

Health Board Consolidation Program Summary

During the 2016 Legislative Session, the Governor supported the physical and administrative consolidation of several health regulatory boards as outlined in HB 2501. While the bill did not pass, the concept of board consolidation has been proposed in other forms and raises several issues. This program summary attempts to address some of the relevant issues associated with regulatory board consolidation as well as possible fiscal impact.

Board Relocation

The Arizona Department of Administration (ADOA) plans to sell the state building located at Doubletree Road in Scottsdale. The building's current tenants include the Medical Board, Osteopathic Examiners Board, and Veterinary Medical Examining Board. ADOA is relocating the 3 agencies to the old Department of Health Services (DHS) 1740 West Adams building following ongoing building renovations. In addition, 24 other health regulatory boards and other small agencies in state- and privately-leased office space are being relocated to the 1740 West Adams building. See *Table 1* for a complete list of building tenants.

Table 1

Proposed 1740 West Adams Tenants

1	Acupuncture Board of Examiners
2	Office of Administrative Hearings
3	Board of Barbers
4	Board of Behavioral Health Examiners
5	State Boards and Central Services
6	State Board of Chiropractic Examiners
7	Board of Cosmetology
8	State Board of Dental Examiners
9	State Board of Funeral Directors and Embalmers
10	Board of Homeopathic and Integrated Medicine Examiners
11	Board of Massage Therapy
12	Arizona Medical Board
13	Naturopathic Physicians Medical Board
14	Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers
15	State Board of Nursing
16	Board of Occupational Therapy Examiners
17	State Board of Dispensing Opticians
18	State Board of Optometry
19	Arizona Board of Osteopathic Examiners in Medicine and Surgery
20	State Personnel Board
21	Arizona State Board of Pharmacy
22	Board of Physical Therapy
23	State Board of Podiatry Examiners
24	State Board for Private Postsecondary Education
25	State Board of Psychologist Examiners
26	Board of Respiratory Care Examiners
27	Arizona State Veterinary Medical Examining Board

ADOA's proposal for the 1740 West Adams building renovations was reviewed by the Joint Committee on Capital Review (JCCR) in June 2016. Of the \$4,200,000 in estimated renovation costs, the Committee favorably reviewed

\$500,000 for demolition, abatement, and engineering design. The remaining \$3,700,000 was deferred until ADOA provided and received review from the Committee on their tenant relocation report pursuant to the FY 2017 Capital Outlay Bill. In December 2016, JCCR favorably reviewed the tenant relocation plan.

This concept of physical consolidation is not a new one. The State Boards' Office is currently comprised of 11 regulatory agencies that use centralized services, such as accounting, clerical, and administrative services. The office is under the Management Services Division of ADOA and is supported by payments from the participating boards, the majority of which are housed in the same office building.

E-Licensing

Health boards allow professionals in the state to submit licensing applications and fees in a variety of ways. In order to modernize state board application systems, standardize user experiences, and reduce overall costs, ADOA has selected a vendor to build a statewide E-Licensing system.

Thirteen "90/10" health and non-health regulatory boards who currently operate with limited or no E-Licensing functionality have opted in to the first phase of the project. (These boards retain 90% of their fees and deposit the other 10% in the General Fund.) The FY 2018 budget transferred \$595,500 from boards' funds to the ADOA Automation Projects Fund (APF) for project development costs. *Table 2* lists the 13 boards participating in the project as well as the amount transferred from each board's fund.

Other states have implemented similar systems to standardize health board procedures and attempt to reduce costs. For example, Ohio uses a single website where the public can choose a health board and proceed with an application or complaint submission. Submissions can then be accessed by the appropriate board's staff.

ADOA expects the new system to be implemented by February 2018. The first partial year of operation costs will be paid for by ADOA, and participating boards will be expected to pay the ongoing operational costs. The Joint Legislative Budget Committee (JLBC) favorably reviewed ADOA's E-Licensing plan in June 2017.

HB 2501

During the 2016 Regular Session, HB 2501 would have expanded the idea of consolidation to the administrative functions of health boards by requiring the transfer of 19 health profession regulatory boards to DHS by FY 2022. There were several versions of the bill. This summary uses the House engrossed version to describe the fiscal impact of physical and administrative consolidation.

Nineteen regulatory boards were included in the transfer, with 3 to 7 boards completing transfer each fiscal year. The first years of transfer included a number of small health boards, such as the Acupuncture Board of Examiners and Board of Athletic Training. The final years of transfer included 3 of the largest health boards, Arizona Regulatory Board of Physician Assistants, State Board of Nursing, and the Medical Board.

Upon consolidation, the health boards would have retained individual discretion over licensing issues with respective licensees, remaining individual entities. However, the extent to which DHS supervised the health boards and took over certain administrative functions would have been contingent upon studies by DHS and the Auditor General's office. Studies would have determined staffing recommendations, consolidation of administrative responsibilities, and the possibility of integrating board procedures and policies. The studies would also have included an evaluation of the structure, organization and operation of health boards, and made recommendations for uniform board processes (e.g. fees, investigative procedures, legal services, fingerprinting, etc.) to benefit licensees. Legislative recommendations regarding these issues would have been made based on the presentation of study findings to the House of Representatives Health Committee and the Senate Health and Human Services Committee.

The bill also required health boards to file proposed rules with the Governor's Regulatory Review Council (GRRRC). Before filing with GRRRC, the DHS director would have been given final approval on rules with a material anticompetitive effect. Specifically, the director would have been able to reject any rules not required to protect public health and safety, unless the rule is required by law, and when less restrictive means are available to protect public health and safety. The bill required the director to provide timely decisions accompanied by a written

explanation. In addition to anticompetitive oversight, the bill would have given the DHS director authority to accept or reject executive director nominations of certain boards with vacancies at the time of transfer.

Board Fund Transfers to APF in FY 2018	
<u>Agency/Fund</u>	<u>FY 2018</u>
<i>Acupuncture Board of Examiners – Acupuncture Board of Examiners Fund</i>	\$ 45,900
<i>Board of Athletic Training – Athletic Training Fund</i>	45,900
<i>Board of Barbers – Board of Barbers Fund</i>	40,000
<i>Board of Funeral Directors' and Embalmers' – Board of Funeral Directors' and Embalmers' Fund</i>	27,500
<i>Board of Examiners of Nursing Care Institution Administrators' Licensing and Assisted Living Facility Managers – Nursing Care Institution Administrators' Licensing and Assisted Living Facility Managers' Certification Fund</i>	27,500
<i>Board of Occupational Therapy Examiners – Occupational Therapy Fund</i>	45,900
<i>Board of Dispensing Opticians – Board of Dispensing Opticians Fund</i>	27,500
<i>Board of Optometry – Board of Optometry Fund</i>	45,900
<i>Board of Physical Therapy – Board of Physical Therapy Fund</i>	45,900
<i>Board of Podiatry Examiners – Podiatry Fund</i>	27,500
<i>Board for Private Postsecondary Education – Board for Private Postsecondary Education Fund</i>	80,200
<i>Board of Psychologist Examiners – Board of Psychologist Examiners Fund</i>	91,700
<i>Board of Respiratory Care Examiners – Board of Respiratory Care Examiners Fund</i>	<u>44,100</u>
TOTAL	\$ 595,500

Background

North Carolina Board of Dental Examiners v. Federal Trade Commission (FTC)

HB 2501 attempted to address liability issues raised by the *North Carolina Board of Dental Examiners v. Federal Trade Commission (FTC)* decision. The U.S. Supreme Court case is a result of a complaint filed by the FTC regarding the North Carolina dental board's decision to send nondentists cease and desist letters, explaining nondentists could not provide teeth whitening services in North Carolina. A lower court determined the dental board's actions unreasonably restrained trade in the state, a violation of antitrust laws. The board responded by claiming "state-action immunity", saying that as a state agency they should be considered immune from antitrust laws. Ultimately, the Court ruled immunity from antitrust laws was not possible due to lack of evidence that the board is actively supervised by the state. A majority of members sitting on the board were actively participating in the state's dental market. As a result, the Court ruled that the North Carolina Dental Board could not claim immunity from antitrust laws without active supervision by a state official.

In its opinion, the Court outlines several steps occupational licensing boards can take to avoid potential lawsuits alleging violation of federal antitrust laws. An active supervisor must be in place to ensure market participants on the regulatory boards are acting in the interest of the state. The active supervisor must review the substance of anticompetitive board decisions, have the power to veto or modify those decisions, and not be a market participant themselves. The Court also noted that the mere potential for supervision was not enough for regulatory boards to be immune from antitrust laws. However, the Court did not require these actions by the states. Action outlined in the steps above is only required if boards want to be included in State antitrust immunity.

State Responses

In responding to the Court's opinion, along with additional guidelines set forth by the FTC, lawmakers in other states have proposed a variety of actions. Several state governors have signed executive orders, and many states' legislators have introduced bills to address the issue of occupational licensing boards and antitrust liability.

Alabama's governor, for example, signed an order establishing the Alabama Office for Regulatory Oversight of Boards and Commissions. All occupational licensing boards in the State of Alabama can voluntarily submit to the authority of the governor-appointed Secretary of the office if they wish to have their decisions reviewed and be guarded from antitrust liability. Similarly, bills and executive orders in other states introduced mandates either creating regulatory agencies or modifying rule making powers of existing state employees.

Delaware's governor also issued an executive order which establishes the Delaware Professional Licensing Review Committee. The committee consists of agency directors and members of the Legislature and is responsible for determining best practices for protecting public health and safety, allowing entry to any profession without unnecessary regulatory burdens, and making recommendations to reduce the risk of antitrust liability.

Additionally, state Attorneys General have released opinions regarding antitrust liability and "state-action immunity" for occupational licensing boards. For example, the Attorney General in California published an opinion detailing the Court case and what specific actions can be taken to guard against antitrust liability and give boards power to claim immunity from anticompetitive decisions. Included in the opinion is a list of actions that could be taken by lawmakers, such as changing the composition of occupational licensing boards to reflect non-majority market participants or naming a state official to establish active supervision. In a letter to the Legislature, the Attorney General in Florida also adds options to amend existing statutes to include legislative or administrative review of proposed rules or to create a new executive agency tasked with active supervision of licensing agencies.

Many solutions proposed in other states attempt to address all occupational licensing and regulatory boards in the respective state and others limit the solutions to a specific type of board. HB 2501 applies only to Arizona's health regulatory boards.

Health Regulatory Board Funding

Health regulatory boards use appropriated funds to certify, license, investigate, and regulate Arizona health professionals. Ninety percent of board revenues, such as license application fees, remain with the respective health board's fund. The remaining 10% are deposited to the General Fund. Appropriations from health board funds are determined by the Legislature each year.

Estimated Fiscal Impact

Table 3 shows the FY 2018 FTE Positions and operating budget appropriations associated with each regulatory board included in HB 2501. Nineteen boards included in HB 2501's consolidation are appropriated 170.5 FTE Positions and \$18,353,600 in operating costs (see *Table 3*).

The bill could result in both costs and savings. The fiscal impact would depend on the outcome of proposed studies and resulting legislative recommendations and cannot be determined in advance.

Potential Costs

The bill would result in one-time costs for moving expenses. Factors affecting cost could include transfer of property, equipment readiness and resources needed for setup, and time and staff needed for planning and oversight. ADOA estimates moving expenses for licensing and regulatory boards shown in *Table 1* as \$576,800. This includes physical moving expenses, modular re-configuration, and IT/cabling. The FY 2017 General Appropriation Act included funding for these costs.

The bill could also increase costs for additional administrative staff and legal services. Review of board decisions with possible anticompetitive effects requires a written explanation from the DHS director. This may require supplemental review from legal staff and assistance from support staff or director designees.

Regulatory agencies in other states, such as the Department of Regulatory Agencies (DORA) in Colorado, receive appropriations for legal services for occupational licensing boards. DORA is currently appropriated 203.8 FTE Positions for its Division of Professions and Occupations, which regulates over 50 professions, occupations, and entities in Colorado. DORA's 5-year average for actual legal service expenditures associated with the Division of Professions and Occupations is 41% of the appropriation, or about \$4,290,633. These expenditures may account for regular licensing issues, but the Court's decision puts occupational licensing boards at risk for antitrust liability. Since the Court decision, DORA has been able to address antitrust liability issues within existing legal and staffing resources. The 19 health boards included in HB 2501 may require appropriations for legal oversight of anticompetitive decisions, as well as other appropriations to address any additional administrative consolidation resulting from study recommendations.

Boards	FTE Positions	Operating Budget
Acupuncture Board of Examiners	1.0	\$ 185,500
Board of Athletic Training	1.5	120,600
Board of Behavioral Health Examiners	17.0	1,777,800
State Board of Chiropractic Examiners	5.0	455,100
State Board of Dental Examiners	11.0	1,229,900
Board of Homeopathic and Integrated Medicine Examiners	1.0	89,000
Arizona Medical Board	61.5	6,841,900
Medical Radiologic Technology Board of Examiners	3.6	304,200
Naturopathic Physicians Medical Board	2.0	183,000
State Board of Nursing	42.2	4,323,800
Board of Occupational Therapy Examiners	1.5	183,700
State Board of Dispensing Opticians	1.0	141,700
State Board of Optometry	2.0	222,200
Arizona Board of Osteopathic Examiners in Medicine and Surgery	7.2	913,100
Arizona Regulatory Board of Physician Assistants ^{1/}	-	-
Board of Physical Therapy	4.0	448,000
State Board of Podiatry Examiners	1.0	149,700
State Board of Psychologist Examiners	4.0	480,600
Board of Respiratory Care Examiners	<u>4.0</u>	<u>303,800</u>
TOTAL	170.5	\$18,353,600

^{1/} The Arizona Regulatory Board of Physician Assistants shares funding and operations with the Arizona Medical Board. Appropriations for both boards are represented by the Arizona Medical Board.

Potential Savings

If the bill's studies result in uniform policies and procedures, workload associated with certification and license application processes may be reduced, both benefiting licensees' wait time and resulting in reduced spending by respective boards. Streamlined procedures may include fingerprinting, fee structures, investigation processes, purchasing of office equipment and supplies, and sunset reviews.

Similarly, the overall costs associated with support resources, such as Human Resources and Information Technology, and lease spending may be reduced by the bill. If boards are housed in DHS operated buildings, lease payments for individual office space may be reduced. ADOA estimates that moving the boards listed in *Table 1* to the 1740 West Adams building will result in a reduction of rentable square feet per FTE Position and a \$1,515,999 reduction in rent payments. Sharing office space may also facilitate access to shared support services, like the model currently used by the State Boards' Office. Spending may be reduced if studies, along with proceeding legislative recommendations, determine boards can access and share such resources effectively. Legislative action would be required for administrative consolidation.

Non-Health Board Consolidation Proposal

Laws 2016, Chapter 371 required ADOA to conduct a study of transferring all non-health regulatory and licensing boards to ADOA. Based on a 10-board sample, the resulting study recommends physically consolidating boards to the same geographic area, creating centralized processes, and implementing triage processes for application and complaint intake. The study estimates consolidation would result in a 10% annual savings, or \$990,000, in operational expenses of 9 of the sample boards. With additional reductions in the average rentable square feet per FTE Position, the study estimates a total annual savings of \$1,430,000.

DHS Health Board Regulatory Analysis

Although HB 2501 did not pass, DHS conducted a study similar to that required by Laws 2016, Chapter 371 to determine the cost and benefits of transferring health regulatory and licensing boards to DHS. The May 2017 report discusses the functions and operations of 20 subject boards, potential oversight models, and other states' approaches to consolidating boards.

Three oversight models are examined in the report: 1) Autonomous Oversight Model; 2) Umbrella Oversight Model; and 3) Hybrid Oversight Model. Historically, Arizona has operated using an Autonomous Oversight Model where each board operates independently and has unique application and investigation procedures. HB 2501 proposed an Umbrella Oversight Model, where DHS would act as the "umbrella" agency overseeing board operations and consolidating administrative and operational functions. The Hybrid Oversight Model, which reflects the State Boards' Office appropriation, boards moving to 1740 West Adams, and boards participating in the ADOA E-Licensing project, would use some combination of both approaches. These boards share physical space and/or are moving towards using standardized application and investigation procedures, but remain separate entities.

Other states who have adopted an umbrella structure like that proposed in HB 2501 report both positive and negative outcomes. Washington's Department of Health, for example, published a report in January 2013 that listed many benefits to using an umbrella model, including shared infrastructure (information technology, human resources, communications, etc.) and centralized rulemaking. The report also lists efficiencies associated with having a "one-stop-shopping" approach for members of the public, legislative staff, and other interested parties (a single website, one call center, consistent complaint intake procedures, etc.) as a positive outcome. Similarly, the Wisconsin Department of Public Safety and Professional Services reports that operational consolidation has led to an increase in responsiveness and productivity as well as a reduction in costs.

Another report commissioned and published by Minnesota's health licensing boards in 2003 found that no specific oversight model had shown a solution to existing regulation issues. Following a survey of occupational licensing boards in multiple states, this report found that an agency's ability to protect public health and safety may not be impacted by the oversight model used as much as other governance factors, such as funding, management, and general cooperation among boards. The report also notes that many boards did not experience some of the expected benefits following a change in oversight, and that autonomous boards were less likely to report funding issues.