

# EXECUTIVE SUMMARY

## *Texas State Board of Examiners of Marriage and Family Therapists*

## *Texas State Board of Examiners of Professional Counselors*

## *Texas State Board of Social Worker Examiners*

**Project Manager: Robert Romig**

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The Legislature created the Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners as independent boards charged with protecting persons receiving behavioral health services. The boards are not independent agencies; instead, each board receives administrative services from the Department of State Health Services (DSHS). Collectively, the boards regulate about 50,000 licensees, many of whom treat vulnerable clients who suffer from mental health disorders or impairments. As such, the boards' public protection charge is critical since these behavioral health practitioners apply a considerable amount of judgment in the services they provide, and the authority and trust given to them creates an opportunity for abuse, whether financial, emotional, sexual, or otherwise.

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Overall, the Sunset review found the administrative attachment of the boards to DSHS is not working. Further, their impending transfer in name only to the Health and Human Services Commission (HHSC) next year will change little, if anything. The shortcomings of this system have been highlighted in numerous reports, including the 2015 DSHS Sunset review in which staff recommended transferring these programs to the Texas Department of Licensing and Regulation (TDLR). While the Sunset Commission and the Legislature ultimately transferred 13 occupational regulatory programs from DSHS to TDLR, these three boards were allowed to remain until the completion of their own Sunset reviews. However, the current Sunset review confirmed previous concerns and identified other serious and systemic issues that must be addressed.

The behavioral health boards have failed to effectively regulate these professions, putting vulnerable Texans at risk. The boards' enforcement processes are broken. In fiscal year 2016, each board took an average of two to three years to resolve

a complaint, and the boards have amassed an alarming backlog of more than 850 complaint cases from previous fiscal years potentially putting the public at risk. The boards' unusual complaints committee processes fail to safeguard due process or confidentiality, and many stakeholders take exception to the public shaming aspect of these public meetings. The professional counselor board in particular has earned a reputation for its sensationalistic complaints meetings. Beyond the significant issues with the boards' actions, DSHS must prioritize its programs with the highest potential risk to public health. With finite resources, DSHS cannot devote adequate resources to support the boards' missions to protect the public.

Given the serious, ongoing, and systemic problems identified, these programs simply cannot continue to function under the existing regulatory structure. Sunset staff recommends transferring the regulation of marriage and family therapists, professional counselors, and social workers to TDLR's newly created health professions division where they will receive the expertise and attention needed to fix these longstanding problems. TDLR has established itself as a successful umbrella licensing agency with an effective regulatory model, and has a proven track record of improving licensing and enforcement outcomes for transferred programs while maintaining or reducing costs. Transferring these three behavioral health regulatory programs to TDLR's health professions division will increase responsiveness to licensees and consumers and improve regulation to better protect the public.

The following material summarizes all of the Sunset staff findings and recommendations on the Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners.

## Issues and Recommendations

### *Issue 1*

#### **The Texas Department of Licensing and Regulation Should Regulate Marriage and Family Therapists, Professional Counselors, and Social Workers.**

Three independent boards administratively attached to DSHS oversee the practice of marriage and family therapy, professional counseling, and social work. The boards and DSHS have failed to effectively regulate these professions, putting Texans at risk. The boards have unacceptable enforcement processes, including a backlog of over 850 enforcement cases and appalling complaint resolution times. Additionally, the boards have not kept pace with occupational regulatory standards. Transferring these boards to the health professions division of TDLR, with its proven track record of improving licensing and enforcement outcomes for other professions, would ensure licensees are more effectively and efficiently regulated and the expectations of Texans are met.

#### **Key Recommendation**

- Continue regulation of marriage and family therapists, professional counselors, and social workers at the Texas Department of Licensing and Regulation.

## *Issue 2*

### **The Behavioral Health Boards' Dysfunctional Enforcement Processes Fail to Adequately Regulate Licensees and Protect the Public.**

The enforcement processes used by the behavioral health boards have led to unacceptable case resolution times of several hundred days and a backlog of several hundred cases that can endanger the public. A number of board decisions have created roadblocks to efficient and effective enforcement activity, including insufficient complaint dismissal authority for staff. Unconventional approaches to complaint resolution processes, such as involving board members in the investigative process, create unmanageable work for staff and can skew the fairness and objectivity in enforcement processes. The boards' unusual public complaints and ethics committees also undercut due process and confidentiality, both of which would be better protected through appropriate notice of allegations and an informal settlement process. Regardless of board actions, limited resources at DSHS have also proven to be inadequate to support the boards' missions to protect the public.

#### **Key Recommendations**

- Abolish the boards' complaints and ethics committees and ensure board members are not involved in complaint investigations.
- Ensure TDLR develops policies for prioritizing complaints and directs staff to prioritize complaint investigations based on these policies.
- Ensure TDLR updates its enforcement plan, including appropriate penalty matrices.

## *Issue 3*

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

Several licensing provisions in the behavioral health boards' statutes, rules, and policies do not conform with model standards or common practices observed in other occupational regulatory agencies, presenting unnecessary hurdles to applicants and potentially reducing consumer safety. The boards rely on outdated modes for criminal background checks and do not proactively ensure out-of-state applicants are safe to practice in Texas. None of the boards has updated rules to reflect expedited licensing for military personnel and spouses. Outdated and absent statutory authority prevent the boards from operating efficiently, and overly restrictive education and experience requirements and bureaucratic supervision requirements add unnecessary burdens to entering the profession.

#### **Key Recommendations**

- Require TDLR to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Authorize TDLR to check for disciplinary actions in other states and from other licensing boards, and to pursue any necessary enforcement actions based on the results.
- Remove the statutory limitation currently restricting the boards' authority to lower fees.

- Direct TDLR to remove unnecessary and restrictive education requirements for professional counselor applicants, and to reduce the burden of supervision requirements on licensees, supervisors, and staff.
- Direct TDLR to fully implement expedited processing for military applications and renewals for marriage and family therapists, professional counselors, and social workers.

## Fiscal Implication Summary

Overall, the recommendations in this report would result in much better regulation for the professions and reduced regulatory costs over time; however, the recommendations would result in a small negative fiscal impact to the General Revenue Fund of approximately \$540,409 over the next five years. The impact comes from initial start-up appropriations to TDLR of at least \$950,565 and eight additional full-time equivalent employees (FTEs) in fiscal year 2018 and \$209,440 and three FTEs in fiscal year 2019 to enhance licensing and enforcement efforts, particularly to clear up the existing large backlog of behavioral health board complaint cases. After these initial investments, the administrative costs for the behavioral health programs should decrease from the current cost of \$1.4 million to less than \$1.2 million resulting in an annual savings beginning in fiscal years 2020–2022 and continuing thereafter.

The boards generate \$3.1 million in revenue annually, which is more than sufficient to cover TDLR's projected start-up and operating costs. Alternatively, the Legislature could consider covering TDLR's start-up costs by authorizing a temporary surcharge or fee increase on licensees in the transferred programs.

**Issue 1** — Transferring regulation of marriage and family therapists, professional counselors, and social workers to TDLR would result in initial start-up costs to the General Revenue Fund but lead to more efficient long-term regulation and savings, as well as fewer employees over time from efficiencies gained.

**Issue 2** — The fiscal impact of the recommendations to improve enforcement processes is difficult to estimate given the extensive waste of resources by the three current boards. Streamlining the enforcement processes and providing staff adequate authority to handle baseless and nonjurisdictional complaints will save significant, but unestimable staff resources.

**Issue 3** — Requiring fingerprint-based criminal background checks would not have a fiscal impact to TDLR but would require applicants and licensees to pay a one-time fee of about \$40 for a fingerprint background check through the Department of Public Safety. Any increased workload related to background checks could be handled with current resources. Requiring approval of continuing education courses would increase staff workload, which would be offset by efficiencies gained through other recommendations in this issue. TDLR would have sufficient fee authority, but would need a matching appropriation, to recover costs if determined to be necessary, including costs associated with querying the National Practitioner Data Bank.

### **Behavioral Health Boards**

| <b>Fiscal Year</b> | <b>Cost (Savings) to the General Revenue Fund</b> | <b>Change in the Number of FTEs From FY 2017</b> |
|--------------------|---|--|
| 2018               | \$950,565   | +8   |
| 2019               | \$209,440   | +3   |
| 2020               | (\$57,502)  | +1   |
| 2021               | (\$281,047)                                       | -3   |
| 2022               | (\$281,047)                                       | -3   |