



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

- 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)



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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	

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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.

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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