

# **Sunset Advisory Commission**



**Licensing  
Reorganization  
Project**

October 2004

## ***Sunset Advisory Commission***

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**LICENSING REORGANIZATION PROJECT**

**OCTOBER 2004**

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# **Licensing Reorganization Project**

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## *Reorganize the State's Health Professions Regulatory Agencies into an Umbrella Health Licensing Agency and a Smaller Number of Stand-Alone Agencies.*

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### **Summary**

#### **Key Recommendations**

- Establish a Department of Health Professions Licensing made up of health professions regulatory programs from the Department of State Health Services; and the Chiropractic, Optometry, Podiatry, Psychology, and Acupuncture boards.
- Continue the Medical, Physician Assistant, Pharmacy, and Veterinary boards in their current status as separate agencies.
- Provide further standardization of regulatory practices within the new umbrella agency.

#### **Key Findings**

- Recent changes in the Department of State Health Services and Board of Medical Examiners may affect their ability to function as umbrella regulatory agencies.
- Consolidation of health professions regulation provides an opportunity for efficiency and improved services, particularly for small licensing agencies.
- Establishing an umbrella regulatory structure provides an opportunity to achieve greater standardization of regulatory practices.

#### **Conclusion**

The approach to regulating health professions in Texas has generally followed a trend from stand-alone agencies, overseen by Governor-appointed boards, to consolidating regulatory programs within larger agencies with related missions. Today, health professions regulation reflects a mix of structures with 12 programs in stand-alone agencies and 25 in some form of consolidated agency, with different types of oversight boards.

Sunset staff reviewed 15 health professions licensing boards during this cycle, providing an opportunity to explore the possibility of changing the organization of those boards. Staff first evaluated the need for the regulation, and then analyzed organizational options for providing these licensing functions. These options include consolidating programs under a health professions regulatory umbrella agency, enhancing coordination through an interagency council, or providing regulation through a stand-alone agency.

Sunset staff found that the recent realignment of the State's health and human services agencies that changed the Texas Department of Health into the Department of State Health Services (DSHS), also showed that the regulation of health professions does not neatly fit with DSHS' core mission of delivering state health services. Staff also found operational difficulties among the boards, particularly in the small agencies; and opportunities for increased efficiencies and enhanced regulatory effort.

This report reflects staff’s approach to addressing these problems and realizing the benefits of a centralized approach to regulation.

While the consolidation of health professions regulations under a new umbrella structure suggested here is an opportunity to focus regulatory activities and enjoy economies of scale not possible in the myriad of small licensing agencies, it is intended to continue the discussion about the State’s approach to health professions regulations. Further refinement of these recommendations may well be needed for the State to find its preferred approach to this long-standing debate.

## Support

### Texas has taken several approaches to the way it organizes regulation of health professions.

- When Texas began regulating health professions, it did so through stand-alone agencies, overseen by independent boards appointed by the Governor. These boards had the authority to establish budgets and hire staff, create rules, establish standards for licensure, and take disciplinary action against those who violated the law and board rules. Examples include the Medical Board and the Pharmacy Board, both created in 1907, and the Chiropractic Board, established in 1949. The last such health licensing agency created was the Texas Board of Occupational Therapy Examiners, established in 1983, but attached in 1993 to the State Board of Physical Therapy Examiners through an Executive Council representing both boards. The textbox, *Autonomous Health Licensing Agencies in Texas*, lists these stand-alone agencies and provides the year in which each was established.

<b><i>Autonomous Health Licensing Agencies in Texas</i></b>
Funeral Service Commission, Texas – 1903
Medical Examiners, Texas State Board of – 1907
Pharmacy, Texas State Board of – 1907
Nurse Examiners, State Board of – 1909
Dental Examiners, Texas State Board of – 1911
Veterinary Medical Examiners, Texas State Board of – 1911
Optometry Board, Texas – 1921
Podiatric Medical Examiners, Texas State Board of – 1939
Chiropractic Examiners, Texas Board of – 1949
Psychologists, Texas State Board of Examiners of – 1969
Physical Therapy Examiners, Texas State Board of – 1971
Occupational Therapy Examiners, Texas Board of – 1983

  
*Policymakers have recognized that efficiency and expertise could be gained by consolidating regulatory functions.*

- As the State regulated more health professions, it began to house them in one location, at first to take advantage of economies of scale by consolidating administrative functions, such as human resources, purchasing, and accounting. Over time, policymakers recognized that additional efficiency and expertise could be gained – especially for small agencies – by consolidating regulatory functions, such as licensing and enforcement. The State embarked on this approach in 1965 with the regulation of professional sanitarians within the former Texas Department of Health (TDH), which became the Department of State Health Services (DSHS), in 2004. Over the years, the Legislature transferred six programs to the Department, including last session’s merger of the regulation of the licensed chemical dependency counselors, as part of its realignment of health and human services agencies in Texas.

The textbox, *Health Professions Regulated Within the Department of State Health Services*, lists the regulatory programs in this umbrella structure, and provides the year each was established.

To a lesser extent, the Legislature has viewed the Board of Medical Examiners as an umbrella agency, adding to its responsibility to regulate physicians with the regulation of acupuncture and physician assistants in 1993, and surgical assistants in 2001.

- The Legislature created the Health Professions Council (HPC) in 1993 to allow health licensing agencies to share common administrative activities while maintaining autonomy for licensing and enforcement. This effort has enabled health professions agencies to share administrative services such as a central toll-free phone number for the public to get information about health licensing agencies and filing complaints. HPC also helps mostly small agencies benefit from other agencies' experience and resources in areas such as information technology, financial management, and reporting. Last session, the Legislature expanded on this approach by creating the Office of Patient Protection to provide the public with assistance and information on health licensing complaint processes.

**Health Professions Regulated Within the Department of State Health Services**

Professional Sanitarians – 1965  
Fitters and Dispensers of Hearing Instruments – 1970  
*(transferred in 1993)*  
Athletic Trainers – 1971  
Non-Commercial Pesticide Applicators – 1975  
Social Workers – 1981  
*(transferred in 1993)*  
Professional Counselors – 1981  
Offender Education – 1982  
*(transferred in 2004)*  
Speech-Language Pathologists and Audiologists – 1983  
Dietitians – 1983  
Midwives – 1983  
Massage Therapists – 1985  
Respiratory Care Practitioners – 1985  
Medical Radiologic Technologists – 1987  
Health-Related Registry – 1989  
Personal Emergency Response System Providers – 1981  
*(transferred in 2003)*  
Chemical Dependency Counselors – 1991  
*(transferred in 2004)*  
Code Enforcement Officers – 1991  
Marriage and Family Therapists – 1991  
Professional Medical Physicists – 1991  
Opticians – 1991  
Sex Offender Treatment – 1993  
*(transferred in 1997)*  
Perfusionists – 1994  
Contact Lens Dispensers – 1997  
Orthotists and Prosthetists – 1997  
Bottled and Vended Water Operators – 1999  
Food Managers – 2001

**Recent changes in the Department of State Health Services and Board of Medical Examiners may affect their ability to function as umbrella regulatory agencies.**

- The Legislature's recent consolidation of health and human services agencies has created an opportunity to separate the regulation of health professions because of the differences in their missions. The new Department of State Health Services is more focused on health-care service delivery than its predecessor, the Texas Department of Health. DSHS assumed all of TDH's mission plus responsibility for mental health services, including seven mental health hospitals from the former Department of Mental Health and Mental Retardation, and all programs of the former Commission on Alcohol and Drug Abuse. These changes have more than doubled the size of DSHS over TDH, taking it from 4,858 to 11,545 employees, and increasing its annual budget from \$1.8 billion to \$2.4 billion.

By comparison, the six health licensing boards at DSHS under Sunset review – the State Board of Examiners of Dietitians, the State Board of



*Recent consolidation of health and human services has created the opportunity to separate the regulation of health professions.*

Examiners of Marriage and Family Therapists, the Texas Midwifery Board, the Texas State Board of Examiners of Perfusionists, the Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners – account for 21 employees and a total annual expenditures of about \$1.4 million. The contribution these boards and other regulatory programs may have made to TDH's public health mission is less apparent with DSHS's service-delivery mission.



*In DSHS, licensing decisions are now made in the same office as the State's largest policy decisions.*

Under this new organizational structure, some regulatory decisionmaking is far removed from the regulatory program – so far as to be made in the same office as some of the largest policy decisions in state government. For example, regulatory boards in DSHS that do not have rulemaking authority, such as the Midwifery Board, must have rules approved by the Executive Commissioner of the Health and Human Services Commission (HHSC) – the same person responsible for administering Medicaid and the Children's Health Insurance Program and overseeing programs ranging from Temporary Assistance for Needy Families to child and adult protective services.

- Legislative changes at the Board of Medical Examiners last session have increased the agency's focus on protecting the public against physicians whose practice the Board determines threatens public health and safety. The Legislature increased the Medical Board's funding by \$3.5 million – about 50 percent of the agency's budget – and earmarked the funds for enforcement and increased enforcement authority to strengthen regulation of physicians. While regulation of the practice of acupuncture matches the Medical Board's mission to protect the public, acupuncturists do not pose as great a risk as physicians. Further, because the State Board of Acupuncture Examiners is advisory to the Medical Board, acupuncture issues may require considerable time from the Medical Board and its staff to reach resolution. These time demands may divert the Medical Board's attention from its core mission of regulating physicians.

**Consolidation of health professions regulation provides an opportunity for efficiency and improved services, particularly for small licensing agencies.**

- A significant benefit of consolidation is not having to replicate similar licensing, enforcement, and administrative functions in a series of small, autonomous agencies, with limited staff and resources. Among similar professions, consolidation improves economies of scale in performing these common functions and promotes coordination and standardization of rules and policies. Larger, consolidated agencies are more able to represent the interests of the regulatory programs by providing a clearer focal point for their budget and resource needs. For example, a larger agency could better address the need for updated information systems, helping correct a historical deficiency for these small agencies.

Properly implemented, consolidation can also mitigate criticism of poor customer service and accountability and the lack of staff expertise. Organizing staff resources along the functional lines of licensing, enforcement, and administration can provide needed staff expertise in



*Consolidation eliminates functions replicated in a series of small autonomous agencies.*

areas that define occupational and professional regulation. By promoting specialization of staff, consolidation may even provide an opportunity for greater professionalism in these regulatory efforts. In addition, proper management can ensure that staff assigned to each regulatory program provides needed expertise and accountability.

- Small licensing agencies, such as the Board of Chiropractic Examiners, the Optometry Board, the Board of Podiatric Medical Examiners, and the State Board of Examiners of Psychologists, would benefit from consolidation into an umbrella regulatory agency. The table, *Key Facts About Health Licensing Boards*, briefly describes each of these agencies.

<b>Key Facts About Health Licensing Boards – 2004</b>				
<b>Board</b>	<b>Staff</b>	<b>Appropriation</b>	<b>Licenses</b>	<b>Complaints Resolved</b>
Chiropractic Examiners	6	\$340,000	4,876	336
Optometry	7	\$372,000	3,384	143
Podiatric Medical Examiners	4	\$205,000	848	107
Psychologists	14	\$721,000	6,226	149

Consolidation would benefit these agencies by improving their ability to meet the standard administrative requirements common to all agencies, such as budgeting, accounting, and reporting, while strengthening their licensing and enforcement responsibilities. A recent audit of the Chiropractic Board highlights significant deficiencies in its accounting system, illustrating the problems endemic to small agencies.<sup>1</sup> In addition, the Podiatry Board has experienced a budget shortfall requiring a deficiency grant from the Governor’s Office and preventing it from being fully staffed. While these problems are not in evidence at the Optometry or Psychology boards, they too, could benefit from improved coordination with the regulatory programs for opticians and contact lens dispensers; and marriage and family therapists, professional counselors, and social workers.

- Consolidation of licensing agencies directly provides the benefits envisioned by creation of the Health Professions Council, without the need for a separate entity. Created in 1993, following a Sunset review of health licensing agencies, HPC functions like a cooperative, with some agencies sharing more of their resources, as needed. While reducing the number of agencies needing HPC’s services, a consolidated agency could assume HPC’s responsibilities for assisting small agencies not under the umbrella. This effort could help the new agency integrate and coordinate programs under the umbrella. Agencies not affected by the consolidation could reclaim resources given to HPC, and could thus focus more directly on their core regulatory missions. Consolidation could also provide better information collection and dissemination on issues such as health workforce supply and demand, improving overall state health planning. Consolidation could also improve the Office of Patient Protection by moving it from HPC to the new agency, taking advantage of its central location to serve patient’s needs.
- While the benefits of consolidation would also accrue to other boards under Sunset review – the Board of Medical Examiners, the State Board of Physician Assistant Examiners, the State Board of Pharmacy, and the State Board of Veterinary Medical Examiners – these regulatory

  
*A recent audit highlighting the Chiropractic Board’s accounting deficiencies illustrates the problems of small agencies.*

programs have either the size and significance or other reasons that would preclude significant benefit from consolidation. The Medical and Pharmacy boards are two of the largest health licensing agencies in the state. While these boards could fit within an umbrella structure and add expertise benefiting other regulatory efforts, such a move would likely divert resources and attention from their critical missions. Such a change would be especially difficult for the Medical Board at a time when significant attention has been given to improving its programs. As an advisory board, the Physician Assistant Board is already attached to the Medical Board and is working well through this association. In addition, physician assistants work under the authority of physicians, providing a better fit for their regulation under the Medical Board. Few additional benefits would accrue from shifting the Physician Assistant Board to another umbrella structure.

The Veterinary Medical Board is a stand-alone agency with 11 employees and an appropriation of approximately \$593,000 in fiscal year 2004. That same year, it licensed 6,760 veterinarians, and resolved 308 complaints. While the Veterinary Medical Board could also benefit from consolidation with a larger agency, it does not clearly fit under a health professions umbrella. Texas is one of 19 states that regulates veterinarians through a stand-alone agency, and only eight states regulate veterinarians through a health licensing umbrella agency.

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*Twenty states regulate health professions in a general umbrella agency, and 10 to 15 more do so under a health licensing umbrella agency.*

- With some variation according to profession, other states have largely embraced the concept of regulating health professions under a consolidated, umbrella structure. About 20 states regulate health professions and other occupations in a general umbrella agency, analogous to the Texas Department of Licensing and Regulation. Another 10 to 15 states regulate health professions through an umbrella agency that focuses on health licensing.

**Establishing an umbrella regulatory structure provides an opportunity to achieve greater standardization of regulatory practices.**

- *Appointment of presiding officer.* The Sunset Commission routinely recommends that the Governor appoint the presiding officer of Governor-appointed boards and commissions. This approach promotes accountability to the state's highest elected official for bodies responsible for setting state policy. Two of the Governor-appointed boards at DSHS – the State Board of Examiners for Speech-Language Pathology and Audiology and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments – still provide for board members to elect the presiding officer. Providing for the Governor to appoint their presiding officers would bring them in line with the standard for Governor-appointed bodies.
- *Biennial license renewal.* Last session, the Legislature required that all health professions regulated at DSHS switch from annual to biennial license renewal, and DSHS is currently phasing in this requirement. The Chiropractic, Optometry, Podiatric, and Psychology boards each provide for annual renewal. Authorizing biennial license renewal would provide a consistent approach to licensing.

- *Administrative penalty amounts.* The health professions regulatory agencies have authority to assess administrative penalties against violators of their statutes or rules to ensure compliance without restricting a licensee’s practice. To provide an adequate deterrent effect, agencies must be able to set penalties at a level to reflect the seriousness of the violation. Many health professions agencies may assess administrative penalties up to \$5,000 per day of violation and, last session, the Legislature gave this same authority to eight additional programs at DSHS. Health professions regulatory programs without penalties at this level include those for chiropractors, optometrists, psychologists, hearing instrument fitters, athletic trainers, massage therapists, licensed chemical dependency counselors, medical radiologic technicians, medical physicists, and respiratory care practitioners. Providing a standard penalty cap would enable regulators to scale penalties to the violation and promote a consistent regulatory approach across all programs.
- *Criminal history check.* Increasingly, the Legislature has recognized the importance of providing a thorough screening to protect the public from licensees who pose a potential risk. To ensure that licensees do not have criminal histories, last session, the Legislature provided specific authority to all licensing and regulatory agencies to perform criminal history record checks with both the Department of Public Safety (DPS) and the FBI. The Legislature also required the Nurse Board to obtain criminal history information for new license applicants and currently licensed nurses renewing licenses. In addition, DSHS may obtain criminal history information for licensed chemical dependency counselors from both DPS and the FBI and may consider this information in determining the person’s license status. Extending this authority to obtain criminal history information would provide for better background checks of licensees for the improved protection of the public.

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*Last session, the  
Legislature provided  
authority for licensing  
agencies to perform  
criminal history  
record checks.*

## Recommendations

### Change in Statute

#### Consolidation of Health Professions Licensing

##### 1.1 Establish a Department of Health Professions Licensing.

This recommendation would create a new agency responsible for regulating most health professions in Texas, modeled after the Texas Department of Licensing and Regulation. It would be overseen by a Board that would hire staff to carry out the duties of the new Department. The Department would have general statutory authority for the licensing and enforcement functions for all regulatory programs, subject to the specific provisions of each program’s statute. The Department would be directed to adopt a functional approach to organizing its operations, rather than having specific staff carry out each program. The Department would have a Sunset date of 2017, applied to each regulatory board and program under its umbrella. The chart on page 11, *Programs in the Department of Health Professions Licensing*, shows each of the regulatory boards and programs that would be under this umbrella if all recommendations in this report are adopted.

**Board.** The Health Professions Licensing Board would have seven public members, appointed by the Governor to six-year terms, and subject to the standard Sunset Across-the-Board provisions related to eligibility, conflict of interest, and public participation. The Board would employ an Executive Director and supervise the Executive Director's administration of the agency.

**Board duties.** The Board's powers and duties would include establishing policy objectives for the Department, approving the operating budgets and legislative appropriations requests, establishing fees at levels to cover costs of administering programs, and adopting rules necessary to oversee the Department. The Board would have final licensing and enforcement authority for regulatory programs that do not have independent oversight boards. The Board would also ensure that rules and procedures of independent boards under its umbrella are consistent overall with its own rules and procedures.

**Staff duties.** The Executive Director would administer and enforce the Department's programs, subject to the Board's oversight. The Executive Director would organize and manage the Department to issue licenses, impose sanctions, and issue orders for regulatory programs under the Department's purview. The Executive Director would also account for all funds received and disbursed, develop cost-management procedures to determine the total cost of each program and activity, and ensure that each program covers its costs. This responsibility would include preparing an agency budget and legislative appropriations request that encompasses all regulatory programs.

The Executive Director would make personnel and resources available for the efficient administration of each regulatory program, including helping manage and run meetings, maintaining files and records, and preparing reports and information as directed. To accomplish these tasks, the Executive Director, in consultation with the various boards and advisory committees, could designate staff contacts for each regulatory program. The Executive Director, however, would maintain full organizational and management authority over the Department's staff.

**General licensing provisions.** The general statute governing the Department would include licensing and enforcement provisions defining the Department's basic authority, including standard language for common licensing procedures such as notification of examination results, examination fee refunds, staggered renewal, expiration and renewal, and continuing education. Enforcement provisions would include standard language for inspections and investigations, the right to a hearing at the State Office of Administrative Hearings, and monitoring of license holders' compliance with disciplinary orders. General statute would also include actions to enforce the Department's laws, including administrative sanctions and fines, emergency suspension, cease-and-desist orders, refunds, and injunctive relief and civil penalties. Each program under the Department would have specific statutory provisions outlining any additional requirements needed for that program.

## **1.2 Transfer regulation of health professions from the Department of State Health Services to the Department of Health Professions Licensing.**

This recommendation would transfer the six regulatory boards under DSHS that are currently under Sunset review – the State Board of Examiners of Dietitians, the State Board of Examiners of Marriage and Family Therapists, the Texas Midwifery Board, the State Board of Examiners of Perfusionists, the State Board of Examiners of Professional Counselors, and the State Board of Social Work Examiners – to the Department of Health Professions Licensing. In addition, regulation of most other health professions currently located at DSHS would be transferred to the Department.

Three of the boards currently under Sunset review – the Marriage and Family Therapist, Professional Counselors, and Social Work boards – would maintain their existing status as Governor-appointed boards with authority to adopt rules and make independent licensing and enforcement decisions. Because staffing for these regulatory programs would be provided by the Department of Health

Professions Licensing, separate personnel provisions in these boards' statutes would be deleted. Under the new Department, these and the other boards would be subject to Sunset review in 2017, and their separate Sunset dates would be removed.

The Texas Midwifery Board would maintain its existing status as a quasi-independent board with final authority on specific licensing and enforcement matters, but advisory on rulemaking. The Midwifery Board would be appointed by and advisory to the new Health Professions Licensing Board, instead of the Executive Commissioner of the Health and Human Services Commission.

The State Board of Examiners of Dietitians and the State Board of Examiners of Perfusionists would be transferred to the Department, but as advisory committees, not as independent boards with final decisionmaking and rulemaking authority. Consistent with the recommendations in Issue 1 in the Sunset Staff Report on the six health licensing boards at DSHS, these boards would become advisory to the Health Professions Licensing Board, instead of the Executive Commissioner of HHSC. In addition, these advisory boards would be appointed by this Board, instead of the Governor, and they would both be reduced from nine to five members, as specified in that recommendation.

***DSHS Regulatory Programs to be Transferred  
to the Department of Health Professions Licensing***

***Independent Boards***

Athletic Trainers, Advisory Board of  
Dietitians, Texas State Board of Examiners of  
Marriage and Family Therapists, Texas State Board of Examiners of  
Orthotics and Prosthetics, Texas Board of  
Perfusionists, Texas State Board of Examiners of  
Professional Counselors, Texas State Board of Examiners of  
Social Work Examiners, Texas State Board of  
Speech-Language Pathology and Audiology, State Board of  
Examiners for

***Quasi-Independent Board***

Fitting and Dispensing of Hearing Instruments, State Committee  
of Examiners in the  
Midwifery Board, Texas  
Medical Physicists, Texas Board of Licensure for Professional

***Programs With Advisory Committees***

Medical Radiologic Technologist Certification  
Respiratory Care Practitioner Certification

***Programs Without Advisory Committees***

Chemical Dependency Counselor  
Contact Lens Dispensing Permitting  
Health-Related Registry  
Massage Therapy Registration  
Optician Registration  
Personal Emergency Response System Provider  
Licensing and Registration

Other health professions regulatory programs at DSHS would transfer to the Department as currently constituted, with or without independent, Governor-appointed boards. The textbox, *DSHS Regulatory Programs to Be Transferred to the Department of Health Professions Licensing*, lists the DSHS regulatory programs that would transfer to the Department, categorized by the type of oversight. Because these programs would come under the Department's general statutory language, references to staffing in their statutes and any separate Sunset dates would be deleted.

The regulatory programs not transferred from DSHS under this recommendation relate more to health-services delivery than health professions regulation. The registrations of professional sanitarians and code enforcement officers involve public-health-related activities concerned with health and safety codes and other environmental health concerns more central to DSHS' service delivery function, and should not be consolidated into the

new Department. Three other programs – food service certification, noncommercial pesticide applicator certification, and bottled and vended water operator certification – have policymaking and content expertise located elsewhere at DSHS and are not good candidates for consolidation. In addition, the Council on Sex Offender Treatment – responsible for registering sex offender treatment providers – also administers the civil commitment process for sexually violent predators. While the regulatory program for sex offender treatment providers would be appropriately placed under the new umbrella agency, separating this activity from the Council's civil commitment responsibilities requires additional analysis before it can be including it in this consolidation. Finally, the offender

education program regulates training programs for alcohol offenders, which should not be consolidation because of its importance to DSHS' service delivery mission.

This recommendation would not include the regulation of facilities, except for a limited number of educational facilities and establishments related to certain regulated health professions. Specifically, these facilities include contact lens vendors, massage establishments and schools, medical radiologic schools and training programs, orthotic and prosthetic facilities, and personal emergency response system providers. The regulation of hospitals, nursing homes, and other health facilities would remain at the DSHS.

The recommendation would also transfer appropriate staff and resources from DSHS to support the administrative and legal needs of these regulatory programs in the new Department, calculated at the same percentage that these same programs currently require from DSHS. The transfer of these regulatory programs and the staff and resources to administer them would be effective on March 1, 2006, giving DSHS time to adequately plan and execute the transfer of powers, duties, functions, programs, and activities to the Department of Health Professions Licensing.

**1.3 Consolidate the regulation of chiropractic within the Department of Health Professions Licensing.**

**1.4 Consolidate the regulation of optometry within the Department of Health Professions Licensing.**

**1.5 Consolidate the regulation of podiatry within the Department of Health Professions Licensing.**

**1.6 Consolidate the regulation of psychology within the Department of Health Professions Licensing.**

These recommendations would abolish four independent agencies and transfer their responsibilities to the Department. These recommendations would not affect each of these regulatory programs' oversight boards, which would continue as currently constituted – as nine-member, Governor-appointed boards, with authority to pass rules and make licensing and enforcement decisions. Because the Department would provide staffing for these programs, separate provisions in statute relating to their own executive directors and other board personnel would be deleted, as would provisions for the boards to collect and disburse funds. The Department would be responsible for all budgeting and accounting. Under the new Department, these four boards would be subject to Sunset review in 2017, and their separate Sunset dates would be removed.

All staff, resources, and state property would transfer with these regulatory programs to the Department by September 1, 2006, to provide adequate time to plan for an orderly transition.

**1.7 Transfer the regulation of acupuncture from the Board of Medical Examiners to the Department of Health Professions Licensing.**

Under this recommendation, the State Board of Acupuncture Examiners would transfer to the Department of Health Professions Licensing as a quasi-independent board, reflecting the recommendation made in Issue 8 in the Sunset Staff Report on the Board of Medical Examiners. The Acupuncture Board would continue to have nine members, appointed by the Governor, but would have final authority to make licensing and enforcement decisions, rather than having those decisions approved by another board, as is currently the case. The Acupuncture Board's rules would be approved by the Health Professions Licensing Board.

The recommendation would also require the Board of Medical Examiners to transfer the staff and resources needed to administer acupuncture regulations. The transfer would be effective on March 1, 2006, when the regulatory programs from DSHS would be transferred.

**1.8 Consolidate the Health Professions Council within the Department of Health Professions Licensing.**

This recommendation would assign the functions of the Health Professions Council relating to sharing and coordinating activities and collecting and disseminating information among the health professions regulatory programs to the Department. The Council would still be needed to serve as a focal point for information sharing and for coordinating administrative and regulatory efforts for health professions agencies not under the Department’s umbrella. Health professions agencies not under Sunset review this cycle – the State Board of Dental Examiners, State Board of Nurse Examiners, the Executive Council of Physical Therapy and Occupational Therapy Examiners, and the Funeral Service Commission – were not considered for consolidation into the Department, and would continue to benefit from the Council’s activities. With consolidation, however, neither the Council’s size, nor the demands made on it, would be as large. The accompanying table depicts the membership of the Council under the proposed consolidation.

<p><b>Reconstituted Health Professions Council</b></p> <p>Department of Health Professions Licensing          State Board of Medical Examiners          State Board of Pharmacy          State Board of Dental Examiners          State Board of Nurse Examiners          Executive Council of Physical Therapy and Occupational Therapy Examiners          State Board of Veterinary Medical Examiners          Texas Funeral Service Commission</p>
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Separate funding and staffing for the Council would be eliminated, and the Department would assume responsibility for the Council’s statutory mandates for the telephone complaint system, board member training, and annual report of complaint and enforcement actions. The Department would also help Council members with administrative needs, as appropriate. The Department, through the Council, would also be responsible for collaborating and coordinating health workforce planning and data collection for the Texas State Health Plan.

**1.9 Administratively attach the Office of Patient Protection to the Department of Health Professions Licensing.**

This recommendation would locate the Office of Patient Protection in the Department for administrative purposes, instead of the Health Professions Council. The Office would retain all of its existing powers and duties under its statute, and it would continue to be overseen by a three-member Executive Committee, appointed by the Governor. To ensure the Office’s independence, the Department would not have any supervisory or budgetary control. The Office would be required to reimburse the Department for any administrative costs incurred.

<b>Programs in the Department of Health Professions Licensing</b>	
<p><b>Independent Boards</b></p> <p>Athletic Trainers, Advisory Board of          Chiropractic Examiners, Texas Board of          Marriage and Family Therapy, Texas State Board of Examiners of          Optometry Board, Texas          Orthotics and Prosthetics, Texas Board of          Podiatric Medical Examiners, Texas State Board of          Professional Counselors, Texas State Board of Examiners of          Psychologists, Texas State Board of Examiners of          Social Work Examiners, Texas State Board of          Speech-Language Pathology and Audiology, State Board of          Examiners for</p> <p><b>Quasi-Independent Boards</b></p> <p>Acupuncture Examiners, State Board of          Hearing Instruments, State Committee of Examiners in the          Fitting and Dispensing of          Midwifery Board, Texas          Professional Medical Physicists, Texas Board for Licensure for</p>	<p><b>Programs with Advisory Committees</b></p> <p>Dietitians, Texas State Board of Examiners of          Medical Radiologic Technologists Certification          Perfusionists, Texas State Board of Examiners of          Respiratory Care Practitioner Certification</p> <p><b>Non-Board Programs</b></p> <p>Contact Lens Dispensing Permitting          Health-Related Registry          Licensed Chemical Dependency Counselor          Massage Therapy Registration          Optician Registration          Personal Emergency Response System Provider          Licensing and Regulation</p> <p><b>Interagency Councils</b></p> <p>Health Professions Council          Office of Patient Protection (administratively attached)</p>

## **Continuation of Previously Reviewed Agencies**

### **2.1 Continue the State Board of Medical Examiners as a separate agency.**

This recommendation would continue the Medical Board as an independent, stand-alone agency for 12 years. The Medical Board would remain as it is currently constituted, with 19 members, appointed by the Governor, with independent authority for regulating physicians

### **2.2 Continue the State Board of Physician Assistant Examiners as an advisory board under the Board of Medical Examiners.**

The Physician Assistant Board would be continued, as a nine-member, Governor-appointed board that is advisory to the Medical Board. It would retain its final decisionmaking authority for licensing and enforcement matters related to physician assistants, but would still have the Medical Board approve its rules. As part of the Medical Board, the Physician Assistant Board would be subject to Sunset review in 2017 when the Medical Board next comes under review. Its separate Sunset date would be deleted.

### **2.3 Continue the Board of Pharmacy as a separate agency.**

This recommendation would continue the Pharmacy Board as an independent, stand-alone agency for 12 years. The Pharmacy Board would remain as a nine-member, Governor-appointed board, with independent authority for regulating pharmacists and pharmacies.

### **2.4 Continue the State Board of Veterinary Medical Examiners as a separate agency.**

The Veterinary Medical Board would be continued as an independent, stand-alone agency for 12 years. Its existing status as a nine-member, Governor-appointed board, with independent authority for regulating veterinarians would remain.

## **Standardization of Regulatory Practices**

### **3.1 Provide for the Governor to appoint the presiding officers of two independent boards that currently elect their presiding officer.**

This recommendation would provide for the Governor to appoint the presiding officers of the State Board of Examiners for Speech-Language Pathology and Audiology, and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments. Each of these bodies would still elect other officers as currently provided in statute.

### **3.2 Authorize the Department of Health Professions Licensing to provide biennial license renewal.**

This recommendation would provide for biennial renewal for all licensees by the Department. This change would affect the regulatory programs for chiropractors, optometrists, podiatrists, and psychologists, as these programs currently provide annual renewal. The Health Professions Licensing Board would determine when to start biennial renewals, and would be able to stagger license issuance and renewal for further workload benefits.

### **3.3 Provide a standard \$5,000 cap on administrative penalties for all regulatory programs in the Department of Health Professions Licensing.**

All regulatory programs under the Department would be able to assess administrative penalties up to \$5,000 per day of violation. The regulatory programs with current caps below \$5,000 include those for regulating chiropractors, optometrists, psychologists, hearing instrument fitters, athletic

trainers, massage therapy, licensed chemical dependency counselors, medical radiologic technicians, medical physicists, and respiratory care practitioners. The Department would also be required to adopt penalty matrices, in rule, specifying which offenses are serious enough to merit the increased penalty.

### **3.4 Provide for the Department to conduct national criminal history checks of applicants for all health professions licenses.**

This recommendation would ensure the Department has specific authority to perform both Department of Public Safety and FBI criminal history record checks, and consider the information in determining licensure status. The Department would be able to charge a fee to cover the costs of administering this criminal history investigation.

### **Impact**

These recommendations are intended as a starting point to further the discussion about the State's approach to regulating health professions. The recommendation to place many of these regulatory programs into a new umbrella agency dedicated to health professions licensing would promote the advantages of consolidation – improved economies of scale from eliminating duplicative structures of numerous small agencies; better focus on regulatory mission and articulation of staff and resource needs; and improved coordination, consistency, and standardization in the State's regulatory approach. The recommendation also balances the need for expertise and independence in the programs with the need for centralization of staff functions in the Department of Health Professions Licensing so that consolidation can be successfully implemented.

The recommendations would also continue the functions of the Health Professions Council within the Department to serve the needs of information sharing and dissemination, and help remaining Council agencies meet administrative needs. The Office of Patient Protection would be centrally located to continue its assistance to patients.

Excluded from this consolidation are regulatory agencies with sufficient staff and resources to satisfy the demands of practitioners and the public. This would enable these agencies to continue to meet their missions without overwhelming the new regulatory agency. Excluded are agencies not subject to Sunset review cycle. The Department would be available for consolidating such programs if the Legislature chooses.

While these recommendations would likely result in savings by improving economies of scale and eliminating the need for some positions, during its start-up phase any savings would be returned to the Department to improve the overall regulatory effort of the various health professions. Returning savings to the General Revenue Fund is not the purpose of these recommendations.

### **Fiscal Impact**

These recommendations would not have a fiscal impact to the State. The transfer of regulatory programs from the Department of State Health Services would require approximately \$3.3 million and 66 full time equivalent positions to be transferred from DSHS to provide needed administrative support for the new Department of Health Professions Licensing. These estimates are based on the percentage of the Department State Health Services budget and staffing currently dedicated to regulating these health professions. In addition, the funding and resources currently allocated to the Chiropractic, Optometry, Podiatric Medical, and Psychology boards would also transfer to the Department.

The recommendations to consolidate existing stand-alone agencies into this new Department would provide greater efficiency in regulating these professions, eliminating the need for several current staff positions. In addition, elimination the funding and staffing for the Health Professions Council would also save approximately \$138,000 in funds transferred from member agencies. However, any savings that accrue would be dedicated to the new agency to help it provide the level of regulation needed to protect the public. These savings would help pay for the Department's support functions for HPC and other start-up costs. In summary, using the current level of expenditures, the Department should be able to increase the quality of operations and regulatory oversight currently provided by the separate agencies and programs subject to this consolidation.

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<sup>1</sup> Comptroller of Public Accounts, Claims Division, *Claims Division Quarterly Report, Fourth Quarter, Fiscal Year 2004, Post-Payment Audits* (Austin, Texas, September 30, 2004), p. 5.

# LICENSING REORGANIZATION PROJECT

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