

SUNSET ADVISORY COMMISSION

Implementation of 2005 Sunset Legislation

January 2007



Sunset Advisory Commission

Senator Kim Brimer, Chair

Representative Vicki Truitt, Vice Chair

Senator Robert F. Deuell, M.D.

Representative Byron Cook

Senator Craig Estes

Representative Dan Flynn

Senator Eliot Shapleigh

Representative Lois Kolkhorst

Senator John Whitmire

Representative Ruth Jones McClendon

Howard Wolf, Public Member

Ike Sugg, Public Member

Joey Longley

Director

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.



Summary

The Sunset Act requires the Sunset Commission to review the ways in which agencies implement Sunset bill provisions in the session following their Sunset reviews. This review helps ensure that agencies fully implement changes adopted by the Legislature through the Sunset process.

In 2005, the 79th Legislature passed 18 bills containing changes recommended by the Sunset Commission. These bills contained a total of 275 provisions requiring action by the agencies involved. Sunset staff worked with each agency affected by these provisions to follow up on their efforts to implement the required changes.

Sunset staff found many major changes have been made by these agencies based on directives contained in the Sunset legislation from 2005. Key changes implemented as a part of the Sunset process included the following.

- ◆ Creating a new structure for workers' compensation in Texas through the abolishment of the Texas Workers' Compensation Commission, transfer of its functions to the newly created Division of Workers' Compensation in the Department of Insurance, and establishment of an independent Office of Injured Employee Counsel.
- ◆ Strengthening of the Public Utility Commission's (PUC) authority to oversee the Electric Reliability Council of Texas (ERCOT), the addition of two public members to the ERCOT Board, and the requirement that ERCOT monitor the electricity market by contracting with a private company selected by PUC.
- ◆ Providing stakeholders with meaningful input into the rulemaking process of the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and the Texas State Board of Acupuncture Examiners and improving the boards' investigation processes to better protect the public.
- ◆ Abolishing the Texas State Board of Barber Examiners and the Texas Cosmetology Commission, transferring their functions to the Texas Department of Licensing and Regulation, and reducing the level of regulation of barbers and cosmetologists.

While the majority of statutory provisions have been implemented, the chart, *Implementation Results*, shows that a number of provisions have not yet been fully put into action. Sunset staff identified 30 provisions that agencies are still in progress of implementing. In addition, five provisions are not yet effective, and eight provisions have not been implemented.

The chart on page 3, *Implementation Results 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, not yet effective, or not implemented, is provided in the following material.

Implementation Results

Status of Provisions	Number	Percentage
Implemented	232	84%
In Progress	30	11%
Not Yet Effective	5	2%
Not Implemented	8	3%
Total	275	100%

In addition to statutory changes, the Sunset Commission adopted 36 management recommendations for improvements to agency operations. The State Auditor evaluated the implementation of these management recommendations. The Auditor's findings are contained in SAO Report number 06-057. This SAO Report is attached.

Implementation Results by Agency

Agency	Bill Number	Changes Required	Changes Implemented	In Progress	Not Yet Effective	Not Implemented
Barber Examiners, Texas State Board of Cosmetology Commission, Texas	SB 411	26	26			
Chiropractic Examiners, Texas Board of	HB 972	12	6	6		
Counselors, Texas State Board of Examiners of Professional	HB 1283	12	11		1	
Dietitians, Texas State Board of Examiners of	HB 1155	7	6		1	
Guaranteed Student Loan Corporation, Texas	HB 2274	4	3	1		
Marriage and Family Therapists, Texas State Board of Examiners of	HB 1413	8	7		1	
Medical Examiners, Texas State Board of Physician Assistant Examiners, Texas State Board of Acupuncture Examiners, Texas State Board of	SB 419	38	35	3		
Midwifery Board, Texas	HB 1535	13	13			
Optometry Board, Texas	HB 1025	15	15			
Perfusionists, Texas State Board of Examiners of	SB 403	14	13		1	
Pharmacy, Texas State Board of	SB 410	19	18			1
Podiatric Medical Examiners, Texas State Board of	SB 402	12	10	1		1
Psychologists, Texas State Board of Examiners of	HB 1015	13	13			
Public Utility Commission of Texas	SB 408	16	13	1		2
Public Utility Counsel, Office of	SB 409	5	5			
Social Worker Examiners, Texas State Board of	SB 415	9	8		1	
Veterinary Medical Examiners, Texas State Board of	SB 407	11	9	2		
Workers' Compensation Commission, Texas	HB 7	41	21	16		4
Totals		275	232	30	5	8

PROVISIONS IN PROGRESS OR
NOT IMPLEMENTED BY AGENCY

Provisions In Progress or Not Implemented

Texas Board of Chiropractic Examiners HB 972

House Bill 972, as adopted by the 79th Legislature, continued the Texas Board of Chiropractic Examiners for 12 years. The legislation included a total of 12 changes requiring action. The following chart summarizes six provisions that are still in progress.

Item	Bill Provisions	Implementation Status
1	Adds standard Sunset language requiring Board members to complete training before assuming their duties. Provides that the changes in law only apply to a member appointed on or after September 1, 2005.	In Progress – The agency is creating a formal policy on training future board members. The Board will consider the new policy during either the February or May 2007 meeting, pending staff’s finalization of the proposed policy.
2	Requires the Board to take a strong stance against fraud and to adopt rules to prevent fraud in the practice of chiropractic no later than Jan 1, 2006. Requires the Board and the Texas Department of Insurance to cooperate on relevant cases of insurance fraud for complaints filed on or after the bill’s effective date, Sept 1, 2005. Requires the Board to report information on joint fraud cases with TDI to the Legislature annually.	In Progress – Fraud prevention rules adopted by the Board became effective December 2006. However, the rules do not include a formal process for sharing insurance fraud information among the agency, the Texas Department of Insurance (TDI), and TDI’s Division of Workers’ Compensation. Currently, the Board shares information with TDI’s fraud prevention division through an informal process. A memorandum of understanding between the Chiropractic Board and TDI to formalize the exchange of information on fraud complaints is being drafted and may be considered by the Board during its February 2007 meeting.
3	Adds standard Sunset language requiring the Board to implement a policy for the effective use of technology in its delivery of services and provision of information to the public.	In Progress – While the Board has not adopted a formal policy stating its long-term technology plans, it has embarked on an approach to use technology to deliver online services to the public. The Board also has hired a system analyst to review agency processes and build a new database. The database should be functional by September 2007.
4	Adds standard Sunset language requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.	In Progress – The Board does not have a formal policy on negotiated rulemaking, but has begun using early stakeholder involvement to ensure that rulemaking is open and fair.

**Texas Board of Chiropractic Examiners
HB 972 (Continued)**

Item	Bill Provisions	Implementation Status
5	<p>Provides that peer review committee members serve staggered terms of three years and receive training. Requires the Board to adopt rules no later than Jan 1, 2006 that define eligibility requirements to serve on peer review committees, including a clean and acceptable disciplinary and utilization record. Requires the Board to appoint members of the local and executive peer review committees on or before January 1, 2006. Authorizes the local peer review committee members to assist the Board in investigating complaints that require a standard of care review, creating immunity from civil liability, for complaints filed with the Board on or after the bill's effective date, Sept 1, 2005. Requires the peer review committees to report information on disputes mediated to the Board. Requires the Board to post information about the peer review committees on its website. Bases delinquent license renewal fees on the Board's normally required renewal fee (instead of the exam fee). Specifies that the changes only apply to a license applied for on or after September 1, 2007.</p>	<p><i>In Progress</i> – The Board has adopted rules outlining the process for establishing peer review committees. Currently, the Board is determining the number of peer review committees needed and procedures on how to solicit and select members. This process should be finalized by the May 2007 Board meeting.</p>
6	<p>Requires TDI to share with the Board information it collects on medical malpractice settlements and requires insurers that have filed expert witness reports in a malpractice action against a chiropractor to submit these reports to the Board.</p>	<p><i>In Progress</i> – The Board has not established a formal procedure for receiving malpractice settlement information from TDI. The working relationship between TDI and the Chiropractic Board is being reestablished after a complete turnover in executive and enforcement staff at the Chiropractic Board.</p>

**Texas State Board of Examiners of Professional Counselors
HB 1283**

House Bill 1283, as adopted by the 79th Legislature, continued the Texas State Board of Examiners of Professional Counselors for 12 years. The legislation included a total of 12 changes requiring action, 11 of which have been successfully implemented. The following chart summarizes one provision that is not yet effective.

Item	Bill Provisions	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Specifies that changes in license renewal fees apply only to renewals on or after September 1, 2007.	Not Yet Effective – The Board will propose and adopt rules relating to late renewal fees by the provision’s effective date of September 1, 2007.

**Texas State Board of Examiners of Dietitians
HB 1155**

House Bill 1155, as adopted by the 79th Legislature, continued the Texas State Board of Examiners of Dietitians for 12 years. The legislation included a total of seven changes requiring action. The following chart summarizes one provision that is not yet effective.

Item	Bill Provisions	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Specifies that changes in license renewal fees apply only to renewals on or after September 1, 2007.	Not Yet Effective – The Board expects to adopt the necessary rules by the provision’s effective date of September 1, 2007.

**Texas Guaranteed Student Loan Corporation
HB 2274**

House Bill 2274, as adopted by the 79th Legislature, continued the Texas Guaranteed Student Loan Corporation for 12 years. The legislation included a total of four changes requiring action. The following chart summarizes one provision that is in progress.

Item	Bill Provisions	Implementation Status
1	Requires state agencies that issue professional and occupational licenses to provide TG with lists of their licensees for TG to use in identifying individuals with defaulted student loans, instead of requiring TG to provide lists of defaulted borrowers to the licensing agencies. Repeals language no longer applicable under this new process.	<i>In Progress</i> – TG has identified and notified all known state agencies that issue professional and occupational licenses in an effort to identify individuals with defaulted student loans. Communications with TEA’s Educator Certification Board and the Texas Department of Agriculture are ongoing. Responses to information requests from the Appraiser Licensing and Certification Board of the Texas Real Estate Commission, the Savings & Loan Department, and the Board of Professional Geoscientists are outstanding. With cooperation by these agencies, all data is scheduled to be exchanged with TG by June 2007.

**Texas State Board of Examiners of Marriage and Family Therapists
HB 1413**

House Bill 1413, as adopted by the 79th Legislature, continued the Texas State Board of Examiners of Marriage and Family Therapists for 12 years. The legislation included a total of eight changes requiring action. The following chart summarizes one provision that is not yet effective.

Item	Bill Provisions	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Specifies that changes in license renewal fees apply only to renewals on or after September 1, 2007.	Not Yet Effective – The Board will propose and adopt rules relating to the recalculation of late renewal fees to become effective by September 1, 2007.

**Texas State Board of Medical Examiners
Texas State Board of Physician Assistant Examiners
Texas State Board of Acupuncture Examiners
SB 419**

Senate Bill 419, as adopted by the 79th Legislature, continued the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners for 12 years. The bill also renamed the Texas State Board of Medical Examiners to the Texas Medical Board and the Texas State Board of Physician Assistant Examiners to the Physician Assistant Board. The legislation included a total of 38 changes requiring action. The following chart summarizes three provisions that are still in progress.

Item	Bill Provisions	Implementation Status
1	Authorizes the Medical Board to issue a limited license for the practice of administrative medicine. Requires an applicant to meet the same licensing standards as other applicants. Requires the Board to adopt rules regarding the eligibility for the license, scope of the license, fees, and other renewal requirements. Requires an administrative license holder to prove clinical competence if the license holder seeks to practice medicine.	In Progress – Following an extensive process working with various stakeholders to draft rules, the Board heard public comments on proposed rules relating to administrative medicine licensure at its December 2006 Board meeting. Following the meeting, the rules were pulled for further research regarding the definitions of “determination of medical necessity” and “practice of medicine,” and regarding potential conflict with federal statute. The Board expects to take public comments on the revised rules in April 2007.
2	Requires the boards to develop guidelines, in conjunction with stakeholders, for evaluating applicants’ mental or physical health, alcohol and substance abuse, or professional behavior problems. Requires the boards to refer applicants or licensees to the most appropriate medical specialist for evaluation.	In Progress – The agency established a stakeholder working group to discuss required guidelines for all three professions. The agency expects to complete the guidelines in spring 2007.
3	Requires the Acupuncture Board to establish guidelines for preferred providers and content for continuing education courses. Requires the Board to delegate to staff authority to approve continuing education courses that clearly meet the guidelines, and refer courses that do not clearly meet guidelines to the Board for approval.	In Progress – The Board is in the early stages of developing guidelines for preferred providers and content for continuing education courses, and established an ad hoc committee during its October 2006 Board meeting to determine evaluation criteria. Because the Board has not determined the criteria, agency staff are not approving courses as required by the bill.

**Texas State Board of Examiners of Perfusionists
SB 403**

Senate Bill 403, as adopted by the 79th Legislature, abolished the Texas State Board of Examiners of Perfusionists, replacing it with an advisory committee to the Department of State Health Services (DSHS). The legislation included a total of 14 changes requiring action by DSHS. The following chart summarizes the one provision that is not yet effective.

Item	Bill Provisions	Implementation Status
1	Requires delinquent license renewal fees to be based on the normally required renewal fee. Also requires perfusionists who are delinquent for more than one year to reapply for licensure.	Not Yet Effective – Provisions related to late renewal fees will be effective on September 1, 2007.

**Texas State Board of Pharmacy
SB 410**

Senate Bill 410, as adopted by the 79th Legislature, continued the Texas State Board of Pharmacy for 12 years. The legislation included a total of 19 changes requiring action. The following chart summarizes one provision that has not yet been implemented.

Item	Bill Provisions	Implementation Status
1	<p>Establishes legislative findings regarding the high cost of prescription drugs and their effect on residents of this state. Requires the Pharmacy Board to authorize at least one, but not more than 10, Canadian pharmacies to dispense prescriptions under a prescription drug order to residents of Texas. Allows the Board to set fees, and requires the Board to establish a website to provide information about Canadian pharmacies. Provides for the Pharmacy Board at least annually to conduct random inspections of Canadian pharmacies to ensure compliance with safety standards and other requirements of the Pharmacy Act and Board rules. Allows for the Board to enter into an agreement with another state to provide these inspections, other than the initial inspection of the pharmacy.</p> <p>Prohibits a pharmacy located in Canada from shipping or delivering prescription drugs under a prescription drug order to a resident of this state unless the pharmacy is designated by the Board. Requires Canadian pharmacies to meet Texas licensing standards to pass inspection by the Board. Establishes additional requirements on Canadian pharmacies to qualify for designation by the Board. Requires a Board representative to visit the pharmacy's facilities and review its compliance with Board requirements and safety standards before a Canadian pharmacy may be designated to dispense drugs to residents in this state.</p> <p>Allows a Texas pharmacy to order for a consumer a prescription drug from a Canadian pharmacy designated to dispense prescription drugs.</p> <p>Requires a Canadian designated to dispense prescription drugs to do so only under a lawful order of a practitioner licensed in the United States and provides other requirements for prescribing drugs. Requires these Canadian pharmacies to provide periodic reports on each complaint received from a Texas consumer and</p>	<p>Not Implemented – The Board voted to not implement the legislation based on an Attorney General's opinion (GA-0384). The opinion held that designating certain Canadian pharmacies, promoting them on a website, and expressly permitting Texas consumers to import prescription drugs that cannot be imported under federal law would be a violation of the federal Food, Drug, and Cosmetic Act.</p>

**Texas State Board of Pharmacy
SB 410 (Continued)**

Item	Bill Provisions	Implementation Status
1 (cont.)	<p>to maintain a current price list for prescription drugs and guarantee those prices for at least 30 days.</p> <p>Requires the Board, not later than the 30th day after the effective date of this Act, to adopt initial rules necessary to implement changes regarding Canadian pharmacies in the manner provided by law for adoption of emergency rules. Requires the Board to adopt rules necessary to implement changes regarding Canadian pharmacies not later than January 1, 2006. Provides for the requirements on Canadian pharmacies designated to dispense drugs in this state to take effect March 1, 2006.</p>	

**Texas State Board of Podiatric Medical Examiners
SB 402**

Senate Bill 402, as adopted by the 79th Legislature, continued the Texas State Board of Podiatric Medical Examiners 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 one provision that the Board has not implemented.

Item	Bill Provisions	Implementation Status
1	Requires the Board to adopt rules that list the specific offenses that would permit the Board to revoke, suspend, or deny a license.	In Progress – Board staff have drafted guidelines to be posted in the <i>Texas Register</i> upon approval from the Board at its February 5, 2007 meeting.
2	Simplifies the licensing process for active podiatrists from out of state by eliminating the requirement that they pass a clinical skills exam if it was not required of Texas licensees at the time the out-of-state licensee became licensed.	Not Implemented – Because of unclear statutory language, the Board has not implemented the recommendation. The Board plans to seek a sponsor for legislation to correct the ambiguity during the 80th Legislature.

Public Utility Commission of Texas
SB 408

Senate Bill 408, as adopted by the 79th Legislature, continued the Public Utility Commission of Texas for 12 years. The legislation included a total of 16 changes requiring action. The following chart summarizes one provision that is still in progress and two provisions that have not been implemented.

Item	Bill Provisions	Implementation Status
1	Adds standard Sunset language requiring the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.	In Progress – The Commission routinely notifies parties to contracts of the use of alternative dispute resolution (ADR), and is updating its employee handbook to include the use of alternative dispute resolution in employee disputes. PUC is also developing a written policy encouraging negotiated rulemaking and ADR in contested cases, and will consider the policy in January 2007.
2	Clarifies PUC's complete oversight authority over all facets of the Electric Reliability Council of Texas (ERCOT) finances, budget, and operations.	Not Implemented – PUC has not yet undertaken the required rulemaking detailing the procedures that would be used to decertify ERCOT.
3	Expands the use of the System Benefit Fund to assist needy patients on life support or with serious health problems who are threatened with disconnection for nonpayment. Updates obsolete reference to Department of Human Services.	Not Implemented – The program has not been implemented because PUC did not receive funding for it. PUC plans to conduct a rulemaking in 2007 to prepare for possible implementation of this program.

**Texas State Board of Social Worker Examiners
SB 415**

Senate Bill 415, as adopted by the 79th Legislature, continued the Texas State Board of Social Worker Examiners for 12 years. The legislation included a total of nine changes requiring action. The following chart summarizes one provision that is not yet effective.

Item	Bill Provisions	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Because of potential revenue loss, the provision requires the Board to enact this change at such time that the new renewal fee would result in an increased late fee.	Not Yet Effective – The agency is monitoring the license renewal fee and will implement the statutory provision when the new renewal fee will not result in a revenue loss as provided by the statute.

**Texas State Board of Veterinary Medical Examiners
SB 407**

Senate Bill 407, as adopted by the 79th Legislature, continued the Texas State Board of Veterinary Medical Examiners for 12 years. The legislation included a total of 11 changes requiring action. The following chart summarizes two provisions that are still in progress.

Item	Bill Provisions	Implementation Status
1	Requires the Board to monitor licensees' compliance with continuing education (CE) requirements through randomly conducted audits of license renewals. Requires a license holder who is audited to provide proof of CE course completion. Prohibits license holders from submitting pre-signed CE forms.	<i>In Progress</i> – The Board adopted revisions to rules on continuing education and the required documentation to reflect the bill's provisions. The Board currently monitors licensee compliance through desk audits conducted by the agency's investigative staff. Due to staffing constraints, the agency is unable to conduct monitoring through the license renewal process.
2	Authorizes the Board to impose administrative penalties for drug-related felony convictions and to set the amount of the penalty to match the seriousness of the offense. Repeals the requirement that the Board must revoke a license if the license holder has been convicted of a drug-related felony.	<i>In Progress</i> – The agency will propose amendments to its rules on drug-related felonies at its February 2007 Board meeting.

**Texas Workers' Compensation Commission
HB 7**

House Bill 7, as adopted by the 79th Legislature, abolished the Texas Workers' Compensation Commission, and transferred the duties of the Commission to the Division of Workers' Compensation of the Texas Department of Insurance and the newly created Office of Injured Employee Counsel. The bill established a 2009 Sunset date for the Division and moved the Sunset date of the Department from 2007 to 2009. The legislation included a total of 41 changes requiring action. The following chart summarizes 16 provisions that are still in progress, and four that have not been implemented.

Item	Bill Provisions	Implementation Status
1	Encourages the use of single points of contact for injured workers at the Division and with the carrier.	In Progress – Carriers are required to establish single points of contact; however, the Texas Department of Insurance's Division of Workers' Compensation (Division) has not checked carrier compliance with this provision. The Division created a basic single point of contact model for workers and is developing standards for all 24 field offices. Work remains to establish a single point of contact system between the Division and the Office of Injured Employee Counsel (OIEC).
2	a) Adds explicit language to the workers' compensation statute detailing nine system wide goals and clarifies that the Division may adopt any rules necessary and appropriate to implement its powers and duties under the Workers' Compensation Act. b) Requires the Division to assess its effectiveness in meeting the statutory goals and identify and report all internal policy and statutory changes needed to address deficiencies. Specifies that the goals and strategies do not create a cause of action or establish an entitlement to benefits not otherwise provided for in statute.	In Progress – The Division has a strategic management plan that details the major goals of the system. The plan informs all policy, program, and rule development, and will be updated as needed. The Division has begun to collect data on the system's effectiveness, but it is too early for meaningful analysis. Future reports to the Legislature will outline deficiencies in the system as well as statutory and policy changes needed to address these deficiencies. In December 2006, TDI issued two reports to the 80th Legislature. <i>Biennial Report of the Texas Department of Insurance to the 80th Legislature</i> provides an overview of the workers' compensation system. The report entitled <i>The Effects of the 2005 Legislative Reforms on the Affordability and Availability of Workers' Compensation Insurance</i> , presents preliminary data on the impact of House Bill 7 reforms.
3	Requires the Division to ensure all workers' compensation forms and explanatory materials are prepared in plain language and in Spanish where appropriate.	In Progress – All high priority documents have been translated into Spanish and prepared in plain English. The Division will continue to translate and update remaining forms and letters.
4	a) Requires the Division to implement a workers' compensation regulatory approach that emphasizes overall compliance, rewards performance, and efficiently handles complaints.	In Progress – The Division developed a risk-based complaint process that allows staff to process telephonic and web-based complaints; however, the Division has not yet adopted rules to govern the process.

Texas Workers' Compensation Commission
HB 7 (Continued)

Item	Bill Provisions	Implementation Status
4 (cont.)	<p>(b) Requires the Division to regularly assess the performance of carriers and medical providers against key regulatory goals to identify entities needing enhanced regulatory oversight and create regulatory incentives to promote greater overall compliance and reward performance.</p> <p>(c) Requires the Division to establish rules that govern the filing of a complaint against a regulated entity, and make that information available on its website.</p> <p>(d) Requires the Division to prioritize its investigations of complaints using risk-based criteria.</p> <p>(e) Authorizes the Department to conduct audits of carriers' accident prevention services.</p>	<p>The Division developed a compliance audit plan to steer the performance review process. Similar to the complaint process, the Division uses a risk-based approach to schedule audits. The Division anticipates initiating or completing 80 audits in fiscal year 2007.</p> <p>The Division developed performance measures for system participants but has not yet collected data for meaningful evaluation or risk assessment.</p> <p>The Division intends to develop incentives to reward performance following evaluation of system participants.</p>
5	Clarifies that the Division may impose sanctions against any person regulated by the Division and that sanctions are binding pending appeal.	In Progress – The Division has partially implemented a new enforcement process and will propose rules when the process is more fully developed.
6	<p>(a) Establishes a system of workers' compensation health-care networks. Authorizes insurers, certified self-insured employers, and public entities to establish or contract with networks, and authorizes employers to elect to participate in a network offered by their insurer. Injured workers must use a network if their employer has contracted for one, and choose a network treating doctor to coordinate their medical care.</p> <p>(b) Allows injured workers to receive treatment from their PCP if the employee is in an HMO and allows employees with certain chronic and life-threatening conditions to use a nonprimary care specialist as their treating doctor.</p> <p>(c) Authorizes networks to designate the specialties of providers who may serve as network treating doctors.</p> <p>(d) Requires TDI to certify networks meet certain regulations and service delivery standards outlined in the Insurance Code, including requirements for notices, access to care, contracts, electric billing, use of evidence-based treatment and return to work guidelines, and treatment protocols, monitoring and quality improvement</p>	<p>In Progress – As of December 1, 2006, the Division has certified 17 workers' compensation health-care networks.</p> <p>All certified networks are required to meet the regulations and service delivery standards outlined in statute, including the standards outlined in sections 6(a) through 6(d) of this chart.</p> <p>The Division is still engaged in rulemaking, or anticipating rule proposal, relating to certain standards such as return to work guidelines, complaint resolution, treatment protocols, and the Division's enforcement process. The Division has developed performance measures and audit guidelines based on required standards.</p> <p>The Commissioner has not adopted rules identifying underserved areas or modifying requirements in those areas. The Division will review this issue concurrent with the revisions to medical fee guidelines scheduled for 2007.</p>

Texas Workers' Compensation Commission
HB 7 (Continued)

Item	Bill Provisions	Implementation Status
6 (cont.)	<p>plans, internal complaint resolution, interaction with providers, and utilization and retrospective review of medical necessity of care. Provides oversight, enforcement and sanction authority to TDI over networks and management contractors.</p> <p>(e) For both network and non-network areas, establishes specific prompt payment standards and authorizes the Commissioner to adopt alternative standards for underserved areas.</p>	
7	<p>(a) Establishes specific duties relating to research and professional studies of the Workers' Compensation Research and Evaluation Group.</p> <p>(b) Requires REG to evaluate the impact of health-care networks on the cost and quality of medical care in the workers' compensation system, including the frequency, duration and outcomes of dispute and complaint resolution, and report on its findings every other year beginning December 1, 2008.</p> <p>(c) Requires REG to prepare and publish annually a proposed workers' compensation research agenda. Requires the Commissioner to accept public comment and, if requested, hold a public hearing on the research agenda. Exempts the group's working papers from disclosure requirements.</p>	<p>In Progress – The Workers' Compensation Research and Evaluation Group (REG) issued research agendas for fiscal years 2006 and 2007.</p> <p>REG has begun to collect a variety of different types of data, including the data outlined in statute, to assist in evaluating the impact of health-care networks. Specifically, REG will use data to analyze the extent, reach, and impact of existing networks. To date, sufficient data is not available to determine the percentage of covered workers, or any outcome information.</p> <p>REG plans to publish reports on its findings beginning in December 2008.</p>
8	<p>(a) Requires the Commissioner of Workers' Compensation, in coordination with the Commissioner of Insurance, to adopt rules requiring insurance carriers to accept medical bills from providers electronically no later than January 1, 2006. Requires the Commissioner to adopt rules outlining criteria for granting exceptions to carriers and providers unable to comply with the electronic billing requirements.</p> <p>(b) Authorizes the Commissioner to adopt rules regarding electronic payments by carriers to providers on or after January 1, 2008.</p>	<p>In Progress – The Division has adopted rules on electronic billing, although the rules are not effective until January 1, 2008. The delay in implementation is due to technical problems with electronic billing systems.</p> <p>The Division anticipates adopting electronic payment rules on or after January 1, 2008.</p>
9	<p>(a) Requires the Commissioner of Workers' Compensation to adopt a closed formulary using generic pharmaceutical medications and appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor; and</p>	<p>In Progress – The Division is in the process of contracting with a consultant to create the pharmaceutical formulary, and anticipates completion of the formulary in Spring 2007.</p>

Texas Workers' Compensation Commission
HB 7 (Continued)

Item	Bill Provisions	Implementation Status
9 (cont.)	(b) adopt a fee schedule for pharmacy benefits and services and for carriers and networks to reimburse using the Division developed schedule or at rates negotiated in advance.	The Division plans to adopt rules related to the formulary and fee reimbursement following the release of the formulary.
10	Requires the Division to study and report to the Legislature whether to require accreditation of interdisciplinary pain rehabilitation programs or treatment facilities that provide services to injured employees.	In Progress – The Division is developing a report to the Legislature on accreditation of pain rehabilitation programs.
11	Requires the Commissioner to adopt rules setting compliance standards for Supplemental Income Benefits (SIB) recipients work search requirements and to define the level of activity required to meet these standards, including defining the number of job applications necessary to meet the requirements and taking into consideration the availability of employment options. Requires SIB recipients to demonstrate active participation with TWC, DARS or private vocational rehabilitation programs, or actively search for work documented by the number of job applications. Eliminates current standard of good faith effort.	Not Implemented – The Division anticipates adoption of SIB work search rules in mid 2007. Due to a large volume of statutory changes requiring rule development, including varying effective dates, the Division set a timeline for rulemaking that prioritized certain key elements of House Bill 7. The Division intends to propose and adopt all remaining rules in 2007 and 2008.
12	(a) Requires the Division to establish protocols for injured workers to obtain workforce and occupational training where appropriate. (b) Requires the Division, where appropriate, to work with TWC, DARS, and private vocational rehabilitation programs to identify and attempt to remove barriers to successful employment income benefit recipients; ensure information and outcome data is tracked between appropriate agencies and carriers; establish a referral mechanism to TWC and local workforce centers; and create a method to promote employment success that includes post referral contact by the Division with income benefit recipients. Expands requirement that the Department refer any income benefit recipient in need of vocational rehabilitation to DARS, rather than just those persons receiving SIBs. (c) Requires the Division and DARS to report to the Legislature on actions taken to improve access to and the effectiveness of vocational rehabilitation programs for injured workers.	In Progress – The Division has memoranda of agreement with the Department of Assistive and Rehabilitative Services (DARS) and the Texas Workforce Commission (TWC). The Division is working with DARS to develop improved referral processes. DARS, Division, and Office of Injured Employee Counsel staffs have received training on making appropriate referrals. Employees who are not eligible for DARS services are referred to TWC. The Division expects to contact injured employees in the future to determine referral outcomes. DARS and the Division submitted an abbreviated report to the Legislature in September 2006. However, no data is available to determine the effectiveness of the Division's and DARS' vocational rehabilitation efforts.

Texas Workers' Compensation Commission
HB 7 (Continued)

Item	Bill Provisions	Implementation Status
13	Requires the Division to monitor Independent Review Organizations (IROs) and evaluate the compliance of the IROs with the statute and with rules relating to medical policies, fee guidelines, and impairment ratings, as well as the quality and timeliness of IRO decisions.	Not Implemented – The Division is developing procedures for referring possible violations to the Health and Workers' Compensation Network Certification and Quality Assurance Division. The Division's Quality Monitoring and Enforcement Team is developing IRO review criteria. The Office of the Medical Advisor plans to evaluate the 13 licensed IROs in the future.
14	Abolishes the Medical Advisory Committee. Expands the Medical Advisor duties to make recommendations on policies, monitor the quality and timeliness of decisions by designated doctors and IROs, and impose sanctions regarding those decisions. Expands Medical Quality Review Panel authority to review IROs.	In Progress – The Commissioner of Workers' Compensation has expanded the Medical Advisor's job description to include elements required in H.B. 7. However, the Medical Advisor has not yet developed enforcement or sanction standards for IROs or doctors. In addition, the Medical Advisor is not consistently monitoring quality and timeliness of decisions by doctors and IROs because data is not yet available.
15	(a) Requires the Commissioner of Workers' Compensation to adopt fee guidelines using one or more conversion factors and exempt carriers, networks, and providers from using the fee guidelines if they have a fee schedule established through a contract. (b) Requires the Commissioner of Insurance to adopt evidence-based and outcome focused treatment and return to work guidelines and authorizes the Commissioner to adopt individual treatment protocols. Authorizes the Commissioner to adopt rules providing for a disability management and treatment planning process aimed to improve return to work outcomes for injured workers.	In Progress – The Division formed a stakeholder working group to aid in developing hospital inpatient and outpatient fee guidelines. The Division is collecting additional cost and reimbursement data to assist this process. The Division is working to expedite stakeholder involvement and anticipates rule proposal in Summer 2007. After adopting inpatient fee guidelines, the Division plans to begin work on outpatient, professional fee, and pharmacy guidelines. The Division has proposed treatment and return to work guidelines but has not adopted rules yet.
16	Requires the Division to review reimbursement rates and accessibility issues for surgically implanted devices.	Not Implemented – The Division anticipates researching these issues in 2007.
17	Requires carriers to evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as is practicable to determine if skilled case management is necessary for the injured employee's case. As necessary, requires carriers to use case managers who are appropriately licensed to practice in Texas to carry out the evaluations and prohibits claims adjusters from providing case management services.	Not Implemented – The Division anticipates adopting rules related to case management in Summer 2007.

Texas Workers' Compensation Commission
HB 7 (Continued)

Item	Bill Provisions	Implementation Status
18	Increases the maximum administrative penalty to \$25,000 and eliminates the multiple "classes" of violations and associated administrative penalties. Eliminates the "willfully and intentionally" standard for certain violations by attorneys, carriers, health-care providers.	In Progress – The Division is instituting a new enforcement process with maximum penalties of \$25,000. The enforcement process is still in development and the Division has not adopted rules to govern the process.
19	Requires TDI, as part of its research duties, to prepare report cards on quality, costs, provider availability, customer satisfaction and other factors of workers' compensation networks.	In Progress – The REG drafted measures for use in the workers' compensation network report cards. The Division expects to issue the first report card by September 2007, in accordance with the 18-month schedule established in statute.
20	(a) Requires the Commissioner to determine the impact of H.B. 7 on workers' compensation rates and premiums, and authorizes the Commissioner to order rate reductions or require the modification of use of individual risk variations. This provision establishes oversight by the Commissioner of Workers' Compensation for premiums and rates, and provides for a public hearing on rates. (b) Requires carriers to file rating information with the Commissioner before the hearing.	In Progress – The REG issued data calls to collect preliminary data on the functioning of the workers' compensation system. Additional data calls will be issued semiannually and will provide the basis for actuarial projections of cost savings and the impact on premiums. The Commissioner has not called a hearing on rates but intends to call a hearing, as required by statute, before December 1, 2008. The Division requires insurers to provide data on premium credits granted for employer network participation. The Division has previously requested rates filings and will continue to request filings in the future.

STATE AUDITOR'S OFFICE:
STATE AGENCIES' IMPLEMENTATION OF
SUNSET ADVISORY COMMISSION
MANAGEMENT ACTIONS



John Keel, CPA
State Auditor

A Review of State Agencies' Implementation of Sunset Advisory Commission Management Actions

August 25, 2006

Members of the Legislative Audit Committee:

The State Auditor's Office has reviewed the status of 11 state agencies' implementation of 36 non-statutory recommendations (management actions) included in the *Sunset Advisory Commission Report to the 79th Legislature*.

The following five agencies reported that they had fully implemented all management actions:

- The Office of Public Utility Counsel.
- The Public Utility Commission of Texas.
- The Texas Optometry Board.
- The Texas State Board of Examiners of Psychologists.
- The Texas State Board of Veterinary Medical Examiners.

The following four agencies reported that they had fully implemented or were in the process of implementing all management actions:

- The Texas Department of Insurance.
- The Texas Department of State Health Services.
- The Texas Lottery Commission.
- The Texas Medical Board.

Two agencies reported they had fully implemented or were in the process of implementing all but one management action. The management actions they did not implement were as follows:

- The **Texas Education Agency** (Agency) did not implement a management action recommending that it extend background checks to all currently certified or credentialed educators by using Social Security numbers to search all state and federal criminal conviction databases for any indication of criminal activity. The Agency agreed with that management action; however, because of the large number of licensed educators, the Agency asserted that implementing the management action would require additional funding. For more information on the Agency's practices regarding criminal background checks, see *An Audit Report on State Agencies' Use of Criminal History Records* (State Auditor's Office Report No. 06-049, July 2006).

SAO Report No. 06-057

Robert E. Johnson Building
1501 North Congress Avenue
Austin, Texas 78701

P.O. Box 12067
Austin, Texas 78711-2067

Phone: (512) 936-9500
Fax: (512) 936-9400
Internet: www.sao.state.tx.us

- The **Board of Chiropractic Examiners** (Board) did not implement a management action recommending that it comply with an opinion issued by the Office of the Attorney General and inform chiropractors that needle electromyograms are not within the scope of chiropractic. The Board did not implement that management action as a result of House Bill 972 (79th Legislature, Regular Session). That bill took effect on September 1, 2005. The bill instructed the Board to adopt scope of practice rules that define what is and what is not within the scope of practice for chiropractors. According to the Board, it adopted scope of practice rules that allow qualified chiropractors to perform this procedure.

The table in the attachment to this letter summarizes the implementation status of the management actions at the 11 agencies we reviewed.

We appreciate the agencies' cooperation during this review. If you have any questions, please contact Sandra Vice, Assistant State Auditor, or me at (512) 936-9500.

Sincerely,

John Keel, CPA
State Auditor

Attachment

- cc: Mr. Joey Longley, Director, Sunset Advisory Commission
Boards, commissions, and executive management of the following agencies:
- Office of Public Utility Counsel
 - Public Utility Commission of Texas
 - Texas Board of Chiropractic Examiners
 - Texas Department of Insurance
 - Texas Department of State Health Services
 - Texas Education Agency
 - Texas Lottery Commission
 - Texas Medical Board
 - Texas Optometry Board
 - Texas State Board of Examiners of Psychologists
 - Texas State Board of Veterinary Medical Examiners

Objective, Scope, and Methodology

Texas Government Code, Section 325.012 (b), provides for the State Auditor's Office's examination of the non-statutory management actions that the Sunset Advisory Commission (Commission) recommends.

The objective of this review was to determine the implementation status of non-statutory recommendations (management actions) included in the Commission's report to the 79th Legislature.

The scope included the 11 agencies to which the Commission directed management actions in its report to the 79th Legislature.

This review relied on self-reported information provided by agencies. The information in this report was not subjected to all the tests and confirmations that would be performed in an audit.

The following members of the State Auditor's staff performed the review:

- Barbette Mays (Project Manager)
- J. Scott Killingworth CIA, CGFM (Quality Control Reviewer)
- Sandra Vice CIA, CGAP, CISA (Assistant State Auditor)

Attachment

Agencies' Implementation of Sunset Advisory Commission Management Actions

Table 1 presents information on agencies' implementation of non-statutory recommendations (management actions) in the *Sunset Advisory Commission Report to the 79th Legislature*. The definitions of each implementation status are as follows:

- **Fully Implemented:** Successful development and use of a process, system, or policy to implement a prior recommendation.
- **Substantially Implemented:** Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation.
- **Incomplete or Ongoing:** Ongoing development of a process, system, or policy to address recommendation.
- **Not Implemented:** Lack of a formal process, system, or policy to address a prior recommendation.

Table 1

Status of Agencies' Implementation of Sunset Advisory Commission Management Actions		
Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
Office of Public Utility Counsel		
The Office of Public Utility Counsel (OPUC) should perform an internal cost-benefit analysis including chance of success, time to be spent, anticipated cost, and consumers' interests and benefits. The analysis would contain information relating to reasonably anticipated litigation involving a governmental body, and therefore would be protected from disclosure under the Public Information Act.	Fully Implemented	
Public Utility Commission of Texas		
The Public Utility Commission (PUC) should consider the burden of new reporting requirements on telecommunications utilities before adopting new rules regarding reporting.	Fully Implemented	
PUC should establish a rulemaking proceeding to develop reasonable time limits for electricity service transfers, initiations, and disconnections.	Fully Implemented	

Status of Agencies' Implementation of Sunset Advisory Commission Management Actions		
Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
PUC should devote greater resources towards determining and penalizing parties responsible for unreasonable switching or billing delays.	Fully Implemented	
Texas Board of Chiropractic Examiners		
The Board should discontinue the Technical Standards Committee and ensure adequate public membership on the Rules Committee.	Fully Implemented	
The Board should eliminate the executive director's role from the license denial process.	Fully Implemented	
The Board should hire additional enforcement staff to assist in its enforcement activities.	Substantially Implemented	
The Board should make enforcement information important to consumers readily available.	Substantially Implemented	
The Board should track denied licenses and denied license renewals.	Substantially Implemented	
The Board and Texas Workers' Compensation Commission (TWCC) should start actively cooperating with each other, as required by law.	Incomplete/ Ongoing	This recommendation has not been implemented as of August 1, 2006, because of changes in the executive director position for the Board. The previous executive director resigned in April and the current executive director was hired in mid-May 2006. Other issues such as the establishment of scope of practice rules and stabilizing the agency's financial position have taken precedent, but this recommendation will be implemented by the end of calendar 2006.
The Board should comply with the Attorney General's opinion on needle electromyogram and inform chiropractors that this procedure is not within their scope.	Not Implemented	Not implemented as a result of statutory changes made by the Board's Sunset Bill (House Bill 972) passed in 2005. After receiving the Sunset Commission's recommendations, the 79th Legislature chose not to amend the statute (Chapter 201 Texas Occupations Code) to specifically address whether needle electromyogram is or is not within the scope of practice for chiropractors. Instead, House Bill 972 amended the statute to instruct the Board to adopt scope of practice rules that define what is and what is not within the scope of practice for chiropractors. The Board adopted scope of practice rules that allow qualified chiropractors to perform this procedure.
Texas Department of Insurance		
The Department and Workers' Compensation Research and Evaluation group should partner with the Texas Workforce Commission (TWC) to obtain return to work information.	Fully Implemented	

Status of Agencies' Implementation of Sunset Advisory Commission Management Actions		
Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
The Office of Employee Assistance (OEA) should consider contracting for some portion of its workers assistance activities.	Incomplete/ Ongoing	At this time, the Office of Injured Employee Counsel (OIEC) has consulted with Texas' three large legal aids to encourage the development of programs that aid injured employees. Currently, the legal aid servicing central and south Texas has indicated that further research and development is being pursued in an effort to develop such a program. OIEC has approached legal aids about developing a program where legal aid could provide representation at District Court (beyond the jurisdiction of the Ombudsman Program). No formal process has been established for such a program. OIEC has made referrals to both legal aid or the State Bar Attorney Referral Service but is precluded from making referrals to specific legal representatives.
The Department should adopt return to work guidelines.	Incomplete/ Ongoing	The Division will propose a return to work guideline as part of a package of disability management rules in August 2006.
Texas Department of State Health Services		
The Professional Counselor Board should replace the Texas exam with a national exam administered by the National Board of Certified Counselors.	Fully Implemented	
The Professional Counselor Board should simplify the process for a licensed professional counselor, who holds an active license in another state, to be licensed in Texas.	Fully Implemented	
The Boards should use complaint trend analysis to address recurring problems.	Fully Implemented	
The Midwifery and Social Worker boards should establish, by rule, methods to notify consumers about the boards for complaint purposes.	Substantially Implemented	
The Boards should improve the information they provide to the public.	Substantially Implemented	
Texas Education Agency		
The agency should work with the State Board of Education (SBOE) to ensure the development of clear guidelines or determining adequate Texas Essential Knowledge and Skills (TEKS) coverage on textbooks.	Fully Implemented	
The Commissioner should include a majority of subject area experts on each textbook review panel for all curriculum areas.	Fully Implemented	
The agency should work make all grant application and award process available online by 2007.	Substantially Implemented	
The Texas Education Agency (TEA) should expand its current processes for updating textbooks.	Substantially Implemented	

Status of Agencies' Implementation of Sunset Advisory Commission Management Actions		
Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
TEA and TWC should submit quarterly reports to the Sunset Commission detailing the agencies' progress implementing the workplace literacy curriculum provision.	Substantially Implemented	
TEA should extend background checks to all currently certified or credential educators by using Social Security numbers to search all state and federal criminal conviction database for any indication of criminal activity on the part of the Texas educator.	Not Implemented	Management agrees with the recommendation that TEA should perform criminal history background checks on all currently certified or credentialed educators using Social Security numbers. However, due to the large number of licensed educators this would involve it would require legislation to provide funding to the undertaking. Without such funding TEA cannot implement this recommendation.
Texas Lottery Commission		
The agency should use its cost-benefit analyses as a benchmark to judge the ongoing effectiveness of its expenditures. Since the agency has begun performing cost-benefit analyses of major expenditures, it should use this information to determine whether those expenditures are achieving their original objectives once underway. Further, by comparing a program's original expectations to its ongoing performance, the agency will be able to judge the accuracy of the projections provided in its cost-benefit analyses.	Incomplete/ Ongoing	The Commission currently conducts a thorough cost-benefit analysis before acquiring goods or services or renewing an existing contract valued more than \$25,000. While the cost-benefit analysis process used for the renewal of existing contracts evaluates historical expenditures and program objectives, the Commission will revise its current cost-benefit analysis procedure to further analyze the cost-effectiveness and necessity of expenditures. The revision will incorporate a periodic formal analysis of the original expectations reflected in the cost-benefit analysis to actual expenditures to assess the effectiveness of major expenditures.
Texas Medical Board (formerly the Texas State Board of Medical Examiners)		
The Board should make an effort to use more expert panelists who reside outside the Austin area.	Fully Implemented	
The Medical Board should adopt rules to prohibit communication between Board members and staff regarding open enforcement cases	Fully Implemented	
The Medical Board should attempt to resolve enforcement cases informally.	Fully Implemented	
The Board should ensure that the public has an opportunity to testify or appear before the Board.	Incomplete/ Ongoing	Physician Assistant and Acupuncture Board rules are adopted by the Medical Board and formal public comment on rules is heard by the Medical Board. However, the agency has not implemented processes to involve stakeholders in discussion of issues for policy and rule development. Workgroups of major stakeholders have been formed for Physician Assistant and Acupuncture issues and for Medical Board enforcement and licensure issues. Meetings of stakeholder workgroups are open meetings posted in the <i>Texas Register</i> . Public input has also been solicited via the agency's Web site. Stakeholder input is reported to the Acupuncture and Physician Assistant (PA) boards. Future agendas for both PA and Acupuncture Boards will include public comment on issues for rules development along with the report of the stakeholder input.

Status of Agencies' Implementation of Sunset Advisory Commission Management Actions		
Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
The Medical Board should work with residency programs and other stakeholders when developing guidelines for evaluating applicants' risk for behavior likely to result in poor practice.	Incomplete/ Ongoing	The agency is developing a system to determine what applicant characteristics and behaviors correlate to disciplinary actions. The agency has created a resource group of representatives of Graduate Medical Education programs. The group has assisted the board in the development of policy related to other issues and will be involved in development of required guidelines. The issue has also been considered by the standing workgroup of major licensure stakeholders.
Texas Optometry Board		
The Board should make its complaint form available on its Web site in an easily accessible format.	Fully Implemented	
The Board should share prescription-related enforcement cases with appropriate law enforcement agencies.	Fully Implemented	
Texas State Board of Examiners of Psychologists		
The Board should post information about disciplinary orders and sanctions on its Web site in a format that consumers may access easily.	Fully Implemented	
The Board should provide explanations of its complaint dismissals to complaints dismissals to complainants and respondents.	Fully Implemented	
Texas State Board of Veterinary Medical Examiners		
The Board should explore and implement ways to ensure that continuing education providers comply with minimum standards established by the Board.	Fully Implemented	

Summary for All Agencies Reviewed					
	Fully Implemented	Substantially Implemented	Incomplete/Ongoing	Not Implemented	Total
Number of Management Actions	20	8	6	2	36

