

# **SUNRISE REVIEWS: REGULATORY STRUCTURES AND CRITERIA**

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## FOREWORD

This report was prepared in response to Senate Concurrent Resolution No. 121, adopted by the Twenty-first Legislature during the Regular Session of 2002. This report sets forth the Bureau's findings and recommendations on the current policies and criteria used to conduct sunrise reviews pursuant to chapter 26H, Hawaii Revised Statutes.

We hope that this publication helps to provide a better understanding of the nature and purpose of sunrise reviews in legislative decision-making.

The Bureau wishes to acknowledge the cooperation and assistance of the Office of the Auditor and the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs.

Wendell K. Kimura  
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# FACT SHEET

## Sunrise Reviews: Regulatory Structures and Criteria

### I. Highlights

A. Senate Concurrent Resolution No. 121, adopted by the Legislature in the 2002 Regular Session, requested the Bureau to conduct a study of the current policies and criteria used to conduct sunrise reviews pursuant to chapter 26H, Hawaii Revised Statutes.

B. **Findings.** The Bureau finds that:

- (1) Hawaii law does not mandate the legislature to choose the least restrictive method of regulation that will fulfill the need for regulation. The requirement formerly existed in section 26H-2, Hawaii Revised Statutes, but has since been repealed;
- (2) The list of sunrise review criteria in section 26H-2, Hawaii Revised Statutes, is missing two basic criteria found in other states' sunrise review statutes. The two criteria are the need for assurances of competency and the lack of other adequate protections. Although missing from the statutes, the Auditor has adopted these criteria as supplemental criteria in its sunrise reviews. All other states with sunrise review statutes have these two criteria; and
- (3) It is not feasible to add economic impact, insurance reimbursements, or accessibility of services as additional criteria for the Auditor's sunrise review.

First, economic impact amounts to the costs of regulation to the state, the cost of services to consumers, or restrictions on entry. All three components are already incorporated into section 26H-2.

Second, insurance reimbursement is not relevant to the basic question of whether regulation is necessary to protect consumers who are otherwise left unprotected from harm caused by the incompetence of practitioners.

Third, accessibility of services is already a criterion in section 26H-2, Hawaii Revised Statutes, under a different choice of words.

### **C. Recommendations**

- (1) Section 26H-2, Hawaii Revised Statutes, should be amended by adding the two basic criteria missing from that section--the need for assurances of competency, and the lack of other adequate protections; and
- (2) The additional criteria proposed in S.C.R. No. 121, specifically, economic impact, insurance reimbursement, or accessibility of services, should not be adopted.

## **II. Frequently Asked Questions**

### **A. What is a sunrise review?**

**Answer:** It is a review of whether it is necessary for a legislature to enact legislation to regulate an as yet unregulated profession or occupation in order to protect the health, safety, or welfare of the public.

### **B. Who conducts the sunrise review?**

**Answer:** It depends on the state. Although the decision to regulate ultimately lies with the legislature, it is usually an executive department or agency that prepares the sunrise review report. In other states the reports are prepared by a legislative committee, a legislative auditor, a council of legislative and executive branch members, or even the proponents of the legislation. In Hawaii, the sunrise reviews are conducted by the Auditor.

### **C. What are sunrise review criteria?**

**Answer:** The criteria are different ways of asking whether it is necessary to regulate a profession or occupation in order to protect the public. They are generally presented in the form of a test in which all the criteria must be met in order for a proposal to pass the sunrise review. The three most common criteria involve harm, competency, and protection. They may be paraphrased as follows:

- (1) Does the unregulated practice harm the public;
- (2) Is the harm due to incompetent practice; and
- (3) Is the public unprotected.

### **D. What is the regulatory structure of a sunrise review statute?**

**Answer:** The regulatory structure of a sunrise review statute is generally built around two basic issues that the legislature must decide. The two issues are:

- (1) Is regulation necessary to protect the public?
- (2) If regulation is necessary, what is the least restrictive method of regulation that will fulfill that need for regulation?

The sunrise review criteria help to answer the first issue. The second issue involves choosing a method of regulation. From the least restrictive to the most restrictive, the methods are as follows:

- (1) Strengthened civil remedies and criminal sanctions;
- (2) Regulation of the business rather than its employee practitioners;
- (3) Registration;
- (4) Certification; and
- (5) Licensure.

# TABLE OF CONTENTS

	<i>Page</i>
<b>FOREWORD</b> .....	<i>iii</i>
<b>FACT SHEET</b> .....	<i>v</i>
<b>1. INTRODUCTION</b> .....	1
<b>2. THE REGULATORY STRUCTURE OF SUNRISE REVIEW STATUTES IN OTHER STATES</b> .....	3
Policy .....	7
Sunrise Criteria.....	8
Information.....	11
Least Restrictive Method of Regulation .....	12
Conclusion.....	14
<b>3. SUNRISE REVIEWS UNDER HAWAII LAW</b> .....	16
Conclusion.....	20
<b>4. THE REGULATORY STRUCTURES OF OTHER STATES AND HAWAII CONTRASTED</b> .....	21
Hawaii's Stronger Policy Statement.....	21
The Least Restrictive Method of Regulation.....	22
Policy (7).....	23
The Three Basic Criteria .....	24
Harm.....	25
The Auditor's Supplemental Criteria .....	26
Assurances of Competency .....	27
The Auditor's Supplemental Criteria .....	28
The Lack of Other Protections.....	28
The Auditor's Supplemental Criteria .....	29
Conclusion.....	29
<b>5. THE ADDITIONAL THREE CRITERIA</b> .....	31
Economic Impact.....	31
Other States' Sunrise Reviews .....	33
The Auditor's Sunrise Reviews.....	35
Insurance Reimbursement.....	36
Other States' Sunrise Reviews .....	38
The Auditor's Sunrise Reviews.....	40

	<i>Page</i>
Accessibility of Services.....	40
Other States' Sunrise Reviews .....	43
The Auditor's Sunrise Reviews .....	44
Conclusion.....	44
<b>6. FINDINGS AND RECOMMENDATIONS.....</b>	<b>46</b>
Findings.....	46
Recommendations.....	47

### **Tables**

2-1 Sunrise Review Statutes.....	6
2-2 State Sunrise Review Criteria.....	11
5-1 The Economic Impact Criterion in Other States' Laws .....	31
5-2 Health Professions Sunrise Review Criteria .....	37
5-3 The Insurance Reimbursement Criterion in Other States' Laws .....	38
5-4 The Accessibility of Services Criterion in Other States' Laws .....	41

### **Appendices**

A. Senate Concurrent Resolution No. 121, Regular Session of 2002.....	49
B. Suggested Legislation.....	51



# Chapter 1

## INTRODUCTION

Senate Concurrent Resolution No. 121 was adopted by the Twenty-first Legislature during the Regular Session of 2002 and a copy of it is attached as Appendix A. The resolution requests the Legislative Reference Bureau to conduct a study of the current policies and criteria used to conduct sunrise reviews pursuant to chapter 26H, Hawaii Revised Statutes. Specifically, the Legislature directed that the study include:

- (1) Assessing the feasibility of including economic impact, insurance reimbursements, and accessibility of services, as additional factors to be considered by the Auditor in the review of any regulatory proposal; and
- (2) A review of regulatory structures in other states, including any model regulatory acts, to ascertain what factors are used in assessing regulatory programs.

As a preliminary matter, chapter 26H uses only the term "policies" in the relevant sections dealing with sunrise reviews. The other terms "criteria" and "factors" are not used. Thus, we understand the resolution to be using the words "criteria" and "factors" as synonyms for "policies".

The Bureau finds that it is not feasible to include economic impact, insurance reimbursements, and accessibility of services as additional criteria for the Auditor's review. The Bureau bases its findings on its review of sunrise review statutes and sunrise review reports of Hawaii and the other states.

The Bureau's analysis is presented as follows:

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|-----------|---|
| Chapter 1 | Summarizes the task requested in Senate Concurrent Resolution No. 121.  |
| Chapter 2 | Reviews the regulatory structure of other states' sunrise review statutes to ascertain other states' sunrise criteria.  |
| Chapter 3 | Describes the Hawaii sunrise review law, the sunrise review criteria contained in the statute, the sunrise review criteria adopted by the Auditor, and the Auditor's sunrise reviews. |
| Chapter 4 | Contrasts Hawaii's sunrise review laws to the sunrise review laws of other states.  |
| Chapter 5 | Assesses the feasibility of adopting the three additional criteria of economic impact, insurance reimbursement, and accessibility of services into Hawaii law.                        |

Chapter 6 Summarizes the findings of the study, recommends against the adoption of the three proposed criteria of economic impact, insurance reimbursement, and accessibility of services, recommends the adoption of the two basic criteria found in other states' laws of competency and lack of other protections, and recommends proposed legislation.

## Chapter 2

### THE REGULATORY STRUCTURE OF SUNRISE REVIEW STATUTES IN OTHER STATES

Senate Concurrent Resolution No. 121 requests the Bureau to review the regulatory structure of sunrise review statutes in other states, including any model regulatory acts, to ascertain what factors are used in assessing regulatory programs.

In this chapter the Bureau reviews the criteria used in other states' sunrise reviews and the context in which they are used.

At least eighteen other states besides Hawaii had sunrise review statutes as of June 1, 2002.<sup>1</sup> These eighteen states are Arizona, Colorado, Florida, Georgia, Kansas, Maine, Minnesota, Nebraska, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.<sup>2</sup> For three of them, specifically, Arizona, Kansas, and Nebraska, the sunrise reviews apply only to health care professions. No model regulatory acts were found.

The sunrise review statutes are a state legislature's mandate to itself regarding the regulation of professions that are not yet regulated by the state. The statutes typically begin with

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1. A search of other states statutes was conducted in May 2002. The versions of the state statutes reviewed in this report were obtained by June 1, 2002 through state websites.

2. The states' sunrise review statutes may be found as follows:

Arizona Revised Statutes Annotated sections 32-3101 to 32-3108.

Colorado Revised Statutes section 24-34-104.1.

Florida Statutes section 11.62.

Code of Georgia sections 43-1A-1 to 43-1A-9.

Kansas Statutes Annotated sections 65-5001 to 65-5011.

Maine Revised Statutes Annotated title 32, sections 60-J to 60-L, and title 5, section 12015.

Minnesota Statutes sections 214.001 to 214.002.

Statutes of Nebraska sections 71-6201 to 71-6229.

New Mexico Statutes Annotated sections 12-9A-1 to 12-9A-6.

North Carolina General Statutes sections 120-149.1 to 120-149.6.

South Carolina Code of Laws sections 40-1-10 to 40-1-220.

Tennessee Code sections 4-29-101 to 4-29-122.

Texas Code sections 318.001 to 318.003.

Utah Code sections 36-23-101 to 36-23-108.

Vermont Statutes Annotated sections 3102 to 3107.

Code of Virginia sections 54.1-100, 54.1-309 to 54.1-311.

Revised Code of Washington chapter 18.118, Regulation of Business Professions, sections 18.118.005 to 18.118.900, and chapter 18.120, Regulation of Health Professions--Criteria, sections 18.120.010 to 18.120.910.

West Virginia Code sections 30-1A-1 to 30-1A-6.

a statement of the purpose behind regulating a profession. The purpose is to regulate a profession only if regulation is necessary to protect consumers from harm caused by practitioners of unregulated profession. The statutes then deal with the two basic questions that the legislature must ask itself:

- (1) Is regulation of the profession necessary?
- (2) If regulation is necessary, what is the least restrictive method of regulation that should be used?

Both decisions are ultimately the legislature's decisions. In deciding whether regulation of a profession is necessary, the legislature uses a checklist of sunrise criteria. If the legislature decides that regulation is necessary, the legislature then resorts to a second list of the methods of regulation. It must pick the least restrictive means that fulfills the need for regulation. As a practical matter, the legislature typically assigns either a legislative or executive agency to submit a sunrise report or sunrise review that provides the legislature with preliminary responses to one or both of the two basic questions.

In other words, the policy behind regulating a profession is that regulation is necessary to protect the public. The policy gives rise to the question of whether it is thus necessary to regulate. The sunrise criteria break that question into its component parts. The criteria provide different points of view from which to determine the question of necessity. To determine whether the criteria are met, certain information must be collected and reviewed. The information itself is not criteria, but helps in analyzing the criteria. If the criteria are met, the conclusion then is that it is thus necessary to regulate the profession. Finally, the second question to answer is what is the least restrictive method of regulation that should be used.

In discussing other states' laws, the terms "policy", "criteria", and "information" will be used artificially to distinguish related but distinct levels of issues involved in sunrise review statutes. In Hawaii all three ideas are denoted as "policies". In other states, the "policy" is expressed as a "purpose"<sup>3</sup> or "policy"<sup>4</sup> or something the legislature "finds",<sup>5</sup> "intends",<sup>6</sup> "declares",<sup>7</sup> or "believes".<sup>8</sup> Likewise, "criteria" is expressed usually as "criteria",<sup>9</sup> but also as

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3. Georgia, Vermont.

4. Vermont.

5. Colorado, Texas, West Virginia.

6. Florida, Washington.

7. Minnesota.

8. Nebraska, Vermont, Washington.

9. Arizona, Georgia, Kansas, Maine, Minnesota, Nebraska, New Mexico, North Carolina, Tennessee, Utah, Vermont, Washington, West Virginia.

"factors",<sup>10</sup> "considerations",<sup>11</sup> or "standards".<sup>12</sup> Finally, "information" is usually expressed as "information",<sup>13</sup> but also as "factors",<sup>14</sup> "evidence",<sup>15</sup> "issues",<sup>16</sup> or "explanations".<sup>17</sup>

The basic structure of the sunrise review statutes from the other states resembles the following:

- (1) The governing policy:

What is the purpose of regulating a profession or occupation?

- (2) The first issue:

Is it necessary to regulate a profession or occupation?

- (3) The sunrise criteria:

What criteria must be used to determine whether it is necessary to regulate a profession or occupation?

- (4) Information relevant to the sunrise criteria:

What types of information or data are needed in order to determine whether the criteria are met?

- (5) The second issue:

If it is necessary to regulate a profession or occupation, then what is the least restrictive method of regulation that will fulfill that need for regulation?

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10. Florida, Georgia, Minnesota, Tennessee, Texas.

11. Colorado, Texas.

12. Vermont.

13. Colorado, Florida, Georgia, Minnesota, Nebraska, New Mexico, North Carolina, Tennessee, Vermont, Washington.

14. Arizona, Georgia, North Carolina, Vermont, Washington.

15. Minnesota.

16. Minnesota.

17. Nebraska.

From least restrictive to most restrictive, the methods are as follows:

- (a) Strengthened civil remedies and criminal sanctions;
- (b) Regulation of the business rather than its employee practitioners;
- (c) Registration;
- (d) Certification;
- (e) Licensure.

Although all states have sunrise criteria, not all states require a sunrise report. Some do,<sup>18</sup> some don't.<sup>19</sup> Of the states that require a report, the entity responsible for producing the report is usually an executive department or agency.<sup>20</sup> In other states, the responsibility is given to a legislative committee,<sup>21</sup> a legislative auditor,<sup>22</sup> a council of legislative and executive branch members,<sup>23</sup> or the proponents of the legislation.<sup>24</sup>

The following table shows the regulatory structure of state sunrise review statutes, including Hawaii's.

**Table 2-1  
SUNRISE REVIEW STATUTES**

State	Health	Policy	Necessity	Method	Info	Report	Writer
Arizona	Y	Y	Regulate health pro	Y	Y	Y	Leg com
Colorado		Y	Regulate profession	Y	Y	Y	Exec
Florida		Y	Regulate profession	Y	Y		
Georgia		Y	Lic/certify profession	Y	Y	Y	Exec/leg
Hawaii		Y	Reg/license profession			Y	Leg aud
Kansas	Y		Credential health pro	Y		Y	Exec

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18. Reports are statutorily required in Arizona, Colorado, Georgia, Kansas, Maine, Minnesota, Nebraska, New Mexico, North Carolina, Vermont, Washington, and West Virginia.

19. Reports are not statutorily required in Florida, South Carolina, Tennessee, Texas, Utah, and Virginia.

20. Colorado, Kansas, Maine, Nebraska, New Mexico, Vermont, and Washington.

21. Arizona and North Carolina.

22. West Virginia.

23. Georgia.

24. Minnesota.

*REGULATORY STRUCTURE OF SUNRISE REVIEW STATUTES IN OTHER STATES*

State	Health	Policy	Necessity	Method	Info	Report	Writer
Maine			Reg/license profession	Y		Y	Exec
Minnesota		Y	Regulate profession	Y	Y	Y	Proponent
Nebraska	Y	Y	Regulate health profession	Y	Y	Y	Exec
New Mexico		Y	Create license/reg board		Y	Y	Exec
N Carolina		Y	Create licensing board		Y	Y	Leg com
S Carolina		Y	Regulate profession	Y	Y		
Tennessee		Y	Create lic/cert agency		Y		
Texas		Y	Regulate profession	Y			
Utah			License/reg profession				Leg com
Vermont		Y	Regulate profession	Y	Y	Y	Exec
Virginia		Y	Regulate profession	Y	Y		
Washing		Y	Regulate profession	Y	Y	Y	Exec
W Virginia		Y	Regulate profession	Y	Y	Y	Leg aud

The topics of policy, criteria, and information are discussed more fully below.

## Policy

The common policy behind regulating a profession or occupation can be stated as follows:

The legislature believes that no regulation shall be imposed upon any profession or occupation unless necessary for the protection of the health, safety, or welfare of the public.

The states that have a policy statement for their sunrise reviews are Arizona, Colorado, Florida, Georgia, Minnesota, Nebraska, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia.<sup>25</sup> This type of policy statement tends to be in a

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25. The states' sunrise review policies may be found as follows:

- Arizona Revised Statutes Annotated section 32-3103(A).
- Colorado Revised Statutes section 24-34-104.1(1).
- Florida Statutes section 11.62(2).
- Code of Georgia section 31-1A-2.
- Minnesota Statutes section 214.001(2).
- Revised Statutes of Nebraska section 71-6202.
- New Mexico Statutes Annotated section 12-9A-2.
- General Statutes of North Carolina section 120-149.1
- Code of Laws of South Carolina section 40-1-10(A).
- Texas Code Annotated section 318.001.
- Vermont Statutes Annotated section 3101.
- Code of Virginia section 54.1-100.
- Code of Washington section 18.120.010(2), for health professions; section 18.118.010(2), for business professions.
- West Virginia Code section 30-1A-1.

findings-and-purpose section. In any case, it tends to be separate from the actual list of sunrise criteria.

Furthermore, the policy statements explain that regulation is an abridgment of a person's constitutional right to engage in a lawful profession, trade, or occupation. A state cannot abridge that right unless the abridgment constitutes a reasonable exercise of its police powers. Abridgment will restrict entry into the profession and adversely affect the availability of the professional or occupational services to the public. Thus, a state will not regulate unless it is necessary to protect the public, and will use the least restrictive regulatory alternative consistent with the public health and safety.

Generally, it is well settled that under its inherent police powers, a state has the right to regulate any and all kinds of businesses in order to protect the public health, morals, and welfare of its people. It is also well settled that the state under its police powers does not have the right to regulate any business where there is no threat to and no need to protect the health, morals, and welfare of the general public.<sup>26</sup>

Thus, concerns outside of consumer protection do not appear to justify the state's right to regulate a profession. None of the sunrise review statutes express any further policy of regulating a profession in order to promote a profession or even to bestow benefits upon consumers. Industry promotion and consumer benefits are not the motivating forces behind these statutes.

Accordingly, in order to implement the policy of regulating a profession only when necessary to protect the public, a legislature establishes the sunrise reviews, which are a procedure or system for reviewing the necessity of regulating an occupation or profession prior to the enactment of laws that regulate that occupation or profession. The sunrise reviews enable the legislature to determine whether regulation is necessary.

## Sunrise Review Criteria

Integral to the sunrise review statutes is the sunrise review criteria.<sup>27</sup> The states with sunrise review statutes all have sunrise review criteria. The criteria are generally presented in the

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26. 16A Am Jur 2d Constitutional Law section 372 (1998).

27. The states' sunrise review criteria may be found as follows:

Arizona Revised Statutes Annotated section 32-3103(A).

Colorado Revised Statutes section 24-34-104.1(4)(b).

Florida Statutes section 11.62(3).

Code of Georgia section 43-1A-6.

Kansas Statutes section 65-5006(a).

Maine Revised Statutes Annotated title 32, section 60-J.

Minnesota Statutes section 214.001(2).

Revised Statutes of Nebraska section 71-6221(1).

New Mexico Statutes Annotated section 12-9A-3.

*Footnote continued on next page.*



form of a test in which all the criteria must be met in order for a proposal to pass the sunrise review.

The various state statutes share common criteria among them. In particular, three criteria appear to be fundamental. The three are as follows:

- (1) The unregulated practice in question can clearly harm or endanger the health, safety, or welfare of the public, and the potential for harm is easily recognizable and not remote or dependent upon tenuous argument;
- (2) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- (3) The public cannot be effectively protected by other means in a more cost-beneficial manner.

In other words, the basic criteria are:

- (1) The public can be clearly harmed by the unregulated practice;
- (2) The public needs assurances that practitioners are competent; and
- (3) The public cannot be protected except through regulation.

Recasting the three criteria as questions:

- (1) Does the unregulated practice harm the public?
- (2) Is the harm due to incompetent practice?
- (3) Is the public unprotected?

Five states have only these three basic, core criteria in their statutes. These states are Arizona, Colorado, Vermont, Washington, and West Virginia.

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General Statutes of North Carolina section 120-149.1.

Code of Laws of South Carolina section 40-1-10(B).

Tennessee Code section 4-29-118(b)(2).

Texas Code section 318.002.

Utah Code section 36-23-107.

Vermont Statutes section 3105(a).

Code of Virginia section 54.1-100.

Revised Code of Washington section 18.120.010(2) for health professions and section 18.118.010(2) for business professions.

West Virginia Code section 30-1A-3(c).

There are also other criteria that are common enough among other states' sunrise review laws. Among these are the following:

- (1) The overall cost effectiveness and economic impact of regulation will be positive for citizens of the state (five states);
- (2) Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare or interest (eight states);
- (3) The profession or occupation possesses qualities that distinguish it from ordinary labor (seven states); and
- (4) Practice of the profession or occupation requires specialized skill or training (twelve states).

In other words, the other common criteria involve the following issues:

- (1) Economic impact;
- (2) Supply of practitioners;
- (3) Distinction from ordinary labor; and
- (4) Specialized skills.

In a few states, specifically, Arizona, Vermont, and Washington, there is a post-criterion. After evaluating the sunrise criteria and before deciding that it is necessary to regulate a profession, the legislature must also consider governmental and societal costs and benefits. However, based on the Vermont<sup>28</sup> and Washington<sup>29</sup> reviews, this post-criterion is not discussed in the sunrise reviews.

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28. The reports from Vermont are as follows:

Report of Preliminary Assessment for State Regulation of Speech and Language Pathologists and Audiologists, Office of Professional Regulation, November 1, 1999;  
Report of Preliminary Assessment for State Regulation of Respiratory Therapists, Office of Professional Regulation, November 1, 1999;  
Report of Preliminary Assessment for State Regulation of Certified Lay Midwives, Office of Professional Regulation, November 1, 1999;  
Report of Preliminary Assessment for State Regulation of Alcohol and Drug Counselors, Office of Professional Regulation, November 1, 1999;  
Report of Preliminary Assessment for State Regulation of Electrologists, Office of Professional Regulation, November 1, 1999.

29. The report from Washington is as follows: Athletic Trainers Sunrise Review, Office of Financial Management, 2001.

The table below shows the sunrise criteria used in state sunrise review laws, including Hawaii's.

**Table 2-2  
STATE SUNRISE REVIEW CRITERIA**

State	Harm	Competency	Protection	Skills	Labor	Economic Impact	Supply	Insurance	Others
Arizona	Y	Y	Y						
Colorado	Y	Y	Y						
Florida	Y	Y	Y	Y		Y	Y		
Georgia	Y	Y	Y	Y		Y			
Hawaii	Y						Y		Y
Kansas	Y	Y	Y	Y	Y		Y		Y
Maine	Y	Y	Y	Y		Y	Y	Y	Y
Minnesota	Y	Y	Y	Y		Y			
Nebraska	Y	Y	Y				Y		
New Mexico	Y	Y	Y	Y	Y		Y		Y
N Carolina	Y	Y	Y	Y	Y	Y			
S Carolina	Y	Y	Y	Y	Y				
Tennessee	Y	Y	Y	Y	Y				
Texas	Y	Y	Y	Y			Y		Y
Utah	Y	Y	Y	Y	Y		Y		Y
Vermont	Y	Y	Y						
Virginia	Y	Y	Y	Y	Y				
Washing	Y	Y	Y						
W Virginia	Y	Y	Y						

## Information

In the statutes of several states, the list of sunrise review criteria is accompanied by a second list of specific information relevant to the review criteria. The states that require such information and set it out in a list separate from that of the sunrise criteria are Arizona, Colorado, Florida, Georgia, Minnesota, Nebraska, New Mexico, North Carolina, South Carolina, Tennessee, Vermont Virginia, Washington, and West Virginia.<sup>30</sup> Maine, like Hawaii, mixes

30. The states' sunrise review lists of required information may be found as follows:

Arizona Revised Statutes Annotated section 32-3105.

Colorado Revised Statutes section 24-34-104.1(2).

Florida Statutes section 11.62(4) and (5).

Code of Georgia section 43-1A-7.

Minnesota Statutes section 214.002(2).

Revised Statutes of Nebraska section 71-6223.

New Mexico Statutes Annotated section 12-9A-5.

General Statutes of North Carolina section 120-149.4(a).

Code of Laws of South Carolina section 40-1-10(D).

Tennessee Code section 4-29-118(b)((3).

Vermont Statutes section 3107.

Revised Code of Washington section 18.118.030 for business professions and section 18.120.030 for health professions.

West Virginia Code section 30-1A-2(b).

sunrise criteria and information in the same list. In South Carolina and Virginia, the information, however, is needed to decide on the method of regulation, rather than to determine the need for regulation. The entity required to produce the information is generally the proponents of the legislation.

Among the most common required types of information are the following:

- (1) Statement of the problem;
- (2) Documentation of harm from the unregulated practice;
- (3) Voluntary efforts to establish a code of ethics or resolve disputes;
- (4) Regulatory alternatives;
- (5) Public benefits from regulation;
- (6) Public harm from regulation;
- (7) Population of the applicant group;
- (8) Projected costs of regulation to the state, to practitioners, or to consumers;
- (9) Similar regulatory laws from other states; and
- (10) Existing state and federal laws applicable to the profession.

The impact of regulation on the supply of practitioners is also required information in the laws of Maine, Minnesota, and New Mexico. Insurance reimbursement appears as part of the required information in the laws of Georgia and Nebraska. In Georgia, it is listed as part of the required information on the costs of regulation. Specifically, the expected costs of regulation include the impact regulation might have on various types of insurance. In Nebraska, it is listed as part of the required information on the cost of the proposal. Specifically, costs of the proposal include impacts on third party payment systems.

### **Least Restrictive Method of Regulation**

Finally, once the legislature decides to regulate, it must then choose the least restrictive method of regulation available. The legislature is required to choose the method of regulation appropriate to the nature of the problem. The statutes of eleven states, specifically, Arizona, Georgia, Kansas, Minnesota, Nebraska, South Carolina, Texas, Vermont, Virginia, Washington, and West Virginia, list various methods of regulation from the least restrictive to the most restrictive.

The statutes of three other states, specifically, Colorado, Florida, and Maine, only require that a determination be made of the least restrictive regulatory alternative but do not provide a list of the methods of regulation.

Also, the statutes of four other states, specifically, New Mexico, North Carolina, Tennessee, and Utah do not address the second issue of the methods of regulation. The reason may be that the sunrise reviews in these statutes deal primarily with licensing or certification proposals. The first question posed under the statutes is not whether it is necessary to regulate a profession. Rather, the question is whether it is necessary to license or regulate, or license or certify, a profession. Alternate methods of regulation, including the least restrictive one, are not at issue.

Based on the statutes of the several states that list the methods of regulation, the following is a checklist of which method is to be used for which problem, starting with the least restrictive method of regulation and ending with the most restrictive method of regulation:

- (1) *Strengthened civil remedies and criminal sanctions.* Use this method of regulation where the existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm.
- (2) *Regulation of the business rather than its employee practitioners.* Use this method of regulation where the professional or occupational service involves a threat to the public and the service is performed primarily through business entities or facilities that are not regulated. Specifically, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations through injunctions.
- (3) *Registration.* Use this method where the threat to the public health, safety, or welfare is relatively small as a result of the operation of the profession. Also, use where it is necessary to determine the impact of the operation of a profession or occupation on the public.

Registration means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner, the location, nature and operation of the activity to be practiced, and, if required by the regulatory entity, a description of the service to be provided.

- (4) *Certification.* Use this method where the consumer may have a substantial basis for relying on the services of a practitioner.

Certification means a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by the regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed professional tasks.

- (5) *Licensure*. Use this method where it is apparent that adequate regulation cannot be achieved by any other means.

Licensure means authorization to engage in a profession which would otherwise be unlawful in the state in the absence of the authorization. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed professional tasks and for the use of a particular title.

As indicated above, licensure is the most restrictive method -- the method of last resort. In other words, a legislature's decision to regulate does not necessarily entail licensure as the means to regulate.

## Conclusion

Based on a review of other states' laws, sunrise review statutes are a tool for a legislature to decide whether to regulate an unregulated profession. Under the theory of the statute, a legislature will not regulate a profession unless regulation is necessary to protect consumers from harm caused by practitioners of the unregulated profession. The statutes are organized around two basic issues, specifically:

- (1) Is regulation of the profession necessary?
- (2) If regulation is necessary, what is the least restrictive method of regulation that should be used?

In deciding whether regulation is necessary, the legislature examines the unregulated profession against sunrise criteria. The three core criteria are as follows:

- (1) Does the unregulated practice harm the public?
- (2) Is the harm due to incompetent practice?
- (3) Is the public unprotected?

Other common criteria include economic impact, supply of practitioners, distinction from ordinary labor, and specialized skills. Different types of information may be needed to analyze the criteria, such as documentation of harm, costs of regulation, voluntary efforts to establish a code of ethics or resolve disputes, and existing laws applicable to the profession. If a legislature decides that regulation is necessary, then the legislature commits itself to choosing the least restrictive method of regulation available. Basic methods of regulation, from the least restrictive to the most restrictive, are as follows:

- (1) Strengthened civil remedies and criminal sanctions;
- (2) Regulation of the business rather than its employee practitioners;

- (3) Registration;
- (4) Certification; and
- (5) Licensure.

## Chapter 3

### SUNRISE REVIEWS UNDER HAWAII LAW

Senate Concurrent Resolution No. 121 requests the Bureau to conduct a study of the current policies and criteria used to conduct sunrise reviews pursuant to chapter 26H, Hawaii Revised Statutes. In this chapter the Bureau reviews chapter 26H, its sunrise criteria, and the Auditor's sunrise reviews.

The Hawaii laws pertaining to sunrise reviews are found in chapter 26H, Hawaii Revised Statutes, as part of the Hawaii Regulatory Reform Licensing Act, more commonly known as the "Sunset Law".

Section 26H-6 of the licensing act requires the Auditor to conduct sunrise reviews. Specifically, the Auditor must analyze new regulatory measures being considered for enactment that, if enacted, would subject unregulated professions or vocations to licensing or other regulatory controls. The review must set forth the probable effects of the proposed regulatory measure and assess whether the enactment of the measure would be consistent with the policies set forth in section 26H-2. The policies used for sunrise reviews are the same as those used for sunset reviews done under section 26H-5. Section 26H-6 also requires the review to assess alternative forms of regulation.<sup>1</sup>

Section 26H-2, which sets out the policies for sunrise reviews, was originally enacted in 1977.<sup>2</sup> The section was subsequently amended twice, first in 1980<sup>3</sup> and then in 1996.<sup>4</sup> The 1980

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1. The requirement that the Auditor assess alternative forms of regulation was added to section 26H-6, Hawaii Revised Statutes, in 1979. Act 121, Session Laws of Hawaii 1979.
  2. Act 70, Sessions Laws of Hawaii 1977. The source legislation is Senate Bill No. 460. For the legislative history of the act, see Senate Journal 1977, Regular Session, Senate Standing Committee Report No. 526; House Journal 1977, Regular Session, House Standing Committee Report Nos. 801 and 977. Adoption of House Standing Committee Report No. 977 was preceded by floor speeches, House Journal 1977, recorded at pp. 930-931.  

According to the legislative history, the policies were "predicated on the belief that regulation shall not be imposed except when it is reasonably necessary to protect the public welfare. Furthermore, even where regulation is deemed necessary, government interference should be minimized, and regulatory options which are less restrictive and less expensive than full licensure should be adopted when available." House Journal 1977, Regular Session, House Standing Committee Report No. 977.
  3. Act 142, Session Laws of Hawaii 1980. The source legislation is Senate Bill No. 118. For the legislative history of the act, see Senate Journal 1980, Regular Session, Senate Standing Committee Report No. 547-80; House Journal 1980, Regular Session, House Standing Committee Report No. 835-80 and Conference Committee Report No. 50-80.
  4. Act 45, Session Laws of Hawaii 1996. The source legislation is Senate Bill No. 3052. For the legislative history of the act, see Senate Journal 1996, Regular Session, Standing Committee Report Nos. 1866 and 2195; House Journal 1996, Regular Session, Standing Committee Reports Nos. 972-96 and 1468-96.



amendment amended the language of three policies in order to "recast their emphasis".<sup>5</sup> It did not repeal any policies or add any new ones. The 1996 amendment, in contrast, amended the language of most of the policies, repealed one of the three policies that had been amended in 1980, and added a new policy.<sup>6</sup> The current section 26H-2 reads as follows:

**§26H-2 Policy.** The legislature hereby adopts the following policies regarding the regulation of certain professions and vocations:

- (1) The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation;
- (2) Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;
- (3) Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable;
- (4) Professional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer;
- (5) Professional and vocational regulations shall be eliminated when the legislature determines that they have no further benefits to consumers;
- (6) Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons; and
- (7) Fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program.

In simpler words, Hawaii's statutory sunrise policies are as follows:

- (1) Regulation is necessary to protect consumers;
- (2) The unregulated practice endangers consumers;

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5. Specifically, section 26H-2 was amended to "recast the emphasis of three policies contained in that section." Senate Journal 1980, Conference Committee Report No. 50-80. The policies amended were the ones then numbered as (2), (3), and (4). Policy (2) dealt with the adoption of licensure or other restrictions where necessary to protect consumers. Policy (3) dealt with consumers being at a disadvantage in choosing or relying on the provider of services. It was repealed in 1996. Policy (4) deals with the great weight to be given evidence of abuses by providers. It was renumbered as policy (3) in 1996.

6. The policy that was added is current policy (7), on fees for regulation. The policy that was repealed was former policy (3), on consumers being at a disadvantage in choosing or relying on the provider of the service. Of the remaining policies the only one that was not amended is current policy (6), on restrictions on entry into the profession. Act 45, Session Laws of Hawaii 1996.

- (3) Evidence of provider abuses indicates that consumers are in jeopardy;
- (4) The danger to consumers from the lack of regulation is greater than the increase in the cost of services caused by regulation;
- (5) Useless regulations shall be eliminated;
- (6) The regulation does not unreasonably restrict a provider's entry into the profession; and
- (7) A regulatory program shall be financially self-supporting.

Additionally, the Auditor has adopted its own set of supplemental criteria, which it uses in its reviews.<sup>7</sup> This use of additional non-statutory, supplemental criteria is not addressed by chapter 26H. In other words, the practice is not required, prohibited, encouraged, or discouraged by the statutes. Under the current version of section 26H-2, last amended in 1996, the Auditor has produced two reports, both in 1999. According to these 1999 reports, the Auditor's current supplemental criteria are as follows:<sup>8</sup>

- (1) The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- (2) The cause of harm is the practitioner's incompetence or insufficient skill;

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7. The following Auditor sunrise analyses, listed in reverse chronological order from 1999 to 1994, were reviewed in this study:

- (1) Sunrise Analysis of a Proposal to Regulate Professional Mental Health Counselors and Professional Rehabilitation Counselors, Report No. 99-21, August 1999, The Auditor; State of Hawaii
  - (2) Sunrise Analysis of a Proposal to Regulate Certified Professional Midwives, Report No. 99-14, March 1999, The Auditor; State of Hawaii
  - (3) Sunrise Analysis of a Proposal to Regulate Respiratory Care Practitioners, Report No. 95-31, December 1995, The Auditor; State of Hawaii
  - (4) Sunrise Analysis of a Proposal to Regulate Physical Therapist Assistants, Report No. 95-30, December 1995, The Auditor; State of Hawaii
  - (5) Sunrise Analysis of Two Proposals to Regulate Nutritionists, Report No. 95-27, November 1995, The Auditor; State of Hawaii
  - (6) Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists, Report No. 95-26, November 1995, The Auditor; State of Hawaii
  - (7) Sunrise Analysis of a Proposal to Regulate Refrigeration and Air Conditioning Mechanics, Report No. 94-15, October 1994, The Auditor; State of Hawaii
8. After the 1996 amendment to section 26H-2, the Auditor added the criterion on other states laws and dropped a previous criterion on the field being too complex for consumers to choose practitioners wisely. The discontinued criterion appears to be the Auditor's own construction of the statutory policy that was repealed in 1996. That policy specified that regulation shall be imposed to protect consumers who because of a variety of circumstances may be at a disadvantage in choosing or relying on the provider of the service. Specifically, the "variety of circumstances" was being interpreted as "the complexity of the field".

- (3) The occupational skill needed to prevent harm can be defined in law and measured;
- (4) No alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private actions, or supervision); and
- (5) Most other states regulate the occupation for the same reasons.

In the Auditor's sunrise reviews the analyses are generally divided into two parts. The first part is conceptual, examining the policy issue of whether regulation of the profession is warranted. Based on the Auditor's 1999 reviews, a simplified breakdown of the factual sub-issues involved in determining whether regulation is warranted is as follows:

- (1) Is there a risk of serious harm to consumers?
- (2) Do other protections for consumers already exist such as supervision and monitoring of practitioners by employers?
- (3) Does the potential harm result from lack of competency, or does it result from unethical actions, fraud, sexual abuse, or financial irresponsibility?
- (4) Is competency difficult to assess?
- (5) Are there any other benefits to consumers?
- (6) What will be the regulatory costs?

In contrast, the second part of the Auditor's reports is technical, examining whether the specific legislative proposal submitted is flawed. It questions the legislative bill itself for its definitions, exemptions, key terms and names, and basic licensing provisions. It also examines whether the bill unreasonably restricts entry into the profession. The Auditor's own framework for this part of the analysis was not affected by the 1996 amendment and is set forth as follows:<sup>9</sup>

- (1) The scope of practice to be regulated is clearly defined and enforceable;
- (2) The licensing requirements are constitutional and legal (for example, no residency or citizenship requirements);
- (3) Licensing requirements, such as experience or continuing education, are directly related to preventing harm;

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9. See e.g., No. 99-21, at pp. 10-11; No. 99-14, at p. 10; No. 95-31, at p. 7; No. 95-30, at p. 6; No. 95-27, at p. 6; No. 95-26, at p. 5.

- (4) Provisions are not unduly restrictive and do not violate federal competition laws;
- (5) Prohibited practices are directly related to protecting the public; and
- (6) Disciplinary provisions are appropriate.

## **Conclusion**

In conclusion, the Hawaii laws pertaining to sunrise reviews are found in chapter 26H, Hawaii Revised Statutes. Chapter 26H requires the Auditor to conduct sunrise reviews using the criteria set forth in section 26H-2. The Auditor must apply the criteria to legislative proposals that would subject unregulated professions to licensing or other controls. The Auditor must also assess alternative forms of regulation. The sunrise criteria in section 26H-2 are as follows:

- (1) Is regulation necessary?
- (2) Does the unregulated practice harm consumers?
- (3) Is there evidence of harm?
- (4) Does the danger to consumers before regulation outweigh the increased costs to consumers after regulation?
- (5) Is regulation useless?
- (6) Does the regulation unreasonably restrict a provider's entry into the profession?
- (7) Is the regulatory program financially self-supporting?

In addition, the Auditor has adopted the following supplemental criteria for use in its sunrise reviews:

- (1) The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- (2) The cause of harm is the practitioner's incompetence or insufficient skill;
- (3) The occupational skill needed to prevent harm can be defined in law and measured;
- (4) No alternatives provide sufficient protection to consumers;
- (5) Most other states regulate the occupation for the same reasons.

## Chapter 4

# THE REGULATORY STRUCTURES OF OTHER STATES AND HAWAII CONTRASTED

In this chapter, the Bureau continues the discussion from chapter 3 on sunrise reviews under Hawaii law. This chapter highlights some key differences between Hawaii's sunrise review law, reviewed in chapter 3, and that of the other states, reviewed in chapter 2.

### Hawaii's Stronger Policy Statement

First of all, there is slight a difference in the policy statement. Specifically, the policy statement of the Hawaii sunrise review laws is more expressly consumer-oriented than the stated policies in other states' laws. The policy statement from the other states essentially is as follows:

No regulation shall be imposed upon any profession or occupation unless required for the protection of the health, safety, or welfare of the public.

The policy statement for Hawaii goes one step further. Section 26H-2(1), Hawaii Revised Statutes, adds that:

...the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.

In other words, criteria that are relevant to promoting or advancing the standing of a profession or occupation are irrelevant to a sunrise review under Hawaii law.

The policy behind chapter 26H reflects the constitutional limits of State<sup>1</sup> and federal<sup>2</sup> due process that is placed on the State's inherent police powers. Under its inherent police powers, a state has the right to regulate businesses, occupations, and professions in order to protect the public health, morals, and welfare of its people. However, under those powers, the state has no right to regulate any business, profession, or occupation where there is no threat to and no need to protect the health, morals, and welfare of the general public.<sup>3</sup> Accordingly, concerns that are irrelevant to consumer protection do not justify the state's right to regulate a profession.

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1. Article I, section 5 of the Constitution of the State of Hawaii states in part: "No person shall be deprived of life, liberty or property without due process of law..."
  2. Article XIV, section 1 of the Amendments to the Constitution of the United States of America states in part: "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."
  3. 16A Am Jur 2d Constitutional Law section 372 (1998).

Nonetheless, it appears that due process and practitioners are pulling the state's inherent police powers in different directions. Due process pulls one way, restraining the state's exercise of its police powers, on the assumption that practitioners do not want to be regulated. Practitioners pull the other way, encouraging the state's exercise of its police powers, because practitioners in fact want to be regulated.

As the Auditor points out in its report:<sup>4</sup>

Consumers rarely initiate regulation; more often, practitioners themselves request regulation for benefits that go beyond consumer protection. Practitioners often equate licensure with professional status in seeking respect for the occupation. Regulation may also provide access to third-party reimbursements for their services and help restrict entry into their field.

## **The Least Restrictive Method of Regulation**

Another way in which Hawaii law differs from the laws of other states concerns the choice of a method of regulation. The laws of some of the other states generally require the legislature to choose the least restrictive means of regulation that fulfills the need for regulation.<sup>5</sup> In contrast, Hawaii law does not mandate the legislature to choose the least restrictive method of regulation. Policy (2) under section 26H-2 merely requires that "Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider." Section 26H-6, however, does require the Auditor to assess alternative forms of regulation.

The requirement of choosing the least restrictive method of regulation existed implicitly in the original version of policy (2). The original policy (2) specified that:

Even where regulation of professions and vocations is reasonably necessary to protect consumers, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted.

In other words, if available, less restrictive alternatives to licensure should be adopted so as to minimize government interference. However, as noted earlier, the 1980 amendment "recast the emphasis of three policies" in section 26H-2, including policy (2). Specifically, the clauses were eliminated that recommended the minimization of government interference and the adoption of less restrictive alternatives to full licensing.

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4. See e.g., Report No. 99-21, at p. 9.

5. The exceptions are the statutes of New Mexico, North Carolina, Tennessee, and Utah. Those statutes do not have any language requiring that the least restrictive method of regulation be adopted.

Thus, Hawaii law formerly required that the Legislature adopt the least restrictive method of regulation. The Legislature has since repealed that requirement.

## Policy (7)

The Hawaii sunrise review law has one criterion that is unique. No other state sunrise review statute has anything comparable to it. The criterion is section 26H-2(7), which reads as follows:

Fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program.

In other words, a regulatory program must be self-supporting. The programs must pay for themselves.<sup>6</sup> The fees charged to practitioners must equal or exceed the costs to the State of administering the program.

Evidently, policy (7) was added to section 26H-2 in 1996. The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs had become self-sufficient and had not been receiving general funds. Therefore, the division wanted to be able to recover its full administrative costs through its licensing fees.<sup>7</sup> The legislature felt that the new policy was necessary to expressly authorize the division to assess fees to recover its indirect costs and be truly self-sufficient.<sup>8</sup>

The source or basis of the self-sufficiency requirement in policy (7) is section 26-9(o), creating the special fund known as the compliance resolution fund, and section 26-9(l), on setting regulatory fees.<sup>9</sup> Section 26-9(o), back in 1996 and at present, requires that "proceeds [from license, certificate, registration fees]...do not surpass the annual operating costs of conducting compliance resolution activities required under this section." In 1996, section 26-9(l) required that the "fee assessed shall bear a reasonable relationship between the revenue derived from the

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6. E-mail response to writer from the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, October 8, 2002.

7. Senate Journal 1996, Regular Session, Standing Committee Report Nos. 1866 and 2195.

8. House Journal 1996, Regular Session, Standing Committee Report No. 972-96.

9. E-mail to writer from the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, October 8, 2002.

fee and the cost or value of services rendered."<sup>10</sup> The section also acknowledged that the "division shall continue in its attempt to be self-supporting."<sup>11</sup>

At first glance policy (7) seems to have no immediate relevance to the issue of the necessity of regulation. However, the policy does serve a useful purpose. In order to determine the level of fees that will cover the costs of the program, the costs of the program must first be determined. In other words, this policy implicitly requires an estimation of the regulatory costs. Also, the costs of regulation to the state is a common type of factor reviewed under other states' laws. It is relevant to analyses of the economic impact of a regulatory proposal.

Furthermore, the Professional and Vocational Licensing Division points out that the intent of policy (7) was that fees should be a part of the analysis of whether regulation is warranted. Regulation has an associated cost, and the costs should be known up front.<sup>12</sup>

### The Three Basic Criteria

A fourth way in which Hawaii law differs from other states laws deals with the three basic sunrise criteria found in other states laws. The three criteria are:

- (1) *Harm*;
- (2) *Competency*; and
- (3) *No other protections*.

Hawaii law contains the criterion on harm, but is missing the other two on competency and the lack of protection. In fact, section 26H-2 contains three policies relating to the presence of harm to the public from the unregulated practice, but none relating to the other two.

It cannot be determined what effect the lack of these two basic criteria may have had on sunrise reviews in this state. Specifically, it cannot be determined whether the presence of these

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10. See, e.g., Session Laws of Hawaii 1995, Act 198, section 2, for the version of Hawaii Revised Statutes section 26-9(1) that was current in 1996. The requirement of a reasonable relationship between fees and costs was repealed from section 26-9(1) in 1999. See Act 129, section 1, Session Laws of Hawaii 1999.

11. Actually, Act 198, section 2, Session Laws of Hawaii 1995, amended Hawaii Revised Statutes section 26-9(1) by adding paragraph (2) on copying fees. With regard to copying fees, paragraph (2) stated that "In adopting these fees, the division shall continue in its attempt to be self-supporting."

Act 225, section 1, Session Laws of Hawaii 1997, amended section 26-9(1) paragraph (2) by changing the mandate to read in its present form as follows: "In adopting these fees, the director shall take into account the intent to make the division self-supporting."

12. E-mail to writer from the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, October 8, 2002.



criteria would have changed the outcome of any past reviews. The reason is that although these criteria are not in the statute, the Auditor has already been using them as supplemental criteria since at least 1995.<sup>13</sup>

### *Harm*

The harm criterion is found in policies (2), (3), and (4) of section 26H-2, which respectively use the words "jeopardy", "abuses", and "danger". Policy (2) addresses the possibility of harm between the consumer and the provider of services. It states that:

Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;

In other words, regulation is justified if the consumer "may be jeopardized" by the provider's service. Policy (3) is a corollary to policy (2). Specifically, if the possibility of harm justifies regulation, the actual manifestation of harm also justifies regulation. Policy (3) specifies that:

Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable;

The "evidence of abuses" indicates that the harm actually exists. It is more than a possibility. The harm criterion is further elaborated upon in policy (4), which addresses the magnitude of the harm. Policy (4) states that:

Professional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer;

In other words, the magnitude of harm is such that the potential danger to the consumer outweighs the increase in the cost of goods and services to the consumer.

In contrast, the public harm criterion from other states' laws is expressed in terms of the presence and the immediacy of harm. A typical statute on the harm criterion states that:

The unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for harm is easily recognizable and not remote or dependent upon tenuous argument.<sup>14</sup>

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13. See e.g., No. 95-27, at p. 6.

14. The harm criterion is found as follows in the sunrise review statutes of the other states:

Arizona Revised Statutes Annotated section 32-3103 (A)(1).  
Colorado Revised Statutes section 24-34-104.1 (4)(b)(I).  
Florida Statutes section 11.62 (3)(a).  
Code of Georgia section 43-1A-6 (1).

*Footnote continued on next page.*

The criterion has two components. The first is that practitioners, if unregulated, "can clearly harm" consumers. The second is that the potential for harm is "easily recognizable" and "not remote or dependent upon tenuous argument." It appears that the second component reiterates the first. The harm is "clear" if it is "easily recognizable" and "not remote or dependent upon tenuous argument". In other words, the key idea seems to be that harm is immediate.

The Hawaii statute in contrast does not require that the jeopardy be "clear" or that the potential for harm be "easily recognizable" and "not remote or dependent upon tenuous argument". The immediacy of harm is not an element of policies (2) and (4).

### **The Auditor's Supplemental Criteria**

The Auditor, however, has evidently supplied this element of immediacy in the Auditor's supplemental criteria. The first of the Auditor's supplemental criteria is that:

The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation.

The phrases "documented evidence" and "sufficiently real or serious" appear equivalent to the requirement in other states' laws that the harm be clear, easily recognizable, and not remote or dependent upon tenuous argument. Also, the criterion seems to modify policy (3) of section 26H-2, which specifies that "Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable." The Auditor's criterion tends to narrow down the types of evidence of abuses that will be accorded great weight. The evidence must be documented and sufficiently real or serious.

The Bureau has no recommendation regarding the adoption of these qualifying terms into the present statutory criterion on harm.

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- Kansas Statutes Annotated section 65-5006 (a)(1).
  - Maine Revised Statutes Annotated title 32, section 60-J (3).
  - Minnesota Statutes section 214.001 (2)(a).
  - Statutes of Nebraska section 71-6221 (1)(a).
  - New Mexico Statutes Annotated section 12-9A-3 (A).
  - North Carolina General Statutes section 120-149.1 (1).
  - South Carolina Code of Laws section 40-1-10 (B)(1).
  - Tennessee Code section 4-29-118 (b)(2)(A).
  - Texas Code section 318.002 (1).
  - Utah Code section 36-23-107 (1).
  - Vermont Statutes Annotated section 3105 (a)(1).
  - Code of Virginia section 54.1-100 (1).
  - Revised Code of Washington chapter 18.118, Regulation of Business Professions, section 18.118.010 (2)(a), and chapter 18.120, Regulation of Health Professions—Criteria, section 18.120.010 (2)(a).
  - West Virginia Code section 30-1A-3 (c)(1).

### *Assurances of Competency*

As stated earlier, section 26H-2, Hawaii Revised Statutes, is missing the criterion on assurances of competency.

In other states' laws, the assurance of competency criterion is as follows:

*Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence.*

This criterion is found as a stand-alone criterion in the sunrise review laws of ten of the states, specifically, Arizona, Colorado, Nebraska, New Mexico, North Carolina, Tennessee, Utah, Vermont, Washington, and West Virginia. Technically, in North Carolina and Tennessee, the criterion reads slightly differently: the substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent.

In six other states, specifically, Georgia, Kansas, Minnesota, South Carolina, Texas, and Virginia, the "assurances of competency" is actually a component of a two-component criterion whose other component is "specialized skills". Both components are separate and independent. Neither is conditioned upon the other. The two-component criterion is "*specialized skills*" + "*assurances of competency*". For example, the Georgia criterion is whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability.

In two other two states, Florida and Maine, the two components are linked in a different manner. The basic criterion is "specialized skills", and it is modified by "assurances of competency". Specifically, the skills are so specialized that assurances of competency are needed. For example, in Maine the criterion is whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

In Florida, the criterion is whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability. In other words, there is a link between specialized skills and assurances of ability. The link is that the skills are measurable or quantifiable.

Incidentally, in New Mexico, North Carolina, Tennessee, and Utah, "specialized skills" is a criterion separate from "assurances of competency".

The competency criterion vaguely overlaps the criterion in section 26H-2 that was repealed in 1996. The former policy (3) required that:

Professional and vocational regulations shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service.

The overlap between the competency criterion and former policy (3) lies in the inability of consumers to choose a provider. Under the competency criterion, consumers need governmental assurances of competency in order to be able to choose a provider. Under former policy (3), consumers are unable to choose a provider simply "because of a variety of circumstances." No reasons were given in the recorded legislative history of the 1996 act for the repeal of the former policy from section 26H-2.

### **The Auditor's Supplemental Criteria**

The Auditor has taken the initiative of adopting two supplemental criteria that appear to be the equivalent of the assurances-of-competency criterion. Specifically, since at least 1995, the Auditor has been using the following two criteria in its reviews:

- (1) *The cause of harm is the practitioner's incompetence or insufficient skill; and*
- (2) *The occupational skill needed to prevent harm can be defined in law and measured;*

In its reviews the Auditor recasts these criteria in the form of two questions:

- (1) *Is competency at issue?*
- (2) *If so, is competency difficult to assess?*

The Auditor concurs that the need to assure competency is a criterion that the Auditor routinely uses when conducting sunrise reviews and that the criterion is currently missing from section 26H-2, Hawaii Revised Statutes.<sup>15</sup>

The Bureau recommends the statutory adoption of this criterion.

### ***The Lack of Other Protections***

As stated earlier, section 26H-2, Hawaii Revised Statutes, is missing the criterion on the lack of other protections.

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15. Written response from the Auditor to the Bureau's letter of inquiry, Office of the Auditor, December 4, 2002.

In other states' laws the criterion on the lack of other protections is as follows:

*The public cannot be effectively protected by other means in a more cost-beneficial manner.*

This criterion is found in the sunrise review laws of the eighteen other states, specifically, Arizona, Colorado, Florida, Georgia, Kansas, Maine, Minnesota, Nebraska, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia.

### **The Auditor's Supplemental Criteria**

The Auditor has already expressly adopted the protection criterion as a supplementary criterion since 1995. Specifically, the criterion used by the Auditor reads as follows:

*No alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision).*

In its sunrise reports, the Auditor looks at whether other protections besides state regulation of the profession already exist. Specifically, they look to see whether protections already exist in federal law, other state laws, and the private sector employment or contractual arrangement. They look at whether practitioners are independent practitioners or work under the supervision of others.

The Auditor concurs that the lack of other adequate protections is a criterion that the Auditor routinely uses when conducting sunrise reviews and that the criterion is currently missing from section 26H-2, Hawaii Revised Statutes.<sup>16</sup>

The Bureau recommends the statutory adoption of this criterion.

## **Conclusion**

In conclusion, these are the major differences between Hawaii's law and those of the other states:

First, Hawaii's statement of policy is found in section 26H-2 (1), and like those of the other states, it expressly affirms that the purpose of regulation is consumer protection. Unlike those of the other states, it expressly rejects as a purpose the protection of the profession. The statement affirms the constitutional principle that under its police powers a state has the right to regulate professions in order to protect the public health and welfare, but not right to regulate where there is no threat.

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16. Written response from the Auditor to the Bureau's letter of inquiry, Office of the Auditor, December 4, 2002.

Second, unlike the laws in the other states, Hawaii law no longer requires that once regulation is deemed necessary, then the least restrictive method of regulation that fulfills the need for regulation should be adopted. Presently, section 26H- 2(2) requires the adoption of "full licensure or other restrictions". Formerly, it required that "government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted". The former language was repealed in 1980. In other words, in "recasting the emphasis" of section 26H-2(2), the Legislature rejected the approach of adopting the least restrictive method of regulation.

Third, Hawaii law has a unique criterion in section 26H-2(7). The criterion requires regulatory programs to be self-supporting. The fees charged to practitioners must equal or exceed the costs to the State of administering the program. At first glance the criterion appears to have little relevance to the basic issue of whether it is necessary to regulate a profession to protect consumers. However, it serves a useful purpose. The criterion implicitly requires an estimation of the costs of regulation to the State. The costs of regulation make up part of the economic impact of a regulatory proposal.

Fourth, Hawaii law lacks two of the basic three criteria that are found in every other state sunrise review law, specifically, competency and the lack of other protections. However, the Auditor has taken the initiative of adopting equivalents of the two as supplemental criteria in its sunrise reviews. The Bureau recommends adding the criteria of competency and other protections to section 26H-2.

## Chapter 5

### THE ADDITIONAL THREE CRITERIA

Senate Concurrent Resolution No. 121 requests the Bureau to assess the feasibility of including economic impact, insurance reimbursements, and accessibility of services as additional criteria to be considered by the Auditor in the review of any regulatory proposal.

In this chapter, the Bureau assesses feasibility by ascertaining the meaning of those terms and their relevance to sunrise reviews.

A cursory review of section 26H-2, Hawaii Revised Statutes, makes it clear that the literal terms "economic impact", "insurance reimbursement", and "accessibility of services" are not found among the policies listed in the section. Also, these terms are not found among the list of supplemental criteria adopted by the Auditor.

Assessing the feasibility of adding these criteria involves two tasks. One is to determine whether these criteria are already present in section 26H-2 under a different choice of words. Another is to determine whether the proposed criteria are relevant to the issue of whether regulation is necessary protect the public.

#### Economic Impact

Section 26H-2 lists no criterion labeled "economic impact". The Auditor has no such criterion listed among its supplemental criteria.

"Economic impact" appears to be a somewhat common criterion among the other states laws. It exists in the laws of five of the eighteen mainland states that have sunrise review laws. Specifically, these states are Florida, Georgia, Maine, Minnesota, and North Carolina. The most common phrase in which this criterion is found is "overall cost-effectiveness and economic impact". The exact language used in these states' laws for this criterion is quoted in the table below:

**Table 5-1**  
**THE ECONOMIC IMPACT CRITERION**  
**IN OTHER STATES' LAWS**

<b>State</b>	<b>Criterion: Economic Impact</b>
Florida	Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable

State	Criterion: Economic Impact
Georgia	Whether the overall cost effectiveness and economic impact would be positive for citizens of the state <sup>1</sup>
Maine	The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers
Minnesota	Whether the overall cost effectiveness and economic impact would be positive for citizens of the state
North Carolina	Licensure will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services

"Economic impact" is an ambiguous term. Based on the above statutory language and related language for required information or factors, it appears that in these other states the term "economic impact" means:

- (1) Increases in the cost of services to consumers;<sup>2</sup>
- (2) The costs of regulation to the state;<sup>3</sup> or
- (3) The impact on the supply of practitioners.<sup>4</sup>

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1. According to the Georgia Office of Planning and Budget, the criterion the criterion is concerned mainly with what effect licensing will have on the number of qualified practitioners and whether licensing will limit the profession and thereby increase the cost to the public. E-mail to writer from Office of Planning and Budget, Georgia, October 10, 2002.

2. Florida: "indirect costs to consumers", Florida Statutes section 11.62(3)(e).

Maine: "cost of goods or services provided by practitioners", "indirect costs to consumers", Maine Revised Statutes Annotated chapter 1-A, section 60-J(5).

Georgia: "costs of service to the public", Code of Georgia section 43-1A-7(7)(A).

Minnesota: "impact of the proposed regulation on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation", Minnesota Statutes section 214.002(2)(11).

3. Florida: "The departmental resources necessary to implement and enforce the proposed regulation", Florida Statutes section 11.62(5)(a).

Georgia: "cost to the state and to the general public of implementing the proposed legislation", Code of Georgia section 43-1A-7(7)(C).

4. Georgia: "extent to which regulation might restrict entry into the business or profession", Code of Georgia section 43-1A-7(5)(A).

Minnesota: "impact of the proposed regulation on the supply of practitioners of the occupation", Minnesota Statutes section 214.002(2)(11).



As stated earlier, Hawaii lacks a criterion expressly termed "economic impact". However, the sunrise review law already has the elements that comprise the idea of "economic impact". In other words, section 26H-2 has criteria that involve the costs of services to consumers, the costs of regulation to the State, and the supply of practitioners. Specifically:

- (1) Policy (4) discourages "regulations which artificially increase the costs of goods and services to the consumer". Implicitly, this policy asks for the impact that regulation will have on the cost of services to consumers;
- (2) Policy (6) requires that regulation "shall not unreasonably restrict entry into professions and vocations by all qualified persons". The whole of this policy is about the impact of regulation on the supply on practitioners; and
- (3) Policy (7) requires that "fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation", specifying that the "aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program." Implicitly, this policy asks for the impact of regulation on the costs to the State.

Therefore, adding "economic impact" to Hawaii law appears to add nothing new to the sunrise reviews and will likely not change the analysis performed under the current criteria. The elements that comprise "economic impact", specifically, costs to consumers, costs to the State, and impacts on the supply of practitioners, are already in section 26H-2 in policies (4), (6), and (7). Again, policy (4) addresses the costs of services to consumers. Policy (6) and policy (7) address the costs of regulation to the State. Policy (6) addresses restrictions on entry.

Moreover, the Department of Commerce and Consumer Affairs points out that economic impact, specifically, the cost of regulation, the benefit to practitioners seeking licensure, and the impact to consumers, is already being assessed by the Auditor in the Auditor's sunrise and sunset reviews. Adding "economic impact" to section 26H-2 would seem duplicative.<sup>5</sup>

The Auditor agrees that it is either unnecessary or inappropriate to include economic impact as an additional sunrise criterion to section 26H-2, Hawaii Revised Statutes.<sup>6</sup>

### ***Other States' Sunrise Reviews***

With regard to costs, the sunrise reviews of states with the criterion of "economic impact" suggest that it is difficult to estimate the expected costs of regulation to consumers.

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5. E-mail response to the writer from the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, October 8, 2002.

6. Written response from the Auditor to the Bureau's letter of inquiry, Office of the Auditor, December 4, 2002.

We obtained sunrise reviews from Maine, Georgia, and North Carolina. Although the term "economic impact" is used in the statutes of Florida and Minnesota, no attempts were made to obtain reports from those states, because neither state expressly requires a governmental agency to produce a sunrise report.

In Maine, the criterion is the "extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers". The reports<sup>7</sup> we reviewed resort to the general principle that licensing a previously unregulated profession tends to reduce the pool of available practitioners and increase the expenses and overhead costs of the practitioners, thus increasing the cost of services provided. No specific estimates are provided.

In Georgia, the criterion is whether the "overall cost effectiveness and economic impact would be positive for citizens of the state". The reports<sup>8</sup> we reviewed conclude that the overall cost effectiveness and economic impact of the proposed regulatory measures cannot be made because it is not possible to determine the effect of the measures on the cost of services to the public. According to the Georgia Office of Planning and Budget, it is difficult to develop enough information to address the criterion. Evaluating the impact on consumers would become more speculation than anything else.<sup>9</sup>

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7. The two reports from Maine are as follows:

Final Report of the Commissioner of Professional and Financial Regulation to the Joint Standing Committee on Education and Cultural Affairs, Sunrise Review of L.D. 2345, "Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine's Children", January 31, 2001, at p. 6;

Final Report of the Commissioner of Professional and Financial Regulation to the Joint Standing Committee on Business and Economic Development, Sunrise Review of L.D. 2478, "An Act to License Cued Speech Translitterators of the Deaf and Hard-of-Hearing", December 15, 2000, at pp. 6-7.

8. The reports from Georgia are as follows:

Review of House Bill 733 Which Proposes to Regulate Massage Therapists, Georgia Occupational Regulation Review Council, January 2002, at p. 11;

Review of House Bill 69 Which Proposes to Regulate Clinical Perfusionists, Georgia Occupational Regulation Review Council, December 2001, at p. 13;

Review of Senate Bill 119 Which Proposes to Regulate Mental Health Therapists, Georgia Occupational Regulation Review Council, December 2001, at p. 18;

Review of Senate Bill 194 Which Proposes to Regulate Natural Gas Pipefitters, Georgia Occupational Regulation Review Council, December 2001, at pp. 15-16.

9. E-mail to the writer from the Office of Planning and Budget, Georgia, October 10, 2002.

In North Carolina, the criterion is whether licensure "will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services". The reports<sup>10</sup> we reviewed do not generally provide extended third party analyses or discussions of the criteria.

### *The Auditor's Sunrise Reviews*

The Auditor's reports estimate the costs of regulation to the State, but do not provide estimates of the increases in costs of services to consumers. For the costs of regulation to the State, the reports estimate the start up costs to the State, the operational costs to the State, the anticipated number of practitioners seeking licensure, and the licensing fees to be charged to the licensees.

This type of cost analysis has been provided both before and after the 1996 amendments. Prior to the 1996 amendments, the analysis was pegged to two criteria. They were as follows:

- (1) The former policy (6), now renumbered as policy (5), on the costs of regulation to taxpayers outweighing the benefits to consumers;
- (2) The former policy (7), now renumbered as policy (6), on unreasonable entry restrictions placed on the profession.<sup>11</sup>

The 1996 amendments amended the former policy (6), now the current policy (5), on taxpayer costs outweighing consumer benefits. Specifically, the entire clause on taxpayer costs was repealed. Subsequent to the 1996 amendments, the analysis has been pegged to a different set of criteria. The relevant three policies are as follows:

- (1) Policy (4) on artificial increases in the costs of services to consumers;

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10. The North Carolina sunrise reviews are as follows:

Assessment Report for Interpreters and Translators, House Bill 1313, Legislative Committee on New Licensing Boards, North Carolina General Assembly, June 6, 2001;  
Assessment Report for Certified Professional Midwives, House Bill 1014, Senate Bill 498, Legislative Committee on New Licensing Boards, North Carolina General Assembly, June 6, 2001, at pp.7-8;  
Assessment Report for Locksmith Licensure, House Bill 942, Legislative Committee on New Licensing Boards, North Carolina General Assembly, June 6, 2001, at p. 7;  
Assessment Report for Naturopathic Physicians, House Bill 1091, Legislative Committee on New Licensing Boards, North Carolina General Assembly, 2000-2001, at p. 7;  
Assessment Report for Landscape/Irrigation Contractors, House Bill 984, Senate Bill 893 Legislative Committee on New Licensing Boards, North Carolina General Assembly, May 16, 2001, at p. 6;  
Assessment Report for Mortgage Lenders & Brokers, House Bill 1106, Senate Bill 1064, and House Bill 1179, Senate Bill 904, Legislative Committee on New Licensing Boards, North Carolina General Assembly, May 16, 2001, at pp. 6-7;

11. See e.g., Report Nos. 95-31, at pp. 13-14; 95-30, at pp. 13-14; 95-27, at pp. 13-14; 95-26, at pp. 12-13; 94-15, at pp. 8-9.

- (2) Policy (6) on entry restrictions placed on the profession; and
- (3) Policy (7) on self-sustaining fees.<sup>12</sup>

The common criterion for the analysis both before and after the 1996 amendments is policy (6) on unreasonable restrictions on entry into the profession.

With regard to the impact of regulation on the cost of goods and services to consumers, the Auditor does not provide estimates of those costs. Rather the Auditor, like its counterparts in the other states, points out without any calculations that regulatory costs are passed on to consumers: specifically, when occupations are regulated, administrative costs are eventually passed on to consumers through fees paid for services.<sup>13</sup>

In conclusion, the elements of the term "economic impact" are already in section 26H-2 in the terms "costs of services to the consumer", "restrictions on entry into the profession", and "costs of administering a regulatory program". Adding the term would be duplicative. Furthermore, the Auditor already provides an economic impact analysis in its reports. Adding the term would likely not change the analyses already being provided in those reports.

Therefore, it is not feasible to adopt "economic impact" as an additional criterion.

## **Insurance Reimbursement**

Section 26H-2 lists no criterion labeled "insurance reimbursement". The section contains no criteria bearing a resemblance to the idea of "insurance reimbursement". Also, the Auditor has no criterion similar to insurance reimbursement listed among its supplemental criteria.

The question then is whether the fact of insurance reimbursement is somehow relevant in determining whether regulation is necessary to protect consumers from the unregulated practice. Based on the core criteria, regulation is necessary if the unregulated practice can clearly harm the public, the public needs assurances that practitioners are competent, and the public is otherwise unprotected. Contrasting insurance reimbursement against the core criteria may give a sense of its relevance to the issue of necessity in protecting consumers.

Insurance reimbursement typically means that a consumer enters into a policy with an insurer such that when the consumer receives services from a practitioner, the insurer pays the practitioner for those services, in whole or in part. The consumer pays the practitioner the difference, if any, between the practitioner's charges and the insurer's reimbursement. In exchange for coverage under the policy, the consumer pays premiums to the insurer.

Insurance reimbursement, then, relates merely to the consumer's method of paying the practitioner for the practitioner's services, or, vice versa, the practitioner's method of receiving

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12. See, e.g., Report Nos. 99-21, at pp. 17-18; 99-14, at p. 17.

13. See, e.g., Report No. 99-21, at p. 17; No. 99-14, at p. 17.

*THE ADDITIONAL THREE CRITERIA*

payment for services provided to the consumer. It is all about the payment for a service, but not about the providing of the service itself. In contrast, the core criteria of harm, competency, and protection all focus on just two entities, the consumer and the practitioner, and on one action, the practitioner's performance of the service to the consumer. Insurance reimbursement, on the other hand, introduces a third party, the insurer, into the picture. It also potentially shifts the focus of regulatory attention to a different action, specifically, the insurer's providing of reimbursement to the practitioner.

Moreover, the Department of Commerce and Consumer Affairs concurs that as a criterion, insurance reimbursements do not appear to be relevant to the question of whether regulation is needed to protect consumers. Adding "insurance reimbursements" to section 26H-2 would seem inappropriate.<sup>14</sup>

The Auditor agrees that it is either unnecessary or inappropriate to include insurance reimbursements as an additional sunrise criterion to section 26H-2, Hawaii Revised Statutes.<sup>15</sup>

Also, none of the statutes of the eighteen other states reviewed in this report has a criterion termed "insurance reimbursement", not even the states whose sunrise reviews relate or formerly related only to the regulation of health professions, specifically, Arizona, Kansas, Nebraska, or Washington.<sup>16</sup> Presumably, insurance reimbursement is an issue that would be primarily relevant to practitioners in the health professions, as opposed to those in business or trade professions. Instead, the table below, excerpted from Table 2-2, shows that the laws of the states whose sunrise reviews apply or formerly applied only to health professions tend to have only the most common, basic criteria:

**Table 5-2  
HEALTH PROFESSIONS SUNRISE REVIEW CRITERIA**

<b>State</b>	<b>Harm</b>	<b>Competency</b>	<b>Protection</b>	<b>Skills</b>	<b>Labor</b>	<b>Supply</b>	<b>Others</b>
Arizona	Y	Y	Y				
Kansas	Y	Y	Y	Y	Y	Y	Y <sup>17</sup>
Nebraska	Y	Y	Y			Y	
Washington	Y	Y	Y				

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14. E-mail response to writer from the Professional and Licensing Division, Department of Commerce and Consumer Affairs, October 8, 2002.
  15. Written response from the Auditor to the Bureau's letter of inquiry, Office of the Auditor, December 4, 2002.
  16. The Washington law formerly related only to health professions, before being expanded later to apply to business professions as well. Revised Code of Washington chapter 18.120 on the regulation of health professions, was enacted in 1983. In 1987, the law was duplicated in chapter 18.118 to apply to the regulation of business professions.
  17. The other criteria under Kansas Statutes No. 65-5006, pertain to supervision by other health care personnel or inpatient facilities, costs of health care to the public, scope of practice, effect on other health care personnel, and standards of education.

Of the eighteen other states reviewed in this report, only Maine has a criterion resembling "insurance reimbursement". The criterion is termed "mandated benefits", and reads as follows:

**Table 5-3**  
**THE INSURANCE REIMBURSEMENT CRITERION**  
**IN OTHER STATES' LAWS**

State	Criterion: Insurance Reimbursement
Maine	Whether the profession or occupation plans to apply for mandated benefits

Only Georgia requires the submission of information that even involves insurance. However, the information does not relate to insurers reimbursing providers, but rather to consumers paying higher insurance premiums to insurers. In Georgia proponents of regulation must produce information on the "expected costs of regulation", which is defined to include the "impact regulation might have on various types of insurance".

### *Other States' Sunrise Reviews*

In Maine, where the sunrise criterion is whether the profession plans to apply for mandated benefits, the sunrise reports<sup>18</sup> simply ascertained whether practitioners planned to apply for insurance reimbursement and whether reimbursement was possible. There was no indication in the reports of whether the intent to apply for mandated benefits supports or does not support regulation.<sup>19</sup>

In Georgia, a required item of information is the expected cost of regulation, which includes the impact on various types of insurance. The sunrise reports<sup>20</sup> had no specific

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18. The two reports from Maine are as follows:

Final Report of the Commissioner of Professional and Financial Regulation to the Joint Standing Committee on Education and Cultural Affairs, Sunrise Review of L.D. 2345, "Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine's Children", January 31, 2001, at p. 8;  
Final Report of the Commissioner of Professional and Financial Regulation to the Joint Standing Committee on Business and Economic Development, Sunrise Review of L.D. 2478, "An Act to License Cued Speech Translitterators of the Deaf and Hard-of-Hearing", December 15, 2000, at p. 10.

19. No clarification was received from Maine regarding the rationale behind the criterion.

20. The reports from Georgia are as follows:

Review of House Bill 733 Which Proposes to Regulate Massage Therapists, Georgia Occupational Regulation Review Council, January 2002;  
Review of House Bill 69 Which Proposes to Regulate Clinical Perfusionists, Georgia Occupational Regulation Review Council, December 2001;  
Review of Senate Bill 119 Which Proposes to Regulate Mental Health Therapists, Georgia Occupational Regulation Review Council, December 2001;

*Footnote continued on next page.*

discussion of insurance costs, and three of the four reports obtained dealt with health care professionals, specifically, massage therapists, clinical perfusionists, and mental health therapists.

Although not a sunrise review criterion or item of information, insurance reimbursement has been discussed in the reviews of Nebraska and Vermont. The analysis and discussion in these reviews offer further proof that the issue of insurance reimbursement strains and twists the basic sunrise analysis of whether regulation is necessary to protect consumers from harm.

In the Nebraska report,<sup>21</sup> insurance reimbursement is discussed under the sunrise criterion of the lack of other protections. Apparently, insurance reimbursement is the goal of the practitioners (dietitians), and licensure is their means of achieving it. The practitioners want licensure so that they can receive their payment from insurers rather than from the consumers. In the report, the practitioners claimed that licensure in other states may have brought down barriers to direct reimbursement for their services. Committee members countered that third party payors make reimbursement decisions based on many factors, and that licensure is only one consideration out of many. Accordingly, the committee members were skeptical that licensure would improve the practitioners' chances for reimbursement.

In the Vermont report,<sup>22</sup> insurance reimbursement is discussed under the criterion of harm. Apparently, the unregulated practice of lay midwives harms low-income consumers. Without insurance reimbursement, low-income consumers will not seek the services of a lay midwife but will instead perform the services themselves through an unattended home birth. Specifically, the report found that the unregulated practice of lay midwifery meets the harm criterion because "the number of unattended home births appears to be positively influenced by the lack of regulated lay midwives and the lack of insurance coverage for their services." Practitioner lay midwives had asserted that low income patients in the state were currently unable to obtain third-party reimbursement for home births but would be able to obtain reimbursement if the practitioners were regulated by the state. The practitioners had also asserted that harm to the public could be directly related to the lack of third-party reimbursement for home births: low income residents currently must pay for home births themselves and therefore will use unattended home births to save money.

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Review of Senate Bill 194 Which Proposes to Regulate Natural Gas Pipefitters, Georgia Occupational Regulation Review Council, December 2001.

21. Final Report of Preliminary Findings and Recommendations by the Technical Review Committee for the Review of an Application to License Medical Nutrition Therapists to the Nebraska State Board of Health, the Director of Health, and the Nebraska Legislature, October 25, 1994, at pp 40-41.
22. Report of Preliminary Assessment for State Regulation of Certified Lay Midwives, Office of Professional Regulation, November 1, 1999, at pp. 3-4.

### ***The Auditor's Sunrise Reviews***

Insurance reimbursement is not one of the Auditor's supplemental criteria. However, insurance reimbursement is discussed in the sunrise reviews, and from various angles. These discussions offer further proof that insurance reimbursement shifts attention away from the central concern of whether regulation is necessary to protect the public. One report noted that insurance reimbursement was one of the financial considerations motivating the practitioners into seeking licensure.<sup>23</sup> Another report stated that even if one of the goals of the legislative proposal was insurance reimbursement, regulating the practitioners would not necessarily achieve that goal.<sup>24</sup> A third report criticized as tenuous the claim by practitioners that licensure will bring about insurance reimbursement, which in turn will bring about greater accessibility of services.<sup>25</sup>

In conclusion, insurance reimbursement is unrelated to the underlying policy of regulating a profession. It is irrelevant to the central issue of whether regulation is necessary to protect consumers who are otherwise left unprotected from harm caused by incompetent practitioners. Adding the term to section 26H-2 would be inappropriate.

Therefore, it would not be beneficial or appropriate to adopt "insurance reimbursement" as an additional criterion.

### **Accessibility of Services**

Section 26H-2 lists no criterion labeled "accessibility of services". The Auditor has no such criterion listed among its supplemental criteria.

However, policy (6) in section 26H-2 addresses "unreasonable restrictions on entry", which seems to be a closely related idea, since it deals broadly with the issue of supply. Specifically, policy (6) reads as follows:

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23. Report No. 99-21, at p. 18, where the Auditor reports that financial considerations motivate mental health counselors and rehabilitation counselors in seeking licensure. "As health insurance coverage does not apply to unlicensed providers, mental health counselors and rehabilitation providers will benefit from "licensure" by becoming qualified providers and thus receive insurance reimbursements."
  24. Report No. 99-14, at pp. 8 where the Auditor reports that the purpose of the bill is that licensed midwives will be entitled to receive third-party reimbursement for the performance of all midwifery services that would be reimbursable if performed by a physician, nurse, or certified nurse-midwife. However, at 16-17, the Auditor concludes that there is no guarantee that regulation of certified professional midwives will achieve the purposes of the bill. "Regulation does not ensure that licensed midwives will receive third-party reimbursement for their services."
  25. Report No. 95-27, at p. 13, where the Auditor reports that the benefits to the public in regulating nutritionists are uncertain. Specifically, proponents of regulation "contend that licensure of qualified nutritionists will increase the availability of third-party reimbursement, making nutritionists' services more affordable for consumers and enhancing access to cost-effective care. However, this is not certain. The decision to regulate should not be based on such tenuous grounds."



*THE ADDITIONAL THREE CRITERIA*

Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons;

Similarly, none of the state statutes reviewed in this report have a criterion expressly called "accessibility of services", although many have criteria that deal with the issue of supply. However phrased, the issue of whether regulation will negatively impact the supply of practitioners is a common criterion among state laws. Seven other states besides Hawaii have this criterion. They are Florida, Kansas, Maine, Nebraska, New Mexico, Texas, and Utah.

The criteria from these other states laws use terms such as "increase or decrease the availability of services", "significantly reduce competition", "significantly diminish the supply of qualified practitioners", "create barriers to service", "unreasonable effect on job creation or job retention", and "unreasonable restrictions on the ability of individuals who seek to practice". Generally, the focus of the criteria is whether regulation will make it unreasonably difficult for an individual to become a practitioner. Specifically, the full texts of the criteria read as follows among the various state laws:

**Table 5-4  
THE ACCESSIBILITY OF SERVICES CRITERION  
IN OTHER STATES' LAWS**

<b>State</b>	<b>Criterion: Accessibility of Services</b>
Florida	Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment
Kansas	The effect of credentialing of the occupation or profession on the availability of health care personnel providing services provided by such occupation or profession is minimal
Maine	The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public
Nebraska	Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest
New Mexico	Regulation of the profession or occupation does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners or otherwise create barriers to service that are not consistent with the public welfare or interest
Texas	Whether the regulatory process would significantly reduce competition in the field and, if so, whether the reduction would be more harmful to the public than the harm that might result from the absence of regulation
Utah	Whether regulation of the profession or occupation imposes significant new economic hardship on the public, significantly diminishes the supply of qualified practitioners, or otherwise creates barriers to service that are not consistent with the public welfare or interest

Thus, Hawaii, like many other states, already has a criterion dealing with the effect of regulation on the supply of practitioners. The specific concern behind the criterion is whether regulation will limit entry into the profession. The issue is whether regulation will negatively impact the supply of practitioners.

Moreover, the Department of Commerce and Consumer Affairs agrees that "accessibility of services" appears to speak to the same issues raised in section 26H-2(6), Hawaii Revised Statutes, regarding restricting entry into a profession. Thus, adding the term to section 26H-2 would seem duplicative.<sup>26</sup>

The Auditor agrees that it is either unnecessary or inappropriate to include accessibility of services as an additional sunrise criterion to section 26H-2, Hawaii Revised Statutes.<sup>27</sup>

The term "accessibility of services", as opposed to "restrictions on entry", appears to invite an irrelevant question on the issue of supply. It seems to ask whether regulation will positively impact or increase the supply of practitioners. Such a question goes beyond the primary purpose of regulating a profession.

Basically, the primary purpose of regulation is to protect consumers from harm. The core concerns are the existence of harm, the competency of practitioners, and the lack of protection other than regulation. On the other hand, the criterion relating to the supply of practitioners introduces a counterbalancing concern to that of protecting consumers. The concern is that consumers should not be so over-protected that practitioners end up being the ones that are unreasonably harmed. In other words, regulation should not unreasonably restrict the practitioner's entry into the profession. Regulation, after all, is an exercise of the police power and is subject to due process constraints protecting the practitioner's right to pursue a profession.

Consequently, the assertion that regulation will increase the supply of practitioners or the accessibility of services may tend to cancel out the countervailing policy that regulation should not unreasonably restrict entry into the profession. However, the claim still leaves intact and unanswered the basic, core question of whether regulation is necessary to protect consumers.

This tension between the traditional concern that regulation will reduce or limit supply and the claim that regulation will actually improve accessibility of services is reflected in some of the sunrise reviews from both Hawaii and the other states.

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26. E-mail response to writer from the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, October 8, 2002.

27. Written response from the Auditor to the Bureau's letter of inquiry, Office of the Auditor, December 4, 2002.

### *Other States' Sunrise Reviews*

The Bureau was able to obtain sunrise reports from Maine, Kansas, and Nebraska in order to see how analyses were performed for those criteria. Some of the reports, specifically those from Kansas and Nebraska, show that proponents of regulation contend that the criterion is met because regulation, far from unreasonably decreasing the supply of practitioners, will actually increase it, or improve accessibility of services.

In Maine, the statutory criterion is "service availability of regulation". The two reports reviewed<sup>28</sup> placed emphasis on the general rule that licensing a previously unregulated profession tends to reduce the pool of available practitioners and increase the expenses and overhead costs of the practitioner, thus increasing the cost of services provided. This was noted to be a particular concern where pool of practitioners is fairly small or limited.

In Kansas, the criterion is "availability of health care personnel". Two reviews were obtained.<sup>29</sup> One report found a registration bill to have minimal impact on availability because the bill did not exclude current practitioners or change current entry-level practice requirements. Another report found that a licensing bill would have minimal impact on availability, based on information provided by the applicant group that licensing would on the contrary increase the supply of practitioners.

In Nebraska, the criterion is whether the regulation will "impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest". Relevant things to consider are the extent to which regulation will restrict entry into the health profession, specifically, whether the proposed standards are more restrictive than necessary to ensure safe and effective performance and how the proposed legislation will treat practitioners

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28. The two reports from Maine are as follows:

Final Report of the Commissioner of Professional and Financial Regulation to the Joint Standing Committee on Education and Cultural Affairs, Sunrise Review of L.D. 2345, "Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine's Children", January 31, 2001, at p. 6;

Final Report of the Commissioner of Professional and Financial Regulation to the Joint Standing Committee on Business and Economic Development, Sunrise Review of L.D. 2478, "An Act to License Cued Speech Translitterators of the Deaf and Hard-of-Hearing", December 15, 2000, at p. 7.

29. The Kansas sunrise reviews are as follows:

Final Findings and Conclusions of the Technical Committee on the Review of the Application to Register Pharmacy Technicians, Kansas Department of Health and Environment, May 23, 2002, at p. 8;

Final Findings and Conclusions of the Technical Committee on the Review of the Application to License Naturopathic Physicians, Kansas Department of Health and Environment, November 29, 2001, at pp. 12-13.

from other jurisdictions who migrate to the state. The reports reviewed<sup>30</sup> both noted that the proponents claim licensing would on the contrary increase the supply of practitioners or improve access to services.

### ***The Auditor's Sunrise Reviews***

The criterion in Hawaii is whether regulation will "unreasonably restrict entry" of practitioners into the field. Under this criterion, Hawaii sunrise reports look at the legislative proposals and examine them for the reasonableness and fairness of experience requirements, grandfather clauses, frequency of examinations, licensing by endorsement schemes, and the level of regulatory fees, and for any organizational biases in the treatment of licensees. However, as in the reports of Kansas and Nebraska, some of the Auditor's reports have had to deal with the claim by proponents of regulation that licensure will increase accessibility of services, especially if licensure brings with it the availability of insurance reimbursement.<sup>31</sup>

In conclusion, Hawaii already has a criterion equivalent to "accessibility of services". The criterion is expressed through a choice of different words, specifically, "restrictions on entry into the profession". Adding the new term to section 26H-2 would be duplicative.

Therefore, it is unnecessarily duplicative to adopt "accessibility of services" as an additional criterion.

## **Conclusion**

In conclusion, the Bureau finds that it would not be beneficial to add economic impact, insurance reimbursements, or accessibility of services as additional statutory criteria for the Auditor's sunrise review. Adding economic impact or accessibility of services would be duplicative. They are already in the statute. Adding insurance reimbursement would be inappropriate.

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30. The Nebraska sunrise reviews are as follows:

Final Report of Recommendations and Findings by the Technical Review Committee for the Review of the Application for Licensure by the Nebraska Oriental Medicine Association to the Nebraska State Board of Health, the Director, Department of HHS Regulation and Licensure, the Legislature, May 5, 1999, at pp. 11-12;

Final Report of Preliminary Findings and Recommendations by the Technical Review Committee for the Review of an Application to License Medical Nutrition Therapists to the Nebraska State Board of Health, the Director of Health, and the Nebraska Legislature, October 25, 1994, at pp. 28-29.

31. Report No. 95-27, at p. 13. The proponents of regulation "contend that licensure of qualified nutritionists will increase the availability of third-party reimbursement, making nutritionists' services more affordable for consumers and enhancing access to cost-effective care."

*THE ADDITIONAL THREE CRITERIA*

First of all, economic impact means the costs of regulation to the state, the cost of services to consumers, or restrictions on entry. All three components are already incorporated in section 26H-2. Existing policy (4) of that section covers "costs of goods and services to the consumer". Policy (6) covers regulations that "unreasonably restrict entry into the professions". Along with policies (4) and (6), policy (7), which requires regulatory programs to be self-supporting, implicitly cover the costs of regulation to the state.

Second, insurance reimbursement is not relevant to the basic question of whether regulation is necessary to protect consumers from harm caused by the incompetence of practitioners.

Third, accessibility of services is already a criterion in section 26H-2 under a different choice of words. Specifically, policy (6) of that section asks whether regulation will "unreasonably restrict entry into professions and vocations by all qualified persons". Regardless of the choice of words, the criterion addresses the negative impacts that regulation may have on the supply of practitioners.

## Chapter 6

### FINDINGS AND RECOMMENDATIONS

#### Findings

The Bureau finds that:

- (1) Section 26H-2, Hawaii Revised Statutes, originally contained language recommending that government interference be minimized, and if less restrictive alternatives to full licensure were available, they should be adopted. The language was repealed in 1980 in order to "recast the emphasis" of the criterion. Resorting to the least restrictive method of regulation is a requirement found in most of the states whose sunrise review statutes were reviewed in this report. The Auditor is still required, however, to assess alternative forms of regulation under section 26H-6;
- (2) The list of sunrise review criteria in section 26H-2, Hawaii Revised Statutes, is missing two basic criteria found in the statutes of all the other states whose sunrise review statutes were reviewed in this report. The two criteria are the need for assurances of competency and the lack of other adequate protections. Although missing from the statutes, the Auditor has taken the initiative of adopting these criteria as supplemental criteria in its sunrise reviews; and
- (3) It would not be beneficial to add economic impact, insurance reimbursements, or accessibility of services as additional criteria for the Auditor's sunrise review.
  - (a) First, economic impact amounts to the costs of regulation to the state, the cost of services to consumers, or restrictions on entry. All three components are incorporated into section 26H-2. Existing policy (4) of that section covers "costs of goods and services to the consumer". Policy (6) covers regulations that "unreasonably restrict entry into the professions". Policy (4), (6), and (7) implicitly cover the costs of regulation to the state.
  - (b) Second, insurance reimbursements are not relevant to the basic question of whether regulation is necessary to protect consumers from harm caused by the incompetence of practitioners.
  - (c) Third, accessibility of services is already a criterion in section 26H-2 under a different choice of words. Specifically, policy (6) of that section asks whether regulation will "unreasonably restrict entry into professions and vocations by all qualified persons". Regardless of the choice of words

that it is couched in, the criterion addresses the negative impacts that regulation may have on the supply of practitioners.

## **Recommendations**

The Bureau recommends that:

- (1) Section 26H-2, Hawaii Revised Statutes, should be amended by adding the two basic criteria missing from that section, specifically, the need for assurances of competency, and the lack of other adequate protections. These two criteria are relevant to the issue of whether it is necessary to regulate a profession. The eighteen other states whose sunrise review laws were reviewed in this report all have these two criteria.
- (2) The additional criteria proposed in S.C.R. No. 121, specifically, economic impact, insurance reimbursement, or accessibility of services, should not be adopted. Adding economic impact and accessibility of services to section 26H-2, Hawaii Revised Statutes, would be duplicative. The criteria, or their components, are already in the statute. Adding insurance reimbursement would be inappropriate, since it is not relevant to the issue of necessity.

A bill draft is included as the Appendix B, incorporating the recommendations noted above.

## Appendix A

THE SENATE  
TWENTY-FIRST LEGISLATURE, 2002  
STATE OF HAWAII

S.C.R. NO. 121

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# SENATE CONCURRENT RESOLUTION

REQUESTING A STUDY OF THE CURRENT POLICIES AND CRITERIA USED IN  
CONDUCTING SUNRISE REVIEWS PURSUANT TO CHAPTER 26H, HAWAII  
REVISED STATUTES\_

1           WHEREAS, Chapter 26H, Hawaii Revised Statutes (HRS), the  
2 Hawaii Regulatory Licensing Reform Act, was originally enacted  
3 to require periodic reviews of professional and vocational  
4 regulatory programs; and  
5

6           WHEREAS, the intent of these reviews was to assure that  
7 these regulatory programs were serving the public interest by  
8 protecting consumers from harm resulting from unregulated  
9 professional or vocational practices; and  
10

11           WHEREAS, in its original enactment, this Act also required  
12 that impact statements be submitted with any proposal requesting  
13 regulation of an unregulated profession or vocation; and  
14

15           WHEREAS, in 1984, the Act was amended to request the State  
16 Auditor to conduct a "sunrise" study of any proposal to regulate  
17 unregulated professions and occupations, prior to the enactment  
18 by the Legislature of any new regulatory program; and  
19

20           WHEREAS, section 26H-2, HRS, delineates the specific  
21 policies and criteria to be used by the Auditor in conducting  
22 the sunrise review; and  
23

24           WHEREAS, these policies and criteria have been reviewed and  
25 modified since 1977, most recently in 1996 to include a review  
26 of the relationship between the regulatory fee structure and the  
27 costs of the regulatory program; and  
28

29           additional factors that may impact upon  
30 consideration of whether to regulate a profession or vocation  
31 include economic impact, insurance reimbursement, and  
32 accessibility of services; and  
33





## **Appendix B**

**Report Title:**

Sunrise law

**Description:**

Adds 2 criteria to policies to be used in sunrise law evaluations on proposals to regulate unregulated professions and vocations.

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# A BILL FOR AN ACT

RELATING TO THE HAWAII REGULATORY LICENSING REFORM ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that states with sunrise  
2 review laws have two common criteria that are presently absent  
3 from Hawaii law. These criteria relate to the public's need for  
4 assurances of competency and the lack of other protections. The  
5 purpose of this Act is to add these two new policies to the  
6 sunrise review policies in section 26H-2, Hawaii Revised  
7 Statutes.

8           SECTION 2. Section 26H-2, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§26H-2 Policy.** The legislature hereby adopts the  
11 following policies regarding the regulation of certain  
12 professions and vocations:

13           (1) The regulation and licensing of professions and  
14 vocations shall be undertaken only where reasonably  
15 necessary to protect the health, safety, or welfare of  
16 consumers of the services; the purpose of regulation

# S.B. NO.

1 shall be the protection of the public welfare and not  
2 that of the regulated profession or vocation;

3 (2) Regulation in the form of full licensure or other  
4 restrictions on certain professions or vocations shall  
5 be retained or adopted when the health, safety, or  
6 welfare of the consumer may be jeopardized by the  
7 nature of the service offered by the provider;

8 (3) Evidence of abuses by providers of the service shall  
9 be accorded great weight in determining whether  
10 regulation is desirable;

11 (4) Professional and vocational regulations which  
12 artificially increase the costs of goods and services  
13 to the consumer shall be avoided except in those cases  
14 where the legislature determines that this cost is  
15 exceeded by the potential danger to the consumer;

16 (5) Professional and vocational regulations shall be  
17 eliminated when the legislature determines that they  
18 have no further benefits to consumers;

19 (6) Regulation shall not unreasonably restrict entry into  
20 professions and vocations by all qualified persons;

21 [~~and~~]

# S.B. NO.

1           (7) Fees for regulation and licensure shall be imposed for  
2           all vocations and professions subject to regulation;  
3           provided that the aggregate of the fees for any given  
4           regulatory program shall not be less than the full  
5           cost of administering that program[-];

6           (8) Consumers need, and can reasonably be expected to  
7           benefit from, an assurance of initial and continuing  
8           professional or vocational competence; and

9           (9) The public cannot be effectively protected by other  
10           means in a more cost-beneficial manner."

11           SECTION 3. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13           SECTION 4. This Act shall take effect upon its approval.

14

INTRODUCED BY: \_\_\_\_\_

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