

EXECUTIVE SUMMARY

Texas State Board of Examiners of Marriage and Family Therapists

Texas State Board of Examiners of Professional Counselors

Texas State Board of Social Worker Examiners

Texas State Board of Examiners of Psychologists

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This limited review of Texas' four behavioral health licensing boards — the Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, Texas State Board of Social Worker Examiners, and Texas State Board of Examiners of Psychologists — follows up on the full Sunset review of these boards conducted in 2016–2017. At that time, the Sunset Commission adopted several recommendations to streamline and improve the operations and management of the boards — most notably, the recommendation to merge the four boards into a consolidated “umbrella” licensing agency, the Texas Behavioral Health Executive Council. These recommendations were drafted into House Bill 2898, but the bill failed to pass during the regular session of the 85th Legislature. The Legislature instead passed Senate Bill 20 during the First Called Session, which continued the four behavioral health boards as currently structured for two years and placed them under Sunset review again in 2019.

The state has failed to effectively regulate three of these professions, putting Texans at risk.

Sunset staff focused the current review on evaluating the appropriateness of the original recommendations adopted by the Sunset Commission. Staff evaluated the progress each board has made toward addressing the issues identified in the prior reports and found the boards are acting in good faith and have made notable strides in addressing the previously identified problems, such as altering their enforcement hearings to more effectively process complaints and protect confidential health information. However, significant problems and challenges remain that cannot be resolved within the current structure.

The independent psychology board is a well-functioning agency. However, with the continued administrative attachment of the marriage and family therapy, professional counseling, and social work boards to a large agency

with higher priority responsibilities, the state has failed its citizens. This approach is still not working and fails to efficiently regulate these professions, putting vulnerable Texans at risk. The prior Sunset review identified severe operational dysfunction within these programs that stemmed from a variety of problems, including chronic staff shortages, lack of attention and resources from their administrative host agency, poor communication between host agency staff and board members, and mismanagement by the boards. The current attachment to the Health and Human Services Commission (HHSC) continues to impede the boards' ability to right their operations and respond to the growing backlog of licensing applications and enforcement complaints. For example, the professional counselor board still takes an average of 949 days to resolve a complaint and 107 days to process a licensing application, and continues to have nearly 700 backlogged complaints. As in prior reports, Sunset staff again concluded that an administrative attachment model does not and cannot work. The dysfunction created by such a model places the livelihoods of licensees in jeopardy and puts the public at risk.

Ultimately, Sunset staff considered the various options for transferring these programs and concluded the consolidated agency structure of the Behavioral Health Executive Council previously recommended by the Sunset Commission presents the best approach to align the regulation of these behavioral health professions and elevate the attention and oversight of these programs. Sunset staff looked for an agency structure that offered the most viable, cost-effective model with the least disruption to licensees and consumers and the greatest benefits to the public. The stand-alone psychology board offers a proven foundation that effectively regulates a closely-related behavioral health profession. The logical solution is to build on the success of the psychology board to create administrative efficiencies through functional alignment and economies of scale. More efficient and effective regulation of these professions will not only provide improved services and increased responsiveness to licensees, but also will better protect behavioral health care consumers.

At the same time, the proposed structure will ensure each individual board maintains a central role in regulating its profession. Each board would retain responsibility for guiding all matters related to their profession. No one group of practitioners would, or should, hold sway over any other group. The executive council would be composed of one public member appointed by each of the four boards and an independent presiding officer appointed by the governor, and would be responsible for standardizing regulatory procedures and guiding the operations of the agency. A shared staff would conduct licensing and customer service activities, perform complaint investigations and prosecutions, and provide all other administrative services for all the boards.

Beyond consolidating the four boards into a single behavioral health agency, the Sunset Commission's previous recommendations generally focused on removing unnecessary barriers to entry into these professions and giving each board more flexibility to manage its operations. Sunset staff found these recommendations continue to be appropriate. All four boards would benefit from adopting standard licensing practices, such as biennial license renewals and improved background checks. For the psychology board specifically, removing the statutory provisions authorizing an oral exam would align with the board's recent action to eliminate the unsustainable oral exam. In addition, regulation of psychologists would benefit from making the post-doctoral supervision experience requirement more flexible. Finally, Texas would benefit from the adoption of an interjurisdictional compact that could help address the shortage of mental health care providers in the state. The Sunset Commission also previously adopted 13 management actions the four boards have implemented or are in the process of implementing. The current status of the recommendations for the marriage and family therapy, professional counseling, and social work boards is shown in the chart on page 7, and the current status of the recommendations for the psychology board is shown in the chart on page 11.

The following material summarizes Sunset staff's current recommendations on the four behavioral health boards. For more detailed information on the original Sunset staff recommendations, Sunset Commission decisions, and legislative action, a 2017 *Staff Report with Final Results* for each board is available on the Sunset Commission's website.

Issues and Recommendations

Issue 1

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

As found by the 2016 Sunset review, Texas continues to need to regulate the practice of psychology, marriage and family therapy, professional counseling, and social work, but regulating these professions through four separate, independent boards fails to meet the needs of consumers, licensees, and the state. In particular, administrative attachment of three of the boards to the Health and Human Services Commission has not fixed the numerous problems identified during the previous Sunset review that have led to massive backlogs and years-long delays in processing license applications and complaint cases. Using the well-functioning psychology board as a foundation, the four behavioral health boards would benefit from consolidation of their operations under a single agency to take advantage of administrative economies of scale, as well as shared efforts to regulate and promote the field of behavioral health.

Key Recommendation

- Consolidate the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, and Board of Social Worker Examiners with the Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council.

Issue 2

Key Elements of the Behavioral Health Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.

Several licensing provisions in the behavioral health boards' statutes, rules, and policies do not conform with model standards or common practices observed in other occupational regulatory agencies, presenting unnecessary hurdles to applicants and potentially reducing consumer safety. The boards rely on outdated modes for criminal background checks and do not proactively ensure out-of-state applicants are safe to practice in Texas. In addition, outdated and absent statutory authority prevents the boards from operating efficiently.

Key Recommendations

- Require the boards to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Authorize the boards to check for disciplinary actions in other states or from other licensing boards, and to pursue any necessary enforcement actions based on the results.
- Remove the statutory limitation currently restricting the boards' authority to lower fees.

Issue 3

The Psychology Board's Oral Exam Is an Unnecessary Requirement for Licensure.

An oral examination is an outdated licensing requirement that offers little value in assessing candidates' minimum competency to practice psychology. As a result of logistical hurdles related to the administration of the exam, the psychology board removed the oral exam as a licensing requirement in its rules in the fall of 2017. Licensure as a psychologist already requires a doctoral degree, passage of a national written examination and jurisprudence examination, and completion of 3,500 hours of supervised experience. Nationally, the psychology profession has moved away from using oral examinations, with few states continuing to use an oral exam.

Key Recommendation

- Eliminate the authority for the psychology board to administer an oral exam.

Issue 4

Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.

Psychologist candidates must complete two years of supervised work experience before becoming fully licensed. Statute requires half of this experience to be completed after candidates receive their Ph.D. Current doctoral degree programs include substantially more practical experience than at the time Texas enacted this post-doctoral supervision requirement. Recognizing the change in doctoral education and training, the national trend has begun shifting away from requiring a set number of hours be completed solely in a post-doctoral setting. Today, 18 states and the American Psychological Association have adopted policies that do not distinguish between pre-doctoral and post-doctoral work experience. Requiring candidates to often repeat hours of experience earned during their degree program adds minimal protection and delays licensure of psychologists at a time when Texas faces a shortage of mental health care providers.

Key Recommendation

- Remove the requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.

Issue 5

Key Elements of the Psychology Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.

Sunset staff found some of the psychology board's licensing and enforcement processes do not match model standards or common practices observed in other regulatory agencies. For example, the two-step requirement to apply for a provisional license before applying again to become a licensed psychologist makes the process overly burdensome. The board also lacks certain tools, such as issuing remedial non-disciplinary sanctions and ordering show-cause hearings regarding competency, necessary to effectively enforce the psychology statute and board rules.

Key Recommendations

- Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.
- Authorize the board to issue remedial plans to resolve minor complaints.
- Clarify the agency’s authority to require physical or mental evaluations for those suspected of impairments and hold related hearings for noncompliance.

Issue 6

Texas Should Adopt the Psychology Interjurisdictional Compact.

The Psychology Interjurisdictional Compact (PSYPACT) is an interstate compact designed to facilitate the practice of both telepsychology and the temporary in-person practice of psychology across state boundaries. PSYPACT’s flexibility and mobility support Texas’ efforts to encourage out-of-state licensees’ to come to Texas, which could help ease the growing shortage of mental health care providers. In addition, PSYPACT would help ensure state lines do not disrupt the ability of psychologists to continue to care for their existing clients. Texas psychologists could practice in other compact states while still residing and working in Texas, helping ensure Texas does not lose psychologists to other states.

Key Recommendation

- Adopt the Psychology Interjurisdictional Compact.

Fiscal Implication Summary

Overall, the recommendations in this report would result in much better regulation for the professions and reduced regulatory costs over time. However, accomplishing the necessary consolidation and transformation into the Texas Behavioral Health Executive Council (BHEC) recommended in Issue 1 will require an initial up-front investment. All other recommendations in this report would not have a fiscal impact to the state, with the boards recovering any costs or loss of revenue associated with the recommendations through adjustments in regulatory fees.

Issue 1 — BHEC will require a one-time startup appropriation of about \$850,000 for database transfers, information technology, and employee startup costs and equipment, as well as a full-time equivalent employee (FTE) for an executive director for six months in fiscal year 2020. Meanwhile, the four behavioral health programs would need current operating funds to continue to function in place during fiscal year 2020.

In fiscal year 2021, BHEC’s first full year of operations, current appropriations and FTE positions for the behavioral health programs would be transferred from HHSC and the psychology board to BHEC. Some additional funding will be required going forward to replace administrative services previously provided by HHSC (such as legal and technology) without charge to the behavioral health boards’ budgets. In

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Fiscal Year	Cost to the General Revenue Fund	Change in the Number of FTEs From FY 2019
2020	\$857,073	+5
2021	\$0	+3
2022	\$0	+3
2023	\$0	0
2024	\$0	0

addition, BHEC will need three additional FTE positions for two years to address the boards' massive existing backlog of licensing applications and complaint cases. However, like the current behavioral health boards, BHEC would be statutorily required to generate sufficient revenue to cover its costs, offsetting any increased cost to general revenue.