
Sunset Evaluation Report: Social Workers

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 00-02
January 2000

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Submitted by

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Foreword

The Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes (the “sunset” law), establishes policies for occupational regulation and schedules the repeal of newly enacted occupational regulatory programs. The law directs the Auditor to evaluate each board, commission, and regulatory program prior to the repeal date.

This report evaluates the regulation of social workers under Chapter 467E, HRS, which Section 26H-4, HRS, schedules for repeal on December 31, 2000. The report presents our findings as to whether the regulatory program complies with policies in the sunset law and whether there is a reasonable need to regulate social workers to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed.

We recommend that Chapter 467E be allowed to expire as scheduled. However, if regulation continues, our report recommends improvements in the law and its administration. In accordance with Section 26H-5, HRS, Appendix A incorporates the draft legislation to improve the program.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs and other organizations and individuals whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes (the “sunset” law), establishes policies for occupational regulation and schedules the repeal of newly enacted occupational regulatory programs. The law directs the Auditor to evaluate each board, commission, and regulatory program prior to the repeal date to determine whether the program complies with the sunset law’s policies and whether the public interest requires reenactment, modification, or repeal of the law establishing the program.

If the Auditor finds that the law establishing the regulatory program should be modified, the Auditor must incorporate in the report, drafts of recommended legislation to be considered for enactment that would improve the policies, procedures, and practices of that regulatory program. If the Auditor finds that the law establishing the regulatory program should not be reenacted, the Auditor must still evaluate the effectiveness and efficiency of the regulatory program and make appropriate recommendations to improve the policies, procedures, and practices.

We evaluated the regulation of social workers under Chapter 467E, HRS, which is scheduled for repeal on December 31, 2000.

Background on Social Workers

Social work is one of the “helping” professions. Social workers help individuals, families, and communities deal with problems as varied as substance abuse, family conflicts, workplace tension, health problems, disabilities, and mental illness.

Social workers provide a wide range of services such as consultation, counseling, diagnosis, advocacy, case management, outreach, crisis intervention, social rehabilitation, and psychotherapy. Their clients include the young, the poor, the disadvantaged, the elderly, and the ill. They may work directly with clients or engage in policy, planning, or administration.

In 1996, about 40 percent of social workers in the United States worked for state or local governments in departments of human resources, mental health, social services, child welfare, housing, education, and corrections. Social service or health care agencies, hospitals, and religious institutions employed those in the private sector. Some social workers were in private practice.

Professional organizations and credentials

The National Association of Social Workers, founded in 1955, is the major professional organization with a membership close to 155,000 in 55 chapters throughout the United States, Puerto Rico, the Virgin Islands, and abroad. The association's primary functions are to promote the development of social work practice, establish professional standards, advance social policies, and provide services to its members.

The association offers professional recognition to social workers through its voluntary credentialing program. Upon meeting specified requirements, social workers can be certified as members of the Academy of Certified Social Workers. Clinicians with post-master's degree experience can earn the credential of qualified clinical social worker. The credential of diplomate in clinical social work recognizes advanced clinical practice expertise. Another credential is school social work specialist, available to those working in educational settings.

The American Association of State Social Work Boards, founded in 1979, assists state regulatory boards in their efforts to protect the public. This association developed and maintains the written licensing examination for social workers used in almost every state. The examination includes the basic, intermediate, advanced, and clinical levels.

Numbers in Hawaii

The precise number of social workers in Hawaii is not known. However, the state Department of Labor and Industrial Relations recorded approximately 2,500 social workers employed in the private and public sectors combined in 1996. As of March 1999, agencies of Hawaii state government employed about 1,100 persons in social-worker-type positions.

In December 1998, the Hawaii Chapter of the National Association of Social Workers recorded 1,094 members. This number included all membership categories: regular members and student, retired, doctoral-candidate, and associate members. Most chapter members are employed with private agencies, and many of them also have their own practice.

As of April 1999, the total number of licensed social workers in Hawaii was 920. Government-employed social workers are exempt from licensure.

Education

The minimum requirement for most social worker positions is a bachelor's degree in social work or in a related field such as psychology or sociology. There are bachelor's, master's, and doctorate degree programs in social work. The U.S. Department of Education has designated the Council on Social Work Education as the sole accrediting agency for social work education programs.

In Hawaii, two institutions offer accredited social work programs: Brigham Young University-Hawaii Campus has a bachelor's degree program and the University of Hawaii at Manoa has bachelor's, master's, and doctorate degree programs. Hawaii Pacific University has a bachelor's program that is working toward accreditation.

Regulation in other states

All states, the District of Columbia, Puerto Rico, and the Virgin Islands have licensing, certification, or registration laws governing social workers. Standards for licensing vary by state. Some states require either a master's degree or a doctoral degree while others license several levels of social workers. Puerto Rico only requires licensees to have a bachelor's degree.

The written examination of the American Association of State Social Work Boards is used in every jurisdiction except Michigan, which does not require an examination, and Puerto Rico. California requires an oral examination in addition to the association's written examination.

Previous Regulatory Efforts and Auditor's Reports in Hawaii

Various approaches for regulating social workers have been proposed to the Hawaii State Legislature since 1975. The chief proponent of regulation has been the Hawaii chapter of the National Association of Social Workers. In 1986, we published a "sunrise" analysis of a proposal to regulate clinical social workers, and in 1988 a sunrise analysis of a proposal to regulate social workers. Both of these analyses concluded that regulation was not warranted.¹

In 1989, the Legislature enacted Chapter 467D, HRS, as a temporary, voluntary registration program for social workers, primarily to develop information on the need for regulation. The law gave the Department of Commerce and Consumer Affairs broad authority to receive and investigate complaints about social workers so that the department could gather data on abuses. The Legislature made Chapter 467D effective as of January 1, 1990 and provided for its sunset review by scheduling it for repeal as of December 31, 1992.

In our 1991 sunset evaluation on social workers,² we found that the regulation of social workers was still not warranted. There was little evidence of actual harm and Chapter 467D was not sufficiently related to protecting the public. We also noted that other protections against potential harm already existed in both the public and private sectors. We recommended that the chapter be repealed as scheduled and social workers not be regulated.

Chapter 467D was repealed as scheduled.

Current Regulatory Program in Hawaii

In 1994, the Legislature enacted Chapter 467E, HRS, establishing requirements to protect the titles of social workers and establishing a social worker “licensing” program in the Department of Commerce and Consumer Affairs. The law actually then created a “title protection” or “certification” program—not a licensing program—since it regulated the use of a title, not the right to practice an occupation. To avoid misunderstanding, we generally place quotation marks around the word “license” or similar words when referring to Hawaii’s social worker regulatory program in the remainder of this report.

A 1994 legislative committee report asserted the need for regulating social work to ensure the protection and welfare of the consuming public. The purpose of the regulatory program was to set standards of qualification, education, and experience for persons who seek to represent themselves to the public as social workers.

The law required repeal of the regulatory program on December 31, 2000, triggering this sunset evaluation by our office.

Chapter 467E defines social work practice as:

applying the formal knowledge base, theoretical concepts, specific functional skills, and essential social values that are used to effect change in human behavior, emotional responses, and social conditions, and helping individuals, couples, families, groups, and community organizations enhance or restore their capacities for personal and social functioning and preventing and controlling social problems. Social work practice is the professional application of social work values, principles, and techniques in the following areas:

- (1) Information, resource identification and development, and referral services;
- (2) Preparation and evaluation of psychosocial assessments and development of social work service plans;
- (3) Case management, coordination, and monitoring of social work service plans in the areas of personal, social, or economic resources, conditions, or problems;
- (4) Administration, development, implementation, and evaluation of social work programs and policies;
- (5) Clinical diagnosis, treatment, and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders;
- (6) Social work consultation; or

- (7) Research through the formal organization and methodology of data collection and the analysis and evaluation of social work data practice.

Powers and duties of the director

Chapter 467E requires the director of commerce and consumer affairs to:

- grant or refuse “licenses”;
- adopt, amend, or repeal rules as necessary;
- administer, coordinate, and enforce the regulatory laws;
- discipline any “licensed” social worker—and fine any government social worker—for any reason given in the law; and
- appoint an advisory committee of “licensed” social workers to assist in implementing the law.

For any reason listed in the statute, the director can refuse to renew, reinstate, or restore any “license”; can deny, revoke, suspend, or condition any “license”; and can fine any exempt government employee. The department can investigate, prosecute, and conduct administrative hearings regarding exempt government employees.

“Licensing” requirements

To be “licensed,” a person must:

- Have a master’s degree from a social work program accredited by or deemed to be equivalent to an accredited program by the Council on Social Work Education, or a doctoral degree accredited by the Western Association of Schools and Colleges or a comparable regional accreditation body; and
- Have passed a written national examination administered by the American Association of State Social Work Boards or have passed the Academy of Certified Social Workers examination administered by the National Association of Social Workers prior to June 30, 1995.

The law prohibits “unlicensed” persons from indicating that they are a “social worker” or a “licensed social worker,” or using the letters, “S.W.” or “L.S.W.”

Exemptions

Exempted from “licensure” are the following:

- Any person doing work within the scope of practice or duties of the person’s profession that overlaps with the practice of social work, provided the person does not purport to be a social worker or “licensed” social worker;
- Any person employed by federal, state, or county government officially as a social worker (but only when carrying out the duties of that employment); and
- Students in accredited degree programs in social work if they are identified by a title that indicates their training status.

Program costs

The law requires that fees assessed must defray all operating costs of the regulatory program.

Objectives of the Evaluation

1. Determine whether regulation of social workers is warranted.
 2. Determine whether the current regulatory requirements are appropriate.
 3. Determine whether the regulatory program is being implemented effectively and efficiently.
 4. As appropriate, make recommendations based on our findings.
-

Scope and Methodology

To assess the need to regulate social workers, we applied the regulation criteria set forth in Section 26H-2, HRS, of the Hawaii Regulatory Licensing Reform Act.

The Legislature established policies in Section 26H-2 to ensure that regulation of an occupation takes place only for the right reason: to protect consumers. Regulation is an exercise of the State’s police power and should not be taken lightly. 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 policies set forth in Section 26H-2, amended by Act 45 of 1996, continue to reinforce the primary purpose of consumer protection:

- The State should regulate professions and vocations only where reasonably necessary to protect consumers;
- Regulation should protect the health, safety, and welfare of consumers and not the profession;
- Evidence of abuses by providers of the service should be given great weight in determining whether a reasonable need for regulation exists;
- Regulation should be avoided if it artificially increases the costs of goods and services to consumers unless the cost is exceeded by the potential danger to consumers;
- Regulation should be eliminated when it has no further benefits to consumers;
- Regulation should not unreasonably restrict qualified persons from entering the profession; and
- Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.

We were also guided by the 1994 edition of *Questions A Legislator Should Ask* by Benjamin Shimberg and Doug Roederer (published by the Council on Licensure, Enforcement and Regulation, a national organization). The primary guiding principle for legislators, according to this publication, is whether the unregulated profession presents a clear and present danger to the public's health, safety, and welfare. If it does, regulation may be necessary; if not, regulation is unnecessary and wastes taxpayers' money.

We used additional criteria for this evaluation, including whether:

- The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- The cause of harm is the practitioner's incompetence or insufficient skill;
- The occupational skill needed to prevent harm can be defined in law and measured;

- No alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision); and
- Most other states regulate the occupation for the same reasons.

In assessing the need for regulation and the specific regulatory program, we took the position that the burden of proof is on those in the occupation to justify the need for regulation. We evaluated their arguments and data against the criteria stated above.

It is not enough that regulation *may* have *some* benefits. We recommend regulation only if it is *demonstrably* necessary to protect the public.

We also scrutinized the language of the existing regulatory statute, Chapter 467E, HRS, for appropriateness. We assessed the statute as to whether:

- The scope of practice regulated is clearly defined and enforceable;
- The “licensing” requirements are constitutional and legal (for example, no residency or citizenship requirements);
- “Licensing” requirements, such as experience or continuing education, are directly related to preventing harm;
- Provisions are not unduly restrictive and do not violate federal competition laws;
- Prohibited practices are directly related to protecting the public; and
- Disciplinary provisions are appropriate.

In examining the type of existing regulation, we determined whether it is one of three approaches to occupational regulation:

Licensing. A licensing law gives persons who meet certain qualifications the legal right to deliver services, that is, to practice the profession.

Certification. A certification law restricts the use of certain titles to persons who meet certain qualifications, but does not bar others who do not use the title from offering such services. This is sometimes called *title protection*. This government certification should not be confused with professional certification, or credentialing, by private organizations.

Registration. A registration law simply involves practitioners signing up with the State so that a roster or registry will exist to inform the public of the nature of practitioners' services and to enable the State to track them. Registration may be mandatory or voluntary.

We also assessed the effectiveness and efficiency of the regulatory program, including the "license" application process, "licensing" examinations, and enforcement. Regarding the "*license*" application process, we assessed whether:

- The process is easily understood, consistent, fair, and efficient;
- Requirements are applied consistently;
- Provisions are made for reciprocity for licensees from other states with comparable licensing standards; and
- Applicants are informed of their right to appeal.

With regard to "*licensing*" examinations, our assessment included whether:

- Tests are prepared by qualified testing specialists based on a job analysis;
- There is a valid relationship between what is measured and performance of the critical skill needed to prevent harm;
- Tests are not discriminatory and conform with federal Equal Employment Opportunity Commission rules;
- Tests meet standards issued by the American Educational Research Association, etc.;
- Tests are current;
- Testing conditions and test instructions are standardized;
- Security is adequate;
- Tests are given as frequently as needed to prevent hardship to applicants who need a "license" to work;
- The cut-off score has a valid relationship to the presence and absence of the skill needed for minimal competency in the practice;
- Scoring is unbiased;

- Pass/fail rates conform to national norms; and
- Special precautions are taken to ensure fairness in oral or practical examinations.

Finally, our assessment of *enforcement* included assessments of whether:

- Complaints are investigated in a timely, thorough manner; and
- Discipline is fair and appropriate.

To accomplish the objectives of our evaluation, we reviewed literature on social workers, relevant federal regulation, regulation in other states, and Hawaii statutes and rules. We also contacted recognized national and Hawaii professional associations and state regulatory agencies for complaints and other evidence of harm to consumers. We reviewed Chapter 467E to assess the appropriateness of current regulatory requirements.

At the Department of Commerce and Consumer Affairs, we reviewed files on “license” applications, enforcement, and correspondence, and other documentation of regulatory operations, from FY1994-95 to the time of our evaluation. Our review included a judgment sample of “license” application files. We interviewed department staff, the members of the department’s Social Worker Advisory Committee, employers of social workers, representatives of the occupation, and others as appropriate. We also obtained information from the Council on Licensure, Enforcement and Regulation, government agencies, and recognized national organizations of social workers. We observed the administering of the social worker “licensing” examination in Hawaii.

Our work was performed from December 1998 through October 1999 in accordance with generally accepted government auditing standards.

Chapter 2

Regulation of Social Workers Should Be Repealed

Here we present the findings and recommendations of our evaluation of the regulation of social workers under Chapter 467E, Hawaii Revised Statutes. This law is scheduled for repeal on December 31, 2000.

We conclude that the State of Hawaii should no longer regulate social workers; the regulatory law should be allowed to expire as scheduled. However, if regulation is continued, improvements are needed in the law and its administration.

Summary of Findings

1. The regulation of social workers in Hawaii is not warranted. There is little evidence of harm to consumers, the benefits of regulation are uncertain, and other protections are in place. Certain costs associated with regulation could pose difficulties.
2. If regulation of social workers is continued, the regulatory law needs attention. Amendments in social workers' scope of practice, exemptions, licensing requirements, and grounds for enforcement may be appropriate. Administrative rules implementing one of the law's provisions are also needed.
3. Also, if regulation is continued, the Department of Commerce and Consumer Affairs should improve the operations of this regulatory program. Improvements are needed in tracking disciplinary actions, administering examinations, handling late license renewals, preparing licensing forms, and recording temporary licenses.

Regulation of Social Workers Is Not Warranted

Chapter 26H, HRS, states that professions and vocations should be regulated only when necessary to protect the health, safety, and welfare of consumers. In assessing the need for regulation, the Auditor is required to give great weight to evidence of abuses and must also consider the benefits and costs of regulation to consumers.

We found little evidence that the State should regulate social workers. Few consumers have complained, evidence of harm is minimal, and any potential harm is unlikely to be prevented by regulation. Moreover, sufficient consumer protections already exist in both the public and private sector, and the costs of regulation could restrict entry into the profession. Ending regulation could, however, reduce reimbursement for social work services.

Many of our arguments against regulation of social workers are similar to arguments presented in our previous reports that recommended against regulation of other “helping” professionals, such as professional counselors, marriage and family therapists, mental health counselors, and rehabilitation counselors.¹

Limited evidence of harm found in Hawaii

We found little incidence of public harm posed by social workers in Hawaii.

Since the start of the regulatory program in FY1995-96, the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs has investigated only seven complaints against social workers. Six of these cases have been closed and one is pending.

Four of the six closed cases grew out of divorce proceedings involving disputes over child custody and visitation rights and alleged child abuse. Social workers involved in the proceedings were charged with professional misconduct, unethical practice, and unlicensed activity. In the fifth case, the social worker was charged with failure to disclose previous disciplinary action taken by another state. In none of the six cases did Hawaii officials find that the social worker had harmed a client here. The sixth case, accusing the social worker of negligent care and treatment, was closed when the complainant moved out of state.

The Office of Consumer Protection, located in the Department of Commerce and Consumer Affairs, and the Office of the Ombudsman, attached to the Legislature, have recorded no formal complaints against social workers for the past five years. The Protection and Advocacy Agency of Hawaii recently received a complaint from a person living in a care home against a social worker placed by the Department of Human Services. The complainant charged that the social worker, who was related to the care home operator, neglected to provide care. The protection and advocacy agency relocated the complainant to another care home upon her request.

From 1995 to the present, the Hawaii Chapter of the National Association of Social Workers recorded only one formal complaint. A social worker was charged with discriminating against a client and a relative of the client. The case went through the formal adjudication process of the association’s national office; no violations were found.

The Arizona State Auditor has reported that behavioral health professions, including social work, are considered low risk, and that major insurance companies have indicated that harm to clients is uncommon.

Benefits of regulation are uncertain

Proponents of regulating social workers claim that regulation is needed as an avenue for recourse for vulnerable people with illnesses or disabilities who might otherwise be too overwhelmed by their personal problems to complain of harm by their social worker. However, Hawaii's experience shows that even when social workers are regulated, few people file complaints. This undermines the proponents' argument.

Proponents of regulation also point to the potential harm of unregulated social workers resulting from vulnerable clients seeking services at times of crisis but lacking expertise in choosing a qualified and ethical social worker. Licensing would thus screen out practitioners who could harm consumers. However, we find the benefits of *licensing* social workers for this purpose to be uncertain.

Title protection, the type of social worker regulation currently used in Hawaii—which prohibits people from calling themselves social workers without a “license”—has uncertain screening benefits. Furthermore, title protection for social workers does not clearly achieve its desired purpose of assuring consumers that persons using the title are at least minimally competent.

The regulation's ability to either deter ethical and professional violations or assess the competency of practitioners is limited.

Ethical and professional violations are not deterred

A leading authority on occupational regulation has stated:

Licensing is a process by which a government agency grants individuals permission to engage in a specified profession or occupation upon finding that individual applicants have attained the minimal degree of competency required to ensure that the public's health, safety and welfare will be reasonably well protected.²

However, the potential harm from social workers apparently results not from lack of competency (in terms of qualifications, knowledge, and skills) but from unethical and unprofessional actions.

The National Association of Social Workers studies and adjudicates complaints against social workers alleging violation of the association's professional Code of Ethics. The association's 1993 study of 72 substantiated violations of the code found the following leading areas of violations: (1) sexual activities with a client, (2) conflict of interest, (3) precipitous withdrawal from the social worker-client relationship, (4) exploitation of the professional relationship for personal gain, and (5) dishonesty, fraud, deceit, or misrepresentation. More recent data from the association found “boundary” violations, such as sexual misconduct, to be a primary type of violation. Moreover, statistics provided by the

American Association of State Social Work Boards revealed “unprofessional conduct” to be a dominant ground for license revocation, probation, and suspension.

Such types of harm are difficult to prevent through licensing or title protection because regulation focuses on verifying the practitioner’s technical competency, not his or her character. Indeed, states regulating social workers continue to experience violations of both law and ethics within the practice. With unethical and unprofessional conduct dominating consumers’ complaints, it is questionable whether qualifications based on education and testing of competency would address that type of harm to the public.

Competency is difficult to assess

Even if social worker incompetence were a significant cause of harm to consumers, competency would be difficult to assess. For example, social workers often perform counseling and psychotherapy. Yet in a recent report, the California Board of Behavioral Sciences found that it is difficult for regulators to assess such attributes of therapist competency as integrity, compassion, and emotional maturity.

The California board’s view is consistent with views expressed in a 1994 article published by the Council on Licensure, Enforcement and Regulation (CLEAR), a national organization.³ The article favored a combination of three licensing examinations for counselors and psychotherapists to screen for competency: (1) a written examination covering pathology to protect consumers from incorrect diagnosis or lack of documentation of the need for treatment; (2) a written examination covering treatment procedures and practice skills to deter inappropriate techniques or methods; and (3) a clinical examination assessing the therapist’s interactions with an actual client.

However, while optimistic that adequate examinations can be developed to test competence, the CLEAR article concluded that “at this time the pieces that are needed to regulate counseling and psychotherapy are not in place, perhaps not even in existence.” The reasons given were disagreements within the field as to appropriate practices and effective methods, lack of a clear relationship between treatment and outcome, and difficulty defining a desirable outcome.⁴

Furthermore, psychotherapy has been described as “an amorphous and vaguely defined process with wide variations in theory and technique.”⁵

The CLEAR article also suggests that the personal and interpersonal qualities of the therapist—such as warmth and empathy—are key to minimal competence. The article therefore puts heavy emphasis on clinical examinations involving actual therapy sessions. However, we

maintain that clinical examinations can be difficult to administer objectively and uniformly. Indeed, California is the only state that requires an oral examination. (The oral exam is in addition to California's written exam and is designed to assess an applicant's personal functioning, interactive skills, and ability to provide safe and effective clinical services.)

The differing approaches to regulation among various jurisdictions (see Exhibit 2.1) suggest some uncertainty about how to ensure social worker competence. For example, some states, like Hawaii, license a single "tier" of social workers; others license several tiers (for example, bachelor's, master's, and independent social workers).

We believe that the capacity of regulatory authorities to assess and assure the competence of counselors, including social workers, has not been clearly demonstrated.

Exhibit 2.1

Comparison of Regulation of Social Workers Among 50 States and 3 Other Jurisdictions

Level of Regulation	Percent Of States
Licensure	85%
Certification	13%
Registration	2%
Type of Law	
Title and practice protection	68%
Title protection	21%
Practice protection	11%
Tiers	
Multi-tiers	74%
Single tier	26%

Source: American Association of State Social Work Boards, *Social Work Laws and Board Regulations: A Comparison Guide*

Other protections exist

Even without regulation, protections for consumers of social worker services in Hawaii would be in place.

Protection by public organizations

Many publicly run organizations can help protect social work consumers. For example, the State of Hawaii requires the more than 1,000 persons that it employs in social-worker-type positions to meet certain standards. These standards include the following: minimum job qualifications; screening and hiring practices; supervisory control; and regular monitoring and evaluation.

The State also has procedures to inform the public of its rights and to allow for complaints against social workers. Public or quasi-public agencies in Hawaii that provide such protection include the following:

- The Office of the Ombudsman investigates alleged erroneous acts of state government and its employees. The ombudsman reports opinions and recommendations to the investigated agency, and notifies the complainant of the actions taken by both the ombudsman and the agency. If the ombudsman finds a breach of duty or misconduct by an employee, the matter is referred to the appropriate authorities.
- The Office of Consumer Protection investigates reported violations of consumer laws and regulations and takes appropriate legal action to stop unfair or deceptive practices in the marketplace. The office recommends new consumer laws, conducts consumer education programs, appears on behalf of consumers before governmental boards and commissions, and serves as a clearinghouse for consumer complaints.
- The Protection and Advocacy Agency of Hawaii, a nonprofit public interest corporation, provides legal services, information and referral services, and technical assistance to mentally ill persons, persons with developmental disabilities, and persons with other disabilities. The agency serves aggrieved persons in both the public and private sectors.

In addition, a federal disciplinary databank, named the “Federal Integrity and Protection Data Bank (HIPDB),” is under development to establish a national health care fraud and abuse data collection program. The databank will report, disclose, and maintain certain final adverse actions taken against health care providers, suppliers, or practitioners (including social workers).

Protection by private organizations

Privately run organizations also offer protections.

For example, clients of a social worker who belongs to the National Association of Social Workers benefit from the association's membership criteria, from its program of awarding credentials (such as qualified clinical social worker), and from its "regulatory" requirements (based on the association's Code of Ethics). Through its adjudication process, the association can take actions to protect clients, agencies, colleagues, and the public from practices by social workers who violate the code. Furthermore, the association publishes on-line information about the sanctions imposed on individual social workers in ethics cases. Hawaii's chapter of the association has 1,094 members, more than 40 percent of the estimated number of social workers in Hawaii.

Moreover, the American Association of State Social Work Boards established the Disciplinary Action Reporting System. Every other month, the system provides the association's member boards and others with important information on disciplinary action taken against social workers by the states. The general public can subscribe to these reports for a fee.

Another type of private protection exists. Many social workers are employed not by the ultimate client directly but by private social service and welfare agencies and hospitals. These organizations are sophisticated and knowledgeable. They take measures to ensure that their social workers provide services appropriately. These measures include establishing qualification requirements, screening and hiring procedures, and supervisory and evaluation mechanisms. Organizational employers are expected to follow strict standards established by their accreditation agencies. In addition, the employers must follow applicable state regulations, federal regulations, and requirements of health benefit plans concerning social work services.

No problems found with independent practitioners

The extent and nature of independent social work practice in Hawaii are largely unknown. We found no complete listing of these practitioners. The yellow pages of GTE Hawaiian Tel for the island of Oahu for 1998-1999 listed two social workers under "Social Workers"; one social worker under "Counselors—Personal"; eight social workers under "Marriage, Family, Child & Individual Counselors"; and thirteen social workers under "Psychotherapists." Many independent practitioners work part-time with family courts and social services agencies.

There are fewer controls on the activities of social workers who are independent practitioners because they operate without the supervision and oversight of an employing agency. However, we found no indication that Hawaii's consumers are in danger from these persons. For example, of the complaints investigated by the Regulated Industries Complaints Office that were mentioned earlier in this report, none were against independent practitioners.

Cost of licensing could restrict entry into profession

Social workers in Hawaii are currently governed by a triennial “licensing” cycle. Those applying for a “license” in the first year of the triennium must pay total fees of \$317. Some applicants, especially recent graduates, may find this a considerable obstacle to “licensure.” Neighbor island applicants face additional costs of air fare, lodging, transportation, and other incidental charges when taking the licensing examination, which is administered only in Kailua, Oahu.

Repealing licensing could reduce reimbursement

Hawaii insurers and health maintenance organizations (HMOs) reimburse for certain services provided by clinical social workers. The types of services eligible for reimbursement are counseling, diagnostic assessment, and psychotherapy for individuals, families, and groups.

For reimbursement eligibility, the social worker must be: (1) “licensed” under Chapter 467E, HRS, and (2) certified in clinical social work by a recognized national organization. These certification credentials and the awarding organization include: (1) qualified clinical social worker (National Association of Social Workers), (2) diplomate in clinical social work (National Association of Social Workers), or (3) board certified diplomate (American Board of Examiners in Clinical Social Work). These requirements are set forth in Chapter 431M, HRS, of the Insurance Code. Chapter 431M, Mental Health and Alcohol and Drug Abuse Treatment Insurance Benefits, specifies covered benefits, under accident and sickness insurance policies and health plan contracts, for the services of clinical social workers treating mental illness and alcohol and drug dependency.

Representatives of the health insurance industry in Hawaii informed us that social workers would no longer be eligible for reimbursement for their services if the state “licensing” law is repealed. They say that repealing the law could increase the costs of insurance plans for the types of services currently provided by clinical social workers. It could also increase the costs to consumers who need the services.

The Federal Employees Health Benefits Program and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) do not anticipate any impact on reimbursement if the state “licensing” law were repealed. Under the former program, we were told that social workers could still be reimbursed if they were “accredited” as clinical social workers by a national professional organization. Under the latter program, social workers could still be reimbursed if they are “certified” by the National Association of Social Workers.

If Regulation Is Continued, the Legal Requirements Need Attention

Scope of practice may need clarification concerning “psychotherapy”

For the reasons stated above, we conclude that regulation of social workers in Hawaii is not warranted. However, if the Legislature decides to continue regulation, the regulatory law, Chapter 467E, HRS, needs attention. Amendments or, in one case, supplementary administrative rules, may be appropriate. We found problems and issues relating to social workers’ scope of practice, exemptions, licensing requirements, and grounds for enforcement.

Chapter 467E does not specifically include psychotherapy within the scope of practice of “licensed” social workers. However, questions have been raised about social workers acting as psychotherapists. In the 1998-1999 yellow pages for Oahu, 13 social workers advertised themselves as psychotherapists. Moreover, social services and welfare agencies informed us that their social workers with a master’s degree in social work are performing psychotherapy.

The issue of psychotherapy surfaced recently when the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs sent a warning to a social worker who advertised her psychotherapy services. Aware of this warning, the Hawaii chapter of the National Association of Social Workers in November 1998 asked the department’s director for an informal opinion as to “whether any legal impediments exist precluding social workers, licensed under Hawaii Revised Statutes (HRS) chapter 467E, from practicing psychotherapy (and holding themselves out as ‘psychotherapists’).” In its request, the Hawaii chapter stated: “This is a matter of extreme importance to social workers who wish to practice what has long been deemed to be an essential element of clinical social work.”

In December 1998, the director of commerce and consumer affairs responded to the Hawaii chapter’s request with an informal, unofficial written opinion concluding that “social workers are not legally authorized to perform or advertise that they perform ‘psychotherapy’ or are ‘psychotherapists’.” The director argued that generally, under Chapter 465, HRS (regulating psychologists), a person describing his or her services as “psychotherapy” must be licensed as a psychologist. Furthermore, according to the director, while Chapter 465 exempts from this requirement other licensed professionals (non-psychologists) rendering services within their own profession’s legally defined scope of practice, social workers do not fall within the exemption because their legally defined scope of practice does not specifically include the word “psychotherapy.”

The director was correct in saying that the social worker law does not include the word “psychotherapy.” Open to debate, however, is whether,

without the exact word “psychotherapy,” social workers cannot perform psychotherapy and advertise themselves as psychotherapists. Section 467E-1(5) includes “clinical diagnosis, treatment, and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders” within the practice of social work. This language bears a resemblance to the definition of psychotherapy by the American Association of State Social Work Boards:

The use of treatment methods utilizing a specialized, formal interaction between a clinical social worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained and sustained to understand unconscious processes, intrapersonal, interpersonal and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions.

Since confusion remains, concerned members of the social work profession may wish to seek legislation clarifying whether social workers may act as psychotherapists.

***Exemptions from
“licensing” are unclear
or inappropriate***

Hawaii’s law exempts certain groups from the social worker “licensure” requirement. These exemptions are sometimes confusing and unnecessary or create a double standard.

“Overlapping” profession provision lacks clarity and is unnecessary

For regulation to be effective, the profession and its scope of practice must be delineated so that the State can readily determine who falls under regulation and who does not.

Persons exempted from “licensure” under Chapter 467E include:

any person doing work within the scope of practice or duties of the person’s profession that overlaps with the practice of social work; provided the person does not purport to be a social worker or licensed social worker.

We found that this exemption is unclear and therefore difficult to implement. The law does not define “overlapping” or explain how the director of commerce and consumer affairs will determine which professions are exempted under this category. Furthermore, the provision seems unnecessary because a person who “does not purport to be a social worker or licensed social worker” probably needs no “license” in the first place.

Exemption of government employees creates double standard

The law exempts from “licensure” government-employed social workers. Apparently this exemption was intended to make it easier for state government to recruit social workers.

We question this sweeping exemption because it creates a double standard: government-employed social workers need no “license” to describe themselves as social workers while others need a “license.” While we still oppose regulation of *any* social workers, we believe that if regulation exists, large groups should not be exempted.

Currently, 53 percent of the states and other jurisdictions that regulate social workers exempt at least some public workers. Whether their laws exempt all public employees—or only certain groups (federal, state, or county employees)—varies among the states.

For consistency, if regulation in Hawaii is continued, it should include government employees. This approach would be consistent with the position of the American Association of State Social Work Boards, which opposes exemptions.

We acknowledge that government agencies might face increased costs associated with replacing staff, or might need to reduce services, if the “licensing” requirement were extended to government social workers. Hawaii’s “licensing” law requires a master’s degree, which many government-employed social workers do not have.

Of course, the State could avoid such problems by not regulating *any* social workers, making the issue of exemptions moot.

“Licensing” requirements need reconsideration

The “licensing” requirements set forth in the law include a debatable educational provision and a questionable examination provision. We also found a lack of reciprocity and endorsement provisions.

Master’s degree in social work may not be needed

Chapter 467E defines the scope of practice of social work very broadly (see the definition presented in Chapter 1 of this report). Among other things, the practice may involve applying “essential social values” that are used to change social conditions, helping community groups enhance their capacity for social functioning, providing information and referral services, administering social work policies, treating mental disorders, and conducting research.

We are not convinced that these activities require at least a master’s degree in a social work program (as the law demands). The requirement

could be too restrictive. For many years we have questioned the use of academic requirements to regulate “helping professions.” For example, in January 1986, we cited a major study that concluded that evidence exists that academic credentials are not appropriate for identifying competent mental health practitioners.⁶ In November 1991, we observed that there was little evidence to support the contention that social work education is essential to competent, effective social work performance and that the absence of this education could lead to harm.⁷ In August 1999, we reported that disagreement exists as to whether a master’s degree is needed for basic competency in counseling.⁸

The master’s degree requirement is already on the books and we are reluctant to oppose it without more extensive study of its necessity than we can commit our resources to at this time. Nevertheless, we encourage the Legislature to insist that the social work profession provide empirical justification for requiring a master’s degree for all of the types of work that social workers may perform.

Examination exception is inappropriate

Section 467E-9, HRS, requires license applicants to pass a written national examination administered by the American Association of State Social Work Boards, with one exception. The exception, which serves as a type of “grandfathering” provision, appears in Section 467E-9(b). Applicants who passed the Academy of Certified Social Workers examination administered by the National Association of Social Workers prior to June 30, 1995 have satisfied the examination requirement.

This provision was included in Chapter 467E in 1994, the year of the law’s enactment. The National Association of Social Workers had testified asking consideration for a group of already practicing social workers who held the association’s credential, held a master’s degree in social work, had practiced for at least two years under supervision, and had passed the association’s national examination.

However, we oppose this “exception” for a certain group of applicants. We agree with the American Association of State Social Work Boards, which recommends against state boards accepting examinations administered by national associations for their own private credentialing purposes.

In support of its position, the American Association of State Social Work Boards points out that while its own national examination (widely used by states for licensing purposes) tests minimum competency based on the intent to protect the public, the examinations of the National Association of Social Workers test other factors, including excellence. However, minimum competency of practitioners, not excellence, is the proper standard for licensing.

The American Association of State Social Work Boards also argues that the State runs a risk when delegating its authority and a part of its responsibilities to establish standards for examinations to outside organizations. Accepting an examination given by the National Association of Social Workers heightens this risk. Specifically, doing so can create a conflict of interest between public protection and professional promotion. The State’s ability to protect the public through the regulation of an occupation could be compromised by accepting certification examinations from an organization representing the social work profession.

Endorsement and reciprocity provisions are needed

The Hawaii law does not provide for “licensure” of social workers by reciprocity or by endorsement.

Reciprocity and endorsement are processes by which a social worker licensed in one jurisdiction may obtain licensure in another jurisdiction. Through reciprocity agreements, a few states accept each other’s verification of education, experience, and supervision for social work licensure applicants.

Currently, licensure by endorsement is more prevalent. Forty-three states offer licensure by endorsement by honoring a passing score on the examination of the American Association of State Social Work Boards. The endorsing state will accept the passing score from the examination category that the other state uses for its license. Also, the applicant still has to submit a school transcript and, if seeking a clinical social worker license, a verification of work experience.

We suggest adding reciprocity and endorsement provisions to the Hawaii law. The provisions should be framed to reduce unnecessary burdens on persons already licensed in other states while still ensuring that Hawaii’s “licensing” standards are upheld.

Some grounds for enforcement raise problems

Section 467E-12, HRS, lists certain acts or conditions of social workers that justify enforcement by the director of commerce and consumer affairs. Enforcement includes (1) refusing to renew, reinstate, or restore a license; (2) denying, revoking, suspending, or conditioning a license; and (3) fining any exempt government employee.

We found that two of the grounds for enforcement—professional misconduct and ethical violations—pose problems.

“Professional misconduct” needs clarification

Section 467E-12(6), HRS, includes “engaging in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of social work” as grounds for enforcement. We believe that the phrase “professional misconduct” is too vague to use for enforcement.

The Model State Social Work Practice Act developed by the American Association of State Social Work Boards allows discipline for a similar offense—“unprofessional conduct”—as determined by the board. (“Board” here refers to any state’s social worker licensing board. As explained previously, Hawaii regulates social workers through the director of commerce and consumer affairs and not through a board.)

Written commentary accompanying the model act states that boards must be specific when defining the grounds for revoking or suspending a social worker’s license to practice. According to the commentary, the term “unprofessional conduct” is “particularly susceptible to judicial challenge for being unconstitutionally vague.” Each offense encompassed by the term “unprofessional conduct” must be capable of being understood with reasonable precision by the people being regulated. If so, they will be able to conform their professional conduct accordingly, and state boards will be able to enforce this provision readily and rely on it during disciplinary proceedings.

The director of commerce and consumer affairs needs to adopt administrative rules clarifying how the term “professional misconduct” will be applied to social workers.

Ethical standard puts State at risk

Section 467E-12(7), HRS, lists “engaging in conduct or practice contrary to recognized standards of ethics for the social work profession” as a basis for enforcement.

Again, the views of the American Association of State Social Work Boards cast doubt on this provision. The association argues that regardless of how comprehensive or effective the standards of outside organizations may be, regulatory boards using these standards risk being accused of delegating authority unlawfully. The association says its legal counsel and other experts oppose incorporating complete codes of ethics of professional organizations into state licensing laws and regulations.

In support of its position, the association argues that a professional organization’s code of ethics is “aspirational and voluntary.” This fits the mission of a professional association, but can be a problem for regulatory authorities in trying to develop legally enforceable statutes and regulations. According to the association, some sections in the Code of

Ethics of the National Association of Social Workers concerning social workers' responsibilities to their employers, to the profession, and to society are inappropriate in state regulation and would be unenforceable.

Hawaii's law should no longer allow discipline for "engaging in conduct or practice contrary to recognized standards of ethics for the social work profession."

The Department Should Improve Its Regulatory Operations

Tracking of disciplinary actions is needed

If the regulation of social workers is continued, other improvements in addition to statutory revisions and administrative rules are needed. The Department of Commerce and Consumer Affairs should improve its operations in tracking disciplinary actions, administering examinations, handling late renewals of "licenses," preparing "license" forms and instructions, and recording temporary "licenses."

The director of commerce and consumer affairs can take enforcement action against a Hawaii social worker for many reasons. These reasons include the following:

- A Hawaii "licensee" or license applicant having a revocation, suspension, or other disciplinary action by another state or federal agency for any of the grounds for enforcement listed in Hawaii's law;
- The social worker having a conviction of a crime directly related to the qualifications, functions, or duties of the social work profession;
- A "licensee" or applicant failing to report to the director any disciplinary decision issued against him or her in another jurisdiction within 30 days of the decision.

We believe that the department should at least conduct a background check on previous disciplinary actions for social worker "license" applicants. Currently, the department simply requires each applicant to answer some background questions on convictions and previous disciplinary actions on the application form and sign the statement. We found that one complaint case filed with the Regulated Industries Complaints Office resulted in a social worker's suspended license for three years because he failed to disclose a previous license revocation by another state in answering the background questions. The department did not discover his prior revocation until one year after his "license" was issued. The revocation could have been detected at the time of his "license" application if the department had been more active in tracking disciplinary actions taken against license applicants by other states.

The department currently requires only guards and private detectives to take background checks at their own cost. For other licensees, the department relies only on background questions in the application form. The department believes that checks and balances are in place because the Regulated Industries Complaints Office will investigate a question arising later from the “licensee’s” statement.

However, we believe that the State has a responsibility to determine in a more timely manner whether entering practitioners have been disciplined in another state. Of course, we found little potential harm from social workers and see no need for regulation in the first place. Regulation’s proponents argue, though, that without regulation, practitioners from other states who are “bad apples” will move to Hawaii to escape regulation. If this argument has any merit, communication among the states regarding disciplinary actions taken against practitioners is critical for public protection.

Every other month, the department receives reports issued by the Disciplinary Action Reporting System of the American Association of State Social Work Boards. However, the “license” application clerk does not use these reports. The clerk should track disciplinary actions listed in the reports against applicants as a part of the “licensing” process.

We think our suggestion is reasonable. California takes the position that background checks (for both criminal convictions and disciplinary actions) for all social work license applicants are vital to consumer protection. California uses the Disciplinary Action Reporting System to detect disciplinary actions. Arkansas law requires license applicants and licensed social workers to apply for criminal history checks. Twenty-five out of 1,100 persons who underwent criminal checks were revealed to have prior arrests, ranging from drug possession to manslaughter.

Other government agencies in Hawaii recognize the need for background checks. Starting in FY1999-00, the Department of Health and the Department of Human Services will enter into a contract with the private Child & Family Service organization to conduct state criminal history checks, FBI checks, and Child Protective Services references on social workers involved in contracts and programs specifically targeted to children.

Administration of examination through contractor is inadequate

We found that the department’s administration of the social worker “licensing” examination in Hawaii is deficient. With the many layers of organizations involved in exam administration, the Department of Commerce and Consumer Affairs has not adequately monitored the examination process. This has led to significant weaknesses in the process.

Examination administration is multi-layered

Like all other states except Michigan, Hawaii uses a national written examination developed by the American Association of State Social Work Boards to test the knowledge base of “license” applicants. The four-hour computerized examination contains 170 multiple-choice items; 150 of these items count in determining the score and the remaining 20 are pretest items.

The examination has many layers of administration (see Exhibit 2.2). The Department of Commerce and Consumer Affairs (which we will call Layer 1) has overall responsibility for examination administration through the Examination Branch of its Professional and Vocational Licensing Division. However, the department does not administer the examination directly but does so through a contractor, the American Association of State Social Work Boards (Layer 2). Under its current letter of agreement with the department, the board association must: (1) arrange appropriate testing sites; (2) train and furnish examination administrators; (3) provide and administer the examination on uniform dates previously set; and (4) process and score answers for each examinee and report scores independently to the department.

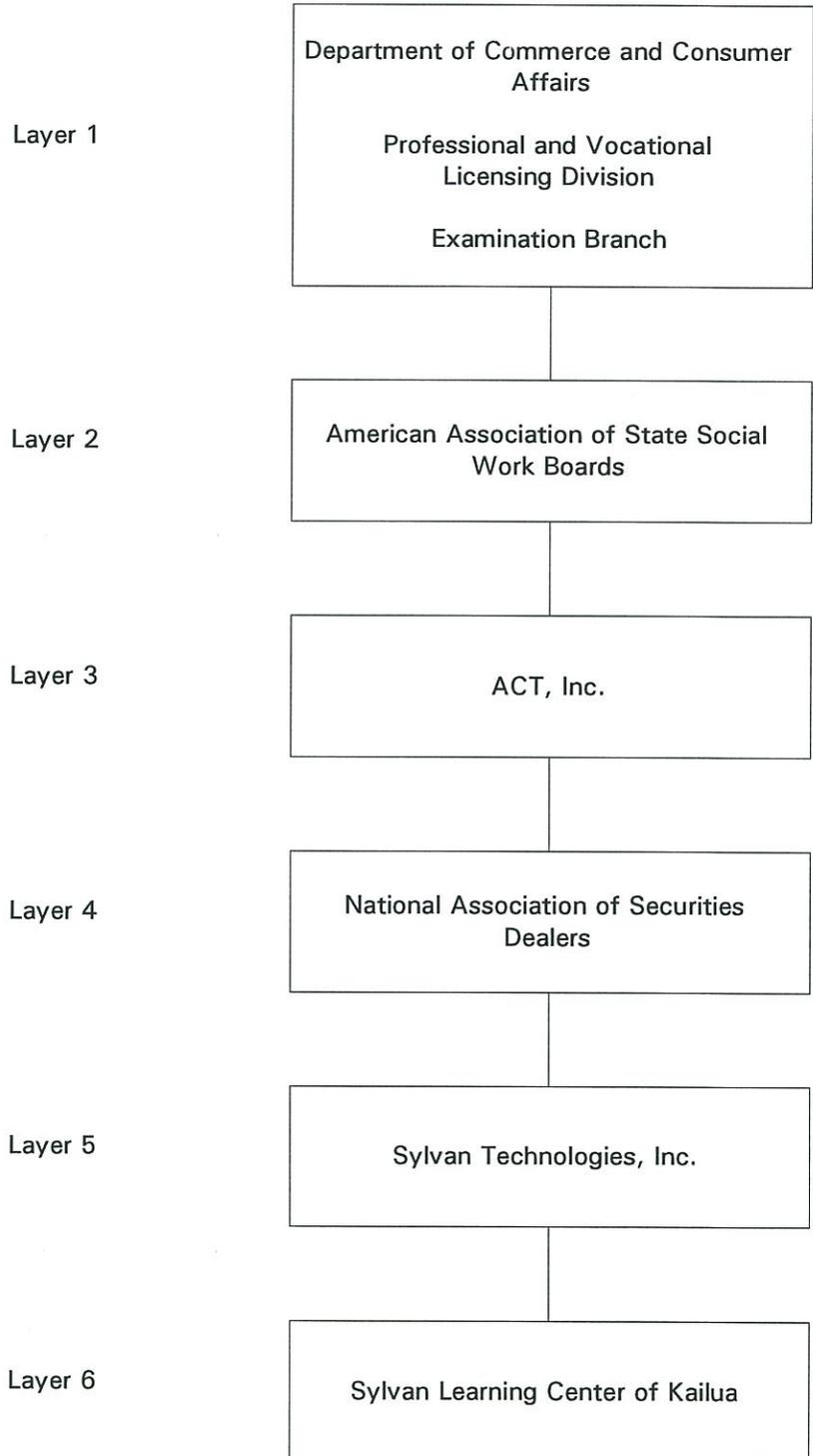
The board association in turn contracted with Assessment Systems, Inc. (Layer 3) as its test contractor to provide examination development and administration services through 1997. On January 1, 1998, ACT, Inc. took over the Layer 3 services under a new contract with the association. ACT, Inc. administers the board association’s national examination through a network of centers for which it in turn contracts with the National Association of Securities Dealers (Layer 4).

The National Association of Securities Dealers in turn contracts with Sylvan Technologies (Layer 5) to administer the examinations at test sites. Currently, a franchised Sylvan Learning Center (Layer 6) located in Kailua, Oahu conducts Hawaii’s examination.

Department is not adequately monitoring examination administration

Section 467E-3, HRS, requires the director of commerce and consumer affairs to administer, coordinate, and enforce the regulatory law. Therefore, although many organizations bear responsibility for social worker exam administration under the various contracts and subcontracts, the Department of Commerce and Consumer Affairs has final responsibility.

Exhibit 2.2
Layers of Administration of the Social Worker "Licensing"
Examination



The department, through the Examination Branch, should monitor the administration of the social worker examination through routine and ongoing review of the pertinent operations and performance of the primary contractor (the board association). The branch should compare the association's performance against the contract's scope of services, should review expenditures, and should ensure compliance with contract requirements.

We found that the department is not adequately monitoring the association's administration of the examinations. This leaves no assurance that the contractor and subcontractors are meeting testing location, testing date, security, and other requirements as specified in the contract. The problems we found in these areas are discussed below.

We believe that the department should observe some examinations as part of its monitoring. Both the current and proposed letters of agreement with the board association urge the department to (1) observe the administering of the examination from time to time and (2) report on the conduct of such administration on forms to be furnished by the association. The association is also developing guidelines for test center visits by state social work board members and administrators.

Despite the association's requests, department staff have not observed any examinations. The department believes it is the association's responsibility to administer and monitor contracted examination operations. While we agree that the association bears this responsibility, we concluded that observations by the department are also needed. We urge the department to reconsider its position, particularly in light of the deficiencies in exam administration that we uncovered and described below.

The Council on Licensure, Enforcement and Regulation, a national organization, is developing an audit booklet for state licensing boards and administrators to use for auditing licensing examinations. The booklet is expected to be available in late 1999 with criteria to assess the quality, legal defensibility, and effectiveness of the licensing examinations. The department may want to refer to the booklet when monitoring examination administration.

Number of test locations and schedule of tests are inadequate

Currently, with ACT, Inc. as the board association's subcontractor, the testing site in Kailua, Oahu is the only site available in Hawaii.

Under the board association's former subcontractor, Assessment Systems, Inc., sites were available on each of the major islands. The current letter of agreement between the association and the department requires testing sites throughout the state, in Lihue on Kauai; Honolulu on Oahu; Kahului

on Maui; and Kamuela on the Big Island. The proposed agreement requires sites at “various locations throughout the state.” However, of the five Sylvan Learning Centers in the state (all on Oahu), only the Kailua center is equipped with testing computers, which are needed for the computerized national examination of the board association. A staffer at the Department of Commerce and Consumer Affairs recalled some examination candidates from the neighbor islands expressing displeasure, possibly because of additional time and costs needed for traveling.

The current letter of agreement also requires the board association to provide and administer the examination on uniform dates previously set. Assessment Systems, Inc., the former testing subcontractor, made testing available on Tuesdays through Saturdays every week. However, no set testing frequency is currently available at the Sylvan Learning center. The board association’s explanation is that candidates have been taking the examination on a regular basis, as needed, several times monthly. However, in reality, the social work examination and over 100 other examinations administered by the center are scheduled on an “as you reserve” basis, depending on the available slots (eight computer work stations). The Department of Commerce and Consumer Affairs has received a couple of complaints about the limited test scheduling, for example one person had to wait for a month.

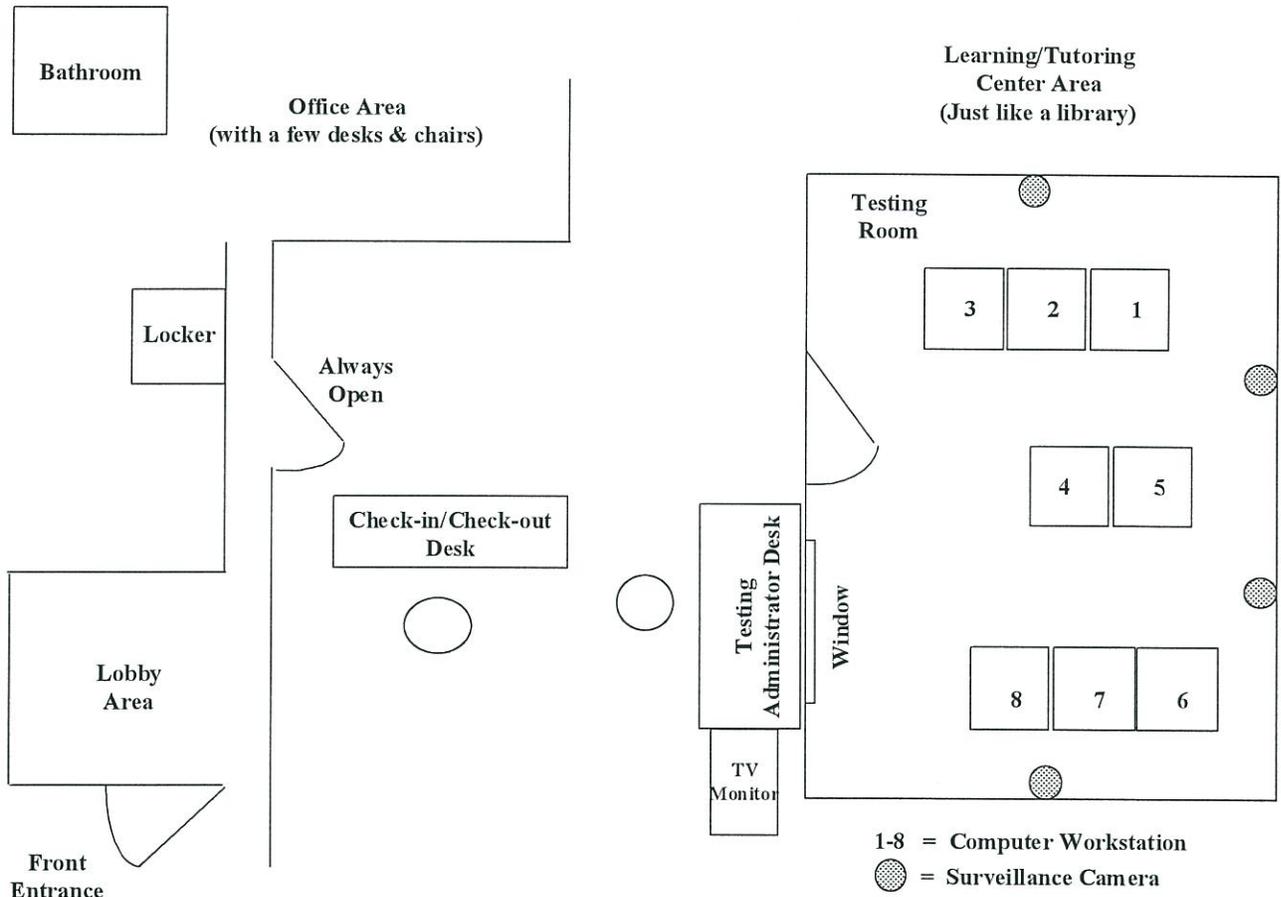
The proposed letter of agreement with the association would further restrict test frequency. It vaguely specifies “at least 3 times a year at each testing site.” Judging from the Kailua center’s capacity of eight computers, this could mean that the examination would be given to no more than 24 candidates a year. With approximately 150 persons seeking social worker “licenses” in each recent year, the proposed contract agreement appears inadequate.

Weak security offers opportunities for irregular activities

We observed an examination being administered at the Kailua site on April 14, 1999. As Exhibit 2.3 shows, the testing room is equipped with four surveillance cameras. The test administrator, who is located just outside the testing room, is supposed to monitor candidates’ examination taking. In addition to electronic surveillance, the board association requires that the testing room be proctored at least every 20 minutes either by walking through the testing room or observing it through the observation window and mirrors.

However, we found that the one part-time testing administrator scheduled for the exam was too busy and preoccupied by various duties to concentrate on effectively monitoring examinees. We observed that the administrator’s activities included: (1) answering inquiries and examination scheduling by phone, (2) handling check-ins and admissions to the testing room, and (3) handling check-outs and exits from the examination.

Exhibit 2.3
Approximate Layout of the Sylvan Learning Center at Kailua



Not to scale.

Source: Observation by staff of the Office of the Auditor on April 14, 1999.

The Kailua center administers over 100 different examinations, including the Graduate Record Examination, the Graduate Management Admission Test, and various licensing examinations. Therefore, social worker candidates take their examinations with other people who sit for those different examinations starting at different times. The sole testing administrator has to keep up with the many different examinations and his or her various duties.

Under these circumstances, the testing administrator does not accompany examination candidates when they go to the bathroom. As a result, it is possible that candidates could take materials from their lockers, located close to the bathroom, and review them in the bathroom.

We also found that the center discourages but does not prohibit friends, family members, or acquaintances of examination candidates from remaining in the lobby area while candidates are taking an examination. The lobby area, however, is the only place available for examination candidates taking breaks. This condition allows opportunities for irregular activities. Examination candidates can communicate with those in the lobby area about test questions and answers.

During our observation we found another weakness in testing security. The center director explained that six sheets of scratch paper are distributed to each candidate for the social worker licensing examination and are collected at the end of each examination. However, we observed that the testing administrator did not collect the scratch paper of the social worker examination candidate before the candidate left the center. The center's poor control over testing materials creates an opportunity for candidates to share test information with other candidates via scratch papers.

Noisy environments can distract examinees

We found noise problems at the Kailua test center that could be distracting and not conducive to the testing environment. The center's proximity to a thrift store (which at the time of our observation was the primary tenant in the building and the center's adjacent neighbor) and the frequent entries to and exits from the testing room contribute to poor testing conditions.

Recently, the department and the board association received at least two complaints about noise. The Sylvan center director acknowledges the occasional noisiness when the thrift store opens. Each time, she indicated, testing center staff must ask the thrift store for quiet.

In addition to this noise problem, we observed that the frequent entries and exits of examination candidates for other tests and of the testing administrator resulted in further distractions. Exam candidates may find

it difficult to concentrate fully on taking their exam. During an hour and a half time period, the testing room door was opened and closed at least 16 times due to: (1) new examination candidates being admitted to other examinations, (2) current examination candidates finishing their examinations, (3) examination candidates going to the bathroom or taking a break, and (4) testing administrators seating candidates who are starting examinations or helping candidates with computer problems.

These noisy environments could disturb examination candidates' concentration, especially when they are not familiar with a computerized examination.

Testing center is not complying with certain procedures

Sylvan's Kailua center is not complying with the board association's testing procedures for early arrivals and photo IDs.

The center allowed a social worker candidate from the Big Island to start taking an examination 1 hour and 40 minutes earlier than the scheduled testing time. The center director explained that the center tries to accommodate especially the candidates coming early from neighbor islands so long as there is a space (computer work station) available.

However, this center's practice does not comply with the early arrival procedure as described in the board association's Candidate's Handbook. The handbook requires that a candidate be admitted to the testing room at the scheduled time. This procedure appears to be justified because the center's actual practice could be considered preferential treatment. Under certain circumstances, the preference could become quite pronounced. For example, if two candidates were to arrive from the neighbor islands earlier than the scheduled time, allowing only one to start earlier because of the availability of a computer would be unfair to the other candidate. Moreover, failure to give a test at the scheduled time contributes to the testing administrator's inefficiency.

The center accepts official identifications issued by the State as primary identifications. However, if it questions or has reservation about the candidate's identification because of his picture or signature change, in practice it sometimes asks for another identification such as a photo employment card, a credit card, or even an ATM card with signature. Accepting these alternative forms of identification does not comply with the association's procedural manual, which allows only official photo identification issued by the State or government. Moreover, the practice risks misidentifying examination candidates who provide a false signature.

A penalty should be assessed for late "license" renewals

Unlike the case with other licenses, the department is assessing no penalty on social workers' late "license" renewals. The renewal application sets the same fee whether the renewal is on time or late.

We found that about 10 percent of the social workers subject to "license" renewal on or before June 30, 1998 were on delinquent status eight months later. Some of them may have been illegally using the title of social worker or licensed social worker without a "license." A late fee should have been established to encourage all "licensees" to make their renewals more timely.

Section 436B-15, HRS, of the State's Uniform Professional and Vocational Licensing Act requires the director of commerce and consumer affairs to establish licensing fees. The fees may include a renewal fee. Section 467E-11, HRS, of the social workers law allows a forfeited "license" to be restored within one year of the expiration date upon payment of renewal and penalty fees.

The last amendment made to Chapter 53, Hawaii Administrative Rules, *Fees Relating to Boards and Commissions*, became effective on July 18, 1994. Because Chapter 467E regulating social workers became effective in July 1994, the program was not included in those administrative rules. The first draft of proposed amendments to Chapter 53 including the social worker program was submitted for the attorney general's review several years later, in June 1998. In the meantime, the first "license" expiration date for social workers occurred on June 30, 1998. The Department of Commerce and Consumer Affairs should have anticipated and acted early enough to charge a late penalty for social workers' "license" renewals.

Application form and instructions are misleading

"Licensing" requirements in the application instructions, and a background question in the application form, are not consistent with the law and cause confusion.

Equivalency of accreditation is missing

Act 202, SLH 1996, amended Section 467E-7, HRS, by adding an equivalency provision to the master's degree minimum requirement for "licensing." Previously, the master's degree had to be from an accredited college or university in a social work program accredited by the Council on Social Work Education. As a result of the 1996 amendment, the master's degree now must be from a college or university in a social work program accredited by or deemed to be equivalent to an accredited program by the Council on Social Work Education.

However, the department did not incorporate the new requirement into the “license” application instructions, which were most recently revised in November 1998. The instructions could therefore be misleading to applicants.

Question on examinations could be misinterpreted

The “licensing” application form contains the question:

Have you passed the national exam given by the American Assn. of State Social Work Boards or the Academy of Certified Social Workers exam administered by the National Assn. of Social Workers prior to June 30, 1995?”

This question is open to interpretation. The phrase “prior to June 30, 1995” could refer either to the Academy of Certified Social Workers exam alone or to both exams, causing unnecessary confusion, misinterpretation, and inquiries.

Proportional renewal fee is not explained

For its various regulatory programs, the department charges a “proportional renewal fee” upon a new license application. The reason for this, as explained by the department, is that new licensees should bear their fair share of renewal fees for the current license term in order to be fair and equitable to current licensees who pay the full renewal fee. For example, for social work “licensees,” two thirds of the \$78 renewal fee or \$52 is charged to a new applicant if applying for a license in the first year of the licensing triennium; one third of the \$78 renewal fee or \$26 in the second year; and none in the third year.

However, this proportional renewal fee charged upon new license application is confusing without any explanation of its nature in the application instructions. It could be mistaken as a prepayment for the next license renewal. The charge actually is an additional license fee on new licensees; therefore, it should be included in the license fee category (currently \$100) in the application instructions to avoid unnecessary confusion.

Recording of temporary-license issuance is inadequate

The department mails a temporary “license” to all successful applicants that they can use until an official pocket ID is printed and mailed to them. However, we found that the application clerk handling social worker “license” applications does not consistently record the date the temporary “license” was mailed.

This is an inadequate record-keeping practice. Adequate documentation and recording of transactions and events is one of the key elements for

establishing a good internal control structure within an organization. A cause of the problem is that the department has a general procedural manual, but no clear written procedures on documentation.

Because no information regarding the mailing date is inputted into the computer data base used by the department's Application and Records Branch, there is no way to verify that date upon the applicant's inquiry, unless the clerk documented it by some other means.

Conclusion

Occupational regulation should be undertaken only when necessary to protect the health, safety, and welfare of consumers. While clients of social workers may sometimes be vulnerable, we found little evidence of harm in Hawaii to warrant regulation of this occupation. The benefits of regulation are uncertain, and other protections are in place. Certain costs associated with regulation pose problems.

If regulation of social workers is continued, statutory amendments in the scope of practice, exemptions, licensing requirements, and grounds for enforcement may be appropriate. Administrative rules for one of the enforcement categories are also needed.

Also, if regulation is continued, the Department of Commerce and Consumer Affairs should improve the regulatory program's operations. Areas of concern include tracking disciplinary actions, administering examinations, handling late license renewals, preparing licensing forms, and recording temporary licenses.

Recommendations

1. The Legislature should allow Chapter 467E, HRS, the social worker regulatory law, to be repealed as scheduled.
2. If regulation continues, the Legislature should amend Chapter 467E by:
 - a. Repealing Section 467E-6(1), the "licensing" exemption for overlapping professions;
 - b. Repealing Section 467E-6(2), the "licensing" exemption for government social workers;
 - c. Repealing Section 467E-9(b) that waives the usual examination requirements in the case of applicants who have passed the Academy of Certified Social Workers examination administered by the National Association of Social Workers prior to June 30, 1995;

- d. Adding a provision for “licensure” by reciprocity and endorsement; and
- e. Repealing Section 467E-12(7), which authorizes enforcement action against social workers “engaging in conduct or practice contrary to recognized standards of ethics for the social work profession.”

Note: Appendix A of this report contains draft legislation to implement the statutory recommendations listed above.

- 3. If regulation continues, the director of commerce and consumer affairs should:
 - a. Adopt administrative rules clarifying how the department will interpret “professional misconduct” in enforcement actions against social workers;
 - b. Ensure that a licensing clerk uses reports of the Disciplinary Action Reporting System of the American Association of State Social Work Boards to identify “license” applicants’ previous disciplinary actions;
 - c. More actively monitor the administration of the social worker “licensing” examination carried out by the department’s primary contractor, the American Association of State Social Work Boards;
 - d. Observe examinations periodically and give feedback to the association for improvement as needed in such areas as exam security, noise, and compliance with procedures for early arrivals and ID verification;
 - e. Review the proposed letter of agreement with the association to ensure adequate testing frequency and testing locations, and monitor compliance with the agreement;
 - f. Consider giving the examination on uniform dates previously set;
 - g. Amend Chapter 53, Hawaii Administrative Rules, to establish a suitable penalty fee for late renewals of the social worker “license,” and amend the renewal application form accordingly;
 - h. Revise the application form and instructions by clearly stating the statutory requirements on equivalency of accreditation, allowable examinations, and proportional renewal fees, and list the proportional renewal fees in the license fee category; and

- i. Establish clear written requirements for documentation of the “licensing” process, including how to document the date of issuance of temporary “licenses.”

Notes

Chapter 1

1. Hawaii, Legislative Auditor, *Sunrise Analysis of a Proposal to Regulate the Practice of Clinical Social Work*, Report No. 86-9, Honolulu, January 1986; and Hawaii, Legislative Auditor, *Sunrise Analysis Update of a Proposal to Regulate Social Workers*, Report No. 88-16, Honolulu, November 1988.
2. Hawaii, The Auditor, *Sunset Evaluation Report: Social Workers*, Report No. 91-16, Honolulu, November 1991.

Chapter 2

1. These reports include the following, all issued by our office:
 - Sunrise Analysis Update of a Proposal to Regulate Social Workers*, Report No. 88-16
 - Sunrise Analysis of a Proposal to Regulate Professional Counselors*, Report No. 88-17
 - Sunset Evaluation Report: Social Workers*, Report No. 91-16
 - Sunrise Analysis of a Proposal to Regulate Professional Counselors*, Report No. 92-23
 - Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists*, Report No. 95-26
 - Analysis of a Proposal to Expand the Regulation of Occupational Therapists*, Report No. 97-15
 - Sunrise Analysis of a Proposal to Regulate Professional Counselors and Professional Rehabilitation Counselors*, Report No. 99-21
2. Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, 2d ed., Lexington, Kentucky, The Council on Licensure, Enforcement and Regulation, 1994, p. 1.
3. Jim C. Fortune and David E. Hutchins, "Can Competence in Counseling and Psychotherapy Be Identified and Assured?" Resource Brief 94-2, The Council on Licensure, Enforcement and Regulation, Lexington, Kentucky, 1994, p. 3.

4. Fortune and Hutchins, p. 5.
5. Daniel B. Hogan, *The Regulation of Psychotherapists, Volume I, A Study in the Philosophy and Practice of Professional Regulation*, Cambridge, Massachusetts, Ballinger Publishing Company, 1979, p. 11.
6. Hawaii, Legislative Auditor, *Sunrise Analysis of a Proposal to Regulate the Practice of Clinical Social Work*, Report No. 86-9, Honolulu, January 1986, p. 20 (citing Hogan, *The Regulation of Psychotherapists, Volume I*, p. 160).
7. Hawaii, The Auditor, *Sunset Evaluation Report: Social Workers*, Report No. 91-16, Honolulu, November 1991, p. 10.
8. Hawaii, The Auditor, *Sunrise Analysis of a Proposal to Regulate Professional Mental Health Counselors and Professional Rehabilitation Counselors*, Report No. 99-21, Honolulu, 1999, p. 22.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on November 30, 1999. A copy of the transmittal letter to the department is included as Attachment 1. The response from the department is included as Attachment 2.

Concerning our recommendation that the Legislature allow Chapter 467E, HRS, the social worker regulatory law, to be repealed as scheduled, the department said it defers to the Legislature on this matter. The department also said that it generally supports “elimination of, or deregulation of licensing requirements when a need does not exist for government intervention and oversight.” The department agreed with most of our other recommendations.

The department disagreed with our recommendation that if regulation continues, the statutory “licensing” exemption for overlapping professions should be repealed. The department explained that it finds no problems with the interpretation and implementation of the existing exemption. Also, while finding merit in our position that the exemption is unnecessary, the department favored retaining the exemption, in an “abundance of caution.” However, we continue to recommend repealing the exemption because it is unclear and unnecessary.

Concerning our recommendation to add a statutory provision for “licensure” by reciprocity and endorsement, the department commented that in practice it currently licenses social workers by endorsement. In any event, we still favor incorporating endorsement and reciprocity into the law.

The department disagreed with our recommendation to repeal the statutory provision that authorizes enforcement action against social workers “engaging in conduct or practice contrary to recognized standards of ethics for the social work profession.” The department believes that repeal of the provision would remove the ability to discipline a licensee for “ethical” violations and that the concern with relying on private professional organizations’ ethical codes is outweighed by the benefit of having ethical guidelines in place and enforceable. Nevertheless, we stand by our recommendation, because the provision seems to incorporate into the social worker “licensing” law, the codes of ethics of outside professional organizations.

In addition, the department disagreed with our recommendation to adopt administrative rules clarifying how the department will interpret

“professional misconduct” in enforcement actions against social workers. The department opposes our conclusion that the phrase “professional misconduct” is too vague to use for enforcement. Moreover, the department argues that “professional misconduct” is the only violation that “goes to the heart of consumer protection and establishes an administrative remedy based on malfeasance in the course and scope of the profession.” The department also says that professional misconduct “must be interpreted broadly to allow discretion to determine the propriety of a wide range of conduct” and that rules may be counterproductive. Once again, however, we stand by our recommendation because we believe “professional misconduct” lacks sufficient specificity.

Agreeing with our findings on test administration, the department stated that the American Association of State Social Work Boards (through which the department administers the social worker “licensing” examination) also agreed and will be working to correct the problems. The department attached a response from the association (recently renamed the Association of Social Work Boards). The association emphasized that it is “committed to having a valid and reliable examination administered in a fair and secure manner, and will immediately take whatever steps it can to see that its policies are being upheld.”

To our published report we added Appendix A (containing draft legislation to implement Recommendation No. 2) and appropriate references to the appendix. We also made minor editorial changes for reasons of accuracy or style.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

November 30, 1999

COPY

The Honorable Kathryn S. Matayoshi, Director
Department of Commerce and Consumer Affairs
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Matayoshi:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Sunset Evaluation Report: Social Workers*. We ask that you telephone us by Thursday, December 2, 1999, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Thursday, December 30, 1999.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

BENJAMIN J. CAYETANO
GOVERNOR

MAZIE K. HIRONO
LT. GOVERNOR



KATHRYN S. MATAYOSHI
DIRECTOR

GILBERT S. COLOMA-AGARAN
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P.O. BOX 541
HONOLULU, HAWAII 96809

December 30, 1999

RECEIVED

DEC 30 1 59 PM '99

OFFICE OF THE AUDITOR
STATE OF HAWAII

The Honorable Marion Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

The Department of Commerce and Consumer Affairs ("Department") would like to thank you for the thorough evaluation conducted by your office regarding the licensure of social workers. The Department also appreciates the opportunity to respond to the recommendations contained in the report, as follows:

1. *The Legislature should allow Chapter 467E, HRS, the social worker regulatory law, to be repealed as scheduled.*

We defer to the Legislature on this matter, but generally support elimination of, or deregulation of licensing requirements when a need does not exist for government intervention and oversight.

2. *If regulation continues, the Legislature should amend Chapter 467E by:*

- a. *Repealing Section 467E-6(1), the "licensing" exemption for overlapping professions;*

Reasons given for such repeal were that the provision was unclear and therefore difficult to implement. We disagree with this, finding no problems with the interpretation and implementation of said provision. With respect to the determination the provision is unnecessary, there is merit to this position however, in the abundance of caution that there be no misinterpretation, the exclusion was statutorily provided. We would seek retention of this exemption.

- b. *Repealing Section 467E-6(2), the "licensing" exemption for government social workers;*

The Department has always maintained that all those to be regulated, be regulated uniformly and consistently. While this recommendation may be opposed by other government agencies, we do agree with it as it implements regulatory policy.

- c. *Repealing Section 467E-9(b) that waives the usual examination requirements in the case of applicants who have passed the Academy of Certified Social Workers examination administered by the National Association of Social Workers prior to June 30, 1995;*

The Department agrees with this recommendation for the same reasons as noted in "b" above.

- d. *Adding a provision for "licensure" by reciprocity and endorsement;*

The Department would like to clarify that in practice, we do currently license social workers by endorsement. The Department allows applicants to submit official passing scores on the AASSWB examination if it was taken in another state. With regard to allowing licensure by reciprocity, the Department feels if reciprocity is created, the law should require that the reciprocal state have similar or higher licensing requirements than Hawaii's.

- e. *Repealing Section 467E-12(7), which authorizes enforcement action against social workers "engaging in conduct or practice contrary to recognized standards of ethics for the social work profession."*

The Department does not agree with this recommendation because it will completely remove the ability to discipline a licensee for "ethical" violations. While the report cites that the AASSWB is doubtful of such a provision, it is our opinion it is only with respect to their view that a regulatory model should be distinct and separate from private professional organizations in order to avoid the appearance of protectionism, NOT that ethics should not be grounds for discipline. In fact, AASSWB strongly asserts that social worker applicants and licensees be held accountable for committing "ethical violations" and that each jurisdiction must have the ability to discipline licensees for ethical violations in the social work profession. The Department believes that the provision dealing with ethics is sufficiently broad to accommodate a variety of ethical models. The inclusion of this provision helps RICO avoid the "is it professional misconduct or ethical misconduct" argument, since both are actionable. Removal of this provision would suggest that only certain types of professional lapses warrant discipline. The concern with reliance on private professional organizations ethical codes is outweighed by the benefit of having ethical guidelines in place and enforceable.

3. *If regulation continues, the director of commerce and consumer affairs should:*

- a. *Adopt administrative rules clarifying how the department will interpret "professional misconduct" in enforcement actions against social workers;*

Reasons given for this recommendation were that the phrase "professional misconduct" was too vague to use for enforcement. The Department disagrees. Upon examination of the list of violations, "professional misconduct" is the only one that goes to the heart of consumer protection

and establishes an administrative remedy based upon malfeasance in the course and scope of the profession. The other violations tend to be fairly narrow in scope and may or may not involve a client. The phrase must be interpreted broadly to allow discretion to determine the propriety of a wide range of conduct. Rules may be counterproductive to this purpose. Further, RICO's investigative review by an advisory committee member ensures that members of the profession have a hand in determining "professional misconduct" in a manner that is not unreasonable or vague.

- b. *Ensure that a licensing clerk uses reports of the Disciplinary Action Reporting System of the American Association of State Social Work Boards to identify "license" applicants' previous disciplinary actions;*

The Department agrees with this recommendation and has implemented such practice.

- c. *More actively monitor the administration of the social worker "licensing" examination carried out by the department's primary contractor, the American Association of State Social Work Boards;*

The Department agrees with this recommendation and will be more proactive in this area.

- d. *Observe examinations periodically and give feedback to the Association for improvement as needed in such areas as exam security, noise, and compliance with procedures for early arrivals and ID verification;*
e. *Review the proposed letter of agreement with the Association to ensure adequate testing frequency and testing locations, and monitor compliance with the agreement;*
f. *Consider giving the examination on uniform dates previously set;*

The Department agreed with the Auditor's findings on the test administration and discussed these findings with AASSWB. The AASSWB also agreed with the Auditor's findings and will be working with ACT and Sylvan to address and correct the problems so noted. Attached is the written response from the AASSWB which we wish to incorporate with our response.

With regard to the request that the Department review the "proposed letter of agreement" with AASSWB to ensure compliance with the agreement, we would like to clarify that the "proposed letter of agreement" was not implemented, since AASSWB and the Department did not agree to its contents. Since the "proposed letter of agreement" was not implemented the Department's 1995 contract is still in effect. The Department will monitor its 1995 contract with AASSWB to ensure compliance with the terms of this contract.

- g. *Amend Chapter 53, Hawaii Administrative Rules, to establish a suitable penalty fee for late renewals of the social worker "license," and amend the renewal application form accordingly;*

The Department agrees with this recommendation and, as noted in the report, is processing this through chapter 91 proceedings.

- h. Revise the application form and instructions by clearly stating the statutory requirements on equivalency of accreditation, allowable examination, and proportional renewal fees, and list the proportional renewal fees in the license fee category;*

The Department agrees with this recommendation and will revise these forms accordingly.

- i. Establish clear written requirements for documentation of the "licensing" process, including how to document the date of issuance of temporary "licenses."*

The Department would like to first clarify that it does not issue "temporary" licenses for social workers. The licensing clerk does issue a "provisional license" which is used by the applicant as an indication of licensure only until the permanent license indicia is received. The Department acknowledges that there has been inconsistent recordkeeping on the date the "provisional license" is mailed out. To implement your recommendation we have established a written policy and procedure for the licensing clerk to record (in the computer) the date that the "provisional license" is issued.

Once again thank you for the opportunity to review your report and for the ability to offer our comments.

Very truly yours,



Kathryn S. Matayoshi
Director

Attachment



Association of Social Work Boards

December 22, 1999

Board of Directors

President
Janice James, LCSW
Kentucky

Past President
Mae Gunnare, SW
South Dakota

Secretary
Bruce Buchanan, ACSW, LISW
Iowa

Treasurer
Patrick Wolberd, MSW, BCD
Montana

Directors-at-Large
Jinny Gender, BS Soc.
Missouri

Ammon P. Jenkins, ACSW, LSW
Oklahoma

Delfino Trujillo, MSW, LISW
New Mexico

Executive Director
Donna DeAngelis, ACSW, LICSW

Kathleen Hashimoto
Executive Officer
Social Worker Program
State of Hawaii
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

Dear Ms. Hashimoto:

We at the Association of Social Work Boards (ASWB) are very disturbed by the reports from your auditor's office about conditions at the Sylvan testing center in Kailua, Oahu. As you probably realize, the requirements ASWB has for its examinations, as stated in printed manuals on-site at the centers and in ongoing discussions with ACT and Sylvan officials, are certainly not being met in such a situation as the one described.

Our policies include the close monitoring as described in the report, requirements that scratch paper be collected, and a prohibition against visitors.

In the response to our recent survey of member boards about the level of satisfaction with examination services, Hawaii did list some problems with the center. Information about the survey, including the specifics of any complaints, was given to ACT. ACT has informed us this week that Sylvan is aware of the problem and will seek to improve the situation. ASWB has asked ACT for a timeline on any items that were flagged in the survey under the column "needs improvement."

The auditor's report was very accurate in its summary of the multi-tiered administration process for the examinations. Because we have found the operation cumbersome, our executive director, Donna DeAngelis, instituted a regular series of telephone conference calls with staff members from Sylvan, the National Association of Securities Dealers, and ACT. At the next such call, we will certainly have the Kailua site as an agenda item, and in fact we have already had some discussion with ACT about it, with the understanding that the information you provided is confidential.

RECEIVED
PROF & VOCATIONAL
LICENSING DIVISION
Dec 30 9 48 AM '99
DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

Hashimoto, Dec. 22, 1999, page 2

You probably also realize that Sylvan centers administer the majority of the large-scale computerized testing programs in the U.S. at this time. When ASWB was evaluating the proposals that came in as a result of its RFP several years ago, of the contractors that bid, only one company would have been able to administer the tests at locations other than Sylvan centers.

However, since then, the picture has changed, and competition is increasing. Our current contractor, ACT, is working with the international company EDS to set up its own testing and learning centers. By spring of 2001, ACT expects to have 250 sites in operation. By then, and probably earlier than that, ASWB will have its tests switched to the new ACT centers. Those new centers will have the photo-id capability that was referred to in the auditor's report, and security and other concerns will be much more subject to the control of ASWB. ACT has been very responsive to problems and questions that we have raised; the survey mentioned earlier found a very high level of satisfaction with ACT, even with the test administration. Certainly the association will have a much more direct line of communication with centers to ensure that policies are being met.

While ASWB does not expect to be using the Sylvan site in Hawaii long-term, it certainly finds the situation as described unacceptable, and will work with both ACT and Sylvan to improve it.

However, computer testing centers are generally located only where there are enough candidates in various testing programs to make them economically feasible. While ACT plans to use existing relationships with some colleges to set up facilities, there is certainly no guarantee that there will be more widely distributed centers in Hawaii. However, there are alternatives—ASWB has worked with Alaska to make periodic paper and pencil testing available at two additional locations to permit geographically-remote candidates to test without taking expensive trips by plane to Anchorage, the only Sylvan center in the state. The association would certainly be happy to begin discussions with Hawaii on doing something similar.

A number of Sylvan centers share the problem of bathrooms located outside the secure area. We have asked for and received information about this, and it is less than ideal. However, at least two candidates in other centers were identified by the staff as taking too many, and too lengthy, breaks. These people were stopped from taking the examination and investigations were done by the boards in those states.

Noise in a center is very rarely voiced as a candidate concern, but if such a complaint is reviewed and justified, as it occasionally is, a retest has been allowed without cost to the candidate. Again, the Kailua center location is a question that will be discussed on a conference call. I understand that the thrift store is no longer in operation, but the possibility of a new, equally incompatible neighboring business still exists. We will also be talking about the apparent laxity regarding photo-ids and testing times, and lack of adequate staff on site. Obviously security risks are of great concern to ASWB.

Hashimoto, Dec. 22, 1999, page 3

We agree with the department that your office, although new and no doubt strained to capacity, should encourage observation of the centers, especially as soon as some steps have been taken to make changes. In the states that have done such observations, information about individual centers has been forwarded to us, and we have used it to give specifics to ACT. Most experiences board members have had have been positive; a few concerns about waiting times for an appointment or noise potential have been raised, but generally observers have been pleased with the staffing, efficiency and atmosphere of the centers. Candidate surveys have rated the "atmosphere is conducive to test-taking" comment on the survey at the end of the examination very high, almost without exception.

The help of observers has always been an important part of the examination program, even before computerized testing began. Generally, volunteers go in and take the exam, without cost and of course not for a score; they then report back to the state and to the association.

Members of ASWB's staff have taken the exam simply to become familiar with the experience, and generally have been very favorably impressed with staff and conditions. Again, an occasional problem has been found and complaints registered.

On a more general level regarding repealing the law regulating social work, ASWB would urge that the universal nature of social work licensure be emphasized. There are currently close to 1,200 disciplinary actions listed in the ASWB Disciplinary Action Reporting System, against more than 900 social workers who might be looking for a place to practice where the formality of getting a license is not required. A state that has licensure, and that is a member of ASWB, can and should check all applications against that list, thus knowing any negative background of the applicant.

ASWB spends about \$1.5 million a year on its examination program. Computerized testing has been much in demand, and it has pushed the development of centers perhaps faster than has been good for the most consistent quality. While the association has complete control over the content of its exams, and works very hard to ensure their fairness and applicability to the tasks faced by on-the-job social workers, it has had to work within marketplace conditions for administration.

The ASWB examinations are minimum competency exams that offer protection of the public against incompetent practitioners. The DARS databank offers protection against unethical practitioners, or those who demonstrate the lack of the knowledge and skills needed to practice. Taking away those two levels of protection, however imperfect, does a disservice to those in need of social work services. Such individuals are often vulnerable and therefore in no position to protect or defend against possible abuse or exploitation.

Hashimoto, Dec. 22, 1999, page 4

In replying to this report, please also keep in mind the other benefits of having a licensure law—among them membership in ASWB and a national perspective on the profession and on ways of operating. The association acts as a forum for shared information, and can save boards money with such assistance as the model licensing act, legal opinions and publications.

But foremost, ASWB is committed to having a valid and reliable examination administered in a fair and secure manner, and will immediately take whatever steps it can to see that its policies are being upheld. Confidentiality will of course be strictly observed.

Sincerely,

A handwritten signature in blue ink that reads "Janice Fristad". The signature is written in a cursive style with a large loop at the beginning.

Janice Fristad, ACSW, LSW
Director of State Services

P.S. To avoid confusion with past and future references to our organization, please keep in mind that the name of the association was changed by vote of the Delegate Assembly in our Fall Meeting. The words "American" and "state" were taken out to make the name more inclusive, since ASWB has as members the District of Columbia, the Virgin Islands, and Alberta, Canada.

NO.

TWENTIETH LEGISLATURE, 2000
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO SOCIAL WORKERS.

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

1 SECTION 1. The legislature finds that the auditor evaluated
2 the regulation of social workers under chapter 467E, Hawaii
3 Revised Statutes, which is scheduled for repeal on December 31,
4 2000. In its sunset evaluation of social workers, the auditor
5 recommended that the social worker regulatory law be repealed as
6 scheduled. The auditor also made some statutory recommendations
7 to the social worker law if regulation should be continued.

8 The purpose of this Act is to implement the auditor's
9 statutory recommendations in the event of the continued
10 regulation of social workers under chapter 467E, Hawaii Revised
11 Statutes. Specifically, the purpose of this Act is to remove the
12 sunset of chapter 467E and to adopt changes relating to
13 reciprocity and endorsement, exemptions for overlapping
14 professions and public employees, examinations, and grounds for
15 license restrictions.

16 SECTION 2. Chapter 467E, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§467E- Reciprocity and endorsement. (a) The director

NO.

1 may enter into reciprocity agreements with other states and issue
2 a license to a social worker who has been licensed in that state;
3 provided the requirements for a license in the state in which the
4 applicant is licensed, are deemed by the director to be
5 equivalent to the requirements for a license in this State at the
6 date of the license.

7 (b) The director may also issue a license by endorsement by
8 honoring a passing score on the examination of the American
9 Association of State Social Work Boards; provided that the
10 applicant meets the other requirements under section 467E-7 and
11 the passing score is from the examination category that the other
12 state uses for its license."

13 SECTION 3. Section 26H-4, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§26H-4 Repeal dates for newly enacted professional and**
16 **vocational regulatory programs.** (a) Any professional or
17 vocational regulatory program enacted after January 1, 1994 and
18 listed in this section shall be repealed on the date indicated in
19 subsection (b). The auditor shall perform an evaluation of the
20 program, pursuant to section 26H-5, prior to its repeal date.

21 (b) [(1) Chapter 467E (social workers) shall be repealed
22 on December 31, 2000.

NO.

1 (2)] (1) Chapter 451J (marriage and family therapists)
2 shall be repealed on December 31, 2002.

3 [(3)] (2) Chapter 457G (occupational therapy practice) shall
4 be repealed on December 31, 2003."

5 SECTION 4. Section 467E-6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[[[§467E-6]]] **Exemptions.** Licensure shall not be required
8 of[:

9 (1) Any person doing work within the scope of practice or
10 duties of the person's profession that overlaps with
11 the practice of social work; provided the person does
12 not purport to be a social worker or licensed social
13 worker;

14 (2) Any person employed by a federal, state, or county
15 government agency in a social worker position but only
16 at those times when that person is carrying out the
17 duties and responsibilities as a social worker in
18 governmental employment; and

19 (3) Any] any student enrolled in an accredited educational
20 institution in a recognized program of study leading
21 toward attainment of a degree in social work; provided
22 that the student's activities and services are part of

NO.

1 a prescribed course of study supervised by the
2 educational institution, and the student is identified
3 by an appropriate title such as "social work student",
4 "social work intern", or any other title which clearly
5 indicates the student's training status."

6 SECTION 5. Section 467E-9, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~§~~467E-9] Examination for license. (a) Each
9 applicant for licensure shall take and pass a written national
10 examination administered by the American Association of State
11 Social Work Boards in accordance with procedures and standards
12 prescribed by the director.

13 [(b) Applicants who have passed the Academy of Certified
14 Social Workers examination administered by the National
15 Association of Social Workers prior to June 30, 1995, shall be
16 deemed to have satisfied the requirements of this section.

17 (c) (b) The examination fee shall be paid by the applicant
18 directly to the American Association of State Social Work
19 Boards."

20 SECTION 6. Section 467E-12, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

22 "(a) In addition to any other acts or conditions provided

NO.

1 by law, the director may refuse to renew, reinstate, or restore,
2 or may deny, revoke, suspend, or condition in any manner any
3 license, or fine any exempt government employee for any one or
4 more of the following acts or conditions on the part of the
5 applicant, licensee, or exempt person:

- 6 (1) Failing to meet or maintain the conditions and
7 requirements necessary to qualify for the granting of a
8 license;
- 9 (2) Being addicted to, dependent on, or being a habitual
10 user of a narcotic, barbiturate, amphetamine,
11 hallucinogen, opium, or cocaine, or other drugs or
12 derivatives of a similar nature;
- 13 (3) Practicing the profession of social work while impaired
14 by alcohol, drugs, or mental instability;
- 15 (4) Procuring a social work license through fraud,
16 misrepresentation, or deceit;
- 17 (5) Aiding and abetting an unlicensed person to directly or
18 indirectly use the title "social worker" or "licensed
19 social worker";
- 20 (6) Engaging in professional misconduct, incompetence,
21 gross negligence, or manifest incapacity in the
22 practice of social work;

NO.

- 1 [(7)] Engaging in conduct or practice contrary to recognized
2 standards of ethics for the social work profession;
- 3 (8)] (7) Failing to comply, observe, or adhere to any law
4 in a manner such that the director deems the applicant
5 or holder to be an unfit or improper person to hold a
6 social work license;
- 7 [(9)] (8) Revocation, suspension, or other disciplinary
8 action by another state or federal agency against a
9 licensee or applicant for any reason provided by this
10 section;
- 11 [(10)] (9) Having a criminal conviction, whether by nolo
12 contendere or otherwise, of a crime directly related to
13 the qualifications, functions, or duties of the social
14 work profession;
- 15 [(11)] (10) Failing to report in writing to the director any
16 disciplinary decision issued against the licensee or
17 the applicant in another jurisdiction within thirty
18 days of the disciplinary decision;
- 19 [(12)] (11) Employing, utilizing, or attempting to employ or
20 utilize at any time any person not licensed under this
21 chapter who purports to be a social worker or licensed
22 social worker; or

NO.

1 [[13]] (12) Violating this chapter or any rules adopted
2 pursuant thereto."

3 SECTION 7. Statutory material to be repealed is bracketed.
4 New statutory material is underscored.

5 SECTION 8. This Act shall take effect upon its approval.

6

7

INTRODUCED BY: _____