Sunset Advisory Commission

Staff Report

Health Licensing Consolidation Project

2016–2017
85th Legislature

Sunset Advisory Commission

Representative Larry Gonzales
Chair

Senator Van Taylor
Vice Chair

Representative Cindy Burkett

Representative Dan Flynn

Representative Richard Peña Raymond

Representative Senfronia Thompson

William Meadows

Senator Juan "Chuy" Hinojosa

Senator Robert Nichols

Senator Charles Schwertner

Senator Kirk Watson

LTC (Ret.) Allen B. West

Ken Levine
Director

Cover Photo: The iron perimeter fence was installed in the 1890s, a few years after the completion of the Texas State Capitol. The fence surrounds approximately 22 acres of the Capitol Grounds but only on the east, west, and south sides due to the addition of the Capitol Extension to the north in the early 1990s. Photo Credit: Janet Wood

Health Licensing Consolidation Project

Sunset Staff Report

2016–2017

85th Legislature

Table of Contents

Health Licensing Consolidation Project

The Independent Structure of the State's Health Licensing Agencies Is Antiquated and Inefficient.

Introduction

Texans want, and deserve, a lean, high-quality state government. When it comes to licensing many of our health professionals, the reality is we have a slow, inefficient structure. No true *system* of licensing exists. Texas has a series of independent, separate state agencies. Each has its own governor-appointed board, a majority of which is made up of members of the regulated profession who write their own rules to regulate their own profession. Each has its own licensing staff. Each has its own enforcement and inspection staff. Each has its own administrative staff.

Corporations would never structure their business this way. A well-run private business would not have separate administrative structures for each of its components. Information technology would run on a consistent platform. Where possible, operations would be consolidated to take advantage of economies of scale. While not all government can be run on a business model, health occupational licensing does not take advantage of available business best practices.

Texas' health occupational licensing does not take advantage of business best practices.

Texas is far behind most states that have consolidated their health occupational licensing in various forms. Health occupational licensing also lags behind Texas' approach to licensing other types of occupations, where the Texas Department of Licensing and Regulation (TDLR) has been a model for efficiency and quality service. TDLR succeeds by taking advantage of economies of scale for each element or function of regulatory programs — one licensing program, one investigations division, one information technology system and so forth.

As shown in this report, Texas has a great opportunity for improvement. The place to start this effort in the area of health occupational licensing is with small, inefficient and, in some cases, quite problematic agencies. The Board of Podiatric Medical Examiners, for example, has four staff to perform licensing, enforcement, and administration functions and spends nine times more per licensee than the Board of Nursing. Last year, the Board of Social Work Examiners took 1,107 days (about three years) on average to resolve a complaint. Although not every small board exhibits problems at this level, the overall inefficiency is endemic. The Legislature must fund each agency, for each function, over and over again.

As a result, this report focuses on health licensing agencies with less than 25 staff. Nine such licensing boards currently under Sunset review fell within this scope. Working with the Sunset review teams assigned to these entities, staff concluded that Texas would significantly benefit from a business transformation

through consolidation of all nine within TDLR's Health Professions Division. Recommendations to transfer the boards of Marriage and Family Therapists, Professional Counselors, and Social Workers to TDLR-Health are already contained in the separate staff report on those entities published earlier this month. This report contains the remaining recommended transfers. In addition, transfer of the three behavioral health boards from the Department of State Health Services (DSHS) would leave just one small behavioral health licensing program there. Accordingly, this report also recommends licensure of Chemical Dependency Counselors transfer to TDLR.

These recommended transfers are in no way a punishment for those agencies with performance issues. Staff recommend all nine entities transfer to the Health Professions Division of TDLR to take advantage of economies of scale and elimination of duplicate functions. Due to their small staff size, even well-performing agencies pose a risk since they are but one retirement or a complicated lawsuit away from calamity.

In almost every transfer of a board to TDLR Sunset has recommended, board members and practitioners argue that they will lose authority over their profession. However, as advisory boards at TDLR, they still design standard of care rules and develop the penalty matrix for enforcement, and TDLR consults with the boards on matters requiring professional expertise. Meanwhile, applications are processed by TDLR licensure staff, TDLR inspectors investigate complaints and perform on-site inspections statewide, and legal and enforcement staff prosecute infractions. And no, before we are asked, electrical inspectors won't be investigating standard of care complaints. This type of question arises with every transfer, and the answer is that TDLR has successfully obtained the necessary training and required expertise where needed.

The following material illustrates the current problems and duplication of effort in health occupational licensing. The material also explains the significant opportunities for saving taxpayer dollars and improving service that come with a consolidation of these small licensing agencies.

Background

Texas's approach to regulating occupations has followed a trend of moving from stand-alone agencies to consolidated regulatory programs. Texas began licensing and regulating health professions in the early 1900s through the creation of individual state agencies, each with its own operations, staff, and independent board appointed by the governor. As each specialization in health care sought licensure, the Legislature continued to establish new regulatory statutes and autonomous stand-alone agencies, spanning from the medical and pharmacy boards created in 1907 to the Executive Council of Physical Therapy and Occupational Therapy Examiners in 1993. This biennium, the Sunset Commission is reviewing 13 of these independent health profession licensing boards, including three administratively attached to the Department of State Health Services (DSHS). The table, *Health Licensing Agencies Under Sunset Review,* lists these boards and their licensee population and staff.

Health Licensing Agencies Under Sunset Review — FY 2015

	Licenses and Registrations	Staff
Small Health Licensing Agencies		
Texas State Board of Podiatric Medical Examiners	1,562	4
Texas State Board of Examiners of Marriage and Family Therapists*	3,511	4
Texas Optometry Board	4,411	7
Texas Board of Chiropractic Examiners	9,276	14
Texas State Board of Examiners of Psychologists	9,512	14
Texas State Board of Examiners of Professional Counselors*	22,543	9
Texas State Board of Social Worker Examiners*	23,797	10
Texas Board of Physical Therapy Examiners**	27,049	20
Texas Board of Occupational Therapy Examiners**	15,454	
Large Health Licensing Agencies		
State Board of Dental Examiners	82,658	58
Texas Medical Board	85,244	210
Texas State Board of Pharmacy	113,806	88
Texas Board of Nursing	408,846	117

* Administratively attached to DSHS

** Overseen by the Executive Council of Physical Therapy and Occupational Therapy Examiners

While Sunset staff's evaluation found a continuing need to regulate these health professions, the Legislature tasks Sunset with also considering the organizational structures that would provide the most effective and efficient regulation. Since the 1990s, the structure of occupational regulation in Texas has undergone considerable changes, as the Legislature has worked to develop economies of scale and greater government efficiency through the consolidation of regulatory programs.

- In 1989, the Legislature created the Texas Department of Licensing and Regulation (TDLR) to regulate several occupations under one roof. Today, TDLR regulates 32 health and non-health related occupations.
- In 1993, the Legislature created the Health Professions Council to provide some consolidated administrative support services, such as information technology, to the independent health licensing agencies.
- During the 1990s and early 2000s, the Texas Medical Board became a quasi-umbrella licensing agency with the transfer of acupuncture and physician assistant regulation and oversight of surgical assistants. Today, the board oversees eight medically-related occupations.
- By 2004, the Legislature had consolidated the regulation of many health occupations at DSHS. During the 2004 review of health licensing agencies, Sunset staff found consolidation of health professions regulation could provide an opportunity for efficiency and improved services. Sunset staff recommended creating a stand-alone health licensing umbrella agency by consolidating four of the smaller independent health licensing agencies and 19 health licensing programs from DSHS and the Texas Medical Board. At that time, the Sunset Commission declined to recommend the restructuring to the 79th Legislature.
- In 2015, Sunset staff found DSHS struggled to effectively regulate health professions with its broad array of other high-priority responsibilities. The Sunset Commission and Legislature agreed, transferring 17 health licensing programs from DSHS to the Texas Medical Board and TDLR to improve services and better protect the public. The chart, *2015 DSHS Transfers to TDLR*, shows the 13 programs transferred to TDLR and completion dates of the transfers. Following the transfer, four health licensing programs currently remain at DSHS — regulation of professional counselors, marriage and family therapists, social workers, and chemical dependency counselors.

2015 DSHS Transfers to TDLR

Programs With Completion Date of October 3, 2016	Programs With Completion Date of November 2017 (Expected)
• Athletic Trainers • Dietitians • Fitters and Dispensers of Hearing Instruments • Midwives • Orthotists and Prosthetists • Speech-Language Pathologists and Audiologists • Dyslexia Therapists and Practitioners	• Code Enforcement Officers • Laser Hair Removal • Massage Therapists • Mold Assessors and Remediators • Offender Education Providers • Sanitarians

Findings

The independent board structure creates common problems and inefficiencies for small agencies.

Although each health licensing board faces a unique set of issues, the majority of problems grow from one root challenge: limited staff and fiscal resources to dedicate to core functions and respond to changing demands. The risks posed to the public by these problems do not necessarily apply to every agency reviewed for potential consolidation. But each smaller-sized board faces at least four of the eight core issues commonly seen throughout these reviews that taken together cannot be addressed by an individual board without addressing the root cause. The chart, *Key Problems Shared by Small Health Licensing Boards*, ties each board to the specific set of problems or challenges it shares with other boards. Appendix A, *Comparison of Licensing and Enforcement Outcomes*, provides further details on the performance of each board.

Key Problems Shared by Small Health Licensing Boards

	Chiropractors	Professional Counselors	Marriage and Family Therapists	Optometrists	Physical and Occupational Therapists	Podiatrists	Psychologists	Social Workers
Slow complaint resolution	✓	✓	✓			✓		✓
Limited or no fingerprint background checks	✓	✓	✓	✓	✓	✓		✓
Unnecessary barriers to licensure	✓	✓	✓	✓		✓	✓	✓
Ineffective complaint prioritization	✓	✓	✓			✓		✓
Lacking consistency in penalties		✓	✓		✓	✓		✓
Cost due to lack of economies of scale	✓			✓	✓	✓	✓	
Turnover poses high risk to agency functions	✓			✓	✓	✓	✓	
Size and resources limit effectiveness and customer service	✓	✓	✓	✓		✓	✓	✓

The findings that follow illustrate significant concerns identified during Sunset reviews of the health licensing agencies, most of which are shown in the chart above. Not all the agencies have all of these problems. Several are quite well run at the present time. However, even these agencies may be one retirement, resignation, or lawsuit away from a downward spiral and show opportunities for gains in efficiency.

Ineffective health licensing agencies put Texans at risk.

Effectively licensing and regulating these licensees is crucial to protecting the public, given the trust the public places in their health professionals. Individual agencies for each small licensee population struggle under constraints from limited and inflexible resources that in some cases have led to systemic failings, potentially leaving dangerous health professionals in practice and placing patients at risk of harm.

- **Long complaint investigation and resolution timelines**. Most small health licensing agencies take 10 to 30 months to investigate and resolve complaints against licensees. This long complaint resolution timeline potentially allows a health professional whose license may ultimately be suspended or even revoked to continue to practice on an unknowing public. Conversely, long complaint resolution timelines unnecessarily place health professionals in regulatory limbo while they await their board's decision on the future of their livelihood. Quick complaint resolution is critical to protect the public from potentially harmful health professionals in need of disciplinary action and to keep effective, safe professionals in practice.

On average, the Board of Podiatric Medical Examiners took 398 days to resolve complaints and the Board of Social Worker Examiners took 911 days during fiscal year 2015.

- **Limited implementation of fingerprint background checks leaves agencies in the dark on licensed professionals' criminal convictions**. To help protect the public's safety, licensing agencies commonly conduct background checks using the Department of Public Safety's fingerprint system, which uncovers the criminal history of applicants and licensees nationwide. Although the Legislature authorized all health licensing agencies to conduct these background checks, few required existing licensees to undergo a fingerprint background check.[1] As a result, many boards rely solely on licensees to self-disclose any criminal history when renewing their license and cannot reliably track any past, present, or future criminal activity of licensees. The licensed health professionals regulated by these boards often practice in otherwise unregulated locations, including licensees' private offices, and their practice can involve contact with vulnerable populations, such as minors, the elderly, and patients with serious behavioral health diagnoses. In fiscal year 2015, more than 90,000 licensed chiropractors, podiatrists, physical therapists, occupational therapists, optometrists, marriage and family therapists, social workers, and professional counselors in Texas were not subject to fingerprint background checks.

Due to a lack of fingerprint background checks, a licensed chiropractor continued to treat patients after multiple arrests and allegedly providing illegal drugs to patients.

- **Several agencies do not prioritize high-risk complaints**. Sunset reviews revealed several boards do not direct investigators to prioritize investigations that pose the greatest risk to the public, a critical component of an effective investigative process. Without such priority, investigators may place patients at risk by diverting their time and attention away from resolving high-risk complaints in favor of those presenting little risk of public harm, such as late license renewal. As a result, serious complaints about health professionals, such as for sexual misconduct, could linger unresolved while those health professionals continue to practice.

- **Some agency practices risk exposing confidential health information or discouraging patients from filing complaints on licensees**. Health professionals and the agencies tasked with regulating them ask the public to trust them with confidential and often sensitive health information or complaint information against their treatment provider. Over time, siloed health profession licensing agencies have developed policies and processes that fail to protect this confidential information.

  For example, several boards regulating behavioral health professionals conduct public enforcement committee meetings in a manner that can lead to disclosure of patient names and diagnoses when discussing allegations against a licensee. These committee meetings create a chilling effect for complainants since they must be willing to undergo the stressful experience of having deeply personal matters discussed in a public setting.

  When observing openly held complaints and ethics committee meetings for the marriage and family therapy, professional counselor, and social worker boards, Sunset staff frequently observed discussion that revealed symptoms, diagnoses, and patient identity.

  When investigating complaints, some boards send un-redacted copies of the complaint directly to the licensee, revealing the identity of the complainant and potentially discouraging people from filing legitimate complaints. For complaints that relate to patient care, the boards' actions risk potential retaliation against complainants, who range from patients, office staff, or other healthcare practitioners.

  Other health licensing agency practices that may discourage the public from filing complaints include requiring patients to notarize and mail their complaints to the agency, and having patients release their medical records to the agency regardless of the nature of the complaint.

Administrative functions of small health licensing agencies are inefficient and take focus away from core licensing and enforcement functions.

Small, stand-alone health licensing agencies dedicate a larger portion of resources to administrative functions. Each state agency must perform basic functions to operate, such as accounting and information technology. Small agencies do not benefit from economies of scale found at large agencies and therefore must dedicate a larger percentage of their budget

The Board of Podiatric Medical Examiners spends nine times more per licensee than the Board of Nursing, an agency with a much larger licensee population that benefits from economies of scale.

and employee allotment to filling these roles — despite many of these agencies not having enough work for a full-time chief financial officer, general counsel, or information technology staff. Agencies either pay these costs and therefore have higher expenditures per licensee than larger agencies, or the agencies find patchwork solutions that are not ideal arrangements for the state.

With chronically thinly-stretched resources, even boards whose current operations meet minimum standards face a perpetual risk of operational dysfunction.

Unlike larger agencies able to absorb and adjust to changed circumstances, these smaller licensing boards have little to no flexibility when reacting to events such as losing staff or facing litigation.

- **Turnover is more damaging to small agencies**. When staff leave, either through retirement or attrition, the regulatory functions of the agency suffer while the board hires to fill positions. Core regulatory functions keep existing staff working at or beyond full capacity, leaving little time for the boards to develop succession plans or fill gaps in agency functions created by staff attrition. In addition, the limited number of positions and career paths offered at these small agencies has further contributed to staff attrition.

Almost 30 percent of the Executive Council of Physical Therapy and Occupational Therapy Examiners' staff qualify for retirement.

Several agencies report frequently losing mid-level staff to larger agencies that can offer longer-term career growth simply not feasible at a small agency. When staff leave, licensing boards often lose years of training invested in those individuals, as well as key experience in the functions of the agency. Taken together, impending retirements and difficulty retaining experienced staff create a significant risk that these licensing boards will lose vital institutional knowledge and fail to maintain effective regulation.

The Board of Chiropractic Examiners lost five of its 14 employees in fiscal year 2016 alone.

- **Litigation poses greater threat to small agency operations**. Similarly, when these small agencies become involved in litigation, either through an appeal from an enforcement action or a suit brought against the agency directly, the agencies typically do not have money in their operating budget or extra staff to help in case litigation. As a result, agencies often must redirect money and staff time away from core regulatory functions, regardless of any resulting detriment to their mission. Staff from several agencies under review expressed concerns to Sunset staff about the difficulties they have or would face if involved in serious litigation.

The Board of Examiners of Psychologists currently faces an order to pay attorney fees from a recently lost federal lawsuit, which the board likely must pay from a 2017 operating budget that had not accounted for such an expense.

A private sector business would never structure its operations with multiple independent, duplicative processes.

As staff researched models of occupational licensing structures, they also reviewed numerous articles regarding business mergers and restructuring. Both the private sector and nonprofits rely on restructuring as a tool to address factors such as the drive for efficiency, technological or regulatory changes, and gaining economies of scale.[2] These same factors are consistent with the goals of consolidating duplicative government programs and operations.

A case study of the typical process of merging two businesses provides a clear example of the benefits realized from consolidation. One firm with five manufacturing facilities acquires a second firm with three similar manufacturing facilities. Post-merger, the two firms data processing centers are combined to support all eight facilities. This reduces direct labor costs, telecommunication expenses, leased space expenses, and general administrative expenses, resulting in profits tripling.[3]

Certainly, governmental regulation of health occupations is not like manufacturing. However, the concepts of cost reductions by merging and removing duplication do apply to functions such as licensing and enforcement and are appropriate to consider in the regulatory context.

TDLR has a proven track record of improving licensing and enforcement outcomes.

Transferring the regulatory functions of small health licensing agencies to TDLR would improve licensing and enforcement outcomes and better protect the people of Texas.

TDLR's focus on occupational and small industry regulation has enabled it to effectively and efficiently regulate its programs. With the programs scheduled to transfer from DSHS by 2019, TDLR will oversee 38 licensing programs with more than 168 license types and about 700,000 licensees. TDLR has a proven track record of improving licensing and enforcement outcomes for transferred programs, while maintaining or decreasing administrative costs. TDLR could provide health licensing programs improved services, institutional stability, administrative savings, and the capacity for greater innovation.

- **TDLR applies best practices for licensing and enforcement**. TDLR's licensing staff processes over 157,000 new license applications and over 350,000 renewal applications each year, while managing to issue almost all those licenses within 10 days. Dedicated enforcement staff investigate and prosecute over 10,000 complaints each year. In comparison to year-long complaint resolution times seen at some of the independent health licensing agencies, TDLR resolves complaints in an average of about seven months. Efficient processing of licenses and resolution of complaints not only delivers better regulation to professionals; it provides the public quicker access to the services of those professionals while protecting them from potential harm.

TDLR also has a proven ability to provide consistent and quality regulation without many of the struggles Sunset staff found at smaller health licensing agencies. TDLR's enforcement process prioritizes investigation of complaints based on objective rankings of the severity of the complaint. Trained agency staff investigate complaints in a manner that protects confidential information and does not discourage the public from coming forward with those complaints.

- **Functional divisions minimize administrative costs and provide greater flexibility of resources**. TDLR divides its operations along functional lines, creating divisions responsible for activities common across all programs such as customer service, licensing, enforcement, and administrative services. These divisions enable staff to specialize in a particular task, such as processing license applications, and to become more efficient at that task. For example, TDLR employs 53 staff focused solely on answering customer service calls and requests. TDLR also cross-trains employees for multiple programs, meaning it can react more nimbly to staff attrition or emergency situations and can shift staff resources in ways impossible at smaller agencies. Under this model, programs have access to substantially more resources within each function and a larger statewide presence than each program would be able to individually afford. For example, TDLR employs numerous attorneys to represent the agency in enforcement cases and litigation that would stretch a small agency's budget and resources. In addition, TDLR's satellite offices enable it to cost-effectively investigate complaints and conduct inspections throughout the state.

TDLR has 53 staff dedicated to customer service.

- **Licensees often see cost savings**. By allowing TDLR to share costs for services across its programs, a functional approach creates economies of scale. Dedicating staff to each function increases productivity, which reduces overall costs. Because of these administrative cost savings, TDLR has been able to reduce regulatory fees for a number of programs.[4]

Over the past 14 years, TDLR has lowered licensing fees for a cumulative savings of over $32.5 million.

- **TDLR has greater capacity to innovate**. Efficient use of its staff and resources allows TDLR to develop innovative and sophisticated services not present at many smaller licensing agencies. For example, TDLR keeps up-to-date with technology innovations such as new licensing database software. TDLR provides substantial online services, ranging from accepting applications or complaints online, to updating licensees and the public through social media, to developing extensive online resources relating to occupational rules and guidance for licensees. TDLR employs multi-lingual staff to assist non-English speaking licensees and the public. By coordinating legislative priorities among its programs, TDLR gives each program a coordinated voice for needed improvements.

TDLR is well-positioned to effectively regulate health professions.

TDLR's approach to regulation serves to balance the need to involve health professionals in determining the scope of practice and standards of care for the profession with the benefits of consolidated, public oversight of occupational regulation. Although TDLR has only recently begun regulating health-related occupations, TDLR's experience absorbing the DSHS programs transferred last session has positioned it to effectively and efficiently regulate additional programs currently under Sunset review. In addition to gaining the practical experience needed to incorporate these new programs into its operations, TDLR has developed specific structures designed to acknowledge the complexity of health occupations and incorporate the role of professional expertise in regulatory functions.

TDLR has already completed the first phase of transfers from DSHS and expects to complete the second phase in November 2017 — almost two years ahead of schedule.

- **Health Professions division**. To preserve the benefits of its regulatory model, TDLR has continued its functional divisions of services. However, for health-related occupations TDLR has created a parallel "Health Professions" division across its organizational structure, as reflected in Appendix B, *Texas Department of Licensing and Regulation Organizational Structure*. Within each functional group — such as licensing, investigations, or compliance — health programs receive services from staff in a dedicated health professions section. In many of these sections, TDLR has hired former DSHS staff with expertise in the same program areas to provide continuity of services and institutional knowledge.

- **Involvement by advisory boards**. Each health advisory board, made up of professional members, continues to function similarly to independent boards. Advisory boards are involved in initiating, developing, and taking public testimony on most rulemaking proposals. By statute, all rules relating to a profession's scope or standard of care must be proposed by the advisory board and the Texas Commission on Licensing and Regulation may only adopt or return the proposal for further consideration. Health advisory boards receive support from a dedicated team of staff from each functional section who regularly attend board meetings to update board members.

TDLR advisory boards initiate and develop standard of care rules.

- **Expertise from professions**. TDLR has developed structures to ensure members of health professions remain central to decisions regarding the professions' qualifications to practice and standards of care. Particularly relating to enforcement cases, TDLR seeks subject-matter expertise from advisory board members or contracts with licensed professionals during both the investigation and prosecution of complaints. TDLR's reliance on experts to advise on matters of professional standards mirrors the process used by the lay enforcement staff at each independent board. In addition, TDLR's compliance division provides a direct point of contact for licensees and professional associations to provide input or learn how to stay within

compliance of state law and board rules. The compliance division often hires licensed individuals to provide subject-matter expertise to other divisions and to coordinate with advisory boards.

- **Providing active oversight**. By placing final rulemaking and enforcement decisions with a public commission, TDLR faces less risk of costly litigation than the independent boards. In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, the Supreme Court held that a state licensing board controlled by members of the profession being licensed does not qualify for state action immunity regarding rulemaking and enforcement decisions and may be sued for anti-trust violations for decisions that create an unreasonable restraint of trade. In contrast, the public-member Texas Commission on Licensing and Regulation's review of advisory board proposals before final adoption may keep TDLR from being found in violation of anti-trust laws.

Oversight by the TDLR Commission helps prevent rules that create unreasonable restraint of trade.

Other organizational options for these professions do not provide the same opportunities for improved services and administrative efficiencies.

During the review of these health licensing programs, Sunset staff considered a wide range of organizational options and concluded that transfer to TDLR provides the greatest opportunity for both better service and protection for the people of Texas and efficient use of state resources. Staff considered the possibility of a separate health professions regulatory agency, as previously recommended but legislatively rejected in the 2004 Sunset review of health licensing programs. Forming an independent health licensing agency would create a new bureaucracy and be quite costly. A new agency would have to start from scratch to obtain staff, purchase information technology systems, and develop processes for administrative services, such as accounting, purchasing, human resources, and legal counsel. TDLR, on the other hand, is able to add to existing infrastructure and systems.

Staff also considered the appropriateness of transferring programs to the Texas Medical Board. However, standard licensing practice dictates that a single board should not have regulatory authority over competing occupations, particularly where that authority could create conflicts of interest. Historically, conflicts have arisen over the scope of practice boundaries between physicians and chiropractors, podiatrists, physical and occupational therapists, optometrists, and psychologists, making these programs inappropriate for transfer to the Medical Board. Further, unlike programs transferred to the medical board by the Legislature in 2015, most of the practices being considered here for transfer do not work under the direction and supervision of a physician.

Recommendation

Change in Statute

1.1 Transfer 10 health occupational licensing programs to the Health Professions division at TDLR and reconstitute the associated regulatory boards as advisory boards.

By taking a more business-like organizational approach to occupational health licensing, this recommendation would both streamline and strengthen Texas's regulation of health professions by transferring 10 currently independent programs to TDLR. This recommendation keeps all current licenses intact while gaining efficiencies through a functional approach to regulatory and administrative operations. Each current profession would have a governor-appointed advisory board that would develop and initiate all rules related to practice of the related professions and provide expertise on difficult licensing or standard of care enforcement matters. Meanwhile, TDLR would handle all administrative matters, process licenses, perform investigations and carry out enforcement processes.

- **Phased transfer**. A phased transfer over three years would allow TDLR to absorb the new programs in an orderly and controlled manner as an extension of the recent successful phased approach used by TDLR for the 2015 DSHS transfers. TDLR would be required to adopt transition plans with the Health and Human Services Commission (HHSC) and each independent board to provide for orderly transfer of the programs. The first phase would transfer the four remaining occupational licensing programs from DSHS/HHSC to TDLR no later than August 31, 2018.[5] The next phase would transfer occupational regulation of chiropractors, optometrists, and podiatrists by August 31, 2019. The final phase would transfer occupational regulation of physical therapists, occupational therapists, and psychologists by August 31, 2020. The chart, *Phases of TDLR Program Transfers*, reflects the complete schedule of these transfers.

Phases of TDLR Program Transfers

Program		Completion Date
Phase One:	Marriage and Family Therapists Professional Counselors Social Workers Chemical Dependency Counselors[6]	By August 31, 2018
Phase Two:	Chiropractors Optometrists Podiatrists	By August 31, 2019
Phase Three:	Physical Therapists Occupational Therapists Psychologists	By August 31, 2020

By transferring only the four DSHS/HHSC programs in the first phase, TDLR would be able to capitalize on knowledge and experience it is gaining from absorbing 13 DSHS programs transferred last session. Delaying transfer of programs with independent boards until phases 2 and 3 would allow TDLR sufficient time to prepare to operate these programs. To support the transition of these programs without any loss of services, the Legislature would need to enact appropriation contingency riders to allow for interagency financial agreements between TDLR, DSHS, HHSC, and the independent boards.

- **Advisory boards**. Each health profession would have a governor-appointed advisory board responsible for development of all practice-related rules. Such rules require the experience and expertise of highly-trained members of that profession. The all-public member TDLR Commission would consider these practice-related rules for final approval and could adopt or return the rules to the advisory board, but could not amend them. TDLR would gain responsibility for registering, certifying, licensing, and taking enforcement action against practitioners. TDLR would make all final regulatory decisions currently requiring board action, including decisions regarding the establishment of fees.

  Transition. Under this recommendation, each program's independent regulatory board would be abolished on the date the program transfers to TDLR, as established in each transition plan, and reconstituted as a governor-appointed advisory board to match TDLR's operational model as discussed above. Like the health programs previously transferred to TDLR, the advisory boards would keep the same composition of public and professional members currently prescribed by statute. To ensure continuity, TDLR should use current board members as an advisory working group until a majority of new advisory board members have been appointed by the governor and qualified. Current board members would be eligible for appointment to the new advisory boards.

- **Sunset provisions**. This recommendation would continue the functions of each licensing program and remove the Sunset provision in the enabling statutes of each of these programs, as they would be subject to review under TDLR's existing Sunset provision, currently set for September 1, 2019.

- **Coordination of transition**. Each independent board and DSHS/HHSC would provide TDLR access to all systems and information needed to effectively absorb the programs, including licensing, revenue, and expenditure systems; rights to service contracts and licensing agreements; use of online renewal and new application systems; and review and resolution of pending judgments and outstanding expenditures.

- **Legislative issues**. This recommendation would direct Sunset staff to work with staff from TDLR, the independent boards, DSHS, HHSC, and the Texas Legislative Council in the drafting of legislation to accurately account for any other legal and administrative aspects a transfer of this magnitude entails. This would include aligning the statutory frameworks of each regulatory program with Chapter 51 of the Texas Occupations Code and TDLR's regulatory model.

Fiscal Implication

Like in any business, functional consolidations and business transformation require an initial up-front investment in the people and systems to carry them out. The service improvements will be immediate and actual monetary savings will begin in year four and continue to grow into the future. TDLR would require a one-time startup appropriation of about $950,565 and eight full-time equivalent employees (FTEs) for staff, equipment, information technology, and other capital expenses in fiscal year 2018, as shown in the chart, *Full-Time Equivalent Employees*. Meanwhile, the four behavioral health programs would need current operating funds to continue to function in place in fiscal year 2018.

Full-Time Equivalent Employees

Fiscal Year	TDLR FTEs	DSHS FTEs	Boards FTEs	Change in FTEs From FY 2017
2017	0	27.6	60	0
2018	35.6	0	60	+8
2019	55.6	0	35	+3
2020	88.6	0	0	+1
2021	84.6	0	0	-3
2022	84.6	0	0	-3

Comparison of Current Expenditures to Projected Operational Costs

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Programs that begin to transfer to TDLR	Chemical Dependency Counselors Marriage and Family Therapists Professional Counselors Social Workers	Chiropractors Optometrists Podiatrists	Physical and Occupational Therapists Psychologists		
Projected operating costs at TDLR	$950,565	$3,845,508	$5,642,814	$5,109,681	$5,109,681
Current expenditures at existing boards	$1,734,282*	$3,232,541	$5,390,728	$5,390,728	$5,390,728
Cost (Savings) to General Revenue	$950,565	$612,967	$252,086	($281,047)	($281,047)

* HHSC will have responsibility for operating the programs until transfer occurs during fiscal year 2018 and will require the existing operating budget to carry out its responsibilities.

In fiscal year 2019, TDLR's first full year operating the four behavioral health programs, TDLR would continue to require three additional FTE positions to address the boards' massive existing backlog of complaint cases. After these initial investments, the administrative costs for the behavioral health programs should decrease from $1.4 million to less than $1.2 million resulting in an annual savings and reduction in FTEs in fiscal years 2020–2022 as shown in the chart, *Comparison of Current Expenditures to Projected Operational Costs*.

The behavioral health boards currently generate approximately $3.1 million in revenue annually, which is more than sufficient to cover TDLR's projected start-up and operating costs, but would reduce the transfer to general revenue. Alternatively, the Legislature could direct TDLR by rider to cover the startup costs with a temporary surcharge on licensees of the transferred programs.

Despite gains in efficiencies and cost savings from economies of scale, TDLR would initially require the existing level of funding and FTE positions for each of the independent boards to redirect saved funds to raising the quality of investigation, enforcement, and customer service. Each transfer would also require one-time appropriations to update and transfer a board's data system to meet TDLR's existing level of software sophistication.

Since TDLR would be appropriated the funding for the behavioral health programs for the fiscal year 2018–2019 biennium, TDLR and HHSC or DSHS, as appropriate, would enter into a transition agreement to ensure funding is allocated between the agencies on a pro-rated basis until TDLR assumes full responsibility for the programs. TDLR would enter into similar arrangements with each of the health licensing professions' boards in the biennium during which their transfer would occur.

TDLR and DSHS recently completed the transfer of seven DSHS healthcare professions and TDLR is well positioned to build off of previous legislative investments in information technology and additional staff made during this transfer. The expertise and experience both agencies have gained during the first transfer should help minimize associated costs and disruptions to the agencies' programs, license holders, and the public. As an example, TDLR expects the second transfer, consisting of six other DSHS healthcare professions, to be completed almost two years ahead of schedule. Additional savings generated

from greater efficiency at TDLR due to functional alignment and economies of scale can be expected beyond the estimated $281,047 annually, but TDLR has the expertise to reassess after consolidating these programs and determine the appropriate number of FTEs and funding necessary to retain effective and efficient regulation of these professions. Further, TDLR has a long history of reducing licensing fees as operating costs decrease.

[1] All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 411.122, Texas Government Code.

[2] Donald DePamphilis, *Mergers, Acquisitions, and Other Restructuring Activities*, 5th ed. (Amsterdam: Elsevier, 2010), 6–12.

[3] Ibid.

[4] Texas Department of Licensing and Regulation, *2017–2021 Strategic Plan* (Austin: Texas Department of Licensing and Regulation, June 2016), 6.

[5] Sunset staff have independently recommended transferring these programs to TDLR in Issue 1 of the *Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners Sunset Staff Report*.

[6] The Licensed Chemical Dependency Counselors program at DSHS was not subject to review by Sunset during this biennium. As the only other purely occupational licensing program that would remain at DSHS, Sunset staff recommends transferring the program with the programs for professional counselors, marriage and family therapists, and social workers.

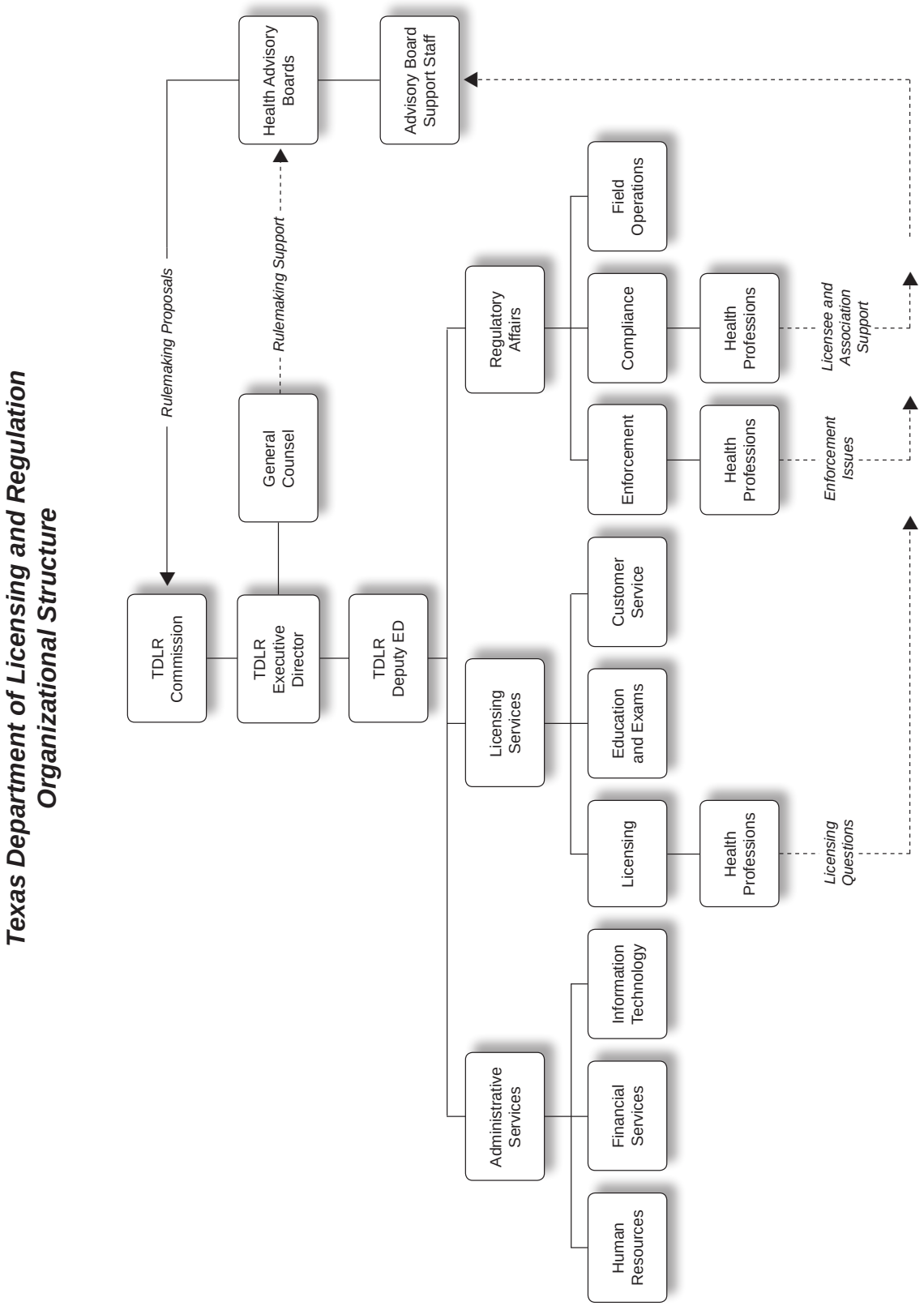
APPENDICES

Appendix A

Comparison of Licensing and Enforcement Outcomes Fiscal Year 2015

	Chiropractors	Marriage/Family Therapists	Optometrists	Physical / Occupational Therapists	Podiatrists	Professional Counselors	Psychologists	Social Workers	TDLR
General									
Licensees	5,085	3,511	4,411	38,397	1,093	22,543	9,512	23,797	455,076
Facility Registrations	4,090	0	0	4,106	0	0	0	0	197,312
Budget 2016	$816,666	$240,319	$480,516	$1,355,342	$290,880	$612,801	$898,408	$564,867	$28,538,184
FTEs	14	4	7	20	4	9	14	8	400
Licensing									
Number of Licensing FTEs	3	1	3	10	2	4	7	3	66
New License Applications	312	367	225	4,467	66	4,311	821	2,163	157,053
Renewal Applications	5,946	1,522	4,240	15,892	1,093	8,437	8,446	10,860	350,875
Enforcement									
Number of Enforcement FTEs	5	1	1	3	2	3	4	2	199
New Complaints Filed	132	50	156	770	75	235	270	146	10,511
Complaints Resolved	319	28	124	659	88	104	278	44	13,155
Disciplinary Actions	141	2	17	93	2	15	40	9	3,420
Average Days to Resolve Complaints	299	639	157	PTs: 127 OTs: 114	398	673	209	911	217

Appendix B


Texas Department of Licensing and Regulation
Organizational Structure
TDLR Commission
TDLR Executive Director
TDLR Deputy ED
General Counsel
Health Advisory Boards
Advisory Board Support Staff
Rulemaking Proposals
Rulemaking Support
Regulatory Affairs
Licensing Services
Administrative Services
Field Operations
Compliance
Enforcement
Customer Service
Education and Exams
Licensing
Information Technology
Financial Services
Human Resources
Health Professions
Health Professions
Health Professions
Licensee and Association Support
Enforcement Issues
Licensing Questions

Sunset Staff Review of the *Health Licensing Consolidation Project*

Report Prepared By

Ken Levine, *Project Supervisor*

Carissa Nash

Robert Romig

Cee Hartley

Ken Levine
Director

Sunset Advisory Commission

Location
Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail
PO Box 13066
Austin, TX 78711

Website
www.sunset.texas.gov

Email
sunset@sunset.texas.gov

Phone
(512) 463-1300