

# OVERVIEW

## *Sunrise Analysis: Athletic Trainers*

Report No. 10-08, October 2010

### Summary

In Act 108, Session Laws of Hawai'i 2010, the Legislature asked the Auditor to conduct a “sunrise” analysis of Senate Bill No. 2601, Senate Draft 1 (S.B. No. 2601, S.D. 1), which proposes to regulate athletic trainers. The *Hawai'i Regulatory Reform Act*, Chapter 26H, Hawai'i Revised Statutes, requires such an analysis to ensure that new regulation is enacted only when reasonably necessary to protect the health, safety, and welfare of consumers of the services.

Senate Bill No. 2601, Senate Draft 1, proposes to offer athletic trainers title protection. This means that no one could represent, advertise, or announce oneself either publicly or privately as an athletic trainer or registered athletic trainer unless registered with the Department of Commerce and Consumer Affairs (DCCA). Registration would require athletic trainers to have a current certification issued by the Board of Certification, Inc. (BOC)—the independent credentialing body for the athletic training profession accredited by the National Commission for Certifying Agencies. The DCCA would maintain a public registry without having to verify that certificates are current or valid.

Athletic trainers specialize in recognizing, preventing, managing, and rehabilitating *athletic-related* illnesses and injuries. Usually the first at the scene to provide immediate care when athletes are injured, athletic trainers apply protective or preventive devices such as tape bandages and braces, and teach athletes how to prevent injuries, reduce risk, use proper equipment, and exercise to improve balance and strength. The American Medical Association recognizes athletic trainers as “allied” health professionals who work under the direction of licensed physicians and in cooperation with other health care professionals such as physical therapists. They should not be confused with personal or fitness trainers who are not healthcare professionals. Currently, about 170 certified athletic trainers work in Hawaii, primarily at secondary schools in the Department of Education, as well as in private secondary schools, universities, and colleges in the state. A few are employed in private physical therapy clinics and in the military.

Our analysis shows in sum that S.B. No. 2601, S.D. 1, does not meet sunrise criteria to warrant regulation. We found no evidence of harm to the public or the athletes served by athletic trainers. Flaws in the bill create a confusing regulatory program that fails to meet the objectives of ensuring specialized emergency and appropriate treatment and rehabilitation and providing a mechanism to report and remedy malpractice and ethical violations.

More specifically, S.B. No. 2601, S.D. 1, is not reasonably necessary to protect the public. The DCCA's Office of Consumer Protection has no records of any complaints relating to athletic trainers and the Hawaii Athletic Trainers Association



could provide only anecdotal evidence of harm. Although proponents have shown the primary purpose of regulation is to obtain recognition as reimbursable allied health professionals by third-party payers, they have failed to show that regulation is necessary to protect the consumer from harm or abuse.

Many other protections are in place to ensure that athletes receive appropriate care. In Hawai'i, employers already require athletic trainers to be BOC-certified or pursuing certification. Employers can easily check BOC's online data to verify whether an athletic trainer is active, in good standing, under investigation, inactive, delinquent, under disciplinary suspension, or has had certification permanently revoked.

The provisions in S.B. No. 2601, S.D. 1, appear to serve no public purpose. The bill does little to accomplish its stated public protection objectives of appropriate care for Hawai'i's athletes. Definitions are vague, minimum competency is not ensured, and no mechanisms are created to report and remedy malpractice or ethical violations. Instead, the bill's primary purpose appears aimed at enhancing the profession and gaining reimbursement from insurers. The National Athletic Trainers' Association is aggressively pursuing efforts to gain licensure and to amend regulatory laws nationwide since most third party payers will reimburse only *licensed* health care providers.

The bill merely restricts the *use* of the *title* of "athletic trainer" to those who are BOC certified, but does not restrict the *practice* to certified athletic trainers. No grounds for discipline and no mechanism for taking disciplinary action are contained in the bill. The DCCA would not have the power to sanction or remove the registration should the submission prove to be false or to investigate complaints or pursue other enforcement actions. The public would not be protected from incompetent, unscrupulous, and unethical athletic trainers. Finally, the bill is further flawed by language in Section -6 creating *licensure* for an athletic trainer who is registered even though the bill is entitled the "*Athletic Trainer Registration Act*." The addition of this section seems related only to enabling reimbursement from third party insurance payers.

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## Recommendations and Response

Senate Bill No. 2601, Senate Draft 1, of the 2010 legislative session should not be enacted. The DCCA agreed with our report findings.

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