

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)
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-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
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To: Sunset Advisory Commission
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Agency: DEPARTMENT STATE HEALTH SERVICES DSHS

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Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

I am writing in regards to Issue 3 of the Sunset Advisory Commission Staff Report regarding DSHS. The issue is listed as "The unmanageable scope of DSHS's regulatory functions reduces needed focus on protecting public health." The solution recommended by staff includes transferring oversight of professional licensing for 12 professions from DSHS to TDLR and eliminating the professional licensing requirements for 19 additional professions. The rationale for transferring programs from DSHS to TDLR seems reasonable, but the conclusion that Medical Physics [MP] and Medical Radiologic Technologist [MRT] licensing programs should be discontinued completely is not supported either by the arguments in the report or by common sense.

General comment on report's rationale:

The report cites several large-scope problems at DSHS with the implication that the recommended cutting or transferring of these licensing programs will help address these problems. Consider these statements from the report "Continued regulatory expansion combined with shrinking resources has created an unmanageable undertaking and ineffective structure at DSHS." [p.42] Fulfilling multiple responsibilities with limited resources means high-risk programs are stretched thin and low-risk programs are forced to the margins. [p.44] "Most regulatory programs at DSHS are designed to be self-funded through fees collected from the regulated businesses, but the Legislature routinely keeps more of the revenue these programs generate rather than appropriating it to strengthen the regulatory effort. In fiscal year 2013, the State kept more than one-third of fee revenue generated — \$21 million." [p.43] The proposed solution (cutting 19 programs) will cost the state's budget (General Fund) \$1.6M and will remove 45 FTEs from DSHS. [p.54] This solution makes no sense and appears to be staff recommending that DSHS cut off its nose to spite its face. If the licensing programs generate net positive revenue, and DSHS is stretched too thin to adequately oversee all its responsibilities, it seems the logical solution would be to go to the Legislature and ask to keep more of the money they are generating so DSHS can do the jobs it has been assigned.

Rather than do that, the report suggests cutting these moneymaking programs to punish the legislature for taking DSHS's money away and then trying to do DSHS's remaining work with 45 fewer FTEs. Given that all 19 of the programs suggested for cuts are listed as "generating little regulatory activity" it seems unlikely that these 19 programs require 45 FTEs to manage, resulting in a net FTE loss for DSHS.

So essentially, the staff identifies the problem as, "DSHS is trying to do too much with too few resources" and their recommendation is "get rid of the programs that generate more resources than they require to maintain themselves". This makes no sense and will not help either DSHS or the citizens of Texas. Doesn't it make more sense to move all the programs to the TDLR, keep the money in the budget and keep many of the staff FTEs in DSHS (presumably some FTEs would be transferred to TDLR to help oversee the programs) and realize additional savings from improved efficiency under TDLR?

MP & MRT Programs:

I would next like to address the errors in the report's analysis regarding the MP and MRT licensing programs. The report suggests that the programs are unneeded as (1) deregulation would have little impact on health and safety (2) they cover professionals that operate in a highly regulated environment (3) they have 'regulation' provided by provided by another body or through private sector accreditation and (4) they generate little regulatory activity. The rationales provided in these sections are incorrect and in some cases contradictory to information presented elsewhere in the report.

(1) Impact on Health & Safety

The idea that deregulating the MRT and MP programs would have little impact on health and safety is contradicted by some of the analysis given in the report itself.

Within its finite resources, DSHS must prioritize regulatory programs with the highest potential risk to public health, such as those designed to prevent foodborne illnesses and radiological disasters. In one example, federal requirements concerning radioactive materials inspections increased over the last few years, requiring DSHS to implement new duties with no additional resources, which in turn reduces resources for other programs that are important but bear a lower level of risk, such as inspecting facilities that use x-ray machines on patients. [p. 44] Clearly DSHS sees the use of radioactive materials and the use of x-ray machines on patients as important – and rightly so. What the report fails to realize is that it is the technologists who most often expose patients with radiation. Technologists also log, handle and administer radioactive materials. Medical physicists develop and oversee the programs for the safe use of radiation and radioactive materials. Medical physicists also calibrate the linear accelerators used to treat cancer patients so that those patients get the right amount of radiation – and much more for both groups. If DSHS is concerned about reducing inspections at x-ray facilities now, how much more concerned would they be if those facilities were not required to have qualified MRT and MP staff as they are now? I would contend that one of the reasons x-ray facilities are considered lower risk is precisely because Texas has a strong program requiring qualified individuals calibrate and operate x-ray equipment in Texas.

Both MPs and MRTs are often the front line of radiation use in Texas healthcare facilities and to suggest that having unqualified individuals performing these tasks would not impact the health and safety of Texas patients is ridiculous and I will not waste your time refuting it here. If however you would like to make that argument, please feel free to contact me and I would be happy to have that discussion. The argument for the removal of the MP and MRT licensing therefore, must be that because of items (2), (3) &

(4) below, licensure is not needed to assure that only qualified individuals operate in these professions. I will address these in the sections below.

(2) Highly regulated environment

It is true that MPs and MRTs operate in a highly regulated environment, however the vast majority of the regulations pertaining to the use of radiation are either equipment standards or facility requirements. The requirements for qualifications of individuals are relatively few. For instance, the regulations list requirements for radiation safety officer

(RSO) or authorized using physician (AUP) but no requirements for Medical Physicist other than that one is a 'Licensed Medical Physicist' [LMP].

The regulations are full of references to important items that must be performed by LMPs (see for instance 25 TAC 289.229 or the new requirements added to 25 TAC 289.227 in May 2013) but without licensure, there will be no standard as to what is required to be a qualified medical physicist in Texas.

If something is important enough that it is required by regulation to be performed by MPs, is it not also important enough to assure those MPs are qualified? The rationale given in the report is as follows:

Medical radiologic technologists, sometimes referred to as x-ray technicians, are another group of professionals who operate in a highly regulated environment. These trained practitioners perform radiological procedures, such as mammograms, CT scans, and MRIs. Like perfusionists, they operate in healthcare facilities subject to numerous

federal and state requirements, including separate regulation of the machines themselves, have private accreditation programs, and work in conjunction with several other highly trained healthcare professionals.

Many other technical positions in the healthcare field are staffed by practitioners such as anesthesiologist assistants and dialysis, surgical, and laboratory technicians whose professions are not state-regulated. Although a state occupational license is not required in these examples, the scope of practice is subject to standards governing training credentials and the facilities, patients, and equipment with which they work. These examples suggest a similar arrangement is feasible for similar technical professions currently regulated by DSHS without lowering standards for these practices.

The rationale here does not apply to MPs, who operate as independent professionals in their field and I would argue that it does not even apply very well to technologists. The ‘unregulated’ professions cited as similar are generally assistants who will be operating under the direction of a licensed practitioner. So an anesthesiology assistant does not need a license as he or she will be operating under the supervision of an anesthesiologist. This has not been the model for MRTs or MPs in Texas where an MRT can be RSO for a facility and take x-rays ordered by a physician, but not be under the supervision of that physician while doing so. The model is even less appropriate for MPs who often perform tasks that no one else at the facility is even qualified to supervise.

Also, the idea that “[Technologists] operate in healthcare facilities subject to numerous federal and state requirements, including separate regulation of the machines themselves, have private accreditation programs, and work in conjunction with several other highly trained healthcare professionals” may be true in some cases, but is often not correct.

Technologists can operate in physician offices that are not required to undergo accreditation and the technologist may well be the only person in the office with any radiation training. I am frequently asked by administrators or physicians in small offices if they have to hire an MRT to replace one that left or if they can just have one of the nurses take their x-rays.

Removing MRT licensing will mean that individuals with no radiation training will be able to take x-rays in these offices. The fact that there are many regulations requiring quality x-ray machine performance is true, but irrelevant to the operator’s ability to use the machine safely. We have plenty of regulations regarding automobile construction and safety features, but we still require the drivers to be licensed – and for good reason. The same should be true of MRTs and MPs.

(3) ‘Regulation’ provided by private sector accreditation Given that the ‘highly regulated environment’ does not assure that MRTs or MPs in Texas would be qualified in the absence of Licensure, the hope must be that regulation provided by other bodies or the requirements of private accreditation programs will assure that MRTs and MPs will be qualified. There are certainly some situations where this is true. In mammography, MQSA has personnel requirements similar to (and stricter in some cases than) Texas Licensure. In order to achieve accreditation by ACR, facilities must use MPs and MRTs that meet certain quality requirements. However, other accrediting bodies have lower or no personnel qualification requirements for MPs and there is no requirement by the state of Texas that free-standing facilities undergo accreditation at all, much less with a body that has strong personnel requirements. Indeed we are already seeing facilities come up with clever ways to skirt the accreditation requirements imposed by private insurers. For instance, imaging centers opened miles from a hospital are considered a ‘department’ of the hospital so that they do not have to apply for independent accreditation. The hospital itself must be accredited, but TJC currently has no personnel qualification requirements for MPs (they did suggest some in late 2013, but have delayed implementation and are ‘reviewing ‘ them at this time). Even if TJC implements their own standards, there are other hospital-accrediting bodies that have no standards in this area. While CMS and many private insurers require accreditation for advanced imaging services at free-standing facilities, there are no accreditation requirements for facilities using x-ray and fluoroscopy.

Similarly, there is no requirement that cancer centers be accredited. This leaves huge loopholes in the coverage provided by alternate regulatory bodies and the private sector.

(4) Program generates little regulatory activity This does not seem like a good reason to cut a revenue-generating program when resources are spread thinly. The rationale presented in the report is:

Little regulatory activity. In addition to evaluating risk levels, Sunset staff considered the number of licensees, complaints, enforcement actions, and investigations for each program. Low numbers of complaints, investigations, and enforcement actions typically reflect a lower risk of harm.[p.48] The conclusion presented (Low numbers of complaints, investigations, and enforcement actions typically reflect a lower risk of harm) does not make sense. Risk of harm is more strongly related to the risks associated with the work the licensed individual performs than to the number of complaints.

Indeed, especially with MPs and MRTs ‘low numbers of complaints, investigations and enforcement actions’ is more likely due to the fact that licensure is working well and therefore qualified MPs are delivering high quality services. It may also be because most members of the public are unaware that MPs are even involved in their care.

Patients rarely see MPs, yet if the machine on which they are treated is mis-calibrated, the potential for harm is significant. Similarly, patients are mostly unaware of important aspects of the MRTs job and what is correct or incorrect practice. For instance, if the MRT is pleasant and professional but fails to collimate and takes three x-rays in order to get an acceptable one, the patient is unlikely to realize that they received several times the radiation that was needed for the exam. They are unlikely to complain to the MRT board and they don't even know that the MP who calibrated the machine exists. Lack of complaints in a field that is poorly understood is not an indication that a lack of quality would not cause significant harm. Similarly complaints cannot be counted on to raise a flag if quality begins to deteriorate. Therefore the best solution is to assure that MRTs and MPs have the qualifications to perform their jobs correctly.

Conclusion

Clearly, good quality job performance by MPs and MRTs is critical to the safe and effective use of radiation in Texas. The current system assures that MPs and MRTs are qualified to perform their duties. If these boards need to be moved to TDLR to improve administrative efficiency, that may certainly be appropriate, however to cut these effective and financially self-supporting programs in the hopes that a mishmash of alternate regulations and private accrediting agencies will assure equivalent-quality protection for Texas patients and members of the public is misguided and dangerous.

Any Alternative or New Recommendations on This Agency: Do not do away with professional licensing for Medical Physicists or Medical Radiologic Technologists.

My Comment Will Be Made Public: I agree