

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>]
Sent: Tuesday, June 17, 2014 10:04 AM
To: Sunset Advisory Commission
Subject: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)

Submitted on Tuesday, June 17, 2014 - 10:04

Agency: DEPARTMENT STATE HEALTH SERVICES DSHS

First Name: Mary K (Suzy)

Last Name: Weems

Title: Professor, Registered Dietitian,Licensed Dietitian

Organization you are affiliated with: Baylor University and private

City: Waco

State: Texas

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

Thank you for your conscious efforts to maximize efficiency and judicial utilization of Texas dollars through routine sunset reviews. However the report issued on this review presented some concerns as well as some accolades in the issues and recommendations. The recommendations made in this report with which I defer comments to professionals in those areas are covered in Issues 1, 2 & 4.

However, the recommendation in Issue 3 pertaining to discontinuation of 19 regulatory programs is of great concern. Especially, I take issue with the statement that the regulatory board for dietitians does not have health implications. This is particularly erroneous since there would be a definite potential for deleterious consequences with this being discontinued.

Nutrition, especially Medical Nutrition Therapy, is a key and essential part of promoting and maintaining the health and safety of Texans. A more thorough explanation of this role is provided in the formal response by the Texas Academy of Nutrition and Dietetics. Please consider the following:

specifically, I oppose the recommendation 3.1 because -

1) there appears to be a sudden and unanticipated rush to have this occur and to justify the future existence of this board. In fact, a thorough review in the sunset process is scheduled for the 2017 reviews and at that point, full consideration to the concerns will be addressed. 2) I have strong concern that there are some erroneous findings from the research as noted in the

report- in particular - the Licensed Dietitian is a uniquely and highly trained professional qualified to perform Medical Nutritional Therapy using a highly specialized array of nutrition-related analytical, diagnostic, rehabilitative and treatment services that when performed by less trained persons can produce definite harm and risk to the patient/s up to and including death. I agree that most anyone in the health care field should be able to provide consumers with basic general guidance on non-medical nutrition information such as principles of good

nutrition, essential nutrients (kind and quantity), etc. However, when a more sophisticated service is needed involving Medical Nutrition Therapy - it is VERY MUCH a matter of public health and safety for a properly trained and licensed dietitian to direct the care. [Examples of inappropriate medical nutrition therapy include erroneous guidance given to an individual with gestational diabetes leading to severe drops in blood sugar; suggested use of a supplement by a patient with a specific form of Hepatitis C which exacerbated a liver condition] Another area of concern with recommendation

3.1 is the number of critical facilities caring for many of the more fragile Texans whose regulations specify the use of Licensed Dietitians in these settings including but not limited to end-stage renal disease centers, private psychiatric hospitals, Texas Youth Commission facilities, state-licensed skilled nursing homes.

Other concerns include the fact that it appears there was a lack of consideration for the fact that the licensed dietitian performing medical nutrition therapy support is an important goal of addressing rising health care costs; the importance of a title act in that it does provide a meaningful purpose of assuring the public that the person has met educational and training standards as well as familiarity (through testing) of the jurisprudence expectations and thus provides a level of confidence and protection; in addition, there seems to be a oversimplification of the important and essential work performed by the regulatory board - TSBED which is indeed more than a 'rubber stamp' of the standards set by the Commission of Dietetics Registration (CDR) at the national level; lastly, it seems the report missed the point as to the amount of regulatory activity overseen by the board in that there are close to 5,000 licensed dietitians in Texas and more than 500 students currently training to become such. It is expected that the number of applications for license will continue to increase as more persons choose to move to Texas and engage in this area of health and safety protection.

Any Alternative or New Recommendations on This Agency: I would strongly suggest you maintain the Texas State Board of Examiners of Dietitians (TSBED) and NOT discontinue it as recommended in issue 3 of the report on this Department. In addition, I would suggest this board be reviewed according to the scheduled sunset review process scheduled for 2017 so that a more thorough and directed process can be conducted.

My Comment Will Be Made Public: I agree

Department of State Health Services Sunset Advisory Committee Report
Comments regarding Issue#3

This is a summary of the comments regarding Issue # 3 of the Sunset Advisory Commission Report on Department of State Health Services. The details pertaining to each is included in the letter. Thank you for your review and consideration.

Background: Texas State Board of Examiners of Dietitians (TSBED) is an essential part of the Texas health and safety system. During the review of the Department of State Health Services, TSBED was recommended to be discontinued.

- Texas State Board of Examiners of Dietitians (TSBED) has a direct impact on the health and safety of Texans.
 - o It is critical to assure consumers they are receiving medical nutrition therapy services from a competent, qualified and trained professional who meets the standards of the state and is compliant with the jurisprudence expectations of the state.
 - o The Commission on Dietetics Registration (CDR) at the national level does not have regulatory focus on the state,
- Nutrition is important to the health and safety of our future.
 - o Nutrition, especially Medical Nutrition Therapy, is critical for maintaining, promoting and treating for good health of Texans.
- TSBED contributes to the economy of the state of Texas
 - o Fiscally, this board has shown profit which has contributed to the overall budget for the department.
- The TSBED was discontinued prior to its scheduled sunset review.
 - o Accurate input on the importance of the TSBED was not received. The goal of the sunset review is to obtain a thorough review of the programs. Conducting a review prior to the scheduled sunset does not provide sufficient review nor does it afford the opportunity for public input.
 - o Consideration of those involved was not afforded considering the consequences for health and safety of Texans with the discontinuation of this board

For additional information, contact Suzy Weems, TSBED Board Member, suzy_weems@baylor.edu or 254-710-6003 (office)

June 17, 2014

Senator Brian Birdwell
Sunset Advisory Commission Member

Dear Senator Birdwell:

As a member of your district and as a member of the Texas State Board of Examiners of Dietitians (TSBED), I want to commend and applaud your efforts in reviewing the Department of State Health Services (DSHS). This department currently has a tremendous level of responsibility and expectations attributed to it and has evolved into a very complex department. Its stated mission of ‘improving health and well-being in Texas’ is extensive in aim and expectations. It is evident the review process was extensive and time intense as is noted in the summary of the review on page one of the report. One point here that seems pertinent is that neither the size of a department nor its complexity is necessarily the best way to measure or assess its efficiency. However, it is certainly important to maximize the state dollar to assure the best protection for the health and safety of Texans be promoted. This Health aspect is multi-facet including the mental as well as the physical health aspects of the citizens. I would argue though that the mental health is often impacted by physical health as well as vice versa. Nutrition services as delivered by Dietitians are critical in both these aspects of total health. The process, though not clearly shared with all of the board members in the numerous boards housed in this department, seems to have made considerable inquiry and study into the thorough report. As an appointed TSBED member, I have reviewed the process as noted and the report issued. Based on this review, there are several comments and questions I would pose to you with regard to the issues and recommendations offered in this report. I will limit my comments to Issue # 3.

Issue 3 – “*The Unmanageable Scope of DSHS’ Regulatory Functions Reduces Needed Focus on Protecting Public Health*” As noted, there seems to be more than a reasonable number of regulatory programs housed in this department. However, the recommendations that were presented are of concern. The discontinuation of 19 regulatory programs housed at DSHS seems a bit excessive and of those particular programs, I would especially address the recommendations noted on pages 42-52. In particular, I take strong issue with the findings concerning the ‘Dietitian Board’ (more correctly noted as TSBED). Utilizing the rubric established by the review group (p 46), noting that of the six (6) stated criteria, the program was identified as fitting four (4) of those criterion. Please note concern by each criterion:

Would deregulation have little impact on the public health or safety? There would be considerable impact on public health in a negative manner if this were to occur. The licensed dietitian is one of the key members of a health care team and as such makes considerable inroads into protecting the health of Texans. If this recommendation were to occur, one example of a negative impact on public health would be the existence or creation of a strong potential for an individual to hold themselves out as a dietitian and utilize this professional title to provide erroneous medical nutrition therapy to an individual with regard to appropriate foods, combination of foods, supplements, drugs, etc. which could have life threatening consequences. Please see a detailed example of this in the attached. Also, please note on Page 45, bullet # 1 ‘*In consultation with DSHS, Sunset staff studied these tools and identified programs that, if discontinued would have little impact on public health and safety.* . . . ‘ Nutrition and especially medical nutrition therapy is critical for maintain, promoting, and treating for good health – the removal of this board would in fact have a dramatic negative impact on the health of Texans. Also, in this bullet, there are points in which there is no argument. I would suggest too that at this point, there would be a strong need to look at current and evolving issues related to health and in particular the proliferation of spurious nutrition related therapies being promoted that have no scientific support and may be either a waste of dollars or of health and life.

Is regulation also provided by another state or local regulatory program, or private sector accreditation? The indication that this is the case is again erroneous. Though the licensed dietitian in Texas is most likely to be a registered dietitian from a national group, licensure is a state regulatory issue and not a national one. The licensed dietitian in Texas may also be one that is not a 'registered dietitian' though the academic training and the experiential component, along with the examination is very similar, it is not necessarily identical. In addition, regulation is not a national issue, but is a state function. Each 2 year renewal of the state license for the dietitian in Texas involves continuing education validation/verification and successful completion of a jurisprudence exam to assure the person is knowledgeable in rules and regulations unique to Texas. Therefore, this assessment seems to be in error. Please note on Page 45, bullet # 2 '*practice takes place in a highly regulated environment. . .*' the dietitian works in a variety of venues and some are highly regulated, others not so much. There are several critical environments who designate the requirement for a licensed dietitian to be utilized for the delivery of medical nutrition therapy and other dietetics professional tasks. Also, note on page 47 bullet 1 or paragraph 4 – Texas licensure is different in some respects to the registration expectations at the national level in that Texas licensure provides for a provisional license and although Texas uses the national registration exam, preliminary arrival at that opportunity may vary.

Does the program generate little regulatory activity? This determination is reasonably accurate due to the nature of the profession and the fact the act is primarily a 'title protection' act. The program has consistently showed a net positive financial impact for the state in and compliance with the governor's suggestion to limit meetings and expenses unless absolutely necessary, some activities have been limited and therefore, regulation may appear to be minimal. Complaints have been a part of the programs' work and though minimal, when they occur, are important for the health of Texas.

Does the program merely prohibit the use of a title, making regulation optional? A yes to this criterion is likely to be accurate even though some regulation is implied with the prohibiting of free utilization of the title – Licensed Dietitian.

The fiscal responsibility for this board as a part of this department should be appreciated in that over the years which it has been utilized, there has been a profit that was utilized in the overall operation of the department.

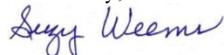
In addition to my comments concerning the issues and suggestions as noted above, I have a couple of questions. As a board member, I do not recall being notified of this review of the DSHS and all of its regulatory groups. It is my impression that the TSBED was scheduled for a full sunset review in the 2017 session. I should think it would be best to allow the board to undergo its full sunset review process as it has successfully done several times prior and not be discontinued under the sunset review of DSHS.

Why were these recommendations made? Who initiated this review? What were the directions for the review process? Who served on the review panel? What expertise and understanding was required for participation in the review process?

In addition, since several of the some 70 (I believe) were identified as those to be incrementally transferred to the Texas Department of Licensing and Regulations (TDLR), what criteria were used in differentiating the outcomes of these various boards. Also, would the focus and mission of DSHS change? And, if so, how?

Thank you for your time and attention to these concerns. I look forward to hearing from you.

Sincerely,



Suzy (Mary K) Weems, PhD, RD, CSSD, LD, FAND
Current TSBED member

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Attachment: formal response from the Texas Academy of Nutrition and Dietetics for your review as well.

Response to DSHS Sunset Staff Report from the Texas Academy of Nutrition and Dietetics.

I The Texas Academy of Nutrition and Dietetics opposes DSHS Sunset Staff Report Recommendation 3.1 related to Dietitians.

The Texas Academy of Nutrition and Dietetics, a statewide professional organization representing more than 4,000 Licensed and Registered Dietitians, opposes the Department of State Health Services (DSHS) Sunset Staff Report Recommendation 3.1 related to the discontinuation of the current regulatory and statutory framework for Licensed Dietitians.

The Texas Academy takes strong exception with much of the rationale provided by the Sunset Staff Report in support of the proposed dismantling of the Texas State Board of Examiners of Dietitians and the elimination of dietitian licensure. Particularly troubling is the report's conclusion that the work performed by Licensed Dietitians has little or no impact on the well-being, safety, and health of the public. Quite the contrary, Licensed and Registered Dietitians are uniquely trained and qualified to perform Medical Nutrition Therapy, a highly-specialized array of nutrition-related analytical, diagnostic, rehabilitative and treatment services that, performed improperly or by lesser-trained individuals, can produce very definite harm and risk to patients, up to and including death.

By way of background, Medical Nutrition Therapy encompasses the use of specific nutrition services to manage a disease or to treat or rehabilitate an illness, injury or condition. Examples of the types of services Licensed Dietitians provide under the Medical Nutrition Therapy umbrella include interpreting dietary data and recommending nutrient needs for medically-prescribed diets, including but not limited to tube feedings, specialized intravenous solutions and specialized oral feedings; providing skilled guidance on food and drug interactions that could be potentially harmful to patients with various medical conditions; and developing and managing food service operations in hospitals, skilled nursing homes and other settings in which patients require medically-prescribed diets.

The Texas Academy has always supported health care providers of all types providing consumers with basic guidance on general non-medical nutrition information, including the principles of good nutrition and food preparation; food to be included in the normal daily diet; the essential nutrients needed by the body; and recommended amounts of essential nutrients. However, when the more highly-specialized services that comprise Medical Nutrition Therapy are required, it is very much a matter of public safety for a properly-trained and Licensed Dietitian to be directing dietary care. Following are just a few examples of the adverse patient impacts that can occur when individuals without specialized Medical Nutrition Therapy expertise dispense "nutrition" advice and treatment. These examples represent actual patient cases documented by the Texas Academy from input received from Licensed and Registered Dietitians practicing in Texas today.

* **Case 1:** A female patient diagnosed with gestational diabetes was advised by her OB/GYN to see a dietitian to help manage her blood glucose. After seeing a sign in a local chiropractic office promoting "nutrition therapy," she decided to book an appointment. To address her condition, the chiropractor placed the patient on a supplement that was basically a very low-carbohydrate, high-protein diet. She subsequently experienced morning blood sugars below 60 mg (in pregnancy values under 90 mg are considered low) and frequent dizziness. The patient returned to her OB/GYN who assisted in finding a Licensed Dietitian to design a menu that would manage the gestational diabetes but at the same time provide the nutrients required during pregnancy. Licensed Dietitians know that ketones created with a low-carbohydrate, high-protein diet are considered unsafe during pregnancy as adequate

carbohydrate intake is essential for healthy fetal brain development. By using the services of a Licensed Dietitian for the remainder of her pregnancy, the patient was able to give birth to a healthy, 7-pound, 3-ounce baby.

* **Case 2:** In an effort to stay fit, a female diagnosed with Anorexia Nervosa went to a cross-fit type gym, where she was told by staff that she needed to consume no more than 1,500 calories per day to maintain her weight and eat fewer calories and stay on a strict fitness regimen if she wanted to lose weight. At that time, her Body Mass Index (BMI) was 17, which is considered underweight. Any suggestion to reduce calories and set intake limits without considering the patient's underlying mental health could have quickly resulted in severe medical consequences. Instead, a Licensed Dietitian and mental health professional intervened and were able to work with the patient to get her BMI into the normal range over time.

* **Case 3:** A male patient diagnosed with Hepatitis C and liver disease was told by a licensed chiropractor to take Red Rice Yeast to treat his condition. A year after taking the supplement as directed, the patient's blood work revealed compromised liver function. A Licensed Dietitian would know that taking the supplement Red Rice Yeast can cause harm to liver function. Moreover, when the patient worked with a Licensed Dietitian, he learned to manage his diet and the liver function returned to normal.

* **Case 4:** A practitioner from another discipline, claiming to be a "dietitian", placed a female patient diagnosed with Type 2 Diabetes, high cholesterol and Polycystic Ovarian Syndrome on a food supplement and advised her to replace dairy consumption with coconut oil. The patient followed the program for four months, spending about \$2,000 on supplements. During this period, she lost 30 pounds and felt sick every day. Her blood glucose stayed high and cholesterol levels increased. At the end of the four months, she also was diagnosed with a gallbladder stone. A Licensed Dietitian was finally consulted and tailored the patient's eating preferences to her medical diagnoses. As a result, she began feeling better, saved money and was able to better manage her diabetes and cholesterol issues.

While the Sunset Staff Report concludes that discontinuing the regulatory program for dietitians would have little impact on public health and safety, these examples clearly illustrate that services performed in the name of good nutrition do not always protect patients but can actually do substantial harm. Even under the more stringent Sunset criteria established by the Legislature in 2013, evidence strongly supports that the licensing program for dietitians serves a meaningful public interest purpose. This point is further underscored by the fact that various Texas administrative rules specify the use of a Licensed Dietitian in critical facilities in which fragile Texans must be protected, including end-stage renal disease centers, private psychiatric hospitals, crisis stabilization units, Texas Youth Commission facilities, and state-licensed skilled nursing homes, among others.

While ample evidence exists to support the public safety contributions of dietitian licensure, research also indicates that Licensed Dietitians performing Medical Nutritional Therapy support another important state goal of addressing skyrocketing health care costs. In almost any medical setting, having a Licensed Dietitian on the extended health care team can help shorten patient recovery time, reduce the length of hospital stays, prevent re-admissions and help manage chronic illnesses. Without regulatory oversight, it is likely that these cost benefits would be undermined.

Another aspect of the Staff Report that the Texas Academy refutes is the assertion that the enabling statute for dietitian licensure serves no meaningful purpose other than to regulate the use of the Licensed Dietitian title. The Texas Academy has long held the position that the public safety implications of performing Medical Nutrition Therapy strongly support a more robust statute that prohibits non-licensed persons from providing highly-

specialized services for which Licensed Dietitians are uniquely trained. However, absent such statutory clarity, the so-called "title" act in place today is hardly meaningless. Quite the contrary, it helps ensure that anyone who holds himself or herself out as a "Licensed Dietitian" has met the educational and training standards defined by the dietitians' regulatory board. As such, it provides a level of consumer protection and confidence that would simply not exist if the Texas Board of Examiners of Dietitians and the enabling statute for dietitian licensure were to be abruptly abolished. At least under the current regulatory framework Texans can be assured that a practitioner using the Licensed Dietitian title has the necessary skills and training to perform the more sophisticated services that comprise Medical Nutrition Therapy.

Similarly, while the Sunset Staff Report dismisses the state dietitian licensure process as redundant to national accreditation programs, the Texas Academy believes this is an overly simplistic and inaccurate conclusion. In reality, ensuring that standards set by the Commission for Dietetic Registration (CDR) are met before an individual is licensed in Texas is an important and necessary consumer safeguard. Additionally, the Texas State Board of Examiners of Dietitians performs other valuable oversight duties. For example, the board ensures that applicants have taken a Jurisprudence Test on rules specific to Texas and that all licensees are retested on Texas statutes at each renewal. Another ongoing role of the board is oversight of the Provisional Licensing process for individuals who have met all academic requirements for licensure but have yet to complete the required supervised internship. The TSBED must verify that the Provisional Licensee has the necessary internship hours and has passed the CDR examination before upgrading his or her status to full Licensed Dietitian.

A final area in which the Texas Academy believes the Staff Report is flawed is its dismissal of the need for dietitian licensure based upon limited regulatory activity. The number of Licensed Dietitians in the state currently totals 4,972, hardly an insignificant professional representation, especially compared to many of the other DSHS regulatory programs identified in the Staff Report. Moreover, with more than 546 students in dietitian training/degree programs in Texas colleges today and an increasing number of out-of-state practitioners moving to Texas for better employment opportunities, requests for licensure are expected to grow at a steady pace. Equally important, as less-credentialed business entities and practitioners find new ways to promote and profit from offering nutrition-related treatment and counseling, it is expected that the need for enforcement will increase, not diminish.

II The Texas Academy proposes that the current dietitian licensure program be retained and that an appropriate state entity be identified to house it if DSHS cannot.

While the Texas Academy acknowledges the vast and diverse scope of regulatory functions for which DSHS is responsible, that situation alone does not constitute a valid reason for abolishment of a function that helps ensure Texans needing specialized Medical Nutrition Therapy are safely served. If limited resources and unmanageable work load are problematic for DSHS, the focus should shift to finding the appropriate location within state government to house Licensed Dietitian oversight and the important consumer protection work it performs. Among the possible alternatives that should be carefully examined include: 1) establishing an independent board similar to the ones that regulate other health care professions with a comparable number of licensees; 2) moving the function under the Texas Medical Board, since Licensed Dietitians work in partnership with physicians in many health care settings; 3) moving the function under the Texas Department of Licensing and Regulation; or 4) placement in a newly-created independent health care licensing agency, which would encompass the various health profession regulatory programs that do not today have autonomous boards.

The Texas Academy has no new issues to recommend; but again strongly cautions against rushing to judgment on dietary licensure without a more thorough understanding of the implications for public health and safety.

The professional dietitian community, along with our regulators at the Texas State Board of Examiners of Dietitians, has been preparing for a comprehensive Sunset review to take place in the 2016-17 review cycle, which for some time has been part of the published future Sunset schedule. Given the typical thoroughness with which Sunset review is conducted--with ample opportunity for upfront input from all affected stakeholders, including the agency itself--it is alarming that an issue as serious as dismantling dietitian licensure would be recommended without the procedural due process and detailed analysis that the parties have come to expect. In fact, the Staff Report acknowledges that "the luxury of a detailed analysis of each regulatory program was simply not possible." The Texas Academy of Nutrition and Dietetics respectfully submits that a deeper, more nuanced analysis is in order, especially given the proven patient health and safety risks associated with improperly-trained individuals providing specialized Medical Nutrition Therapy services.