
Continuing education or renewal audit failure	126	57
Fraudulent advertising for physical therapy	26	0
Practicing with expired license	8	10
Practice in unregistered facility	58	12
Fraudulent billing or documentation	37	27
Patient injury, abandonment, or neglect	31	10
Disciplinary action taken by another jurisdiction	16	10
Practicing beyond scope of licensure	10	0
Improper supervision of subordinates	5	0
Practice without a license	8	2
Referral for profit	5	0
Total	***524***	***246***
Disciplinary Actions Taken		
Cease-and-desist	0	1
Community service	11	17
Suspension	43	18
Reinstatement	0	1
Surrender or revocation	0	2
Total	***54***	***39***

[1] All citations to Texas statutes are as they appear at http://www.statutes.legis.state.tx.us/. Section 453.001, Texas Occupations Code.

[2] Executive Council of Physical Therapy and Occupational Therapy Examiners, "Occupational Therapy," accessed December 11, 2015, http://www.ptot.texas.gov/page/what-is-ot.

[3] Section 452.152, Texas Occupations Code.

[4] Sections 453.153, 453.154, 454.152, and 454.153, Texas Occupations Code.

[5] Sections 452.154 and 452.156, Texas Occupations Code.

Issues

Issue 1

The Requirement to Register Physical Therapy and Occupational Therapy Facilities Is Unnecessary.

Background

The Legislature added the requirement to register physical and occupational therapy facilities the last time the two regulatory boards went through Sunset reviews back in 1993. Under the terms of the facility registration requirement, physical and occupational therapy services in Texas can only be provided in a facility registered by the Executive Council of Physical Therapy and Occupational Therapy Examiners and the facility must have a therapist-in-charge responsible for compliance with registration requirements. Statute exempts from the registration requirement healthcare and other facilities where physical and occupational therapy services are provided but fall under other regulatory jurisdictions, such as hospitals, nursing homes, ambulatory surgical centers, and facilities for early childhood intervention.

Applicants for initial facility registration must provide the executive council basic information about the facility, as shown in the textbox, *Requirements for Physical Therapy and Occupational Therapy Facility Registration.*[1] Registrations must be renewed annually. Registration requires a $215 initial fee and a $220 annual renewal fee for each facility an individual or entity owns. The facility owners must inform the executive council of any changes regarding a therapist-in-charge or the facility's name or address. New owners of facilities must obtain new registrations, and owners must also notify the executive council of any change in managing partners. At the end of 2015, about 2,600 physical therapy and 1,400 occupational therapy facilities were registered. Of these, approximately 1,080 were dually registered as physical and occupational therapy facilities.

Requirements for Physical Therapy and Occupational Therapy Facility Registration

1. Name of facility
2. Physical/street address of the facility
3. Mailing address, if different from street address
4. Name of owner
5. Type of ownership
6. Identification/contact information for the facility owner as follows:
   a. Sole proprietor
   b. Partnership
   c. Corporation
   d. Governmental entity (federal, state, local)
7. Name and license number of the physical therapist or occupational therapist-in-charge and his or her signature
8. Names and license numbers of all physical and occupational therapy licensees who practice in the facility
9. Name, title, and signature of the owner, managing partner or officer, or person authorized to complete the registration application
10. The non-refundable fee, as set by the executive council

Findings

Facility registration is an unnecessary regulation that has nothing to do with protecting the public.

Registration of physical or occupational therapy facilities does not impose any regulatory requirement beyond providing the basic information listed in the table above, paying the required fee, informing the agency of pertinent changes to keep the registration up to date, and renewing on time. The registration does not include safety or other facility requirements relating to the practice of physical or occupational therapy, nor does the registration or any other regulation restrict ownership of facilities where therapy services may be provided. Because the registration does not impose requirements on the actual facility, the agency has no basis for inspecting facilities and as a result, has no inspection process.

Risk to recipients of physical or occupational therapy stems from practitioners, not facilities.

Due to the nature of physical therapy and occupational therapy, the facilities in which these disciplines are practiced do not present the type of risk seen in other facilities that typically justify registration. Physical and occupational therapy facilities are not like hospitals, dialysis centers, ambulatory surgical centers, and pharmacies. These therapy facilities do not involve invasive procedures, administration of anesthesia, storing or dispensing drugs, or using equipment with potentially negative environmental or public health effects. The risk to a recipient of physical or occupational therapy services stems from the practitioner, not the facility, and the agency addresses this risk through its regulation of practitioners, not facilities.

Likewise, nothing in the agency's complaint or enforcement data indicates public safety concerns related to these facilities. The only facility-related violations that can be committed are the failure to register or failure to renew, with timely renewal being by far the most common violation. Without any connection to public safety, however, such a violation is almost purely administrative.

Facility registration simply adds to the bureaucratic burden for no apparent purpose.

For many physical therapy and occupational therapy facilities, this extra layer of state regulation to register facilities simply adds to the bureaucratic burden for no apparent purpose. A large proportion of physical and occupational therapy licensees work in outpatient facilities that are under Medicare and Medicaid regulation and may receive separate private sector accreditation.

Facility registration is not needed to control scope-of-practice infringement or to enforce physical therapy and occupational therapy regulation.

Although the violation of practicing in an unregistered facility as a percentage of all executive council disciplinary actions has been negligible in years past, this percentage has been rising in recent years, accounting for more than a quarter of the disciplinary actions taken against physical and occupational therapy licensees in fiscal year 2015. While the program was designed to gain accountability over people and entities not otherwise under the agency's

jurisdiction who might be providing physical and occupational therapy services illegally, in practice the accountability has fallen exclusively on the physical and occupational therapy licensees that facilities employ, rather than the facility owners. Any licensee providing care in a facility that is late with its registration renewal is considered to be in violation of statute and subject to disciplinary action, even if the licensee had no responsibility in the management of the business or the renewal of the registration. As a result, virtually all disciplinary action concerning these facilities has been taken against licensees, not facility owners. In the history of the program, a facility's registration has never been revoked. The requirement has simply served as an instrument for data collection and assessment of fees.

A facility's registration has never been revoked.

Executive council staff has occasionally used facility data to locate a licensee whom an individual could not identify for purposes of filing a complaint. However, such information or other data related to licensees' work settings could simply be required through the licensee renewal process. In fact, as part of the minimum data set that most state regulatory boards for health occupations collect and report to the Department of State Health Services, licensees must already provide similar information during the license renewal process.

Facility registration is burdensome on the regulated community and an unwarranted distraction for the executive council.

Agencies generally set fees to cover the cost of the regulated activity. However, facility fees bring in approximately $966,000 annually, well beyond the agency's cost for the program, estimated at $42,500 annually. While the registration fees create a windfall to the state for no clear regulatory purpose, their one-size-fits-all approach is more of a financial hardship on small facility owners without the means of larger corporate-owned facilities.

In addition, the Texas Board of Physical Therapy Examiners (PT board) in particular has been relatively severe in its enforcement of the prohibition on practicing in a facility that lacks current registration. Until a January 2016 policy change, the PT board had dealt with such violations generally by suspending licenses of all practitioners for a duration of half the time they had practiced while the facility's license was expired. Since the change, the PT board imposes administrative penalties, again tied to the time practicing in a facility with an expired registration, with the standard penalties being $1,000 for the facility owner, $1,000 for the physical therapist-in-charge, $500 for each licensee practicing at the facility, and $1,500 for a PT who owns and practices in the facility. These penalties exist despite no proof of harm for a paperwork violation over which no practitioner other than the facility owner has control.

Penalties exist despite no proof of harm.

While the facility registration does not require a lot of staff effort, time spent should still apply to needed, useful activities. As noted earlier, based on estimates of resources required from licensing and enforcement staff to administer facility registration, total annual staff costs amount to approximately $42,500. These resources could be put to better use.

Recommendation

Change in Statute

1.1 Discontinue the registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.

As a result of this recommendation, owners of facilities that provide physical or occupational therapy services would no longer have to register with their respective boards or pay a fee to the executive council. The recommendation would authorize the two regulatory boards to require licensees, as a condition of licensure, to provide necessary information regarding places of employment and to do so in a readily accessible and usable manner.

In addition, this recommendation would authorize the boards to establish a process for expunging from a licensee's record any disciplinary action for the violation of practicing in an unregistered facility. Expunction would only apply to a disciplinary action for practicing in an unregistered facility. This temporary authority would expire two years from the effective date of the Sunset legislation.

Fiscal Implication

Based on revenue generated from facility registration fees in fiscal year 2015, the recommendation to discontinue the registration of physical and occupational therapy facilities would result in the loss of approximately $966,000 per year to the General Revenue Fund, beginning in fiscal year 2018. Any additional revenue lost to the state from the PT board no longer collecting administrative penalties cannot be estimated at this time.

Executive Council of Physical Therapy and Occupational Therapy Examiners

Fiscal Year	Loss to the General Revenue Fund
2018	$966,000
2019	$966,000
2020	$966,000
2021	$966,000
2022	$966,000

[1] Title 22 T.A.C. Section 347.4 and Title 40 T.A.C. Section 376.3.

Issue 2

The Physical and Occupational Therapy Statutes Unnecessarily Impede Increasingly Mobile Workforces.

Background

Physical and occupational therapy practitioners are among the allied health professionals whose numbers were deemed "woefully insufficient" to meet demand according to the most recent Texas State Health Plan.[1] Such health professionals play an important role in the delivery of health care, working with other providers like physicians to evaluate and assess patient needs or working independently as specialists in matters like rehabilitation and daily functions. Despite the growth in recent years in the number of these therapy providers in Texas, access gaps remain. According to data from the Bureau of Labor Statistics in 2014, Texas accounted for 8.4 percent of the nation's population, yet only 5.8 percent of the nation's physical therapists.[2] Although the outlook for occupational therapists is better, Texas' overall concentration of physical therapists is the third lowest in the nation behind Puerto Rico and Oklahoma.[3]

Licensing agencies like the Executive Council of Physical Therapy and Occupational Therapy Examiners are primarily concerned with ensuring that only individuals with adequate training and demonstrated knowledge can practice in a given profession. However, these agencies must ensure that policies and processes only relate to the ability to do the work safely and do not impose unfair barriers to entry to a regulated profession. While agencies generally do not overtly address shortages of practitioners, their policies and processes can have a significant impact on the ability of people to enter a profession. This impact may be seen in how appropriately an agency judges qualification of both applicants for initial licensure and persons licensed elsewhere who wish to practice in this state.

The licensure processes for physical and occupational therapy practitioners generally follow the same paths. Like physical and occupational therapy regulators in other states, the Texas Board of Physical Therapy Examiners (PT board) and Texas Board of Occupational Therapy Examiners (OT board) recognize established education, training, and examination requirements for licensing initial applicants and individuals from other states. Accrediting bodies affiliated with the national trade associations for physical and occupational therapy establish minimum standards for education programs, specifying necessary coursework, clinical knowledge, and degree level required to sit for the examination.[4] Other national organizations for physical and occupational therapy develop and administer the required national licensure examinations.

Having standard national approaches for considering education, prior experience, and examination in licensing physical or occupational therapists means that all practitioners must meet the same basic requirements. These national efforts simplify the consideration of licensees from other states to practice in Texas. The boards provide a path for practitioners licensed elsewhere to acquire a Texas license without having to re-take the national examination or resubmit degree information. In the past 10 years, the agency has issued over 7,100 physical therapy licenses and 3,900 occupational therapy licenses to practitioners already licensed in another jurisdiction. In 2015, about 3,400 physical therapy and about 2,000 occupational therapy licensees resided out of state.

Findings

Texas law does not recognize an interstate licensure compact that would streamline the licensure of physical therapy practitioners.

Under current law, physical therapists and physical therapy assistants must seek licensure in each state in which they practice. Physical therapy practitioners from other states applying for licensure must demonstrate proper educational qualifications and examination results, pass a jurisprudence examination to show familiarity with state laws and regulations, and pay license fees. Agency staff verify this information and make sure these practitioners do not have any disciplinary action in another state or criminal history that would disqualify them from practicing in that state. While national education standards and a national examination help this process work more smoothly, the licensee and agency staff make considerable efforts to satisfy licensure requirements.

Compacts encourage states to recognize each others licensees without requiring licenses in each state.

Another model exists to ease the process for experienced professionals to obtain licenses without sacrificing public safety standards, notably the interstate licensure compact. Such compacts are formal agreements that arise from national organizations to encourage states with similar standards to recognize each other's licensees without requiring a separate license in each state. Compacts typically begin as efforts of national organizations preparing the statutory framework that state legislatures may adopt. When a minimum number of states join the compact to make it viable, those states form a compact commission to adopt and implement rules for administering the compact.

Adopting a compact would give licensees in a member state the option to acquire a "compact privilege" to practice in other member states more quickly, simply, and cheaply than having to obtain and renew multiple regular licenses. Licensees must pay a fee for this privilege and must demonstrate knowledge of the other state's laws and regulations via a jurisprudence examination. Compacts do not affect the scope of practice as specified in participating states. Licensees working away from one's home state would be governed by the other state's laws and regulations and subject to that state's disciplinary processes, with action taken against the person's privilege to practice in that state. Compacts require reporting of enforcement and disciplinary actions to notify other member states of the status of a licensee's privilege and to enable the home state to take action against the licensee for violating state laws or regulations. To verify licensees' identities, compacts may require the submission of social security numbers as a condition of joining the compact because they enable compacts to establish a unique identifier among multiple states.

The Legislature has adopted compacts for nurses, advanced practice registered nurses, and EMS personnel.

Basically patterned after the interstate compact for driver's licenses, compacts for occupational licensing recognize the benefit of easing the ability to work across state lines for professions where standards nationwide are fairly similar. The Legislature has adopted compacts for nurses in 1999, advanced practice registered nurses in 2006, and emergency medical services personnel in 2015.[5] The Federation of State Boards of Physical Therapy, the organization of

state physical therapy regulators that also administers the national licensing examination, introduced the Physical Therapy Licensure Compact in fall 2015. To date, the compact has been enacted in Oregon, and is in varying stages of legislative adoption in Tennessee, Missouri, and Arizona. The Legislature has not yet authorized the PT board to join the compact.

The physical and occupational therapy boards lack clear statutory authority to license by endorsement.

Endorsement is a common practice in which agencies basically recognize licensed practitioners in other states who meet substantially the same requirements imposed in Texas. With the advent of national accreditation of education providers and national examinations, endorsement processes are less cumbersome than in the past when each state had its own requirements. However, endorsement is still meaningful in providing a path to licensure for practitioners in other states without having to re-prove their qualifications and retake the licensing examination. In addition, even if an interstate licensing compact for physical therapy were adopted, the PT board would still need endorsement to recognize licensees from states that have not adopted the compact.

Endorsement provides for licensing practitioners from other states without having to re-prove their qualifications.

Without clear endorsement authority in statute, the agency relies on its provisional licensure authority to approve qualified practitioners from other states while staff processes applications. With today's processes and technology, licenses for complete applications can be issued on a same-day basis. Providing clear authority to issue licenses by endorsement will ensure an expedited path to Texas licensure for qualified licensees elsewhere.

The agency does not have authority to allow occupational therapy assistants common temporary exemptions from licensure.

Statute exempts out-of-state physical and occupational therapy professionals who travel to Texas for certain educational or temporary assignments from having to seek a Texas license.[6] These provisions specifically apply to physical and occupational therapists and physical therapist assistants, but do not include occupational therapy assistants.[7] This omission constrains occupational therapy assistants' educational opportunities and may prevent them from assisting in short-term emergencies or special projects.

The Legislature no longer needs to specify education standards for physical and occupational therapy licensees.

A common qualification for licensure is a requirement to obtain a certain level or degree of education in a specified field of study before an applicant is eligible to sit for a licensing examination. As national entities oversee the educational qualifications for licensure, the statutes for physical and occupational therapy tie education requirements to completion of accredited education

programs meeting standards and degree levels prescribed by national entities, not individual states.[8] When these national entities increase minimum degree requirements needed for licensure, educational institutions go along to maintain accreditation so their graduates will qualify to sit for the national licensure exam. Through this process, all educational programs for physical therapists only offer a doctoral degree, while programs for occupational therapists offer either a master or doctoral degree.

Statute reflects requirements of a bygone era.

By tying educational standards to accreditation, the Legislature has eliminated the need to have specific educational requirements in statute. However, statute continues to reflect requirements of a bygone era when the state, as in the case of physical therapy, established entry-level educational standards and then developed and administered its own licensing exam. The chart, *Requirements for Entry-Level Licenses*, compares the current degree requirements with the other statutory requirements for physical and occupational therapy licensure still in law that no longer apply. Removing these outdated prescriptions, such as the fieldwork requirement that is now required for occupational therapy students to take their qualifying examination, would allow statute to reflect current educational requirements for physical and occupational therapy.

Requirements for Entry-Level Licenses

License	Degree of Accredited Program	Outdated Statutory Requirements
Physical Therapist (PT)	Doctorate of Physical Therapy	60 academic semester credits from institution of higher education (if demonstrating "substantial equivalence")
Occupational Therapist (OT)	Master or Doctorate of Occupational Therapy	Six months of supervised fieldwork (which is arranged by the degree program)
Physical Therapist Assistant (PTA)	Associate degree or higher	Coursework in anatomical, biological, physical sciences and clinical procedures; program must be associated with institution of higher education
Occupational Therapy Assistant (OTA)	Associate degree or occupational therapy assistant certification	Two months of supervised fieldwork (which is arranged by the degree program)

Recommendations

Change in Statute

2.1 Adopt the Physical Therapy Licensure Compact.

This recommendation would add the Physical Therapy Licensure Compact language to statute, with an added authorization for the board to share licensees' social security numbers with the Compact Commission. The compact would not affect the scope of practice for any type of licensee. The Legislature would still have authority over the physical therapy board and the practice of physical therapy in the state through the Texas Physical Therapy Practice Act and other applicable state laws.

Adopting the compact allows qualified physical therapy licensees from other member states to obtain privileges to practice in Texas without having to go through the board's standard licensing process. Licensees residing in Texas would need a Texas license before applying for privileges to practice elsewhere, and compact privileges cease if the license expired. Until 10 states adopt the compact, the Compact Commission cannot convene to establish rules and fees. The compact would contain the following provisions.

- Requires those practicing in Texas to comply with the Texas Physical Therapy Practice Act and board rules.
- Authorizes the PT board to fine an out-of-state physical therapy practitioner and/or end the practitioner's compact privileges for violating the Texas practice act or board rules. Suspensions or revocations of a home state license would be the responsibility of the home state.
- Requires the PT board to participate in a coordinated database and reporting system that includes licensure, adverse actions, and investigative information on each licensee in compact states. The physical therapy board would send a uniform data set with the items listed in the textbox, *Compact Uniform Data Set Requirements*, to the Compact Commission — including the authorized transmission of social security numbers — and conduct fingerprint background checks on licensees.[9] Licensees are already required to disclose their social security numbers to the federation to take the required national examination. The use of social security numbers also has precedent — in adopting the Nursing Licensure Compact, the Legislature authorized the Nursing Board to transmit social security numbers.

Compact Uniform Data Set Requirements

- Identifying information
- Licensure data
- Adverse actions against a license or privilege
- Non-confidential information on alternative program participation
- Any denial of application for license and the reason(s) why

- Provides for a PT board member to serve as the delegate to the compact commission.
- Authorizes the board to develop rules as necessary to implement the compact.

2.2 Provide clear statutory authority for licensure by endorsement.

This recommendation would clarify statute by adding authorization for the boards to license out-of-state practitioners by endorsement. An individual licensed through the endorsement process would continue to have to pass the boards' jurisprudence exams and meet the boards' other requirements.

2.3 Clarify that occupational therapy assistants licensed in other states may practice in this state temporarily under the same conditions as occupational therapists.

This recommendation would provide for occupational therapy assistants licensed in other states to be exempt from license requirements to practice temporarily in Texas in certain capacities and under certain circumstances already in statute for occupational therapists. This would ensure that the exemptions to licensure, which already have strict boundaries in statute, apply fairly to all licensees.

2.4 Remove provisions prescribing educational requirements beyond completion of an accredited program or substantially equivalent to an accredited program.

This recommendation would remove outdated statutory language that prescribes, as requirements for licensure, such requirements as coursework and fieldwork that are now established in program accreditation. These statutory requirements that are no longer necessary are shown in the chart on page 16, *Requirements for Entry-Level Licenses*. This recommendation would require all licensees to demonstrate that the educational entry-level programs from which they graduated are either accredited or "substantially equivalent" to an accredited program at the time of their graduation, standardizing and simplifying the process within the practices and between the boards. These changes would ensure requirements to practice in Texas remain relevant and reflect maturing standards of education and practice. This recommendation would not affect the status of any license that has already been granted.

Fiscal Implication

Recommendation 2.1 would have a fiscal impact which, however, is not estimable. The state would likely lose some licensing fee revenue among the approximately 13 percent of physical therapy licensees who reside out of state if they opt for a compact privilege in Texas in lieu of a Texas license. The total fiscal impact will depend on how many states adopt the compact and thus how many compact privileges are issued. However, the compact provides for collecting and remitting fee revenue to member states on every compact privilege issued to practice in their state, offsetting the potential license revenue loss. Texas licensees who reside in non-member states would have to renew their license and pay renewal fees, as they do now, to practice in Texas. In addition, the compact could produce administrative efficiencies once the compact is widely adopted, due to reduced applications for licensure from out of state practitioners.

Recommendations 2.2 to 2.4 would have no fiscal impact to the state.

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1 Texas Statewide Health Coordinating Council, S*tate Health Plan 2011–2016: A Roadmap To A Healthy Texas*, accessed February 25, 2016, https://www.dshs.state.tx.us/chs/shcc/reports/SHP2011-2016.pdf, iv.

2 U.S. Census Bureau, "Monthly Population Estimates for the United States: April 1,2010 to December 1, 2016", accessed March 1, 2016, http://www.census.gov/popest/data/national/totals/2015/index.html; U.S. Census Bureau, "Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2015", accessed March 1, 2016, http://www.census.gov/popest/data/state/totals/2015/index.html.

3 Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2016–17 Edition*, Physical Therapists, accessed January 6, 2016, http://www.bls.gov/ooh/healthcare/physical-therapists.htm.

4 "Standards and Interpretive Guide Vision," Accreditation Council for Occupational Therapy Education, accessed February 29, 2016, http://www.aota.org/-/media/Corporate/Files/EducationCareers/Accredit/Standards/2011-Standards-and-Interpretive-Guide.pdf ; "CAPTE Accreditation Handbook," Commission on Accreditation in Physical Therapy Education, last updated February 5, 2016, http://www.capteonline.org/AccreditationHandbook/.

5 All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 304, Texas Occupations Code, and Section 778A, Texas Health and Safety Code.

6 Sections 453.004 and 454.005, Texas Occupations Code.

7 Sections 454.005(b)(5), Texas Occupations Code.

8 Sections 453.203(a)(1) and 454.204, Texas Occupations Code.

9 Federation of State Boards of Physical Therapy, *Physical Therapy Licensure Compact*, accessed October 15, 2015, http://www.fsbpt.org/Portals/0/documents/free-resources/LicensureCompactLanguage_20151006.pdf.

Issue 3

Key Elements of the Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.

Background

The Executive Council of Physical Therapy and Occupational Therapy administers and oversees the regulation of physical and occupational therapy through a unique arrangement with separate boards responsible for specific aspects relating to licensing, practice requirements, enforcing regulations, and taking disciplinary action when required.

The Sunset Advisory Commission has a long history evaluating licensing agencies, as the increase in occupational regulation was an impetus behind the Commission's creation in 1977. Since then, the Sunset Commission has completed more than 100 licensing agency reviews, documenting standards in reviewing licensing programs to guide reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. Sunset staff continues to refine and develop standards, reflecting additional experience and different or changing needs, circumstances, or practices in licensing agencies. The following material highlights areas where Sunset staff found licensing and enforcement processes in the boards' statutes and rules do not match model standards and common practice by comparable agencies, and describes the potential benefits of conforming to standard practices.

Findings

Provisions of the boards' statutes and rules relating to their regulatory structure do not follow model practices and could potentially affect the operations of the executive council and boards.

- **Consistency between statute and actual operations.** A regulatory agency's statute does more than provide the legal basis for its duties, responsibilities, and operations. It also guides agencies in how to conduct their business; specifies the expectations of practice for licensees and license applicants; and details for the public and stakeholders the state's interest in the regulatory activity. An agency's operations may not reflect its statute for good reason, such as external changes affecting an agency's work; outdated statutory language no longer reflecting commonly accepted practice; and imprecise language that does not provide a clear course of action.

  The mismatch between the statutes for the Texas Board of Physical Therapy Examiners (PT board) and the Texas Board of Occupational Therapy Examiners (OT board) and the boards' duties and operations may not endanger the public, but continue to misrepresent fundamental aspects of the agency to licensees, the public and stakeholders, and even agency

Statutes misrepresent fundamental aspects of the agency.

staff. Synchronizing statute and agency operations would promote a better understanding of the agency and better guide its operations, particularly in the following areas.

Examinations. The statutes for both boards contain language related to administering their own qualifying examinations for licensees. A national examination body has always administered the occupational therapy qualifying examination, and a national body for physical therapy has administered that profession's qualifying examination for Texas since 1997. The national examination body also determines eligibility of applicants for occupational therapy licenses to take the national licensure examination, and plans are underway to do the same for applicants for physical therapy examination by late 2016.

National examination bodies administer qualifying examinations for physical and occupational therapy.

Separately, statute requires only applicants already licensed in another state to complete a jurisprudence examination that tests knowledge of the relevant Texas practice act and board rules.[1] In practice, however, the boards have extended this requirement to all applicants for licensure. Ensuring all licensees are familiar with statutes and board rules that govern their profession is a best practice that should be clearly reflected in state law.

Staff Responsibilities. Statute requires the executive council's board coordinators to report to the boards about certain investigation matters. However, the executive council's investigative personnel actually report on such matters because they are responsible for investigations. This overly prescriptive requirement makes it harder for the agency to organize in the most effective manner, and could jeopardize disciplinary actions because of the boards' technical noncompliance with statute.

Licensing provisions in the boards' statutes and rules do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer safety.

- **Improper delegation of continuing education approval**. Licensing agencies should require continuing education — or continuing competence as it is known in physical therapy — to ensure licensees keep up with advances in their field. Agencies generally administer continuing education through a process of developing rules, approving activities that meet those rules, and auditing licensees for compliance. To facilitate this effort, agencies may preapprove all courses offered or approved by certain organizations provided the activities meet the agencies' requirements. Besides courses, some agencies also preapprove categories of educational "activities," such as teaching, advanced certifications, and presentations.

The PT board has inappropriately delegated continuing education approvals.

Agencies typically maintain processes for evaluating and approving activities offered outside preapproved categories and providers. The OT board, Board of Pharmacy, and others oversee continuing education in the above manner. In the case of the OT board, licensees are not required to complete preapproved activities, but may select and complete activities that meet

OT board rules on continuing education. If the licensee is audited for compliance with continuing education requirements, agency staff would determine if the activity is acceptable. This process allows licensees to select activities from the marketplace of continuing education offerings that make sense for their practice, provided they comply with board rules.

In contrast, while the PT board has enacted standards for continuing competence activities, it has inappropriately delegated the review and approval of all licensees' continuing competence that falls outside preapproved categories to the Texas Physical Therapy Association (TPTA) — a course provider — rather than executive council staff. Under the delegation from the PT board, competing continuing competence providers must apply to the association either for approval of the individual activities they offer or to become a TPTA-accredited provider.[2] If a licensee obtains continuing competence that is not in a preapproved category or lacks TPTA approval, the licensee must obtain approval by submitting an application and $40 fee to the association to receive credit for the continuing competence. Appendix C, *Texas Physical Therapy Association (TPTA) Continuing Competence Approval*, and the textbox, *How Licensees Obtain Individual Continuing Competence Approval*, offer more detail on the costs associated with the PT board's continuing competence approval process.

How Licensees Obtain Individual Continuing Competence Approval

If licensees complete activities that have not been pre-approved by the board or lack a TPTA approval number, they must submit documentation to TPTA and a $40 fee to receive an approval number so it can count towards their license renewal. Even if the activity has already been approved for another licensee through this process, the fee is still assessed.

If licensees fail an audit because their activities are not preapproved or offered by TPTA or a TPTA-accredited provider, they must have their activities approved to resolve the audit and avoid possible disciplinary action. To obtain a resolution more quickly, licensees can pay a $100 expedited fee on top of the $40 approval fee.

In both cases, the panel of volunteer reviewers established by TPTA only determines if the activity satisfies the PT board's continuing competence criteria.

This authority to impose an additional financial hurdle on continuing competence gives the association undue advantage over competitors in the continuing competence market, particularly competitors out of state who are unwilling or unable to pay for the association's approval. Failure to take continuing competence activities that are not approved or taken through TPTA-accredited providers also leads to higher rates of audit failures for the PT board than the OT board. Statute also permits the OT board to delegate continuing education approval, though the board has not used it. While the PT board has an interest in verifying the legitimacy of continuing competence activities, outsourcing this responsibility to a single professional association appears anti-competitive, adds an undue additional cost to licensees, and is neither necessary nor appropriate to protect the public.

- **Missing fingerprint background checks**. Occupational therapy and physical therapy licensees often practice outside regulated locations, including in clients' residences, and their practices also involve physical contact with clients. However, neither board uses the most accurate and comprehensive means to ensure licensees do not have a criminal history

that would place a client's health or safety at risk. Licensing agencies commonly conduct criminal background checks using the Department of Public Safety's (DPS) fingerprint system, which accurately identifies the individual, provides automatic updates, and uncovers criminal history on applicants and licensees nationwide. The PT and OT boards only require applicants and renewing licensees to self-disclose if they have a criminal history, and the agency searches state records for criminal history information matching the names of those who do disclose. However, reliance on self-disclosure and following up with name-based checks does not fully assess an applicant's history to ensure their safety to practice, as the system does not capture all local or out-of-state records. Requiring fingerprint checks for initial and renewing licensees would ensure the boards assess criminal history and is also a prerequisite for Texas to join the Physical Therapy Licensure Compact.

Reliance on self-disclosure of criminal history does not ensure an applicant can safely practice.

- **Subjective qualifications for licensure and registration**. Qualifications for licensure should not overburden applicants or restrict their entry to practice unreasonably. Currently, statute requires foreign-trained applicants to furnish proof of "good moral character."[3] Good moral character is a vague requirement that can be applied inconsistently. In practice, the boards review applicants' criminal history and deny licensure for activity that relates to the applicant's profession, in accordance with Chapter 53 of the Occupations Code, which governs how licensing agencies use criminal history information. Besides creating a disparity between applicants trained in the United States versus abroad, this requirement is subjective, not clearly related to practice, and difficult to evaluate and enforce. Removing this requirement of good moral character would be in line with current practice of reviewing criminal history and would better ensure that qualifications for licensure relate to the practice of physical or occupational therapy and that entry into practice is not restricted arbitrarily.

- **Unclear grounds for denial of licensure**. Chapter 53 of the Texas Occupations Code provides a general standard to guide licensing agencies in determining what crimes should affect licensure for that agency. In general, this law provides that a criminal conviction may affect a decision to deny an applicant a license or to take action against a current licensee when a crime relates to the profession, according to guidelines adopted by the agency. The PT board has such rules regarding the consequences of a criminal conviction. The Occupational Therapy Practice Act authorizes the OT board to deny or sanction a license based on criminal history, drug usage, and fraud, among other reasons.[4] However, the OT board rules do not specify which criminal activities are cause for denying or sanctioning a license beyond those considered "detrimental practice."[5] Consequently, occupational therapy licensees only have a code of ethics, which is just a statement of general principles, to guide them.[6] Formulating a list comparable to what the PT board uses would clarify the expectations of occupational therapy licensees and bring more transparency to the disciplining of licensees who commit a crime.[7]

Nonstandard statutory enforcement provisions and internal policies could reduce the boards' effectiveness in protecting the public.

- **Implementing administrative dismissal**. A licensing agency's staff should have the authority to dismiss certain low-level complaints without having to involve the board, provided the staff informs the board of all such dismissals. Both boards have the authority to dismiss cases, and the PT board has granted executive council staff administrative dismissal for a small set of drug- and alcohol-related misdemeanors in an applicant's criminal history, offenses the board consistently found were not sufficient grounds to deny a license. Staff keeps the PT board apprised of all cases that are slated for dismissal under this authority, which does not apply to drug or alcohol cases that arise after the board issues a license. By contrast, the OT board has not given the executive council staff administrative dismissal authority for any complaints against occupational therapy licensees. Administrative dismissal like that of the PT board would allow the OT board to focus more time and resources on more serious incidents that require license sanction or denial and would speed up case resolution.

- **Forwarding non-jurisdictional complaints**. High quality service to the public requires that licensing agencies have procedures in place to refer complaints not within their jurisdiction to the appropriate agency to ensure they are addressed. Agencies should also keep track of non-jurisdictional complaints to have a full picture of the public's problems and concerns in a given regulatory area. When the executive council receives non-jurisdictional complaints, staff directs the individuals who file complaints to the entity with jurisdiction but does not implement the best practice of referring non-jurisdictional complaints to the appropriate state entities. Further, while the agency logs and reports the number of non-jurisdictional complaints it receives each year, the agency does not collect other information about these complaints, which could help the state better identify gaps in enforcement and enhance coordination between the boards and other government entities.

Collecting additional complaint information could help the state better identify gaps in enforcement.

- **Publishing a schedule of sanctions**. Agencies should have procedures to ensure that they can apply all sanctions and scale them to the nature of the violation to help ensure consistency and fairness in disciplinary actions. Both boards are charged with adopting a schedule of sanctions for use in disciplinary actions that take place at the State Office of Administrative Hearings (SOAH).[8] Because the boards have not had a disciplinary action go to a SOAH hearing in over 10 years, they lack a schedule of sanctions or disciplinary matrix. Instead, for informal investigative and general board meetings where the boards consider and decide on all investigative and enforcement matters, the executive council maintains a list of previous violations and resulting enforcement actions from the past five years. However, this list is not publicly available, and the boards leave it to the

enforcement staff to recommend the suggested penalty. Adopting a fully developed penalty matrix would promote consistency and transparency in the boards' disciplinary matters regardless of venue.

Recommendations

Change in Statute

3.1 Clarify statutes to reflect current standards and conditions.

This recommendation would amend statute as follows to reflect operational changes the boards have adopted since their last Sunset review in 1993:

- Revise examination requirements to eliminate references to the boards administering their own qualifying examinations and instead reflect the use of national examinations for both physical therapy and occupational therapy
- Authorize the boards to require jurisprudence exams of all licensees
- Eliminate the provision that specifies which executive council staff are required to report to the boards on investigations

These changes would ensure that the statutes governing the executive council and boards accurately reflect where the agencies have made beneficial changes in the name of accountability and efficiency. These changes would also remove unnecessarily prescriptive and outdated provisions from statute while preserving the boards' ability to operate effectively in the future.

3.2 Remove the boards' authority to delegate to other entities the responsibility of approving continuing education and continuing competence while clarifying their authority to preapprove course providers.

This recommendation would remove the authority of the PT and OT boards to authorize external organizations to operate as the *sole* approval authorities for continuing competence or continuing education activities. This recommendation would not change the way the OT board currently oversees continuing education, but would remove the ability for either board to delegate approval of continuing education or continuing competence to a single entity as the PT board has done with the Texas Physical Therapy Association. Both boards would continue to be able to preapprove external organizations for activities they provide and for the activities offered by providers they accredit. However, when completing audits of continuing competence and continuing education, the responsibility to review and approve activities that are not preapproved would fall to the agency. This process would reflect the way the occupational therapy continuing education audits works. Both boards would retain the authority to adopt rules and procedures as necessary to fulfill this and other statutory requirements.[9] These procedures could include use of volunteers to examine non-preapproved courses if the agency so chooses.

3.3 Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.

Fingerprint checks through the Department of Public Safety would replace the current system of name-based checks only on licensees and applicants who self-disclose criminal history. Licensees and applicants would use the state's fingerprint vendor to collect and submit fingerprints. Prospective licensees would

provide fingerprints at the time of application, and existing licensees would provide fingerprints upon their next renewal. Applicants and licensees would pay the approximate $40 cost.

3.4 Require the boards to develop a disciplinary matrix.

Under this recommendation, the boards must adopt a disciplinary matrix in rule to match violations with the level of sanction based on the nature and seriousness of the violation, compliance history, and other aggravating and mitigating factors. The matrix should include a range of administrative penalties and sanctions against a licensee, and relate the appropriate fines and sanctions to different violations based on their severity and other factors, and should include increased penalties for repeat violations. This change would ensure that the agency applies sanctions and penalties fairly and consistently.

3.5 Remove the "good moral character" standard as a criterion for foreign-trained licensure applicants.

This recommendation would remove the requirement for foreign-trained applicants to prove "good moral character," a standard that is unclear, subjective, and difficult to enforce. The boards would still receive and review criminal history information to determine if an applicant qualifies to practice in Texas.

Management Action

3.6 Direct the OT board to adopt rules to specify the types of criminal activities that may result in denial, suspension, or revocation of a license.

This recommendation would direct the OT board to establish guidelines in accordance with the requirements of Chapter 53 of the Occupations Code when specifying the types of criminal activities that would affect licensing qualifications. Guidelines must state the reasons the board considers a particular crime relates to the licenses issued and include any other factors that affect the board's decisions. Adopting such guidelines into board rules would ensure applicants and licensees have full knowledge of the types of criminal activity that could result in denial or other action against their professional license.

3.7 Direct the OT board to grant administrative dismissal to staff for low-level misdemeanor offenses.

This recommendation would provide for staff to dismiss minor criminal cases against occupational therapy applicants, provided staff informs the OT board of cases disposed of under that authority. This recommendation would promote consistency between the boards and reduce time spent by the OT board reviewing these cases, which virtually never prevent an applicant from obtaining a license.

3.8 Direct the agency to develop a formal process to refer non-jurisdictional complaints to the appropriate agency.

This recommendation would direct executive council staff to document the subject matter of non-jurisdictional complaints and forward them to the appropriate agency, rather than relying on the complainant to do so. This recommendation would also direct staff to maintain information about and track non-jurisdictional complaints, not just the number of non-jurisdictional complaints received. Formal referral of non-jurisdictional complaints would ensure all complaints arrive at the proper authority and receive a proper evaluation, and tracking non-jurisdictional complaints would enable the boards to identify trends and potential areas of regulatory concern while enhancing greater coordination with other agencies.

Fiscal Implication

Requiring fingerprint-based criminal background checks would require licensees to pay a one-time fee of approximately $40 to a Department of Public Safety approved fingerprint vendor to cover the cost of fingerprint checks and would not have an impact to the state. The agency may need to conduct more criminal history investigations if the checks identify more criminal histories as expected. However, the agency indicates it should be able to resolve those investigations with existing staff resources. Requiring the executive council staff to approve certain non-accredited continuing competence courses may slightly increase workload. However, the executive council should be able to fulfill this responsibility using existing resources and has sufficient fee authority to recover added costs if determined to be necessary.

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1 All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Sections 453.209(d) and 454.210(c), Texas Occupations Code.

2 22 T.A.C. Section 341.2(h) and 22 T.A.C. Section 341.3; "TBPTE Changes Expand Qualifying CC Activities," Texas Physical Therapy Association, accessed March 23, 2016, http://www.tpta.org/?page=CCChanges030114.

3 Sections 453.204(b)(1) and 454.205(b)(1), Texas Occupations Code.

4 Sections 53.021 and 454.301, Texas Occupations Code.

5 40 T.A.C. Section 374.2.

6 22 T.A.C. Section 343.9; 40 T.A.C. Section 374.4.

7 22 T.A.C. Section 343.9.

8 Sections 453.352(c) and 454.302(c), Texas Occupations Code.

9 Sections 453.102 and 454.102, Texas Occupations Code.

Issue 4

The State Has a Continuing Need to Regulate Physical Therapy and Occupational Therapy.

Background

In the broadest sense, physical and occupational therapy are healthcare professions providing rehabilitation and other services that deal with the proper functioning and movement of the body and the performance of the tasks and functions of everyday life. Both therapies have similar roots, arising from efforts to treat veterans of World War I. Today, physical therapy is seen as a way to address acute or prolonged movement dysfunction, bodily malfunction, and related pain; occupational therapy is recognized as a way to help overcome physical or emotional dysfunction and maximize function in a person's life. Both physical and occupational therapy professionals work in a variety of inpatient and outpatient settings with geriatric, pediatric, sports, palliative, and other categories of patients.

The Legislature created the Texas Board of Physical Therapy Examiners (PT board) in 1971 to license and regulate physical therapists and physical therapist assistants in the state. Texas began regulating occupational therapists and occupational therapy assistants in 1983 when the Legislature established the Texas Advisory Board of Occupational Therapy within what was then called the Texas Rehabilitation Commission. Through Sunset legislation in 1993, the Legislature created the Texas Board of Occupational Therapy Examiners (OT board), merged its administrative functions with those of the PT board, and established the Executive Council of Physical Therapy and Occupational Therapy Examiners. The executive council comprises two members from each board and a separately appointed public member, and provides staff and oversight functions for the boards, such as establishing fees for the boards' licensees and registered facilities and approving the boards' rulemaking proposals. In fiscal year 2015, the boards regulated about 16,000 physical therapists and 8,300 physical therapist assistants and about 9,000 occupational therapists and 4,800 occupational therapy assistants. The boards also registered about 2,600 physical therapy facilities and 1,400 occupational therapy facilities.

Findings

Because of the potential for harm to patients, Texas has an interest in regulating physical and occupational therapy.

Physical and occupational therapists do not work under the supervision of a physician.

Physical and occupational therapy belong to a class of allied health professions that do not present as high a risk to patient health and safety as physicians, dentists, pharmacists, and nurses, but play an important role in patients' well-being and may still cause considerable harm. Physical and occupational therapy professionals have direct physical contact with patients, many of whom are from vulnerable populations, such as people with disabilities, children, and the elderly. Further, unlike other allied health professionals, physical and occupational therapists do not work under the supervision of a physician or other healthcare practitioner.

Physical and occupational therapists may design and implement a plan of care for their patients, reflecting a high degree of technical and scientific training

and expertise. Occupational therapists must have a minimum of a master's level degree while physical therapists must now complete a doctoral-level education. In addition, both professions can bill Medicaid and Medicare for their services. The demand for physical and occupational therapy services is likely to increase with the aging of the population and the greater need for rehabilitative and therapeutic services. As with doctors and nurses, the state also experiences chronic shortages in physical therapists and, to a lesser extent, occupational therapists.[1] Finally, all other states regulate physical and occupational therapy.

All other states regulate physical and occupational therapy.

While ample reason exists for regulating allied health professions like physical and occupational therapy under an umbrella agency structure, suitable options are not currently available to justify the added cost and disruption.

The current Sunset review of the executive council presents a strong challenge in determining the most suitable organizational structure for carrying out the regulation of physical and occupational therapy. By the criteria or factors that typically guide the evaluation of the appropriate organizational approach to the regulation, strong arguments can be made for moving to an umbrella structure. Ultimately, however, current limitations reduce the feasibility of this umbrella structure, tipping the scales ever so slightly on the side of maintaining the agency's independent status. The following material describes the evaluation of an independent structure compared to an umbrella agency structure.

- **Independent Agency Structure**. The state has regulated physical and occupational therapy with conjoined boards under the independent structure of the executive council since 1993. This independent status provides for focused regulatory attention on these disciplines with needed expertise from practitioner board members in developing rules and regulations and enforcing requirements on violators. The executive council and PT and OT boards operate cost-effectively and appropriately and meet their mission. The agency has maintained an experienced, professional leadership core and has been able to meet most of their legislative performance measures while generating more than three times in revenue than what the agency requires to operate. The agency is collocated with several other health regulatory agencies, allowing it to easily access best practices and learn from shared experiences of neighboring agencies. Through its participation in the Health Professions Council, the agency also collaborates with these other health licensing agencies in the areas of information technology, human resources, and staff training.

  Other aspects of the regulation of physical and occupational therapy, however, do not reflect the need for an independent structure. As allied health professions, they do not involve the same level of risk to public health and safety as of physicians, dentists, pharmacists, and nurses. Their practice requirements are not as complex and do not require the same level of technical expertise to develop regulations or to oversee enforcement activities. Complaints rarely involve practice aspects related to these

Complaints rarely involve practice aspects related to these therapies.

therapies, obviating the need for expert reviewers or in-house staff counsel for disciplinary matters.

In addition, along with the upside of collocation comes the competition with larger agencies able to pay more than the executive council, such that the agency "… has been hemorrhaging good licensing clerks and investigators after spending the time and effort to train them and retain them."[2] Also, while the executive council has retained experienced staff, six employees — representing almost 30 percent of the agency's personnel, with many in upper management — already qualify for retirement, potentially presenting risks for the future.

Almost 30 percent of the agency's personnel qualify for retirement, presenting risks for the future.

- **Umbrella agency structure**. An alternative approach to having an independent agency is the consolidation of needed regulatory programs under an umbrella structure. The state has long regulated various trades under the umbrella of the Texas Department of Licensing and Regulation (TDLR). However, the only comparable effort for health regulatory programs at the Department of State Health Services (DSHS) was ineffective and largely dismantled last session, with numerous programs moved to TDLR or the Texas Medical Board, while others were deregulated. The rationale for this change was to focus DSHS on its important public health mission by freeing it from its health occupations licensing responsibility.

  While this same rationale for moving programs from DSHS does not apply to independent agencies that already focus on licensing, an umbrella structure can still offer advantages in terms of objective, professional regulation. By specializing staff along functional lines, umbrella agencies can provide improved long-term efficiency over smaller, single-shot agencies. In addition, larger umbrella agencies can provide more avenues for developing and retaining staff, helping to insulate them against the institutional loss and disruption that can result from the departure of just a few key personnel in small agencies. Umbrella agencies can also provide a more objective regulatory approach, because their broad responsibilities typically require oversight boards comprising public members that rely on advisory committees of practitioners for expertise about the regulated field. The separation helps promote the broader public interest, minimizing the potential for the regulated community to promote its own interest when it controls the oversight boards.

  Umbrella agencies can provide improved long-term efficiency over smaller, single-shot agencies.

  The review considered structural alternatives presumed to provide these benefits, but found pitfalls that call into question whether such a change justifies the upheaval it would cause.

  The Texas Department of Licensing and Regulation. As noted above, through the 2015 Sunset review of DSHS, the Legislature voted to transfer 13 health-related programs to TDLR over the next three years. The accompanying textbox on the following page lists these agencies by their transfer dates. With this change, TDLR has effectively become an umbrella agency for the regulation of health professions, providing the

Health Programs Transferring to Texas Department of Licensing and Regulation

Fiscal Years 2016–2017

- Fitters and Dispensers of Hearing Instruments
- Orthotists and Prosthetists
- Athletic Trainers
- Midwives
- Speech-Language Pathologists and Audiologists
- Dietitians
- Dyslexia Therapists and Practitioners

Fiscal Years 2018–2019

- Laser Hair Removal Providers
- Massage Therapists
- Sanitarians
- Code Enforcement Officers
- Mold Assessors and Remediators
- Offender Education Providers

same characteristics mentioned above for objective oversight through its disinterested all-public commission and for developing and retaining staff through its larger employee base.

The advantage of TDLR's staffing has been key to the increases in administrative effectiveness and efficiency of licensing programs the Legislature has transferred to TDLR. However, to justify transferring more than 38,000 physical and occupational therapy licensees, at a time when that agency is inheriting 13 DSHS programs whose combined licensee population is more than 67,700, requires a high threshold. Based on TDLR's estimates, and in consultation with Legislative Budget Board staff, Sunset staff has determined that such a move would not result in a reduction in personnel or a cost-savings, undermining a major rationale for doing so. Specifically, TDLR indicates that it would need the same number of employees as the executive council and a one-time cost of about $440,000 to pay for transferring the licensing data from the executive council to one of TDLR's licensing systems. Thereafter, annual costs would be approximately the same. Without achieving cost savings or improving the quality of regulation, the justification for such a transfer and the upheaval it would cause is greatly diminished. In addition, the large expansion of regulatory authority bestowed on TDLR last session raises questions about its current capacity to take on more responsibility at this time.

Without cost savings or improved regulation, the justification to transfer regulation is diminished.

The Texas Medical Board. While the Texas Medical Board is not a traditional umbrella licensing agency, it regulates a number of health-related programs, including the 2015 transfer of four additional programs from DSHS. The medical board does not fit the traditional umbrella model because it regulates medical providers under a physician-oriented board instead of a structure that accounts for broader regulatory authority. Because the medical board oversees complex medical activities that pose a significant risk to public health and safety and generate substantial regulatory activity, adding programs for physical and occupational therapy, with more than 38,000 licensees, would require considerable adjustment and effort, especially at a time when the medical board is still absorbing four other licensing programs.

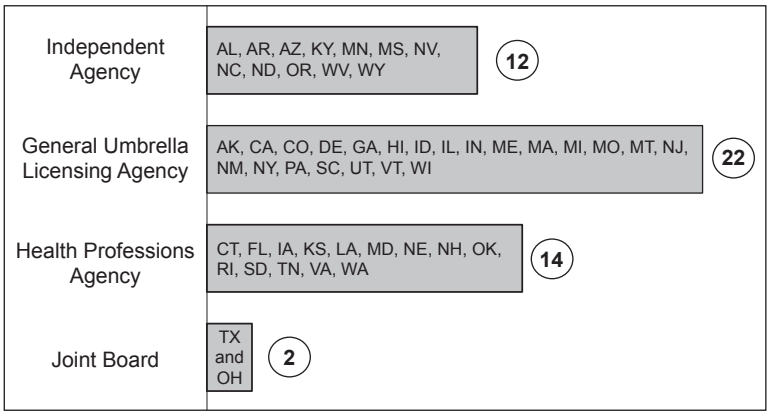
Most states regulate physical therapy and occupational therapy professionals through semi-autonomous boards.

Texas is one of only two states that regulate physical and occupational therapy under a single agency, and the other state that does this, Ohio, includes the regulation of athletic trainers as well. While 13 states have independent PT

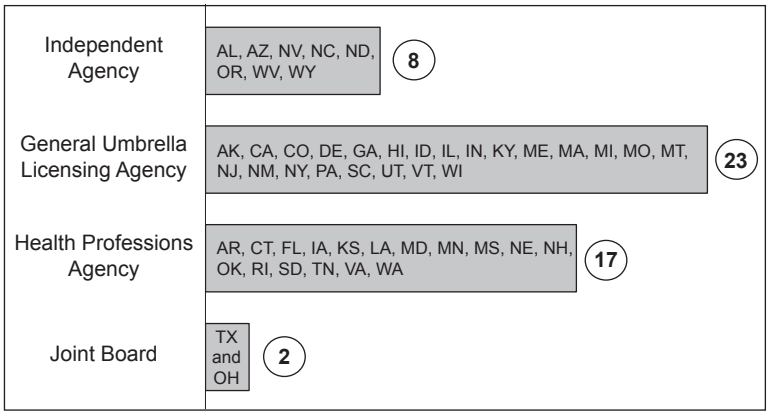
boards and eight have independent OT boards, most states house their physical and occupational therapy licensing programs under an umbrella structure of either general jurisdiction or health-related. The charts, *Regulation of Physical Therapy in the United States* and *Regulation of Occupational Therapy in the United States,* show the regulatory structure for the two disciplines in different states.

An important characteristic of a regulatory program, in addition to its structure, is the authority to enact rules or regulations. Under other states' umbrella agencies, rulemaking authority commonly resides with the agencies' administratively-attached regulatory boards, which is different from the TDLR model. Twenty-six states rely on such semi-autonomous boards to regulate physical therapy while 20 states do so for the regulation of occupational therapy.

Regulation of Physical Therapy in the United States



Regulation of Occupational Therapy in the United States



The statutes of the executive council and the boards do not reflect standard language typically applied across the board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board recommendations reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. The provisions reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government. Because the executive council and PT and OT boards have not undergone Sunset review in 24 years, many of these provisions are either missing or out of date.

- **Conflict of Interest**. The statutes lack updated standard conflict of interest language designed to prevent potential conflicts with professional trade organizations by members of the executive council, PT and OT boards and high-ranking executive council employees and ensure that agency decisions are made solely in the public's interest. A lack of protections against conflicts of interest potentially holds agency leaders and board members to a different standard than their counterparts.

- **Presiding Officer Designation**. Statute provides for the governor to appoint the presiding officer of the executive council, but not the presiding officers of the PT board and OT board. Instead, the board members elect the presiding officer from among their ranks. Having the governor designate the presiding officer of agency boards ensures more accountability of the boards to the state's highest ranking executive branch official.

Having the governor designate the presiding officer ensures more accountability.

- **Grounds for Removal**. Statutes for the executive council and boards have provisions for removing a board member under certain circumstances. However, the boards' statutes lack a provision that dictates the removal procedure when the board member in question is the presiding officer. In addition, statute requires the board coordinators to report a board member who may need to be removed, instead of the executive director who should have this responsibility.

- **Board Member Training.** Members of the PT and OT boards receive training on their roles and responsibilities before assuming their duties. However, the executive council statute does not prescribe any training requirements for the executive council's presiding officer before this individual serves in this capacity. In addition, while four of the five members of the executive council are drawn from these boards and already receive training, their roles differ as members of the executive council. The PT and OT boards are authorized to adopt rules concerning the qualifications, licensing, regulation, or practice of physical and occupational therapy, but the members of the executive council are responsible for reviewing the boards' rule proposals to ensure such proposals do not exceed the boards' rulemaking authority. The training, as such, should reflect this unique role.

- **Separation of Duties**. A policymaking body should clearly define its role of setting agency policy, and the executive director should be responsible for managing the agency's day-to-day activities. The executive council's statute requires the separation of the policymaking functions of the executive council and boards from the administrative functions of executive council staff but not separation from the executive director. In addition, statute requires the boards and executive council to define their respective responsibilities versus those of the executive council staff. Statute should require the executive council and boards to define their policymaking responsibilities and the management responsibilities of the executive director and staff.

- **Alternative Dispute Resolution**. The executive council's governing statute lacks a standard provision relating to alternative rulemaking and dispute resolution. Without this provision, the agency could miss ways to improve rulemaking and dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

Recommendations

Change in Statute

4.1 Continue the executive council, PT board, and OT board for 12 years.

This recommendation would continue the Texas Board of Physical Therapy Examiners and Texas Board of Occupational Therapy Examiners under the administration of the Executive Council of Physical and Occupational Therapy Examiners until 2029.

4.2 Apply the standard Sunset across-the-board requirements to the executive council, PT board, and OT board.

- **Conflict of Interest**. This recommendation would further specify that a person is prohibited from being a member of the executive council, boards, or staff employed in a "bona fide executive, administrative, or professional capacity," as defined in federal law, if the person or the person's spouse works for a Texas trade association for physical therapy or occupational therapy.

- **Presiding Officer Designation**. This recommendation would require the governor to designate a member of the PT board and a member of the OT board to serve as the presiding officer of these boards at the pleasure of the governor.

- **Grounds for Removal**. This recommendation would specify a notification process if a potential ground for removal involves the presiding officer of the executive council. The executive director would have to notify the next highest ranking officer of the executive council, who would then be required to notify the governor and the attorney general that a potential ground for removal exists.

- **Board Member Training**. This recommendation would require members of the executive council, including the presiding officer, to complete appropriate training to properly discharge their duties.

- **Separation of Duties**. This recommendation would require the executive council and boards to adopt policies defining their policymaking role and the role of the executive director and staff, in managing the executive council's day-to-day activities.

- **Alternative Dispute Resolution**. This recommendation would require the PT and OT boards to develop a policy to encourage the use of negotiated rulemaking procedures for the adoption of their rules. The recommendation would also require the boards to adopt appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under their respective jurisdictions.

  Under this recommendation, the boards' procedures relating to alternative dispute resolution would have to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings. The boards would also be required to coordinate the implementation of this policy, provide training to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

Fiscal Implication

Based on fiscal year 2016 appropriations and employee benefits expenditures, continuing the executive council and the PT and OT boards would continue to require approximately $1.7 million in annual costs associated with the agency. These costs are entirely paid for by the licensing and registration fees the agency collects. The state would also continue to receive approximately $3.9 million collected annually by the executive council in excess of the agency's costs.

1 Statewide Health Coordinating Council, *2011–2016 Texas State Health Plan: A Roadmap to a Healthy Texas* (Austin, TX), 73–74, 81.

2 Executive Council of Physical Therapy and Occupational Therapy Examiners, *Self-Evaluation Report* (Austin: Executive Council of Physical Therapy and Occupational Therapy Examiners, 2015), 11.

APPENDICES

Appendix A

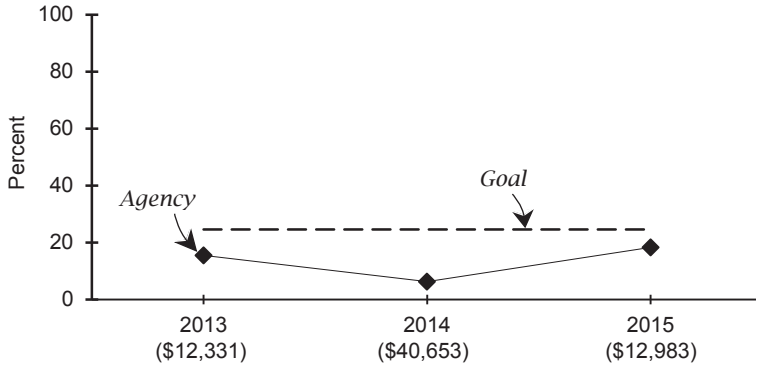
Historically Underutilized Businesses Statistics 2013 to 2015

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1]

The following material shows trend information for the Executive Council of Physical Therapy and Occupational Therapy Examiners' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.[2] In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2013 to 2015. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

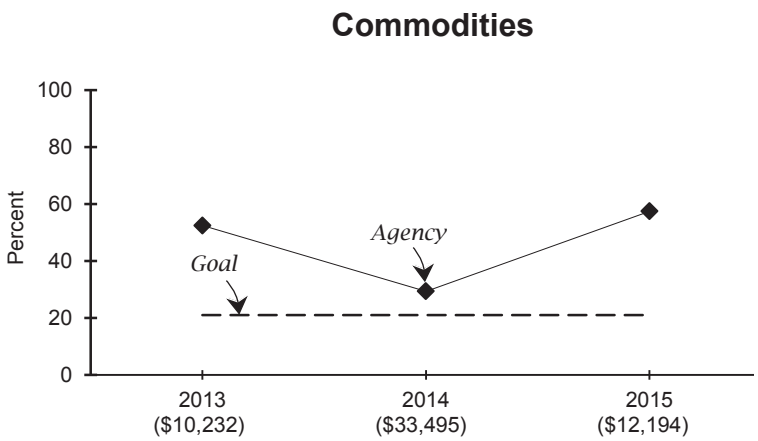
The agency exceeded the statewide HUB goals for the commodities category in all three years. The agency fell short of meeting the goals for other services in the past three years. The agency at present has not adopted HUB rules. The agency has neither biennial appropriations nor contracts large enough to mandate other HUB-related requirements such as creating HUB subcontracting plans for large contracts, appointing a HUB coordinator, creating a HUB forum program, and developing a mentor-protégé program.

Other Services



The agency did not meet the statewide purchasing goal in this category in any fiscal year. The agency's expenditures in this category involved a web development and hosting contractor whose HUB certification lapsed and has not been renewed.

Appendix A



Purchases in this category exceeded the statewide purchasing goal for 2013, 2014, and 2015.

1 All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 325.011(9)(B), Texas Government Code.

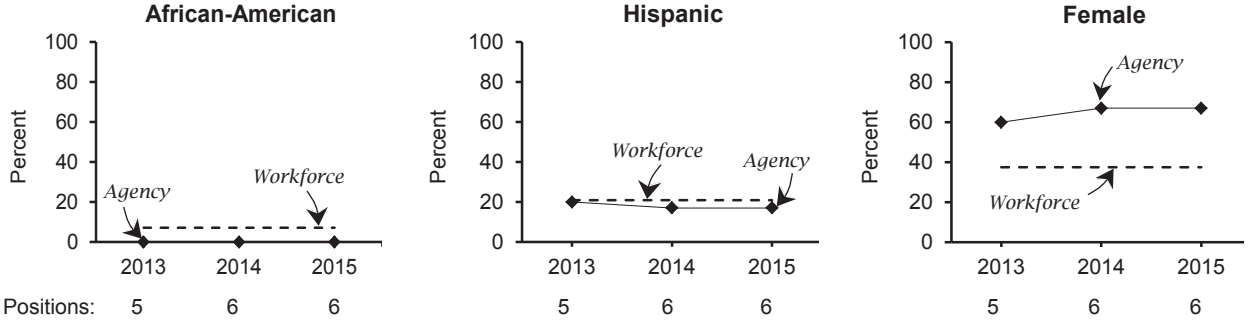
2 Chapter 2161, Texas Government Code.

Appendix B

Equal Employment Opportunity Statistics 2013 to 2015

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Executive Council of Physical Therapy and Occupational Therapy Examiners.[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.[3] These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2013 to 2015. The agency only has 20 employees and therefore has difficulty meeting statewide percentage targets.

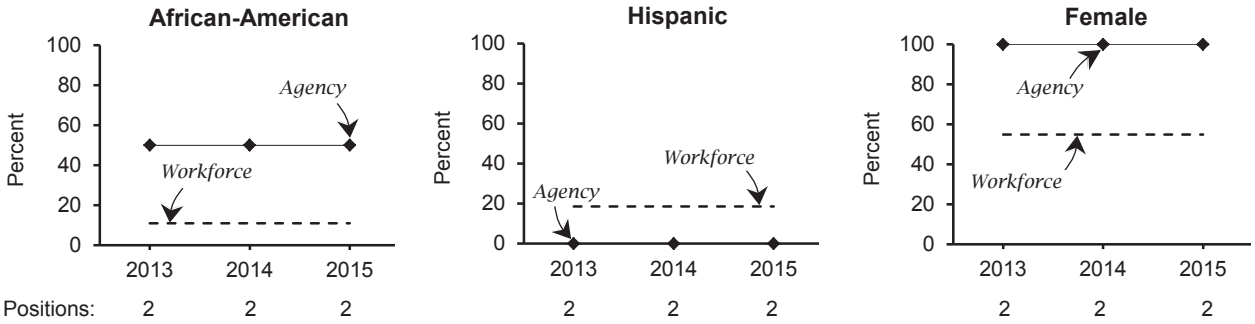
Administration



The agency met the civilian workforce percentage for the female category for all three years. The agency was close to meeting the civilian workforce percentages for the Hispanic category for the least three years, but the percent decreased in 2014 and held at that level in 2015. The agency fell below the civilian workforce percentage for the African-American category for all three years. Due to the small number of employees in this category, the agency has difficulty meeting the statewide percentage.

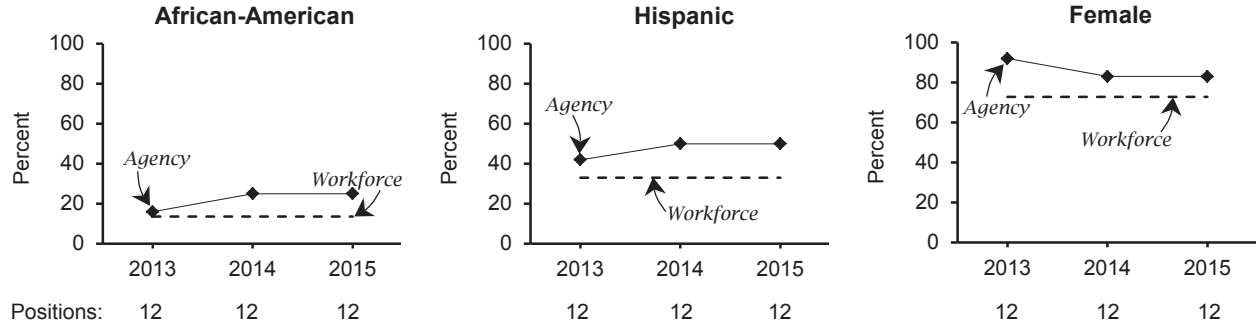
Appendix B

Professional



The agency met the civilian workforce percentages for both the African-American and female categories for all three years. The agency fell below the civilian workforce percentages for the Hispanic category for the past three years. Due to the small number of employees in this category, the agency has difficulty meeting the statewide percentage.

Administrative Support



The agency met the civilian workforce percentages for the African-American, Hispanic, and female categories for all three years.

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1 All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 325.011(9)(A), Texas Government Code.

2 Section 21.501, Texas Labor Code.

3 Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

Appendix C

Texas Physical Therapy Association (TPTA) Continuing Competence Approval[1]

Peer review of individual licensees' activities

Licensees who participate in continuing competence activities that have not already been assigned an approval number may submit evidence that it is a suitable activity. Individual approvals are not transferrable to those who took the same activity. An application for this type of approval includes

- Necessary attachments or addendums required for approval processing;
- A review fee of $40; and
- An (optional) expedited fee of $100.

Peer review of courses

The provider or sponsor of an activity may apply for the activity to be approved for all Texas licensees who participate in it for one or two years. Activities may be provided at multiple dates and places without requiring a new application for each instance, as long as significant changes to the course have not been made since its approval. An application for this type of approval includes

- Necessary attachments or addendums required for approval processing;
- A review fee for one (two) year approval of $60–$210 ($90–$315), with the amount varying according to the number of continuing competence units for which the course is seeking approval; and
- An (optional) expedited fee of $250.

Peer review to be an accredited provider

Providers who have offered approved continuing competence activities for at least three years (and 15 courses within the last 12 months) may apply to be an accredited provider, where all of their offerings are approved for Texas physical therapy continuing competence for three years.[2] TPTA audits providers to ensure offerings maintain board standards. An application for this type of approval includes

- Necessary attachments or addendums required for approval processing;
- An initial application fee of $1,500;
- An annual fee of $750;
- A renewal fee every three years of $1,250; and
- A late fee of $500 per month for the renewal fee.

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1 As administered by the Texas Physical Therapy Association for the PT Board.

2 Or a number of approved courses that totals at least 135 continuing competence units.

Appendix D

Staff Review Activities

During the review of the Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, and Texas Board of Occupational Therapy Examiners, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended the governing boards' meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Attended rules, education, and investigations committee meetings of both boards
- Attended continuing education courses provided to occupational therapy professionals
- Toured a physical therapy facility
- Toured a comprehensive outpatient facility where physical and occupational therapy services are provided
- Surveyed every physical therapy and occupational therapy licensee in Texas
- Interviewed representatives from the Federation of State Boards of Physical Therapy and the National Board for Certification in Occupational Therapy as well as state and national organizations representing physical therapists and occupational therapists
- Interviewed staff from the Health Professions Council, Health and Human Services Commission Office of Inspector General, Texas Medical Board, Department of State Health Services, and Texas Department of Licensing and Regulation

Sunset Staff Review of the

Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

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