
Sunrise Analysis: Athletic Trainers

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 10-08
October 2010



THE AUDITOR
STATE OF HAWAI'I

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. Financial audits attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. Sunrise analyses are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. Health insurance analyses examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. Analyses of proposed special funds and existing trust and revolving funds determine if proposals to establish these funds are existing funds meet legislative criteria.
7. Procurement compliance audits and other procurement-related monitoring assist the Legislature in overseeing government procurement practices.
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9. Special studies respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawai'i's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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OVERVIEW

Sunrise Analysis: Athletic Trainers

Report No. 10-08, October 2010

Summary

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

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

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

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

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



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

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

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

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

Recommendations and Response

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

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Conducted by

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Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No. 10-08
October 2010

Foreword

This “sunrise” report on the proposed regulation of athletic trainers was prepared in response to Act 108, Session Laws of Hawai‘i 2010, in which the Legislature requested an analysis of Senate Bill No. 2601, Senate Draft 1. The *Hawai‘i Regulatory Licensing Reform Act*, Chapter 26H, Hawai‘i Revised Statutes, requires the Auditor to evaluate proposals to regulate previously unregulated professions or vocations.

The evaluation was conducted by consultant Diana M. Chang and presents our findings and recommendation on whether the proposal is consistent with the policies in the licensing reform law and the probable effects of regulation.

We wish to express our appreciation to the Department of Commerce and Consumer Affairs, the Department of Education, the University of Hawai‘i, and other organizations and individuals that we contacted during the course of our evaluation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

This report on the proposed regulation of athletic trainers responds to a sunrise provision in the *Hawai'i Regulatory Licensing Reform Act*, Chapter 26H, Hawai'i Revised Statutes (HRS). Section 26H-6, HRS, requires that, prior to enactment, bills proposing regulation of previously unregulated professions or vocations be referred to the Auditor for analysis. The Auditor is to assess whether the proposed regulation is necessary to protect the health, safety, or welfare of consumers and is consistent with other regulatory policies in Section 26H-2, HRS. In addition, the Auditor must examine the probable effects of the proposed regulation and assess alternative forms of regulation.

Act 108, Session Laws of Hawai'i 2010, requires the Auditor to perform a sunrise analysis of the proposed regulation of athletic trainers set forth in Senate Bill No. 2601, Senate Draft 1, of the 2010 legislative session. The Auditor must also analyze, at a minimum, the issues entailed in the definition and scope of practice of an athletic trainer and make recommendations.

Background on Athletic Trainers

Athletic trainers are health care professionals who specialize in recognizing, preventing, managing, and rehabilitating *athletic-related* illnesses and injuries. The American Medical Association recognizes athletic trainers as “allied” health professionals. Athletic trainers work under the direction of a licensed physician and in cooperation with other health care professionals (e.g. physical therapists), athletics administrators, coaches, and parents. According to the National Athletic Trainers' Association (NATA), athletic trainers:

...[O]ptimize activity and participation of patients and clients. Athletic training encompasses the prevention, diagnosis, and intervention of emergency, acute, and chronic medical conditions involving impairment, functional limitations, and disabilities.

Athletic trainers are usually first at the scene to provide immediate care when injuries occur. They try to prevent injuries by teaching people how to reduce risk and use proper equipment, and exercises to improve balance and strength. They also apply protective or preventive devices such as tape bandages and braces. They should not be confused with personal or fitness trainers who are not health care professionals.

Places of employment

As of May 2009, the U.S. Bureau of Labor Statistics estimates that there were 15,260 athletic trainers working nationwide. The majority worked in sports settings at colleges and universities and elementary and secondary schools. Over the past decade, the traditional places of employment for athletic trainers have evolved from college, university and high school settings, to businesses linked to health care providers such as physical therapists. Today, about 40 percent of athletic trainers work in health care settings such as in clinics and hospitals. Others work in the performing arts, in professional sports, and with the military, law enforcement and government agencies.

The role of the National Athletic Trainers' Association

The National Athletic Trainers' Association, established in 1950, is the national membership organization for the profession. NATA's mission "is to enhance the quality of health care provided by certified athletic trainers and to advance the athletic training profession." It represents more than 30,000 members—the majority of all athletic trainers practicing in the United States.

The National Athletic Trainers' Association was instrumental in developing the athletic training education program. In the 1950s, NATA developed a model curriculum and a certification program as a means to professionalize the occupation. The curriculum emphasized having a secondary-level teaching credential due to the need for athletic trainers at secondary schools. Thus, the focus was on the athletic trainer both as an athletic trainer and a health and physical education teacher. Students were also encouraged to pursue studies in physical therapy. This early approach was basically similar to coursework in physical education with some advanced courses or practice in athletic training.

It was not until the late 1960s that NATA recognized the first undergraduate programs in athletic training at Indiana State University, Mankato State University, Lamar University, and the University of New Mexico. The first graduate programs were established at Indiana State University and the University of Arizona in 1972. The first certification examination was administered in 1970.

By the 1980s, NATA realized that athletic trainers needed a higher level of expertise and a more relevant educational base. The association proposed the concept of an academic major focusing solely on athletic training. The organization began developing the components of an academic major and published guidelines and standards for undergraduate programs in athletic training. By the end of the 1980s, NATA had succeeded in converting some of the undergraduate education *programs* to academic or equivalent *majors*.

In June 1990, the American Medical Association (AMA) formally approved athletic training as an allied health profession. The National Athletic Trainers' Association sought this recognition as a necessary step in gaining educational program accreditation by the AMA's Committee on Allied Health Education and Accreditation (CAHEA). In 1991, the AMA approved NATA's *Essentials and Guidelines for an Accredited Educational Program for the Athletic Trainer*. In 1994, CAHEA accredited the first two entry-level athletic training programs. (Committee on Allied Health Education and Accreditation has been replaced by the independent Commission on Accreditation of Allied Health Education Programs.)

Educational requirements for certification

To become a certified athletic trainer, applicants must earn a bachelor's degree from a professional athletic training program accredited by the Commission on Accreditation of Athletic Training Education (CAATE). The NATA-defined educational content of accredited athletic training education programs includes courses in human physiology, human anatomy, exercise physiology, kinesiology/biomechanics, nutrition, acute care of injury and illness, statistics and research design, and strength training and reconditioning. Classroom learning is enhanced through clinical education experiences.

About 70 percent of certified athletic trainers have a master's degree or higher advanced degree. Master's degrees may be in athletic training (clinical), wellness and health promotion, education, exercise physiology, counseling, or health care administration.

Board of Certification, Inc.

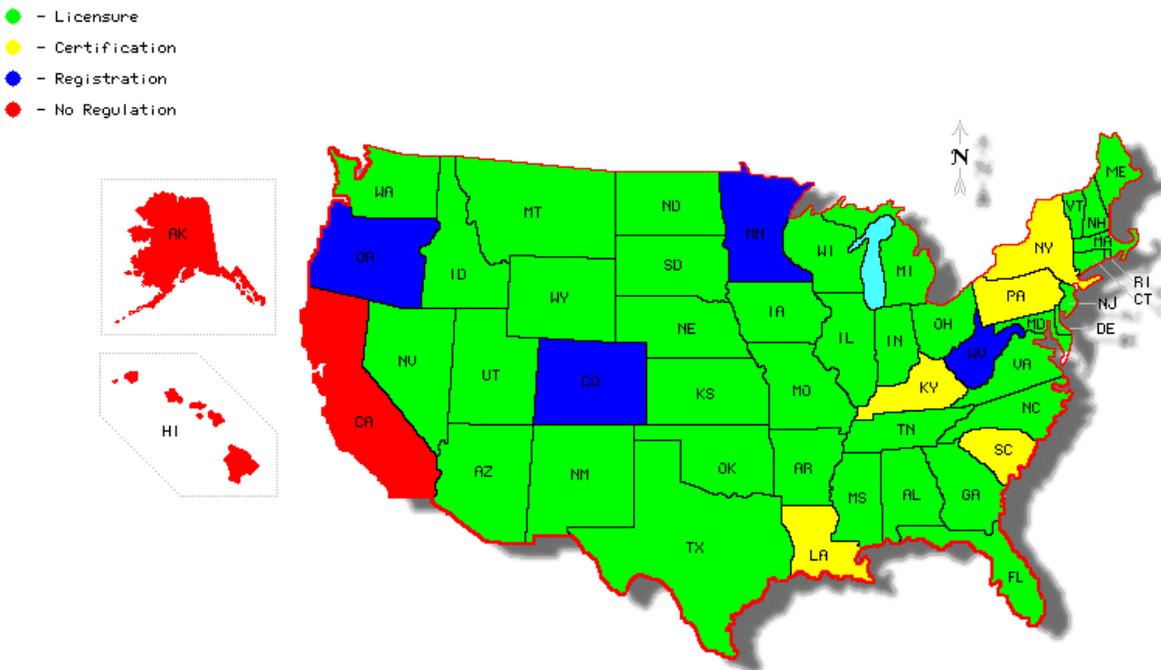
The Board of Certification, Inc. (BOC) has been accredited by the National Commission for Certifying Agencies as the certifying body for athletic trainers in the United States. Applicants for certification must pass a board certified examination to earn the title of certified athletic trainer. To be eligible for the examination, applicants must graduate from a CAATE-accredited program. In order to retain certification, credential holders must complete 75 hours of medically related continuing education credits every three years and adhere to Standards of Professional Practice.

The BOC is also responsible for the oversight and adjudication of the BOC Professional Practice and Discipline Guidelines and Procedures and the BOC Standards of Professional Practice. The BOC's Professional Practice and Discipline Committee investigates and decides cases involving alleged violations of these standards and imposes sanctions as appropriate. The BOC may discipline certified trainers by placing them on probation or revoking their certification or suspending or censuring them.

Regulation in other states

Currently 47 states have regulatory programs for athletic trainers. Hawai'i, California, and Alaska have no statutes that recognize athletic trainers as health care professionals similar to physical therapists and occupational therapists. In Hawai'i, athletic trainers are exempt from regulation under the *Physical Therapy Practice Act*. Exhibit 1.1 shows the various regulatory programs by state.

**Exhibit 1.1
Regulation of Athletic Trainers by State**



Source: National Athletics Trainers' Association

According to NATA's data, four states have registration programs, five states have certification programs, and the remainder has licensing programs. However, this categorization is misleading. Whether NATA classifies a state as having registration, certification, or licensing is based solely on what each state legislature chooses to name the regulatory program. The categorization has little to do with the actual regulations

created. The National Athletic Trainers' Association has not developed model legislation for regulating athletic trainers and the regulatory programs vary widely.

For example, South Carolina, Kentucky, and New York each have certification programs. Certification in South Carolina permits the use of the title "athletic trainer" only to those who have been issued certificates by the Department of Health and Environmental Control after it has determined that applicants have met the appropriate qualifications. Although the statute contains no grounds for discipline, the department has the power to deny, suspend, or revoke a certificate.

Kentucky also has what is categorized as a certification program, but it is really a licensing program. It defines athletic trainers as persons with specific qualifications practicing only in areas in which they are deemed competent. Applicants must be certified by the Kentucky Board of Medical Licensure before they can hold themselves out as athletic trainers or perform the activities of an athletic trainer. The law contains a long list of services prohibited to athletic trainers including prohibitions against spinal or pelvic manipulations, dispensing of medications to minor athletes, performing invasive procedures, or seeking reimbursement from the federal government for physical or occupational therapy services or chiropractic services. The law also provides extensive grounds for discipline and sanctions the board can take including license revocation and denial and fines up to \$5,000 per violation.

Certification in New York is primarily a title protection act whereby applicants can be certified by filing an application, paying the appropriate fees, and having a certification by a certifying body acceptable to the New York State Education Department. The law has no grounds for discipline or requirements for the department to verify the information presented.

Insurance coverage for Athletic Training Services

The National Athletic Trainers' Association is pursuing enactment of the Athletic Trainers Equal Access to Medicare Act of 2009 in Congress. The bill would amend the Social Security Act to provide increased access to physical medicine and rehabilitation services by athletic trainers under Part B of the Medicare program. The National Athletic Trainers' Association is seeking to make athletic trainers covered providers under Medicare so that they become fully recognized health care providers by the Centers for Medicare and Medicaid Services (CMS). The CMS has defined "quality therapy providers" who would be reimbursable to be physical therapists, occupational therapists, or speech language pathologists. Under the bill, NATA would add certified athletic trainer services to the reimbursable services performed under the supervision of a physician.

Currently, insurance coverage for athletic training is limited, but, depending on the state, may be available from a third-party payer (other than Medicare) when the athletic trainer is working under the direction of a physician or physical therapist. These third-party payers would include health maintenance organizations, preferred provider plans, traditional insurance programs, and others.

Senate Bill No. 2601, Senate Draft 1

Senate Bill No. 2601, Senate Draft 1, proposes to regulate athletic trainers by offering them title protection. It provides that no one may represent, advertise, or announce oneself either publicly or privately as an athletic trainer or registered athletic trainer unless the person has been registered by the Department of Commerce and Consumer Affairs (DCCA). To be registered, athletic trainers must have a current certification issued by the NATA BOC. Athletic trainers registered by the DCCA may then engage in the practice of athletic training, defined as the principles and methods of:

- Preventing athletic injuries;
- Recognizing, evaluating, and assessing athletic injuries and conditions;
- Providing immediate care of athletic injuries, including common emergency medical situations;
- Rehabilitating and reconditioning athletic injuries;
- Administering athletic training services and organization; and
- Educating athletes.

Impetus for the proposed regulation

The National Athletic Trainers' Association is aggressively pursuing regulation in the three remaining states that do not regulate athletic trainers. It has succeeded in enacting regulation in 15 states since 2000.

The Hawaii Athletic Trainers Association testified in support of regulation. The association said that registration would ensure that Hawai'i's athletic population would receive specialized emergency care and appropriate treatment and rehabilitation before being returned to play. Registration would ensure minimum competency in the profession by verifying the educational and certification requirements of the BOC. Moreover, no agency currently monitors whether certified athletic trainers remain in good standing or can receive and investigate complaints against athletic trainers.

Testimony from therapy associations

The Hawaii Chapter of the American Physical Therapy Association (HAPTA) and the Occupational Therapy Association of Hawaii both

avored a sunrise analysis but raised concerns on the proposal to regulate athletic trainers.

The practice of athletic trainers overlaps with that of physical therapists and occupational therapists. Physical therapists are licensed under Chapter 461J, HRS, entitled the *Physical Therapy Practice Act*. Currently, the act exempts certified athletic trainers from regulation provided they do not claim to be performing physical therapy and limit their services to regularly enrolled students in institutionally sponsored athletic events. The law allows physical therapists to examine, treat, and instruct patients to detect, assess, prevent, correct, alleviate, and limit physical disabilities, bodily malfunctions, pain from injury, disease, and any other physical or mental condition, provided that the treatment does not contravene that prescribed by a physician or osteopath.

The HAPTA president stated that the education and training of athletic trainers prepare them to treat a very specific population of healthy athletes that does not extend to a broader range of services beyond preventing and treating sports injuries. She noted that the NATA was seeking to treat Medicare patients by introducing a bill in Congress for Medicare reimbursement of athletic training services. She also testified that the association had reached an agreement with the Hawaii Athletic Trainers Association on a definition of “athletic injury” and also pointed out that the term “athlete” should be defined in the bill to protect consumers against athletic trainers who might over-reach their education and training. Moreover, she recommended that the bill be amended to state clearly that the practice of athletic training does not include the practice of physical therapy.

The Occupational Therapy Association of Hawaii had similar concerns. Like the physical therapists, the association noted that it was important to preserve the definitions of “athlete” and “athletic injury” in any legislation, as the education and training of athletic trainers does not extend to patients with chronic or systemic health problems.

Objectives

1. Determine whether a reasonable need exists to regulate athletic trainers.
2. Assess the probable effects of regulation on athletic trainers and the public.
3. Make recommendations based on the findings.

Scope and Methodology

To assess the need to regulate athletic trainers as proposed in Senate Bill No. 2601, Senate Draft 1, we applied the criteria set forth in Section 26H-2, HRS, of the *Hawai'i Regulatory Licensing Reform Act*. The Legislature established these policies to ensure that regulation of an occupation occurs only when needed to protect consumers. Since regulation is an exercise of the State's police power, it should not be imposed lightly. Its primary purpose is not to benefit the occupation, which often seeks regulation for reasons that go beyond consumer protection. For example, members of a profession sometimes believe regulation will enhance their profession's status or reputation.

Regulatory policy in Hawai'i

Hawai'i's "sunrise" law requires the Auditor to assess new regulatory proposals that would subject unregulated professions and vocations to licensing or other regulatory controls against the regulation policies set forth in Section 26H-2, HRS. These policies clearly articulate that the primary purpose of such regulation is to protect consumers, stating that:

- The State should regulate only where it is reasonably necessary to protect consumers;
- Regulation should protect the health, safety, and welfare of consumers and not the occupation;
- Evidence of abuses by practitioners of the occupation 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 benefit 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 *Questions a Legislator Should Ask*, a publication of the national Council on Licensure, Enforcement and Regulation that stated that the primary guiding principle for legislators is whether the

unregulated occupation 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.

In assessing the need for regulation and the specific regulatory proposal, we placed the burden of proof on proponents of the measure to demonstrate the need for regulation. We evaluated their arguments and data against the above criteria. We examined the regulatory proposal and assessed whether the proponents provided sufficient evidence for regulation. In accordance with sunrise criteria, even if regulation *may* have *some* benefits, we recommend regulation only if it is *demonstrably* necessary to protect the public.

Types of regulation

As part of our analysis, we assessed the appropriateness of the specific regulatory approach put forth in the proposed legislation and the appropriateness of regulatory alternatives. The three approaches commonly taken to occupational regulation are:

- *Licensing* is the most restrictive form of occupational regulation and confers a legal right to practice to individuals who meet certain qualifications. Penalties may be imposed on those who practice without a license. Licensing laws usually authorize a board that includes members of the profession to establish and implement rules and standards of practice.
- *Certification* restricts the use of certain titles (for example, social worker) to persons who meet certain qualifications, but it does not bar others from offering such services without using the title. Certification is sometimes called title protection. Government certification should be distinguished from professional certification, or credentialing, by private organizations. For example, social workers may gain professional certification from the National Association of Social Workers.
- *Registration* is used when the threat to the public's health, safety or welfare is relatively small or when it is necessary to determine the impact of the operation of an occupation on the public. A registration law simply requires practitioners to register their details onto the State roster so the State can keep track of practitioners. Registration can be mandatory or voluntary.

To accomplish the objectives of our analysis, we reviewed the literature on athletic trainers, including their current scope of practice, their education, and regulation in other states. We examined regulatory statutes from the 47 other states that regulate athletic trainers and analyzed the various forms of regulations and their provisions.

We contacted staff at the NATA, the Board of Certification, Inc., the DCCA, the Department of Education, and the University of Hawai'i. We conducted interviews with staff of these departments and certified athletic trainers, physical therapists, occupational therapists, and physicians. We attempted to identify the costs and possible impacts of the proposed regulation.

The assessment was conducted from June 2010 to September 2010.

Chapter 2

Regulation of Athletic Trainers Is Not Warranted

We found no evidence of harm to consumers that would warrant licensing for athletic trainers. The primary purpose of Senate Bill No. 2601, Senate Draft 1, (S.B. No. 2601, S.D. 1) appears aimed at enhancing the profession and gaining reimbursement from insurers. The practice of athletic trainers does not meet the criteria for regulation in Chapter 26H, Hawai‘i Revised Statutes (HRS), the *Hawai‘i Regulatory Licensing Reform Act*. Moreover, the proposed bill has little relevance to its stated objectives of achieving appropriate care for Hawai‘i’s athletes or for providing a mechanism to report and remedy malpractice and ethical violations. Therefore, S.B. No. 2601, S.D.1, should not be enacted.

Summary of Findings

1. Regulation of athletic trainers is not reasonably necessary to protect the public under the sunrise criteria.
2. The regulatory program in Senate Bill No. 2601, Senate Draft 1, serves no public purpose.

Regulation of Athletic Trainers Does Not Meet Sunrise Criteria

Criteria set forth in Section 26H-2, HRS, state that the State should regulate only where reasonably necessary to protect the public. Evidence of abuse should be given great weight in determining whether regulation would be justified. Furthermore, regulation is solely for the purpose of protecting the health and welfare of consumers. We found no evidence of abuse that would justify regulating athletic trainers.

Certified athletic trainers in Hawai‘i

Currently, about 170 certified athletic trainers work in Hawai‘i. The largest employer is the State of Hawai‘i, primarily at secondary schools in the Department of Education (DOE). In the early 1990s, a group of school principals, athletic directors, coaches, certified athletic trainers, and others persuaded the 1993 Legislature to fund a pilot program to place certified athletic trainers in ten schools. The group had conducted two needs-assessment studies that demonstrated that the level of sports health care fell far below the accepted standard of care for students participating in high-risk activities. Although injuries were considered a normal byproduct of sports participation, the group believed that immediate treatment by qualified athletic health care specialists could reduce the incidence and severity of such injuries.

Today, all public and private secondary schools in Hawai‘i employ at least one certified athletic trainer. Athletic departments at universities and colleges also employ certified athletic trainers. In addition, they work in private physical therapy clinics and in the military. Some are private contractors who work part-time for private schools. The University of Hawai‘i, the DOE, and private schools and other employers all require applicants to be currently certified by the National Athletic Trainers’ Association (NATA) Board of Certification, Inc. (BOC).

When injuries occur, athletic trainers provide emergency care, treatment, and associated rehabilitation. They assess whether the student should be referred to a physician. Some schools, such as the University of Hawai‘i and the Kamehameha Schools, have full-time physicians on staff. Others generally use physicians who volunteer at various events. Athletic trainers work under the direct supervision of physicians, which generally means using written protocols or guidelines for treating specific types of injuries such as sprains rather than prescriptions or orders for individuals. Because of the number of sports and the lengths of the various seasons, athletic trainers say that it is impossible for them to cover all events. Instead, they try to attend the practices and games for high-risk sports such as football.

The Kinesiology and Rehabilitation Science Department at the University of Hawai‘i at Mānoa offers the only athletic training program in Hawai‘i accredited by the Commission on Accreditation of Athletic Training Education. The mission of the graduate-level program is to prepare students for the NATA BOC certification. Students receive a master of science degree. The department also offers undergraduate degrees in physical education, health and exercise science, and post-baccalaureate degrees in physical education, counseling and guidance, and sports medicine exercise science.

No evidence of harm in Hawai‘i

The Department of Commerce and Consumer Affairs (DCCA) Office of Consumer Protection has no records of any complaints relating to athletic trainers. The Hawaii Athletic Trainers Association could provide only anecdotal evidence of harm in Hawai‘i. For example, a private school hired an individual to work as an athletic trainer who had not met the requirements for certification. When this information was brought to the attention of the private school, the individual was eventually let go. In another incident, a certified athletic trainer employed by the DOE had been found guilty of shoplifting and in possession of alcohol in the training room. In a third incident, a massage therapist, hired by a private school as a part-time athletic trainer, lied about taking classes in athletic training. In each instance, there was no evidence that these individuals caused any harm to those under their care while practicing as athletic trainers.

Hawai‘i’s athletes need care

We believe that athletic trainers should not be regulated, but this does not imply that their services are not essential to preventing, treating, and educating Hawai‘i’s athletes who need immediate and appropriate care when participating in sports activities. Athletic trainers perform a valuable service by treating athletic injuries shortly after they are sustained. Data from the DOE show that, during the 2009 school year, high school athletes sustained more than 25,000 injuries. Most of the injuries were related to the knee and ankle and were treated by taping and icing. However, 1,439 or 5.7 percent were sufficiently serious to be classified as “severe.” Of these, 676 involved injuries to the head, 349 of which were concussions. It is clear that athletic trainers are providing an important service to Hawai‘i’s youth.

Public is protected by other means

Many other protections are in place to ensure that athletes receive appropriate care. The majority of athletic trainers work in the DOE’s secondary schools, which are required to have an athletic trainer on their staff. They do not practice independently. The remaining athletic trainers work in private schools, universities, and colleges. All of these employers require their athletic trainers to be certified by the BOC—the independent credentialing body for the athletic training profession accredited by the National Commission for Certifying Agencies. Only a handful work in private physical therapy clinics under the supervision of physical therapists. In addition, athletic trainers are supposed to work under the direction of a physician and follow protocols prescribed by physicians. They do not order tests or prescribe medication.

In Hawai‘i, employers require athletic trainers to be certified or on the path to being certified by the BOC. Certification assures that athletic trainers practicing in Hawai‘i are appropriately qualified. Athletic trainers gain professional qualifications after: 1) graduating from a bachelor’s or master’s academic program accredited by the Commission on Accreditation of Athletic Training Education; and 2) passing an exam administered by the BOC. All athletic trainers currently practicing in Hawai‘i are either certified or working toward certification. The certification process is rigorous. In addition to passing the BOC exam, certified athletic trainers must obtain 75 hours of medically related continuing education credits every three years and adhere to Standards of Professional Practice to retain certification.

The BOC also has Practice Standards and a Code of Professional Responsibility. The practice standards establish the duties and obligations imposed by the credential and aim to help the public understand what to expect of an athletic trainer. The code mandates that athletic trainers act in a professionally responsible manner in all athletic training activities. The BOC’s Professional Practice and Discipline Committee is responsible for the oversight and adjudication of violations

to the practice and code. The BOC may discipline, revoke, or take other actions against an athletic trainer. The BOC *Professional Practice and Discipline Guidelines and Procedures* manual provides that once the ATC® certification mark is terminated, the athletic trainer may not:

- Represent him or herself to the public as a practicing certified athletic trainer or use the certification marks “ATC®” or “C.A.T.” following his or her name; or
- Serve as an examiner for the BOC exam; or
- Serve as a supervisor of students who are satisfying the athletic training requirements for certification eligibility.

It is easy for employers to check whether applicants have the appropriate qualifications. The BOC offers online verification of whether an athletic trainer is active and in good standing, or under investigation, inactive, delinquent, under disciplinary suspension, or has had the certification permanently revoked.

The BOC reports that it had processed about 960 cases nationwide between January 2005 and March 2010. Half of these were administrative cases of athletic trainers who did not complete their continuing education requirement or failed to adhere to eligibility requirements. The BOC reports very few complaints. However, it has come across some cases of athletic trainers who have been convicted of child pornography, inappropriate sexual relationships or communication with a minor, insurance fraud, and dispensing medication inappropriately. Whenever the BOC revokes or suspends a license, it notifies the appropriate state regulatory agency and relies on that state’s authority to prevent the individual from practicing.

The National Athletic Trainers’ Association also has an investigatory panel through which it enforces its Code of Ethics.

Reimbursements are not a justification for regulation

Proponents of regulation for athletic trainers have shown that the primary purpose of regulation is to obtain recognition as reimbursable allied health professionals by third-party payers. Proponents have not shown that regulation of athletic trainers is necessary to protect the public.

Insurance reimbursements for athletic training services are a priority for NATA—the international professional membership association for athletic trainers. Members are offered a “Legislative Toolkit” that outlines the basis for political action. It notes that licensure is the

first key step to successful reimbursement from third-party payers. A large number of these payers will only consider *licensed* health care professionals as reimbursable entities.

The National Athletic Trainers' Association's mission is to enhance the quality of health care provided by certified athletic trainers and to advance the athletic training profession. It is aggressively pursuing efforts to gain licensure and to update outdated licensure laws in the states. Its governmental affairs section constantly monitors trends in reimbursement and state practice acts, developing model legislative language to level the reimbursement playing field by prohibiting third-party payers from discriminating based on provider. For example, NATA noted that Vermont had recently passed a bill to prohibit insurers from denying reimbursements to licensed athletic trainers for services for which it would reimburse another health care provider.

The National Athletic Trainers' Association has published a manual for its members on how athletic trainers should approach third-party payers. It advises athletic trainers that they can be reimbursed under the American Medical Association's Current Procedural Terminology (CPT) codes that are universal descriptions of services rendered and the level of reimbursement for the care provided. The Centers for Medicare and Medicaid Services require CPT coding. Virtually all third-party payers recognize them. Athletic trainers may use these codes for office visits or consultations in states where they are licensed. The manual offers a strategy and suggestions on how to determine costs, the range of fees that could be billed, and the documentation that should be available.

**Cost for registrants
would be high**

The sunrise law requires that fees charged by the DCCA must not be less than the full costs of administering the regulatory program. According to the department, the costs for the proposed registration program would be \$45,328 annually. This translates to an initial registration fee of \$267 for the approximately 170 certified athletic trainers working in Hawai'i and \$192 for the renewal fee every three years. The department says that the costs would change depending on the form of regulation. *Registration*, the simplest form currently being proposed under the bill, would be \$267. Under a *certification* program, where the department would be required to verify the certification, the cost per applicant would be \$471. Finally, the cost of a *licensing* program would increase the cost per applicant to \$1,012.

The Regulatory Program in Senate Bill No. 2601, Senate Draft 1, Serves No Public Purpose

According to Act 108 (Session Laws of Hawai‘i 2010), the regulation of athletic trainers is supposed to accomplish three public protection purposes:

1. Ensure that Hawai‘i’s athletes receive specialized emergency care and appropriate treatment and rehabilitation and meet appropriate criteria before returning to play;
2. Require demonstration of minimum competency in the profession; and
3. Provide a mechanism to report and remedy malpractice and ethical violations.

In addition, in testimony in support of S.B. No. 2601, S.D. 1, athletic trainers stated that regulation is needed because Hawai‘i currently has no mechanism under which ethical or incompetent athletic trainers can be sanctioned or prevented from practicing. They say that this is particularly important because athletic trainers work with children. They note that there have been incidences where athletic trainers may have engaged in inappropriate behaviors with young children.

The provisions in S.B. No. 2601, S.D. 1, do not carry out the stated objectives of regulating athletic trainers. Definitions are vague, minimum competency is not ensured, and no mechanisms are created to report and remedy malpractice or ethical violations. The thrust of the proposed regulatory program is directed at advancing the profession and gaining recognition from insurers for reimbursement and not at consumer protection.

Proposed regulatory program is confusing

Senate Bill No. 2601, Senate Draft 1, is a confusing mix of registration and certification that is further muddled by language stating that it is creating *licensure* for athletic trainers. The bill’s title in Section -1 is the “Athletic Trainer Registration Act.” It calls on athletic trainers to register their certification and restricts the use of the title of *Certified Athletic Trainer*. However, the Department of Commerce and Consumer Affairs is merely responsible for maintaining a public registry of those who have submitted information on their BOC certification. Usually, regulation by certification entails the issuance of a certificate by a government agency once the agency has deemed that the applicant has met certain minimum qualifications. A certification program is not one in which applicants merely present a certification from a private entity such as the BOC.

The reason for further confusing the proposed registration program with licensure appears to be related to the issue of reimbursement. Section -6 of S.B. No. 2601, S.D. 1, states that an athletic trainer who is registered shall be regarded as an athletic trainer who holds a *license* within the meaning of Section 436B-2, HRS, to practice the profession of athletic training. Identical language is found in Section 457G-1.5(d), HRS, relating to the practice of occupational therapy and has made enforcement more complicated for DCCA. Section 436B-2, HRS, defines license as:

[P]ermission to engage in a profession ... granted by the applicable licensing authority to a person who has satisfied every requirement for licensure, and shall include any registration, certificate, or other document issued by the licensing authority reflecting proof of permission.

Licensure is the most restrictive form of regulation whereby the state issues a license that confirms that only licensees may practice in a well-defined scope of work. That scope of work would generally be guided by rules and standards of practice and enforced by the DCCA. The bill is clearly not authorizing a licensing program.

The bill will not ensure appropriate treatment and rehabilitation

Senate Bill No. 2601, Senate Draft 1, merely restricts the *use* of the *title* of “athletic trainer” to those who have been certified by the BOC. It does not restrict the *practice* to certified athletic trainers. Consequently, the proposed program offers no assurance that Hawai‘i’s athletes would receive specialized emergency care and appropriate treatment and rehabilitation.

The bill would not prevent those who do not call themselves athletic trainers from treating sports injuries. For example, an athletic trainer complained that some of his student athletes were going to a Hawaiian healer when they got injured. He did not feel that they were receiving the appropriate care. However, the bill would not prevent this from occurring since the bill is solely a title protection measure. It would not prevent unqualified persons from practicing athletic training; it would only prevent them from calling themselves certified athletic trainers or athletic trainers while performing those activities.

Definitions are broad and unclear

Some provisions have created concerns about overlapping practices and their enforceability. Section -2 of S.B. No. 2601, S.D. 1, defines practice of athletic training to include the prevention, assessment, and immediate care of athletic injuries and their rehabilitation and reconditioning. Athletic injuries, in turn, are defined as injuries that affect the preparation for or participation in organized sports or sports-related activities, amateur, or recreational sports involving competition or performance arts

including interscholastic, intercollegiate, intramural, semiprofessional, or professional sports. These broad definitions have raised concerns among physical therapists and occupational therapists because they fear that athletic trainers could practice in areas beyond their training and expertise. One therapist quipped that the definition would cover anyone who moves. Physical therapists and occupational therapists believe that while athletic trainers play an important role in emergency treatment of sports injuries, they are not trained to work with chronic conditions or other health problems.

Athletic trainers must work under the supervision of a directing physician, or surgeon licensed under Chapter 453, HRS, either through written or verbal service plans or protocols. However, the role of the treating physician is unclear. As defined in Section -2 of S.B. No. 2601, S.D.1, the “directing physician” is responsible for services provided by the athletic trainer and for overseeing the practice of the athletic trainer established by rule. It also states that the duties of a directing physician are to supervise an athletic trainer either by verbal order when in the presence of an athletic trainer or by written order or written service plans and protocols when not present. It is unclear what the term “oversees” encompasses. Since this is not a statute for physicians, the Department of Commerce and Consumer Affairs questions whether the provision is enforceable.

Minimum competency is not ensured

Senate Bill No. 2601, Senate Draft 1, would not ensure the competency of those who register with the DCCA as certified athletic trainers. It creates a registration program whereby athletic trainers would submit a current and unencumbered BOC certificate to the Department of Commerce and Consumer Affairs. The department is then to maintain a public registry of these names. The department is not required to verify that these certificates are current or valid nor is the department required to issue a certificate or license. The department merely maintains a list of current registrants. In addition, the department does not have the power to sanction or remove the registration should the submission prove to be false or in error. In addition, athletic trainers are allowed three years before they have to renew their certificates. During this time, a registrant’s certificate could lapse and no one would know. The bill has no provision for the department to investigate complaints or pursue other enforcement actions. It does not require those registered to report any misstatement or omission of fact or disciplinary actions taken against the registrant by the BOC or any other jurisdiction.

Regulation would not remedy malpractice or ethical violations

Absent a mechanism for disciplinary action against athletic trainers, the public is not protected from incompetent, unscrupulous, and unethical athletic trainers. Senate Bill No. 2601, Senate Draft 1, contains no

grounds for discipline and no mechanism for taking disciplinary action for acts such as gross negligence, professional misconduct, illegal use of drugs or intoxicating liquors, sexual misconduct or other violations. In addition, the bill has no provisions for the DCCA director to revoke, suspend or restrict the registration of any athletic trainer.

Conclusion

Our analysis shows that Senate Bill No. 2601, Senate Draft 1 of the 2010 legislative session does not meet criteria for new regulation in the *Hawai'i Regulatory Licensing Reform Act*. We found no evidence of harm to the public that would warrant the licensing of athletic trainers. In addition, the bill's serious flaws create a confusing regulatory program that fails to meet the objectives of ensuring specialized emergency and appropriate treatment and rehabilitation, and providing a mechanism to report and remedy malpractice and ethical violations.

Recommendation

Senate Bill No. 2601, Senate Draft 1 of the 2010 legislative session should not be enacted.

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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 October 13, 2010. A copy of the transmittal letter to the department is included as Attachment 1. The response of the department is included as Attachment 2.

The department agreed with our report findings that regulation of athletic trainers is not warranted as set forth in Senate Bill No. 2601, Senate Draft 1.

ATTACHMENT 1

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



MARION M. HIGA
State Auditor

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

October 13, 2010

COPY

The Honorable Ronald Boyer, Director
Department of Commerce and Consumer Affairs
King Kalākaua Building
335 Merchant Street
Honolulu, Hawaii'i 96813

Dear Mr. Boyer:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Sunrise Analysis: Athletic Trainers*. We ask that you telephone us by Friday, October 15, 2010, 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, October 21, 2010.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this confidential 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,

A handwritten signature in black ink, appearing to read "Marion M. Higa". The signature is written in a cursive style.

Marion M. Higa
State Auditor

Enclosures

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR



RONALD BOYER
DIRECTOR

CELIA C. SUZUKI
ACTING LICENSING ADMINISTRATOR

STATE OF HAWAII
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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HONOLULU, HAWAII 96801
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October 14, 2010

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OFF. OF THE AUDITOR
STATE OF HAWAII

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

Dear Ms. Higa:

Thank you for the opportunity to comment on the draft report, **Sunrise Analysis: Athletic Trainers.**

We are in agreement with the findings in your report which concludes that the regulation of athletic trainers is not warranted, as set forth in Senate Bill No. 2601, Senate Draft 1 of the 2010 Legislature.

Very truly yours,

Ronald Boyer
Director

c: Celia Suzuki
Acting Licensing Administrator