

SUNSET ADVISORY COMMISSION

Report to the 84th Legislature

FEBRUARY 2015



Sunset Advisory Commission

Senator Jane Nelson

Chair

Representative Four Price

Vice Chair

Senator Brian Birdwell

Representative Cindy Burkett

Senator Donna Campbell

Representative Harold V. Dutton, Jr.

Senator Juan "Chuy" Hinojosa

Representative Larry Gonzales

Senator Charles Schwertner

Representative Richard Peña Raymond

Dawn Buckingham, M.D.

Tom Luce

Ken Levine

Director

Cover Photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the north facade of the Capitol. The gardens in the foreground sit atop a 667,000 square foot underground structure, the Capitol Extension, which houses many legislators' offices and committee rooms. Photo Credit: Janet Wood



SUNSET ADVISORY COMMISSION

P.O. Box 13066 ❖ Austin, Texas 78711-3066

Senate Members

Chair
Sen. Jane Nelson
Flower Mound

Sen. Brian Birdwell
Granbury

Sen. Donna Campbell
New Braunfels

Sen. Juan "Chuy" Hinojosa
McAllen

Sen. Charles Schwertner
Georgetown

Dawn Buckingham, M.D.
Austin

House Members

Vice Chair
Rep. Four Price
Amarillo

Rep. Cindy Burkett
Sunnyvale

Rep. Harold V. Dutton, Jr.
Houston

Rep. Larry Gonzales
Round Rock

Rep. Richard Peña Raymond
Laredo

Tom Luce
Dallas

Director

Ken Levine

February 11, 2015

The Honorable Greg Abbott
Governor of Texas

The Honorable Dan Patrick
Lieutenant Governor of Texas

The Honorable Joe Straus
Speaker, Texas House of Representatives

Honorable Members of the 84th Legislature
Assembled in Regular Session

Ladies and Gentlemen:

As we begin the 84th Legislative Session, the members of the Sunset Advisory Commission present to you the enclosed results of the thousands of hours of staff work, hearings, debate, and decisions of the Commission. As you know, statute directs the Sunset Commission members and staff to review and evaluate the performance of agencies subject to the Sunset Act each biennium; recommend the abolition or continuation of these agencies; propose needed statutory or management changes; and develop legislation to implement any proposed statutory changes.

Between September 2013 and January 2015, the Sunset Commission worked to develop recommendations regarding the 20 agencies under Sunset review. These recommendations to the 84th Legislature intend to streamline government and best meet the needs of Texans. These changes include abolishing 13 agencies and related boards, commission and councils, eliminating 45 statutory advisory committees, and discontinuing nine regulatory and four other programs. Overall, the Sunset Commission's recommendations will position these agencies to best meet the challenge of delivering outstanding services to the citizens of Texas. If implemented, these recommendations would have an estimated positive fiscal impact to the State of \$66.5 million over the upcoming 2016–2017 biennium.

The Sunset Advisory Commission is pleased to forward to you its findings and recommendations with this report.

Respectfully Submitted,

Senator Jane Nelson
Chair
Sunset Advisory Commission

Representative Four Price
Vice Chair
Sunset Advisory Commission

REPORT TO THE 84TH LEGISLATURE

FEBRUARY 2015

TABLE OF CONTENTS

	PAGE
INTRODUCTION	
.....	1
 SUNSET COMMISSION RECOMMENDATIONS	
 HEALTH AND HUMAN SERVICES SYSTEM	
Health and Human Services Commission.....	5
Children with Special Needs, Interagency Task Force for Health Services Authority, Texas	
Aging and Disability Services, Department of.....	27
Assistive and Rehabilitative Services, Department of.....	39
Family and Protective Services, Department of.....	47
Health Services, Department of State.....	61
Health Care Information Council, Texas	
 EMPLOYMENT SERVICES	
Workforce Commission, Texas.....	73
Workforce Investment Council, Texas.....	85
 DISABILITY AGENCIES	
Developmental Disabilities, Texas Council for.....	87
People with Disabilities, Governor's Committee on.....	89
Purchasing from People with Disabilities, Texas Council on.....	93
 CENTRALIZED ADMINISTRATIVE SERVICES	
Administrative Hearings, State Office of.....	97
Administrative Hearings Tax Division, State Office of	

	PAGE
SPECIAL REVIEWS	
Education Agency, Texas.....	105
Education Agency, Texas — Contracting Procedures for Assessment Instruments	
Facilities Commission, Texas.....	119
Self-Directed Semi-Independent Status of State Agencies	121
University Interscholastic League	125
 OTHER REPORT MATERIALS	
Implementation of 2013 Sunset Legislation.....	131
Soil and Water Conservation Board, Texas State	147
 APPENDICES	
Appendix A — Sunset Review Schedule — 2017.....	149
Appendix B — Summary of the Texas Sunset Act	151

INTRODUCTION

INTRODUCTION

Sunset is the Legislature's regular assessment of the continuing need for a state agency to exist. For agencies that are needed, the process also provides a unique opportunity to take a close look and make fundamental changes to their mission or operations to make them more efficient, effective, and more open and responsive to citizens. The Sunset process works by setting a date on which an agency is automatically abolished unless the Legislature passes a bill to continue its operations. Agencies typically undergo review once every 12 years.

Sunset for the 84th Legislative Session

The Sunset Commission conducted a total of 20 reviews this biennium — 15 agencies and five separate entities or functions with their own Sunset date. Texas' health and human services agencies dominated the review cycle, as Sunset reviewed those agencies for the first time since the Legislature consolidated the system in 2003. The Sunset Commission also reviewed other agencies that provide or affect social services, including the Texas Workforce Commission and three councils that assist individuals with disabilities. Sunset also examined the State Office of Administrative Hearings, which is the state's centralized agency to conduct hearings for licensing and enforcement matters referred from other state agencies.

Two agencies subject to Sunset in 2013 underwent review again this biennium, including the Texas Education Agency, whose Sunset bill failed to pass, and the Texas Facilities Commission, whose Sunset bill passed but was placed under review again. The Legislature also directed the Sunset Commission to conduct special reviews of the Texas Health Care Information Council, the University Interscholastic League, and the entry criteria for Self-Directed Semi-Independent Agencies.

Results

Following extensive analysis, testimony, and deliberations, the Sunset Commission recommends that the 84th Legislature pass major legislation reorganizing Texas' five health and human services agencies into one agency. The Sunset Commission also recommends making significant improvements to the operations and oversight of 12 agencies, including the health and human services agencies as they are currently organized, with the understanding that those changes would still apply in the new organization. Other recommendations provide for abolishing and transferring the functions of the Texas Council on Purchasing from People with Disabilities; removing statutory authority for the Texas Health Services Authority; and merging the functions of the Interagency Task Force for Children with Special Needs with other entities to better focus overall advisory efforts for children with special needs. While

*In all, Sunset recommends
the 84th Legislature
eliminate or consolidate
72 agencies, boards,
commissions, and councils.*

the Commission recommends continuing nine of these agencies, two agencies continue automatically, as they do not have a Sunset expiration clause.

Altogether, the Sunset Commission adopted 315 recommendations to improve agency operations, use available funds more efficiently, and position these agencies to better serve the people of Texas. The chart on page 4 summarizes the Sunset Commission's decisions regarding the continuation of the agencies under review and provides an estimated two-year fiscal impact of recommended changes. Overall, the Sunset Commission's recommendations would result in a positive fiscal impact to State and federal funds of about \$66.5 million for the 2016–2017 biennium, and a total of about \$277 million from fiscal years 2016–2020. The Sunset Commission also recommends seven changes relating to appropriations for six agencies, though these changes will not be included in the Sunset bills since they are intended to be considered during the appropriations process.

The picture of the Sunset Commission's work would not be complete without also mentioning the many other entities or activities within the agencies under review this cycle that were eliminated or streamlined. The Sunset Commission recommends eliminating three separate agencies in addition to the four health and human services agencies as part of the reorganization of the Health and Human Services Commission (HHSC). Through the reviews of HHSC and the health and human services agencies, the Commission also recommends eliminating the five agency oversight councils and removing 44 advisory committees from statute. The Commission also recommends discontinuing 10 regulatory programs at the Department of State Health Services and shuttering the Austin State Supported Living Center, operated by the Department of Aging and Disability Services. Finally, the Sunset Commission recommends eliminating five boards, commissions and councils through other reviews, including the Human Rights Commission at the Texas Workforce Commission and the State Board of Educator Certification at the Texas Education Agency.

Guide to Recommendations

Individual chapters in this report summarize Sunset recommendations for each agency under review this biennium, including three types of recommendations as described below, followed by the fiscal impact of these changes.

- **Statutory Change.** These changes in law require consideration and action by the full Legislature and are drafted into Sunset legislation on each agency.
- **Management Action.** These changes call for management action by an agency and do not require legislative action. As adopted by the Sunset Commission, these recommendations should be implemented by each agency over the next two years or as specified by the Sunset Commission.
- **Appropriations Change.** These changes express the will of the Sunset Commission to request changes to agencies' appropriations by the appropriative committees. These changes are not contained in the Sunset bills for those agencies.

For this report, the discussion of recommendations has been shortened, and some recommendations may have no explanatory text. However, more detailed information on Sunset's recommended changes on each of the agencies can be found in the individual Sunset staff report on each agency, available on the Commission's website, or by contacting Sunset staff directly.

Implementation of Previous Sunset Legislation

Following the current recommendations, the report includes an update on the status of state agencies' implementation of changes adopted through the Sunset process last session. The 83rd Legislature passed 17 of 20 bills containing 158 changes recommended by the Sunset Commission. Overall, agencies, to date, have implemented 91 percent of these statutory changes. A summary of the status of key management actions, as followed up on by the State Auditor's Office, is also covered in this section of the report. The Sunset Commission appreciates the state auditor's assistance in this project.

Other Report Material

Also included in this report is one informational item resulting from a request by the Legislature to evaluate the Texas State Soil and Water Conservation Board's compliance with recent Sunset Commission recommendations. Finally, the appendices of this report provide a list of agencies scheduled for Sunset review in 2017, and a summary of the Texas Sunset Act.

84th Session Sunset Summary Information

Agency	Action	Two-Year Net Fiscal Impact
Health and Human Services System		
Health and Human Services Commission	Continue	\$6,241,863
Children with Special Needs, Interagency Task Force for Health Services Authority, Texas	Merge ¹	No Impact
	Abolish ²	No Impact
Aging and Disability Services, Department of	Merge ¹	\$10,520,000
Assistive and Rehabilitative Services, Department of	Merge ¹ and Transfer ³	No Impact
Family and Protective Services, Department of	Merge ¹	\$98,000
Health Services, Department of State Health Care Information Council, Texas	Merge ¹	(\$1,673,250)
	Continue	No Impact
Employment Services		
Workforce Commission, Texas	Continue	\$48,638,354
Workforce Investment Council, Texas	Continue	No Impact
Disability Agencies		
Developmental Disabilities, Texas Council for	Continue	No Impact
People with Disabilities, Governor's Committee on	Continue	\$641,600
Purchasing from People with Disabilities, Texas Council on	Abolish and Transfer	No Impact
Centralized Administrative Services		
Administrative Hearings, State Office of Administrative Hearings Tax Division, State Office of	N/A	\$1,000,000
	Continue	No Impact
Special Reviews		
Education Agency, Texas Education Agency, Texas — Contracting Procedures for Assessment Instruments	Continue	No Impact
	N/A	No Impact
Facilities Commission, Texas	Continue	No Impact
Self-Directed Semi-Independent Status of State Agencies	N/A	No Impact
University Interscholastic League	N/A	\$1,000,000
Net Positive Fiscal Impact		\$66,466,567

.....
¹ These Sunset recommendations would merge the health and human services departments into the Health and Human Services Commission, including the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the Department of State Health Services.

² Sunset Recommendations would remove the Texas Health Services Authority from statute in six years, eliminating it as a statutory nonprofit corporation on September 1, 2021.

³ Sunset recommendations would transfer responsibility for vocational rehabilitation services from the Department of Assistive and Rehabilitative Services (DARS) to the Texas Workforce Commission, and merge DARS' remaining function with the Health and Human Services Commission.

**SUNSET COMMISSION
RECOMMENDATIONS**

HEALTH AND HUMAN SERVICES COMMISSION

INTERAGENCY TASK FORCE FOR CHILDREN WITH SPECIAL NEEDS

TEXAS HEALTH SERVICES AUTHORITY

Sarah Kinkle, Project Manager

Agency at a Glance

In 2003, the Texas Legislature enacted House Bill 2292, consolidating 12 agencies and more than 200 programs into five agencies under the leadership of one umbrella organization, the Health and Human Services Commission (HHSC). The health and human services system comprises the following agencies and functions.

- HHSC provides oversight and support for the health and human services agencies, administers the state's Medicaid and other public benefit programs, sets policies, defines covered benefits, and determines client eligibility for major programs.
- The Department of Aging and Disability Services (DADS) provides a comprehensive array of long-term services and supports for people with disabilities and people age 60 and older, and regulates providers serving these populations in facilities or home settings to protect individuals' health and safety.
- The Department of Assistive and Rehabilitative Services (DARS) provides people with disabilities and children with developmental delays with time-limited services, such as gaining functionality, preparing for and finding employment, and living independently in the community.
- The Department of State Health Services (DSHS) oversees public health services; funds local health departments; operates the state's mental health hospitals, center for infectious disease, and public health laboratory; provides services for persons with infectious diseases, specific health conditions, substance use disorders, and mental illness; and regulates healthcare professions, facilities, and consumer services and products.
- The Department of Family and Protective Services (DFPS) investigates allegations of abuse and neglect perpetrated against children, older adults, and people with disabilities, administers the state's foster care system, and regulates child care facilities.

Recent events support the need to reorganize the health and human services system.

- The Office of Inspector General (OIG) prevents, detects, and investigates fraud, waste, and abuse throughout the health and human services system.

In fiscal year 2013, the system agencies spent a combined \$34.5 billion, about 58 percent of which were federal funds and 42 percent was general revenue and other state funds. HHSC alone spent about \$23.4 billion that year, with its main expenditures related to Medicaid, the Children's Health Insurance Program, and integrated eligibility and enrollment services. In total, the system agencies had more than 54,000 staff in fiscal year 2013, including more than 12,000 staff employed by HHSC and OIG.

Two other entities subject to Sunset review are also included with this review of HHSC: the Texas Health Services Authority, a public-private partnership created to accelerate the adoption and secure sharing of health-related information through health information exchanges; and the Interagency Task Force for Children with Special Needs, which advises HHSC on ways to improve the coordination, quality, and efficiency of services for children with special needs.

Summary

The timing of the Sunset review of HHSC greatly influenced the Sunset Commission's vision for reshaping the system and improving services to the most vulnerable Texans. Not only was the Sunset Commission able to consider how well the system is working after 12 years' experience in the current configuration, it was also able to follow up on more recent events including the transition to managed care from direct fee for service in the state's Medicaid program, the integration of behavioral and physical health, and funding shifts and changes in federal law affecting program delivery.

The Sunset Commission built on the Sunset reviews of the four health and human services agencies to take a big step toward completing the vision of the 2003 consolidation, and with it, promoting accountability in the system, reducing fragmentation, and streamlining operations. The Sunset proposal would eliminate these agencies as separate entities and reconfigure them in a functional alignment under HHSC as discussed below. Much of DARS would transition to the Texas Workforce Commission (TWC), as discussed in the TWC section of this report. The Sunset Commission's recommendations specific to each system agency, however, continue to be needed whether the agency continues as currently organized or as reorganized. The recommendations for the other health and human services agencies follow this discussion of HHSC, and reflect each agency as currently organized, although the intent of the Sunset Commission is that they be aligned functionally in the reorganized system.

The Sunset Commission also took action to better position HHSC in its new environment to ensure the quality of programs and services, detailed in the issues below. In addition, the Sunset Commission addressed other entities under the HHSC umbrella or closely associated with HHSC. OIG came under the microscope for the first time in its current incarnation, revealing deep management and due process concerns, particularly in its efforts to detect and deter Medicaid fraud, waste, and abuse. Finally, two other entities with their own Sunset dates, the Interagency Task Force for Children with Special Needs and the Texas Health Services Authority, can still operate effectively, but under alternative approaches to their existing statutory arrangements. The following material summarizes the Sunset Commission's recommendations on HHSC and these related entities.

Issues and Recommendations

Issue 1

The Vision for Achieving Better, More Efficiently Run Services Through Reorganization of Health and Human Services Agencies Is Not Yet Complete.

The Legislature expected the 2003 consolidation of human services agencies to strengthen accountability by streamlining programs, breaking down cultural and structural barriers, and eliminating fragmentation of services by combining like functions. While partially achieved, this vision is not yet complete.

The creation of the four system agencies as separate state agencies with their own commissioners, budgets, and statutes, within a system led by HHSC results in gray lines of accountability, policy disconnects, and lost efficiency between system agencies. The current system structure also aggravates fragmentation of client services, resulting in divided policy direction and administrative oversight, difficulty for customers to know where to go for services, duplicated administration, and unnecessary expenses. Regulatory functions may be too closely connected with the programs they regulate and lose the benefits of being housed together to take advantage of best practices. Management of state hospitals, state supported living centers, and other system facilities are split among agencies, reducing focused attention on similar infrastructure issues. The system's organizational structure is also not designed to gain functional efficiencies and presents uncertainty given recent legislative changes regarding Medicaid managed care and behavioral health.

Recommendations

Change in Statute

1.1 Reorganize the five health and human services system agencies into one agency called the Health and Human Services Commission, with divisions established along functional lines.

This recommendation eliminates DSHS, DADS, and DFPS as separate agencies, merging their functions into a newly constituted Health and Human Services Commission. In the case of DARS, only a few remaining functions would be merged into the new structure, as DARS' largest functions related to vocational rehabilitation and federal disability determination would transfer to TWC, as described in the TWC section of this report. Elimination of separate agency designations for other entities in the system clarifies lines of authority, improves accountability, and helps to reduce the silo mentality that the five-agency system reinforces. More importantly, achieving a more simplified, streamlined functional approach improves the delivery of health and human services by reducing the fragmentation and inefficiency of the current structure.

- **Require the governor to appoint an executive commissioner, with Senate confirmation, for a two-year term to lead the new agency.**
- **Establish divisions along functional lines as the basic organizational framework for the consolidated agency.**

Statute would require the executive commissioner to consider the following functional divisions in organizing the commission: medical and social services, state institutions and facilities, family and protective services, public health services, regulatory services, centralized services, and inspector general.

The graphic, *Health and Human Services Commission Example of Functional Organization*, on the following page depicts the organizational arrangement to be considered. The descriptions of divisions in the following graphic do not imply organization of sections within them. The executive commissioner would consider this organization chart as a starting point and fill in and adjust organizational details in developing the transition plan described in Recommendation 1.2.

Statute would direct the executive commissioner to develop clear, publicly available qualifications for each division head to ensure these individuals are experienced leaders in their field and have high-level administrative experience. The executive commissioner also would be required to develop clear policies for delegating specific decision-making authority, including budget authority, to each division head similar to the authority that commissioners exercise now.

This recommendation would also remove structural components for entities that are administratively attached to the system. These entities are the Texas Office for the Prevention of Developmental Disabilities, and the Texas Council on Autism and Pervasive Developmental Disorders and Texas Autism Research and Resource Center. The recommendation would maintain the functions of these entities in statute, but would remove any structural components, such as administrative attachment, governing boards or appointment structures, or status as an independent entity, just as it removes the separate system agencies. The executive commissioner could create advisory committees in rule if the agency determines a need for public input specific to these functions. Because of the need to maintain its independent nature, the Office of Independent Ombudsman at DADS, would be retained in its current structure but its administrative attachment would move from DADS to HHSC.

- **Establish a Policy and Performance Office.**

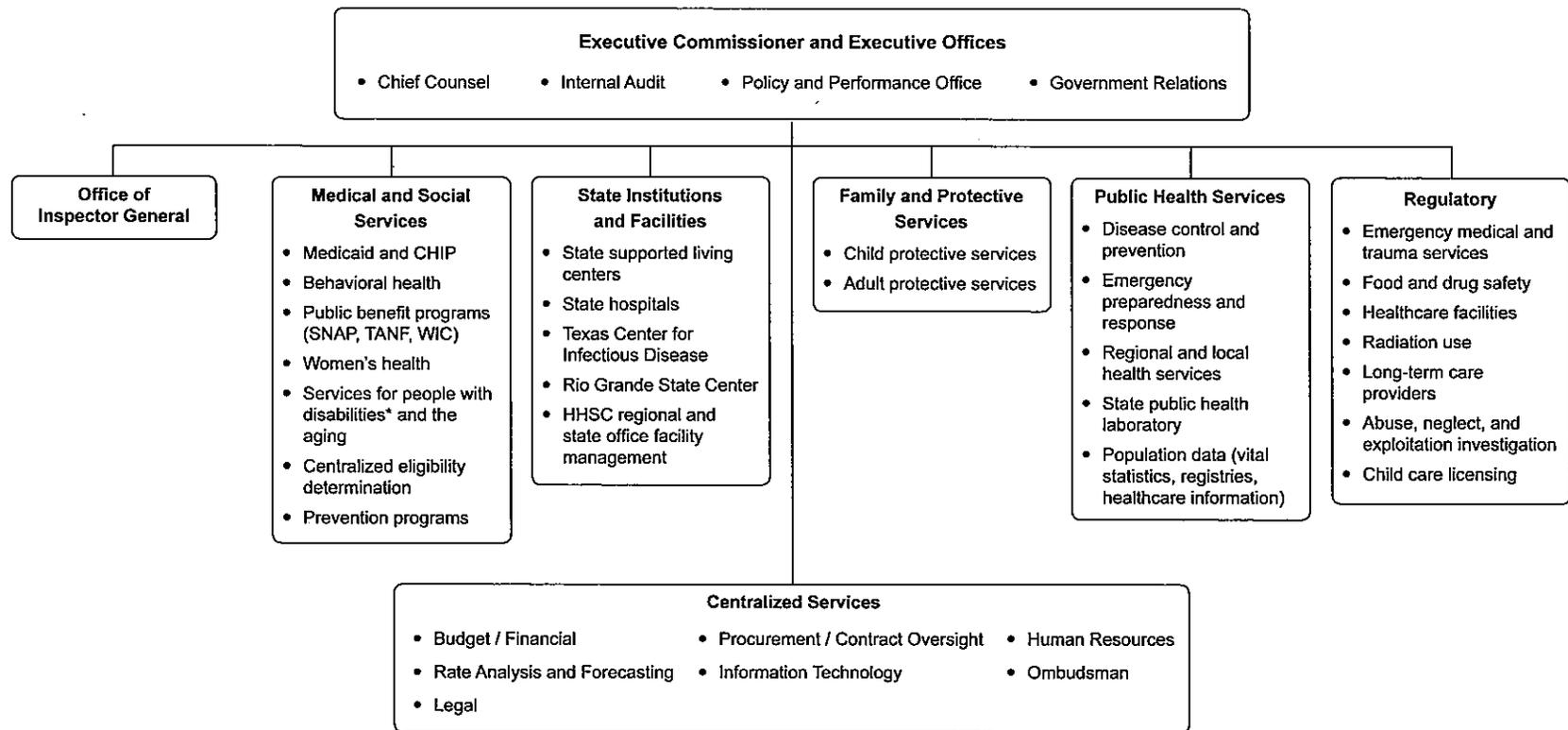
Statute would require HHSC to designate and maintain a high-level executive office to coordinate policy and performance efforts across the system. Specifically, the office would develop a systemwide performance management system, oversee data and analytics responsibilities, and oversee implementation of major policy changes including working with the transition legislative oversight committee to achieve the reorganization efforts proposed in this recommendation. This office should assist in ensuring that client population groups do not lose the visibility or attention they need in the new organization, including establishing cross-functional efforts or teams needed to improve coordination of services. Regarding system staff, the office would take the lead in managing change in the organization, including cultural aspects and needed communication with staff in the transition and on an ongoing basis to implement major policy changes, such as legislation and associated rule revisions. The office would also be a centralized “think tank” within the system to offer program evaluation and process improvement expertise.

- **Replace the five agency advisory councils with an executive council comprising the executive commissioner and division heads to obtain public input.**

Statute would require the executive commissioner to chair this new council, which would include all division directors reporting directly to the executive commissioner and other persons the executive commissioner thinks necessary. The executive council would meet to take public comment on proposed rules, recommendations of advisory committees, legislative appropriations requests and other documents required in the state’s appropriations process, operation of agency programs, and other issues for the entire system. The executive commissioner would retain all decision-making authority. The committee would not be a “governmental body” as defined by the Open Meetings Act, given that these individuals would normally meet in the course of their daily work to discuss agency business. Executive council meetings should be publicly announced and held at least quarterly, with authority to call a special meeting when necessary.

Health and Human Services Commission
Example of Functional Organization (including Sunset decisions on January 14, 2015)

The following diagram is an *example* of an HHSC organization developed around functional lines. Statute would specify that the executive commissioner must consider reorganizing the agency around these seven large functional divisions, but statute would not include any of the bulleted detail under each of these functional divisions. The executive commissioner would use this chart as a starting point for preparing the transition plan for the reorganization. *Bulleted items are not intended to be an exhaustive list of all functions carried out in the seven large functional divisions.* Each of the seven functional divisions would be led by a high level executive who would have broad discretion to make decisions as delegated by the executive commissioner. Statute would require HHSC to establish a Policy and Performance Office, which is to develop cross-functional teams and processes between the functional divisions to ensure full collaboration of staff and coordination of related programs for optimal delivery of services.



* The Sunset Commission voted on January 14, 2015 to recommend transferring the Blind and General Vocational Rehabilitation programs, Business Enterprises of Texas, and federal Disability Determination Services from the Department of Assistive and Rehabilitative Services to the Texas Workforce Commission. These activities had been bulleted either separately or grouped conceptually with services for people with disabilities under Medical and Social Services in the Sunset Commission decisions on HHSC on December 10, 2014, but would no longer be considered under that functional alignment.

1.2 Require development of a transition structure, including formation of a transition legislative oversight committee, and development of a broad transition plan and a detailed work plan to guide HHSC in setting up the new structure.

This recommendation would require in statute that the executive commissioner submit a transition plan outlining the newly formed agency structure and a plan to carry out the reorganization to a newly created transition legislative oversight committee for its review and approval, and to the governor and Legislative Budget Board by December 1, 2015. HHSC would flesh out details of the transition in a work plan that contains the details of program movement and timelines. The transition plan should require reorganization to be complete by September 1, 2016.

As a management recommendation, the executive commissioner should submit to the transition legislative oversight committee a separate plan for consolidating administrative support services; report how the reorganized structure emphasizes information technology and contracting so that these functions receive ongoing high-level attention; as well as report how to satisfy federal requirements related to the organizational placement of programs. The executive commissioner should also report how the reorganized structure would ensure needed coordination for people served across system components.

Statute would require that the transition legislative oversight committee have the following composition: 11 voting members including four members from the House appointed by the speaker, four members from the Senate appointed by the lieutenant governor, and three public members appointed by the governor; and the executive commissioner as an ex officio nonvoting member. The lieutenant governor and speaker would each name a co-chair from among their appointees. The committee would be required to meet at least quarterly or at the call of the co-chairs through 2016 and then at least once a year through 2023, at which point the committee would disband. Committee meetings would be subject to the Open Meetings Act and the committee would be required to report to the lieutenant governor, speaker, and governor on progress and issues related to the transition not later than December 1 of even-numbered years.

1.3 Continue the basic functions of the health and human services agencies in the single, reconstituted Health and Human Services Commission for 12 years.

Unless specified in other decisions of the Sunset Commission, the need for all system functions would continue and the reconstituted HHSC would have a Sunset date of September 1, 2027. In addition to this full Sunset review, the reorganized agency would undergo a limited Sunset review for the 2022 – 2023 biennium, but would not be subject to abolishment at that time. The review would be limited to providing an update on agency progress in meeting reorganization requirements and identifying any other changes deemed appropriate.

Issue 2

Incomplete Centralization of Support Services Deprives the State of Benefits Envisioned in Consolidating the Health and Human Services System.

A key tenet of the reorganization of the health and human services system in 2003 was consolidation of administrative support services under HHSC. Twelve years later, administrative consolidation is still incomplete, resulting in lost opportunities for efficiencies and cost savings. The Sunset Commission found that information resources, contracting, and rate setting support functions, remain decentralized in various degrees within and outside HHSC affecting needed oversight of these essential services. Of particular interest, HHSC lacks high-level attention to provide needed sophistication in its overall

approach to contracting to meet so many of its critical responsibilities through outside parties. While support services would centralize as a consequence of the overall system reorganization in Issue 1, their treatment here is intended to elevate their importance regardless of the outcome of reorganization.

Recommendations

Management Action – Nonstatutory

2.1 Direct HHSC to further consolidate administrative support services.

HHSC, in consultation with other system agencies, should develop a consolidation plan, including a schedule with milestones, for reviewing and implementing consolidation changes. The consolidation plan should use principles, such as ensuring clear lines of responsibility for providing services and responsiveness to the system's needs for support services to help guide decisions as to the desirability of further consolidation. As a statutory change, individual system agencies should be clearly exempted from the requirement that all state agencies have an internal audit, to allow for possible internal audit consolidation.

2.2 Direct HHSC to take steps to improve the accountability for, as well as the planning and integration of, information technology and information security in the health and human services system.

HHSC should consolidate within HHSC IT the system agencies' information resource managers, information security officers, and related staff, while still ensuring that system agencies have sufficient and readily available IT support to meet their needs. HHSC should clearly define and direct in policy that HHSC IT sign off on and monitor any IT-related procurements, regardless of the originating agency. HHSC guidelines should require that HHSC IT, in consultation with system agencies, develop a comprehensive plan of IT projects looking forward a minimum of three years that aligns with the program's vision, strategy, needs, and priorities. The executive commissioner should adopt guidelines setting out the responsibilities of HHSC IT and system agencies for IT. HHSC should also consolidate authority for system networking and customer support and put in place a security system meeting consistent minimum standards. As a statutory change, this recommendation would exempt system agencies from the general state requirement that each state agency's information resource manager report to the executive head of the agency.

2.3 Require HHSC to better define and strengthen its role in both procurement and contract monitoring.

HHSC should clarify and standardize its role over enrollment contracts and complete, maintain, and update the statutorily required contract management handbook, risk analysis procedure, and central contract management database. In addition, HHSC should require the executive commissioner's signature on large or complex contracts managed by any of the system agencies; require development of a formal policy defining an ongoing reporting structure that shows for large contracts any corrective action plans, their status, and any liquidated damages assessed and collected; and define a means of escalating attention on large and problematic contracts.

2.4 Direct HHSC's procurement and contract office to improve assistance to and communications throughout the system.

HHSC should strengthen technical assistance by designating points of contact within HHSC and throughout the system. HHSC should also ensure HHSC procedures establish contract training requirements for contract development, or contract management staff and system leadership, and coordinate any required contract-related training.

2.5 Direct HHSC to develop ways to apply focused, high-level attention to system contracting.

HHSC executive management should focus needed resources and attention on contracting to promote ongoing improvement, consistency, and accountability on major contracts. For example, reinstating some form of the disbanded enterprise contract council could provide a place to spearhead discussion of contracting issues and solutions.

2.6 Consolidate rate setting for the health and human services system at HHSC.

HHSC should establish this consolidation in policy, determining a transition schedule for moving different types of rates and associated staff to HHSC in stages, as well as identifying contracted services in agencies whose underlying payments are not based on standard rates and thus not appropriate for rate analysis.

2.7 Improve transparency in setting capitated rates.

HHSC should consider providing additional information and time to managed care organizations so that these entities can independently calculate various factors making up their capitated rates.

Issue 3

Fragmented Administration of Medicaid Leads to Uncoordinated Policies and Duplicative Services and Could Place Future Transitions to Managed Care at Risk.

Fragmentation of the state's Medicaid program among three agencies hinders consistent decision making toward a shared vision, clear communication among staff who share the same organizational culture, and a shared awareness of program problems and how to fix them. This structure also impedes cohesive Medicaid policy changes and program administration, efficient delivery of medically necessary services, and proper administrative oversight. As Texas' most vulnerable Medicaid populations are about to transition into managed care, the fragmented administration of Medicaid could affect the smooth transition for these critical populations.

Recommendation

Management Action – Nonstatutory

3.1 Consolidate administration of Medicaid at HHSC.

This recommendation would move all pieces of the Medicaid program administered by DSHS and DADS to HHSC in accordance with the overall system reorganization in Issue 1. HHSC should create

a transition plan to provide for the details of program movement and timelines related to transfer of these programs to the agency no later than January 1, 2016, with consolidation occurring no later than September 1, 2016.

Issue 4

HHSC Has Not Fully Adapted Its Processes to Managed Care, Limiting the Agency's Ability to Evaluate the Medicaid Program and Provide Sufficient Oversight.

State efforts to oversee Medicaid services have not kept pace with the state's movement into managed care. While the State could previously rely on its fee-for-service claims contractor to run data and analyze trends in the Medicaid program, the addition of 21 managed care organizations requires increased sophistication. Meanwhile, having a separate Pharmaceutical and Therapeutics Committee and Drug Utilization Review Board impedes a unified approach to ensure the safe and cost-effective use of prescription drugs.

Recommendations

Management Action – Nonstatutory

- 4.1 Direct HHSC to comprehensively evaluate data and trends for the Medicaid program on an ongoing basis.

Change in Statute

- 4.2 Require HHSC to regularly evaluate the appropriateness of requested performance data and develop a dashboard that identifies key performance data for agency leadership.

Management Action – Nonstatutory

- 4.3 HHSC should develop a system to automate data entry.

Change in Statute

- 4.4 Require OIG and HHSC to define, in rule, the respective roles and purpose of managed care audits and to coordinate all audit activities.

Management Action – Nonstatutory

- 4.5 Direct HHSC to redefine the role of its prescription drug program to provide better oversight of drug benefits in managed care.

Change in Statute

- 4.6 Eliminate the Pharmaceutical and Therapeutics Committee, transfer its functions to the Drug Utilization Review Board, and expand the repurposed board's membership to include managed care representation.

The repurposed board's membership would include two representatives from managed care organizations, a pharmacist and physician, to serve as non-voting members.

- 4.7 Expand the Medical Care Advisory Committee’s membership to include a managed care representative.**

Management Action – Nonstatutory

- 4.8 Direct HHSC to report to the Sunset Commission recommendations related to network adequacy for Medicaid managed care organizations.**
- 4.9 Direct HHSC to routinely measure and publicly report on non-emergent utilization of the emergency department by managed care members, by health plan, by region.**

Issue 5

Fragmented Provider Enrollment and Credentialing Processes Are Administratively Burdensome and Could Discourage Participation in Medicaid.

The state’s lengthy and cumbersome Medicaid enrollment processes and its disconnect with managed care organizations’ credentialing processes cause providers to submit the same information multiple times to numerous different entities to participate in Medicaid, creating an administrative burden for providers and delaying services to clients. In addition, OIG lacks decision-making guidelines for evaluating providers’ criminal history and duplicates criminal history checks already performed by state licensing boards.

Recommendations

Change in Statute

- 5.1 Require HHSC to streamline the Medicaid provider enrollment and credentialing processes by creating an enrollment portal and better linking data within the process.**

This recommendation would also authorize creation of a single, consolidated enrollment and credentialing process, if feasible.

- 5.2 Provide that OIG no longer conduct criminal history checks for providers already reviewed by licensing boards.**

OIG’s criminal history checks would be limited to providers not already subject to fingerprint-based checks by state licensing boards. Licensed providers that pass fingerprint criminal history checks performed by a licensing board and are eligible to practice in Texas would still be subject to additional OIG screening related to federal or state exclusions, open OIG investigations, or other criteria that prohibits participation in the Medicaid program.

- 5.3 Require OIG to develop criminal history guidelines for provider types for which it conducts background checks.**

- 5.4 Require OIG to complete provider background checks within 10 business days.**

OIG would also be required to develop performance metrics to measure the length of time for completing background checks for complete applications, as well as for all applications.

Issue 6

The State Is Missing Opportunities to More Aggressively Promote Methods to Improve the Quality of Health Care.

HHSC's three largest quality initiatives are not aligned, limiting the agency's ability to accomplish meaningful change to improve healthcare delivery in the state. Specifically, quality initiatives under managed care, the Delivery System Reform Incentive Payment (DSRIP) program, and other efforts lack a cohesive vision for improving the quality of health care. Additionally, most managed care providers are paid through a fee-for-service approach, which may incentivize more, instead of necessarily better, care.

Recommendations

Change in Statute

6.1 Require HHSC to develop a comprehensive, coordinated operational plan designed to ensure consistent approaches for improving the quality of health care.

This recommendation would require HHSC to develop a plan to include broad goals for improving the quality of health care and revise its major quality initiatives to ensure the initiatives work toward common goals and measures are reported consistently. In implementing this recommendation, in conjunction with seeking renewal of the 1115 waiver, HHSC should narrow the menu of DSRIP projects and consider developing ways to incentivize coordination across these various quality initiatives.

6.2 Require HHSC to develop a pilot project to promote increased use of incentive-based payments by managed care organizations.

Management Action – Nonstatutory

6.3 Require HHSC to include incentive-based payments in managed care contracts and better define types of incentive-based payments.

Issue 7

HHSC Lacks a Comprehensive Approach to Managing Data, Limiting Effective Delivery of Complex and Interconnected Services.

In the course of running hundreds of programs, Texas' health and human services agencies have amassed more than 200 terabytes of information related to services provided to clients and public health trends — double the amount of everything the Hubble Telescope has sent to Earth. The system's highly decentralized approach prevents appropriate use of information to measure performance and inform key decisions and creates compliance risk given the complicated privacy laws and other regulations governing the data.

Recommendation

Management Action – Nonstatutory

7.1 Direct HHSC to elevate oversight and management of data initiatives, including creation of a centralized office with clear authority to oversee strategic use of data.

HHSC should prioritize and provide additional attention to data oversight and use by designating a high-level executive office with clear authority to coordinate data governance and management efforts throughout the system. The office should establish systemwide policies governing the development, use, and appropriate sharing of data and data systems and to monitor adherence to agreed-upon standards. The office should conduct a detailed inventory of all major data sets and systems across the enterprise, and should then develop a strategic plan establishing data priorities for the enterprise and strategies for achieving them, incorporating feedback from system staff and stakeholders. The office should also develop specialized expertise to offer technical assistance and cross-program coordination for priority projects.

Issue 8

Administration of Multiple Women’s Health Programs Wastes Resources and Is Unnecessarily Complicated for Providers and Clients.

HHSC and DSHS provide women’s health and family planning services through three programs: the Expanded Primary Health Care and Family Planning programs administered by DSHS and the Texas Women’s Health Program administered by HHSC. The programs share similar goals but have distinct eligibility criteria, benefits packages, and administrative structures. As a result, state-funded women’s health programs comprise a patchwork of services that are difficult to navigate and result in unnecessary administrative costs. Programmatic differences also limit useful data comparisons to measure the impact of significant legislative investments, problems compounded by the lack of a comprehensive vision for women’s health across agency lines.

Recommendations

Management Action – Nonstatutory

8.1 Consolidate the existing Texas Women’s Health and Expanded Primary Health Care programs into one program at HHSC and continue the Family Planning program unchanged, but also at HHSC.

This recommendation directs HHSC to work with the Senate Finance Committee and the House Appropriations Committee to determine eligibility criteria and a benefit package for the consolidated program that will increase the state’s capacity to serve women and emphasize family planning services within available resources. HHSC should address other aspects of the program relating to billing procedures and funding distribution, program administration, and the periodic evaluation of services, largely on the direction provided through the appropriations process. HHSC should use the same processes in the two programs, where feasible, to gain administrative efficiencies.

HHSC is directed to consolidate the two programs and roll out the newly consolidated program by January 1, 2017. Current laws applicable to existing state-funded women’s health programs would be applied to the new program.

8.2 Direct HHSC to study the feasibility of automatically transitioning new mothers in Medicaid to the new women's health program.

Issue 9

NorthSTAR's Outdated Approach Stifles More Innovative Delivery of Behavioral Health Services in the Dallas Region.

An outdated model for delivery of behavioral health services for clients in the Dallas area hinders more holistic care for clients and misses opportunities to expand funding for behavioral health services. While the rest of the state is moving to integrate behavioral and physical health to reduce costs and improve client outcomes, the NorthSTAR model prevents such integration. NorthSTAR's structure also prevents the Dallas area from taking advantage of new federal funding opportunities, which does not incentivize local investment in the model. However, successful elements of the NorthSTAR model could be continued in a new model or applied statewide.

Recommendations

Management Action – Nonstatutory

9.1 Transition provision of behavioral health services in the Dallas area from NorthSTAR to an updated model.

This recommendation would allow the local communities that comprise NorthSTAR to work with HHSC to develop a mutually agreed upon solution, within certain timelines, to move the current NorthSTAR model into one that meets the state's priorities and maintains the strengths of the NorthSTAR model, as described below.

- **Medicaid.** Subject to federal approval, this recommendation would transition behavioral health services for Medicaid clients to the managed care organizations responsible for their primary health care, as is currently occurring in the rest of the state. HHSC and DSHS should ensure continuity of care for clients as they move from NorthSTAR to a managed care organization by requiring the organizations to extend contracts to any provider participating in NorthSTAR and treat them as significant traditional providers for three years.
- **Local plan for indigent services.** Each of the counties that comprise NorthSTAR, either as an individual county or in partnership with other counties, would be required to submit a local plan to DSHS, in consultation with HHSC, for provision of indigent services. The agencies must dedicate a direct liaison to assist the local communities in developing their local plans. The local plan must be agreed to by a majority of the county commissioners, and the board of directors of the local mental health community center, in each county covered by the local plan. Counties who do not want to remain within NorthSTAR may adopt the current DSHS model of behavioral health service delivery found in other parts of the state outside of NorthSTAR.

Local plans must demonstrate the following criteria: experience or plan to provide and coordinate integrated care for mental health, substance abuse, and crisis services; status as a public entity eligible to put up non-federal funds to match federal DSRIP funds; intent and ability to integrate behavioral health and primary care services; provider payment plan and mechanisms to ensure a competitive

provider market and an adequate network of providers capable of providing broad access to services; plans to ensure quality of services provided to clients; and incentives or inclusion of local participation or match requirements.

If DSHS does not receive sufficient local proposals to deliver indigent healthcare services within required timelines, DSHS, in consultation with HHSC, should solicit local input in developing its own plan to transition indigent services to a new entity through a competitive bid. In selecting an entity, DSHS and HHSC should give favorable consideration to proposals that most closely provide for the criteria listed for local plans above.

- **Timeline.** For Medicaid, funding for children should be transitioned to STAR and STAR Kids plans no later than September 1, 2016. All other Medicaid and indigent behavioral health services must go into effect no later than January 1, 2017.

Change in Appropriation

- 9.2 The Sunset Commission should recommend that the Legislature include a rider to transition NorthSTAR funds to DSHS behavioral health funding strategies.**

Change in Statute

- 9.3 Require the state to assist with maintenance of Medicaid eligibility statewide.**

This recommendation would apply statewide and require managed care organizations to assist clients in maintaining Medicaid eligibility. HHSC should also explore strategies to support continuity of Medicaid eligibility for individuals with social security income, if cost effective.

- 9.4 Require HHSC to ensure behavioral health services are integrated into managed care organizations statewide.**

HHSC should use performance audits and measures, especially in cases in which managed care organizations subcontract behavioral health services, to ensure clients receive coordinated behavioral health and primary care.

Issue 10

Poor Management Threatens the Office of Inspector General's Effective Execution of Its Fraud, Waste, and Abuse Mission.

OIG has the difficult and crucial job of protecting the integrity of the health and human services system and its public assistance programs, including Medicaid. However, OIG's highest profile responsibilities — investigative processes — lack structure, guidelines, and measurement of data needed to analyze and improve its processes and outcomes. Inefficient and ineffective processes lead to limited outcomes and a modest return on investment to the State. These concerns, taken in sum with other issues such as poor communication and transparency, limited staff training, and a lack of performance data from a case management system, point to limited oversight and the need for further review. OIG also performs many functions that do not align with its fraud, waste, and abuse mission, and would benefit from increased focus on its most critical functions. Additionally, the inspector general's gubernatorial appointment and OIG's creation as a division of HHSC raise questions about the inspector general's accountability to the governor versus the executive commissioner.

Recommendations

Change in Statute

- 10.1 Remove the gubernatorial appointment of the inspector general and require the executive commissioner to appoint and directly supervise the inspector general.**

In cases in which OIG perceives a conflict of interest in reporting to the executive commissioner, OIG would refer those allegations to the Texas Rangers for investigation through the same mechanisms that are available to other state agencies.

- 10.2 Require OIG to undergo special review by Sunset in six years.**
- 10.3 Require OIG, by rule, to establish prioritization and other criteria to guide its investigation processes.**
- 10.4 Require OIG to complete Medicaid provider preliminary investigations within 45 days and full investigations within 180 days.**
- 10.5 Require OIG, by rule, to establish criteria for scaling its enforcement actions for Medicaid provider investigations to the nature of the violation, including penalties.**
- 10.6 Require OIG to conduct independent quality assurance reviews and request a peer review of sampling methodology used in its investigative process.**
- 10.7 Define OIG's role in managed care, including strengthened oversight of special investigative units.**
- 10.8 Remove the prohibition on participation in both the Health Insurance Premium Payment program and Medicaid managed care.**
- 10.9 Allow OIG to share confidential drafts of investigative reports concerning child fatalities with DFPS.**

Management Action – Nonstatutory

- 10.10 Direct OIG to narrow its employee investigations to focus on high priority allegations.**

This recommendation would focus OIG's employee misconduct investigations to those involving a resident of a state supported living center or patient at a state hospital, or involving fraud, waste or abuse in administration of a public benefit or other program that threatens the program's integrity. OIG would still be authorized to investigate employees across the entire system, but not general employee misconduct for allegations that can be handled by an agency manager or referral to a local law enforcement agency. This recommendation would also direct OIG to discontinue regular review of every DFPS case involving a child fatality and focus instead on special cases with specific and serious allegations related to DFPS employees, or other cases at the discretion of the executive commissioner.

10.11 Direct OIG to actively take steps to improve training for its staff and communication with health and human services system programs and providers, including strengthening prevention efforts.

OIG should improve internal training for staff to better inform them of policies, operations, and basic business practices of providers and critical programs they investigate. OIG should better communicate and share information with Medicaid policy staff and establish regular, ongoing prevention efforts among Medicaid providers. OIG should also increase transparency by offering more robust and better information on its website. Finally, upon finding state employee fraud, including by OIG employees, OIG should promptly notify any affected or harmed providers.

10.12 Direct HHSC and OIG to work together to transfer certain OIG functions to other areas of the health and human services system where they would fit more appropriately.

This recommendation would make the following transfers: the Health Insurance Premium Payment program to the Medicaid program in HHSC; review of cost reports to HHSC's financial services division rate analysis department; review of single audit reports to the system agencies that run the programs requiring these reports; and reviews of an intermediate care facilities' handling of residents' trust funds and income to DADS.

10.13 OIG should track basic performance measures needed to monitor the efficiency and effectiveness of its investigative processes.

10.14 OIG should establish a formal plan for reducing its backlog and improving inefficiencies in the process.

Issue 11

Credible Allegation of Fraud Payment Hold Hearings Do Not Achieve the Law's Intent to Act Quickly to Protect the State Against Significant Cases of Fraud.

OIG is required by federal law to withhold Medicaid payments from providers under investigation based on a credible allegation of fraud. OIG's implementation of this mandatory payment hold, known as a credible allegation of fraud or CAF hold, has gone beyond the law's intent for use as an enforcement tool in serious matters. Hearings to appeal placement of a CAF hold have exceeded their narrow scope, duplicating the function of hearings used to establish whether the State overpaid a provider. The process for CAF hold hearings is excessive and creates undue burdens on providers as compared to cases presenting more serious risks to the State and public. In addition, aspects of the overpayment hearing process affect the fairness of these cases for both providers and the State.

Recommendations

Change in Statute

11.1 Streamline the CAF hold hearing process to more quickly mitigate state financial risks.

- **Notice of a payment hold.** OIG would be required to send notice to providers within five days of placing a CAF hold, which would continue to take immediate effect. If the provider requests a

hearing within 10 days of receiving notice, OIG would have three days to request a hearing with the State Office of Administrative Hearings (SOAH), and SOAH would be required to hold the CAF hold appeal hearing within 45 days of the request. OIG would be required to provide a detailed summary of all its evidence as to the credible allegation of fraud along with this notice.

- **Hearings.** Hearings would be held at SOAH and be limited to four hours for each side, plus time for any questions from the administrative law judge. The parties would be limited to two continuances for reasonable circumstances.
- **Standard of proof.** OIG would be required to show probable cause that the allegation of fraudulent activity has an indicia of reliability and that continued payment to a Medicaid provider presents an ongoing significant financial risk to the State and threat to the integrity of the Medicaid program.
- **Decisions and appeals.** The final decision on the payment hold would be made by an administrative law judge at SOAH, not by OIG or HHSC, and would not be appealable to district court. SOAH would not have the ability to adjust the percent of the payment hold.
- **Resolution of the case.** As provided in Recommendation 10.4, OIG should complete the investigation of an overpayment case underlying a CAF hold within 180 days.
- **Informal resolution meetings.** Providers and OIG would have the option to have informal resolution meetings before a CAF hearing, but they would no longer have a statutory right. These informal resolution meetings would run concurrently with the CAF hearing process.

11.2 Clarify good cause exceptions for OIG's application of a credible allegation of fraud payment hold.

This recommendation would require OIG to consider certain findings or mitigating factors, as outlined in federal regulations, for not applying a payment hold, or applying a payment hold only in part, when it receives a credible allegation of fraud.

11.3 Clarify OIG's authority to place payment holds only in serious circumstances.

This recommendation would clarify that OIG's payment hold authority is limited to credible allegations of fraud, situations in which OIG needs to compel the production of records from a provider, or at the request of the attorney general. Payment holds would not be authorized for standard overpayment cases or non-fraudulent errors or to aid in bargaining and settlement negotiation.

11.4 Disallow CAF holds for services that have received prior authorization but lack additional evidence of fraud.

CAF payment holds should not be placed on providers for services that have received prior authorization by HHSC or its contractor as "medically necessary" unless additional evidence is presented that the provider has materially misrepresented documentation for the proposed medical or healthcare services. OIG would retain the ability to pursue all overpayments regardless of whether a claim received a prior authorization.

11.5 Amend the statutory definition of fraud.

This recommendation would amend the statutory definition of "fraud" to clarify that the term does not include unintentional technical, clerical, or administrative errors.

11.6 Require OIG to pay all costs of CAF hold hearings at SOAH.

This recommendation would require OIG to pay the full hearing costs for CAF hold appeals at SOAH, instead of requiring providers to pay half of the costs. Providers would still be responsible for any of their own costs incurred in preparing for the hearing.

11.7 Require OIG to pay all costs of overpayment hearings at SOAH.

This recommendation would require OIG to pay costs associated with overpayment hearings at SOAH, excluding provider attorney's fees, just as Recommendation 11.6 would do for CAF hold hearings.

11.8 Remove the statutory right to two informal resolution meetings before overpayment hearings.

Providers would maintain a right to one informal resolution meeting at the provider's request, but this and any subsequent meeting that may be granted would run concurrently with the overpayment process to not delay the timing of the overpayment hearing.

11.9 Provide pharmacies audited by OIG or a federal contractor and not accused of fraud the right to an informal hearing.

The recommendation would move informal hearings currently held at OIG to the HHSC Appeals division to remove OIG staff from making decisions on matters it originally developed. Vendor drug program staff would remain on the decision-making panel to ensure needed expertise. OIG would also be required to provide information to pharmacies related to methods used to determine the overpayment and any extrapolation of audit findings.

Issue 12

HHSC's Uncoordinated Approach to Websites, Hotlines, and Complaints Reduces Effectiveness of the System's Interactions With the Public.

Collectively, the five health and human services agencies have developed about 100 websites and maintain 28 separate hotlines. The system's piecemeal approach to developing these resources requires users to navigate an increasingly complex network of information, frustrating even savvy stakeholders familiar with the system. In addition, HHSC's ombudsman's office lacks adequate authority and visibility to obtain a comprehensive understanding of the challenges faced by stakeholders, escalate appropriate issues stuck in agency complaint processes, identify systemwide problems, or know whether consumer complaints are actually resolved.

Recommendations

Change in Statute

12.1 Require HHSC to create an approval process and standard criteria for all system websites.

This recommendation would require approval from HHSC for any new website projects throughout the system. HHSC would inventory and evaluate the ongoing need for existing websites and improve uniformity and efficiency, including creating a uniform look and feel for all main agency home pages and ensuring search engine optimization and other technical aspects for all websites.

12.2 Require HHSC to create policies governing hotlines and call centers throughout the system.

This recommendation would require HHSC to inventory and develop criteria to assess the need for all existing hotlines and call centers and create an approval process for new hotlines and call centers. HHSC must assess this inventory with an eye toward merging related hotlines and call centers where appropriate and maximizing use of the 2-1-1 call system.

12.3 Clarify the role and authority of the HHSC ombudsman's office as a point of escalation for complaints throughout the system and to collect standard complaint information.

This recommendation would provide the office with clear responsibility and authority to help interested parties raise matters if they feel they are not being heard or getting information regarding complaints with system agencies. The recommendation would clarify the office's authority for collecting inquiry and complaint data from all system agencies, and require the executive commissioner to adopt policies for a standard process to track and report inquiries and complaints among all system agencies.

Issue 13

HHSC's Advisory Committees, Including the Interagency Task Force for Children With Special Needs, Could be Combined and Better Managed Free of Statutory Restrictions.

HHSC's numerous advisory committees create an administrative burden to HHSC staff and their presence in statute can prevent the agency from responding to evolving needs. Additionally, some of these advisory committees are either no longer necessary or have overlapping jurisdiction, creating duplication. For example, the Interagency Task Force for Children With Special Needs, currently under Sunset review, is one of four advisory committees created to focus on issues related to children. While these four committees' compositions are different, their jurisdictions are difficult to distinguish and often overlap, causing confusion for HHSC staff, committee members, and involved stakeholders.

Recommendations

Change in Statute

13.1 Remove advisory committees from statute, including those with Sunset dates, and require the executive commissioner to re-establish in rule advisory committees to consider all major areas of the agency.

This recommendation would eliminate from statute 32 of 35 advisory committees, including several unnecessary, duplicative, or inactive advisory committees. The three remaining committees are addressed in Issue 4. The recommendation would also remove the Sunset dates of those advisory committees scheduled for Sunset review. All statutory provisions associated with those committees, including reporting requirements, would be removed from law.

The executive commissioner would re-create advisory committees in rule that cover all major areas of the agency, including Medicaid and other social services programs; managed care; quality initiatives; aging; individuals with disabilities, including autism; rehabilitation, including brain injuries; children's

issues; public health; behavioral health; regulatory matters; protective services; prevention efforts; and faith and community-based matters. Through this recommendation, HHSC should restructure and reduce its number of advisory committees to move from a multitude of committees with overlapping jurisdictions to a smaller number of standing committees with broad-based jurisdiction.

13.2 Remove the Task Force for Children With Special Needs, the Children’s Policy Council, the Council on Children and Families, and the Texas System of Care Consortium from statute.

This recommendation would remove all four committees from statute, including removing Sunset dates. In implementing this recommendation, the executive commissioner, by rule, should combine and reorganize the four committees as one advisory committee in such a way that its membership, purpose, and initiatives most effectively direct state resources to improve services and better coordinate advisory efforts for children with special needs.

13.3 Apply advisory committee requirements outlined in Chapter 2110, Government Code, to advisory committees appointed by the executive commissioner.

13.4 Require HHSC to create a master advisory committee calendar, stream advisory committee meetings, and ensure access to online meeting materials.

Management Action – Nonstatutory

13.5 Direct the executive commissioner to seek stakeholder and public input in evaluating the need for and restructuring its advisory committees and post that plan on the agency’s website.

Issue 14

HHSC Statutes Do Not Reflect Standard Elements of Sunset Reviews.

HHSC’s statutes do not include standard provisions relating to conflicts of interest and alternative rulemaking and dispute resolution. Additionally, the Sunset Commission found that four of 42 required reports are no longer necessary and should be eliminated, and eight others required by advisory committees would be removed from statute under Issue 13.

Recommendations

Change in Statute

14.1 Update two standard Sunset across-the-board recommendations, related to conflicts of interest and alternative dispute resolution, for HHSC.

14.2 Eliminate four unnecessary reporting requirements, but continue others that serve a purpose.

This change will remove the following reporting requirements currently in statute: *2-1-1 Electronic Access to Child Care and Education Services Summary Referrals*; *Medicaid Expenditures Report*; *Report on Overpayment Claims*; and the *Report on Procurement and Contracting Practices*. HHSC’s other reporting requirements would continue in effect, except those addressed in Issue 13.

Issue 15

Allow the Texas Health Services Authority to Promote Electronic Sharing of Health Information Through a Private Sector Entity.

The Legislature created the Texas Health Services Authority (THSA) as a public-private partnership to accelerate the adoption and secure sharing of health-related information among providers through seamless, integrated health information exchanges across the state. THSA is an independent entity that contracts with, but is not a part of, HHSC and is subject to the Sunset Act. While Texans have a clear interest in the development of health information exchanges for the improvements they bring to the overall healthcare system, the state does not need a statutorily authorized entity to support health information exchanges.

Recommendation

Change in Statute

15.1 Remove the Texas Health Services Authority from statute in six years, allowing its functions to continue only in the private sector.

This recommendation would remove THSA's statutory authority, eliminating THSA as a statutory nonprofit corporation on September 1, 2021. THSA would transition to an independent nonprofit organization, appointing its own board of directors and providing whatever duties it determines necessary to support health information exchanges in Texas. Statutory provisions for privacy and security standards, HHSC rules relating to standards for sharing protected health information electronically, and mitigating factors to protect entities certified through THSA's privacy and security program would be preserved elsewhere in state law. This recommendation would also clarify that two ex officio non-voting members of THSA's board represent state health and human services agencies instead of just DSHS, and add one member to represent Texas local health information exchanges. The Sunset Commission also recommends to the Senate Finance and House Appropriations committees that THSA receive no state appropriation for the upcoming biennium.

Fiscal Implication Summary

The recommendations would result in savings to the General Revenue Fund of about \$1.7 million in fiscal year 2016, and \$32.3 million over five years. Creation of a new behavioral health model capable of accessing federal funds in Issue 9 could also result in significant gain for the Dallas area of more than \$40 million annually, although these would be additional funds to local entities, not the State.

Issue 1 — Reorganizing the health and human services system into a single agency would result in potentially large savings from more accountable operations, reduced fragmentation of services, and increased consolidation of administrative functions, but these could not be estimated at this time. Reductions from eliminating agency advisory councils would save about \$48,000 in annual travel costs. Costs associated with the reorganization would result primarily from modifications in information technology and administrative systems to accommodate the new organizational structure, and use of staff time to reorganize the system, and would likely offset savings in large part over the first few years.

Issue 8 — Consolidation of women's health programs would result in an estimated administrative savings to the State of \$1.1 million annually.

Issue 9 — Discontinuing NorthSTAR and moving to a new model would result in about \$2.4 million in savings to the State in fiscal year 2017. After implementation, the recommendation would result in a total of \$28.9 million in savings over the first five years from integration of Medicaid primary care and behavioral health in the NorthSTAR area. More efficient administration of the Medicaid portion of the NorthSTAR contract would result in annual state savings of \$107,367 from the reduction of about four staff. A new behavioral health model capable of accessing federal funds for indigent care, while not increasing funds to the State, could also result in significant gain for the Dallas area of more than \$40 million annually.

Issue 10 — Recommendations to narrow the functions of OIG would result in about \$898,000 in overall savings to the State each year through the reduction of 28 staff associated with review of cost reports and narrowing the focus of OIG's employee investigations.

Issue 13 — Abolishing the Medicaid-CHIP regional advisory committees would result in annual savings of \$39,481 in general revenue from staff support and travel costs.

**Health and Human Services Commission
and System Issues**

Fiscal Year	Savings to the General Revenue Fund	Change in FTEs From FY 2015
2016	\$1,717,481	-32
2017	\$4,524,382	-32
2018	\$8,499,191	-32
2019	\$8,632,950	-32
2020	\$8,942,956	-32

DEPARTMENT OF AGING AND DISABILITY SERVICES

Amy Trost, Project Manager

Agency at a Glance

The Legislature created the Department of Aging and Disability Services (DADS) in 2003 as the State's single long-term care agency by consolidating the Department of Human Services and Department on Aging along with certain programs from the Department of Health, Texas Rehabilitation Commission, and the Texas Department of Mental Health and Mental Retardation. Today, DADS aims to ensure access to a comprehensive array of aging and disability services in local communities. To achieve its mission, DADS carries out the following activities.

- Directly providing or contracting for long-term care services for people with disabilities and the elderly.
- Regulating a range of providers serving these populations in facilities or home settings to ensure individuals' health and safety.

Texas must seriously consider closing some of its most costly and problematic state supported living centers.

Approach to Sunset Reviews of Health and Human Services Agencies

The Sunset Commission reviewed the functions and duties of DADS and other health and human services system agencies before evaluating the Health and Human Services Commission (HHSC) and matters relating to the overall system. This approach allowed the Sunset Commission to assess each agency as currently configured, with the understanding that the overall system configuration could change through the later review of HHSC and the accumulated knowledge gained from the reviews of all health and human services agencies.

Ultimately, the Sunset Commission did not continue DADS as a separate agency, instead recommending reorganization of all of the system agencies into a functional structure under HHSC, as discussed in the HHSC section of this report. However, the specific recommendations affecting DADS continue to be needed to address the Sunset Commission's concerns about the agency and its programs whether they operate within DADS or within the reorganized system. These specific recommendations are presented here as the agency and its functions are currently organized, but the Legislature will ultimately determine their placement within the overall health and human services system.

Summary

DADS oversees long-term care services and supports that help more than a million of the state's most vulnerable residents — people with disabilities and the elderly — to live dignified, independent, and productive lives. Overseeing a maze of complex programs, facilities, and providers is a huge task, posing tremendous challenges during a time of change and uncertainty.

A critical and ongoing challenge facing DADS is the operation of 13 state supported living centers (SSLCs) — residential facilities for people with intellectual and developmental disabilities (IDD). Texas developed this system of centers over many years, housing as many as 13,700 residents when placing people with IDD in institutions was the norm. Today, the vast majority of people with IDD live in the community, and the 13 centers only housed about 3,650 people in fiscal year 2013.

Yet maintaining this large system of state-run facilities is costly, involving more than 13,900 employees and a budget of \$661.9 million a year. With the costs to taxpayers growing unsustainably, the State must seriously consider closing some of the most problematic centers, while acknowledging the vulnerable nature of the residents and the emotions involved.

Sunset also found that DADS needs to step up to the plate and more aggressively take on its role as a regulator. DADS oversees more than 10,000 providers serving the elderly and people with disabilities — ranging from 24-hour care in nursing homes to home health agencies serving people able to live more independently. However, DADS takes few enforcement actions, even when confronted with serious and repeat offenses. In the agency's defense, statutory provisions keep penalty caps low and prohibit the collection of fines for many violations later corrected by providers. DADS cannot effectively ensure the safety of these vulnerable populations while wearing statutory handcuffs and without effective enforcement tools. The following material summarizes the Sunset Commission's recommendations on DADS.

Issues and Recommendations

Issue 1

Despite Declining Enrollment, Skyrocketing Costs, and Questionable Quality of Care, Texas Continues to Operate 13 SSLCs.

Texas spent \$661.9 million in fiscal year 2013 to support 13 SSLCs that served about 3,650 people with IDD. Texas is one of the few remaining states that maintain a large system of public residential institutions for this population.

SSLCs have been a hotbed of controversy over the last forty years, including the current U.S. Department of Justice oversight due to safety and quality of care issues. Meanwhile, the State spends a tremendous amount of money and effort trying to improve the quality of care at the centers. Delivering services to a person for a year in an SSLC costs about \$113,000 more than serving that person in an equivalent program in the community. Maintaining the centers' dilapidated infrastructure adds even more cost.

Recommendations

Change in Statute

1.1 Require DADS to close the Austin SSLC by August 31, 2017.

In transferring residents out of the Austin SSLC, DADS should transition as many people to the community as possible while still respecting resident choice in the decision. All net proceeds from the sale or lease of the Austin SSLC must be dedicated for services for people with IDD including those with a dual diagnosis of IDD and mental illness.

1.2 Establish the State Supported Living Center Restructuring Commission to develop recommendations for legislative action in 2017 to right-size the number of SSLCs required for the level of need in Texas.

The eight-member Restructuring Commission would be composed of five individuals from the general public appointed by the governor by September 1, 2015 and three non-voting ex officio members. The head or designee of the HHSC, the Texas Facilities Commission, and the General Land Office would serve as non-voting members to provide relevant expertise.

The Restructuring Commission would be directed to evaluate SSLCs based on the following objective criteria and recommend how many SSLCs should be closed and specify which ones. The Restructuring Commission could also add its own criteria.

- Quality of services provided by the facility, including consideration of the SSLC's most recent certification inspections, and the center's ability to meet the minimum intermediate care facilities standards.
- Costs of operating SSLCs.
- Compliance with the Department of Justice settlement agreement.
- Availability of community service providers and resources in the area capable of delivering the quality and level of care each resident would require.
- Specialty services available at SSLCs, including the ability of an SSLC to serve alleged offenders or high-risk residents.
- Availability of employment opportunities for SSLC employees if the center closes.
- Infrastructure deficiency costs.
- Property values, market demand, and deed restrictions.
- Maintaining geographic distribution of SSLCs statewide.

While a certain number of SSLCs are not required or intended to be closed, an objective analysis from the Restructuring Commission may reveal that certain facilities need to be closed to address the declining enrollment, questionable quality of care, compliance violations, and significantly increasing costs associated with those specific SSLCs.

The Restructuring Commission would report its recommendations to the 85th Legislature by December 1, 2016. The 85th Legislature would either approve or disapprove the Restructuring Commission's recommendations through an up or down vote and prohibit amendments to the legislation containing the recommendations. If the Legislature approves the recommendations, the Restructuring Commission's decisions will take effect on September 1, 2017.

1.3 Require DADS to close any SSLCs designated by the SSLC Restructuring Commission and approved by the 85th Legislature no later than August 31, 2025.

While the Restructuring Commission's recommendations would take effect September 1, 2017, this recommendation would give DADS up to eight years to fully implement the closures. This would help ensure DADS has sufficient time to effectively transition affected residents to an appropriate community setting or another SSLC.

Management Action – Nonstatutory

1.4 Direct DADS to focus on improving the quality of life for residents and staff at all remaining SSLCs.

DADS should focus on decreasing compliance violations, decreasing instances of abuse, neglect and exploitation, and increasing quality of care and work staff retention while building community relationships. DADS must also ensure that those residents living at SSLCs who voluntarily wish to transition into the community through home and community-based services are given the proper information, guidance, support, and assistance for a successful transition.

Issue 2

To Transition From SSLCs to the Community, People With Higher Behavioral Needs Require Extra Support.

Residents of Texas' 13 SSLCs have a wide range of needs, including complex medical and behavioral issues. Many of those residents can be successfully served in a community setting, at a cost savings to the State. However, the State must build community capacity to better serve these higher need residents. Specifically, residents with complex behavioral issues benefit from the extra support of a crisis management team, but such teams are not available statewide. The agency also lacks clear direction and support to better use its existing resources in SSLCs, where experience with the IDD population could be leveraged to support people living in the community and private providers.

Recommendations

Change in Statute

2.1 Require DADS to expand crisis intervention teams to provide increased supports to people with IDD in the community.

This recommendation would require DADS to expand crisis intervention teams to areas of the state where none exist. To accomplish this goal, DADS should evaluate the effectiveness of the various crisis teams for people with IDD and mental health issues being funded by the 1115 demonstration waiver and select the models that best provide comprehensive, cost-effective support. This recommendation would help people with challenging behaviors live in the community by supporting them through crises that could put them at risk of re-institutionalization.

2.2 Amend statute to require DADS to establish, in rule, the array of services an SSLC can provide to community clients and the fees for those services.

SSLCs have the authority to provide medical, behavioral, and other SSLC services to people in the community who meet certain eligibility requirements. This recommendation amends statute to require DADS to establish the array of support services an SSLC can provide and create a fee schedule for those services in rule. These rules would require approval and adoption by HHSC's executive commissioner. This recommendation gives providers and the public a chance to comment on the services that will be offered and the fee schedule.

Change in Appropriation

- 2.3 The House Appropriations and Senate Finance committees should consider adding a rider to DADS' bill pattern authorizing SSLCs to retain fees received for providing services to DADS community clients to cover the cost of these services.**

This recommendation expresses the will of the Sunset Commission that these committees consider adding a rider authorizing SSLCs to retain fees collected for providing services to eligible community clients, and making other conforming changes to rider text as needed. The fees collected would be reflected as appropriated receipts that the SSLC would receive to cover the cost of the services delivered.

Management Action – Nonstatutory

- 2.4 DADS should leverage expertise at SSLCs to support providers in the community.**
- 2.5 DADS should strengthen partnerships with local authorities statewide to improve the number and speed of transitions to the community.**

Issue 3

Texas Lacks Effective Means for Ensuring Adequate Care in Day Habilitation Facilities.

Day habilitation facilities provide services in a group setting during weekday work hours and are offered to DADS clients through community-based IDD waiver and intermediate care facility (ICF) programs. In fiscal year 2013, the State spent more than \$96 million on day habilitation services. While day habilitation facilities are not licensed by state or federal government, DADS requires program providers to ensure their subcontractors, including day habilitation facilities, provide safe and adequate services. However, these requirements vary across programs, and contracts between facility owners and providers are not required to include basic quality and safety measures. In addition, DADS does not have basic information on how many of its clients attend day habilitation, where the facilities are located, or problems at these facilities. Recent federal guidelines have also raised questions about how day habilitation services may best be provided.

Recommendations

Management Action – Nonstatutory

- 3.1 Require DADS to develop, in rule, requirements for contract provisions regarding basic safety and service requirements that its community-based IDD waiver and ICF providers should include in their contracts with day habilitation facilities.**

This recommendation requires DADS to specify minimum standard requirements that should include running background checks on employees and volunteers, conducting fire drills, posting abuse hotline information, and following client plans. Rules implementing the requirements must be adopted by September 1, 2016.

As most providers already require these basic standards to ensure the safety of their clients, this recommendation would ensure consistent protections for all DADS clients receiving day habilitation services. If a day habilitation facility cannot meet these expectations, the provider could more easily terminate the contract and move the client into a more appropriately safe environment.

Change in Statute

3.2 Require DADS to create an advisory committee to address the redesign and potential licensure or certification of all day habilitation programs.

DADS would appoint members to the committee representing community-based waiver providers, day habilitation facility owners, and advocates by September 1, 2015. The committee would examine potential changes to day habilitation services based on recent federal guidelines that define the settings in which states may provide services in home and community-based waivers for people with IDD. The committee would also consider appropriate funding for services; reimbursable settings and services; staffing ratio requirements; safety requirements; and other required standards for the provision of day habilitation services. The committee would make its recommendations for the appropriate regulation of day habilitation programs, including licensure or certification, to the Legislature no later than September 1, 2016 and then disband. These statutory requirements would expire December 31, 2016.

3.3 Require the Department of Family and Protective Services to track data on abuse, neglect, and exploitation in day habilitation facilities and report the findings to DADS on at least an annual basis.

This recommendation would require the Department of Family and Protective Services (DFPS) to track and report to DADS on the number of confirmed, unconfirmed, inconclusive, and unfounded allegations of abuse, neglect, and exploitation at day habilitation facilities serving DADS clients at least once a year. Investigative staff at DFPS would continue to work with and hold the program provider accountable for any abuse, neglect, or exploitation of a person under the program's care. However, this recommendation would require data to be tracked by day habilitation facility, allowing DFPS and DADS to identify trends and problems at facilities. DADS could also use this information to educate providers on common problems to look out for when contracting with a day habilitation facility.

3.4 Require DADS to compile basic information and data on day habilitation facilities providing services to persons in DADS programs, including data on violations and deficiencies found during inspections.

DADS would compile a list of day habilitation facilities that contract with DADS providers, their location and services, an estimate of the number of DADS clients served monthly, and an estimate of monthly expenditures on day habilitation services by each program. Program providers would be required to report this day habilitation information to the agency once a year. DADS would track any violations and deficiencies found at a day habilitation facility during a DADS inspection tied to a provider. In addition, DADS would incorporate information received from DFPS on abuse, neglect, or exploitation in day habilitation facilities into the data.

DADS would continue to hold the program provider accountable for the violations and deficiencies by day habilitation facilities, but this recommendation would require DADS to collect data by day habilitation facility to identify trends and problems at the facilities.

Issue 4

Few Long-Term Care Providers Face Enforcement Action for Violations.

DADS licenses more than 10,600 long-term care providers serving more than 1.3 million of Texas' most vulnerable residents, primarily the elderly and persons with disabilities. These providers range from nursing homes to home health agencies that, by virtue of state licensure, participate in a multi-billion dollar long-term care industry.

However, statutes hamstring DADS' ability to effectively protect clients, creating a regulatory touch so light that the industry feels little consequence from committing repeated violations, including serious violations that can result in harm or even death. Statute prohibits DADS from applying penalties against most violations since providers get multiple opportunities to correct them before ever facing a penalty. In addition, DADS cannot assess adequate administrative penalties as deterrence since statutory penalty caps fall well below standard amounts for health-related violations.

Recommendations

Change in Statute

4.1 Require DADS to revoke the license of a nursing facility that is found to have a total of three or more Level 4 deficiencies in a 24-month period.

This recommendation would require DADS to revoke nursing facility licenses for three or more deficiencies that cause, or are likely to cause, serious harm or death with each deficiency occurring on a separate day, in a 24-month period. DADS would consider seeking the appointment of a trustee to operate the nursing facility, obtaining a new operator for the nursing home, or assisting with the relocation of the residents to other licensed institutions in the event a license is revoked.

4.2 Require DADS to develop, in rule, progressive sanctions for serious or repeated violations committed by long-term care providers.

This recommendation would enable the agency to apply a full range of sanctions to long-term care providers for serious or repeated violations that jeopardize public health, life, and safety. DADS would develop rules regarding the type and frequency of serious violations to guide agency decisions for progressive sanctions up to and including license revocation. DADS should ensure that revocation authority appropriately targets only the severe cases of repeated noncompliance by providers that fail to respond to other progressive sanctions.

Rules would be adopted specific to each provider type to include: levels of violations subject to enhanced administrative penalties for repeated violations; serious violations that could result in suspension or revocation of a license; and timeframes for determining patterns of repeated violations that may warrant revocation, such as repeated violations found during consecutive regular inspections, or other timeframes as appropriate. These rules would require approval and adoption by HHSC's executive commissioner by September 1, 2016.

4.3 Repeal “right to correct” provisions for long-term care providers from statute, and require DADS to define, in rule, criteria for their appropriate use.

Under this recommendation, “right to correct” statutes would be repealed and instead would be set in rule, to include the types of minor violations providers could correct within specific timeframes. By setting these criteria, DADS could appropriately specify the types of violations that would qualify for right to correct and those that do not. DADS should work closely with provider stakeholders in developing these rules. These rules would require approval and adoption by HHSC’s executive commissioner by September 1, 2016.

4.4 Authorize higher administrative penalties for home health agencies and assisted living facilities, and repeal limits on penalties per inspection for intermediate care facilities.

Current penalty maximums for these provider types are not consistent with similar providers and may not provide effective deterrence for serious violations. The following changes aim to match penalty amounts to the potential harm that can result from violations of licensing regulations for licensees that provide healthcare-related services in community and residential settings.

For home health agencies, increase the maximum administrative penalty from \$1,000 to \$5,000 per violation, per day. For assisted living facilities, increase the maximum administrative penalty from \$1,000 to \$5,000 per violation, and authorize each day that a violation continues to be considered a separate violation. For intermediate care facilities, repeal limits on penalties per inspection of \$5,000 for small facilities and \$25,000 for large facilities, relying instead on the current range of penalties of \$100 to \$5,000 per violation, per day.

These recommendations would allow DADS to more effectively deter licensees from committing the most serious violations at the top of the penalty range and more appropriately hold accountable those who commit multiple violations.

Management Action – Nonstatutory

4.5 Direct DADS to refer appeals of enforcement actions to the State Office of Administrative Hearings within 60 days of receiving a request for a hearing, directing the Office to set a timely hearing date.

This change aims to facilitate the elimination of the backlog of provider appeals by October 1, 2016.

4.6 Direct DADS to improve tracking of all provider violations to ensure the agency can appropriately apply progressive sanctions for repeated and serious violations and to identify enforcement trends.

4.7 Require DADS to identify inconsistencies across the state in the interpretation and application of statutes and regulations against long-term care facilities.

This recommendation requires DADS to target specific training and resources to ensure the agency applies statutes and regulations consistently and objectively across DADS’ regions during inspections and surveys.

Issue 5

DADS Lacks a Comprehensive, Effective Approach to Contract Management, Which Increases Financial Risks to the State.

DADS spends more than \$2.3 billion annually through more than 4,300 contracts of different types that provide community services and support agency operations. DADS has a fragmented approach to contracting, with many of these activities occurring within program silos. This decentralized approach limits HHSC's understanding of the full scope and financial risks associated with DADS contracts.

Further, DADS lacks needed contract management expertise, and contract management is not independent from program administration. As a result, DADS cannot ensure that contracts are adequately monitored and that contract sanctions are consistently and fairly applied throughout the agency.

Recommendations

Management Action – Nonstatutory

5.1 Direct DADS to strengthen and consolidate contract management under a new Contract Management Division.

As part of this recommendation, DADS should define the roles and responsibilities between contract management and program functions. The agency should set a goal of implementing the duties of the Contract Management Division and the new organizational structure by September 1, 2016.

5.2 Direct the Contract Management Division to review and approve contract planning during the early stages of procurement.

5.3 Direct the Contract Management Division to develop policies for risk-based monitoring of contracts.

Issue 6

DADS' Consumer Information Website Lacks Clear and Consistent Information For Helping the Public Select Long-Term Care Providers.

DADS operates a consumer information website called the Quality Reporting System (QRS) that displays some ratings for long-term care providers, as well as data on regulatory performance and general quality of care. Although Texas' site was one of the first of its kind, predating a similar, federal website, the site has not maintained its comprehensiveness, is difficult to understand, does not consistently present information among providers, and has not kept pace with the usability trends for current technology.

Recommendations

Change in Statute

- 6.1 Require DADS to maintain a consumer information site on the quality of long-term care providers in Texas, and require the site to immediately note that a facility has lost its Medicaid certification.**

While statute requires compliance information, this recommendation would require DADS to operate a long-term care information site for consumers, ensuring the agency provides this important information in the future. DADS should post an overall rating, along with regulatory performance and quality of care information for each provider, as available. Additionally, statute should require DADS to periodically solicit public input regarding the website's content, usability, and accessibility for persons with disabilities.

Management Action – Nonstatutory

- 6.2 Direct DADS to improve the quality and consistency of information available on QRS for all providers.**
- 6.3 Direct QRS staff to coordinate with the Communications Office, and other divisions as needed, to ensure QRS more effectively meets consumer needs and is more visible on the Internet.**
- 6.4 Direct DADS to ensure compliance with person-first, respectful language requirements on the QRS website.**

Issue 7

One DADS Reporting Requirement Is No Longer Necessary.

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished. Of the 19 reports state law requires DADS to produce, the Sunset Commission identified one for elimination.

Recommendation

Change in Statute

- 7.1 Abolish DADS' reporting requirement on the Options for Independent Living Program, and continue all other reporting requirements.**

This recommendation would eliminate a report from a pilot project that no longer exists. The other 18 reports still provide useful information and should be continued.

Fiscal Implication Summary

Overall, the recommendations would result in a substantial net positive fiscal impact to the State over the next five years from savings associated with closing the Austin State Supported Living Center and costs of improving community supports for people transitioning out of SSLCs, as described below.

Issue 1 — Closing the Austin SSLC would result in savings to state and federal funds that increase from \$7.25 million in fiscal year 2016 to \$22.6 million in fiscal year 2018 in operating costs. Sale of the Austin SSLC would result in an estimated revenue gain of \$25.1 million in 2018. This recommendation would also result in a reduction of SSLC employees of 408 in 2016 to 1,236 in 2018. Establishing the Restructuring Commission would require two staff and an annual cost of \$150,000 for fiscal years 2016 and 2017.

Issue 2 — Expanding community crisis services would have estimated costs to the State of \$2.5 million in fiscal year 2016 and increasing to \$5 million by fiscal year 2017.

Department of Aging and Disability Services

Fiscal Year	Savings to State and Federal Funds*	Revenue Gain to State Funds	Change in FTEs From FY 2015
2016	\$4,750,000	\$0	-406
2017	\$5,770,000	\$0	-616
2018	\$17,600,000	\$25,100,000	-1,236
2019	\$17,600,000	\$0	-1,236
2020	\$17,600,000	\$0	-1,236

* To avoid the loss of federal funds, the Legislature should consider reinvesting these savings to reduce the waiting list for the Home and Community-based Services program.

DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

Karen Latta, Project Manager

Agency at a Glance

The Legislature created the Department of Assistive and Rehabilitative Services (DARS) in 2003 by consolidating the functions of four agencies: the Texas Rehabilitation Commission, Texas Commission for the Blind, Interagency Council on Early Childhood Intervention, and Texas Commission for the Deaf and Hard of Hearing. DARS works with Texans with disabilities and families with children who have developmental delays to improve the quality of their lives and to enable their full participation in society. To achieve its mission, DARS focuses on providing time-limited services through the following key activities.

- Providing Texans who have disabilities with assistance in preparing for, finding, and retaining employment.
- Helping Texans with disabilities gain functionality, avoid institutionalization, and live independently in their communities.
- Providing early intervention services to children who have disabilities and developmental delays to meet their educational and developmental goals.
- Making medical disability determinations for Texans who apply for Social Security Administration benefits.

DARS continues to operate in silos and struggles to ensure consistent services.

Approach to Sunset Reviews of Health and Human Services Agencies

The Sunset Commission reviewed the functions and duties of the DARS and other health and human services system agencies before evaluating the Health and Human Services Commission (HHSC) and matters relating to the overall system. This approach allowed the Sunset Commission to assess each agency as currently configured, with the understanding that the overall system configuration could change through the later review of HHSC and the accumulated knowledge gained from the reviews of all health and human services agencies.

The Sunset Commission did not continue DARS as a separate agency, instead recommending reorganization of all of the system agencies into a functional structure under HHSC, as discussed in the HHSC section of this report. Subsequently, the Sunset Commission recommended transferring DARS' largest program, vocational rehabilitation services, and two related programs to the Texas Workforce Commission (TWC), as discussed in the TWC section of this report. However, the remaining recommendations specifically affecting DARS continue to be needed to address the Sunset Commission's concerns about the agency and its programs whether they operate within DARS or within the reorganized system. These specific recommendations are presented here as the agency and its functions are currently organized, but the Legislature will ultimately determine their placement within the overall health and human services system.

Summary

Twelve years after the Legislature consolidated four agencies to create DARS, those legacy agencies' services continue to operate in separate silos. Of particular concern is the ongoing separation of vocational rehabilitation services for people who are blind, from vocational rehabilitation services for people with all other disabilities. While the need for counselors trained to work with different populations is clear, the need for separate administration, management, and field offices across the state is not. This simply wastes resources better devoted to services to help people with disabilities prepare for, find, and keep jobs.

DARS has also grappled with poor management, planning, and financial controls. After investing millions to create a web-based case management system, the agency continues to lack the case oversight needed to control spending and ensure effective delivery of services. DARS also continues to use state employees to offer independent living services, instead of using these funds to support local centers developed specifically for this purpose and operated largely by people with disabilities.

The Sunset Commission concluded that while DARS' functions are needed, its organizational structure and management were lacking. Also under Sunset review was TWC, the agency responsible for providing job training and employment services through a network of local workforce boards and one-stop centers. Many of DARS' consumers eventually end up at a local workforce center to explore job opportunities. TWC's successful integration of other employment services presented a clear opportunity to merge DARS' vocational rehabilitation services with other workforce-related services in a more proactively managed agency. These changes aim to eliminate duplication and improve services and outcomes for people with disabilities seeking employment.

The Sunset Commission's recommendations on the transfer of vocational rehabilitation services, along with two other related programs, are addressed in the TWC section of this report. TWC would also carry out several Sunset recommendations originally intended for DARS to improve vocational rehabilitation services, including integrating services for people who are blind and for people with all other disabilities.

The recommendations that follow aim to address specific concerns with, and ensure better oversight of, the programs remaining at DARS. These programs would be part of the health and human services reorganization and include the following: Children's Autism; Blind Children's Vocational Discovery and Development; Blindness Education, Screening, and Treatment; Independent Living Services; Comprehensive Rehabilitation Services; Criss Cole Rehabilitation Center; Deaf and Hard of Hearing Services; and Early Childhood Intervention. The following material summarizes the Sunset Commission's recommendations on DARS.

Issues and Recommendations

Issue 1

DARS Lacks Case Oversight to Control Spending and Ensure Effective Delivery of Services.

DARS' caseworkers provided direct services to more than 100,000 consumers in fiscal year 2013 through six programs. The agency relies on caseworkers to use their own judgment when making decisions about consumer services and provides little guidance or monitoring to ensure caseworkers balance the conflicting goals of spending program funds wisely and providing services that consumers choose. The Sunset Commission found that DARS fails to provide safeguards to prevent the cost and length of cases

from going unchecked. Moreover, DARS' limited case review process is not consistent across programs or regions and DARS does not adequately monitor the overall performance and outcomes of its direct services programs.

With the transfer of vocational rehabilitation services to TWC and the outsourcing of independent living services under Issue 2 below, the following recommendations would only apply to the two direct services programs remaining at DARS — the Comprehensive Rehabilitation Services and Blind Children's programs.

Recommendations

Change in Statute

1.1 Require DARS to create clear, validated guidelines for caseworkers to ensure better decision making for successful, cost-effective outcomes.

DARS would base the guidelines on research and best practices so that they effectively lead toward successful case outcomes. At a minimum, guidelines would cover the following.

- **Length and cost of a case.** The agency would use past data and best practices to develop guidelines for how long a case in each category should last and how much a case in each category should cost. The agency may also establish other guidelines to direct caseworkers and their supervisors as necessary to achieve success. Caseworkers would be allowed to exceed these guidelines, but should document the need to continue a case and gain approval from their supervisor.
- **Intermediate goals.** DARS would provide guidelines for all direct services programs on the creation of intermediate goals and criteria to evaluate those goals. Intermediate goals should allow caseworkers to monitor their consumer's progress while also allowing supervisors to quickly see how well a case is advancing. The agency would use these intermediate goals to establish more objective outcomes for its direct services programs.

These tools are not intended to limit any appropriate or needed services provided to consumers. Instead, they should serve as check points to help caseworkers and their supervisors ensure each program's resources are being spent prudently and consumers are on a path to success.

1.2 Require the agency to create a robust and consistent case review system for all direct services programs.

This recommendation would ensure the agency creates one case review system for all direct services programs with risk assessment tools that account for the different risks of each individual program. In this new system, the agency would include the following elements.

- Case reviews would consistently evaluate each program across all regions, with a goal of evaluating at least 10 percent of all cases in each program and region annually.
- Case reviews would focus on areas of highest risk, prioritizing the review of cases that exceed two years of service or that are significantly outside of the expenditure guidelines for that type of case. Since cases in the Blind Children's Program often span many years over the course of a consumer's childhood, the agency would prioritize the review of cases in that program that exceed five years of service, rather than two.

- Case reviews would evaluate caseworkers' eligibility determinations, and include a review of cases closed before a plan is developed and cases closed unsuccessfully.
- Case reviews would focus on the quality of caseworkers' decision making, as well as compliance with program requirements.
- Supervisors would use case reviews as part of caseworkers' performance evaluations, as well as their informal coaching.

1.3 Require DARS to designate staff to monitor performance across programs and regions.

This recommendation would require DARS to create a monitoring function outside of the individual programs and regions to analyze and track performance from a statewide perspective. Staff would collect and monitor data and report outcomes and trends to the agency's direct services program managers, and when warranted, to the commissioner. This group would perform duties such as monitoring performance data from all regions and all programs to identify trends, working with program staff to develop objective outcome measures for all programs, and monitoring case review data to ensure regional managers are consistently complying with the new case review system established under Recommendation 1.2. To better monitor its regions, DARS could also consider conducting internal peer reviews of field offices throughout the state to assess compliance with federal regulations and agency policies.

Management Action – Nonstatutory

1.4 Direct DARS to immediately start the process of creating guidelines for caseworkers in anticipation of the passage of the statutory change in Recommendation 1.1.

Issue 2

DARS Offers Many Independent Living Services Consumers Could Easily Access Through Local Centers for Independent Living.

The federal government has created a framework for each state to provide independent living resources to people with disabilities. In this framework, local centers for independent living serve as the hub for services. Of Texas' 27 centers for independent living, DARS funds 15, but has also opted to provide independent living services directly through two of its divisions.

The Sunset Commission found DARS struggles to provide independent living services statewide with its own caseworkers and provides most of the same services as local centers for independent living. Despite heavy caseloads, waitlists, and the availability of many of the same services through the local centers, DARS does not consistently refer consumers to the centers for services. The agency has also not established a transparent method for equitably dispersing funds among the centers and has only recently begun to develop consistent outcome measures for the centers.

Recommendations

Change in Statute

2.1 Define DARS' role in the provision of independent living services as supporting and monitoring the network of centers for independent living.

This recommendation would clarify that all state independent living services would be provided by or through centers for independent living (CILs) in all areas of the state, except where no center is willing or able to provide services, beginning in fiscal year 2017. DARS' role in the state's independent living network would be to fund and evaluate services provided by the local centers, and to provide any necessary training or technical assistance to help the centers expand their capacity to provide a full range of independent living services. For areas with no center or for services not currently provided by centers, DARS would first seek out CILs that are capable of subcontracting with nonprofits and other organizations to ensure all needed services are available. If no center is able or willing to subcontract for services, the agency may contract directly with other entities to provide independent living services. The agency would retain ultimate responsibility for monitoring the centers' performance in providing independent living services, including how the centers monitor the performance of subcontractors.

As part of these changes, rules would be adopted addressing topics such as an equitable and transparent methodology for allocating funds to all centers, requirements for contracting with CILs, and expectations for DARS' employees to refer consumers in DARS' direct services programs to CILs, with a method for tracking those referrals. DARS would also seek designation, for federal purposes, to become a combined state unit for the Independent Living Services Program. By outsourcing its independent living services to the centers and establishing DARS' role as monitoring the funding and performance of the centers, the agency will be better able to ensure consumers receive the services they need at the local level.

Management Action – Nonstatutory

2.2 DARS should evaluate independent living services available in communities throughout the state.

To prepare for the implementation of Recommendation 2.1, DARS should determine the capacity of CILs to provide a full range of independent living services in all areas of the state. Based on this analysis, the agency should develop a plan to contract with CILs and other independent living service providers, and reorganize its own staff to provide assistance to the CILs and manage these contracts. This analysis and plan should be completed in time to fully implement the changes outlined in Recommendation 2.1 in fiscal year 2017. DARS should develop its approach to reorganizing services with the input of the State Independent Living Council and other stakeholders, including the Texas Association of Centers of Independent Living, to ensure the most effective operation of the network overall.

2.3 DARS should determine whether the services it currently provides through the Office of Deaf and Hard of Hearing Services could be better provided through the centers for independent living.

Issue 3

DARS Lacks Mechanisms for Effectively Integrating, Directing, and Overseeing Its Programs.

Although the Legislature consolidated four agencies to create DARS 12 years ago, the agency has not fully integrated many of its legacy agency services. This lack of integration limits access across divisions to needed assistance, especially for people with multiple disabilities. Also, in recent years, certain DARS initiatives have suffered from poor planning, oversight, and financial controls.

While DARS is taking important steps to overcome past problems, the agency still lacks well-defined mechanisms to effectively communicate expectations with staff and hold them accountable. Further, DARS has a multitude of strategic priorities and no clear way to track the agency's progress on them or integrate them into the agency's operations.

Recommendation

Management Action – Nonstatutory

3.1 Direct DARS to develop mechanisms to more effectively plan for, track, and evaluate the performance of its programs and staff.

- **Planning and priorities.** The commissioner and executive management team should set clear goals and priorities for the agency using DARS' three-year strategic plan and annual operational plan as a base. In doing so, DARS' management should take a broad look at the agency's services — particularly those for people who are blind or deaf — to ensure services are integrated to the greatest extent possible; determine whether any of the agency's support functions could benefit from further consolidation with similar system-wide functions at HHSC; build on efforts to improve financial controls and the tracking of revenues and costs; and address how the agency will manage areas of high risk.
- **Implementation.** DARS' management, in collaboration with program and support staff, should develop specific strategies for each division and program to implement goals and priorities, and assign clear responsibility for each strategy to a specific person or group.
- **Evaluation.** DARS' management should set clear performance expectations and measures for each of its divisions, programs, and regions around the state, with mechanisms for tracking performance throughout the year. The agency's management should hold division, program, and field managers accountable for all expectations through their annual performance evaluations.

DARS should report to the Legislature on its progress in implementing this recommendation every six months, with the first report due in June 2015 and the last report due in December 2016. By implementing this recommendation, DARS will be better able to ensure its programs work together toward the common goal of improving services for people with disabilities.

Issue 4

Two State-funded DARS Programs Are Not Grounded in Statute, Leading to a Lack of Clear Direction and Purpose for These Programs.

DARS provides services to consumers through two small but important programs — the Comprehensive Rehabilitation Services and Children’s Autism programs. The Legislature created the Comprehensive Rehabilitation Service Program in 1985 to provide intensive rehabilitative therapies to people with traumatic brain and spinal cord injuries to improve their ability to function independently. In 2007, the governor directed HHSC to transfer funds to DARS for services for children with autism between three and eight years old. Both of these programs are funded exclusively with state funds and receive no federal funds or oversight.

While both programs have been in operation for several years, statute does not provide structure for either. Until recently, DARS had no rules for the Autism Program and administered it solely based on a conservative interpretation of the governor’s letter. The Comprehensive Rehabilitation Services Program is mentioned in statute but only in regards to its funding mechanism, with no direction for the types of services the agency should provide. This absence of statutory structure has contributed to a lack of direction and purpose for the programs and has limited transparency of the programs for both the Legislature and the public.

Recommendations

Change in Statute

4.1 Establish the Comprehensive Rehabilitation Services Program in statute and authorize DARS to adopt rules for the program.

The agency would adopt rules for providing comprehensive rehabilitation services to people with traumatic brain or spinal cord injuries that include:

- a system of organization for the delivery of comprehensive rehabilitation services;
- eligibility requirements for comprehensive rehabilitation services;
- the types of services that may be provided to a client through the program; and
- requirements for client participation in the costs of services.

4.2 Establish the Children’s Autism Program in statute and authorize DARS to adopt rules for the program.

The agency would adopt rules for providing autism services to children that include:

- a system of organization for the delivery of autism services;
- eligibility requirements for autism services;
- the types of services that may be provided to a client through the program; and
- requirements for client participation in the costs of services.

Issue 5

Neither HHSC nor DARS Has Established Durable Medical Equipment Reuse Programs Despite Statutory Direction to Do So.

The health and human services agencies provide durable medical equipment to consumers through many programs, including DARS' Vocational Rehabilitation and Independent Living Services programs and HHSC's Medicaid Program. This equipment, such as prosthetic limbs, wheelchairs, and other assistive devices, can be extremely expensive and may only be needed for a short time. In some cases, the consumer may find that the equipment is not appropriate only after the purchase has been made.

DARS inherited statutory authority to create a program to reclaim and repurpose durable medical equipment from the Texas Rehabilitation Commission, but the agency has not created any such program. Likewise, last session the Legislature gave the HHSC executive commissioner authority to create a program to facilitate the reuse of equipment provided to consumers under Medicaid, but to date the agency has taken no action to implement this program.

Recommendation

Management Action – Nonstatutory

5.1 Direct HHSC and DARS to report on their inability to meet statutory requirements to establish programs for the reuse of durable medical equipment.

This recommendation requires the agencies to report on the reasons why they have not implemented the programs intended by the Legislature to reclaim and repurpose durable medical equipment. The report contains recommendations to the Legislature as to what resources or changes in law the agencies would need to comply.

Fiscal Implication Summary

Overall, the DARS recommendations in this section of the report would result in no net fiscal impact to the State, but would eliminate 24 full-time equivalent employees, as summarized below. The fiscal impacts of the transfer of programs to TWC and the reorganization with other health and human services agencies are addressed in those respective sections of this report.

Issue 2 — The recommendation to clarify that all state independent living services should be provided by or through centers for independent living would result in DARS redirecting an estimated \$10 million annually to the centers through contracts beginning in fiscal year 2017. The transfer of funds would result from the elimination of 24 DARS independent living staff positions and the amount the agency spends on purchased goods and services in the program.

Department of Assistive and Rehabilitative Services

Fiscal Year	Change in FTEs From 2015
2016	0
2017	-24
2018	-24
2019	-24
2020	-24

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

Amy Tripp, Project Manager

Agency at a Glance

The Legislature created the Department of Family and Protective Services (DFPS) in 2003 from the functions of the Department of Protective and Regulatory Services in the consolidation of the health and human services agencies. DFPS aims to protect children, adults aged 65 and over, and individuals with disabilities by carrying out the following key activities.

- Investigating allegations of abuse and neglect of children or vulnerable adults perpetrated by a caregiver, whether in the home, in a state-run facility, in a state-contracted setting, or in a regulated child care operation.
- Providing services to families and individuals to prevent future harm from abuse or neglect.
- Placing abused or neglected children with other family members or in a foster home and seeking to address these children's long-term needs through adoption or transition to adult living.
- Regulating child care centers and 24-hour residential child care facilities to ensure a minimum standard of health and safety for children.

DFPS needs to improve the day-to-day aspects of managing its challenging work.

Approach to Sunset Reviews of Health and Human Services Agencies

The Sunset Commission reviewed the functions and duties of DFPS and other health and human services system agencies before evaluating the Health and Human Services Commission (HHSC) and matters relating to the overall system. This approach allowed the Sunset Commission to assess each agency as currently configured, with the understanding that the overall system configuration could change through the later review of HHSC and the accumulated knowledge gained from the reviews of all health and human services agencies.

Ultimately, the Sunset Commission did not continue DFPS as a separate agency, instead recommending reorganization of all of the system agencies into a functional structure under HHSC, as discussed in the HHSC section of this report. However, the specific recommendations affecting DFPS continue to be needed to address the Sunset Commission's concerns about the agency and its programs whether they operate within DFPS or within the reorganized system. These specific recommendations are presented here as the agency and its functions are currently organized, but the Legislature will ultimately determine their placement within the overall health and human services system.

Summary

Aside from law enforcement, no other government agency is more directly involved in life-and-death decisions affecting Texans than DFPS. Its responsibility to protect society's most vulnerable — children, elderly, and persons with disabilities — is as immensely challenging as it is important.

Child Protective Services (CPS), by far the largest and most visible DFPS program, operates in an uncertain, chaotic environment in which child deaths and other tragic events unfortunately happen. Despite the inherent difficulty of its protective mission, DFPS is expected to answer for every bad outcome. As a result, the agency frequently finds itself on the defensive and in a constant state of putting out fires and responding to crisis and criticism, creating a continual cycle of both legislative and self-imposed change in which outside pressures dominate its agenda.

Given the unique nature of this agency and its history of continual change and reform, the Sunset Commission sought to help DFPS better focus on and improve the more day-to-day aspects of managing its challenging work. To this end, the Sunset Commission recommended a series of improvements to correct poor management practices that contribute to high CPS caseworker turnover, a problem that has long plagued the agency. Other action would improve overall CPS management, and provide needed flexibility to remove unnecessary burdens on caseworkers and increase the time they spend with children and families, as separately addressed by a CPS operational assessment that coincided with the Sunset review. The following material summarizes the Sunset Commission's recommendations on DFPS.

Issues and Recommendations

Issue 1

Efforts to Reduce Turnover of CPS Caseworkers Fail to Address Key Reasons Many Staff Leave.

CPS caseworkers contend with high workloads, low pay, and incredibly stressful, challenging working conditions. Understandably, the workers who face the demands of this job often leave the agency citing the inherently stressful nature of the job and the pay — an issue facing many child welfare agencies across the nation. The Legislature and DFPS have long been concerned with reducing chronically high caseworker turnover, which results in a number of problems that directly affect the agency's ability to meet its mission of protecting children. However, despite legislative efforts to reduce workload, the CPS turnover rate remains significantly higher than the state agency average, and DFPS' own efforts to reduce turnover have not done enough to shape a work environment that supports and develops caseworkers to successfully address retention.

Recommendations

Management Action – Nonstatutory

- 1.1 Direct DFPS to consolidate its existing workforce management functions under one operational unit and add additional critical functions to better support employees and systematically identify root causes of turnover.**

Consolidating workforce support functions, such as caseworker and management training and hiring, would allow the agency to more holistically identify and address management problems that lead to turnover and make better informed and systematic efforts to address turnover.

- 1.2 Direct DFPS to dedicate certain existing caseworker positions to create a mentoring program to better support new CPS caseworkers.**

A dedicated mentor program would help lessen much of the strain on supervisors of constantly training new caseworkers and ensure new caseworkers receive the support they need to successfully transition to carrying a full caseload.

- 1.3 DFPS should more clearly define its policy on the use of corrective performance actions, provide additional guidance to managers on appropriate use, and require centralized reporting of all level one actions.**

This recommendation would help ensure that corrective action levels for caseworkers are more consistently and fairly applied, to create a less punitive work environment and encourage supervisors to truly coach caseworkers to improve performance.

- 1.4 DFPS should develop a systematic way of using turnover, when appropriate, as a tool for judging performance of CPS regional management.**

DFPS could recognize managers who adopt effective strategies to increase retention to help replicate those practices agencywide, as well as identify managers who need additional training and resources devoted to improving turnover. This recommendation would also incentivize regional managers to solve work environment issues within their own regions.

- 1.5 CPS should revise its system for evaluating caseworker performance by better evaluating quality.**

CPS should incorporate measures that more directly tie to casework quality and services provided, rather than focus primarily on the timeliness of casework activities and documentation.

- 1.6 DFPS should provide guidance to managers on awarding merit pay to ensure transparency and consistent criteria for merit pay awards to foster increased morale and retention.**

- 1.7 DFPS should establish a system for collecting confidential internal complaints.**

Under this recommendation, the workforce management unit discussed in Recommendation 1.1 would handle the complaints outside of the direct chain of command. DFPS should also make efforts to keep complaints anonymous as a way to identify management problems and systemic issues with workplace culture not necessarily related to individuals that may contribute to high turnover.

1.8 DFPS should regularly do casework time studies to more accurately develop caseload goals and policies that are fair and attainable for caseworkers.

These studies would help DFPS identify problems within the current system and measure the impact of new agency policies on the time it takes to complete casework. The agency should complete the first casework time study by October 2016, and once every three years thereafter.

1.9 DFPS should develop a standardized and objective method for fairly and efficiently distributing cases.

An objective, systematic method for distributing cases would reduce work on the part of the supervisor, travel expenses for the agency, and travel time for the caseworker.

Issue 2

A Crisis Culture Affects CPS' Ability to Focus on Day-to-Day Management Activities Needed to Successfully Perform Its Difficult Work.

Any assessment of CPS must be made with consideration of the challenging, unpredictable environment in which it must react to crisis situations as a regular part of its daily business. Not surprisingly, this inherent reactive approach shows up in the way DFPS approaches the very management of CPS operations, resulting in a continuing cycle of crisis and criticism that distracts the agency from developing an effective approach to CPS management and ensuring it delivers desired results. Agency management had already recognized the need to take a step back and examine the most basic elements of CPS operations through a contracted operational assessment. A principal finding of this assessment was that on average, caseworkers spend about 26 percent of their time with children and families, with paperwork and other administrative tasks taking a large part of the remaining time.

Recommendations

Change in Statute

2.1 Require CPS to implement an annual business planning process.

This recommendation would help CPS focus its efforts and prioritize activities and resources that best support its overall goals for improvement. CPS State Office would lead this process, but seek and use input from regional staff to gain buy-in and achieve a common understanding of CPS' direction and goals and how new and ongoing initiatives further them. The agency would be required to submit its annual CPS business plan no later than October 1 of each year to the governor and Legislature.

Management Action – Nonstatutory

2.2 Direct DFPS to report to the Sunset Commission in October 2014 on its first CPS business plan and any statutory barriers that may impede needed changes.

DFPS submitted its first CPS business plan to the Sunset Commission in October 2014, as described under Recommendation 2.1, detailing its plans to implement both changes related to the operational assessment as well as Sunset Commission recommendations. As part of the same report, DFPS also identified statutory barriers that complicate or prevent implementation of recommendations made through the CPS operational assessment, with the ultimate goal of increasing the time CPS caseworkers spend with

children and families. The Sunset Commission considered each proposed change and adopted a package of statutory proposals for inclusion in the DFPS Sunset bill, as described under Recommendation 2.3.

Change in Statute

2.3 Eliminate, clarify, and streamline burdensome and prescriptive statutory requirements.

Based on the proposed changes presented by DFPS in its October 2014 report, the Sunset Commission adopted a variety of statutory modifications intended to improve caseworker retention, streamline requirements, allow the agency to respond to situations in a more flexible manner, and increase the amount of time caseworkers spend with children and families. Examples include the following broad categories:

- repealing or modifying statutes that overly prescribe agency hiring and staffing requirements, such as specific training and curriculum for CPS caseworkers and managers;
- streamlining statutes governing permanency hearings and associated reporting;
- streamlining or repealing unnecessary reporting, notification, information system, and paperwork requirements; and
- repealing outdated statutes that no longer reflect the current business reality of the agency and cause confusion.

These changes are intended to streamline and clarify DFPS' statute, and give the agency flexibility to implement the changes in progress through the CPS operational assessment, also known as "CPS Transformation."

Management Action – Nonstatutory

2.4 Direct DFPS to submit a progress report to the Sunset Commission in 2016 on changes made as a result of the CPS operational assessment.

A progress report would provide an update to the Sunset Commission and hold the agency accountable for acting on recommendations made through the assessment in addition to any statutory barriers identified in Recommendation 2.3.

2.5 Direct DFPS to comprehensively review and update the CPS policy and procedures handbook.

Under this recommendation, DFPS would update or create new content, evaluate the continuing need for each policy, identify opportunities to eliminate redundancy of caseworker efforts and steps that do not add value, and reduce overall complexity.

2.6 Direct CPS to develop a systematic approach to its policymaking process to ensure clear, updated policies and procedures that mitigate risk of noncompliance and staff confusion.

This recommendation lays out specific elements for changing policies and procedures, including designating responsible staff for developing policies, establishing criteria for the need for changes, and properly communicating policy changes and providing implementation guidance to regional staff.

2.7 Direct DFPS to require CPS regions to fully document their protocols and practices, report these, and update them on a regular basis.

This recommendation would enable CPS State Office to have a full understanding of where regions are doing things differently and why, and identify trends and ways in which state policy does not work appropriately in one or more regions. In addition, CPS could use this process to identify any potential best practices for broader implementation across the state.

2.8 Direct CPS to develop a systematic, comprehensive approach to evaluating and monitoring regional performance, including a monitoring process to verify implementation.

The agency's approach should include, at a minimum, a regular on-site regional review process that evaluates overall regional performance using a common set of criteria for each review and regular, comprehensive reporting and recommendations from State Office to each region using performance and trend information. These approaches would allow CPS State Office to evaluate the effects of state policy in practice; provide valuable, comprehensive feedback to regional management to help them improve; and ensure regions take action in response to identified problems.

2.9 CPS should develop a process to report results of staff surveys and other feedback mechanisms back to employees, including suggestions made and management actions taken.

Implementing this practice could help ensure that agency management more fully considers employee input and could help employees feel more invested in the organization as a result, which could improve morale, important at an agency with high turnover.

2.10 Direct DFPS to ensure its planning efforts for IMPACT modernization support improvement and align with possible CPS operational changes.

This recommendation would direct DFPS to ensure it thoroughly plans for meeting CPS' needs through its effort to modernize IMPACT, its case management IT system, and use information gained and recommendations made through the CPS operational assessment in identifying ways IMPACT could better support caseworkers and provide the data needed for performance management and business intelligence.

2.11 Direct DFPS to develop a succession planning strategy, to prepare for impending retirements and provide opportunities for advancement to lower-level staff.

Issue 3

DFPS Faces Significant Challenges and Risks in Its Efforts to Reform the State's Foster Care System.

Texas, like many other states, struggles to provide quality care for foster children to help them heal from the trauma they have experienced and go on to lead healthy, productive lives. Foster care redesign is an attempt to change the way the State contracts and pays for foster care and address many of the system's longstanding problems, such as those related to child placement and access to services. However, this outsourcing endeavor has its own risks, and other states' and the agency's own experiences show caution is warranted.

Currently, very little data or experience exists to judge the performance of the foster care redesign model and inform decisions about broader implementation. Further, DFPS has not clearly articulated a long-range plan for implementing a redesigned foster care system statewide to mitigate inherent risks associated with the transition.

Recommendations

Change in Statute

3.1 Require DFPS to develop and maintain a long-range foster care redesign implementation plan to guide the agency's transition efforts.

DFPS would use this working document to annually report progress toward implementation goals, such as rollout timelines and limitations, case management roles and responsibilities of DFPS and contractors, and plans for evaluating costs and performance of this new system. This plan would help guide DFPS' implementation efforts, as well as assist the agency in communicating a clear vision to dispel uncertainty among stakeholders.

Management Action – Nonstatutory

3.2 DFPS should thoroughly evaluate system data and cost before pursuing broad implementation of foster care redesign.

This recommendation would direct DFPS to decide on broad-based implementation of foster care redesign after thorough evaluation of performance and cost data from experience under the new system. The agency should also perform a simultaneous internal analysis of the costs involved with initial procurements to better understand the cost of foster care redesign to the State, contractors, and community partners as a whole. The agency would present the results of any data and cost analyses to its Public Private Partnership for discussion and feedback on how best to move forward with foster care redesign. A more deliberate approach to evaluating and implementing foster care redesign would help DFPS mitigate the significant risks associated with the reform effort.

3.3 DFPS should develop a consistent approach to measuring and monitoring provider quality and identifying risk indicators in both the legacy and redesigned systems.

DFPS should identify and develop common quality and risk indicators and performance measures to gauge and communicate the performance of the entire foster care system. The agency should publicize legacy foster care system performance, comparing the performance on selected measures across all providers in both the legacy and redesigned systems and include information in residential contracts for how the agency will use performance measures to improve provider quality and the legacy system as a whole. These changes would improve DFPS' ability to monitor performance of the foster care system and better predict problems before they occur.

3.4 Rules should be adopted for the use of foster care advisory committees, ensuring the groups meet the structural and operational needs for advancing the agency's goals.

Formalizing foster care advisory committees' membership, terms, purpose, and goals would elevate the importance and effectiveness of these groups in achieving the critical safety, permanency, and well-being goals for children in the State's care.

Issue 4

DFPS' Enforcement Efforts Must Be Strengthened to Best Ensure the Safety of Children in Regulated Care.

Driven by statute, the State's traditional approach to enforcing Child Care Licensing regulations has been to pursue non-monetary sanctions before imposing administrative penalties. This approach dampens DFPS' enforcement effort in favor of an extensive collaborative approach of working with regulated entities to bring them into compliance with standards and licensing requirements. Such a limiting approach to enforcement hamstrings the agency's ability to meet its mission to ensure the safety of children in care. As a result, DFPS has taken very few adverse enforcement actions against providers, and rarely used its administrative penalty authority. One consequence of this relaxed regulatory environment is a high incidence of repeat violations, many of which occurred on the highest-risk standards. Also, DFPS has difficulty ensuring that it consistently and reasonably applies safety standards, affecting the level of protection children experience across the state while in regulated child care.

Recommendations

Change in Statute

4.1 Authorize the agency to assess administrative penalties for high-risk child care licensing violations without being required first to pursue non-monetary administrative sanctions.

This recommendation would allow the agency more discretion in applying administrative penalties to violations of Child Care Licensing standards deemed high risk by the agency, just as current law provides for background check violations. The recommendation does not direct the agency to stop providing technical assistance or pursuing corrective action plans to achieve compliance with its regulations. Broader authority would, however, give the agency needed flexibility to help accomplish the ultimate goal of mitigating higher risk of harm to children in care.

4.2 Require DFPS to develop an enforcement policy in rule to guide child care licensing enforcement efforts, and require a specific methodology to be publicly available.

The policy would summarize general expectations for holding licensed operations accountable and communicate the agency's framework for using its regulatory tools, from technical assistance, to corrective action plans and adverse enforcement action. The recommendation would also require the agency to establish and make publicly available a specific methodology to use when determining the proper level of disciplinary action for day care and residential child care operations that have violated state laws or agency rules.

4.3 Grant cease-and-desist authority to DFPS limited to the unlicensed provision of child care in accordance with child care laws.

This recommendation would provide a tool for dealing with an individual or entity operating a child care operation without a permit and also provide for assessing administrative penalties on those who fail to comply with the agency's order. The recommendation would not prevent the agency from working to bring unlicensed operators into compliance with standards for safe child care. Cease-and-desist authority would help the agency better protect children in care and consumers from harm that can result from operators outside the state's regulations.

Management Action – Nonstatutory

4.4 Direct DFPS to develop a more robust quality assurance process for standards cited that directly relate to child safety.

This recommendation would direct DFPS to use the performance management unit within Child Care Licensing to better support and improve regulatory efforts by evaluating trends, concerns, and successes, and recommending specific changes. The performance unit should use its evaluation of existing enforcement support processes, including technical assistance and administrative reviews, to improve regulatory processes.

Issue 5

CPS Does Not Capture Comprehensive Information to Adequately Address How Well It Is Protecting Children.

CPS does not gather and evaluate sufficient data to most accurately assess the risk to children and the quality of services it provides, and does not ensure that services provided to families address the specific risks to children. The agency also lacks clear and consistent policies for referring families for services, which may result in some families not receiving interventions needed to mitigate safety risks to children.

Recommendations

Management Action – Nonstatutory

5.1 DFPS should add a recidivism measure linked to the alleged perpetrator.

In addition to the current recidivism measure linked to the child, developing and evaluating an additional measure of recidivism linked to individual perpetrators would enable the agency to assess the effectiveness of CPS services in preventing repeated abuse or neglect by parents or other caregivers. Adding this measure would allow DFPS to better identify patterns of abuse perpetrated by one caregiver against multiple children and in multiple households.

5.2 The agency should clarify and standardize the use of unsure case findings.

This recommendation would direct DFPS to clarify through policy and additional caseworker training the appropriate use of each disposition finding, especially unable-to-complete and unable-to-determine findings. Ensuring that caseworkers assign the most accurate dispositions to each allegation would improve the quality of the agency's data and allowing for better tracking of risk and outcomes for children and families.

5.3 DFPS should broaden its child fatality investigation review to include a sample of all fatality investigations.

This recommendation would direct DFPS to broaden its current review process to include a sample of fatality investigations with all disposition findings, including fatalities ruled out as being related to abuse or neglect. This broader review would help the agency better ensure it accurately reports the number of fatalities due to abuse or neglect each year and have a more comprehensive quality control process for all child fatality investigations.

5.4 The agency should develop a clear and consistent policy for referring families to services.

A clear and consistent process would increase the value of Family-Based Safety Services outcome measures, if the same types of families are accepted across the state. The process would also increase the perception of fairness and lessen confusion among investigations staff, making case transfer less cumbersome and more predictable.

5.5 DFPS should develop more specific outcome measures for Family-Based Safety Services.

To accurately gauge the success of each family-based safety service provided, the agency should require caseworkers to link each service to an identified safety risk or risks that the service is intended to reduce. The agency could then examine how well specific services work to improve child safety and ultimately to focus on providing only those services that effectively keep children safely in their homes.

5.6 DFPS should monitor the use and evaluate the effectiveness of investigation resources.

This recommendation would direct DFPS to monitor the use of investigation resources and in turn evaluate the use of these resources to confirm or rule out allegations of abuse or neglect. The agency should develop a process for identifying cases that would benefit from child advocacy centers, the Forensic Assessment Center Network, or special investigator input.

Issue 6

Prevention and Early Intervention Efforts Should Be Elevated in Importance and Have Better Evaluation of Program Effectiveness.

Despite pressures to cut prevention programs when funding is limited and the need for a more immediate response is obvious, preventing poor outcomes is always preferable to the incalculable costs associated with child death or injury or broken homes, and the intensive intervention of foster care. After significant cuts to DFPS' prevention programs in the budget-cutting session of 2011, the Legislature restored funding for prevention in 2013, adding \$26.8 million for the biennium. However, DFPS has not yet demonstrated the level of commitment needed to reflect its responsibility for prevention and early intervention efforts. In addition, concerns were raised about DFPS' focus on actual child abuse and neglect and that providing prevention programs could have a chilling effect on program participation by casting suspicion on participants who are not actually under investigation for child abuse and neglect.

Ultimately, as part of its recommendations to reorganize the health and human services system, as specified in the HHSC section of this report, the Sunset Commission directed the executive commissioner to consider consolidating all prevention and early intervention programs, including those currently at DFPS and home visiting programs currently at HHSC and DSHS, under a new medical and social services division in the newly reconstituted HHSC. Other recommendations for improvement, such as strategic planning and reporting of outcomes, are applied below to DFPS as it is currently configured, but like other recommendations in this report, would still apply in whatever configuration these functions ultimately reside.

Recommendations

Change in Statute

6.1 Require DFPS to develop a comprehensive strategic plan for its prevention and early intervention programs.

The strategic plan would include such elements as involving stakeholders, leveraging other sources of funding, and targeting highest-risk populations. DFPS would be required to develop the first plan no later than September 1, 2016, with annual updates to the Legislature.

Management Action – Nonstatutory

6.2 Direct DFPS to develop a strategy to use existing data to better focus its prevention efforts and report the outcomes of its programs.

Issue 7

A Lack of Administrative Flexibility and an Antiquated Fee Collection Process Limit DFPS' Ability to Recover Regulatory Costs.

While federal funds to pay for two-thirds of DFPS' child care regulatory effort sets Child Care Licensing apart from typical state regulatory programs, the agency does charge fees to recover costs. Unlike other regulatory programs, however, DFPS lacks the authority to set fees in rule, constraining its ability to recover costs and fund other child protection initiatives. Statutory fee amounts have not been changed since 1985, and have not recovered the cost of regulation in several years. Also, DFPS' paper-based licensing fee collection process is cumbersome, costly, and inefficient for both DFPS and its licensees, and does not provide assurance that required fees are paid.

Recommendations

Change in Statute

7.1 Eliminate the agency's statutory licensing and administrative fee caps and authorize fees to be set in rule.

All fees would be set by rule, subject to the public comment process in the Administrative Procedure Act. Fees would continue to be deposited to general revenue, and the Legislature would set the fee recovery expectations through the appropriations process.

7.2 Require DFPS to implement a renewal process for child care licenses and registrations.

This recommendation would require the adoption of rules establishing a renewal process for child care licenses and registrations that includes renewal periods, staggering of renewals, dealing with late renewals, conditions for renewal, and ultimately expirations. Such a renewal process would strengthen the agency's ability to keep track of child care operations and help ensure overall regulatory compliance with child safety standards.

Management Action – Nonstatutory

7.3 Direct DFPS to transition to online child care licensing fee collections.

DFPS should complete this transition by August 31, 2016, providing sufficient time for the agency to perform the work within current resources and ensure child care providers are aware of the new system.

Issue 8

The Critical Nature of Its Work to Protect Children and Vulnerable Adults Imposes a Higher Burden on DFPS in How It Obtains Stakeholder Input.

DFPS has a multitude of stakeholders, including families with children; child care and other protective services providers; courts, local law enforcement, and local prosecutors; advocacy groups and other nonprofit entities with an interest in children and family issues; local, state, and federal policymakers; and the public at large. Despite the importance of stakeholder input to DFPS' mission and functions, the agency does not provide sufficient guidance to its staff on how to involve stakeholders on a regular basis, which can result in inconsistent public involvement efforts.

Recommendations

Change in Statute

8.1 Require rules governing the use of advisory committees, ensuring committees meet standard structure and operating criteria.

This recommendation would require rules be adopted to ensure that any advisory committees DFPS creates are in compliance with Chapter 2110 of the Texas Government Code. DFPS would have to comply with requirements, including defining the advisory committees' purpose and responsibilities and regularly evaluating the need for each committee. Given the importance of stakeholder feedback to DFPS' mission, the agency should also consider including other important criteria, not required by law, such as for member qualifications or appointment procedures, in either its policy or rules.

8.2 Remove DFPS' two advisory committees from statute.

This recommendation would remove the Parental Advisory Committee and the Advisory Committee on Promoting Adoption of Minority Children from statute. Removing the committees from statute would eliminate one unnecessary committee and also allow DFPS the flexibility to make changes to the other, as described in Recommendation 8.4.

Management Action – Nonstatutory

8.3 Direct DFPS to clearly define in agency policy the appropriate use of advisory committees and informal workgroups.

8.4 Direct DFPS to establish in rule the Advisory Committee on Promoting Adoption of Minority Children.

While Recommendation 8.2 would remove the committee from statute, this recommendation would direct DFPS to establish it in rule and ensure it follows standard operating criteria described in Recommendation 8.1.

Fiscal Implication Summary

Overall, these recommendations would have a cost to the State of \$181,000 in fiscal year 2016, and a positive fiscal impact to the State of \$279,000 beginning in fiscal year 2017. The fiscal implication for these recommendations is summarized below.

Issue 1 — Adding three full-time equivalent employees to resolve internal complaints and analyze and monitor factors and conditions potentially contributing to employee turnover would cost about \$181,000 per year, including salaries and benefits. However, investing these resources could help reduce the agency's approximately \$72 million annual turnover costs. Directing DFPS to create dedicated CPS mentor positions would not have a fiscal impact to the State, since the agency can use existing vacant positions for this purpose.

Issue 3 — Strengthening child care licensing enforcement could result in additional revenue from administrative penalties, but the fiscal impact could not be estimated because penalty amounts generated would depend on the number and seriousness of future violations.

Issue 7 — Directing DFPS to implement online fee collections for its Child Care Licensing Program would save the agency approximately \$460,000 per year, beginning in fiscal year 2017 due to eliminating administrative costs associated with the current paper-based fee collection system. The new system would likely increase the amount of fees collected by improving the agency's ability to track compliance with fee payments, but this additional revenue cannot be estimated.

Department of Family and Protective Services

Fiscal Year	Cost to the General Revenue Fund	Savings to Federal and State Funds	Change in FTEs From FY 2015
2016	\$181,000	\$0	+3
2017	\$181,000	\$460,000	+3
2018	\$181,000	\$460,000	+3
2019	\$181,000	\$460,000	+3
2020	\$181,000	\$460,000	+3

DEPARTMENT OF STATE HEALTH SERVICES

TEXAS HEALTH CARE INFORMATION COUNCIL

Katharine Teleki, Project Manager

Agency at a Glance

The Legislature created the Department of State Health Services (DSHS) in 2003 by consolidating the Texas Department of Health, Texas Commission on Alcohol and Drug Abuse, Texas Health Care Information Council, and mental health functions of the Texas Department of Mental Health and Mental Retardation. Broadly, DSHS aims to improve health and well-being in Texas and performs the following activities to achieve this mission.

- Preventing and preparing for public health threats, including controlling the spread of infectious disease through immunizations, early detection, outbreak response, and public education.
- Operating the state's public health laboratory, including the newborn screening program.
- Contracting with providers and funding local health departments to improve community health by ensuring Texans have access to health services, prevention, and treatment.
- Promoting recovery for people with substance use disorders, mental illness, and certain infectious diseases by funding services and providing inpatient hospitalization at the Texas Center for Infectious Disease, nine state mental health hospitals, the Waco Center for Youth, and the Rio Grande State Center.
- Protecting consumers by regulating a large array of healthcare professions and facilities, as well as consumer services and products such as food and drug manufacturers.
- Regulating and supporting development of the state's emergency medical services and trauma system.
- Collecting, analyzing, and disseminating public health data and information critical to health policy decision making, including maintaining the state's vital records such as birth and death certificates.

The vision of a truly integrated health services organization has not been realized at DSHS.

Approach to Sunset Reviews of Health and Human Services Agencies

The Sunset Commission reviewed the functions and duties of DSHS and other health and human services system agencies before evaluating the Health and Human Services Commission (HHSC) and matters relating to the overall system. This approach allowed the Sunset Commission to assess each agency as currently configured, with the understanding that the overall system configuration could change through the later review of HHSC and the accumulated knowledge gained from the reviews of all health and human services agencies.

Ultimately, the Sunset Commission did not continue DSHS as a separate agency, instead recommending reorganization of all of the system agencies into a functional structure under HHSC, as discussed in the HHSC section of this report. However, the specific recommendations affecting DSHS continue to be needed to address the Sunset Commission's concerns about the agency and its programs whether they operate within DSHS or within the reorganized system. These specific recommendations are presented here as the agency and its functions are currently organized, but the Legislature will ultimately determine their placement within the overall health and human services system.

Summary

When the Legislature created DSHS in 2003, it formed one of the most complex agencies in Texas government, with responsibility for more than 200 diverse programs and an ambitious mission to improve the health and well-being of all Texans. The Sunset Commission concluded that DSHS has not been able to successfully implement the original goals of consolidation due to its overly broad focus and tendency to operate in crisis management mode, rather than providing needed strategic leadership and planning. The Sunset Commission found DSHS still operates many of its programs in pre-consolidation silos, most obviously in its mental health and substance abuse programs, and has not become the truly integrated health services organization envisioned more than a decade ago.

As a result, several of the Sunset Commission's recommendations reflect a need for DSHS to simply do its job better, particularly in areas of longstanding legislative concern such as state mental health hospitals, community behavioral health programs, and oversight of the state's public health system. The Sunset Commission also paid special attention to DSHS' wide array of regulatory programs and identified many occupational programs that could be deregulated with little risk to the public, or that would be better placed at other regulatory agencies to allow DSHS to focus on its primary public health responsibilities. The following material summarizes the Sunset Commission's recommendations on DSHS.

Issues and Recommendations

Issue 1

Resolving the Current Crisis in the State Mental Health Hospital System Requires Action, Starting Now.

In fiscal year 2013, DSHS provided inpatient psychiatric services to more than 22,000 people with serious mental illness at the state's mental health hospitals and other facilities receiving state funding. The number of patients committed through criminal proceedings (forensic commitments) has increased substantially in recent years, creating significant pressure on the system to provide services to this new population with already scarce resources. This situation is compounded by the remote and outdated condition of

the state hospital facilities, critical shortages of clinical staff, and a lack of effective communication with the judicial system. As a result, individuals needing treatment are at risk of not getting timely services to best address their needs, presenting legal and financial risks to the State.

Recommendations

Change in Statute

1.1 Require DSHS to work with the Court of Criminal Appeals to develop training to inform the judiciary about alternatives to inpatient mental health treatment.

This training curriculum would better inform the judiciary about the implications of and alternatives to civil versus forensic commitments to the state mental health hospital system. A better understanding of alternatives would help divert appropriate forensic patients from state hospitals to other, less costly treatment settings in the community, making more inpatient beds available for persons needing more intensive services.

Management Action – Nonstatutory

1.2 Direct DSHS to develop a guide for alternatives to inpatient mental health treatment in the state mental health hospital system.

Local mental health authorities and the Texas Council of Community Centers should assist DSHS in gathering information on alternatives in individual service areas, including state and locally funded facilities and other resources available in the private market. The information in the guide would include service type, targeted patient population, capacity, admissions process, and contact information for each alternative treatment setting. The guide was due by December 31, 2014.

1.3 Direct DSHS and HHSC to immediately review and streamline hiring processes and improve other personnel actions needed to ensure state mental health hospitals are appropriately staffed.

In response to this recommendation, the agencies provided a follow-up report in November 2014 detailing the initial steps that have been taken to begin to address hiring delays and other personnel actions at state hospitals, including establishing a workgroup that has proposed strategies to improve these processes.

1.4 Direct DSHS to continue expanding state mental health hospital system capacity for both forensic and civil patients by contracting with mental health providers in local communities whenever possible.

This recommendation supports continued efforts to contract for community-based alternatives to inpatient psychiatric care, as well as with community, private, local, and university hospitals to increase capacity of the state mental health hospital system and provide needed services more effectively and efficiently.

Issue 2

DSHS Has Struggled to Deliver Integrated, Outcomes-Focused Community Mental Health and Substance Abuse Services.

The Sunset Commission found that 12 years after consolidation, DSHS has still not integrated basic “front door” assessment, screening, and referral services for mental health and substance abuse, allowing

people with complex, co-occurring issues to more easily fall through the cracks. DSHS has also struggled to develop an effective approach to funding and delivering behavioral health services that encourages local involvement, best practices, and clear outcomes-based information on which to base critical system decisions.

Recommendations

Change in Statute

2.1 Require DSHS to integrate mental health and substance abuse hotline, screening, assessment, and referral functions.

This recommendation would limit eligibility for administration of substance abuse outreach, screening, assessment, and referral functions to a local mental health authority or a behavioral health authority. DSHS would be required to encourage regional collaboration and statewide coverage of these services including consolidated hotlines for both mental health and substance abuse issues following national best practices.

2.2 Require an updated, locally driven process for allocating state mental health hospital beds among regions.

This recommendation requires local mental health authorities to develop, with HHSC approval, a new, regional methodology for allocating state hospital beds, to replace the current State Hospital Allocation Methodology managed by DSHS. Regions should be determined by HHSC with input from the local authorities. HHSC must determine a daily use fee for each bed day a local authority goes over its allocation, which would be distributed to local authorities who underuse their bed allocation.

As a related nonstatutory management directive, DSHS should review current methods for allocating regional mental health funding and determine whether allocations match the prevalence of mental illness in associated regional populations.

2.3 Require HHSC to conduct a strategic review to evaluate and improve performance measurement and contracting processes across all DSHS contractors of behavioral health services.

HHSC would use third-party expert assistance in the area of health purchasing to conduct the review, which would occur in three phases. Phase 1 would identify performance measures that are not required by state statute or federal requirement, and evaluate and refine the 10 percent withhold for local mental health authorities. Phase 2 would include developing outcome measures based on best practices in performance measures and contracting. In Phase 3, HHSC must develop a web-based dashboard available to the public to allow for comparisons across behavioral health providers.

2.4 Require DSHS to overhaul regulations for community-based behavioral health treatment facilities, including creating new license types if necessary.

To provide the most effective and safe community-based treatment possible for people with mental health and substance abuse issues, DSHS would conduct a comprehensive review of current regulatory standards and contract requirements for treatment facilities, and develop updated rules for consideration by September 1, 2016. State funding would be prioritized for facilities that meet the new regulatory standards. DSHS' authority to create new crisis and treatment facility types would be limited to residential settings where the facility provides onsite mental health and/or substance abuse professional services.

2.5 Remove two DSHS advisory committees from statute.

This recommendation would remove the Local Authority Network Advisory Committee and the Drug Demand Reduction Advisory Committee from statute.

Management Action – Nonstatutory

2.6 Direct HHSC to establish an enterprise-wide behavioral health advisory committee to provide regular input and recommendations to the executive commissioner regarding behavioral health programs and issues across the health and human services system.

As part of this recommendation, the existing functions of the Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders will continue as a subcommittee to the new enterprise-wide committee and meet requirements for a mental health planning council under federal law. Existing duties of the Drug Demand Reduction Advisory Committee would also be incorporated into the new committee's duties. The executive commissioner would provide a written response to formal recommendations adopted by the committee.

2.7 DSHS should examine certain services for homeless individuals with mental illness.

DSHS should identify any barriers to providing medication services to homeless individuals with the goal of avoiding episodes of crisis and criminal justice involvement.

Issue 3

The Unmanageable Scope of DSHS' Regulatory Functions Reduces Needed Focus on Protecting Public Health.

DSHS administers more than 70 regulatory programs, licensing more than 360,000 individuals, facilities, and other entities in fiscal year 2014. State law requires the Sunset Commission to critically examine an agency's regulatory programs and in this instance, the Commission concluded DSHS' expansive regulatory responsibilities combined with shrinking resources have made its regulatory functions unmanageable. To streamline these regulatory responsibilities and allow the agency to better perform its public health functions, the Commission determined several regulatory programs could be safely eliminated, while others have no real connection to DSHS' public health mission and would be more effectively administered by other agencies.

Recommendations

Change in Statute

3.1 Discontinue 10 regulatory programs currently housed at DSHS.

This recommendation would deregulate the state licensure, certification, and registration related to bottled and vended water, certified food handler certification providers, contact lens dispensers, dyslexia therapists and practitioners, opticians, personal emergency response systems, bedding, indoor air quality in state buildings, rendering, and tanning bed facilities.¹ Prohibitions against the use of tanning beds by teenagers would be retained.

3.2 Transfer 12 regulatory programs from DSHS to the Texas Department of Licensing and Regulation, and reconstitute associated independent boards as advisory committees.

This recommendation would streamline DSHS' regulatory program by transferring regulation of athletic trainers, dietitians, fitters and dispensers of hearing instruments, midwives orthotists and prosthetists, and speech-language pathologists and audiologists to the Texas Department of Licensing and Regulation (TDLR) by August 31, 2017. The recommendation would transfer the regulation of code enforcement officers, laser hair removal, massage therapists, mold assessors and remediators, offender education providers, and sanitarians to TDLR by August 31, 2019.

Any related independent boards would become advisory committees, and TDLR and its commission would adopt all rules and make all final regulatory decisions currently requiring board action, including registering, certifying, licensing, taking enforcement action, and establishing fees.

3.3 Transfer four regulatory programs from DSHS to the Texas Medical Board, create associated advisory committees and boards, and require fingerprint-based background checks.

This recommendation would streamline DSHS' regulatory program by transferring regulation of respiratory care practitioners, medical radiologic technologists, medical physicists, and perfusionists to the Texas Medical Board (TMB) by August 31, 2017, where they can be more effectively managed.

The powers and duties of the existing related boards and committees would be replaced with new boards and committees established under the authority of TMB, and following TMB's existing model of regulation. The recommendation would establish two governor-appointed boards, the Texas Board of Medical Radiologic Technology and the Texas Board of Respiratory Care, generally following standard powers and duties for the regulation of physician's assistants. The recommendation would establish two advisory committees appointed by the President of the Medical Board, the Medical Physicist Licensure Advisory Committee and Perfusionist Licensure Advisory Committee, generally following standard powers and duties for the regulation of surgical assistants.

For all four transferred professions, the recommendation would require TMB to conduct fingerprint-based criminal background checks, through the Department of Public Safety, on all applicants and licensees.

Issue 4

DSHS Needs Additional Tools to Better Combat Fraud in the EMS Industry.

DSHS regulates the EMS industry, including about 1,500 private and public 911 and non-emergency ambulance entities; designates levels of trauma care for the state's 686 hospitals; and provides grant funds to help develop local trauma systems. These recommendations build on recent efforts by the 83rd Legislature to address Medicaid billing fraud in the EMS industry and ensure EMS providers and personnel are aware of requirements to protect public safety and comply with legitimate healthcare business practices.

Recommendations

Change in Statute

4.1 Require an EMS provider to have a physical location for its business establishment to obtain a license.

The physical location of the business establishment could be owned or leased, as long as the provider maintains the location for the duration of the licensure period as its primary place of business. Only one EMS provider would be allowed to be licensed to operate from each location. Requiring a physical location would assist regulators and law enforcement in monitoring and investigating any fraudulent or other unlawful activity.

4.2 Require an EMS provider to provide proof of ownership or a long-term lease agreement for all equipment necessary for safe operation of an EMS company, such as ambulances, stretchers, and defibrillators.

Proof of ownership would ensure providers actually possess the equipment needed to administer any medically necessary service expected of an EMS provider and help prevent fraudulent businesses from entry into the EMS industry.

4.3 Authorize DSHS to require jurisprudence examinations for all EMS licensees.

This recommendation would ensure providers have familiarity with laws and regulations relating to the EMS industry in Texas.

4.4 Clearly authorize DSHS to take disciplinary action against EMS providers or personnel based on findings by a governmental entity with delegated authority to conduct inspections.

To make the enforcement process easier, faster, and more effective, this recommendation would give DSHS explicit authority to take enforcement action based on findings from local inspections or investigations delegated by DSHS.

4.5 Require DSHS to develop a formal process to refer nonjurisdictional complaints relating to EMS to appropriate organizations.

DSHS would be required to track and formally refer EMS-related complaints outside of the agency's jurisdiction to the appropriate organization, including separately tracking billing fraud complaints.

4.6 Require DSHS to collect, maintain, and make publicly available detailed statistical information on complaints regarding EMS licensees.

DSHS would be required to track and report the information according to specific criteria such as the number, source, and types of EMS complaints received, the reason behind the complaint, the average time to resolve the case, outcomes of investigations, and other factors.

Issue 5

DSHS Has Not Provided the Leadership Needed to Best Manage the State's Public Health System.

Texas has a complex and fragmented public health system with responsibility for providing services falling on DSHS and its eight Health Service Regions, as well as local health departments governed by cities and counties. Texas' decentralized approach to delivering public health services, while providing local control and flexibility, has long presented challenges in coordinating public health efforts. The roles and responsibilities of DSHS and local health departments operating in the same areas are not clearly defined, leading to inefficiency and at times, confusion over who is doing what. Without a clear plan of action, DSHS cannot provide expected leadership and target limited resources to help build local capacity.

Recommendations

Change in Statute

5.1 Require DSHS to develop a comprehensive inventory of the current roles, responsibilities, and capacity of DSHS central office, DSHS Health Service Regions, and each local health department, district, and authority in the state.

DSHS would comprehensively document the division of labor and create an inventory of services and programs each entity currently provides, including the level of service provided. DSHS should identify areas where significant gaps or overlap exists. DSHS should solicit input from its Public Health Funding and Policy Committee and local health departments before commencing the effort.

5.2 Require DSHS to establish clear goals for the state's public health system and to develop an action plan with regional strategies and milestones to meet these goals.

DSHS, with input and advice from the Public Health Funding and Policy Committee, would be required to establish an overarching vision for DSHS central office, DSHS Health Service Regions, and local health departments, and statewide priorities for improving the public health delivery system. DSHS would develop region-by-region goals and strategies with milestones, dates, performance measures, and resources needed, and work with the committee to identify any changes to policies, procedures, funding formulas, or laws needed to achieve the goals and improve working relationships.

Management Action – Nonstatutory

5.3 Direct DSHS to develop a system to categorize different types of local health departments based on the services they provide.

These categories should help show how the responsibility for providing public health services is currently shared between the state and local jurisdictions, inform what improvements may be needed in each region, and provide goals for specific steps that could be taken to increase the scope or quality of local services.

Issue 6

DSHS Has Not Taken Needed Steps to Strengthen the Security of Vital Statistics.

Vital records are the official documents of every person's birth, death, marriage, or adoption in Texas. These important records are susceptible to fraudulent activity relating to personal identity theft, access to government benefits, and voting. Vulnerability is compounded by the fact that about 48,000 users have access to DSHS' electronic system for registering vital events and, as a dual registration state, vital record information is maintained centrally by DSHS and locally in 422 designated local registration jurisdictions. Despite a series of audit reports recommending needed improvements to the security and efficiency of the state's vital records system, DSHS has not yet fully implemented or prioritized needed changes to protect this critical information.

Recommendations

Change in Statute

6.1 Require all local registrars to submit a self-assessment report to DSHS annually.

Management Action – Nonstatutory

6.2 DSHS should develop a formal desk audit policy and increase the use of desk audits in monitoring local registrars' offices.

Change in Statute

6.3 Require identity verification through notarization for all mail-in vital records orders.

To decrease the likelihood of fraud, this recommendation would require individuals to prove their identity through third-party verification, or notarization, to receive vital records by mail from DSHS or a local registrar's office.

6.4 Expand DSHS' authority to require fingerprint-based criminal history background checks for anyone with access to the state's electronic registration system.

This recommendation would apply to all persons with access to vital records and the vital records electronic registration system, including DSHS employees, contractors, local registrars, medical professionals, funeral directors, and others.

Management Action – Nonstatutory

6.5 DSHS should prioritize and regularly report on its progress implementing the Texas Electronic Vital Events Registrar system.

The progress reports should include a specific description of current and future needs of this project along with target dates of completion for all steps in the process and DSHS' status in meeting them.

6.6 DSHS should conduct a feasibility study for creating a single registry for births, deaths, marriages and divorces in Texas.

DSHS should provide an analysis of current systems, and an estimate of cost and any statutory changes that would be required to implement such a system.

Issue 7

The State Has a Continuing Need for the Texas Health Care Information Collection Program.

Originally created as a separate state agency in 1995, the duties of the Texas Health Care Information Council (THCIC) were transferred to DSHS when the agency was created in 2003. Today, the health care information collection program within DSHS' Center for Health Statistics performs THCIC's former duties to collect data from hospitals and ambulatory surgical centers. This information summarizing inpatient and outpatient stays is used to produce data files available for public use and specialized research purposes. The 83rd Legislature specifically directed the Sunset Commission to examine the mission and purpose of the program in conjunction with its review of DSHS. The Sunset Commission found that DSHS appropriately collects and handles the data, and that the information serves a useful purpose. However, the program has not yet met expectations to put the data to best use, including providing information to consumers, and some requirements should be adjusted to reduce the reporting burden on small providers.

Recommendations

Change in Statute

7.1 Continue the health care information collection program with changes to improve the reporting process for providers.

Under this recommendation, DSHS would continue to collect inpatient and outpatient discharge data, but would create a waiver process to exempt certain small facilities. DSHS should also replace the current data certification process with an optional data validation process that gives facilities 30 days to verify the accuracy of their data submissions. This recommendation would also clarify in law that providers are not liable for damages or penalties relating to inappropriate use or disclosure of data after submission to the State. Finally, the recommendation directs DSHS to provide the data to the State's current Medicaid External Quality Review Organization (EQRO), for inclusion in the EQRO database.

The Sunset Commission recommended several additional improvements to overall health and human services data collection and analytics, discussed in the HHSC section of this report.

Management Action – Nonstatutory

7.2 Direct DSHS to improve how healthcare data is used by the agency and displayed for consumers, particularly the outpatient data.

Issue 8

DSHS' Numerous Advisory Committees Lack Strategic Purpose, Limiting Their Effectiveness and Wasting Resources.

An agency as large and diverse as DSHS requires effective avenues for stakeholder input. However, the Sunset Commission found DSHS does not have a strategic approach to managing its more than 55 advisory committees, councils, and independent boards and that having so many statutorily created committees unnecessarily limits the agency's ability to meet evolving needs and changing conditions.

Recommendations

Change in Statute

8.1 Remove six of DSHS' advisory committees from statute and direct DSHS to re-establish active committee functions in rule as needed.

The recommendation would remove the inactive Arthritis, Texas Medical Child Abuse Resources and Education System (MEDCARES), Youth Camp Training, and Sickle Cell Advisory Committees from statute, as well as the Advisory Panel on Health Care Associated Infections and Preventable Adverse Events and Worksite Wellness Advisory Board. The recommendation would direct DSHS to use its existing authority to re-create any active advisory committees in rule as needed, seeking input from existing committee members and other stakeholders.

Management Action – Nonstatutory

8.2 Direct DSHS to review and revise its internal advisory committee policies and to regularly evaluate all of its advisory groups.

DSHS should revise policies to include clear, agencywide goals for the creation, use, and expiration of advisory committees and informal stakeholder groups.

Fiscal Implication Summary

Overall, these recommendations would result in the loss of approximately \$836,625 per year to the General Revenue Fund because of deregulating certain occupations.

Issue 1 — Developing training on alternatives to inpatient mental healthcare treatment would have a small cost, but the Legislature has already identified existing funding for judicial training through the Court of Criminal Appeals that could be used for this purpose.

Issue 2 — Any costs associated with using a third-party expert to assist in a strategic review of DSHS' behavioral health contracting could be absorbed within HHSC's existing budget for obtaining outside expertise.

Issue 3 — Discontinuing 10 regulatory programs would result in the loss of approximately \$836,625 per year to the General Revenue Fund and a reduction of 14 full-time DSHS staff positions, beginning in fiscal year 2016. The loss would result from deregulated programs no longer collecting excess fees that are currently deposited in the General Revenue Fund.

The fiscal impact of transferring 12 regulatory programs from DSHS to TDLR and four regulatory programs from DSHS to TMB should be cost neutral, with a straight transfer of related funds and staff from DSHS to the new agencies. TDLR or TMB may need to request additional appropriations and staffing to support the administration of the additional programs within their existing structures, such as additional legal counsel, information technology, or other support services. If approved by the Legislature, any one-time startup or ongoing additional costs would be recovered through fees.

Department of State Health Services

Fiscal Year	Loss to the General Revenue Fund	Change in FTEs From FY 2015
2016	(\$836,625)	-14
2017	(\$836,625)	-14
2018	(\$836,625)	-14
2019	(\$836,625)	-14
2020	(\$836,625)	-14

.....

¹ The Sunset Commission originally recommended that DSHS' role in approving food manager certification providers also be discontinued. However, the chair and vice chair subsequently directed, with notification to the full Sunset Commission, that the legislation be drafted in a way to ensure individuals seeking food manager certifications can continue to take required exams via the internet, as eliminating the online option was an unintended consequence of the original recommendation. Due to conflicts between state and private certification requirements, the State's role in approving food manager certification providers must be continued to meet this intent.

TEXAS WORKFORCE COMMISSION

Faye Rencher, Project Manager

Agency at a Glance

The Texas Workforce Commission (TWC) oversees and provides workforce development services to employers and job seekers. TWC's mission is to promote and support a workforce system that creates value and offers employers, individuals, and communities the opportunity to achieve and sustain economic prosperity. To achieve its mission the agency carries out the following key activities.

- Contracting with 28 local workforce development boards to provide a variety of services, such as job training, employment services, and child care.
- Administering the state's unemployment insurance (UI) system and collecting taxes for the UI Trust Fund.
- Administering a variety of regulatory programs ranging from the enforcement of wage and child labor laws to the oversight of career schools.
- Enforcing state law to prevent and reduce employment and housing discrimination.
- Collecting, analyzing, and disseminating workforce and labor market data.

TWC's proactive management and integration of services could significantly improve employment services for Texans with disabilities if moved from DARS to TWC.

Summary

The workforce system in Texas has matured substantially since 1995 when the Legislature merged staff and programs from 10 different state agencies to create TWC. TWC has emerged as a national leader by supporting a locally driven workforce environment and proactively managing its work. The Sunset Commission concluded that the agency's functions are clearly needed and have benefited from organization as an integrated and streamlined workforce system.

One component remaining outside TWC's integrated workforce system is the assistance provided to people with disabilities in finding jobs, currently housed at the Department of Assistive and Rehabilitative Services (DARS). With DARS also under Sunset review, the Sunset Commission identified a number of management concerns with the agency, including the ongoing and duplicative separation of blind and general vocational rehabilitation services. The Sunset Commission concluded that moving DARS' Vocational Rehabilitation programs to TWC would help address problems identified with DARS' administration of these services and improve outcomes for people with disabilities seeking employment.

As the agency responsible for administering unemployment compensation benefits in Texas, TWC lacks the needed authority in state law to work with the U.S. Department of the Treasury's federal offset program to recover unemployment compensation debt. Participation in the federal debt collection program will become necessary to comply with federal law in 2015 and could assist Texas in recovering a significantly larger portion of outstanding debt, conservatively estimated at about \$193.7 million in the first four years of operation.

Other issues identified by the Sunset Commission relate to a variety of programs TWC operates. The Civil Rights Division, which investigates complaints of employment and housing discrimination, operates under a separate board, splitting oversight with TWC and leaving little for the board to actually do. Subsidized child care, a workforce support for low-income parents, lacks needed data for evaluating how the program helps achieve employment goals for parents while ensuring quality care for children.

Regarding TWC's regulation of career schools, the Sunset Commission found TWC and prospective students need reliable information to gauge a school's performance. Other concerns addressed involve ensuring better consistency in the agency's handling of wage complaints and better access to written materials discussed in open meetings of the agency's three-member commission. The following material summarizes the Sunset Commission's recommendations on TWC.

Issues and Recommendations

Issue 1

The State Can Benefit From a More Integrated Approach to Ensuring Better Employment Outcomes for Texans with Disabilities.

TWC, through its 28 local workforce boards, administers workforce programs that provide a range of employment services to job seekers in Texas. This system integrates service delivery at the local level across multiple workforce programs, providing a convenient one-stop shop for consumers. DARS administers vocational rehabilitation services for people with disabilities, helping them prepare for, find, and keep meaningful employment through job placement assistance, training, medical restoration, and assistive devices.

The Sunset Commission concluded that integrating DARS' vocational rehabilitation services into TWC would present an opportunity to better serve consumers' needs within one agency, eliminating duplication of effort across agencies, and ensuring better employment outcomes for Texans with disabilities. In addition, the Sunset Commission found the need for improvements to the management of vocational rehabilitation services, particularly the ongoing siloed approach to providing services for people who are blind or visually impaired through a separate division than people with all other disabilities.

Sunset's recommendations adopted to address specific concerns with DARS' administration of these programs have been tailored to conform to the transfer of the programs to TWC. In addition, two other programs generally housed in the same agency as vocational rehabilitation services have been included in the recommendation for transfer to TWC.

Recommendations

Change in Statute

1.1 Transfer responsibility for the Vocational Rehabilitation and Disability Determination Services programs from DARS to TWC, contingent on federal approval of the program transfers.

This transfer would include vocational rehabilitation services provided by counselors in field offices, as well as the Business Enterprises of Texas Program that provides food management opportunities for Texans who are blind. The Disability Determination Services Program, which determines if applicants meet the medical disability criteria for federal income benefits, would also transfer from DARS to TWC to keep it within the same agency that administers vocational rehabilitation services. Rulemaking authority for these programs would also transfer from the executive commissioner of the Health and Human Services Commission to TWC.

TWC and DARS would work together to complete the transfer of these programs, contingent upon federal approval, no later than September 1, 2016. This recommendation also requires TWC to integrate vocational rehabilitation staff from DARS' local field offices into TWC's local workforce development boards and centers no later than August 31, 2018. As a part of this recommendation, the federally required advisory committee for vocational rehabilitation, the Rehabilitation Council of Texas, would also transfer.

Because the goal of vocational rehabilitation is to help individuals with disabilities gain the skills they need to enter the workforce, this transfer would better align the vocational rehabilitation services with other workforce programs at TWC, an agency whose mission is to help all Texans succeed in finding employment.

Management Action – Nonstatutory

1.2 Direct TWC to work with DARS and the Health and Human Services Commission to ensure the efficient transition of the Vocational Rehabilitation and Disability Determination Services programs.

1.3 Direct TWC to integrate the newly transferred programs within the workforce system in a manner that minimizes any disruption in client services and satisfies federal requirements, so that federal funds are not jeopardized.

Recommendations Modified From Sunset Report on DARS

As a part of the transfer, the Sunset Commission recommended modifying several of the recommendations previously developed to address DARS' administration of vocational rehabilitation services. These recommendations are explained in greater detail in the DARS Sunset Staff Report, but have been modified to conform with the program transfer to TWC, as described below.

Integration of DARS' Two Separate Vocational Rehabilitation Programs

Change in Statute

1.4 Require TWC, in coordination with DARS, to integrate administration, management, and oversight of DARS' blind and general Vocational Rehabilitation programs to eliminate duplication and better serve consumers. (Modified from DARS Staff Report Recommendation 1.1)

Under this recommendation, TWC would work with DARS to organize services by functional need rather than by type of disability. This change would break down the silos and fully integrate the administrative structures, policies, and field offices separately housed in DARS' Division for Rehabilitation Services and Division for Blind Services, thus eliminating wasteful duplication. This newly integrated structure would address, but not be limited to, the following elements:

- continued specialization in different consumer populations amongst vocational rehabilitation counselors;
- consolidation of planning, reporting, and policies, including the state plans, performance measurement, and quality assurance functions; and
- revision of program-related rules to better reflect the integrated administrative structure of the Vocational Rehabilitation programs.

This recommendation would require the merger of the vocational rehabilitation language in the Texas Commission for the Blind statute with similar language in the Texas Rehabilitation Commission statute into one, consolidated vocational rehabilitation subchapter within TWC's enabling statute.

Management Action – Nonstatutory

1.5 TWC, in conjunction with DARS, should develop a transition plan for the integration of the administration, management, and oversight of the blind and general Vocational Rehabilitation programs, no later than September 1, 2016. (Modified from DARS Staff Report Recommendation 1.2)

Together, TWC and DARS should begin transition planning as soon as legislation to transfer and integrate the programs passes, including specific steps, timetables, consolidation methods, strategies to prevent service disruption, and any other steps the agencies determine necessary to complete the full integration of the two Vocational Rehabilitation programs.

1.6 Direct DARS to take immediate steps to ensure access to services for people with multiple disabilities, no matter which division offers the services. (Modified from DARS Staff Report Recommendation 1.3)

DARS should immediately make any changes to policies and its case management system to ensure that these consumers can get the services they need. This includes making the necessary modifications to its case management system, ReHabWorks, a top priority. TWC should continue this responsibility once the transfer of vocational rehabilitation services occurs.

Improvements to Case Management

Management Action – Nonstatutory

- 1.7 TWC should create clear, validated guidelines for vocational rehabilitation caseworkers to ensure better decision making for successful, cost-effective outcomes.** *(Modified from DARS Staff Report Recommendation 2.1)*

TWC should base the guidelines on research and best practices so that they effectively lead to successful case outcomes. At a minimum, guidelines should cover the length and cost of a case and intermediate goals to help caseworkers and their supervisors ensure the program's resources are being spent prudently and consumers are on a path to success. These tools are not intended to limit any appropriate or needed services provided to consumers.

- 1.8 TWC should create a robust and consistent case review system across all vocational rehabilitation services, no matter the nature of a person's disability.** *(Modified from DARS Staff Report Recommendation 2.2)*

As a part of this new system, TWC's case reviews should include elements such as consistency across different areas of the state, a focus on areas of highest risk, evaluation of caseworkers' eligibility determinations, and quality of caseworkers' decision making and compliance with program requirements.

- 1.9 TWC should designate staff to monitor performance of vocational rehabilitation services statewide and within each local board area.** *(Modified from DARS Staff Report Recommendation 2.3)*

Under this recommendation, TWC's performance monitoring staff should regularly report on outcomes and trends of vocational rehabilitation services to the program's managers and periodically to the commission in its open public meetings.

Coordination with the Texas Education Agency

Change in Statute

- 1.10 Require TWC to partner with the Texas Education Agency to develop a mechanism to target schools with the highest need for vocational rehabilitation services for students with disabilities who are transitioning from school to work.** *(Modified from DARS Staff Report Recommendation 4.2)*

TWC and the Texas Education Agency (TEA) would collaborate to develop a mechanism to identify the areas of the state with the highest needs for students transitioning from school to work. This mechanism should account for Texas' limited vocational rehabilitation resources and school district needs, such as the amount of resources a school has for special education, the number of students with disabilities, and any other important factors.

As part of this recommendation TWC would develop uniform, statewide policies on transition services including the preferred age for initial contact, standards for assigning transition counselors to schools, and coordination between transition counselors and schools. TWC would develop a memorandum of understanding with TEA to account for these policy changes and improve coordination.

Consolidation of Employer Relations Staff

Management Action – Nonstatutory

- 1.11 Direct DARS and TWC to ensure employer relations staff from DARS' blind and general Vocational Rehabilitation programs are consolidated and work in tandem with their TWC counterparts to build business partnerships. (Modified from DARS Staff Report Recommendation 4.3)**

Under this recommendation, DARS should immediately consolidate its employer relations staff and, as part of the transfer, coordinate with TWC to build and expand business relationships to increase employment opportunities for people with disabilities. Employer relations staff would also have responsibility for evaluating and replicating successful employer-based initiatives and identifying new opportunities for people with disabilities — a function that would continue at TWC after the transfer. To monitor the performance of the employer relations function, DARS, in consultation with TWC, should develop and track internal performance measures, such as the number of employers contacted, the number of job fairs conducted, and the number of consumers employed due to outreach efforts.

- 1.12 Direct DARS to develop a strategy for assisting federal contractors to hire individuals with disabilities, and to task its employer relations staff with researching and anticipating similar federal or state initiatives in the future. (Modified from DARS Staff Report Recommendation 4.4)**

DARS should quickly develop and implement a plan for targeting federal contractors and providing them with information and services, such as awareness events and job placement assistance. This plan should set performance goals for each year, such as the number of contractors contacted, the number of services provided to these contractors, and the number of DARS consumers employed. The agency completed and has begun implementing this plan for federal contractors. TWC would carry on this strategy after vocational rehabilitation functions are transferred.

Issue 2

TWC Needs Authority to Use Federal Offsets to Recover Millions of Dollars in Unemployment Compensation Debt.

Texas is missing out on an opportunity to collect millions of dollars it is owed. Through its administration of the UI program, TWC ends up with a significant amount of outstanding debt, both from delinquent unpaid taxes and from payments made to claimants that must be repaid because the person did not meet program requirements.

In addition to TWC's collection methods, the U.S. Department of the Treasury operates a debt collection program that can apply all or part of a federal payment, most commonly a tax refund, toward any submitted delinquent debts an individual owes. While initially voluntary, state participation in this program for the collection of delinquent unemployment compensation debt becomes mandatory in 2015. However, TWC needs specific authority in state law to participate in this federal program.

Recommendation

Change in Statute

2.1 Authorize TWC to participate in the federal treasury offset program to recover outstanding unemployment compensation debts.

This recommendation would necessitate amending the Texas Labor Code to provide the specific authority necessary to comply with the Bipartisan Budget Act of 2013 requirement to participate in the federal treasury offset program. These changes would ensure Texas' compliance with federal law, help avoid any potential loss of Texas' UI administrative grant, and enable TWC to recover \$193.7 million in outstanding debt. Return of these funds would also help keep Texas' UI trust fund solvent and reduce or delay the need for future tax increases to Texas employers.

Issue 3

The Civil Rights Division Needs Clearer Accountability and Streamlined Functions to Effectively Focus on Its Core Duties.

The Civil Rights Division (division) investigates complaints of employment and housing discrimination in Texas, duties previously performed by a separate agency, the Commission on Human Rights. Due to poor management, the Legislature abolished that agency in 2003, moving these duties to TWC as an independent division, with its separate board, the Human Rights Commission, left intact. This structure fails to provide a clear role for TWC, impeding accountability and clear oversight of the division's performance. Also, the Sunset Commission found the Human Rights Commission to have limited authority to oversee the division's functions, and its workload to be minimal, as division staff investigates and resolves the majority of antidiscrimination cases.

Recommendations

Change in Statute

3.1 Transfer the powers and duties of the Human Rights Commission to the Texas Workforce Commission.

These changes would clarify and simplify the lines of accountability, and ensure one governing body, the Texas Workforce Commission, is responsible for the overall performance of the Civil Rights Division.

3.2 Eliminate the statutory requirement for the Civil Rights Division to review fire department exams for discriminatory factors.

This recommendation would allow the division to better focus limited staff time on improving other functions, such as state agency personnel policy reviews.

3.3 Require TWC, as part of the division's annual report, to provide data on the number and type of state agency employment discrimination complaints with merit.

This recommendation would ensure an assessment occurs of how well state agencies are managing their personnel policies, including information on complaints with merit, in one location that is accessible to the public. These changes should be incorporated into the division's annual report no later than the fiscal year 2015 report.

3.4 Require TWC to develop risk assessment criteria in rule for determining when a state agency could be subject to review more frequently than the regular six-year schedule.

This risk assessment would ensure the division has a systematic method of verifying whether agencies address identified employment discrimination issues and complaints sooner than the regular six-year review. Rules should be enacted no later than September 1, 2016.

3.5 Require TWC to charge state agencies a rate that covers the costs of reviewing their personnel policies and procedures, and annually reassess reimbursement rates to ensure true cost recovery.

This recommendation would ensure TWC continues to reassess reimbursement rates for agency personnel policy reviews on a regular basis to both ensure the agency fully recovers its costs and avoids overcharging agencies.

Management Action – Nonstatutory

3.6 Direct TWC to assist the division in making improvements to electronically track data from state agency personnel policy reviews and use this data to better manage the review process.

Issue 4

TWC Must Better Ensure Its Child Care Program Helps Clients Achieve Employment Goals and Obtain Quality Care for Children.

Quality, affordable child care is an important support benefitting both low-income parents and employers, and can have long-term implications for the development of the children served. TWC, in conjunction with the 28 local workforce boards, administers the State's \$489 million subsidized child care program. Despite its importance and large price tag, TWC has not done enough to manage the program for success. Instead, the agency measures effectiveness primarily in terms of the number of people served and average cost, with no in-depth analysis of employment outcomes or comparison of the effectiveness of local boards' policies and management of the program.

Through passage of House Bill 376 during the 83rd Legislative Session, the Legislature mandated a complete overhaul of the quality standards for the Texas Rising Star program, the state's child care quality rating system. However, TWC lacks the needed processes and tools to better manage these major changes and ensure ongoing maintenance of the program.

Recommendations

Change in Statute

4.1 Require TWC to include more in-depth data on the effectiveness and outcomes of child care subsidies in its statutorily required report on the program.

This recommendation would require TWC to expand the scope of its statutorily required report on the effectiveness of the child care program by including performance data by board area as well as the statewide information on outcomes of the child care program. TWC would also be required to include

multi-year trend information with, at a minimum, the last five years of data. TWC should also consider adding measures to this report based on new measures developed as part of Recommendation 4.5. This recommendation would improve the existing report TWC creates for the Legislature and the public by providing more in-depth, useful information on the effectiveness of the program.

4.2 Require TWC to establish a process in rule providing for regular review of the Texas Rising Star child care quality standards.

This recommendation would require the agency to adopt rules by September 1, 2016, defining a regular timeframe and process it would use in reviewing and updating the Texas Rising Star quality standards.

4.3 Require TWC to develop a policy on gathering and using stakeholder input regarding the child care program.

In its policy, TWC should define the appropriate methods for obtaining needed input, such as through more formal means, like an advisory committee, or less formal means, such as time-limited workgroups, periodic surveys, and proactive communication with stakeholders through the agency's website.

Management Action – Nonstatutory

4.4 Direct TWC to evaluate measures of the child care program's effectiveness in its internal monthly performance analysis.

TWC should expand its performance management approach for the child care program to include outcomes and effectiveness data, and to regularly evaluate and use this information for determining any policy or administrative changes. TWC could use this information as it does other performance dashboard information it regularly evaluates to proactively identify performance issues and target technical assistance efforts.

4.5 Direct TWC to establish baseline board-level data on the Texas Rising Star program and evaluate impacts and trends as program changes progress.

4.6 Direct TWC to regularly gather feedback from boards on the quality of TWC's assistance in managing the child care program.

4.7 Direct TWC to establish and regularly update a consolidated policies and procedures manual for the child care program.

4.8 Require TWC to conduct a study on potential methods of providing incentives to encourage parents to choose providers with a Texas Rising Star designation.

TWC should evaluate and report on any strategies or incentives, such as changes to the reimbursement structure, to increase the number of parents choosing Texas Rising Star providers. The agency should report on the results of this study as part of its 2017 statutorily required report on the effectiveness of the child care program.

Issue 5

Students Need Better Career School Performance Information When Selecting Training Programs.

TWC regulates more than 500 career schools to ensure school quality and provide consumer protections to students. In regulating these institutions, TWC monitors student outcomes and provides consumer information students rely on to help them make informed decisions. However, the accuracy of student outcomes is difficult to ensure because TWC relies on schools to self-report outcome information and lacks a mechanism to adequately validate the reported information.

While collecting occupational information as part of employers' wage records provides an ideal way for TWC to validate career school outcomes, no comprehensive evaluation exists on the potential costs, benefits, and limitations of collecting and analyzing such information. Also, TWC fails to provide students with enforcement actions taken against career schools and has been unable to raise fees for many years because they are capped in statute.

Recommendations

Management Action – Nonstatutory

5.1 Direct TWC to evaluate the costs and benefits, as well as impact on employers, of collecting occupational information to verify educational outcomes, and report its findings to the Legislature.

TWC should study the overall impact of collecting employees' occupational information as part of employers' quarterly wage reports and report its findings to the Legislature by December 1, 2016. TWC should consider, at a minimum, the financial and other impacts on employers reporting the additional information, based on their size; overall costs to TWC to collect and analyze the additional occupational information; limitations in collecting and analyzing the additional information; and benefits to having the additional data and potential uses, including matching the occupations to educational outcomes, beyond career schools.

5.2 Direct TWC to provide a link to its Reality Check tool on its career schools webpage.

Better access to the Reality Check tool should allow individuals to estimate how much money they need for housing, utilities, transportation, clothes, health care, entertainment, and other expenses, and see which careers would most likely pay for those needs.

Change in Statute

5.3 Require TWC to make information on career school enforcement actions available to the public on its website.

This recommendation would require TWC to incorporate information on formal enforcement actions, such as administrative penalties, program revocations, and enrollment suspensions, into its existing career school directory to help prospective students make more informed decisions about the schools they consider.

5.4 Eliminate statutory career school fees and fee caps, and authorize TWC to set fees in rule.

This recommendation would give TWC the flexibility to adjust fees as appropriate, without needing legislation for each change. All fees would be set in rule, thus allowing the career school industry and the public to have input into the amounts. Fees would continue to be deposited to the General Revenue Fund, and the Legislature would set the fee recovery expectations through the appropriations process.

Issue 6

TWC's Appeals Process Lacks Certain Tools That Would Increase Consistency and Transparency.

TWC has the important responsibility of deciding whether an individual is entitled to UI benefits or unpaid wages. Once a decision is made, either party — usually an employee or employer — may appeal the decision. To help guide agency staff in making decisions and the parties in developing their cases, TWC created a publicly available precedent manual of UI cases. However, the wage claim program lacks a similarly developed manual to guide agency staff and parties to the claims, creating a greater risk for inconsistent decisions. As the agency establishes precedents for any administrative claim proceeding, it must take care to avoid creating broad agency policy when rulemaking with full public input is warranted.

Recommendations

Management Action – Nonstatutory

- 6.1 Direct TWC to create a searchable and publicly accessible precedent manual for wage disputes.**
- 6.2 Direct TWC to establish procedures and criteria for determining when policies clarified through precedents would be more appropriate for rulemaking.**

Issue 7

Texas Has a Continuing Need for the Texas Workforce Commission.

Texas clearly benefits from and has an ongoing need for TWC's workforce development and UI programs. In addition, the federal government largely funds and requires states to provide these services. While TWC has made strides to improve public access to the commission's open meetings, it does not provide easy access to written materials discussed in these meetings. This limits the ability of the public and other stakeholders to follow along and understand the commission's policymaking actions and deliberations.

Recommendations

Change in Statute

- 7.1 Continue the Texas Workforce Commission for 12 years.**

This recommendation would continue TWC as the agency responsible for administering the state's UI and workforce programs, and related activities.

Management Action – Nonstatutory

7.2 Direct TWC to provide greater public access to written materials up for discussion in its open public meetings to facilitate the public’s ability to follow and understand its deliberations.

Fiscal Implication Summary

Overall, the recommendations related to TWC would result in a positive fiscal impact of almost \$200 million and a reduction of 21 full-time employees over five years. Three of the seven TWC issues would have a fiscal impact, as described below.

Issue 1 — The transfer of vocational rehabilitation services from DARS to TWC would result in significant savings over time, particularly from the integration of DARS’ field staff into local workforce centers, but a precise estimate was not completed at the time of this report. Integrating the blind and general Vocational Rehabilitation programs would result in estimated savings of about \$896,000 in administrative costs and the elimination of 10 administrative and management staff positions for the 2016–2017 biennium. Annual savings thereafter would be \$1.8 million, with the elimination of 21 total staff. Since most of the savings of both the transfer of programs to TWC and the consolidation of DARS’ blind and general Vocational Rehabilitation programs would be in federal funds, the Legislature should consider redirecting the money into services to avoid the loss of these funds.

Issue 2 — Authorizing TWC to participate in the treasury offset program would result in revenue gain to the State of approximately \$47.7 million in fiscal year 2017, the first year that collections would start, all of which would be a gain to Texas’ UI Trust Fund. Just more than \$18 million would be returned to the U.S. Department of Labor (DOL) as reimbursement for overpayment of federal benefits. TWC also plans to use its UI administrative grant to cover estimated one-time costs of \$436,328 for programming of its automated systems to accommodate this new program. Overall impacts from the first four years after implementation would be about a \$145.9 million gain to the UI Trust Fund and a \$1.3 million gain to general revenue.

Issue 5 — Removing the career school fees and caps currently in statute would provide TWC with greater flexibility to set fees and although the agency would be able to increase fees, its budget would still be governed by the legislative appropriations process. Any increased revenue that might result could not be estimated for this report.

Texas Workforce Commission

Fiscal Year	Revenue Gain to UI Trust Fund	Revenue Gain to the General Revenue Dedicated Fund	Revenue Gain to the ETIA Holding Fund ¹	Amount Returned to DOL	Savings to Federal Funds	Savings to the General Revenue Fund	Change in FTEs From 2015
2016	\$0	\$0	\$0	\$0	\$0	\$0	0
2017	\$47,742,354	\$0	\$0	\$18,408,582	\$705,000	\$191,000	-10
2018	\$38,542,318	\$510,376	\$48,137	\$12,817,454	\$1,410,000	\$382,000	-21
2019	\$31,959,881	\$427,055	\$43,322	\$8,944,192	\$1,410,000	\$382,000	-21
2020	\$27,699,077	\$363,109	\$40,466	\$6,166,150	\$1,410,000	\$382,000	-21

¹ The Employment and Training Investment Assessment (ETIA) Holding Fund is a special trust fund outside the treasury set up to hold assessments of one-tenth of 1 percent of wages paid by employers per Texas Labor Code, Chapter 204, Section 204.121.

TEXAS WORKFORCE INVESTMENT COUNCIL

Faye Rencher, Project Manager

Council at a Glance

The Texas Workforce Investment Council (council) is a 19-member board that assists the governor and the Legislature with strategic planning for and evaluation of the Texas workforce system. Housed in the Office of the Governor, representation on the council includes five from business, five from labor, three from education, one from community-based organizations, and an ex officio voting member from each of the following state entities: the Texas Workforce Commission, Texas Education Agency, Texas Higher Education Coordinating Board, Texas Health and Human Services Commission, and Office of the Governor's Economic Development and Tourism Division.

The council's mission is to promote the development of a highly skilled and well-educated workforce for Texas. In addition to its responsibilities in state law, the council also serves as the State Workforce Investment Board under the federal Workforce Investment Act of 1998. The council's key duties include:

- strategic planning for the integration of system-wide workforce development services in Texas;
- evaluating the workforce development system by collecting and reporting performance measure data from agencies and employers to identify how well the state's workforce system is meeting the needs of employers and job seekers;
- producing research reports for the Office of the Governor, the Legislature, and others, on topics such as adult education and workforce trends; and
- reviewing state and local workforce plans to recommend final approval by the governor.

Without this council, Texas could lose \$160 million in federal funds.

The council also provides staff support for the Texas Skill Standards Board. The Legislature created the board in 1995 to develop a statewide system of skill standards for occupations with strong employment and earnings opportunities but requiring less than a baccalaureate degree.

Summary

Federal law requires a state-level board to plan, evaluate, and coordinate workforce-related services across employment, education, and human service agencies. Without such a council, Texas could lose \$160 million in federal funds. The Sunset Commission concluded that the functions of the council are needed and its organizational placement in the Governor's Office is appropriate.

However, the Sunset Commission found that the key tasks of the closely related Texas Skill Standards Board have largely been accomplished, and its remaining duties could be performed by the council, eliminating the need for this separate workforce-related board. The following material summarizes the Sunset Commission's recommendations on the Texas Workforce Investment Council.

Issue and Recommendations

Issue 1

Texas Has a Continuing Need for the Texas Workforce Investment Council and Would Benefit From Its Assumption of the Duties of the Texas Skill Standards Board.

The Texas Workforce Investment Council fulfills the federal requirement that states must maintain a state-level workforce development board to plan, evaluate, and coordinate workforce services. Texas benefits from having such an entity strategically plan for the integration of workforce services in Texas, and evaluate the effectiveness of the state's workforce system.

However, the Sunset Commission found that the Texas Skill Standards Board has accomplished most of its key tasks and concluded that the remaining duties could easily be absorbed by the council. Maintaining two separate governor-appointed boards when one could perform these duties is inefficient. The council's staff already provides administrative support to the Skill Standards Board, and the council's broader directive to promote the development of a well-educated, highly skilled workforce easily encompasses the board's duties.

Recommendations

Change in Statute

1.1 Continue the Texas Workforce Investment Council for 12 years and align its Sunset review with that of the Texas Workforce Commission.

This recommendation would continue the council to meet federal requirements. The council would continue to be administratively attached to the Governor's Office.

1.2 Abolish the Texas Skill Standards Board and transfer its powers and duties to the Texas Workforce Investment Council.

Under this recommendation, the Texas Skill Standards Board would cease to exist and the council would take over responsibility for developing and maintaining the statewide system of industry-defined and industry-recognized skill standards and credentials for all major skilled occupations. This recommendation would fully integrate the board's functions into the council, effectively streamlining the administration of related workforce development functions under a single entity. These changes would take place on September 1, 2015.

Fiscal Implication Summary

None of the recommendations regarding the council would have a fiscal impact to the State.

TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

Erick Fajardo, Project Manager

Council at a Glance

To receive federal funding through the federal Developmental Disabilities Assistance and Bill of Rights Act, states must establish and maintain a state council for developmental disabilities. In Texas, the Texas Council for Developmental Disabilities (TCDD) serves in this role. The federal government funds TCDD — about \$5 million annually — to engage in advocacy, capacity building, and systemic change activities that promote self-determination for people with developmental disabilities and their families.

TCDD's mission is to create change so that all people with developmental disabilities are fully included in their communities and exercise control over their own lives. Although TCDD does not provide any direct services, it carries out the following key activities to achieve its mission.

TCDD does not track outcomes of its grant-funded projects.

- Developing Texas' federally approved state plan that guides TCDD's advocacy, capacity building, and systemic change activities.
- Awarding and monitoring grants to state agencies, universities, nonprofit organizations, and for-profit businesses for projects that meet the TCDD State Plan goals.
- Providing input and recommendations to state agencies and legislators about ways to improve the services available to people with developmental disabilities.

The 27-member council governs TCDD and its 14 staff. The federal Act allows the State to designate an agency to provide administrative support to TCDD, but it cannot be an agency that directly provides or pays for services to people with developmental disabilities. As a result, TCDD is administratively attached to the Texas Education Agency.

Summary

Beginning in the 1960s, the federal government and, soon thereafter, state governments recognized that people with disabilities faced exclusion from many areas of public and private life because services at that time were predominantly oriented towards institutionalization. The federal government established state councils for developmental disabilities to explore a broader range of services

beyond institutionalization, and to provide people with disabilities and their families access to the decision-making process on these services. Today, Texas, like every U.S. state and territory, has a state council for developmental disabilities.

While Texas continues to need a state council for developmental disabilities to receive certain federal funds, the Sunset Commission found TCDD needs to set clear expectations for and better track the long-term outcomes of its grant-funded projects after grant funding ends. Without this information, whether grants have been effective and the overall impact of TCDD's work is unclear. The following material summarizes the Sunset Commission's recommendations on TCDD.

Issue and Recommendations

Issue 1

The Texas Council for Developmental Disabilities Should Be Continued, but Should Better Track the Outcomes of Its \$4 Million Grant Program.

Texas needs a state council on developmental disabilities to continue to receive federal funds to identify the most pressing needs of Texans with developmental disabilities and advance public policy and systems change to allow them to gain more control over their lives. TCDD's primary activity is awarding grants for projects intended to foster innovation in services provided to people with developmental disabilities and expand state capacity within these services. However, TCDD does not set clear expectations for or track the sustainability and ongoing impact of grant projects designed to continue beyond the funding period.

Recommendations

Change in Statute

1.1 Continue the Texas Council for Developmental Disabilities for 12 years.

Management Action – Nonstatutory

1.2 Direct TCDD to track the five-year outcomes of grant projects designed to continue beyond the TCDD funding period and compare actual outcomes to intended outcomes.

Under this recommendation, TCDD should determine the desired outcomes for each funded grant project, including any outcomes beyond the end of grant funding, and track these outcomes five years after project completion. TCDD could require grantees to submit data to TCDD after grant funding has ended as part of the grant contract. For grant projects intended to continue, TCDD should compile information on their status and annually report this information.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State.

GOVERNOR'S COMMITTEE ON PEOPLE WITH DISABILITIES

Erick Fajardo, Project Manager

Committee at a Glance

The Governor's Committee on People with Disabilities (committee) is a trustee program within the Office of the Governor that supports opportunities for people with disabilities to enjoy full and equal access to lives of independence, productivity, and self-determination. To achieve this mission, the 12-member committee and its five staff carry out the following key activities with an operating budget of about \$314,000.

- Serving as a source of information and education on the abilities, rights, problems, and needs of people with disabilities.
- Advising the governor and Legislature on matters related to full participation of people with disabilities in all aspects of life, including developing policy recommendations.
- Providing technical assistance to stakeholders and the public on navigating services and laws related to people with disabilities.
- Collaborating with mayor's committees on people with disabilities; federal, state, and local entities; and public and private businesses on issues related to people with disabilities.
- Providing recognition of individuals and organizations that perform exemplary work in improving the quality of life for people with disabilities.

The committee's statutory duties extend beyond what it can realistically accomplish.

Summary

In 1991, the Legislature established the committee in statute and placed it within the Governor's Office. Being a trustee program within the Office of the Governor elevates the committee's status, but the Sunset Commission found that several of the committee's statutory requirements extend beyond what it can realistically accomplish with its current resources, particularly since the committee has operated with significantly less funds than it has been appropriated for several years, resulting in a large unexpended balance. The following material summarizes the Sunset Commission's recommendations on the committee.

Issue and Recommendations

Issue 1

The Statutory Duties of the Governor's Committee on People with Disabilities Do Not Align With Its Current Resources and Capabilities.

Several of the committee's statutory requirements do not align with its primary purpose, duplicate the work of other governmental entities, are no longer necessary, or extend beyond what the committee can realistically accomplish. The committee also needs to ensure that it has the necessary resources to carry out its responsibilities since it has operated with significantly less funds than the Legislature has appropriated it for several years, resulting in an unexpended balance of more than \$641,600 as of fiscal year 2014.

Recommendations

Change in Statute

1.1 Continue the Governor's Committee on People with Disabilities for 12 years.

This recommendation would continue the Governor's Committee on People with Disabilities as a trusted program within the Office of the Governor until 2027.

1.2 Remove provisions from the committee's statute that do not align with the committee's purpose and resources.

Under this recommendation, the committee would no longer be required to:

- collect data and provide reports on the State's compliance with the ADA and other federal and state statutes related to the rights and opportunities of people with disabilities;
- create a long-range state plan for persons with disabilities and recommendations to implement the plan (replaced by Recommendation 1.3); and
- collect and evaluate data on employment of persons with disabilities by state agencies.

Removing these provisions would more clearly define the committee's actual responsibilities and remove requirements to collect data that are not available, thus allowing the committee to focus on the duties it can realistically accomplish.

1.3 Require the committee to maintain and analyze information provided in the State's various long-range plans for people with disabilities.

This recommendation would require the committee to collect and publish the links to all long-range plans for people with disabilities created by state agencies and their associated committees. The committee would also be required to review the long-range plans to identify any gaps in state laws and services for people with disabilities.

Management Action – Nonstatutory

- 1.4 Direct the committee to provide information on disability-related services on its website.
- 1.5 Direct the Governor’s Office and the committee to work together to re-evaluate the amount of funding necessary for the committee to carry out its functions, and to ensure its legislative appropriations request and budget reflect the actual fiscal needs of the committee.

Change in Appropriation

- 1.6 The Senate Finance and House Appropriations committees should consider using the committee’s unexpended balance as a method of finance for a portion of the committee’s appropriations for fiscal years 2016–2017.

Fiscal Implication Summary

These recommendations could result in a small savings to the State. Adjusting the committee’s legislative appropriations request and budget to reflect its actual fiscal needs should result in a decrease in the amount appropriated to the committee, providing a small savings to the State. Using the committee’s unexpended balance as a method of finance for a portion of the committee’s appropriations for fiscal years 2016–2017 would result in a one-time savings of \$641,600 to general revenue.

**Governor’s Committee on
People with Disabilities**

Fiscal Year	Savings to the General Revenue Fund
2016	\$641,600
2017	\$0
2018	\$0
2019	\$0
2020	\$0

TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

Erick Fajardo, Project Manager

Council at a Glance

The Texas Council on Purchasing from People with Disabilities (TCPPD) oversees the State Use Program, a statutory mandate that requires state agencies to purchase, on a noncompetitive basis, products and services provided by people with disabilities. Products available through the State Use Program range from office supplies to food items, to more specialized items like drug test and vaccination kits. Examples of services offered include temporary employment, landscaping and park maintenance, janitorial, and document imaging services. The purpose of the State Use Program is to enable people with disabilities to achieve maximum independence through useful and productive employment. In fiscal year 2013, the program employed 6,424 people with disabilities.

The State has no yardstick by which to determine the success of the State Use Program.

TCPPD's mission is to provide leadership and direction for the State Use Program. To achieve its mission, TCPPD performs the following key activities.

- Designing, executing, and overseeing a contract with a central nonprofit agency, currently TIBH Industries, to administer the State Use Program.
- Establishing criteria for and certify all community rehabilitation programs (CRPs) that participate in the State Use Program.
- Approving products and services to be set aside for noncompetitive purchase through the State Use Program.
- Determining the fair market price and value-added of all products and services provided through the State Use Program.

TCPPD employs one staff member to provide administrative support to the nine-member council and receives legal and other support from the comptroller. TCPPD does not receive a state appropriation. Instead, TCPPD is funded annually from a portion of the management fee collected on the sales of goods and services through the State Use Program. In fiscal year 2013, 128 state agencies and 78 political subdivisions paid \$7.5 million in management fees when purchasing \$40.8 million in products and \$93.6 million in services from the program. TCPPD received \$96,042 for its operations, with the remainder of the management fee revenue going to the CRPs and TIBH Industries.

Summary

The Legislature established the State Use Program in 1975 as a partnership between state government and private nonprofit entities to promote employment opportunities for Texans with disabilities. The Sunset Commission determined that despite the evolution of federal and state standards for employment services for people with disabilities, TCPPD and the State Use Program have not kept pace with these changes. TCPPD has not set meaningful goals or performance measures for the program and does not measure how people with disabilities actually benefit from the program. Without this information, it is unclear whether the supposed benefits the State Use Program provides outweigh the additional costs of the program to the State. The following material summarizes the Sunset Commission's recommendations on TCPPD.

Issues and Recommendations

Issue 1

The Texas Council on Purchasing from People with Disabilities Does Not Ensure that the State Use Program Most Effectively Serves People With Disabilities.

The goal of the State Use Program is to assist people with disabilities in achieving maximum independence through useful and productive employment activities, while providing state agencies a method for complying with the statutory purchasing preference the Legislature granted to goods and services provided by people with disabilities. TCPPD, which oversees the program, does not adequately gather, analyze, and use meaningful outcome data to assess how well the program serves people with disabilities. TCPPD has not implemented changes to the State Use Program that would modernize the program and advance the State's standards on employment services for people with disabilities. TCPPD has failed to fully define the intended benefits of the program. Finally, TCPPD, a part-time, voluntary council, duplicates many of the product pricing and contract oversight functions housed at the comptroller's office.

Recommendations

Change in Statute

1.1 Place oversight and administration of the State Use Program at the comptroller's office and abolish the Texas Council on Purchasing from People with Disabilities.

This recommendation would make the Procurement and Support Services Division of the Comptroller of Public Accounts responsible for the administration and oversight of the State Use Program. Transferring TCPPD's functions to the comptroller would ensure active oversight of the State Use Program and that the program benefits people with disabilities. The comptroller has greater expertise to ensure compliance with standards that provide direction and measurable outcomes for the program. Additionally, the comptroller's pricing expertise would provide better oversight of the products and services set-aside from the competitive state purchasing marketplace.

1.2 Require the comptroller's office to establish an advisory committee to set goals for the State Use Program and standards for participating community rehabilitation program certification.

This advisory committee would provide input on the rules the comptroller establishes to guide the State Use Program in accordance with the policies established by the Employment-First Task Force. This committee would also ensure people with disabilities and their advocates serve a role in the development of the program's direction and objectives. Balancing the comptroller's experience in contract oversight and fair market pricing with the advisory committee's perspective on employment for people with disabilities would provide much needed direction and oversight to improve the program.

The committee would consist of nine members, including two representatives from participating CRPs, three representatives from advocacy groups for people with disabilities, one representative from the agency that provides vocational rehabilitation services to people with disabilities, and at least three people with disabilities, one of whom is employed by a CRP that participates in the State Use Program.

Performance goals and measures should relate to the persons with disabilities employed by the program, including their average hourly wage and annual salary, number of hours worked, and training received. Other measures should track the number of people paid less than minimum wage, type of work performed, and any other measures deemed necessary by the advisory committee and the comptroller.

Management Action – Nonstatutory

1.3 Direct the comptroller's office to re-evaluate the process for conducting community rehabilitation program compliance monitoring.

1.4 Direct the comptroller's office to work with the central nonprofit agency to study the cost to the State of continuing to administer the State Use Program.

This study will enable the Legislature to effectively weigh the costs and benefits of the State Use Program to make an informed decision about whether the program merits continued investment or whether other programs for employment of people with disabilities could provide greater impact and value.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State. The comptroller's office estimates three full-time staff would be needed to oversee the program and the one existing employee dedicated to the council would no longer be needed, resulting in an increase of two full-time equivalent employees at the comptroller's office. However, the central nonprofit agency would continue to reimburse the State for the costs to fully administer the State Use Program including any additional costs of running and overseeing the program and costs associated with the advisory committee.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS TAX

DIVISION

Eric Beverly, Project Manager

Agency at a Glance

The State Office of Administrative Hearings (SOAH), established in 1991, serves as the State's independent centralized administrative hearing tribunal to conduct unbiased contested case hearings and alternative dispute resolution proceedings for state agencies. SOAH's mission is to conduct these proceedings in a fair, prompt, and efficient manner, and to provide fair, logical, and timely decisions. The agency carries out its mission through the following key activities.

- Conducting administrative hearings for contested cases involving disputes between state agencies and private parties, and issuing final decisions or proposals for decision used by agencies to make a final determination.
- Performing alternative dispute resolution, such as mediation, to assist parties involved in contested cases to come to an agreement to avoid more costly and lengthy administrative hearings.
- Overseeing contested case hearings for the Texas Department of Public Safety (DPS) and issuing final decisions concerning individuals who have their driver's license suspended for allegedly driving while intoxicated.
- Handling contested cases for the Comptroller of Public Accounts dealing with the collection, receipt, administration, and enforcement of state taxes and fees.

SOAH efficiently provides a needed and independent venue for contested matters.

Summary

The Legislature's decision in 1991 to create SOAH set Texas administrative law on a course for increased independence, impartiality, fairness, and efficiency. The Sunset Commission found SOAH provides a needed and independent venue for contested matters, produces quality decisions that are rarely overturned, and does its work in a timely manner. In evaluating the efficiency of having a separate, independent state agency to conduct contested case hearings, the Sunset Commission found SOAH performs more work today with fewer resources than it did during its last Sunset review in 2002. However, the Sunset Commission identified the need to further strengthen SOAH's independence, improve its management of staff and diverse caseload, and stabilize its funding to make revenue, and budgeting, more predictable.

Statute also required Sunset to conduct a special purpose review of SOAH's tax division, whose functions were transferred from the comptroller's office in 2007. Responsibility for conducting these tax hearings will revert back to the comptroller's office on September 1, 2015 unless specifically continued at SOAH. The Sunset Commission determined tax hearings should continue at SOAH, but several safeguards initially put in place when the transfer occurred are now problematic and should be removed to ensure SOAH's independence.

Finally, the Sunset Commission found little basis for commonly heard complaints such as SOAH taking too long to hold hearings and make decisions, or that its administrative law judges lack expertise needed to handle certain cases, but did find room for improvement in providing informational materials to parties without legal representation. The following material summarizes the Sunset Commission's recommendations on SOAH.

Issues and Recommendations

Issue 1

SOAH's Budget Planning and Billing Processes Do Not Effectively Target and Fund the Agency's Needs, Jeopardizing the Agency's Operations.

In fiscal year 2013, SOAH spent \$9.1 million — one-third from general revenue, one-third from highway funds, and one-third from interagency contracts. Unfortunately, SOAH has difficulty predicting work that will come from each agency, leading to inaccurate budget estimates and lapsed funds. Although statute requires agencies that contract with SOAH to pay up-front, lump-sum payments annually, SOAH has not enforced this payment method. The Sunset Commission also found SOAH's hourly rate is too low to cover its costs, while the amount of funding to conduct hearings for the Texas Commission on Environmental Quality (TCEQ) is too high. SOAH also lacks formal budget controls necessary to ensure it maintains and reports accurate financial and performance data.

Recommendations

Change in Statute

1.1 Authorize SOAH to adjust its hourly rate to recover the full cost of services.

This recommendation would give SOAH clear authority to set its hourly rate to recover costs and end the practice of using general revenue to subsidize the costs of its contract-funded hearings. SOAH would not have an incentive to overcharge agencies because the Legislature would retain oversight of SOAH's funding through the appropriations process.

1.2 Require agencies contracting for services with SOAH to send their caseload projections to SOAH and the Legislative Budget Board each biennium.

This information would help SOAH develop its legislative appropriations requests and ensure it has information to calculate accurate caseload projections.

1.3 Authorize agencies to make up-front, lump-sum payments to SOAH annually or quarterly and only require adjustments if actual costs are not within 10 percent of projections.

This recommendation would allow agencies contracting for services to make fixed annual or quarterly payments to SOAH at the beginning of the payment period before SOAH renders services. If actual costs are no more than 10 percent above or below projected costs, SOAH would not charge extra to cover shortfalls and would keep excess funds. Ultimately, this recommendation would reduce the administrative burden from billing after rendering services and allow SOAH to pool its contract funds to ensure adequate cash flow throughout the year.

Management Action – Nonstatutory

1.4 Direct SOAH to evaluate, on a regular basis, the effectiveness of its caseload projections to predict actual caseload and report this information to the Legislative Budget Board.

1.5 Direct SOAH to require all agencies contracting for services to pay lump-sum amounts upfront.

Contracting agencies could make up-front payments on either a quarterly or annual basis.

1.6 Direct SOAH to evaluate and improve its budget control processes and policies.

To ensure SOAH continues reforms based on recent audit findings to improve and make its budgeting process more accurate, the agency should identify where additional budgetary controls, such as formal reviews of budget spreadsheets, are needed and formalize its budget control processes by developing and adopting written policies and procedures.

Change in Appropriation

1.7 The Senate Finance and House Appropriations committees should consider removing the requirement that TCEQ pay SOAH \$1 million, regardless of actual costs.

This recommendation expresses the will of the Sunset Commission that the Senate Finance and House Appropriations committees consider removing the requirement in SOAH's appropriations bill pattern that requires TCEQ to pay \$1 million for contested case hearings, regardless of actual caseload. Instead, TCEQ's lump-sum payments would be based on average costs over the last three years, like most other agencies paying SOAH by contract. This change would better reflect TCEQ's actual costs, greatly reducing the likelihood of excess funds remaining unspent at the end of the fiscal year.

Issue 2

SOAH Lacks Organizational Flexibility and Certain Management Tools to Best Manage the Agency.

Statutory requirements that SOAH maintain specific divisions for tax, utility, and natural resource conservation cases limits its flexibility to restructure staff to streamline operations and meet changing demands. SOAH's performance evaluation process also needs improvement, including enhanced performance feedback for mid-level managers and field offices. In addition, SOAH needs additional tools and policies to bolster managers' training and oversight of judges, and ensure judges meet deadlines and performance targets.

Recommendations

Change in Statute

2.1 Remove the statutory requirements for SOAH to maintain separate tax, natural resource conservation, and utility divisions.

This recommendation would give SOAH flexibility to organize as necessary to deal with workload requirements. Since experience requirements for judges are important to ensure needed expertise rather than organizational structure, this recommendation would not affect existing experience requirements of judges who hear contested matters for the Public Utility Commission, TCEQ, and the comptroller's office.

2.2 Require referring agencies to provide SOAH with a copy of their final orders.

Under this recommendation, when SOAH issues a proposal for decision to a referring agency that makes the final decision, that agency would send an electronic copy of the final order to SOAH. This recommendation ensures SOAH has the information necessary to track and report appropriate performance measures and to evaluate modified and overturned proposals for decision to help identify trends and areas for improvement.

Management Action – Nonstatutory

2.3 Direct SOAH to improve its performance evaluation process.

Under this recommendation, SOAH should enhance its performance evaluation process by increasing opportunities for employee input, clarifying guidelines for promotions, and making its managers' meetings to discuss employee performance more transparent.

2.4 Direct SOAH to improve and formalize certain management tools.

This recommendation directs SOAH to strengthen its management training, establish clear procedures for monitoring hearing deadlines, and ensure judges' performance is reviewed and evaluated to identify ways to improve the hearing process and quality of decisions.

2.5 Direct SOAH to track and analyze informal complaints and improve its customer service survey.

Issue 3

Contested Tax Case Hearings Should Continue at SOAH, but With Greater Independence.

Since 2007, SOAH's tax division has conducted hearings for taxpayers who contest actions taken by the comptroller when collecting and enforcing certain taxes, such as sales and use or franchise taxes. The Sunset Commission found SOAH has become efficient at handling these tax hearings and employs highly qualified tax judges who produce good decisions that are rarely overturned. As a result, the Commission determined SOAH should continue to conduct these tax hearings to ensure fairness and impartiality, but that SOAH's independence should be improved.

Recommendations

Change in Statute

3.1 Continue tax hearings at SOAH and remove the separate Sunset date for the tax division.

Under this recommendation, tax hearings would remain at SOAH and be reviewed with all of the agency's other functions as part of its future Sunset reviews.

3.2 Remove outdated provisions that give the comptroller undue and unnecessary authority over tax cases and judges.

To address the perception that the comptroller can exercise undue influence over SOAH's tax decisions, this recommendation would remove the requirement that the comptroller provide SOAH with the comptroller's priorities and policy needs. The comptroller's authority to evaluate tax judges' performance and approve their assignment to non-tax cases would also be removed.

3.3 Change the statutory experience requirements for administrative tax law judges.

This recommendation would remove the problematic statutory requirement that SOAH tax judges have devoted at least 75 percent of their legal practice to Texas tax law in at least five of the last 10 years. However, this recommendation would retain other statutory experience requirements for tax judges, such as having substantial tax experience and at least seven years practicing law.

Issue 4

The State's Approach to Processing Administrative License Revocation Hearings Leads to Delays and Lacks Efficiency.

Administrative license revocation (ALR) hearings for drivers who have allegedly driven while intoxicated accounted for 84 percent of SOAH's caseload in fiscal year 2013. Unlike any other hearings held at SOAH, the agency referring the cases, DPS, schedules initial hearing dates and continuances. This shared responsibility for docketing cases has led to communication breakdowns between the agencies, scheduling confusion, unnecessary surges in SOAH's workload, and delays. SOAH's productivity in conducting ALR hearings is further constrained by DPS' docketing system as well as its own teleconferencing technology, which is often insufficient and unreliable.

Recommendations

Change in Statute

4.1 Transfer docketing responsibilities for ALR hearings from DPS to SOAH through a memorandum of understanding.

This recommendation would require SOAH and DPS to develop and adopt a memorandum of understanding (MOU) no later than September 1, 2016 establishing that SOAH has primary scheduling responsibility for ALR hearings. The MOU would set out the roles and responsibilities of each agency in the ALR hearing process, ensure timely access to scheduling and continuance information, and transfer funding for three full-time equivalent employees that DPS currently uses for ALR docketing when SOAH assumes responsibility for initial scheduling of ALR hearings.

Management Action – Nonstatutory

4.2 Direct SOAH to centralize or otherwise significantly improve its telephonic ALR hearings and take advantage of current technology for conference calls.

Issue 5

Statute Does Not Provide Clear Authority to Allow Referring Agencies to Informally Dispose of SOAH's Default Cases.

If a party fails to appear for a SOAH hearing and does not bear the burden of proof, the Administrative Procedure Act allows an administrative law judge to proceed in the party's absence. In these default cases, the judge may issue a formal proposal for decision or issue a dismissal order and return the case to the referring agency for informal disposition, which is more efficient for both SOAH and the referring agency. While SOAH's procedural rules provide for a clear and efficient process to dismiss default cases, statute is unclear as to whether referring agencies may rely on this authority.

Recommendation

Change in Statute

5.1 Specifically authorize SOAH to remand default cases back to the referring agencies for informal disposition.

This recommendation would authorize a referring agency to apply its own rules or SOAH's procedural rules to informally dispose of default cases, but would not apply to a contested case in which the SOAH judge is authorized to render a final decision.

Issue 6

Parties Without Attorneys Need Access to Quality, Detailed Information About the SOAH Hearing Process.

SOAH hearings can be difficult to navigate since they are governed not only by SOAH's procedural rules and the referring agency's statute and substantive rules, but also the Administrative Procedure Act, the Texas Rules of Evidence, and parts of the Texas Rules of Civil Procedure related to discovery. While SOAH is not a traditional court, its decisions and proposals for decision carry considerable weight and can result in significant outcomes like the revocation of a person's occupational license. Since the State is not required to provide an attorney, many parties to SOAH cases represent themselves *pro se*. The Sunset Commission found a high level of dissatisfaction among these *pro se* parties who reported feeling unprepared and overwhelmed by SOAH's hearings process.

Recommendations

Management Action – Nonstatutory

- 6.1 Direct SOAH to develop and maintain a comprehensive, plain-language guide for *pro se* parties.
- 6.2 SOAH should require notices of hearing to include information about and a link to the *pro se* guide.

Fiscal Implication Summary

These recommendations could result in a savings of about \$500,000 annually to the General Revenue Fund, likely offset by costs to other state agencies, and a savings to TCEQ of about \$500,000 annually.

Issue 1 — The recommendation to authorize SOAH to adjust its hourly rate to recover the full cost of services should result in a reduction of SOAH’s general revenue funding by about \$500,000 annually, but most of this amount would be offset by an increase in costs for contract agencies from raising SOAH’s hourly rate. Removing the requirement in the General Appropriations Act that TCEQ pay SOAH \$1 million, regardless of actual costs, could result in a savings to TCEQ of about \$500,000 annually if the Legislature chooses to bring these payments to SOAH more in line with actual costs.

Issue 4 — The recommendation shifting docketing responsibilities for ALR hearings from DPS to SOAH through an MOU would require DPS to transfer funding for three full-time equivalent employees that DPS currently uses for ALR docketing, but not until SOAH assumes responsibility for initial scheduling of ALR hearings.

State Office of Administrative Hearings

Fiscal Year	Savings to the General Revenue Fund	Cost to Contract Agencies	Savings to TCEQ Funds*
2016	\$500,000	\$500,000	\$500,000
2017	\$500,000	\$500,000	\$500,000
2018	\$500,000	\$500,000	\$500,000
2019	\$500,000	\$500,000	\$500,000
2020	\$500,000	\$500,000	\$500,000

* TCEQ pays for SOAH hearings from four general revenue dedicated accounts. In fiscal year 2013, about \$100,000 came from the Clean Air Account 0151, \$85,000 from Petroleum Storage Tank Account 0655, \$120,000 from Waste Management Account 0549, and \$174,000 from Water Resource Management Account 0153.

TEXAS EDUCATION AGENCY

TEXAS EDUCATION AGENCY — CONTRACTING PROCEDURES FOR ASSESSMENT INSTRUMENTS

Karen Latta, Project Manager

Agency at a Glance

The Texas Education Agency (TEA) oversees the state's elementary and secondary public education system, providing leadership, guidance, and resources to help schools meet the educational needs of all students. The agency performs the following activities to achieve its mission.

- Distributing state and federal funding to public schools.
- Administering the statewide standardized testing program and accountability systems.
- Providing assistance to and imposing interventions and sanctions on public schools, including charter schools, that consistently fail to meet the state or federal accountability standards.
- Providing support to the State Board of Education in developing statewide curriculum standards, adopting instructional materials, managing the instructional materials allotment and distribution process, and carrying out duties related to the Permanent School Fund.
- Collecting a wide array of educational and financial data from public schools.
- Performing the administrative functions and services of the State Board for Educator Certification to certify educators, regulate educator preparation programs, and take enforcement action in cases of educator misconduct.
- Monitoring schools for compliance with certain federal and state guidelines.

Despite progress, TEA still must address concerns about the oversight and transparency of its student assessment contract.

During the 2013–14 school year, Texas' public education system consisted of 1,230 active local education agencies, including 202 charter school districts. Statewide, this system served more than 5.1 million students with nearly 340,000 classroom teachers in about 8,600 schools.

Summary

The Sunset Commission's limited scope review of the TEA follows up on the full Sunset review of the agency conducted in 2012. At that time, the Sunset Commission adopted and forwarded recommendations on TEA to the 83rd

Legislature to reshape and focus the role and priorities of the agency. The Sunset Commission's 56 statutory recommendations were incorporated into Senate Bill 218. The Senate Education Committee reported the bill out, but in the end, S.B. 218 never came up on the Senate floor. In a separate bill, the Legislature continued TEA for two years and focused this current Sunset review on evaluating the ongoing appropriateness of the original recommendations adopted by the Sunset Commission in January 2013.

The 83rd Legislature also directed the Sunset Commission to evaluate the contracting procedures used by TEA to enter into a contract with a provider to develop or administer student assessment instruments and present recommendations to the 84th Legislature. The Sunset Commission conducted this evaluation in conjunction with the limited scope review of TEA and found that the agency has made progress in improving its procurement process for and oversight of the student assessment contract. However, TEA still must address concerns about the oversight and transparency of this and other large contracts to ensure the Legislature and the public have confidence that the State gets what it pays for and that the agency maintains an arms-length relationship with its vendors.

Based on the re-examination, the Sunset Commission concluded that most of the previous recommendations remain appropriate, and that TEA continues to need statutory authority and direction to implement them. Since the 83rd Legislature adopted 11 Sunset recommendations related to adult education, charter school regulation, and financial accountability in other legislation, no further action is necessary on those topics. The following material summarizes the Sunset Commission's recommendations on TEA.

Issues and Recommendations

Issue 1

While TEA Has Improved Oversight of Its Large and Complex Student Assessment Contract, Further Work Is Needed.

TEA contracts with NCS Pearson Inc. for many of its student assessment functions, paying the company \$438.3 million over a five-year period. This contract ends in August 2015, and the agency is currently in the process of re-procuring the services. Due to its size and complexity and TEA's long-standing relationship with this one vendor, the contract has been the subject of much scrutiny by the Legislature. Further, in July 2013, the State Auditor's Office performed a comprehensive audit of TEA's contracting practices and made many recommendations to improve the agency's oversight of the assessment contract. TEA is making progress in addressing the auditor's recommendations and other lessons learned. However, the agency needs to further improve the oversight and transparency of the assessment contract and other large contracts.

Recommendations

Management Action – Nonstatutory

1.1 TEA should provide comprehensive information online about the student assessment procurement process and contracts to improve transparency.

TEA should provide this information on its website, including, at a minimum, the solicitation, contracts, and contract amendments. In addition, TEA should use this transparent approach for its other major contracts.

1.2 TEA should allow sufficient time for vendors to submit proposals for major contracts.

TEA has a history of providing short timeframes for key steps in its contracting process, resulting in limited competition for major contracts. While TEA extended the timeline for the new student assessment contracts, this recommendation directs the agency to consider extending the amount of time it usually provides vendors to respond to solicitations for other large contracts.

1.3 TEA should provide more centralized contract oversight and develop monitoring plans for all major contracts.

To enhance oversight, TEA should assign a contract administration manager from its Purchasing and Contracts Division to each of its major contracts. These managers would work with program staff to develop plans for overseeing and monitoring each major contract to ensure the agency receives what it pays for and that vendors comply with their contracts. For each of its major contracts, TEA should tailor a plan to establish a clear division of monitoring responsibilities and tasks, set clear expectations for monitoring activities, and define mechanisms for evaluating contract changes.

Issue 2

TEA Does Not Effectively Manage Public Involvement to Obtain the Greatest Value From Its Stakeholder Input.

TEA has a large and diverse group of stakeholders interested in and affected by the policy decisions of the agency. While TEA makes many efforts to gather stakeholder input, including the use of many advisory committees and workgroups, the agency lacks a comprehensive approach to managing these efforts to ensure it gets the most benefit from the input provided.

Recommendations

Change in Statute

2.1 Require TEA to develop and implement a policy to guide and encourage more meaningful and comprehensive stakeholder involvement efforts.

This recommendation would require TEA to develop a new policy to guide its overall approach to public involvement, including consideration of more proactive stakeholder engagement, formal and informal methods of stakeholder input, easy access to meetings and meeting materials, and clear information about opportunities for stakeholder input and the results of stakeholder input.

2.2 Require TEA to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.

TEA would adopt rules, in compliance with general advisory committee requirements in Chapter 2110 of the Texas Government Code, regarding the purpose, tasks, manner of reporting, and abolishment dates for each of its advisory committees, regardless of whether the committee was created in statute or by the commissioner. This recommendation would apply to any committee or council whose primary function is advising the commissioner or TEA staff.

Issue 3

Regulating the Private Driver Training Industry Does Not Match TEA's Public Education Mission.

TEA regulates more than 1,000 private driver education and driving safety schools and nearly 3,000 instructors who teach at those schools. This activity is simply a business regulatory function unrelated to the agency's education role. The public schools that still teach driver education are exempt from this state-level regulation. Due to its ties to the safety of citizens and the court system, regulation of these private businesses is still necessary. However, this regulatory function does not fit TEA's mission. The Sunset Commission also applied licensing best practices to the driver training statute, resulting in several recommendations to increase the effectiveness and fairness of the regulation.

Recommendations

Change in Statute

3.1 Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation (TDLR).

Under this recommendation, TDLR, the state's business and occupational regulatory agency, would regulate the private driver training industry and develop driver education curriculum, with help from the advisory committee established below. TEA would continue to maintain rules regarding driver education in public schools.

3.2 Require the Commission of Licensing and Regulation to establish an advisory committee to provide technical expertise from the driver training industry.

This recommendation would ensure the board that governs TDLR can obtain expertise, when needed, on rules and standards related to the driver training industry. The presiding officer of the commission, with the commission's approval, would appoint seven members to the advisory committee for six-year staggered terms. Representation on the committee would include one driver education school, one driving safety school, one course provider, one instructor, one Department of Public Safety employee, and two public members.

3.3 Remove the statutory requirement to license driver training school directors, assistant directors, and administrative staff.

These licensure requirements have no public safety benefit. The recommendation would eliminate the unnecessary requirement that these administrative staff at driver training schools meet education and experience requirements, be licensed, and pay fees.

3.4 Remove fixed driver training fee amounts and fee caps from statute.

All fees would be set by rule, allowing for public comment, including industry input, on any fee adjustments.

3.5 Require TDLR to maintain information on driver training complaints.

TDLR would develop and maintain files on all complaints received, ensure that all parties to a complaint are made aware of the status of the complaint until resolution, and ensure all parties are made aware of the agency's approach to complaint investigation.

3.6 Increase the driver training statute's maximum administrative penalty from \$1,000 to \$5,000 per day, per violation.

This recommendation would make the driver training statute consistent with other licensing statutes. As a cap, this maximum penalty would be applied only to the most serious offenses.

3.7 Require TDLR to use the State Office of Administrative Hearings to conduct hearings on driver training enforcement cases.

The Commission of Licensing and Regulation would hold final authority on decisions, as is standard in the Administrative Procedure Act.

Management Action – Nonstatutory

3.8 TEA and TDLR should develop a transition plan for the transfer of driver training regulation.

Transition planning should begin upon passage of the legislation, and the transition plan should include a timetable with specific steps and deadlines needed to carry out the transfer; a method to transfer all program and personnel records to TDLR; steps to ensure against any unnecessary disruption in services to licensees and driver training students; and other steps necessary to complete the transition of programs.

3.9 TDLR should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner.

3.10 TDLR should make public final driver training school disciplinary orders and sanctions on its website.

Issue 4

Outdated and Unnecessary Statutory Provisions Divert TEA's Focus From Its Core Functions.

TEA's loss of staff necessitates a reduction in its responsibilities, especially those that are not key to overseeing the state's public education system. Several statutory requirements are no longer necessary or useful, and several functions and required reports are redundant or do not provide value to the State.

Recommendations

Change in Statute

4.1 Eliminate one academic performance indicator that is no longer applicable under the current testing system.

This recommendation would remove the academic performance indicator regarding the percentage of students of limited English proficiency exempted from the state standardized test, which is obsolete.

4.2 Eliminate the campus distinction designation committees.

The academic achievement distinction designation committee has already completed its work, and is no longer necessary. Further, since TEA is no longer required to develop criteria for awarding campus distinction designations for other areas of achievement, the related committees are also no longer necessary.

4.3 Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.

This recommendation would remove the prescriptive statutory list of items required to be considered in the evaluation of open-enrollment charter schools. In its place, statute would require the agency to designate an impartial organization to evaluate the cost, performance, or other aspects of charter school regulation, as determined by the commissioner. Rather than annually, this recommendation would require TEA to conduct the evaluation once every four years. TEA would report the findings of the evaluation to the Legislature every other biennium, and include recommendations for statutory change to improve charter school performance or regulation, as the agency deems appropriate.

4.4 Limit TEA's involvement in appointing hearing examiners for teacher contract cases.

TEA would no longer be required to assign a hearing examiner whenever a teacher requests a hearing to contest a school district's decision to prematurely terminate the teacher's contract. Instead, statute would allow the teacher and the district to request the assignment of a hearing examiner only in cases when they do not agree on a hearing examiner on their own. In such cases, TEA would immediately assign the next hearing examiner on the list of certified examiners. TEA's assignment would be final and the parties would not be able to reject a hearing examiner assigned by the agency. Further, the parties requesting the assignment of a hearing examiner by TEA would have to do so within 25 days of the teacher receiving notice of the proposed action by the school district.

4.5 Eliminate the requirement that the commissioner approve shared services arrangements for special education services.

This recommendation would not affect the ability of school districts and charter schools to enter into written contracts to jointly operate special education programs, but would alleviate TEA time and resources for this approval.

4.6 Eliminate the requirement for TEA to oversee training for, and to conduct a survey of, site-based decision making.

This recommendation would remove the requirement for TEA to oversee training and support to all districts and campuses for site-based decision-making processes. This recommendation would also remove an unfunded and potentially costly requirement for TEA to conduct an annual statewide survey of types of decision-making and planning processes, the involvement of stakeholders in those processes, and the perceptions of those persons as to the effectiveness of decisions.

4.7 Eliminate the ability of school districts to seek and receive a foreign exchange student waiver from TEA.

TEA would no longer grant waivers from the requirement that a district admit a foreign exchange student placed with a host family that resides in the district. This recommendation would not prevent a school district from denying admission to foreign students who are residing in their countries of origin and seeking to enroll in the district as allowed for under federal law.

4.8 Require school districts and charter schools to submit information about their depository contracts to TEA, instead of filing copies of their depository contracts and related documents with the agency.

Under this recommendation, school districts and charter schools would only be required to submit a direct deposit form necessary to identify their depository. The recommendation would also remove the requirement that district bidding documents be on a form provided by the State Board of Education, as this information would instead be specified by TEA.

4.9 Eliminate the requirement for school district boards of trustees to report the terms of superintendent severance payments to the commissioner.

TEA would no longer use this information to reduce state education funds in response to these severance payments. The recommendation would remove the State's role in a local decision and allow TEA to focus on activities presenting a higher risk to state funds.

4.10 Replace the prescriptive audit methodology for compensatory education funds with a requirement for TEA to audit all aspects of state education funding through a risk-based approach.

This recommendation would remove the specific requirements to audit compensatory education funds. Instead, TEA would audit any appropriate aspects of state education funding, including compensatory education, on a risk basis. TEA should develop a standard, risk-based approach to auditing these funds in rule, and provide guidance to districts and open-enrollment charter schools in any training or reference materials it provides.

4.11 Eliminate the requirement for TEA to recognize schools' use of high school allotment funds.

Since schools have generally not applied for recognition through this program, this recommendation would remove the requirement that TEA develop standards for evaluating the success of high school completion and college readiness programs implemented with use of the high school allotment. This recommendation would not affect the actual high school allotment or how the State distributes it to school districts.

4.12 Eliminate the Best Practices Clearinghouse.

Many other more effective options exist for schools to share best practices.

4.13 Eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.

This recommendation would abolish the High School Completion and Success Initiative Council, whose job is completed and whose broader concerns are covered by the work of the State P-16 Council. The recommendation would also eliminate the council's various reporting requirements and its six unfunded grant and pilot programs.

4.14 Eliminate four unnecessary reporting requirements, but continue 19 that still serve a purpose.

Statute would be amended to eliminate the following reports: *International Assessment Instrument Program Report*, *Intensive Mathematics and Algebra Intervention Pilot Program Report*, *Report on Exemption of Courses for Extracurricular Activities*, and *Reporting of Bus Accidents*. This recommendation would also remove the unfunded Intensive Mathematics and Algebra Intervention Pilot Program from statute.

Issue 5

TEA Lacks Authority and Flexibility in Annexing a School District, Especially an Imminently Insolvent District.

Statute lacks a process to require a school district's annexation if a district will not have sufficient funding to make it through another school year and fails to act on its own to plan for its students' education. Similarly, no mechanism exists to facilitate annexation when a district is unable to consolidate on its own. The commissioner also needs adequate flexibility in the agency's annexation process to allow it to adapt to unique circumstances of school districts with varying academic, financial, or accreditation problems.

Recommendations

Change in Statute

5.1 Authorize the Commissioner of Education to work with county commissioners courts to ensure the timely annexation of an insolvent school district.

This recommendation would authorize the Commissioner of Education to establish a process for annexing a district that has failed to operate for 10 or more days, or that has formally requested the commissioner's assistance, due to insolvency. The Commissioner of Education would notify each appropriate commissioners court of the failure to operate or formal request, and each commissioners court would be required to annex the territory of the district within its county to one or more school districts in the same county or to any contiguous district in an adjacent county. In the unlikely event that a commissioners court fails to order annexation of the district's territory within 60 days, statute would authorize the Commissioner of Education to order annexation of the insolvent school district.

5.2 Authorize the commissioner to adjust the effective date for a district's annexation.

This recommendation would allow the commissioner to provide for an effective date other than July 1 for a district's annexation. While July 1 should still be the target date for district annexations, this recommendation would allow the commissioner to adjust the date if in the best interest of students.

5.3 Provide the commissioner with flexibility to annex a school district to a non-adjointing district.

Under this recommendation, the commissioner would be authorized to annex a school district to a non-adjointing district if that annexation is in the best interest of students.

5.4 Provide the commissioner with limited authority to use a board of managers beyond two years for the purpose of overseeing the annexation process.

This recommendation would allow the commissioner to extend the appointment of an existing board of managers beyond the two-year limit solely to oversee the process for closure and annexation of a school district. The board of managers would serve during the transition period to help direct operations of a district as it winds down and transfers assets to the receiving district.

5.5 Clarify conflicting provisions to ensure that the commissioner may annex a school district for failure to meet financial accountability standards or loss of accreditation status.

This recommendation would clarify conflicting statutory provisions to ensure that, in addition to annexation for an academically unacceptable district, the commissioner may annex a school district to one or more districts for failure to meet financial accountability standards for two consecutive years or for loss of district accreditation.

Issue 6

Educator Certification Can Be Overseen by the Commissioner of Education Without the Need for a Separate Board.

In 2005, the Legislature abolished the separate state agency that regulated educators and transferred its functions to TEA under the Commissioner of Education, while maintaining a separate governor-appointed board. Having two governor-appointed entities involved in overseeing work that is largely performed by TEA staff can lead to confusion and a lack of clear accountability for ensuring that the certification and oversight of educators is effective. Adding to the inefficient and unnecessary layers of bureaucracy, statute requires educator certification and educator preparation program rules to go for review by a second board, the State Board of Education.

Recommendations

Change in Statute

6.1 Abolish the State Board for Educator Certification and transfer its powers and duties to the Commissioner of Education.

The commissioner would approve all rule changes for the regulation and standards of certified educators and educator preparation programs. The commissioner would have the ultimate responsibility of disciplining certified educators and sanctioning educator preparation programs found out of compliance with state law and rules.

6.2 Remove the State Board of Education's authority to reject proposed rules for educator certification and the regulation of educator preparation programs.

This recommendation would remove the duplicative review of educator rules by two different entities.

6.3 Require the commissioner to establish an advisory committee to assist with the regulation of educators and educator preparation programs.

This recommendation would create an advisory committee to provide input and ensure the involvement of public school educators in setting the standards for and governing all aspects of educator oversight. The advisory committee would not be involved in educator discipline. The commissioner would be directed to appoint a balanced representation of teachers, administrators, and counselors from the public education field; and traditional and alternative certification educator preparation programs.

Issue 7

Elements of Educator Certification Do Not Conform to Commonly Applied Licensing Practices.

Certain educator certification licensing provisions do not follow model licensing and enforcement practices, hindering TEA's ability to provide consistent regulation and to take enforcement action as needed to protect the public.

Recommendations

Change in Statute

7.1 Clarify the statutory requirements for school administrators to report misconduct by certified educators to TEA.

This recommendation would make changes to statute, as follows.

- Require charter school directors to meet the same certified educator misconduct reporting and investigation requirements as superintendents.
- Require superintendents and charter school directors to report any termination or resignation based on a determination that the certified educator solicited or engaged in sexual conduct or was involved in a romantic relationship with a student or minor.
- Authorize the Commissioner of Education to establish rules to govern superintendents' and charter school directors' reporting of changes in certified educators' criminal records to TEA, rather than statutorily mandating the reporting of all changes to TEA.
- Clarify that superintendents and charter school directors must report arrests, terminations, or resignations of certified educators, rather than incidents of misconduct, within seven days of first learning of the action.
- Require superintendents and charter school directors to complete an investigation of a certified educator if they have a reasonable suspicion, rather than the higher standard of reasonable cause to believe, that a certified educator abused or solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

7.2 Grant the commissioner administrative subpoena power to fully investigate certified educator misconduct cases.

School administrators often refuse to provide documents to TEA necessary for the investigation of educator misconduct. This recommendation would provide administrative subpoena power for the production of records, papers, and other objects related to a certified educator misconduct investigation. All information and materials subpoenaed or compiled in connection with an investigation would remain confidential and not be subject to disclosure.

7.3 Require the commissioner to establish a disciplinary matrix to guide the application of sanctions to certified educators for violations of law or rule.

A disciplinary matrix for certified educator violations would ensure fair and consistent application of sanctions. In developing the matrix, TEA would strive to cover the range of violations by certified educators and relate the range of appropriate sanctions to different violations based on their severity. This recommendation would only set up guidelines and would not take away the commissioner's ability to use discretion in making disciplinary decisions based on the specific circumstances of an individual case.

Issue 8

Elements of the Regulation of Educator Preparation Programs Do Not Conform to Commonly Applied Licensing Practices.

Several areas of statute, rules, and procedures regarding the accreditation and regulation of educator preparation programs (EPPs) do not follow model licensing standards, hindering TEA's ability to effectively sanction programs and ensure candidates are fully prepared to enter the classroom.

Recommendations

Change in Statute

8.1 Establish a five-year renewal process for EPPs in statute.

Statute would set a five-year renewal requirement for EPPs and require the Commissioner of Education to adopt, in rule, an evaluation process tied to EPPs' compliance with basic standards and requirements to adequately prepare candidates for educator certification. As part of this recommendation, the commissioner would repeal the rules specifying the ten-year reapplication process and five-year compliance audit.

8.2 Require the commissioner to adopt rules to make information about how to file a complaint about an EPP accessible to EPP students and the public.

This recommendation would require the commissioner to adopt rules requiring EPPs to inform their students about the EPP complaint process and post TEA's contact information along with the complaint process in their facilities. Statute would also require TEA to provide the public with instructions for contacting the agency about a complaint against an EPP on the agency's website.

8.3 Require the commissioner to establish a comprehensive risk-assessment model to guide the monitoring of EPPs.

This recommendation would require the commissioner to establish a risk-based approach to conducting on-site monitoring and inspections that would adjust the amount of time staff spends on site during compliance audits, including visits associated with the EPP renewal process. The commissioner would use the assessment model to determine risk, such as a program's compliance history, operational standards, accountability measures, and accreditations by other organizations.

8.4 Strengthen and clarify the commissioner's authority to sanction EPPs for violations of law or rules.

Under this recommendation, the commissioner would have the same range of sanctions as currently in law for EPPs not meeting accreditation standards. The commissioner would also make sanctioning information accessible to all EPPs and counsel at-risk programs.

Issue 9

TEA's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Among the standard elements considered in a Sunset review, the Sunset Commission adopts across-the-board recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. Three of these provisions are missing from TEA's statute and should be applied.

Recommendation

Change in Statute

9.1 Apply three standard Sunset across-the-board recommendations related to conflicts of interest, information on complaints, and alternative dispute resolution.

Issue 10

Texas Has a Continuing Need for the Texas Education Agency.

Ensuring the provision of public education is a key state responsibility. TEA's constitutional and statutory role is to ensure that the billions of dollars spent to educate the children of Texas provide a quality education that meets the needs of all students. TEA's functions of distributing and ensuring the proper use of education funds, measuring student and school performance, and informing the public about the quality of schools are vital to the State. However, TEA's enabling law lacks a clear, concise description of these duties.

Recommendations

Change in Statute

10.1 Continue the Texas Education Agency for 12 years.

This recommendation would continue TEA as an independent agency responsible for overseeing the state's public education system.

10.2 Redefine the commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system.

This recommendation would replace the lengthy section of the Texas Education Code that defines the Commissioner of Education's powers and duties with a concise list of the major duties of that position. In place of the current statutory language, the commissioner would:

- serve as the educational leader of the state, with rulemaking authority as specified in statute;
- serve as the executive head of the agency and oversee its day-to-day operations, with authority to:
 - employ staff necessary to perform the duties of the agency;
 - delegate functions to agency staff;
 - appoint advisory committees as necessary to advise the commissioner in carrying out the duties and mission of the agency;
 - appoint an internal auditor for the agency; and
- carry out the duties imposed on the commissioner by the Legislature.

This recommendation would also replace the section of the Texas Education Code that defines TEA's powers and duties with a concise list of the agency's major duties. In place of the current statutory language, the agency would:

- distribute state and federal funding to public schools and ensure the proper use of those funds;
- monitor public schools for compliance with federal and state guidelines;
- administer the statewide standardized testing program and accountability systems;
- provide assistance to and impose interventions and sanctions on schools that consistently fail to meet state or federal accountability standards;
- provide support to the State Board of Education in developing statewide curriculum standards, adopting instructional materials, managing the instructional materials allotment and distribution process, and carrying out duties related to the Permanent School Fund;
- collect, analyze, and make accessible a wide array of educational and financial data from public schools;
- ensure the quality of public school educators by certifying educators, regulating educator preparation programs, and taking enforcement action in cases of educator misconduct; and
- carry out any other duties imposed on the agency by the Legislature, consistent with the agency's appropriations and mission.

Fiscal Implication Summary

Overall, these recommendations would not result in a significant fiscal impact to the State. Many issues are likely to result in savings in time and effort on the part of TEA staff, if not monetary savings, as the agency's duties are adjusted to better match its previously reduced funding. Recommendations with a fiscal impact are summarized below.

Issue 3 — Transferring regulation of driver training would involve a cost-neutral transfer of about \$1.8 million from TEA to the TDLR, along with authority to fill 12.5 full-time equivalent positions. Eliminating the regulation of certain driver training administrative staff would result in a small revenue loss of \$3,300 per year in fees.

Issue 4 — Recommendations to eliminate certain non-core activities at TEA should result in significant administrative efficiencies, but due to TEA's reduction in funding and staff two sessions ago, no further savings are anticipated. Rather, these changes aim to match the agency's workload to its reduced resources.

Issue 6 — Although cost savings are not the reason the Sunset Commission recommends abolishing the State Board for Educator Certification, the recommendation would result in eliminating the board member travel costs, saving the State about \$12,000 a year.

TEXAS FACILITIES COMMISSION

Steven Ogle, Project Manager

Agency at a Glance

The Texas Facilities Commission (TFC) manages the building construction, maintenance, and leasing needs of state agencies. TFC carries out the following key activities.

- Planning and providing office space for state agencies through the design and construction of facilities or through leasing services.
- Maintaining state-owned facilities in a secure and cost-efficient manner.
- Providing various support services to state agencies, such as operating state and federal surplus property programs and coordinating the recycling program.

*The Sunset Commission
focused on the ongoing
appropriateness of its 2013 TFC
recommendations.*

Summary

As directed by the 83rd Legislature, the Sunset Commission performed a limited scope review of TFC to follow up on the full Sunset review of the agency conducted in 2013. At that time, the Sunset Commission adopted and forwarded recommendations on TFC to the 83rd Legislature. These recommendations were incorporated into Senate Bill 211, which ultimately passed, continuing TFC for eight years. In separate legislation, House Bill 1675, the Legislature shortened TFC's Sunset date to two years, continuing the agency until 2015, and focused this current Sunset review on evaluating the ongoing appropriateness of the original recommendations adopted by the Sunset Commission.

The Sunset Commission concluded that all of the previous recommendations remain appropriate. Since the previous Sunset Commission and the 83rd Legislature adopted these recommendations, no further action is necessary on these topics. The following material summarizes the Sunset Commission's recommendation regarding the continuation of TFC.

Issue and Recommendation

Issue 1

Texas Has a Continuing Need for the Texas Facilities Commission.

The State continues to need an agency with the expertise to manage and preserve the value of the building, office, parking, and associated infrastructure that support state government operations. By centralizing facilities-related duties within TFC, state agencies can focus on carrying out their respective missions, at less cost to the State, precluding these agencies from performing duplicative functions.

Recommendation

Change in Statute

1.1 Continue the Texas Facilities Commission for six years to align its review with other state agencies that provide administrative support services in Texas.

This recommendation would continue TFC as an independent agency for six years, until 2021, and keep its Sunset review aligned with the reviews of the Department of Information Resources and Comptroller of Public Account's Texas Procurement and Support Services Division, the other state agencies that provide administrative support services. Aligning these Sunset review dates would allow for a comprehensive review of the State's overall approach to providing administrative support services.

Fiscal Implication Summary

This recommendation would not have a fiscal impact to the State.

SELF-DIRECTED SEMI-INDEPENDENT STATUS OF STATE AGENCIES

Steven Ogle, Project Manager

Summary

In 2001, the Legislature enacted the Self-Directed Semi-Independent (SDSI) Project Act and granted the Accountancy, Architecture, and Engineers boards SDSI status. Having SDSI status gives an agency the authority to operate outside of the appropriations process by making the agency entirely responsible for its own operations and expenses, including establishing its own budget and setting its fees accordingly. Since 2001, five other agencies gained SDSI status through provisions added to their own individual agency statutes, not through the SDSI Act (the Texas Department of Banking, Texas Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, Credit Union Department, and Texas Real Estate Commission, including the Texas Appraiser Licensing and Certification Board).

The State's inconsistent approach to granting SDSI status to state agencies limits needed and consistent oversight.

From the beginning, oversight agencies and the Legislature had questions and concerns about the soundness of the policy decision to give state agencies so much independence, and whether the SDSI concept would prove effective. Sunset's 2012 evaluation of the SDSI Act found that the three original SDSI agencies were operating appropriately and that the SDSI Act was working as intended. As such, the Sunset Commission recommended continuing the SDSI Act and the Legislature agreed. However, the Sunset evaluation also found that the SDSI Act did not provide needed safeguards to ensure ongoing oversight and prevent potential abuse. In response, the Legislature enacted several additional requirements to address these concerns, but they only applied to the three original agencies under the SDSI Act. To address concerns with the inconsistent approach to granting SDSI status and oversight provisions, the 83rd Legislature directed the Sunset Commission to conduct an SDSI study and report its results and recommendations to the Legislature prior to the 84th Legislative Session.

Overall, the Sunset Commission found that the State's undefined and inconsistent approach to managing the SDSI process exposes the State to unnecessary risk. Without a single entity responsible for overseeing the SDSI process, the Legislature has inconsistently granted SDSI status through various statutes, which significantly limits needed and consistent oversight. The Sunset Commission determined that without a single process for an agency to gain SDSI status, agencies will continue to ask for and potentially gain unique SDSI provisions within their own statutes that undermine effective oversight. These

concerns would be magnified if considering granting SDSI status to health-related and larger licensing agencies, where fiscal mismanagement and lax regulation can directly affect the lives of thousands of Texans. The following material summarizes the Sunset Commission's recommendations on SDSI.

Issues and Recommendations

Issue 1

The Lack of a Comprehensive and Consistent Approach to Self-Directed Semi-Independent State Agency Oversight Creates Risks for the State.

The State does not have a comprehensive process with clearly defined requirements for obtaining and retaining SDSI status. Instead, the Legislature's piecemeal approach to granting SDSI status through various statutes has resulted in agencies receiving SDSI status without thorough vetting, and operating with different reporting requirements and inconsistent oversight.

Recommendations

Change in Statute

1.1 Require the Legislative Budget Board to develop and administer a process for obtaining SDSI status and overseeing SDSI agencies.

The process would include developing and administering an application process that any state agency requesting SDSI status would be required to complete. The Legislative Budget Board (LBB) would have substantial flexibility to develop the application and review process. Agencies that currently have SDSI status would be exempt from the application process. The process would also provide for ongoing oversight of all SDSI agencies and a consistent way to revoke SDSI status and transition agencies back to the appropriations process if needed.

1.2 Expand reporting and monitoring requirements of agencies subject to the SDSI Act to help improve oversight.

This recommendation would require all agencies operating under the SDSI Act to provide more complete budget information, including reporting all nonoperational and pass-through revenues and expenditures in a consistent format prescribed by LBB. The SDSI agencies would also be required to undergo a State Auditor's Office (SAO) financial and performance audit every six years to ensure more consistent and ongoing oversight.

1.3 Place all current SDSI agencies under the SDSI Act.

To provide for more consistent administration and effective oversight of all SDSI agencies, the finance and real estate-related SDSI agencies would be made subject to the SDSI Act and the separate SDSI provisions would be removed from their individual statutes. Each agency's SDSI status would be evaluated as part of the agency's regular Sunset review.

The reporting requirements in the SDSI Act would be modified to appropriately apply to the finance-related SDSI agencies and these agencies would be exempt from the Act's requirement to deposit administrative penalty revenue to the General Revenue Fund. The finance-related SDSI agencies would

also continue to operate under their current property provisions, which would be incorporated into the SDSI Act. The Act would be clarified to ensure that all SDSI agencies are able to own and maintain property, and would require the agencies to report on the purchase or sale of any real property and ongoing lease and maintenance costs associated with real property.

In addition, the Texas Real Estate Commission (TREC) would no longer pay annual retainers to SAO, Office of the Attorney General, and the State Office of Administrative Hearings. Instead, TREC would reimburse these agencies for any services rendered. Also, as part of the SDSI Act, TREC would be subject to the requirement to deposit administrative penalty revenues into general revenue.

Change in Appropriation

1.4 The Senate Finance and House Appropriations committees should consider establishing a moratorium on expanding SDSI status during the 84th Legislative Session.

This recommendation expresses the intent of the Sunset Commission that the Senate Finance and House Appropriations committees temporarily suspend granting SDSI status to any other state agencies until the Legislature is able to adopt a more comprehensive and consistent approach for managing the SDSI process.

Fiscal Implication Summary

Having the administrative penalty revenues from TREC be deposited to the General Revenue Fund, as proposed in Recommendation 1.3, would result in a slight positive fiscal impact to the State. In fiscal year 2013, TREC collected about \$200,000 in administrative penalties. However, since the amount of administrative penalties collected can vary significantly year to year, the overall fiscal impact could not be estimated.

UNIVERSITY INTERSCHOLASTIC LEAGUE

Emily Johnson, Project Manager

UIL at a Glance

Originally created by the University of Texas (UT) in 1913, the University Interscholastic League (UIL) seeks to enhance students' educational experience and help prepare them for citizenship by creating and administering a variety of academic, music, and athletic contests for primary and secondary students in Texas; and promulgating and enforcing rules to ensure safe and fair competition that promotes good sportsmanship.

UIL is a voluntary membership organization that is open to any Texas Education Agency accredited public school district or open-enrollment charter school, as well as certain private or parochial schools. To promote competitive equity, UIL assigns each member school to an appropriate conference, region, and/or district depending on the activity and based on student enrollment and geography. UIL provides for academic, music, and athletic contests in over 70 different activities for approximately two million Texas students each year.

Much confusion exists over UIL's structure and authority.

UIL is governed by a Legislative Council, made up of mostly member-elected school administrators. UIL employs about 50 staff and operates with a budget of approximately \$11 million, with about half of this funding coming from state contest admission fees, gate receipts, and ticket and program sales. Currently, UIL's only state appropriation is \$500,000 in pass-through funding from the Texas Education Agency to administer the steroid testing program.

Summary

Nothing quite like UIL exists anywhere else in state government. UIL operates as part of UT and as a part of higher education, UIL is a state agency, but not in the same way as an independent, executive branch agency. In 2013, the Legislature placed UIL under Sunset review, but it is not subject to abolishment. This is the first Sunset review of the organization and the first in-depth look at UIL's structure and operations in 20 years. Overall, the Sunset Commission found UIL generally does a good job performing its core function — administering state contests — but also found several problems in UIL's budget development, approval, and reporting processes, and that UIL needs to ensure its rule enforcement hearings are conducted in a fair and consistent manner.

The biggest issue the Sunset Commission identified was confusion over UIL's structure and authority, and the fact that very few people understand how UIL operates, particularly since UIL has a long history of operating according to tradition. To this end, the Sunset Commission focused on clarifying UIL's

status as a state agency within higher education, making its operations more understandable and transparent, and improving its accountability to member schools, participants, and the public. The Sunset Commission also found that the statewide steroid testing program is no longer effective, in part due to reduced funding, and that additional measures are needed to promote the health and safety of student athletes. The following material summarizes the Sunset Commission's recommendations on UIL.

Issues and Recommendations

Issue 1

UIL Lacks a Statutory Basis for Its Programs, and Its Governing Documents Do Not Ensure Open and Accountable Operations.

Since UT first created UIL in 1913, the organization has expanded to add many more activities and participants, and has become an integral part of the Texas education system. While UIL is a state agency, statute does not specifically define it as such, resulting in ongoing confusion over the organization's status and authority. With no enabling statute, UIL's Constitution and Contest Rules (C&CR) governs the organization's operations. However, the document is confusing, incomplete, and outdated. Additionally, several problems in UIL's budget development, approval, and reporting processes prevent a complete and clear financial picture of the organization.

Recommendations

Change in Statute

1.1 Clarify UIL is a state agency within the University of Texas at Austin.

To clear up confusion about UIL's status and fully protect the interests of member schools, students, and other stakeholders, this recommendation would clearly define UIL as a state agency within UT and would identify the organization's primary duties, including creating and administering interscholastic academic, music, and athletic contests for its member schools; promulgating and enforcing contest administration rules; creating local committees to assist in carrying out UIL's functions; and other duties necessary to administer interscholastic contests within the state for its member schools.

This recommendation would also clarify that as a part of higher education, UIL and its contest rules are not subject to the Administrative Procedure Act, but that any local committees UIL uses to administer interscholastic contests would be subject to the Public Information Act and Open Meetings Act in the same ways as school boards and other educational entities. Additionally, any monies held by these committees would not be considered funds belonging to UIL deposited in UT accounts, but the committees must report all committee-related revenues and expenditures annually to UIL. Allowing the local committees to operate more like school boards would ensure they are operating under the appropriate authority and still allow for meaningful input from stakeholders affected by the committees' decisions.

Management Action – Nonstatutory

1.2 Direct UIL to rewrite and reorganize its Constitution and Contest Rules.

In consultation with its Legislative Council and input from stakeholders, UIL should rewrite and reorganize its C&CR to be more user friendly and easier to navigate and understand. As part of the

rewrite, UIL should create two separate documents — one that describes UIL's governance structure and other broad principles necessary to govern the organization, and another describing how contests will be administered. Also, UIL should include a complete list of all fees to which member schools or participants may be subject; clearly describe how revenue will be distributed from all state contests; and fully describe the enforcement process.

UIL should also clearly define the authority, roles, and responsibilities of UT, the Legislative Council and its committees, and all local committees. Specifically, UIL should modify the makeup of its Medical Advisory Committee to include 11 voting and three non-voting members, and require the committee to develop an information sheet about the dangers of human growth hormone and synthetic drugs.

1.3 Direct the full Legislative Council to approve UIL's annual budget recommendations.

1.4 Direct UIL to improve how it tracks and reports all contest revenues and expenses.

UIL should require all its local committees to annually report contest revenues and should also improve its annual financial report by using consistent categories to describe expenses across events within the same program area, as appropriate; ensuring rebates to schools are clearly identified and consistent with UIL rules; and clearly stating the percentage of admission fees, gate receipts, and ticket sales UIL is entitled to keep for each state contest.

Issue 2

UIL's Hearings Processes Do Not Ensure Consistent Treatment of Participants.

UIL has developed internal hearings processes to handle student eligibility issues and alleged rule violations. While UIL is not subject to the same procedural requirements for hearings as typical state agencies, UIL should still ensure its hearings are conducted in a fair and consistent manner.

Recommendations

Management Action – Nonstatutory

2.1 Direct UIL to establish detailed procedural rules for its enforcement hearings.

Under this recommendation, UIL should develop and adopt clear rules to address notice requirements, time frames, standards of proof, the role of the committee members and UIL staff in questioning witnesses, and admissibility of evidence in both its local committee and State Executive Committee (SEC) hearings. In addition, UIL should establish a *de novo* standard of review for its SEC appeal hearings to ensure consistent treatment of cases and participants. Providing clearly defined hearings and appeal processes in rule helps ensure that both committee members and participants understand the process, and provides greater consistency in how the local committees and SEC conduct hearings.

2.2 Direct UIL to create penalty guidelines and a precedents manual for its enforcement and eligibility determination processes.

This recommendation directs UIL to develop penalty guidelines based on the severity of violations and provide the guidelines to its local committees and the SEC to help ensure more consistent application of penalties to participants. In addition, UIL should create a precedents manual of common fact situations and general guidance to assist its waiver officer and Waiver Review Board, as well as parents, students

and other participants. Neither requirement is intended to create an automatic or prescriptive approach to penalty or waiver decisions, but to provide guidance with flexibility to use the facts as appropriate.

Issue 3

The Interscholastic League Advisory Council Has Fulfilled Its Purpose and Is No Longer Needed.

Statute requires the 11-member Interscholastic League Advisory Council to review and make recommendations regarding UIL rules and to study UIL policy regarding student eligibility, geographic distribution of UIL resources and programs, and gender equity. Originally established in 1989, the council fulfilled its requirements in 1995 and has had minimal impact since.

Recommendation

Change in Statute

3.1 Abolish the Interscholastic League Advisory Council.

Issue 4

Limited Funding and Changing Attitudes Have Reduced the Need For and Effectiveness of the State's Steroid Testing Program.

The state's steroid testing program began in 2008 with the goal of reducing illegal steroid use through random testing of high school student athletes and educating students, parents, and coaches about the dangers of steroid use. Texas is now one of only three states to test for steroids, spending \$9.8 million over the life of the program while averaging positive test results of less than one-third of 1 percent. Since the program began, changing attitudes in Texas and nationally toward steroid use have resulted in reduced use among teens. Additionally, the Legislature has reduced funding for the program each biennium, resulting in fewer tests being conducted and diminishing the program's deterrent effect.

Recommendation

Change in Statute

4.1 Discontinue the statewide steroid testing program.

This recommendation would repeal the requirement for UIL to conduct a steroid testing program, but would retain the steroid educational program requirements to help ensure athletic coaches remain aware of the potential dangers of steroid abuse.

Issue 5

Additional Measures are Needed to Promote the Health and Safety of Student Athletes Participating in UIL.

Student athlete health and safety issues, especially those related to head injuries and cardiovascular health, are a topic of national discussion. While the State and UIL have focused on student athlete health over the last several years, additional steps are needed to further promote the health and safety of high school athletes in Texas. Currently, each student participating in a UIL athletic activity must complete a pre-participation physical evaluation form that collects the student's medical history and evaluates their health. However, state law does not specify who is authorized to perform pre-participation physical evaluations, which can be a vital tool for identifying injuries and other health issues. Additionally, UIL lacks a mechanism for ensuring compliance with the state's concussion oversight program and could benefit from a relationship with the UT Southwestern Medical Center's Texas Institute for Brain Injury and Repair, a state-funded initiative to promote brain injury research and education.

Recommendations

Change in Statute

5.1 Require the pre-participation physical evaluation form required for student athletes to be signed by a licensed physician, physician assistant, or advanced nurse practitioner.

This recommendation would specify that in addition to the student and the student's parent or guardian, a pre-participation physical evaluation form must also be signed by a physician, physician assistant, or advance nurse practitioner. UIL would be required to amend its rules, which currently require the form to be signed by a physician, physician assistant, advance practice nurse, or doctor of chiropractic.

5.2 Require school districts and charter schools participating in UIL athletic activities to report certain concussion-related information to UIL.

By September 1, 2015 each charter school principal and each school district's superintendent of a school that participates in an interscholastic athletic activity must provide to UIL a notarized statement indicating that the school district has a Concussion Oversight Team (COT) in place, including the names and occupations of the members. The statement must also indicate that each member has had required training; that each COT has established and is currently utilizing a return-to-play protocol based on peer-reviewed scientific evidence; the number of full-time athletic trainers employed by the district or charter school; and that each coach is current on their required concussion training or the number of coaches who are deficient in obtaining the required training.

The recommendation would require UIL to ensure that all participating districts and schools provide the notarized statements. UIL would also post the information on its website and obtain and update the information annually.

Management Action – Nonstatutory

5.3 Direct UIL to establish a collaborative relationship with the UT Southwestern Medical Center’s Texas Institute for Brain Injury and Repair.

This recommendation directs UIL to take all proactive steps to commence establishing a collaborative relationship with UT Southwestern Medical Center’s Texas Institute for Brain Injury and Repair, a state-funded initiative to promote innovative research and education, with the goals of accelerating translation into better diagnosis and revolutionizing care for millions of people who suffer brain injuries each year.

Fiscal Implication Summary

UIL’s only state appropriation is for the steroid testing program. Eliminating the program would result in savings to general revenue of \$500,000 per year. Other recommendations would not result in significant costs or savings to UIL. The direct fiscal impact for each recommendation is summarized below.

Issue 3 — Abolishing the Interscholastic League Advisory Council would result in savings of about \$2,500 per year to UIL from reimbursement of travel and per diem expenses for council members.

Issue 4 — Eliminating the statutory requirement for student athletes to be randomly tested for anabolic steroids would result in savings to general revenue of \$500,000 per year. Maintaining the educational component of the program would not have a fiscal impact to the State or UIL.

University Interscholastic League

Fiscal Year	Savings to the General Revenue Fund
2016	\$500,000
2017	\$500,000
2018	\$500,000
2019	\$500,000
2020	\$500,000

OTHER REPORT MATERIALS

IMPLEMENTATION OF 2013 SUNSET LEGISLATION

An important element of the Sunset process is a check on agencies' progress in implementing Sunset recommendations from the previous legislative session. The Legislature expects agencies to effectively implement both the management recommendations of the Sunset Commission, as well as the statutory provisions of an agency's Sunset bill. The Sunset Act requires the Commission to report the findings of the implementation review.

In 2013, the 83rd Legislature passed 17 of the 20 bills containing the Sunset Commission's recommendations. These bills contained a total of 158 provisions requiring action by the agencies involved. Sunset staff assessed each agency's efforts to implement the required changes. Overall, Sunset staff found that agencies made approximately 91 percent of these changes, with the remainder in progress. Key changes implemented as a part of the Sunset process include the following.

- Requiring the criminal justice agencies to better measure and manage the performance of their programs to help the Legislature align funding with programs that work — those that reduce recidivism and incarceration costs — rather than on incarceration costs alone.
- Increasing the state lottery's contribution to schools by eliminating the diversion of leftover unclaimed prize money and improving the agency's accountability and effectiveness by increasing the size of the commission.
- Transferring rate-related regulation for water and sewer utilities from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission (PUC) to take advantage of PUC's rate setting experience and allow TCEQ to focus on its core mission.
- Refocusing the Texas Higher Education Coordinating Board on coordinating, and not regulating, the public higher education system by removing significant pieces of the agency's regulatory authority, including authority to consolidate or eliminate low-producing academic programs and to approve capital projects at institutions of higher education.
- Changing the culture of the Port of Houston Authority's governing board and improving its operating practices to restore accountability and regain the public's trust.
- Abolishing the Office of Fire Fighters' Pension Commissioner and requiring the Pension Review Board to oversee local firefighter pensions.

The chart, *Summary of 2013 Sunset Legislation Implementation*, shows that approximately 9 percent of the provisions have not yet been fully put into action. The chart on page 133, *2013 Sunset Legislation Implementation by Agency*, shows the progress of each agency in implementing its statutory changes. Detailed information on the status of each statutory provision that is in progress is provided for each agency in the charts beginning on page 134.

**Summary of
2013 Sunset Legislation Implementation**

Status of Provisions	Number	Percentage
Implemented	143	91%
In Progress	15	9%
Not Implemented	0	0%
Total	158	

The Sunset Commission did not conduct a compliance review for two of the agencies under Sunset review in 2013, as their Sunset legislation failed to pass into law during the 83rd Legislature. The Sunset bill on the Railroad Commission did not pass, though the Legislature continued the agency through separate legislation until 2017. The Ethics Commission Sunset bill made it through the legislative process, but the Governor vetoed the bill. As a constitutionally created agency, the Ethics Commission is not subject to abolishment and will be reviewed again on its regular schedule in 12 years.

Two other agencies under review in 2013 were continued under Sunset review for two years, and Sunset staff reviewed their compliance as part of separate special purpose reviews. The Texas Education Agency Sunset bill failed to pass, and the agency was continued under Sunset review until 2015. The Texas Facilities Commission (TFC) Sunset bill passed, but separate legislation required the agency to undergo a limited Sunset review prior to the 2015 session. Reports on these two agencies are available on Sunset's website and include compliance with changes adopted in 2013.

In addition to statutory changes, the Sunset Commission adopted 70 management recommendations for improvements to agency operations under review before the 2013 Session. In July 2014, the State Auditor's Office (SAO) evaluated the implementation of the 23 most important management recommendations.¹ Following up on the auditor's report, Sunset found that one management recommendation for the Texas Higher Education Coordinating Board had not been implemented, as described on page 139 of this report.

Sunset staff also evaluated implementation of Sunset management directives for the Port of Houston Authority since the Authority is not typically subject to SAO oversight. Sunset found that four of the eight management directives to the Authority are still in progress, and one was not implemented. The chart on page 143 provides further information on these provisions.

In addition, the Legislature directed the Sunset Commission to evaluate the Texas State Soil and Water Conservation Board's compliance with Commission recommendations to the 82nd Legislature in 2011. This special-purpose review focused on the agency's implementation of recommendations regarding the Flood Control, Water Quality Management Plan, and Water Supply Enhancement programs as discussed later in this report. Sunset staff found the agency has fully implemented the Sunset Commission's recommendations from H.B. 1808, 82nd Legislature and no further action is necessary.

¹ The Auditor's findings are contained in SAO Report No. 14-038, *A Report on the Self-reported Implementation of Sunset Advisory Commission Management Actions*, which can be obtained at www.sao.state.tx.us.

2013 Sunset Legislation Implementation by Agency*

Agency	Bill Number	Changes Required	Changes Implemented	In Progress	Not Implemented
Architectural Examiners, Texas Board of	H.B. 1717	4	4	0	0
Arts, Texas Commission on the	S.B. 202	No action required	0	0	0
Criminal Justice Agencies					
Criminal Justice, Texas Board and Department of		10	9	1	0
Correctional Managed Health Care Committee	S.B. 213	No action required	0	0	0
Pardons and Paroles, Board of		3	1	2	0
Windham School District within the Texas Department of Criminal Justice		3	2	1	0
Employee Charitable Campaign Policy Committee, State	S.B. 217	6	5	1	0
Engineers, Texas Board of Professional	S.B. 204	7	7	0	0
Fire Fighters' Pension Commissioner, Office of	S.B. 220	14	13	1	0
Higher Education Coordinating Board, Texas	S.B. 215	21	20	1	0
Housing and Community Affairs, Texas Department of	H.B. 3361	12	11	1	0
Information Resources, Department of and Comptroller Procurement and Support Services Division	H.B. 2472	19	17	2	0
Judicial Conduct, State Commission on	S.B. 209 S.J.R. 42	5	5	0	0
Lottery Commission, Texas	H.B. 2197	23	22	1	0
Pension Review Board, State	S.B. 200	3	3	0	0
Port of Houston Authority	H.B. 1642	11	9	2	0
Preservation Board, State	S.B. 201	4	4	0	0
Public Utility Commission of Texas	H.B. 1600	11	9	2	0
Self-Directed Semi-Independent Agency Project Act					
Texas Board of Public Accountancy					
Texas Board of Professional Engineers	H.B. 1685	2	2	0	0
Texas Board of Architectural Examiners					
Totals		158	143	15	0

* As of January 2015.

Texas Department of Criminal Justice — S.B. 213

Senate Bill 213, as adopted by the 83rd Legislature, related to the continuation and functions of the Texas Department of Criminal Justice (TDCJ), Correctional Managed Health Care Committee, Windham School District, and Board of Pardons and Paroles. The legislation continued TDCJ for eight years, until 2021, and included a total of 10 changes requiring action by TDCJ. The following chart summarizes one provision that is still in progress and provides the current status.

Bill Provision	Implementation	
	Status	Comments
1. Requires TDCJ to adopt a standardized assessment tool to fully assess the risk and needs of each offender based on criminogenic factors. Requires TDCJ to specify a timeline for the testing, adoption, and implementation of the assessment tool, which must provide for the use of the assessment tool no later than January 1, 2016.	In Progress	TDCJ has specified a timeline and is on schedule for the full implementation of the standardized assessment tool prior to January 1, 2016. TDCJ finalized the standardized assessment tool in July 2014 and will complete training on the use of the tool by January 1, 2015. TDCJ will begin monitoring the use of the tool in early 2015 to identify and prioritize any needed technical assistance.

Board of Pardons and Paroles — S.B. 213

Senate Bill 213, as adopted by the 83rd Legislature, included three changes requiring action by the Board of Pardons and Paroles (Parole Board). The following chart summarizes two provisions that are still in progress.

Bill Provision	Implementation	
	Status	Comments
<p>1. Requires parole panels, when approving or denying an inmate's release from incarceration, to produce a clear and understandable written statement that explains the decision and the reasons for the decision only to the extent that those reasons relate specifically to the inmate. These requirements apply only to a decision of a parole panel made on or after November 1, 2013.</p>	<p>In Progress</p>	<p>The Parole Board did not implement changes to written statements used to notify an inmate of a parole panel's release decision by November 1, 2013, as required by S.B. 213. In October 2014, the Parole Board's presiding officer issued a board directive that written statements only contain those reasons that specifically apply to the offender. However, changes to TDCJ databases used to prepare the written statements are necessary to help bring the Parole Board into full compliance. The Parole Board just recently submitted its request for changes to TDCJ in late November 2014, but these changes have not been completed.</p>
<p>2. Requires the Parole Board to establish and maintain a range of recommended parole approval rates for each parole guideline score no later than January 1, 2014, and to conduct an annual review of the voting patterns of each regional office and individual parole panel member.</p>	<p>In Progress</p>	<p>The Parole Board did not take any formal action to establish a range of recommended parole approval rates by January 1, 2014 as required by S.B. 213. The Parole Board indicates it has informally reinstated the use of the recommended parole approval rates from 2001, which the Parole Board formally discontinued use of in 2011. The Parole Board also indicates it will need to contract with a consultant to develop new recommended parole approval rates for each parole guideline level and has requested \$300,000 for the 2016–2017 biennium to pursue modification, updates, and improvements to the parole guidelines. The Parole Board states that its <i>Parole Guidelines Annual Report</i> will contain a review of voting patterns of each regional office and individual parole panel member, but the expected publication date of the report is not until the first quarter of 2015.</p>

Windham School District — S.B. 213

Senate Bill 213, as adopted by the 83rd Legislature, related to the continuation and functions of the Texas Department of Criminal Justice (TDCJ), Correctional Managed Health Care Committee, Windham School District, and Board of Pardons and Paroles. The legislation requires Windham to be reviewed in conjunction with future Sunset reviews of TDCJ, with the next review occurring in 2021, and included a total of three changes requiring action by Windham. The following chart summarizes one provision that is still in progress and provides the current status.

Bill Provision	Implementation	
	Status	Comments
1. Requires Windham to collect performance-based program data and conduct biennial program evaluations to measure whether its programs (academic, vocational training, and life skills) reduce recidivism and meet the district's other statutory goals, and to make changes to the programs when needed. Authorizes Windham to enter into an MOU with TDCJ, Department of Public Safety and Texas Workforce Commission to obtain and share necessary data.	In Progress	Windham has entered into verbal agreements with and received data from TDCJ, Department of Public Safety and Texas Workforce Commission to conduct a biennial program evaluation of the 2010 school year and 2011 school year cohorts. Windham is in the process of completing a report to the 84th Legislature that evaluates the effectiveness of Windham's programs and outlines changes in programming based on these findings. The estimated publication date for the report is January 30, 2015.

State Employee Charitable Campaign — S.B. 217

Senate Bill 217, as adopted by the 83rd Legislature, relating to the State Employee Charitable Campaign (SECC) and providing for its next Sunset review in four years, included a total of six changes. The following chart summarizes one provision that is still in progress and provides the current status.

Bill Provision	Implementation	
	Status	Comments
1. Establishes the State Policy Committee's role in leading and overseeing SECC. Requires the State Policy Committee to develop a strategic plan for and make improvements to the campaign as needed.	In Progress	<p>Four members of the State Policy Committee have formed a long range planning committee to develop a strategic plan for and make SECC more effective. The committee met on September 25th to discuss the strategic plan and is considering a facilitated strategy session in February 2015 with key SECC stakeholders to gather feedback and help draft larger goals and strategies for SECC moving forward. Afterwards, the committee will work to finalize a strategic planning document, but does not have an estimated completion date at this time.</p> <p>The committee met again on November 20th to review an online giving tool and is scheduled to present this information to the full State Policy Committee on January 16, 2015 for possible action.</p>

Office of Fire Fighters' Pension Commissioner — S.B. 220

Senate Bill 220, as adopted by the 83rd Legislature, abolished the Office of Fire Fighters' Pension Commissioner and transferred its technical assistance and training functions to the State Pension Review Board, and its pension administration functions to the Texas Emergency Services Retirement System. The legislation included a total of 14 changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires the TESRS board to conduct actuarial audits and experience studies at least every five years but not required to be conducted concurrently.	In Progress	The system's board plans to perform these reviews and will discuss them at its February 27, 2015 board meeting.

Texas Higher Education Coordinating Board — S.B. 215

Senate Bill 215, as adopted by the 83rd Legislature, continued the Texas Higher Education Coordinating Board (Coordinating Board) for 12 years. The legislation included a total of 21 changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires the Coordinating Board to periodically re-evaluate the ongoing need for all existing data requests it imposes on higher education institutions through rule or policy.	In Progress	Although the Coordinating Board requires all new data requests and changes to existing data requests to be reviewed and approved by the agency's Data Collection Committee, the agency will not convene a negotiated rulemaking committee to re-evaluate the ongoing need for all existing data requests imposed by the board on higher education institutions until 2017.

In addition to the provisions in S.B. 215, the Sunset Commission also issued 10 management recommendations. The board has not implemented one of these recommendations, as explained in the chart below.

Management Action	Implementation	
	Status	Comments
1. Direct the Commissioner of Higher Education to ensure that a single high-level executive manages and coordinates the agency's day-to-day operations.	Not Implemented	The Commissioner of Higher Education has not appointed a high-level executive to manage and coordinate the agency's day-to-day operations. Instead of making staff changes, the Coordinating Board has improved cooperation and communication between the operational and academic sides of the agency, which does not comply with the Sunset Commission's management action.

Texas Department of Housing and Community Affairs — H.B. 3361

House Bill 3361, as adopted by the 83rd Legislature, continued the Texas Department of Housing and Community Affairs for 12 years. The legislation included a total of 12 changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Eliminates manufactured housing branch and rebuilder licenses from statute.	In Progress	The agency's manufactured housing division published the rules in the Texas Register in late October 2014 and expects the rules to be effective in January 2015.

Department of Information Resources
Comptroller Procurement and Support Services Division
H.B. 2472

House Bill 2472, as adopted by the 83rd Legislature, continued the Department of Information Resources (DIR) and retains statewide procurement functions at the Comptroller's Procurement and Support Services Division (Division) for eight years, until 2021. The legislation included a total of 19 changes requiring action. The following chart summarizes two provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires DIR and the Division to establish a procurement coordination committee to identify areas of overlap in their procurement functions; mutually beneficial contracting and procurement methodologies; opportunities for collaboration on procurement functions; and opportunities for consolidation of administrative or other functions to improve customer service and reduce costs. Also requires the committee to develop standardized methods to collect and analyze procurement spending data; benchmark and quantitatively measure cost savings and administrative efficiencies resulting from collaboration and cooperative purchasing; and strategies for coordination relating to procurement functions. Authorizes the committee to appoint advisory members. Requires the committee to report to the Sunset Commission on its required activities by September 1, 2015 and September 1, 2017. Requires the Comptroller and DIR to include a similar report as part of their 2019 Self-Evaluation Reports required under the Sunset Act prior to their 2021 Sunset dates.	In Progress	While DIR and the Division have formed the committee and begun work on identifying opportunities for collaboration as specified by the bill, ongoing effort and reporting to the Sunset Commission will be required until 2019.
2. Requires DIR to develop a consistent and clear method of measuring the costs and progress of IT consolidation initiatives. Requires DIR to work with any entity involved in a consolidation to develop an agreed on methodology for evaluating actual costs and cost savings. Also requires DIR to evaluate the progress of its information resources consolidation projects compared to initially projected timelines for implementation. Requires DIR to annually report this information to entities involved in the consolidation, the DIR Board, the Legislative Budget Board, and on DIR's website.	In Progress	While DIR has developed a method of measuring the progress of its data center consolidation effort, the agency has not yet finalized a methodology for measuring costs. DIR has created a draft cost methodology and is working with its data center state agency customers to reach a consensus and finalize this methodology. The agency anticipates completion by February 2015.

Texas Lottery Commission — H.B. 2197

House Bill 2197, as adopted by the 83rd Legislature, continues the Texas Lottery Commission (Commission) for 12 years. The legislation included a total of 23 changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires the Commission to amend its current bingo penalty schedule to include a full range of sanctions to ensure that sanctions imposed are appropriate to the violation.	In Progress	The agency plans to propose rules to amend the existing schedule at its Commission meeting in February 2015.

Port of Houston Authority — H.B. 1642

House Bill 1642, as adopted by the 83rd Legislature, made numerous changes to the operations and management of the Port of Houston Authority (Authority). The legislation included a total of 11 changes requiring action. The following chart summarizes two provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires the Authority to develop and implement a policy to guide and encourage more meaningful stakeholder involvement efforts.	In Progress	The Authority has developed a draft policy and has implemented a number of required elements, such as adding Port Commission meeting minutes and audio to its website. The Authority recently engaged an outside consultant to develop a more comprehensive public engagement strategic plan, and estimates final adoption during the first quarter of 2015.
2. Requires the Authority to create a comprehensive strategic planning process, including long-range strategies and shorter-range implementation plans tied to financial and capital planning.	In Progress	The Authority has completed many elements of this requirement, but has not yet finalized an updated long-range strategic plan. The Port Commission adopted a strategic planning policy, conducted planning and budget workshops, and has approved mid- and short-range capital plans and budgets as required. The Authority recently engaged an outside consultant to conduct an organizational assessment and assist with long-range strategic planning, and estimates adoption of an updated long-range plan in the first quarter of 2015.

Port of Houston Authority (continued)

In addition to the provisions in H.B. 1642, the Sunset Commission also issued eight management actions to the Port of Houston Authority. Two of these directives are still in progress and one has not been implemented, as explained in the chart below.

Management Action	Implementation	
	Status	Comments
1. The Authority should take steps to better manage and align its organizational approach to procurements.	In Progress	The Authority has made significant progress, including establishing a centralized procurement office, completing updates to procurement policies and manuals, and moving responsibilities related to the small business program. However, the Authority has not yet finalized implementation of a new system to better track and manage the procurement process and related information. The Authority has contracted with a vendor to upgrade the procurement system and estimates implementation in June 2015.
2. The Authority should eliminate or better manage ongoing professional services contracts.	Not Implemented	The Authority has not implemented the directive to eliminate the duties of the Special Counsel function. While the Authority eliminated the formal title of this position, the Authority continues to contract for the same general legal and open meetings advice for Commission members that could be handled by the Authority's General Counsel. The Authority has taken action on other elements of this directive to reduce involvement of the Litigation Counsel and more actively manage the Authority's lobby function.
3. Direct the Port Commission, acting as the Pilot Board, to take a more active role in oversight of the Houston Pilots.	In Progress	The Authority has taken steps to implement many elements of the directive, including tracking continuing education and incident investigation information on pilot renewal applications; expanding criminal background checks; monitoring fatigue mitigation activities; and improving information and complaints procedures available to the public. However, the Pilot Board has not yet adopted updated rules as required. The Authority plans to release draft rules for public comment by January 2015, with final adoption expected in the first quarter of 2015.

Public Utility Commission of Texas — H.B. 1600

House Bill 1600, as adopted by the 83rd Legislature, continued the Public Utility Commission (PUC) for 10 years. The legislation included a total of 11 changes requiring action. The following chart summarizes two provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Transfers rate-related regulation of water and sewer utilities from the Texas Commission on Environmental Quality to PUC and revises ratemaking from its current one-size-fits-all design to better accommodate different size utilities. Statute requires the transfer to occur by September 1, 2014, finalization of a memorandum of understanding between PUC and the Texas Commission on Environmental Quality by August 1, 2014, and rule adoption by September 1, 2015.	In Progress	PUC has opened rulemaking projects on new ratemaking processes, with completion of these projects planned for September 1, 2015 as required by statute. Other dates required in statute have been met.
2. Requires PUC to make a comparative analysis of its existing statutory ratemaking authority and its new water and wastewater authority to determine opportunities for standardization. Requires PUC to report to the Legislature any recommendations to standardize ratemaking requirements in time for consideration in the 84th legislative session.	In Progress	The report comparing ratemaking authority at the PUC is currently in production. The PUC intends to submit this report to the Legislature concurrently with the Scope of Competition reports that are due to the Legislature in January 2015.

TEXAS STATE SOIL AND WATER CONSERVATION BOARD

Special Purpose Review

The Texas State Soil and Water Conservation Board (State Board) works directly with owners and operators of agricultural land to develop and implement conservation plans involving land treatment measures for erosion control, water quantity, and water quality purposes. The State Board underwent Sunset review in time for the 2011 legislative session.

The State Board's Sunset bill, House Bill 1808, directed the Sunset Advisory Commission to conduct a special-purpose review of the State Board as part of the Commission's review of agencies for the 84th Legislature. The Legislature limited this review to evaluation of the State Board's implementation of the Sunset Commission's recommendations regarding the Flood Control, Water Quality Management Plan, and Water Supply Enhancement programs.

In Fall 2012, the Sunset Commission evaluated the State Board's progress in implementing the statutory provisions contained in H.B. 1808. Two provisions of the bill were still in progress at that time. This current review builds on that earlier compliance effort to see if implementation of flood control, water quality management, and water supply enhancement recommendations had changed in any way and if new legislation had affected those requirements. Sunset staff also looked to see if the State Board had fully implemented the two remaining provisions related to the Water Supply Enhancement Program.

Sunset staff found the State Board has fully implemented the Sunset Commission's recommendations in H.B. 1808. No further action is necessary at this time.

APPENDICES

APPENDIX A

Sunset Review Schedule — 2017

34 Reviews

Bar of Texas, State

Capital Metropolitan Transportation Authority

Chiropractic Examiners, Texas Board of

Counselors, Texas State Board of Examiners of Professional

Dental Examiners, State Board of

Dietitians, Texas State Board of Examiners of

Employee Charitable Campaign Policy Committee, State

Employees Retirement System of Texas, Board of Trustees of

Expanded Learning Opportunities Council

Health Care Quality and Efficiency, Texas Institute of

Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of

Juvenile Justice Board and Department, Texas

Law Examiners, Board of

Marriage and Family Therapists, Texas State Board of Examiners of

Medical Board, Texas

Midwifery Board

Nursing, Texas Board of

Occupational Therapy Examiners, Texas Board of

Optometry Board, Texas

Orthotics and Prosthetics, Texas Board of

Perfusionist Advisory Committee, Texas State

Pharmacy, Texas State Board of

Physical Therapy and Occupational Therapy Examiners, Executive Council of

Physical Therapy Examiners, Texas Board of

Appendix A

Podiatric Medical Examiners, Texas State Board of

Port of Houston Authority

Psychologists, Texas State Board of Examiners of

Racing Commission, Texas

Railroad Commission of Texas

Social Worker Examiners, Texas State Board of

Speech-Language Pathology and Audiology, State Board of Examiners for

Sulphur River Basin Authority

Transportation, Texas Department of

Veterinary Medical Examiners, State Board of

APPENDIX B

Summary of the Texas Sunset Act

Sunset Act

The Texas Sunset Act (Chapter 325, Government Code) went into effect in August 1977. It provides for automatic termination of most agencies under Sunset review, although a few agencies under review are exempt from automatic termination.

Sunset Advisory Commission

The 12-member Sunset Advisory Commission has five members of the Senate, five members of the House, and two public members, appointed by the lieutenant governor, and the speaker of the House, respectively. The chairmanship rotates between the Senate and the House every two years.

Reviewing an Agency

When reviewing an agency, the Commission's staff must consider statutory criteria as shown in the textbox, *Sunset Review Questions* on the following page . The Commission's report on an agency must include a recommendation to abolish or continue the agency, and may contain recommendations to correct problems identified during the review. These problems may include other agencies not under review that overlap or duplicate, or otherwise relate to the agency under review.

Continuing an Agency

If the Commission recommends that an agency be continued, it has legislation drafted for that purpose, and to correct the problems found during the Sunset review. Sunset legislation usually continues an agency for 12 years.

Abolishing an Agency

If the Commission recommends abolishment of an agency, the agency generally has a one-year period to wind down its operations. The agency retains full authority and responsibility until the end of that year, at which time its property and records are transferred to the appropriate state agency.

Compliance Reviews

The Commission is required to examine an agency's actions after a Sunset bill is passed to determine if the agency has implemented the new statutory requirements. In addition, the state auditor may evaluate the agency's compliance with non-statutory management changes recommended by the Commission.

Appendix B

Sunset Review Questions

All Agencies

1. How efficiently and effectively does the agency and its advisory committees operate?
2. How successful has the agency been in achieving its mission, goals, and objectives?
3. Does the agency perform any duties that are not statutorily authorized? If so, what is the authority for those activities and are they necessary?
4. What authority does the agency have related to fees, inspections, enforcement, and penalties?
5. In what ways could the agency's functions/operations be less burdensome or restrictive and still adequately protect and serve the public?
6. How much do the agency's programs and jurisdiction duplicate those of other agencies and how well does the agency coordinate with those agencies?
7. Does the agency promptly and effectively address complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions?
9. How has the agency complied with state and federal requirements regarding equal employment opportunity, the rights and privacy of individuals, and purchasing guidelines for historically underutilized businesses?
10. How effectively does the agency enforce rules on potential conflicts of interest of its employees?
11. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
12. Would abolishing the agency cause federal government intervention or loss of federal funds?
13. Do the agency's statutory reporting requirements effectively fulfill a useful purpose?

Occupational Licensing Agencies

1. Does the agency's occupational licensing program serve a meaningful public interest and provide the least restrictive form of regulation needed to protect the public interest?
2. Could the program's regulatory objective be achieved through market forces, private certification and accreditation programs, or enforcement of other law?
3. Are the skill and training requirements for a license consistent with a public interest, or do they impede applicants, particularly those with moderate or low incomes, from entering the occupation?
4. What is the impact of the regulation on competition, consumer choice, and the cost of services?

