



**Texas  
Sunset  
Advisory  
Commission**

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**STAFF EVALUATION**

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*Office of Interstate Oil Compact Commissioner for Texas*  
*Office of Interstate Mining Compact Commissioner for Texas*  
*Office of Southern Interstate Nuclear Compact Board Member for Texas*  
*Texas Commission on Interstate Cooperation*  
*Texas Commission on Uniform State Laws*  
*Texas Committee on Purchases and Services of Blind and Severely Disabled Persons*  
*Council for Social Work Certification*

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A Staff Report  
to the  
Sunset Advisory Commission



1982

**SUNSET ADVISORY COMMISSION**

**STAFF REPORT**

**on the**

**COUNCIL FOR SOCIAL WORK CERTIFICATION**

**1982**



## FOREWORD

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that the normal pressures of the legislative process tend to prevent a systematic review of the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which a review and redefinition of state policy can be accomplished on a regular systematic basis.

The Texas Sunset Act (Article 5429K, V.A.C.S., as amended) was enacted by the 65th Legislature in 1977. Under the provisions of the Act, agencies are automatically terminated according to a specified timetable, unless specifically continued by the legislature.

To assist the legislature in making the determination of whether an agency should be continued and, if continued, whether modifications should be made to its operations and organizational structure, the Act establishes a ten-member Sunset Advisory Commission composed of eight legislative members and two public members. The commission is required to evaluate the performance of the agency in accordance with specific criteria set out in the Act and to recommend necessary changes resulting from the findings of the evaluation.

The process by which the commission arrives at its recommendations moves through three distinct phases beginning with a self-evaluation report made by the agency to the commission. The second phase involves the preparation of a report to the commission by its staff, evaluating the activities of the agency, and proposing suggested changes for commission consideration. The final phase involves public hearings on the need to continue or modify an agency and the development of commission recommendations and legislation, based on the agency self-evaluation, staff report, and public testimony.

The Sunset Commission's findings, recommendations, and proposed legislation are then required to be transmitted to the legislature when it convenes in regular session.



## INTRODUCTION AND ORGANIZATION OF AGENCY REVIEWS

The Texas Sunset Act abolishes these agencies on September 1, 1983 unless each is re-established by the 68th Legislature.

The staff reviewed the activities of these agencies according to the criteria set out in the Sunset Act and has based its conclusions on the findings developed under these criteria.

Taken as a whole, these criteria direct the review of an agency to answer four primary questions:

1. Does the state need to perform the function or functions under review?
2. Could the public still be adequately served or protected if the functions were modified?
3. Is the current organizational structure the only practical way for the state to perform the function?
4. If the agency is continued and continues to perform the same functions, can changes be made which will improve the operations of the agency?

The report is structured to present the performance evaluation of each agency separately. The application of the across-the-board recommendations developed by the commission to deal with common problems are presented in a chart at the end of each report and are not dealt with in the text except in one instance. When the review develops a position which opposes the application of a particular recommendation, the rationale for the position is set forth in the text.



## **SUMMARY OF STAFF FINDINGS AND CONCLUSIONS**



## SUMMARY

### Organization and Objectives

The Council for Social Work Certification was created by the 67th Legislature and has been in operation since September 1, 1981. The nine-member council is composed of three certified social workers, three social workers or social work associates, and three representatives of the general public who have no financial interest in the practice of social work. Council members are appointed by the Department of Human Resources Board upon the recommendation of the commissioner and serve overlapping three-year terms.

The council is responsible for advising the Department of Human Resources (DHR) on the certification and regulation of social workers in the state. The actual determination of initial qualifications, examination and subsequent regulation of social workers is the responsibility of DHR. Assigned staff of the licensing division of DHR perform the administration and enforcement duties for the council. Funding for the regulation of social workers is provided from the General Revenue Fund for fiscal year 1982 in the amount of \$85,152. As activities increase, the functions will be supported from this source and the amount drawn from the General Revenue Fund will be reimbursed.

The review determined that the agency has actively worked towards the development of rules and procedures necessary for efficient implementation of its regulatory functions. However, the need for improvements was identified in the areas of the policy-making structure, administrative procedures and program operations.

The policy-making structure and its composition are generally appropriate for operations of this type. However, the structure of the Council for Social Work Certification could be strengthened by adding standard sunset language dealing with member qualifications, selections, and grounds for removal.

The operations associated with the regulation of social workers have generally been conducted in an efficient and effective manner. However, the statute could be improved by clarifying provisions relating to travel reimbursement for members of the Council for Social Work Certification. In addition, the act could be made less restrictive by giving the Department of Human Resources the flexibility to determine whether an applicant's educational background qualifies him to sit for an examination.

The review of the areas of Open Meetings/Open Records, EEOC/Privacy, public participation, and conflicts of interest, show a general compliance with the requirements concerning these areas. However, the social work statute categorizes the records related to the act as "privileged" and an analysis of the types of documents closed to public inspection shows that this restriction should be removed.

## Need to Continue Functions

The review indicated that there is no substantial need to continue the regulation of social workers.

## Approaches for Sunset Commission Consideration

### **I. MAINTAIN THE CURRENT REGULATION WITH MODIFICATIONS**

- A. Policy-making structure
  - 1. Statutory changes
    - a. Amend the provisions dealing with the Council for Social Work Certification to include the across-the-board recommendations concerning conflicts of interest, grounds for removal, and selection of board members.
- B. Agency operations
  - 1. Statutory changes
    - a. Amend the statute to clarify that members of the advisory council shall be reimbursed for travel expenses at the same rate as state employees.
    - b. Amend the statute to allow the Department of Human Resources to determine in any case whether an applicant's educational background qualifies that person to sit for an examination.
- C. Recommendations for other sunset criteria
  - 1. Open Meeting/Open Records (statutory)
    - a. The statutory language which states that all records related to social work certification are privileged should be eliminated so that these records are treated in a fashion similar to those of other licensing agencies.
  - 2. Conflicts of Interest (non-statutory)
    - a. The council should contact the Office of the Secretary of State to determine whether its members are among those state officials required to file financial disclosure statements in certain circumstances.

### **II. ALTERNATIVES**

#### **A. Agency Reorganization**

- 1. **Maintain the current regulatory method but reorganize the structure of the advisory council.**

This approach would continue the state regulation of social workers but would allow the structure of the council to be determined by DHR under their general authority to create advisory bodies. Implementation of this approach would require removal of provisions in the statute which specifies the council's

size, composition, terms of office, requirements for appointments, and the number of meetings. Benefits derived from this approach would be: 1) a reduction in costs associated with council activities since DHR would call the council into existence only when needed; and 2) additional flexibility to appoint qualified persons to the council based on the particular problems to be addressed.

**B. Change in Method of Regulation**

**1. Abolish the council and discontinue the regulation of social workers.**

The potential harm arising from the incompetent practice of social work does not appear to be sufficient to warrant the imposition of additional occupational regulation, and under this approach would be eliminated.

**2. Abolish the council, but continue regulation of clinical social work by merging the functions with the Texas State Board of Professional Counselors.**

This approach provides continuing state regulation only for the clinical social work segment of the profession in private practice. The regulatory functions would be transferred to a currently existing board utilizing support services for administrative and enforcement activities through the Texas Department of Health. Benefits derived from this approach would be: 1) regulation of that part of the profession in private practice in direct contact with the public; and 2) the elimination of the regulation of similar activities through two separate agencies, thus reducing costs associated with administration. Effective implementation of this alternative would require extending the grandfather clause in the Professional Counselor's Act to September 1984 for this group.

**3. Continue regulation of social work through a less restrictive modified form of certification.**

This approach would provide regulation of social work on two levels through a one-time registration of social workers and of certification of clinical social workers. Only those applying for certification would require an examination. Neither level would have annual renewals, title restriction, or enforcement; nor would they require a minimum level of education, experience, or continuing education except on a voluntary basis. Benefits to be derived from this approach include: 1) less restrictive entry into the profession while providing for a means of identifying for the public those engaged in the activity and a means to test the competency of those engaged primarily in private practice, the area of greatest need for protection of the public; and 2) a reduced cost associated with the regulation.



## **AGENCY EVALUATION**

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
2. Does the agency operate efficiently?
3. Has the agency been effective in meeting its statutory requirements?
4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
5. Is the agency carrying out only those programs authorized by the legislature?
6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?

## BACKGROUND

### Historical Development

In 1981, the 67th Legislature enacted Senate Bill No. 623 which established the Council for Social Work Certification and set up a method for the regulation of social workers in Texas. A historical description of social work as a profession and the current method of regulation in Texas is set out below.

Social Work as a Profession. Social work as a profession has progressed steadily since the late nineteenth century. Prior to this time, people's behavioral problems were usually treated according to medical models and strict scientific theories. However, as a result of innovations in the behavioral and social sciences occurring around the turn of the century, the idea began to be accepted that many human behavioral problems could also be dealt with by direct counseling and services rather than traditional medical methods. Social work as a profession developed from this concept and was further strengthened from the establishment of formal social work training programs in colleges and universities.

Currently, the primary role of the social worker, in the broadest sense, is to help people work out the personal problems that come from living in today's world. Tasks commonly carried out by social workers include: 1) providing counseling to individuals and families having problems; 2) guiding persons in need to financial and other assistance programs; and 3) helping people who are in hospitals or institutions cope with or overcome their specific problems. Social workers work both independently in private practice or in government and non-profit agency settings such as hospitals, schools, mental health and mental retardation facilities, and community organizations.

Attempts at Regulation in Texas. Beginning in 1973, several attempts were made to enact legislation that would regulate social workers. These bills were designed to limit the practice of social work to individuals licensed as social workers. It was not until late in the 67th Legislative Session that Senate Bill No. 623 regulating social work was enacted. Unlike previously proposed legislation, the Social Work Certification Act was enacted as a title act to restrict the use of the title "social worker" to those individuals who are certified by the state.

Testimony before legislative committees identified several reasons as to the need for this legislation. In summary, these reasons were that regulating social

workers would establish standards of competency for social work practitioners with corresponding titles to enable the public to identify qualified social workers. In addition, this act would give the general public some recourse in dealing with a social worker guilty of unethical or unprofessional conduct. Finally, the act would provide tax supported and private agencies which employ social workers with a roster of qualified social work practitioners.

How the Regulation Works. Under the current statute, the use of the title of social worker is restricted to those individuals who have been certified by the state as having met certain minimum education and experience requirements. There are three basic levels of licensure. Those meeting the most stringent requirements are licensed as a "certified social worker"; individuals meeting intermediate requirements are licensed as a "social worker"; and those meeting the least stringent standards are licensed as a "social work associate." To become licensed under any of these categories, a candidate must meet basic educational requirements for the appropriate level of certification and, in the case of the social work associate, meet a basic experience requirement. After the grandfather period ends in September 1982, applicants will also have to take and pass an examination for certification. Procedures also exist for obtaining special recognition as a private practitioner. Finally, the statute contains procedures for taking actions against individuals found in violation of the statute.

The act sets up the Department of Human Resources as the agency to carry out the basic licensing responsibilities associated with the regulation of social workers. In addition, the act establishes the Council for Social Work Certification to advise the department on issues and problems related to the practice of social work and the regulation of social workers. For example, rules and procedures proposed by the staff to the department to help administer the statute are reviewed by the council. In turn, the council makes recommendations on these rules to DHR's board.

Staffing functions for the department as well as for the advisory council are provided by two employees of DHR's licensing division -- a director and an administrative technician (this staff also carries out the state's licensing functions for child care administrators). With respect to funding, the statute sets up the social work regulatory program in a fashion which allows the program to be supported by fees. Fees are placed in a Social Work Fund in the State Treasury. Appropriations for the program for fiscal year 1982 are set at \$85,152.

## REVIEW OF OPERATIONS

The evaluation of the operations of the agency is divided into general areas which deal with: 1) a review and analysis of the policy-making body to determine if it is structured so that it is fairly reflective of the interests served by the agency; and 2) a review and analysis of the activities of the agency to determine if there are areas where the efficiency and effectiveness can be improved both in terms of the overall administration of the agency and in the operation of specific agency programs.

### Policy-Making Structure

In general, the structure of a policy-making body should have as basic statutory components, specifications regarding the composition of the body and the qualifications, method of selection, and grounds for removal of the members. These should provide executive and legislative control over the organization of the body and should ensure that the members are competent to perform required duties, that the composition represents a proper balance of interests impacted by the agency's activities, and that the viability of the body is maintained through an effective selection and removal process.

The review of the policy-making structure for the regulation of social workers centered on the Council for Social Work Certification. The board of the Department of Human Resources was not reviewed since the social worker regulatory activity is a small part of that board's overall responsibilities.

The Council for Social Work Certification is composed of nine members. Six members must be certified in the various regulatory categories for social workers provided under the act, while the remaining three members are from the general public. Of the six social workers sitting on the council, three must be classified under the act as "certified social workers," with the remaining three members being classified as "social worker" or "social work associate." Members of the council hold office for staggered terms of three years, and must be citizens of the United States and residents of Texas.

The review of the council's membership indicated that its composition generally reflects the interests that should be represented. The membership includes social workers from the various regulatory categories set up under the act as well as public members. However, several improvements could be made in the

statute relating to the qualifications, selection, and grounds for removal of council members.

In each of these areas, the Sunset Commission has adopted certain standard recommendations intended to strengthen the policy-making structure. First, the statute should set out basic conflict-of-interest criteria that a person should meet to be qualified to serve on a board, commission, or council. These conflict-of-interest provisions are aimed at minimizing any unfair bias towards the regulated occupation. Second, the statute should require that selection as a council member be made without regard to race, creed, sex, religion, or national origin. Finally, the statute should clearly specify as grounds for removal of council members, attendance at meetings and the lack of any specified qualification.

For the most part, the statutory provisions setting up the Council for Social Work Certification do not include these various standards developed by the Sunset Commission. These standards should be incorporated into the statute to promote the continuing viability of the council as an advisory body.

#### ***Summary and Recommendations - Policy-making Structure***

*The policy-making structure and its composition are generally appropriate for operations of this type. However, the structure of the Council for Social Work Certification could be strengthened by adding to the statute standard sunset language dealing with member qualifications, selections, and grounds for removal. The reasons for each of these improvements are briefly discussed below.*

*In the area of qualifications, conflict-of-interest provisions should be added to minimize any potential for unfair bias towards the regulated profession. With regard to selection, the statute should include standard language requiring that appointments to the council be made without regard to race, creed, sex, religion, or national origin, thereby discouraging any potential towards discriminatory practices. Finally, standard language should be added that specifies failure to attend at least half of the council's scheduled meetings or failure to maintain membership qualifications as sufficient grounds for removal from the council. These provisions encourage board attendance and ensure a means for removal in case eligibility requirements are not maintained.*

*The following recommended change to the agency's statute or practices was developed to address the above concerns.*

- 1. Amend the statute to include the across-the-board recommendations concerning conflicts of interest, grounds for removal, and selection of board members.*

### **Overall Administration**

The evaluation of the overall agency administration focused on determining whether the operating policies and procedures of the agency provide a framework which is adequate for the internal management of personnel and cash resources and which satisfies reporting and management requirements placed on the agency and enforced through other state agencies.

The review of licensing activities carried out by the Department of Human Resources (DHR) indicated that licensee records are complete and well organized. The agency has automated many facets of its licensing procedures through data processing. This should facilitate the renewal process, compilation of the roster, production of mailing labels, and general ease in information retrieval. Rules were initially adopted by the department on an emergency basis to expedite the licensing process during the grandfather period. Soon after the adoption of these rules, DHR opened the rules to a 60-day public review period and has taken necessary steps to incorporate suggested changes. Since the agency began taking applications in December 1981, procedures have been developed and used to license applicants under the statute's grandfather provision, and examination procedures are scheduled to begin in September 1982.

While the activities established to carry out the regulation of social work are generally efficient, there is one area related to overall administration where the statute could be improved. This concerns a provision which sets up the travel reimbursement policy for the members of the Council for Social Work Certification. The review indicated that the intent of the language in the statute was to reimburse the members of the council in the same manner that state employees are reimbursed. The council is in fact reimbursed in this manner, and this policy is consistent with the way other advisory councils in the Department of Human Resources are treated. However, the actual language used in the statute does not clearly reflect that intent. It is recommended that, to avoid confusion in the future, the language should be changed to correctly reflect the original intent.

## Evaluation of Programs

The substantive operations undertaken through the social work act include the council's activities in advising the Department of Human Resources on trends and issues affecting the practice of social work and the regulating of social workers as well as Department of Human Resources' licensing activities. In general, no problems were found in these substantive operations. However, a concern exists with respect to the restrictive nature of certain provisions set out in the statute.

Under the act, before an applicant can take an examination for licensure various requirements must be met. For all applicants seeking licensure as a "certified social worker", three requirements exist related to educational background. These persons must have graduated from programs in social work or social welfare that are accredited by an outside organization and approved by the Department of Human Resources. These three educational requirements are also applicable for the "social worker" level, along with a substantial equivalency provision for related fields of study.

As a general rule, a licensing statute should minimize restrictions to obtain a license while still providing necessary protection to the public. Under this approach, government interference in the profession is kept at a minimum. In examining the three conditions set out, it appears that the statute is unnecessarily restrictive.

The purpose of these conditions is to ensure that applicants have a solid educational background. However, the current statute excludes persons having this background from licensure, especially in the "certified social worker" category. First, by requiring that applicants graduate from programs in "social work or social welfare," the statute automatically excludes some persons who may have attended programs having a different name but being substantially equivalent in nature. Second, by requiring that social work programs be accredited, graduates of non-accredited programs cannot sit for examination in the certified category, even though their educational program may have been of acceptable quality. Interviews with personnel of the Department of Human Resources indicate that these types of barriers to certification do, in fact, exist.

To lessen its restrictive nature the statute should be changed to allow the Department of Human Resources to judge whether a person's educational back-

ground is appropriate for the level of license being sought. This change would continue to ensure by statute that an applicant be properly qualified, while at the same time reduce the number of barriers an applicant must cross to be certified. Such an approach is generally consistent with the way some other states have applied their regulatory statute.

### ***Summary and Recommendations - Evaluation of Programs***

*The operations associated with the regulation of social workers have generally been conducted in an efficient and effective manner. However, the statute could be improved by clarifying provisions relating to travel reimbursement for members of the Council for Social Work Certification. In addition, the act could be made less restrictive by giving the Department of Human Resources the flexibility to determine whether an applicant's educational background qualifies him to sit for an examination. The reasons for each of these improvements are briefly discussed below.*

*Members of the Council for Social Work Certification are currently reimbursed for travel expenses at the same rate as state employees. This approach is consistent with the way other advisory bodies to the Department of Human Resources are treated. The review indicated that the language used in the social work act was intended to require the use of this reimbursement policy, but the language does not clearly reflect that intent. To avoid confusion in the future the statute should be amended to clearly authorize the current reimbursement method.*

*The statute also requires that before an applicant can sit for an examination in some categories, the person must be a graduate of a program in social work or social welfare that is accredited by an outside body and approved by the Department of Human Resources. Taken together, these requirements are unnecessarily restrictive. By specifying "social work or social welfare" programs in the statute, graduates of substantially equivalent programs having a different name are excluded from licensure as a certified social worker. In addition, the accreditation requirement excludes graduates from non-accredited programs, even though these programs may be of high quality. The*

*restrictive nature of these provisions could be reduced by modifying the statute to allow the department to judge whether a program is acceptable. This approach also provides sufficient protection to the public since by statute the department would continue to ensure that all applicants have an appropriate educational background.*

*The following recommended changes to the social work statute or practices were developed to address the above concerns:*

- 1. Amend the statute to clearly state that members of the advisory council will be reimbursed for travel expenses at the same rate as state employees.*
- 2. Amend the statute to allow the Department of Human Resources to determine in any case whether an applicant's educational background qualifies that person to sit for an examination.*

**OTHER SUNSET CRITERIA**

The review of the agency's efforts to comply with overall state policies concerning the manner in which the public is able to participate in the decisions of the agency and whether the agency is fair and impartial in dealing with its employees and the general public is based on criteria contained in the Sunset Act.

The analysis made under these criteria is intended to give answers to the following questions:

1. Does the agency have and use reasonable procedures to inform the public of its activities?
2. Has the agency complied with applicable requirements of both state and federal law concerning equal employment and the rights and privacy of individuals?
3. Has the agency and its officers complied with the regulations regarding conflict of interest?
4. Has the agency complied with the provisions of the Open Meetings and Open Records Act?

## EVALUATION OF SUNSET CRITERIA

The material presented in this section evaluates the agency's efforts to comply with the general state policies developed to ensure: 1) the awareness and understanding necessary to have effective participation by all persons affected by the activities of the agency; and 2) that agency personnel are fair and impartial in their dealings with persons affected by the agency and that the agency deals with its employees in a fair and impartial manner.

### Open Meetings/Open Records

The review indicates that regulatory activities have been undertaken in compliance with the Open Meetings Act. However, one concern was identified regarding a provision in the social work statute which specifies that "...all charges, complaints, notices, orders, records, and publications authorized or required..." under the statute are privileged. Currently, the agency interprets the provision in such a manner as to consider this information as being closed to the public.

The review of the social work regulatory activity showed no compelling reason for the records of this program to be treated differently from the same types of records of other licensing agencies. The special provision in this statute should be removed so that the records of this licensing activity are open to the public on the same basis as records of other licensing agencies under the Open Records Act.

### EEOC/Privacy

A review was made to determine the extent of compliance with applicable provisions of both state and federal statutes concerning affirmative action and the rights and privacy of individual employees. The regulatory activity for social workers is carried out by employees of the Department of Human Resources. The department has an affirmative action plan and has policies laid out in their personnel manual relating to the rights and privacy of the individual employee. No problems were apparent in these areas.

### Public Participation

In general, the review of public participation consists of an evaluation of the extent to which persons served by the program and the general public have been kept informed of program activities and the extent to which the program is

responsive to the changing demands and needs of the public. The review indicates that adequate efforts have been made to inform and involve the public in program operations. These efforts include placing three public members on the council and notifying the general public about council meetings concerning proposed rules and policies affecting the certification program. Also, there are plans to provide information to the general public on the certification program. The plans include providing a document that would set out the actual statute and rules affecting the certification program as well as a roster of those persons certified under the act.

### **Conflicts of Interest**

Under state law, appointed state officers are subject to statutory standards of conduct and conflict of interest provisions (Article 6252-9b, V.A.C.S.). This includes, in certain circumstances, the filing of financial disclosure statements with the Office of the Secretary of State. Since the regulation of social workers involves both the board of the Department of Human Resources and the Council for Social Work Certification, both of these bodies were considered in reviewing compliance with the statute.

With regard to the council, it is questionable whether the filing requirements laid out in Article 6252-9b, V.A.C.S., are applicable. Because it is unclear whether the agency comes under the provisions of this statute, it is suggested that the chairman of the council contact the Office of the Secretary of State to determine whether financial disclosures are required and to comply with the direction provided by that office. With respect to the Department of Human Resources, all board members had complied with the state filing requirements.

### ***Summary and Recommendations - Other Sunset Criteria***

*The review of the areas of Open Meetings/Open Records, EEOC/Privacy, public participation, and conflict of interest show a general compliance with the requirements governing these areas. However, there is one concern regarding a provision in the social work statute which categorizes records related to the act as "privileged". This provision is inconsistent with the statutes of most other licensing agencies. No compelling reason could be found for continuing this inconsistency. In addition, it is not clear whether the council comes under the provisions of the state statute which requires board members*

*of certain bodies to file financial disclosure statements in specific circumstances.*

*The following recommended changes to the social work statute or practices were developed to address these concerns.*

- 1. Open Meetings/Open Records (statutory)*
  - a. The statutory language which states that all records related to social work certification are privileged should be eliminated so that these records are treated in a fashion similar to those in other licensing agencies.*
- 2. Conflicts of Interest (non-statutory)*
  - a. The council should contact the Office of the Secretary of State to determine whether its members are among those state officials required to file financial disclosure statements in certain circumstances.*



**NEED TO CONTINUE AGENCY FUNCTIONS  
AND  
ALTERNATIVES**

The analysis of the need to continue the functions of the agency and whether there are practical alternatives to either the functions or the organizational structure are based on criteria contained in the Sunset Act.

The analysis of need is directed toward the answers to the following questions:

1. Do the conditions which require state action still exist and are they serious enough to call for continued action on the part of the state?
2. Is the current organizational structure the only way to perform the functions?

The analysis of alternatives is directed toward the answers to the following questions:

1. Are there other suitable ways to perform the functions which are less restrictive or which can deliver the same type of service?
2. Are there other practical organizational approaches available through consolidation or reorganization?

## NEED

The analysis of need and alternatives is divided into: 1) a general discussion of whether there is a continuing need for the functions performed and the organizational setting used to perform the function; and 2) specific discussion of practical alternatives to the present method of performing the function or the present organizational structure.

### Functions

After reviewing the basic sunset questions relating to need for a function, it was determined that insufficient reason exists for the state to regulate social workers. The reasons for this determination can be summarized in the areas set out below.

Danger to Public Insufficient to Warrant Regulation. Occupations should be regulated by the state only when their unregulated practice can clearly harm or endanger the public and the public cannot be adequately protected by other means. The determination of harm resulting from the practice of social work is particularly difficult due to the nature of the profession. Harm inflicted through the misadministration of drugs by a psychiatrist or from an inaccurate diagnosis of mental retardation by a psychologist is easily seen. However, in the case of social work, the harm resulting from failure to "help individuals, groups, or communities enhance or restore their capacity for social functioning" is less easily perceived.

In examining this question of public harm, the review identified two basic categories of social workers: 1) those who work for public or private nonprofit agencies, and 2) those who are involved in a private counseling practice. A review of the first group showed that the great majority of social workers are employees of government or private nonprofit agencies. The "help" provided by this group generally means assistance to the clients in matters such as housing, food, medical or dental care; educational or occupational training; day care services; or referrals to other social service agencies. Social workers in these settings may also be responsible for determinations of whether a child is in risk of physical or sexual abuse, decisions to remove or return children to their homes, and placement of children outside their own family.

The review indicated that the public is protected from harm from persons having these responsibilities in two ways. First, Texas law specifies certain

requirements for persons performing these activities. The only persons authorized to carry out these duties are individuals with a graduate degree in social work and two years of experience in child placement, as well as law enforcement officers and juvenile probation officers. Second, social workers employed in public and private nonprofit agencies are supervised through the institutional setting. In addition, the state has established standards to ensure that the quality of certain social services meets some minimum level of quality. As a result of these two factors, it would appear that the public is already sufficiently protected against the activities of social workers employed in an institutional setting.

With respect to the second and much smaller group of clinical social workers, rough estimates indicate that there are approximately 600 to 800 of these persons in private practice on a full or part-time basis. These practitioners provide counseling services directly to the public, as do psychiatrists, psychologists, or other recognized counseling professions. To get some indication of the potential harm to the public that this group might represent, an attempt was made to identify if there had been any malpractice suits brought against social workers. A comprehensive review of these suits is difficult to obtain since insurance companies are typically hesitant to release information on suits brought against their policyholders, which eliminated the possibility of examining cases settled out of court. In addition, suits decided at the trial level are rarely published in legal digests and encyclopedias, and reported decisions are difficult to track down since publications do not index social work malpractice. During the review a computer search was made of all recorded decisions of malpractice suits brought against social workers, and no relevant cases were identified. Due to the general lack of evidence of harm, a review was conducted to determine if other states felt a need to regulate clinical social workers. This review indicated that only half the states regulate social workers at all, while less than half have seen any need to provide an additional level of regulation for the independent practice of social work. Given the lack of court action and the small number of states expressing a need to regulate independent practice, the review concluded that there was insufficient indication of danger to the public to justify state regulation of this small group of clinical practitioners.

Broad Definition of Social Work Hampers Effective Regulation. Apart from considerations of danger to the public, attention was also given to the practical

aspects of regulating social work. In general, any occupation can be regulated through either a "practice act" or a "title act." Currently, social workers are regulated through a title act. However, the broad nature of social work creates difficulties for either of these approaches.

Under a practice act, the state regulates an occupation by requiring that anyone engaging in certain defined activities must be licensed in some fashion. In the case of social work, the activity generally involves helping people with a wide variety of problems. Because of the wide boundaries of this definition, however, almost anyone could be involved in social work at one time or another. Thus, as a practical matter, it is difficult to define who should come under regulation.

Evidence of the difficulties with this approach can be seen in the past experience of the Texas legislature. In three prior legislative sessions, practice acts regulating social workers failed to be enacted.

In contrast to a practice act, a title act regulates an occupation by requiring that, before a person can use a title such as "architect" or "psychologist," that person must meet specified licensing requirements. The purpose of this type of regulation is also to protect the public against harm resulting from some defined activity. However, the activity is generally associated clearly with an occupational title such as "architect" which the public seeks out for a generally understood service. As a result, the public can be protected by simply limiting use of the title to persons meeting certain standards.

In the case of social work, the activity involved has not yet become associated with one primary occupational title. As an example of this situation, a review of state classified positions as listed in the appropriations act indicated many different titles that could be linked with social work responsibilities in some way. In addition, it was noted that clinical practitioners with a social work degree often do not use the title of social worker, but use names such as "psychotherapist." Since no single label is commonly accepted and used to describe persons carrying out activities based on a social work background, an act regulating only the title "social worker" leaves wide gaps in the protection afforded the public.

Other Regulatory Methods would be Less Restrictive. As set out above, it would appear that regulation of social workers is neither essential to protect the public nor can it be very effectively carried out in comparison to other licensed activities. If regulation were to be continued, however, the questionable danger to

the public from the practice of social work leaves open for consideration any regulatory method that would be less restrictive than the current system.

A review of the social work act shows that the current regulatory scheme is intended to be fairly restrictive. In general, the act is aimed at both institutional employees as well as private practitioners using "social worker" in their title. In addition, the act sets out various educational, experience, and testing requirements for licensure; requires annual renewal; and authorizes the Department of Human Resources to require continuing education as a prerequisite for renewal.

The regulation of social workers can be made less restrictive by modifying these requirements in two basic ways. The first method would be to narrow the coverage of the regulation to include only those persons involved in private practice as do a number of other states. This method attempts to regulate the group that offers more potential harm to the public due to the lack of agency safeguards. A second general method of reducing the restrictive nature of the current regulation would be to eliminate one or more of the licensing requirements set out above. This approach would continue to give some indication of proficiency in social work while being less burdensome to the applicant.

### Agency

The state regulation of social workers is performed by the Department of Human Resources as provided in the enabling statute. The statute also creates an advisory council to review rules and minimum standards and make recommendations to DHR. A review and analysis of the organizational structure indicated that it is the most efficient means available to carry out this function. However, one element of the organizational arrangement could be structured in a different way.

Currently, the Social Work Certification Act specifies the size and composition of the council as well as the terms of office of members, requirements for appointments, and the number of meetings to be held.

The majority (three out of four) of other statutorily created advisory committees to DHR do not have specified in their statute the number of meetings to be held. Only half of these committees contain language specifying size and terms, while most specify composition. In addition to these committees, DHR has statutory authority to create advisory committees, allowing the commissioner to determine how the committees should be structured and when they should meet. This method has provided DHR with more flexibility and proven to be more efficient to operate.

## ALTERNATIVE APPROACHES FOR COMMISSION CONSIDERATION

### Agency Reorganization

The Social Work Certification Act is most appropriately administered under the Department of Human Resources. No benefits in terms of increased efficiency or effectiveness could be anticipated to result from transferring the functions as they currently exist to another agency. However, the review did identify one way to increase the efficiency of the present structure. The provision in the Act related to council size, composition, terms of office, requirements for appointments, and the number of meetings restricts DHR's flexibility to establish and maintain the council in a manner warranted by the function. The statute should be amended to remove these provisions and allow DHR to create the council as necessary. Benefits derived from this approach would be: 1) reduction in costs associated with council activities since DHR would call the council into existence only when needed; and 2) additional flexibility to appoint qualified persons to the council based on the particular problems to be addressed.

### Change in Method of Regulation

Abolish the Council and Discontinue the Regulation of Social Workers. The review indicated that the potential harm arising from the incompetent practice of social work does not appear to be sufficient to warrant the state imposition of additional occupational regulation. Furthermore, advanced levels of the social work profession could continue to be regulated solely through professional organizations as they were prior to the passage of the Social Work Certification Act in 1981. In a recent publication by the National Organization of Social Workers, the feasibility of regulation through professional organizations was exemplified in the following statement:

"The major voluntary certification program is the ACADEMY OF CERTIFIED SOCIAL WORKERS, which requires membership in the National Association of Social Workers, two years of postgraduate social work experience, and a written examination. It was developed to provide a voluntary identification of practitioners qualified to practice independently and as supervisors. In 1979, some 45,000 persons held the ACSW certification.

Social workers in private or independent clinical social work practice can also be certified and listed in the national Register of Clinical Social Workers, which is primarily designed as a guide to the public and to insurance companies using the services of social work therapists and consultants."

This approach would eliminate the advisory council and the regulation of social workers. The review did not identify any loss of employment that would be suffered by individuals currently licensed by this Act should this approach be implemented.

Abolish the Council and the Current Method of Regulation, but Continue the Regulation of Clinical Social Workers through Licensure under the State Board of Examiners of Professional Counselors. The State Board of Examiners for Professional Counselors was identified during the review as having similar functions and licensee populations. The Professional Counselor's Act regulates individuals who meet specified educational and experience requirements and pass an examination as evidence of minimum competency to practice as a counselor. The educational requirements, a graduate degree in counseling or substantially equivalent course work, can be achieved through a variety of academic backgrounds including clinical social work. It is therefore feasible to eliminate the Council for Social Work Certification, but continue the regulation for the clinical social work segment of the profession in private practice through the activities of the Texas State Board of Examiners of Professional Counselors. Since the Professional Counselor's Act and the Social Worker Act both were enacted in the 67th legislative session, they share the same grandfather deadline of September 1982. Effective implementation of this alternative would require extending the grandfather deadline in the counselor's act to September 1984 for those applicants with academic backgrounds in clinical social work. This would ensure those applicants presently seeking licensure under the social work act sufficient time for licensure under the counselor Act without having to take an examination. Benefits derived from this approach would be: 1) regulation of that part of the profession in private practice in direct contact with the public and 2) the elimination of the need, through consolidation, for regulation of similar activities through two separate agencies, thus reducing costs associated with administration.

Continue Regulation of Social Work Through a Less Restrictive Form of Modified Certification. This approach would continue the regulation of social work on two levels through a one-time registration of social workers and through certification of clinical social workers. Neither method would require a minimum level of education or experience. In addition, there would be no provision for annual renewals, title use restrictions, or enforcement. However, the certification level for clinical social work would require an examination, the contents of which should be approved by the Department of Human Resources; and evidence of continuing education could be provided by individuals on a voluntary basis. The Council for Social Work Certification would be modified in the manner previously recommended. Benefits to be derived from this approach include state recognition of the profession through a less restrictive method than currently available and at reduced cost for its administration.

#### ***Summary of Need and Alternatives***

*The review of the need for the function concluded that the potential for harm to the public was not sufficient to warrant state regulation. To determine the potential for harm, the review divided the profession into the two major work settings for social workers: 1) those who work for public or private nonprofit agencies; and 2) those who are involved in a private counseling practice. The review of the first group indicated that the public is adequately protected from incompetent individuals through requirements specified in state law and minimal standards established for the delivery of certain social services. With respect to the second group, a review of published material on clinical social work malpractice cases and a comparative analysis of other state regulation did not support the need for regulation.*

*In addition to public protection, the review also gave attention to the practical aspects of regulating social work. The broad definition of social work services, "the professional activity of helping individuals, groups, or communities enhance or restore their capacity for social functioning and creating societal conditions favorable to this goal", and the equally broad variation of titles linked with the delivery of those services weaken the ability to provide the protection normally afforded to the public through licensure.*

*If the regulation of social work should be continued, given the questionable protection it provides, a method less restrictive than the current form should be considered. This could be accomplished either by: 1) regulating only those social workers in private practice; or 2) continuing to regulate the entire profession, but eliminating one or more of the current licensing requirements, thereby making the regulation less restrictive.*

*An analysis of the organizational structure revealed that, while the Department of Human Resources and its advisory council provide an effective means of performing the current regulatory functions, one element of this structure could be changed. The enabling statute makes certain stipulations regarding the council's composition, size, terms, and number of meetings. The department has the authority to make determinations concerning these matters for similar advisory bodies and has found this to be more efficient.*

*Based on the above findings, the review identified four alternatives to the current structure or method. The following suggested approaches were developed to implement these alternatives.*

***1. Maintain the current regulatory method, but reorganize the structure of the advisory council.***

*This approach would continue the state regulation of social workers but would allow the structure of the council to be determined by DHR under its general authority to create advisory bodies. Implementation of this approach would require removal of provisions in the statute which specify the council's size, composition, terms of office, requirements for appointments, and the number of meetings. Benefits derived from this approach would be: 1) a reduction in costs associated with council activities since DHR would call the council into existence only when needed; and 2) additional flexibility to appoint qualified persons to the council based on the particular problems to be addressed.*

2. **Abolish the council and discontinue the regulation of social workers.**

The potential harm arising from the incompetent practice of social work does not appear to be sufficient to warrant the imposition of additional occupational regulation, and under this approach would be eliminated.

3. **Abolish the council, but continue regulation of clinical social work by merging the functions with the Texas State Board of Professional Counselors.**

This approach provides continuing state regulation only for the clinical social work segment of the profession in private practice. The regulatory functions would be transferred to a currently existing board utilizing support services for administrative and enforcement activities through the Texas Department of Health. Benefits derived from this approach would be: 1) regulation of that part of the profession in private practice in direct contact with the public; and 2) the elimination of the need, through consolidation, for regulation of similar activities through two separate agencies, thus reducing costs associated with administration. Effective implementation of this alternative would require extending the grandfather clause in the Professional Counselor's Act to September 1984 for this group.

4. **Continue regulation of social work through a less restrictive modified form of certification.**

This approach would provide regulation of social work on two levels through a one-time registration of social workers and of certification of clinical social workers. Only those applying for certification would require an examination. Neither level would have annual renewals, title restriction, or enforcement; nor would they require a minimum level of education, experience, or continuing education except on a voluntary basis. Benefits to be derived from this approach include: 1) less restrictive entry into the profession while

*providing for a means of identifying for the public those engaged in the activity and a means to test the competency of those engaged primarily in private practice, the area of greatest need for protection of the public; and 2) a reduced cost associated with the regulation.*

**ACROSS-THE-BOARD RECOMMENDATIONS**



**COUNCIL FOR SOCIAL WORK CERTIFICATION**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>A. ADMINISTRATION</b>
X		X	1. Require public membership on boards and commissions.
			2. Require specific provisions relating to conflicts of interest.
	X		3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. Board members shall attend at least one-half of the agency board meetings or it may be grounds for removal from the board.
X			8. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	9. Review of rules by appropriate standing committees.
		X	10. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	11. Require the board to establish skill oriented career ladders.
		X	12. Require a system of merit pay based on documented employee performance.
		X	13. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			14. Provide for notification and information to the public concerning board activities.
		X	15. Require the legislative review of agency expenditures through the appropriation process.

**Council for Social Work Certification**  
(continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>B. LICENSING</b>
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
X			5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X			6. (a) Provide for licensing by endorsement rather than reciprocity.
			(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			<b>C. ENFORCEMENT</b>
X			1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			<b>D. PRACTICE</b>
X			1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			2. The board shall adopt a system of voluntary continuing education.