

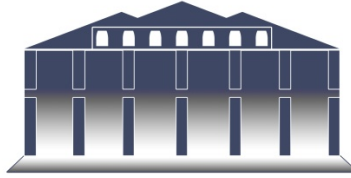
Occupational Licensing Agencies Should Not be Centralized, but Stronger Oversight is Needed



**Final Report to the Joint Legislative
Program Evaluation Oversight Committee**

Report Number 2014-15

December 17, 2014



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December 17, 2014

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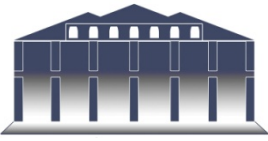
Session Law 2013-413 Section 10.(a) directed the Joint Legislative Program Evaluation Oversight Committee to include in the Program Evaluation Division work plan for 2013–2015 an evaluation of the structure, organization, and operation of the various independent occupational licensing boards as defined by G.S. 93B-1.

I am pleased to report that the occupational licensing agencies cooperated with us fully and were at all times courteous to our evaluators during the evaluation.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Turcotte".

John W. Turcotte
Director



PROGRAM EVALUATION DIVISION

NORTH CAROLINA GENERAL ASSEMBLY

December 2014

Report No. 2014-15

Occupational Licensing Agencies Should Not be Centralized, but Stronger Oversight is Needed

Summary

As required by Session Law 2013-413, Section 10.(a), the Program Evaluation Division (PED) examined the structure, organization, and operation of the State's various independent occupational licensure boards as defined by G.S. 93B-1. PED identified 55 occupational licensing agencies (OLAs) with occupational licensing boards that met this statutory definition. **While OLAs are state agencies, they receive no state general revenue and are not subject to legislatively mandated spending restrictions.** In Fiscal Year 2013–14, these 55 OLAs expended \$67.2 million to regulate 703,870 licensees.

The General Assembly should not transfer regulatory authority or administrative responsibilities from OLAs to a central state agency. The transfer may not result in improved performance and would likely entail significant implementation costs to realize potential gains in efficiency.

There is insufficient state-level oversight to ensure OLAs are efficiently and effectively protecting the public. Occupational licensing is intended to help ensure the public is protected from severe physical or economic harm resulting from the associated activities of an occupation. Currently, there is no state-level entity responsible for ensuring OLA compliance with statutorily-mandated reporting requirements. Statutory requirements also do not ensure that OLAs provide reliable information to enable monitoring and evaluation of efficiency and effectiveness.

As identified in Appendix D, the General Assembly should review the authority of 12 OLAs to issue licenses and consider consolidating 10 individual OLAs with other regulatory entities.

To address these findings, the General Assembly should amend North Carolina General Statutes to:

- establish an Occupational Licensing Commission that would not function as a central licensing authority but would assist the General Assembly and OLAs in improving effectiveness and resolving disputes,
- ensure that the regulatory entities that are required to comply with the associated statutory requirements are clearly defined and listed,
- ensure the complaint process used by each OLA includes specified capabilities and attributes, and
- establish a legislative subcommittee to evaluate the continuing need for licensing authority for the 12 identified OLAs.

Purpose and Scope

Session Law 2013-413 Section 10.(a) directed the Joint Legislative Program Evaluation Oversight Committee (JLPEOC) to include in the Program Evaluation Division work plan for 2013–2015 an evaluation of the structure, organization, and operation of the various independent occupational licensing boards as defined by G.S. 93B-1.

The law required the division to include within the evaluation:

1. Consideration of the feasibility of establishing a single State agency to oversee the administration of all or some of the occupational licensing boards.
2. Determination of whether greater efficiency and cost effectiveness can be realized by combining the administrative functions of the boards while allowing the boards to continue performing regulatory functions.
3. Determination of whether the total number of boards should be reduced by combining and/or eliminating some boards.

G.S. 93B-1 defines a license as a license, certificate, or other evidence of qualification which an individual is required to obtain before they may engage in or represent themselves to be a member of a particular profession or occupation. The statute also defines an occupational licensing board as a board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession or occupation, and which is authorized to issue licenses; this definition does not include State agencies, staffed by full-time State employees, which as part of their regular functions may issue licenses.

The Program Evaluation Division collected data from several sources, including:

- review of laws governing the regulation and reporting requirements for occupational licensing agencies;
- queries of each of the occupational licensing agencies;
- interviews with representatives from 28 of the 55 occupational licensing agencies, as requested in their response to the query; and
- review of statutorily required annual financial and performance reports.

Background

The North Carolina General Assembly has enacted laws to regulate many of the occupations and professions that provide goods and services to its citizens. Regulation of occupations and professions is intended to accomplish the following objectives:

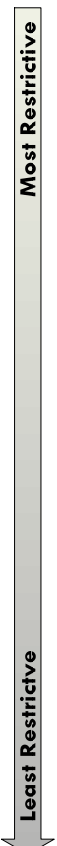
- ensure that the public is protected from unscrupulous, incompetent and unethical practitioners;
- offer some assurance to the public that the regulated individual is competent to provide certain services in a safe and effective manner; and
- provide a means by which individuals who fail to comply with the profession's standards can be disciplined.

The level of regulatory restriction of an occupation depends upon the perceived level of threat to the public of unregulated practice. Although a need to regulate may exist, the most restrictive forms of regulation may not be necessary to provide an acceptable level of protection. As shown in Exhibit 1, each of the three identified forms of occupational regulation are intended to help achieve the same objectives, but exercise varying levels of restriction on the ability of individuals to work in a given occupation. The determination of the most appropriate form of regulation for each occupation is generally based on the perceived threat to the public health, safety, and welfare.

- **Licensure.** Licensure is the most restrictive form of occupational regulation because it prohibits anyone from engaging in the activities covered by a "scope of practice" without permission from a government agency. Thus, the power to license can be used to deny individuals the legal opportunity to work in a chosen field if they do not have the requisite competencies defined through training and experience. Licensure is most often used when there is significant risk of harm to the public if the activities are performed by someone lacking the requisite competencies.
- **Certification.** Certification grants individuals the authority to use a protected occupational title while not defining the legal scope of practice allowed. Accordingly, individuals not certified may still practice in a given occupation, but they may not use the protected title. Certification is most often used when the public needs assistance in identifying competent practitioners, but where the risks to health and safety are not severe enough to justify licensure.
- **Registration.** Registration requires individuals who perform certain tasks to list their contact information with a designated government agency. As a general rule, registration statutes do not require the individual to meet specified standards or to pass a competence examination. Registration is often used when a threat to public health, safety, or welfare exists, but is relatively minimal in comparison to occupations requiring licensure or certification.

Exhibit 1

Occupational Regulation Can Be Achieved in Several Ways

| Level of Restriction | Form of Occupational Regulation | Risk to Public Welfare | Characteristics |
|--|---------------------------------|------------------------|---|
|  | Licensure (practice acts) | High | <ul style="list-style-type: none"> Prohibits anyone from engaging in the activities covered by a “scope of practice” without permission from a government agency Can be used to deny individuals the legal opportunity to earn livelihoods in their chosen fields |
| | Certification (title acts) | Moderate | <ul style="list-style-type: none"> Grants individuals the authority to use a protected occupational title but does not include a legal scope of practice Individuals not certified may practice but may not use the protected title |
| | Registration | Low | <ul style="list-style-type: none"> Requires individuals to list contact information with a designated government agency As a general rule, the associated statutes do not require the individual to meet predetermined standards or pass an examination |

Source: Program Evaluation Division.

North Carolina law requires licensure as a condition for working in many occupations and professions. The primary purpose of professional licensing is to ensure the public is protected from unskilled, incompetent, or unethical practitioners. To achieve this goal, the designated regulatory entity is responsible for ensuring qualified individuals enter the profession and adhere to established standards of professional conduct.

The regulation of licensed occupations is accomplished through the licensure and enforcement functions.

- **Licensure.** Licensure involves establishing minimum educational and/or experience requirements for prospective licensees and for continuing maintenance of licensed status and assessing fees to fund regulatory activities. The requirements for obtaining a license vary from occupation to occupation, but usually include some combination of the following:
 - prescribed formal education;
 - experience or apprenticeship;
 - an examination;
 - good moral character; and
 - citizenship or residency.

- **Enforcement.** A second major function of OLAs is enforcement of the occupation's laws, rules, and professional standards. Allegations of violations of associated laws, rules and professional standards are most often identified through complaints received from the public and other professionals. Potential violations may also be identified internally from evidence uncovered during inspections, complaint investigations, or self-disclosed information provided by licensees. OLAs are responsible for investigating these allegations and, depending on the outcome of the investigation, may act to suspend or revoke the license to practice or attach conditions to the right to practice.

In addition, administrative activities provide essential support services to ensure OLAs are cost-effectively achieving their objectives. Examples of key administrative activities include:

- **license application processing** – supports the licensure function by ensuring that the OLA has received all required information necessary to determine eligibility for licensure.
- **complaint intake** – supports the enforcement function by determining whether inquiries from external sources identify potential violations of laws and regulations that are within the jurisdictional authority to investigate and enforce, as defined by the associated practice act for the licensed occupation.

In North Carolina licensed occupations are administered under different organizational models. As shown in Exhibit 2, regulation of occupational licensure in North Carolina can be categorized into three organizational models. The three models identified below are characterized by differing levels of autonomy and centralization of regulatory authority.

Exhibit 2

In North Carolina,
Licensed Occupations are
Administered Under
Different Organizational
Models

| Organizational Model | Administrative Service Support | Regulatory Authority | Number of Regulatory Entities |
|--|-----------------------------------|------------------------------|-------------------------------|
| State-level agency regulatory authority | Central agency | Central agency director | 12 |
| State agency-housed occupational licensing board | Central agency | Occupational licensing board | 6 |
| Independent occupational licensing agency (OLA) | OLA staff and contracted services | OLA | 55 |

Source: Adapted from Benjamin Shimberg and Doug Roederer, with Kara Schmitt, ed., *Questions a Legislator Should Ask*, (Lexington, KY: The Council on Licensure, Enforcement and Regulation, 1989), 20-21.

State-level agency regulatory authority. All of the administrative and regulatory activities for the licensed occupation are performed by a central agency. In addition, the director of the central agency has final decision making authority on all substantive regulatory activities.

In North Carolina, many state-level agencies are responsible for regulating licensed occupations. State agencies are statutorily required to provide the Department of Commerce with the number of licenses issued during the

previous fiscal year.¹ Based on this information, the Department of Commerce identified 151 licensed occupations that are administered and regulated by 12 state-level agencies and commissions. These licensed occupations ranged from adult care administrators regulated by the Department of Health and Human Services to striped bass dealers regulated by the Department of Environment and Natural Resources. Since the Department of Commerce is not statutorily required to ensure that all state agencies comply with this requirement or to ensure the accuracy of each submission, there are no assurances that this list is valid. However, this list provides an indication of the scope of licensed occupations that are regulated under this model.

State agency-housed occupational licensing board. Administrative activities are performed by a central agency. In addition, regulatory support activities such as complaint investigation and adjudicatory hearings may also be administered by employees of the state agency, while the occupational licensing board continues to make final decisions with respect to license approval and disciplinary actions.

The Program Evaluation Division identified six state agency-housed occupational licensing boards. As of June 30, 2014, these state agency-housed occupational licensing boards were responsible for the regulation of 9,078 licensees. Exhibit 3 provides a listing of these identified state agency-housed occupational licensing boards.

Exhibit 3

The Program Evaluation Division Identified Six Agency-Housed Occupational Licensing Boards

| Name | State Agency | Number of Licensees |
|-----------------------------------|---------------------------|---------------------|
| Manufactured Housing | Insurance | 1,099 |
| Home Inspector | Insurance | 1,079 |
| Code Officials | Insurance | 4,157 |
| Employee Assistance Professionals | Health and Human Services | 56 |
| Alarm Systems | Justice | 956 |
| Private Protective Services | Justice | 1,731 |

Note: As specified in Session Law 2014-100, the Alarm Systems and Private Protective Services occupational licensing boards were transferred to the Department of Public Safety on July 1, 2014.

Source: Program Evaluation Division based on review of available listings of occupational licensing boards.

Occupational Licensing Agency (OLA). OLAs are fully independent state agencies that receive no state general fund revenue and, unlike most other state agencies, are allowed to operate without annual budgetary constraints established by the General Assembly concerning receipt and expenditure of agency-generated funds. OLAs are responsible for performing all associated administrative and regulatory activities.

¹ As specified in N.C. Gen. Stat. §143B-431.

The Program Evaluation Division identified 55 OLAs that meet the criteria described above.² As shown in Exhibit 4, as of June 30, 2014, these OLAs were responsible for the regulation of 703,870 licensees.

Each OLA employs staff and uses contracted services to perform associated administrative and regulatory activities. Exhibit 4 also shows that in Fiscal Year 2013–14, OLAs reported utilizing 485 employees to perform these activities, with staffing levels ranging from zero to 91 employees. Six OLAs used fee-supported state employees to staff operations.³ For the ten OLAs that did not employ any staff, contracted services and Board members performed all administrative and regulatory support services.

Some OLAs also provide licensees with auxiliary services. For example, in addition to enforcing laws and regulations for licensed attorneys, the North Carolina State Bar operates a Lawyers Assistance Program. This program provides free assistance to lawyers, judges, and law students in addressing issues such as substance abuse that can impair an attorney's ability to effectively practice law.

In Fiscal Year 2013–14, these 55 OLAs spent \$67.2 million to administer and regulate licensed occupations. All funding was derived from fees and fines assessed in conjunction with the performance of the associated regulatory activities. Fees from the licensure function consisted of charges for license applications and renewals as well as qualification examinations. Funds generated from enforcement operations were primarily associated with fines assessed as discipline for violations of practice act laws and regulations.

In summary, the overarching objective of licensing is to protect the public from physical or economic harm resulting from the associated activities of the occupation. The decision to require licensure as a condition of performing the activities of an occupation or profession should also weigh and consider the associated impact on the cost of the associated goods and services and on the ability of individuals to obtain gainful employment. Effective monitoring and oversight of regulatory entities with licensing authority is essential in determining whether the OLA is conducting its regulatory activities in an efficient and effective manner.

² The inventory of OLAs was identified through reviews of lists maintained by the Secretary of State, the Attorney General, the Joint Regulatory Reform Committee, the Office of State Budget and Management, the General Assembly, and the Legislative Library.

³ The six OLAs with staff consisting of fee-supported state employees were: N.C. Auctioneer Licensing Board, N.C. Board of Barber Examiners, N.C. Board of Cosmetic Art Examiners, N.C. Board of Opticians, N.C. Psychology Board, and the N.C. Board of Electrolysis Examiners.

Exhibit 4: The Program Evaluation Division Identified 55 Occupational Licensing Agencies

| Profession Regulated by OLA | Number of Active Licenses (June 30, 2014) | Authorized Full Time Equivalent (FTE) Staff | Total Accrued Expenditures |
|--|--|--|-------------------------------|
| Acupuncture | 387 | 1.00 | \$ 97,704 |
| Appraisal | 4,154 | 9.00 | 1,160,452 |
| Architecture | 7,118 | 3.00 | 436,924 |
| Athletic Trainers | 1,209 | 1.00 | 54,904 |
| Auctioneers | 2,623 | 4.00 | 471,807 |
| Barbers | 12,728 | 10.00 | 865,609 |
| Cape Fear River Navigation and Pilotage | 7 | 5.50 | 500 |
| Cemetery | 673 | 1.00 | 184,561 |
| Certified Public Accountants | 19,224 | 13.00 | 2,553,703 |
| Chiropractic | 2,112 | 2.00 | 392,467 |
| Cosmetic Art | 92,950 | 25.00 | 2,234,329 |
| Dental | 11,717 | 8.50 | 2,416,404 |
| Dietetics/Nutrition | 2,468 | 2.00 | 231,328 |
| Electrical Contractors | 13,609 | 10.00 | 1,777,394 |
| Electrolysis | 76 | 0.30 | 18,389 |
| Engineers and Surveyors | 30,068 | 17.0 | 2,520,384 |
| Environmental Health Specialist | 1,041 | 0.75 | 42,712 |
| Fee-Based Practicing Pastoral Counselors | 58 | 0.00 | 6,876 |
| Foresters | 931 | 0.50 | 36,220 |
| Funeral Service | 7,038 | 11.50 | 1,104,413 |
| General Contractors | 27,188 | 16.00 | 2,538,643 |
| Geologists | 1,384 | 0.00 | 137,516 |
| Hearing Aid Dealers and Fitters | 336 | 0.00 | 172,000 |
| Interpreters and Transliterators | 480 | 0.00 | 55,523 |
| Irrigation Contractors | 1,573 | 0.00 | 226,184 |
| Landscape Architects | 730 | 0.00 | 134,331 |
| Landscape Contractors | 1,044 | 2.00 | 71,260 |
| Law Examiners/State Bar (combined) | 26,653 | 91.00 | 12,730,830 |
| Locksmiths | 1,017 | 1.00 | 38,692 |
| Marriage and Family Therapy | 1,058 | 0.00 | 107,295 |
| Massage and Bodywork Therapy | 8,378 | 3.00 | 588,524 |
| Medical | 43,568 | 55.00 | 8,927,789 |

| Profession Regulated by OLA | Number of Active Licenses (June 30, 2014) | Authorized Full Time Equivalent (FTE) Staff | Total Accrued Expenditures |
|--|--|--|-------------------------------|
| Midwifery | 266 | 1.00 | \$ 22,098 |
| Morehead City Navigation and Pilotage | 2 | 0.00 | 0 |
| Nursing | 172,623 | 54.00 | 7,589,098 |
| Nursing Home Administrators | 880 | 2.00 | 337,517 |
| Occupational Therapy | 4,881 | 2.00 | 283,018 |
| Onsite Wastewater Contractor Inspectors | 1,658 | 1.00 | 147,524 |
| Opticians | 1,153 | 2.00 | 201,408 |
| Optometry | 1,327 | 3.00 | 525,502 |
| Pharmacy | 35,156 | 23.80 | 2,790,297 |
| Physical Therapy | 10,377 | 6.00 | 975,225 |
| Plumbing, Heating and Fire Sprinkler Contractors | 14,367 | 12.00 | 1,912,549 |
| Podiatry | 372 | 0.50 | 77,717 |
| Professional Counselors | 7,006 | 0.00 | 479,623 |
| Psychology | 4,100 | 6.00 | 420,113 |
| Real Estate | 94,369 | 58.50 | 5,815,970 |
| Recreational Therapy | 750 | 0.50 | 40,174 |
| Refrigeration | 1,875 | 1.00 | 238,698 |
| Respiratory Care | 4,747 | 2.50 | 366,717 |
| Social Work | 8,816 | 5.50 | 520,493 |
| Soil Scientists | 185 | 0.00 | 17,005 |
| Speech-Language Pathologists and Audiologists | 6,352 | 2.00 | 302,790 |
| Substance Abuse Professionals | 3,372 | 4.00 | 757,062 |
| Veterinary Medical | 5,636 | 5.00 | 1,016,072 |
| Total | 703,870 | 485.35 | \$67,172,337 |

Note: Total Accrued Expenditures based on most recent fiscal year available as reported by each Occupational Licensing Agency in response to a PED request dated July 9, 2014.

Source: Program Evaluation Division based on information provided by each Occupational Licensing Agency.

Findings

Finding 1. Transferring regulatory authority or administrative responsibilities from occupational licensing agencies (OLAs) to a single state agency may not result in improved performance and would likely entail high implementation costs to realize potential gains in efficiency.

Transferring the administration and/or regulatory authority of OLAs to a more centralized organizational model would reduce their autonomy. Currently, OLAs are not subject to the authority and control of any state-level entity. The boards of these OLAs currently have the statutory authority to hire their own staff, spend resources, and make decisions about how to perform each administrative and regulatory activity.

There are perceived advantages for the administration and regulation of licensed occupations being performed by OLAs and for these functions being performed by a centralized state agency. As shown in Exhibit 5, the current organizational structure for the 55 OLAs is generally perceived to be more responsive to the public and the licensees each agency regulates. In addition, because these OLAs regulate a limited number of occupations within a defined scope of practice, they are able to utilize staff and board members with professional expertise in the associated occupation, which may allow for more effective regulation.

An organization structure that centralizes the administration of many occupations is generally perceived to produce more efficient operations because of the cost advantages associated with high volume operations. In addition, this regulatory model is perceived to provide better public access to services and accountability because it provides a single source for the public to locate and monitor the regulatory activities associated with all licensed occupations.

In addition, an organizational structure that centralizes regulatory authority with a state-level agency director is perceived to more aggressively enforce violations of applicable laws and regulations by licensees because an agency director is more independent than an OLA's licensing board.

Exhibit 5

Both OLAs and Centralized Regulatory Models Have Perceived Advantages

| Regulation by OLAs | Centralized Regulation by Single State Agency |
|---|--|
| Appropriate peer review of professional practice standards | Reduced costs through economies of scale and elimination of service duplications |
| Qualified personnel to investigate complaints | Better public access to services |
| Greater visibility to the public and deterrent to potential violators | Increased equity through application of uniform criteria to regulatory decisions |

Source: Program Evaluation Division based on review of various studies and reports on the regulation of occupational licensing.

There is a lack of convincing evidence that transferring regulation and administration of OLAs to a single state agency will result in improved public protection. The argument in favor of centralized occupational regulation holds that transferring OLAs to a single state agency will produce more efficient operations and more effectively achieve the

primary objective of ensuring that public health, safety, and welfare is protected.

To evaluate whether transferring OLAs to a single state agency would result in better performance, the Program Evaluation Division compared the performance of OLAs in North Carolina with the performance of centralized agencies in Florida, South Carolina, and Virginia. These three states were selected based on their geographic proximity and the availability of applicable performance information. As shown in Exhibit 6, each of the selected states used either a single state-level agency regulatory authority and/or a state agency-housed occupational licensing board model(s) to administer occupational licenses.

Exhibit 6: Each of the Three Identified States Utilizes a Central State Agency Model to Administer Licensed Occupations

| State | Organizational Model | Size and Scope |
|----------------|---|---|
| Florida | Centrally administers licensed occupations and professions through two state agencies: <ul style="list-style-type: none"> The Department of Business and Professional Regulation operates under both State-level agency regulatory authority and State agency-housed Occupational Licensing Board models. The Department of Health, Division of Division of Medical Quality Assurance operates under a State-agency regulatory authority model. | <ul style="list-style-type: none"> The Department of Business and Professional Regulation provides regulatory support services for 22 professional boards. For five of these professions, the department director serves as the regulatory authority. In total, the department provided administrative services for 680,969 professional licensees in Fiscal Year 2012-13. The Department of Health, Division of Medical Quality Assurance regulated 113 occupations/professions and administered active licenses for 962,119 health care practitioners in Fiscal Year 2012-13. |
| South Carolina | The Department of Labor, Licensing and Regulation operates under a State agency-housed Occupational Licensing Board model. | The Department provided regulatory support services to 37 occupational licensing boards that were responsible for regulating 353,755 licensees in Fiscal Year 2012-13. |
| Virginia | Centrally administers licensed occupations and professions through two state agencies: <ul style="list-style-type: none"> The Department of Professional and Occupational Regulation operates under a State-level agency regulatory authority model. The Department of Health Professions operates under a State agency-housed Occupational Licensing Board model. | <ul style="list-style-type: none"> In Fiscal Year 2012-13, the Department of Professional and Occupational Regulation regulated 17 boards and administered nearly 300,000 licenses for individuals and businesses. In Fiscal Year 2012-13, the Department of Health Professions provided regulatory support services to 13 occupational licensing boards that were responsible for regulating over 300,000 licensees. |

Source: Program Evaluation Division based on information provided in annual reports and from queries of centralized agencies in other states.

The Program Evaluation Division used three measures to compare the performance of North Carolina's OLAs with other states that utilize a more centralized model to administer licensed occupations. These measures were designed to determine whether the transfer of regulatory authority from OLAs to a centralized model would be expected to result in improved operating efficiencies, better public access to services, and better enforcement of the laws and regulations of licensed occupations. As shown in Exhibit 7, these performance measures include a measure of operating efficiency and two measures of the effectiveness of key regulatory activities.

Cost per licensee. The cost-per-licensee measure provides an indication of the efficiency of regulation of licensed occupations. Licensed occupations

that are regulated under a more centralized model would be expected to have a lower cost per licensee due to the reduced costs that can be realized from economies of scale and the elimination of service duplications.

Number of complaints per 10,000 residents. The number of complaints per 10,000 citizens provides an indication of level of public access to the enforcement process.⁴ Higher levels of public access help ensure licensed occupations are being effectively regulated, as it indicates violations of associated laws and regulations can be more readily identified and enforced. Licensed occupations that are regulated under a centralized model would be expected to have a higher number of complaints due to better public access to complaint intake services as a result of offering a single source to register complaints.

Number of license suspensions/revocations per 10,000 licensees. The number of license suspensions/revocations per 10,000 licensees provides an indication of the aggressiveness with which violations of laws and regulations by licensees are being enforced. Licensed occupations that are regulated under a more centralized model would be expected to have a higher number of license suspensions/revocations per 10,000 licensees due to a more uniform application of the criteria used to investigate and enforce complaints.

Due to differences in the number and characteristics of licensed occupations that are regulated by occupational licensing boards in each state, the evaluation did not compare the relative performance of each OLA, but instead compared the cumulative performance of all of the licensed occupations in each of the selected states. This comparison between the cumulative performance of North Carolina's OLAs and the occupations regulated through a more centralized model in the other states provides indications of whether North Carolina could expect to realize the perceived advantages of a centralized regulatory model.

The comparison of North Carolina's OLAs with central agencies in other states shows that centralized administration is more efficient, but does not conclusively demonstrate that centralizing regulatory authority will result in improved performance. As shown in Exhibit 7, comparing the centralized state agencies in other states with the cumulative results for OLAs in North Carolina showed that centralized state agencies are operating more efficiently but do not generally provide better service as measured by complaints and license suspensions/revocations. The average cost per licensee to administer and regulate the occupations regulated by centralized agencies in other states ranged from \$60.12 to \$69.16, while the cumulative average for North Carolina's OLAs was \$96.47. These results indicate that a centralized state agency that provides administrative and regulatory services to many licensed occupations is able to operate more efficiently by reducing costs through economies of scale and elimination of service duplications.

⁴ Complaints are allegations of individuals exceeding their authority or jurisdiction in the profession/occupation, as specified in the associated practice act.

However, the analysis demonstrated that the effectiveness of the regulatory activities of centralized agencies varies, and in many instances was worse than the cumulative performance of North Carolina's OLAs. For example, the number of license suspensions and revocations per 10,000 licensees is lower in two of the three comparison states, which indicates that North Carolina's OLAs may be more aggressively enforcing violations of the laws and regulations by licensees.

Exhibit 7: Regulation of Licensed Occupations by Centralized Agencies in Other States is More Efficient, but Performance of North Carolina's OLAs is Generally Better

| Performance Measure | Purpose | North Carolina | Florida | South Carolina | Virginia |
|---|--|----------------|---------|----------------|----------|
| Cost per licensee (lower is better) | Provides an indication of the efficiency of the administrative and regulatory activities associated with administration of the licensed occupation. | \$96.47 | \$69.16 | \$60.12 | \$68.48 |
| Complaints per 10,000 residents (higher is better) | Provides an indication of the ability of the public to report allegations of improper or unlawful activity in the licensed profession | 10.30 | 7.98 | 7.30 | 10.31 |
| License suspensions and revocations per 10,000 licensees (higher is better) | Provides an indication of whether enforcement activities are ensuring that violations of laws and regulations of the licensed occupation are being aggressively pursued. | 10.19 | 8.46 | 1.78 | 12.62 |

Source: Program Evaluation Division based on review of annual reporting data provided by North Carolina OLAs and annual reports and information provided by staff of centralized agencies in other states.

A large investment in information technology would likely be required to realize the potential operating efficiencies from centralizing administrative services. Transferring the responsibility to provide administrative services from OLAs to a central state agency can result in improved efficiencies associated with economies of scale and reductions in service duplications. However, new investments in information technology would be required. For example, in 2005 the Minnesota legislature authorized the development of a single online location for managing the licensing function of 21 licensing boards and seven state agencies that regulate 670,000 licensees. This online licensing system is expected to be completed in 2015 at a cost of \$35 million, and will be funded through a surcharge on license application fees.

An evaluation of the development efforts for this system reported that there was extensive opposition to the project by both state agencies and licensing boards. Specifically, the evaluation reported that occupational licensing requirements and processes are too varied for one system, and that some agencies and licensing boards have invested heavily in online licensing systems that work well. These occupational licensing agencies and boards reported concerns about replacing working systems with a potentially less functional system at significant cost.

Another example of a significant investment in information technology that was designed to improve the cost effectiveness of services occurred in Florida. In 2001 one of Florida's agencies providing centralized regulation of licensed occupations contracted for an online licensing system, internet portal, and call center.

This initiative was intended to reduce costs and improve customer service by providing single points of entry through the internet and call center. Upon expiration of the contract in 2008, this centralized regulatory entity had expended approximately \$68 million to consolidate these systems. During the nine-year period from July 1, 2001 through June 30, 2010, these investments in information technology were estimated to have produced a total savings of \$38.7 million.⁵

In addition to investments in information technology, an effective transition of administrative services from OLAs to a single state agency may also require significant time and funding to abolish the existing OLAs and establish necessary centralized administrative and regulatory support services. These additional resources may be required for transition services such as:

- assuming the leases or selling OLA-occupied office space,
- hiring or transitioning OLA employees into a centralized agency,
- transferring or terminating existing contracts for regulatory support services, and
- developing the capability to conduct administrative hearings currently performed by OLAs.

OLAs have expressed strong opposition to transferring operations to centralized state agency. To effectively transition the administration and regulation of licensed occupations to a centralized agency, the cooperation and commitment to success of the participating OLAs would be essential.

Based on survey responses and interviews, the Program Evaluation Division concluded that OLAs are adamantly opposed to transitioning the administration and regulation of licensed occupations to a central state agency. Generally, OLAs view any initiative to establish a more centralized regulatory model as a threat to their autonomy and contend that any initiative to centralize regulatory services would be a waste of funds without benefit to the public or licensees. Given the intensity, breadth, and depth of opposition, it is unlikely that affected parties would readily cooperate, compromise, or cede resources or authority to a centralized agency.

In summary, transferring the regulatory authority and/or responsibility for providing administrative services from OLAs to a central state agency may not result in improved performance. In addition, the transition of administrative services to a central state agency would require a large funding commitment and would be met with broad resistance from the affected OLAs.

⁵As reported by the Florida Office of Program Policy Analysis and Government Accountability: DBPR Re-Engineering Has Achieved Cost Savings, But More Can Be Done to Centralize Functions and Improve Services, Report #05-60, December 2005.

Finding 2. Current reporting requirements do not provide adequate state-level oversight of occupational licensing agency (OLA) performance.

Currently, North Carolina law requires occupational licensing agencies (OLAs) to submit an annual report and financial statement to the Department of the Secretary of State, the Department of Justice, and the General Assembly's Joint Regulatory Reform Committee.⁶ The annual report contains information on the results of the OLA's regulatory activities. The financial statement provides financial information such as annual operating expenses and revenues and end-of-year account balances. In addition, state law requires an OLA with a budget of at least \$50,000 to conduct an annual financial audit of its operations and provide a copy to the Office of the State Auditor.⁷

The Program Evaluation Division identified several deficiencies in the statutorily mandated reporting requirements intended to aid the provision of state-level oversight of OLA performance:

- the regulatory entities that are subject to statutory reporting requirements are not clearly defined and listed;
- the statutory reporting requirements do not ensure sufficient information is provided to monitor and evaluate performance; and
- there is no requirement to conduct external reviews of OLA operations.

The lack of a clear definition and listing of the regulatory entities required to comply with statutory reporting requirements hinders the provision of adequate state-level oversight. To allow for effective monitoring of the regulation of licensed occupations, it is necessary to establish and maintain a definitive listing of the occupational licensing boards that are subject to reporting requirements. Establishment and maintenance of a valid listing of the OLAs is necessary because it will help ensure that the information received through these reporting requirements can be used to determine whether licensing is achieving its intended objective of protecting the public health, safety, and welfare for all applicable occupations.

The lack of a clear definition and listing of the regulatory entities subject to oversight in statute has resulted in some OLAs not submitting all required reports, while other regulatory entities that may not meet the statutory reporting definition are regularly submitting annual reports and financial statements.⁸

For example, the North Carolina Cemetery Commission was authorized in 1975 to license all persons engaged in the business of operating a cemetery.⁹ In 2012, the Legislature changed the organizational model of the commission from an occupational licensing board housed within the Department of Commerce to an OLA. However, since being redesignated,

⁶ As specified in N.C. Gen. Stat. § 93B-2.

⁷ As specified in N.C. Gen. Stat. § 93B-4.

⁸ As defined in N.C. Gen. Stat. § 93B-1.

⁹ As specified in N.C. Gen. Stat. § 65-47.

the commission has not been submitting annual reports or financial statements to each of the designated state entities.¹⁰

By contrast, an example of a regulatory entity that may not have met the statutory definition of an OLA but has been regularly submitting annual reports and financial statements is the Landscape Contractors Registration Board. This regulatory entity recently received statutory authorization to license landscape contractors, effective August 2015.¹¹ However, the Landscape Contractors Registration Board has already been regularly submitting annual reports and financial statements.

Another example of regulatory entities that have been complying with the statutory reporting requirements but may not meet associated criteria are the North Carolina Board of Law Examiners and the North Carolina State Bar. These two entities are jointly responsible for the regulation of lawyers, with the North Carolina Board of Law Examiners assuming responsibility for the licensing function and the North Carolina State Bar taking responsibility for the enforcement function. The North Carolina State Bar stated that it should not be subject to the statutory reporting requirements of an occupational licensing board because the regulation of lawyers is inherently a judicial function and is subject to the supervision of the North Carolina Supreme Court.

The statutorily mandated reporting requirements do not ensure sufficient information is provided to monitor and evaluate the effectiveness of OLAs. Currently, OLAs are statutorily required to only provide information on the number of outputs produced by key regulatory activities. As shown in Exhibit 8, these outputs include the number of license examinations taken, the number of official complaints received, and the number of disciplinary actions taken.

OLAs are not statutorily required to provide information necessary to determine whether these outputs were efficiently produced or effectively contributed to the primary objective of protecting the public health, safety, and welfare. To evaluate the efficiency of key regulatory activities performed by each OLA, the cost to produce each output should be provided.

An evaluation of the effectiveness of each key regulatory activity requires that each OLA provide specific performance information such as the time to resolve a complaint and the percentage of initial license applications that were accurate. In addition, performance targets should be established for each measure. Performance targets define what level of work is desired and act as a guidepost for judging whether progress is being made on schedule and at the levels originally envisioned. Information on the efficiency and effectiveness of each key regulatory activity provides the public, legislature, and other decision-makers with the necessary information to evaluate various alternatives, such as centralization or utilization of term contracts to improve performance.

¹⁰ The NC Cemetery Commission reported that in October 2014 its board authorized the procurement of a contract to conduct a financial audit of its operations for Fiscal Years 2012-13 and 2013-14.

¹¹ As specified in N.C. Session Law 2014-103, House Bill 366.

Exhibit 8

Statutorily Mandated Reporting Requirements of Occupational Licensing Agencies

| Category | Data Required for Reporting |
|-------------|--|
| Licensing | <ul style="list-style-type: none"> • Number of persons who applied to board for examination • Number who were refused examination • Number who took examination • Number to whom initial licenses were issued • Number who applied for license by reciprocity or comity • Number who were granted licenses by reciprocity or comity |
| Enforcement | <ul style="list-style-type: none"> • Number of official complaints received involving licensed and unlicensed activities • Number of disciplinary actions taken against licensees, or other actions taken against non-licensees, including injunctive relief • Number of licenses suspended or revoked • Number of licenses terminated for any reason other than failure to pay the required renewal fee |
| Financial | <ul style="list-style-type: none"> • Source and amount of all funds received by the OLA • Purpose and amount of all funds disbursed by the OLA during the previous fiscal year |

Source: Program Evaluation Division based on review of N.C. Gen. Stat. § 93B-2.

There is no statutory requirement to conduct external reviews of OLA operations to ensure that the statutorily required information is accurately reported and key regulatory activities are being appropriately performed. Due to the lack of an external review requirement, the Governor, Legislature, and public may not be able to rely on the information provided by OLAs to monitor and evaluate whether objectives are being effectively achieved. The lack of an external review requirement of OLAs operations also limits the ability to identify OLAs that are not adequately performing key regulatory activities. Consequently, potential issues that may be affecting public health, safety and welfare may be left unidentified.

An audit conducted by the Office of the State Auditor also found that there is inadequate oversight of OLAs.¹² In conjunction with this finding, the Office of the State Auditor's report included several recommendations to ensure independent occupational licensing board performance is being effectively monitored. These recommendations include:

- The General Assembly should clarify the specific state-level entity(s) responsible for monitoring boards. Clarification should be given regarding the extent of oversight authority and responsibility for each state-level entity.
- State-level entities should work with legislators and boards to develop meaningful financial and operating performance measures.

¹² Office of the State Auditor, Financial Related Audit: Occupational Licensing Boards and Commissions, August 2014.

- Information needed to track performance should be included in the required reports.
- As directed by the General Assembly, the state-level entity should monitor these performance measures on a regular basis and follow up on any unusual measures.
- State-level entities with the authority and responsibility for providing oversight should maintain a list of all boards and share the list of boards with other state-level entities to ensure that all boards are identified.

Finding 3. There is inadequate oversight to ensure that OLA enforcement processes are effectively contributing to the protection of the public's health, safety, and welfare.

OLAs are authorized to regulate the activities performed within their designated scope of practice to ensure that the public's health safety and welfare is being adequately protected. In addition to licensing individuals to work in these occupations, OLAs also are authorized to enforce associated laws and regulations as statutorily authorized.

The enforcement process begins with the identification of a potential violation of the associated practice act of the OLA. These potential violations may include allegations of incompetence, fraud, or negligence in the practice of the occupation. Complaints, which are identified through inquiries originating from external sources such as the public, other OLAs, or governmental entities are the primary method for identifying violations of associated laws and regulations.¹³ Complaints range from minor allegations, such as unprofessional conduct and unintentional misrepresentation, to more serious allegations of unlicensed activity, negligence, fraud, and sexual misconduct. In Fiscal Year 2013–14, OLAs reported processing 10,145 complaints.

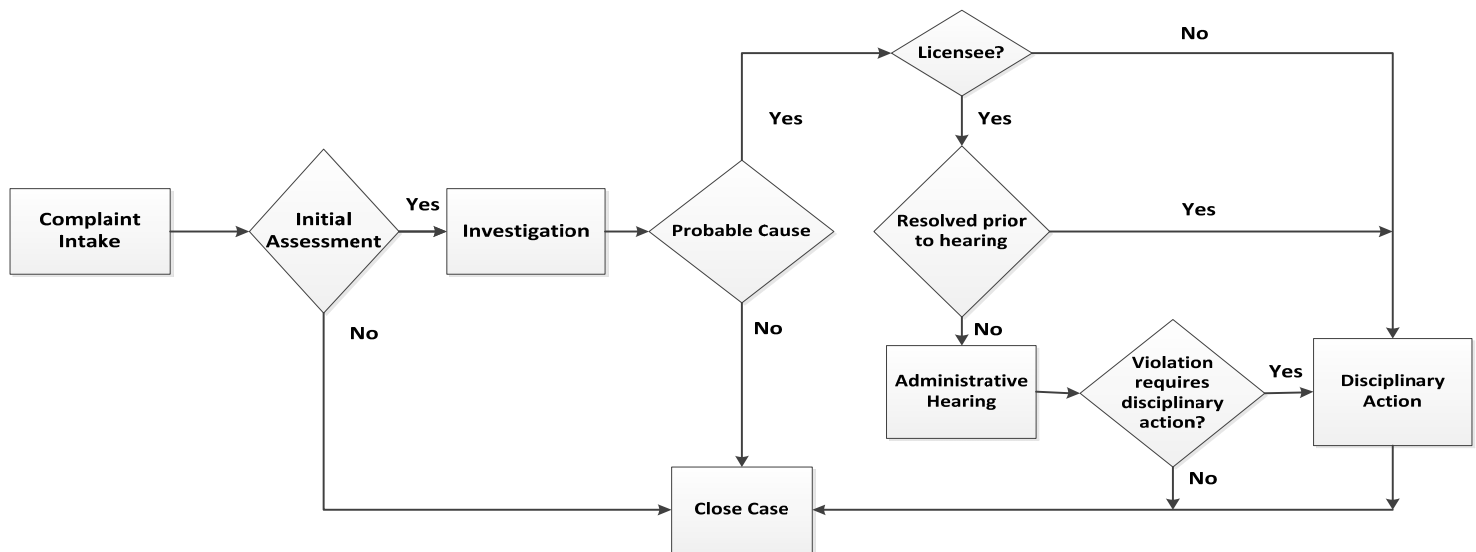
An effective complaint resolution process helps OLAs protect the public by providing citizens and external entities with the opportunity to identify and report potential violations of associated laws and regulations. As shown in Exhibit 9, complaint intake is the initial activity in the complaint resolution process. Complaint intake is an administrative activity used to determine whether the OLA receiving the complaint has jurisdictional authority over the alleged violation. If an alleged violation is determined to be outside of its jurisdictional authority, the case is closed by the OLA. For complaints determined to be within the jurisdictional authority of the OLA, an investigation of the allegation is conducted to determine the validity of the alleged violation. Investigations are a regulatory activity, which often require professional experts who can evaluate and investigate the technical aspects of the complaint.

If the investigation determines that sufficient evidence exists of probable cause that a violation of an applicable law or regulation has occurred, then

¹³ Potential violations may also be identified internally from evidence uncovered during inspections, complaint investigations, or self-disclosed information provided by licensees.

the case will be submitted to the OLA for an administrative hearing.¹⁴ A case may also be resolved prior to an administrative hearing through an informal settlement if the licensee and the OLA agree to a proposed action. Possible disciplinary actions include revocation, suspension, probation, or warning. In addition, OLAs have the authority to impose fines for violations of laws and regulations as specified in the applicable statute. For violations associated with unlicensed activity, the OLA is authorized to apply to the Superior Court for an order prohibiting the individual from being paid for working in the licensed occupation.

Exhibit 9: An Effective Complaint Resolution Process Helps Occupational Licensing Agencies Achieve Their Primary Objective of Protecting the Public Health, Safety, and Welfare



Source: Program Evaluation Division based on review of state law, OLA complaint process descriptions and consultations with selected OLA staff.

The Program Evaluation Division identified several deficiencies in the statutory requirements regarding OLA regulatory enforcement:

- there are no established information requirements and instructions for complaint submission;
- there is no requirement to notify a complainant of the final complaint determination; and
- there are no uniform information retention requirements for the complaint process.

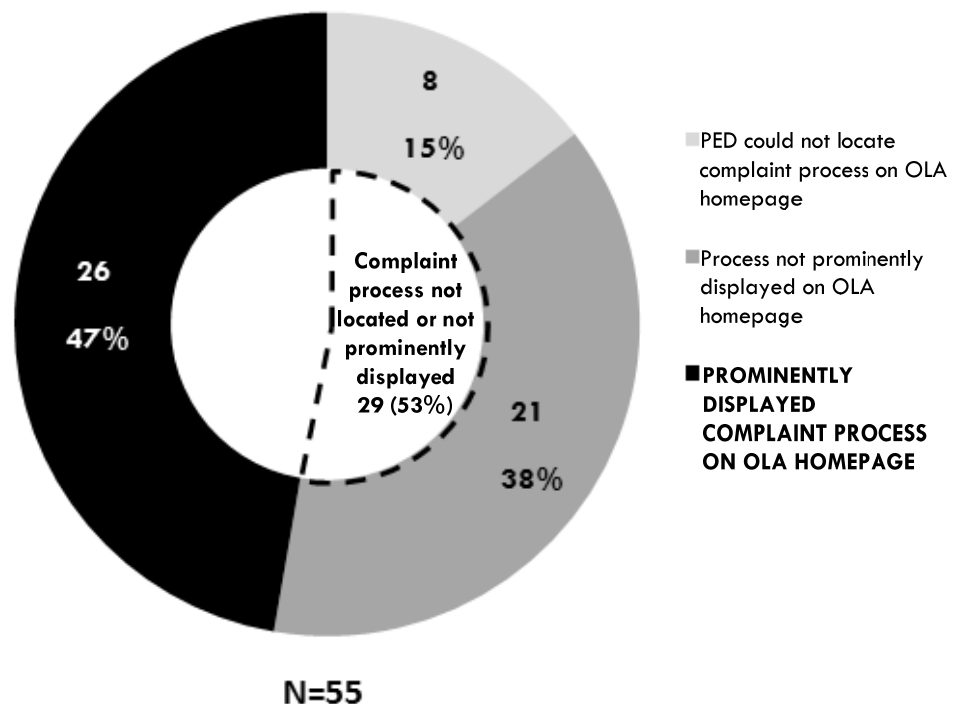
Currently, OLAs are not subject to any statutory requirements regarding information needed to submit a complaint. Consequently, each OLA has developed unique requirements for submitting complaints. Differing submission methods and information requirements hinders the ability of the public to submit complaints.

¹⁴ As specified in N.C. Gen. Stat. §150B, Article 3, an administrative hearing is a proceeding where each party is provided the opportunity to present evidence for consideration in the determination of the appropriate disciplinary sanction, if any, to impose on the professional's license.

For many OLAs, it is difficult for a potential complainant to determine how to submit a complaint from the information provided on the OLA's website. To facilitate public access to the complaint process, the OLA's website should prominently identify the method for filing a complaint including providing a complaint form and a description of the process. As shown in Exhibit 10, the Program Evaluation Division staff could not readily locate a complaint form or description of the process on the website of 8 of the 55 OLAs (15%).¹⁵ For the 47 OLAs where a complaint form and process description could be located, only 26 (47%) prominently identify a complaint form and process description on the site's homepage.

Exhibit 10

More Than Half of Occupational Licensing Agencies Do Not Prominently Display a Method to File a Complaint on the Website



Source: Program Evaluation Division based on review of each OLA website as of December 9, 2014.

OLAs have different information requirements for submitting a complaint. For example, of the 47 OLAs for whom the Program Evaluation Division staff could locate a complaint form and process description, 14 required the complaint to be notarized as a condition of acceptance. This requirement limits public access to the complaint process because of the additional time and expense associated with locating and paying for the services of a notary. This limitation could discourage members of the public from filing complaints by imposing a barrier that is unnecessary in order to process a complaint. Without a clearly identified method to file a complaint and with potentially unnecessary requirements for submitting a

¹⁵ The eight occupational licensing agencies for which the Program Evaluation Division could not identify a complaint intake form were: North Carolina Board of Barber Examiners, North Carolina Board of Electrolysis Examiners, North Carolina Board of Environmental Health Specialist Examiners, North Carolina State Board of Examiners in Optometry, Cape Fear River Navigation and Pilotage Commission, Morehead City Navigation and Pilotage Commission, Board of Examiners of Fee-Based Practicing Pastoral Counselors, and North Carolina Board of Recreational Therapy Licensure.

complaint, the effectiveness of the complaint process in helping ensure the public health, safety, and welfare is compromised.

In addition, 37 of the 55 OLAs (67%) reported not having online complaint submission capability. Without online complaint submission capability, public access to the complaint process may be limited because consumers are often required to print a copy of the complaint form, complete it manually, and mail it to the OLA. In addition to limiting public access, the lack of online complaint submission capability may also increase the time that unqualified or unscrupulous individuals can continue to perform activities within the licensed occupation's scope of practice.

State law does not require OLAs to notify the person making a complaint of the final determination. Currently, when a consumer files a complaint with an OLA that does not have the appropriate jurisdictional authority, their complaint may not be processed. In these instances, the OLA is not required to identify and notify the consumer of the appropriate OLA with jurisdictional authority, if one exists. Further, the OLA is not required to notify the consumer regarding its determination of the complaints that it does process, which limits transparency and the ability of a consumer to ensure their complaint is being reviewed by the OLA.

There are instances where it may not be apparent which OLA has the jurisdictional authority to process the complaint. For example, for a water leak experienced in conjunction with the construction of a home, the new homeowner may be unsure of whether to submit a complaint with the Onsite Wastewater Contractor Inspector Certification Board, the Board of Plumbing, Heating, and Fire Sprinkler Contractors, the Licensing Board for General Contractors, the Home Inspection Board, or another OLA which licenses individuals to perform services in conjunction with the construction and sale of a home.

OLAs do not have uniform information retention requirements for complaints processed. Establishment of minimum complaint processing information and retention requirements can ensure complainants are kept informed of the current status of their complaint, and allows for effective oversight of the complaint process of each OLA. In turn, OLAs can be held accountable for the performance of this key regulatory activity. These information retention requirements should include begin and end dates of each major activity in the complaint process, as well as evidence supporting the completion of each of these activities.

The Office of the State Auditor reported that there is inadequate oversight of the complaint processes of OLAs.¹⁶ Specifically, the audit report stated:

“Complaints, complaint resolution, and disciplinary action taken are key operational areas that demand attention of state-level entities. Lack of proper complaint-handling processes can lead to people or entities operating out of a board's authority and out of compliance with applicable requirements and standards. Ultimately, this may result in the state's citizens and resources not being adequately protected from unqualified or unscrupulous practitioners.”

¹⁶ Office of the State Auditor, Financial Related Audit: Occupational Licensing Boards and Commissions, August 2014.

The report also stated that:

“Complaints are an important source of information for determining whether the people or entities operating within a regulated industry comply with all applicable requirements and standards. State-level entities need to understand the number of complaints and how the complaints are handled in order to monitor complaint resolution.”

In conjunction with these findings, the Office of State Auditor recommended that the level of oversight for processing complaints by OLAs be improved.

Finding 4. The establishment of an Occupational Licensing Commission can help OLAs realize the advantages of centralized regulation without sacrificing the benefits associated with the existence of independent licensing agencies.

Establishment of an Occupational Licensing Commission can help ensure that OLAs are cost-effectively achieving their objectives and receive proper oversight. An Occupational Licensing Commission would not function as a central licensing authority, but would assist the General Assembly and OLAs in improving effectiveness and resolving disputes. As shown in Exhibit 11, an Occupational Licensing Commission can help improve the performance of OLAs in the following areas:

- operating efficiency;
- information management;
- complaint processing; and
- scope of practice dispute resolution.

Operating Efficiency. An Occupational Licensing Commission can help OLAs realize greater operating efficiencies by facilitating the sharing of services among OLAs. Sharing of services allows OLAs with limited resources to obtain services at a lower cost. For example, establishing a contract for an online complaint intake capability that any OLA could choose to utilize would provide an opportunity for the OLA to improve its complaint process without having to procure a separate system. An Occupational Licensing Commission can help OLAs realize this capability at a lower cost because of the ability to leverage the volume of services used by all of the participating OLAs.

Information Management. An Occupational Licensing Commission can work with OLAs to identify the performance information that is required to determine whether each OLA is effectively protecting the public health, safety, and welfare. An Occupational Licensing Commission can also serve as the designated entity to collect and disseminate this information. Establishment of a single entity to collect and disseminate necessary performance information will allow for greater public access and eliminate excess costs associated with providing the same information to multiple entities.

Complaint Processing. Establishment of an Occupational Licensing Commission can help to ensure that each OLA's complaint resolution process is effectively contributing to the public health, safety, and welfare. An Occupational Licensing Commission can also work with OLAs to identify the

information that is necessary to determine jurisdictional authority when allegations are received via the complaint intake process. Identification of these complaint intake information requirements would help to ensure that public access to the complaint resolution process is not limited by any unnecessary requirements.

An Occupational Licensing Commission can also improve complaint processing by assisting the public and OLAs in the determination of jurisdictional authority for submitted complaints. This assistance can be provided when an OLA determines that it does not have jurisdictional authority to resolve a complaint, and refers the individual submitting the complaint to the Occupational Licensing Commission.

Scope of Practice Dispute Resolution. An Occupational Licensing Commission can also help OLAs to identify and resolve scope of practice issues among licensed occupations. Scope of practice refers to the specific tasks that constitute the practice of the given occupation. A disagreement among OLAs regarding the specific duties which each designated occupation is authorized to perform is not uncommon. Licensure by its very nature identifies who is and is not legally able to perform specific tasks, and is often subject to different interpretations.

A recent example of a disagreement among OLAs involving a statutory scope of practice issue occurred with the North Carolina Board of Barber Examiners and the North Carolina Board of Cosmetic Art Examiners. This scope of practice issue partly involved a disagreement between the two OLAs over whether individuals licensed by the North Carolina Board of Cosmetic Art Examiners were authorized to perform facial shaving. The two OLAs have taken contrary positions on the matter, leaving the public and regulated professionals with much uncertainty. Because this disagreement could not be reconciled between these two OLAs, the Joint Legislative Procedure Oversight Committee agreed to include this issue as part of a meeting agenda.

These disagreements over scope of practice are costly and time-consuming for the OLAs, members of the regulated profession, and for the state legislators involved. An Occupational Licensing Commission may be able to cost-effectively assist in resolving these disagreements through a mediated agreement with the participating OLAs. These mediation services provide OLAs and other affected stakeholders with an opportunity to provide an impartial entity with all of the information needed to evaluate the impact on accessibility, quality, and cost-effectiveness of care provided to the consumers. As a result, these mediation services may also serve to reduce the number of disagreements that need to be addressed by a legislative committee, and help ensure that sufficient information is available to address disputes that require legislative involvement.

Exhibit 11: Benefits of an Occupational Licensing Commission

| Area of Concern | Occupational Licensing Commission Benefit |
|--------------------------------------|---|
| Operating Efficiency | Facilitate sharing of services (example: establishing a contract for an online complaint intake capability that any OLA could utilize) |
| Information management | Collect and disseminate information necessary to evaluate the performance of each OLA |
| Complaint processing | Work with participating OLAs to establish uniform standards and assist the public and OLAs in determining jurisdictional authority for submitted complaints |
| Scope of practice dispute resolution | Provide mediation services between OLAs regarding the specific duties each designated occupation is authorized to perform |

Source: Program Evaluation Division.

The Texas Health Professions Council provides a model for improving the level of oversight of OLAs and helping them more cost-effectively achieve their objectives. In 1993, the State of Texas created the Texas Health Professions Council. The mission of the Texas Health Professions Council is to coordinate regulatory efforts among various health care licensing boards. In Fiscal Year 2013–14, the Texas Health Professions Council consisted of 15 agencies that regulated over 45 licensing boards and regulatory programs.¹⁷ The Texas Health Professions Council is funded entirely by a prorated transfer of funds from member agencies. In Fiscal Year 2013–14 the Texas Health Professions Council used six staff and expended \$856,246 to provide various services to each of these regulated occupations and professions.

The Texas Health Professions Council produces an annual report that provides a single source of key performance and financial information for each participating agency. Financial and performance information provided in the annual report includes much of the same information that North Carolina's OLAs are statutorily required to provide to multiple state-level entities in separate annual reports and financial statements. The annual report produced by the Texas Health Professions Council also provides other key performance information such as the number of days to process a complaint as well as county-specific information for each licensed occupation.

The Texas Health Professions Council reported that its services have enhanced the operational efficiency of the participating occupational licensing boards by facilitating the identification and development of regulatory best practices. For example, the Council, through its committees, has developed model policies and procedures for risk management, disaster recovery, and workforce policy/procedures. In addition, participating occupational licensing boards have realized efficiencies through increased cooperation among members, which has resulted in cooperative rulemaking and less reliance on the legislative process to resolve conflicts.

¹⁷ The 15 member agencies of the Texas Health Professions Council are: The Texas Board of Chiropractic Examiners, The State Board of Dental Examiners, The Texas Optometry Board, The State Board of Pharmacy, The Texas State Board of Podiatric Medical Examiners, The State Board of Veterinary Medical Examiners, Texas Medical Board, The Texas Board of Nursing, The Texas State Board of Examiners of Psychologists, The Texas Funeral Service Commission, The entity that regulates the practice of physical therapy, the entity that regulates the practice of occupational therapy, The Texas Department of State Health Service's Professional Licensing and Certification Unit, Governor's office, and Office of the Attorney General.

To help improve the efficiency of the operations of the participating OLAs, the Texas Health Professions Council also offers other services that OLAs can choose to utilize. For example, the Texas Health Professions Council offers information technology sharing, which allows some of the smaller occupational licensing boards with limited resources to share information technology and resources.

In summary, improved state-level oversight of OLAs can help ensure that the public's health, safety, and welfare are being effectively protected. Currently, there is no state-level entity that is designated with the responsibility for ensuring compliance with statutorily mandated reporting requirements. In addition, the reporting requirements do not ensure sufficient information is provided to monitor and evaluate the effectiveness of the services performed by OLAs or that those services are effectively protecting the public from harm. Establishment of an Occupational Licensing Commission within the Department of Commerce can help ensure that OLAs are cost-effectively achieving their objective and have proper oversight.

Finding 5. Twelve occupational licensing agencies (OLAs) did not provide sufficient information to justify maintaining licensing authority and require further review by the General Assembly.

As specified in the session law directing the evaluation, the Program Evaluation Division included an assessment of each occupational licensing agency's (OLA's) continued need for licensure authority. This assessment focused on determining whether the risk to public harm is sufficient to justify societal costs associated with licensed occupations that will be discussed in further detail in this finding.

Occupational licensing protects the public from harm by requiring that all practitioners in a given profession meet the same set of minimum standards. However, the requirement for an individual to be licensed may also have adverse consequences to both consumers and the individuals who can provide the associated goods and services, such as:

- **Increased cost to consumers.** Mandatory entry requirements and business practice restrictions increase the cost of the goods and services provided by licensed occupations. Studies have shown that licensure has resulted in higher incomes for licensed professionals, which could be viewed as an advantage by the professionals but certainly a disadvantage to consumers since it often translates into higher costs for services. A study conducted by the National Bureau of Economic Research concluded that having a license is associated with approximately 15 percent higher hourly earnings when compared to unlicensed individuals performing the same tasks.¹⁸ Yet a report by the Federal Trade Commission cited numerous studies demonstrating the price increases associated with occupational licensing.¹⁹

¹⁸ Morris M. Kleiner and Alan B. Krueger, "The Prevalence and Effects of Occupational Licensing" (Cambridge, Massachusetts, National Bureau of Economic Research, 2008).

¹⁹ Carolyn Cox and Susan Foster, *The Costs and Benefits of Occupational Regulation* (Washington, D.C. Federal Trade Commission, 1990).

- **Restricts the ability of individuals to work in the occupation.** By raising the standards that all practitioners must meet, licensure may facilitate denial of entry to the field for some potential practitioners. For example, some occupations require work experience through an apprenticeship as a condition of licensure. This requirement provides current licensees with the opportunity to restrict entry in the field in order to limit the number of potential competitors.
- **Restricts public access to services.** The tasks that a licensee can perform are statutorily defined. If these task descriptions are not regularly reviewed to ensure that they reflect advances in technology and practitioner competencies, the public access to services will be restricted. For example, the emergence of the internet has brought the potential for consumers to purchase quality products at lower costs because of the reduction in associated transaction costs and the ability to more easily obtain product information. However, current occupational licensing regulations may be restricting these potential benefits.
- **Limits mobility of licensed professionals.** Occupational licensure often limits a person's ability to perform the same work in another state. Licensure is carried out at the state level, so each state is free to develop its own unique standards and requirements. Unique standards can prevent practitioners from practicing in multiple states and limit their ability to move to another state and continue to be able to obtain gainful employment in the same profession. In North Carolina, only 19 of the 55 (35%) OLAs reported having any licensing reciprocity agreements with OLAs in other states in Fiscal Year 2013–14. Licensees regulated by OLAs without any reciprocity agreements are required to obtain a separate license before being able to work in another state.

The public has access to other government and private entities that serve to protect the public health, safety, and welfare. To help enforce North Carolina's consumer protection laws, the North Carolina Department of Justice, Consumer Protection Division, receives and processes consumer complaints. In Fiscal Year 2013–14, this division received 23,732 written complaints. For each of these complaints, the division works with the individual filing the complaint and the identified business to resolve the dispute. Consumers can also access the State's judicial system by filing an action in small claims court or by consulting with a private attorney. Small claims courts handle disputes involving less than \$10,000 in cash or property, and are usually heard within one month after the lawsuit is filed.

Some private entities also enable consumers to hold occupational practitioners accountable for the quality of their goods and services. Third-party consumer organizations such as the Better Business Bureau and Angie's List help consumers make more informed purchasing decisions by providing information on the quality of services provided by practitioners in both regulated and non-regulated occupations. The services provided by these private entities have an impact because they affect a business's or worker's reputation, which can affect their level of future business activity.

The assessment conducted by the Program Evaluation Division used four factors to determine whether the threat to the public health, safety and welfare justifies societal costs. The selection of each of these factors was based on reviews of literature and evaluations conducted by other states and available quantifiable information received from each OLA. The assessment applied the following factors to make determinations:

Public harm. This factor identifies impact to the public's health, safety or economic welfare associated with improper activity in the occupation/profession. Identification of specific instances of severe public harm associated with violations of the associated statutes indicates a continued need for a licensing requirement for the occupation. Examples of severe consequences included death, permanent physical disability, contamination of public drinking water, and personal bankruptcy.

Complaints. This factor identifies the level of public concern regarding impact on health, safety, and welfare. A large number of complaints indicates that there is a higher risk of harm to the public's health, safety, and welfare.

Disciplinary actions. This factor identifies the level of activity in the occupation/profession that resulted in significant disciplinary action. A large percentage of significant disciplinary actions reflects a greater risk that activities associated with the occupation/profession can produce significant public harm. Significant disciplinary actions include license revocation or suspension for licensed activity.

Other states. This factor identifies the number of other states which statutorily require licensure to engage in the occupation. The number of states that statutorily require licensure as a condition of engaging in a profession reflects determinations by other state legislators of the need for a licensure requirement to protect the public from harm.

As shown in Appendix A, the assessment determined that continued licensing authority for the following 12 OLAs should be subject to additional review by the General Assembly:

1. North Carolina Board of Electrolysis Examiners
2. North Carolina State Board of Registration for Foresters
3. North Carolina Interpreter and Transliterator Licensing Board
4. North Carolina Board of Landscape Architects
5. North Carolina Landscape Contractors' Registration Board
6. North Carolina Locksmith Licensing Board
7. North Carolina State Board of Opticians
8. Board of Examiners of Fee-Based Practicing Pastoral Counselors
9. Cape Fear River Navigation and Pilotage Commission
10. Morehead City Navigation and Pilotage Commission
11. North Carolina Board of Recreational Therapy Licensure
12. North Carolina State Board of Refrigeration Examiners

The 12 identified OLAs received the lowest total scores, with each identified OLA receiving an assessment score of ten or less. Based on a combination of evaluation factors, the Program Evaluation Division cannot recommend that the General Assembly continue to authorize licensing authority for these OLAs. For each of the 43 OLAs that received a score of more than 10, the Program Evaluation Division concluded that there was sufficient evidence to warrant continued licensure authority for each of the occupations as identified in the applicable practice acts.

The twelve OLAs should be subject to further legislative review in order to ensure there is continued need for licensure. The assessment conducted by the Program Evaluation Division produced evidence that licensing authorization should be continued for 43 of the 55 OLAs. For the other 12 OLAs, those with scores of 10 or below, the assessment did not provide sufficient evidence to conclude that authorization to license the associated occupations should be continued. At the end of Fiscal Year 2013–14, these 12 OLAs reported administering 8,123 licenses.

The impact of elimination of a licensing requirement on the quality of services received by consumers is less clear. Occupational licensing is generally believed to produce higher quality services because the associated entry restrictions result in more qualified professionals to serve the public. However, the decrease in available prices for associated services achieved through the elimination of a licensing requirement may also improve the overall quality of services received by consumers who are unable or unwilling to purchase services from a licensed individual. These consumers would be more likely to employ an experienced professional at lower cost if they expect to receive higher quality service than what they could perform themselves.

Extenuating circumstances should be considered in deciding whether the threat to the public health, safety, and welfare warrants licensure for the 12 identified OLAs. For example, a low number of complaints received by an OLA may be due to the effectiveness of the licensing process or the lack of access to the complaint intake process. An effective licensing process can help reduce the number of complaints by verifying professional competency and reviewing the criminal history of applicants as a condition of licensure. Conversely, a low number of complaints received by an OLA may also be due to limitations on the public's ability to access the complaint intake process.

The legislation enacted in 1977 by the North Carolina General Assembly provides a model for the review of OLAs. In response to concerns that the number of OLAs had increased without sufficient legislative oversight, regulatory accountability, or a system of check and balances, the General Assembly enacted legislation to evaluate the need for the continued existence of these regulatory bodies.²⁰ This legislation also created the Governmental Evaluation Commission to conduct an evaluation of the performance of each of the regulatory bodies identified for termination. In addition, the Commission was authorized to consider consolidating these identified entities with other related regulatory entities.

²⁰ Session Laws 1977, c.712, s. 16, establishes the effective date as July 1, 1977.

The legislation also directed that the Governmental Evaluation Commission conduct a public hearing before submitting its evaluation report to the General Assembly, and that the designated committees of reference should also hold a public hearing, where the applicable OLA had the burden of demonstrating a public need for the continued existence of the regulatory function.

The legislation authorizing the evaluation of the need for the continued existence of the identified regulatory bodies also stipulated that upon final determination by the General Assembly that each regulatory entity designated for elimination would be authorized an additional year of existence to help ensure that the transition did not result in any adverse impacts to the public.

The General Assembly could consider authorizing certification for OLAs determined to no longer require licensing authority. The assessment conducted by the Program Evaluation Division considered various factors to determine whether the benefits of occupational licensing outweighed the societal costs associated with higher prices for goods and services and decreased access to labor markets.

An alternative to licensure is voluntary certification. Under a certification model anyone is allowed to practice a particular occupation, but formal certificates of competency are provided to those who desire them and can meet the necessary standards. These standards are similar to those established under a licensing arrangement. Under a licensing arrangement, however, only those individuals who meet the requirements are allowed to practice.

Voluntary certification can benefit practitioners by enabling them to distinguish themselves, while consumers remain free to choose among all providers and decide for themselves how much value to place on such credentials. Another benefit of certification is that it may result in more innovative forms of service delivery by practitioners because the statutory restrictions in the allowable work are removed.

One example of voluntary certification through a professional association is the National Institute for Automotive Service Excellence, which currently administers certifications for over 300,000 automotive technicians and service professionals. These certifications are designed to protect the automotive service consumer, shop owner, and the automotive technician by offering tangible proof of an individual's technical knowledge in the designated occupation.

In summary, the requirement to obtain a license as a condition of performing specified services should be limited to occupations where the threat of public harm exceeds the cost of regulation. Based on an assessment of various factors, the Program Evaluation Division determined that continued licensing authority for 12 OLAs should be subject to additional review and consideration by the General Assembly. The review of these OLAs should include an evaluation of the impact on licensees and consumers and include consideration of the appropriate level of regulation.

Finding 6. Consolidation of ten occupational licensing agencies (OLAs) with another regulatory entity can help ensure that necessary resources are available to effectively regulate licensed occupations.

Consolidation is appropriate in cases where an OLA lacks the necessary resources to effectively regulate the occupation. Consolidation of an OLA with another regulatory entity can help ensure that each of the associated licensed occupations can be effectively regulated. OLAs that administer a small number of licensees may not be able to generate sufficient revenues to adequately perform all regulatory activities because statutory limits on fee amounts have been reached or an increase would cause an unacceptable burden on licensees. These OLAs may also have difficulty complying with standard administrative requirements placed on all agencies, providing adequate services to licensees, and investigating and enforcing violations of applicable laws and regulations.

Consolidation of OLAs that regulate a low number of licensees may allow for improved services to the licensees and the public. These OLAs often do not generate sufficient revenues to implement information technology to more cost-effectively perform associated administrative and regulatory activities. For example, information technology can be used to provide better service to potential and current licensees by allowing applications to be submitted online as opposed to requiring individuals to manually complete applications and mail them to the OLA. In addition, information technology can be used to provide better access to the complaint intake process by allowing individuals to complete and submit complaints electronically.

To determine which licensed occupations and professions could be more cost-effectively regulated through consolidation with another regulatory entity, the Program Evaluation Division conducted an assessment of each of the 55 OLAs. The assessment used the following factors to make the determination:

Annual Revenue: This factor identifies the size of the OLA. The size of the OLA as measured by the annual revenue generated provides an indication of the ability to effectively provide oversight of the occupation.

Financial Solvency: This factor compares the operating revenues and expenses generated by the OLA. Operating revenues that consistently exceed expenses provide indications that the OLA has sufficient revenues to provide adequate protection to the public.

Based on an evaluation of these factors, the Program Evaluation Division identified ten OLAs that should be consolidated with another regulatory entity:

1. North Carolina Acupuncture Licensing Board
2. North Carolina Board of Athletic Trainer Examiners
3. Cape Fear River Navigation and Pilotage Commission
4. North Carolina Board of Environmental Health Specialist Examiners
5. Board of Examiners of Fee-Based Practicing Pastoral Counselors
6. North Carolina Board of Registration for Foresters

7. North Carolina Locksmith Licensing Board
8. Morehead City Navigation and Pilotage Commission
9. North Carolina Board of Examiners for Nursing Home Administrators
10. North Carolina Board of Opticians

As shown in Appendix B, each of these identified OLAs received a cumulative score of five or less, which indicated that they may not have the necessary financial resources to effectively regulate the associated licensed occupations. For occupational licensing agencies with a score of more than five, the Program Evaluation Division concluded that consolidation with another OLA would not serve to improve their cost-effectiveness and that licensees and the public would be better served by maintaining the current organization structure.

To help ensure that consolidation achieves its objective of more cost-effectively protecting the public from harm, each of the licensed occupations in a consolidated regulatory entity should be providing services in the same industry. Consolidation with a regulatory entity that regulates occupations where the work requirements and qualifications are similar allows for the selection of Board members who have the necessary background to effectively address the problems and issues associated with each of the licensed occupations. In addition, consolidation with similar occupations provides opportunities for staff development and continuity in key licensing and enforcement functions that small agencies have trouble matching. For example, consolidation provides the opportunity for OLAs to hire dedicated staff with specific expertise in performing specific regulatory activities, such as conducting investigations to determine the validity of allegations of violations of the laws and regulations of the licensed occupation.

Consolidation of OLAs that operate in the same industry also serves to facilitate identification and resolution of scope of practice issues among licensed occupations. Scope of practice refers to the specific tasks that constitute the practice of the given occupation. Disagreements among OLAs occur because licensure by its very nature identifies who is and is not legally able to perform specific tasks, and is often subject to different interpretations.

In summary, consolidation of OLAs is appropriate for licensed occupations whose activities can result in significant public harm but may not be effectively regulated because the associated OLA lacks the necessary resources to effectively regulate the occupation. Based on an assessment of various factors, the Program Evaluation Division identified ten OLAs that should be consolidated. These OLAs should be consolidated with another entity that regulates occupations in the same industry.

Recommendations

Recommendation 1. The General Assembly should establish an Occupational Licensing Commission to improve the effectiveness of occupational licensing boards and assist with resolving disputes between boards.

As described in Findings 2, 3 and 4, the Program Evaluation Division found that occupational licensing boards do not maintain sufficient information to monitor and evaluate the efficiency or effectiveness of administrative activities. To provide greater transparency and accountability and improve the overall effectiveness of the associated activities and processes performed by occupational licensing agencies, the General Assembly should establish an Occupational Licensing Commission (hereafter referred to as “the Commission”) within the Department of Commerce.

The Commission should be responsible for assisting the General Assembly and occupational licensing agencies in more effectively achieving the primary objective of protecting the public’s health, safety, and welfare.

- **Commission membership.** The Commission would consist of nine members appointed for four-year terms. Four of the members of the Occupational Licensing Commission would be licensed in an occupation regulated by an occupational licensing agency, as defined in North Carolina General Statute 93B-1, with the terms of each of these members staggered so that the term of one licensed member expires each year. Each of the licensed members must be from a different occupational licensing agency. Five of the members of the Occupational Licensing Commission would be public members who are not licensed in an occupation regulated by an occupational licensing agency or affiliated with any associated entity.

The Governor would appoint two of the licensed members and three of the public members and designate one public member as Chair. One licensed member and one public member would be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with N. C. Gen. Stat. §120-121, and one licensed member and one public member would be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with N. C. Gen. Stat. §120-121.

- **Funding.** The General Assembly should authorize the Commission to receive up to 1% of revenues generated by each occupational licensing agency subject to the requirements of Chapter 93B to support Commission operations and up to eight full time state employees. In Fiscal Year 2013–14, 1% of the revenues generated by each of the identified occupational licensing agencies amounted to approximately \$710,000.

The powers and duties of the Commission should include, but not be limited to:

- receive and maintain performance and licensing information for each occupational licensing agency;
- establish and maintain a website that aggregates performance and licensing information for each occupational licensing agency

- including performance metrics and targets used to monitor and evaluate achievement of objectives, agency statutes and regulations, and a searchable licensing database;
- establish term contracts, in consultation with the Department of Administration, for administrative activities performed by occupational licensing agencies;
 - facilitate coordination among occupational licensing agencies choosing to consolidate administrative activities;
 - develop and provide training and educational materials to occupational licensing agency board members and staff;
 - provide assistance to develop and enact proposed modifications to the Practice Acts of OLAs, as identified in Chapter 93B-1 and as requested;
 - mediate disagreements among OLAs, as defined and identified in Chapter 93B-1, regarding jurisdictional authority over licensure and enforcement;
 - evaluate proposals to establish new Practice Acts for occupations requesting new authority for licensure and make recommendations to the General Assembly on the need for regulation of a new occupation;
 - develop and maintain information requirements for complaint processing by licensing agencies; and
 - submit an annual report to the General Assembly.

The General Assembly should direct the Commission to complete the following tasks and provide recommended statutory changes to the Joint Administrative Procedure Oversight Committee by September 30, 2016:

- Review the annual reporting requirements, as identified in N. C. Gen. Stat. § 93B-2, to ensure sufficient information is obtained to monitor and evaluate achievement of the objectives of each occupational licensing agency.
- Determine information requirements for complaint processing by each of the occupational licensing agencies, as identified in N. C. Gen. Stat. § 93B-2. Requirements should be limited to the information necessary to determine whether the occupational licensing agency receiving a complaint has jurisdictional authority as established in the applicable practice act to investigate the associated allegations. In addition, the Commission should establish a term contract for the electronic submission of complaints for OLAs to utilize, if desired.
- Develop a process for mediating disagreements among occupational licensing agencies, as defined and identified in N. C. Gen. Stat. § 93B, regarding jurisdictional authority. Completion of this mediation process should be required as a condition of any legislative or judicial consideration of the disagreement.
- Develop a process to evaluate and provide recommendations for new Practice Acts for those occupations requesting new authority for licensure. A determination by the Commission should be required

as a prerequisite to the General Assembly considering regulation of a new occupation.

Recommendation 2. The General Assembly should amend state law to list all occupational licensing agencies in N. C. Gen. Stat. § 93B and define the criteria that agencies must meet in order to be listed.

As described in Finding 2, the Program Evaluation Division found that N. C. Gen. Stat. § 93B does not clearly define and list the regulatory entities that are statutorily subject to reporting requirements.

The General Assembly should amend N. C. Gen. Stat. § 93B and other related statutes to ensure that occupational licensing boards are clearly defined and listed. Regulatory entities subject to requirements of Chapter 93B should meet the following criteria:

- statutory authorization to prohibit anyone from engaging in the activities covered by a “scope of practice” as defined in North Carolina statute; and
- statutory authorization to collect fees and fines to support all agency operations.

To assist the General Assembly with determining which occupational licensing agencies should be listed in N. C. Gen. Stat. § 93B, the Occupational Licensing Commission should be directed to review state law for all occupational licensing agencies and determine which ones meet the applicable criteria. The recommended statutory changes, to include a listing of occupational licensing agencies meeting the proposed definition, should be submitted to the Joint Administrative Procedure Oversight Committee by September 30, 2016.

Recommendation 3. The General Assembly should enact state law establishing complaint processing requirements for occupational licensing boards.

As discussed in Finding 3, complaint processing requirements for occupational licensing agencies are not defined in state law. Consequently, each OLA has developed unique requirements for submitting and processing complaints. This variation in submission hinders the public’s access to the complaint process. In addition, state law does not require OLAs to maintain sufficient information to monitor and evaluate whether the complaint process is being performed in accordance with documented procedures.

To ensure that the public has access to the complaint process for occupational licensing agencies and that the complaint process can be monitored and evaluated by an external entity, the General Assembly should enact state law requiring each occupational licensing agency to develop and implement a complaint process on or before January 2, 2018 that includes:

- electronic complaint submission via the internet, to include a prominently displayed link to a complaint form;

- complaint submission requirements limited to the information necessary to determine jurisdictional authority;
- a description of the complaint process including the types of violations that are under its jurisdictional authority;
- the ability to provide complaint status to complainants;
- the ability to provide complainants with a written description of the final disposition of each valid complaint to include complaints determined to be not subject to the jurisdictional authority of the occupational licensing agency;
- documentation of complaint processing procedures; and
- sufficient information for an external entity to monitor and evaluate whether each complaint was processed in accordance with documented procedures.

Recommendation 4. The General Assembly should require periodic audits of key regulatory activities and associated performance measurement data.

As described in Findings 2 and 3, the Program Evaluation Division found statutorily required financial audits do not provide sufficient information to monitor and evaluate the performance of occupational licensing boards. To ensure occupational licensing agencies are cost effective and achieving their objectives, the General Assembly should amend N. C. Gen. Stat. § 93B-4(b) to require each occupational licensing agency conduct a financial audit of its operations and a performance audit of key regulatory activities every three years.

The performance audit should include an assessment of the validity and reliability of the information provided in annual reports, as specified in N. C. Gen. Stat. § 93B-2. The performance audit should also include an evaluation of key regulatory activities to ensure the process is performed in accordance with documented procedures. To ensure adequate information is available, performance audits should not be conducted prior to July 1, 2018.

Recommendation 5. The General Assembly should direct the Joint Legislative Administrative Procedure Oversight Committee to establish a subcommittee to determine whether licensing authority for the 12 occupational licensing agencies should be maintained or limited to certification.

In Finding 5, the assessment conducted by the Program Evaluation Division determined that 12 occupational licensing agencies did not provide sufficient information to justify continued licensing authority. The identified occupational licensing agencies are:

1. North Carolina Board of Electrolysis Examiners
2. North Carolina State Board of Registration for Foresters
3. North Carolina Interpreter and Transliterators Licensing Board
4. North Carolina Board of Landscape Architects

5. North Carolina Landscape Contractors' Registration Board
6. North Carolina Locksmith Licensing Board
7. North Carolina State Board of Opticians
8. Board of Examiners of Fee-Based Practicing Pastoral Counselors
9. Cape Fear River Navigation and Pilotage Commission
10. Morehead City Navigation and Pilotage Commission
11. North Carolina Board of Recreational Therapy Licensure
12. North Carolina State Board of Refrigeration Examiners

To ensure that these occupational licensing agencies have an opportunity to provide further justification of the need for licensure, the General Assembly should direct the Joint Legislative Administrative Procedure Oversight Committee to evaluate whether licensing authority should be continued for each identified occupational licensing agency or reduced to the level of certification as established in a Title Act or through a professional association.

The newly established Occupational Licensing Commission should be assigned responsibility for providing the necessary clerical, technical, and professional staff and for obtaining such consulting services as the Subcommittee deems necessary to make its determinations. The staff should provide the required information to the subcommittee in a report for each of the identified occupational licensing agencies by September 30, 2016.

The results of the subcommittee's evaluation should be forwarded to the Joint Administrative Procedure Oversight Committee for review and approval before being submitted to the General Assembly for its deliberation.

Recommendation 6. The General Assembly should direct the Occupational Licensing Commission, in consultation with the affected occupational licensing agencies, to develop a plan to consolidate each of the ten identified occupational licensing agencies with another regulatory entity.

As seen in Finding 6, an assessment conducted by the Program Evaluation Division determined that ten occupational licensing agencies did not demonstrate possessing the necessary resources to effectively regulate their respective occupations. The operations of the ten identified occupational licensing agencies could be improved through consolidation with another related agency. The identified occupational licensing agencies are:

1. North Carolina Acupuncture Licensing Board
2. North Carolina Board of Athletic Trainer Examiners
3. Cape Fear River Navigation and Pilotage Commission
4. North Carolina Board of Environmental Health Specialist Examiners
5. Board of Examiners of Fee-Based Practicing Pastoral Counselors

6. North Carolina Board of Registration for Foresters
7. North Carolina Locksmith Licensing Board
8. Morehead City Navigation and Pilotage Commission
9. North Carolina Board of Examiners for Nursing Home Administrators
10. North Carolina Board of Opticians

The General Assembly should direct the Occupational Licensing Commission, in consultation with the affected occupational licensing agencies, to develop a consolidation plan for each identified occupational licensing agency. At a minimum, each plan should identify the appropriate regulatory entity for consolidation, statutory changes necessary to ensure effective regulation, disposition of fund balances, composition of the consolidated board, and recommendations for operational changes such as contract, lease and personnel terminations or transfers. The plan should also include a schedule with key milestones to ensure full implementation of the consolidations within one year following legislative approval of the plan. The plan for each occupational licensing agency identified for consolidation should be submitted to the Joint Administrative Procedure Oversight Committee no later than September 30, 2016.

Appendices:

Appendix A: Assessment of OLAs for Elimination of Licensing Authority

Appendix B: Assessment of OLAs for Consolidation with Another Regulatory Entity

Appendix C: Methodologies for OLA elimination of Licensing Authority and Consolidation with Another Regulatory Entity

Appendix D: Results of Analysis to Eliminate Licensing Authority and to Consolidate with Another Regulatory Entity

Agency Response:

The report was submitted to each of the 55 occupational licensing agencies included in the evaluation for review. Responses are provided as an addendum available on the Program Evaluation Division website: <http://www.ncleg.net/PED/Reports/2014/OccupationalLicensing.html>.

PED Contact and Staff

For more information on this report, please contact the lead evaluator, Chuck Hefren, at chuck.hefren@ncleg.net.

Staff members who made key contributions to this report include Jeff Grimes, Jim Horne, and Larry Yates. John W. Turcotte is the director of the Program Evaluation Division.

Appendix A: Assessment of OLAs for Elimination of Licensing Authority

| Profession Regulated by OLA | Public Harm Score | Complaints Score | Disciplinary Actions Score | Other States Score | Total Score |
|---|-------------------|------------------|----------------------------|--------------------|-------------|
| Foresters | 0 | 0 | 0 | 0 | 0 |
| Interpreters and Translators | 0 | 0 | 0 | 0 | 0 |
| Landscape Contractors | 0 | 0 | 0 | 0 | 0 |
| Locksmiths | 0 | 0 | 0 | 0 | 0 |
| Cape Fear River Navigation and Pilotage | 0 | 0 | 0 | 5 | 5 |
| Fee-Based Practicing Pastoral Counselors | 5 | 0 | 0 | 0 | 5 |
| Morehead City Navigation and Pilotage | 0 | 0 | 0 | 5 | 5 |
| Opticians | 5 | 0 | 0 | 0 | 5 |
| Recreational Therapy | 5 | 0 | 0 | 0 | 5 |
| Electrolysis | 5 | 0 | 0 | 5 | 10 |
| Landscape Architects | 0 | 0 | 0 | 10 | 10 |
| Refrigeration | 0 | 0 | 0 | 10 | 10 |
| Acupuncture | 10 | 0 | 0 | 5 | 15 |
| Cemetery | 5 | 5 | 0 | 5 | 15 |
| Dietetics/Nutrition | 10 | 0 | 0 | 5 | 15 |
| Environmental Health Specialists | 5 | 0 | 0 | 10 | 15 |
| Geologists | 10 | 0 | 0 | 5 | 15 |
| Irrigation Contractors | 5 | 10 | 0 | 0 | 15 |
| Substance Abuse Professionals | 5 | 5 | 0 | 5 | 15 |
| Architecture | 5 | 5 | 0 | 10 | 20 |
| Midwifery | 10 | 0 | 0 | 10 | 20 |
| Podiatry | 10 | 0 | 0 | 10 | 20 |
| Psychology | 5 | 5 | 0 | 10 | 20 |
| Speech-Language Pathologists and Audiologists | 5 | 0 | 5 | 10 | 20 |
| Athletic Trainers | 5 | 0 | 5 | 10 | 20 |
| Auctioneers | 5 | 0 | 10 | 5 | 20 |
| Hearing Aid Dealers and Fitters | 0 | 0 | 10 | 10 | 20 |
| Soil Scientists | 10 | 0 | 10 | 0 | 20 |
| Barbers | 10 | 5 | 0 | 10 | 25 |
| Optometry | 10 | 5 | 0 | 10 | 25 |
| Social Work | 5 | 5 | 5 | 10 | 25 |
| Onsite Wastewater Contractor Inspectors | 10 | 0 | 10 | 5 | 25 |
| Marriage and Family Therapy | 5 | 0 | 10 | 10 | 25 |
| Cosmetic Art | 5 | 10 | 5 | 10 | 30 |
| Physical Therapy | 10 | 5 | 5 | 10 | 30 |
| Engineers and Surveyors | 5 | 10 | 5 | 10 | 30 |
| Respiratory Care | 10 | 5 | 5 | 10 | 30 |
| Real Estate | 5 | 10 | 5 | 10 | 30 |
| Veterinary Medical | 5 | 10 | 5 | 10 | 30 |

| | | | | | |
|--|-----------|-----------|-----------|-----------|-----------|
| General Contractors | 10 | 10 | 5 | 5 | 30 |
| Chiropractic | 10 | 5 | 5 | 10 | 30 |
| Occupational Therapy | 5 | 5 | 10 | 10 | 30 |
| Funeral Service | 5 | 5 | 10 | 10 | 30 |
| Massage and Bodywork Therapy | 5 | 5 | 10 | 10 | 30 |
| Certified Public Accountants | 10 | 10 | 5 | 10 | 35 |
| Electrical Contractors | 10 | 10 | 5 | 10 | 35 |
| Nursing Home Administrators | 10 | 5 | 10 | 10 | 35 |
| Professional Counselors | 5 | 10 | 10 | 10 | 35 |
| Appraisal | 5 | 10 | 10 | 10 | 35 |
| Pharmacy | 10 | 10 | 10 | 10 | 40 |
| Medical | 10 | 10 | 10 | 10 | 40 |
| Nursing | 10 | 10 | 10 | 10 | 40 |
| Plumbing, Heating, and Fire Sprinkler Contractors | 10 | 10 | 10 | 10 | 40 |
| Dental | 10 | 10 | 10 | 10 | 40 |
| Law Examiners/State Bar (combined) | 10 | 10 | 10 | 10 | 40 |

Source: Program Evaluation Division based on data and information provided by each OLA.

Appendix B: Assessment of OLAs for Consolidation with Another Regulatory Entity

| Profession Regulated by OLA | Annual Revenue Score | Financial Solvency Score | Total Score |
|--|----------------------|--------------------------|-------------|
| Cape Fear River Navigation and Pilotage | 0 | 0 | 0 |
| Foresters | 0 | 0 | 0 |
| Morehead City Navigation and Pilotage | 0 | 0 | 0 |
| Acupuncture | 5 | 0 | 5 |
| Athletic Trainers | 5 | 0 | 5 |
| Environmental Health Specialists | 0 | 5 | 5 |
| Fee-Based Practicing Pastoral Counselors | 0 | 5 | 5 |
| Locksmiths | 0 | 5 | 5 |
| Nursing Home Administrators | 5 | 0 | 5 |
| Opticians | 5 | 0 | 5 |
| Auctioneers | 5 | 5 | 10 |
| Barbers | 10 | 0 | 10 |
| Cemetery | 0 | 10 | 10 |
| Dietetics/Nutrition | 5 | 5 | 10 |
| Electrolysis | 0 | 10 | 10 |
| Funeral Service | 10 | 0 | 10 |
| Interpreters and Translators | 0 | 10 | 10 |
| Irrigation Contractors | 5 | 5 | 10 |
| Landscape Architects | 5 | 5 | 10 |
| Landscape Contractors | 0 | 10 | 10 |
| Marriage and Family Therapy | 5 | 5 | 10 |
| Massage and Bodywork Therapy | 10 | 0 | 10 |
| Medical | 10 | 0 | 10 |
| Midwifery | 0 | 10 | 10 |
| Podiatry | 0 | 10 | 10 |
| Professional Counselors | 10 | 0 | 10 |
| Psychology | 5 | 5 | 10 |
| Respiratory Care | 5 | 5 | 10 |
| Soil Scientists | 0 | 10 | 10 |
| Substance Abuse Professionals | 10 | 0 | 10 |
| Certified Public Accountants | 10 | 5 | 15 |
| Chiropractic | 5 | 10 | 15 |
| Cosmetic Art | 10 | 5 | 15 |
| Dental | 10 | 5 | 15 |
| Electrical Contractors | 10 | 5 | 15 |
| Engineers and Surveyors | 10 | 5 | 15 |
| Geologists | 5 | 10 | 15 |
| Hearing Aid Dealers and Fitters | 5 | 10 | 15 |
| Law Examiners/State Bar (combined) | 10 | 5 | 15 |
| Nursing | 10 | 5 | 15 |

| | | | |
|--|-----------|-----------|-----------|
| Occupational Therapy | 5 | 10 | 15 |
| Onsite Wastewater Contractor Inspectors | 5 | 10 | 15 |
| Real Estate | 10 | 5 | 15 |
| Recreational Therapy | 5 | 10 | 15 |
| Refrigeration | 5 | 10 | 15 |
| Speech-Language Pathologists and Audiologists | 5 | 10 | 15 |
| Veterinary Medical | 10 | 5 | 15 |
| Appraisal | 10 | 10 | 20 |
| Architecture | 10 | 10 | 20 |
| General Contractors | 10 | 10 | 20 |
| Optometry | 10 | 10 | 20 |
| Pharmacy | 10 | 10 | 20 |
| Physical Therapy | 10 | 10 | 20 |
| Plumbing, Heating, and Fire Sprinkler Contractors | 10 | 10 | 20 |
| Social Work | 10 | 10 | 20 |

Note: Annual revenue and financial solvency data based on most recent fiscal year available as reported by each Occupational Licensing Agency in response to a PED request dated July 9, 2014.

Source: Program Evaluation Division based on data and information provided by each OLA.

Appendix C: Methodologies for OLA Elimination of Licensing Authority and Consolidation with Another Regulatory Entity

Finding 5: Criteria for the Assessment of OLAs for Elimination of Licensing Authority

The selection of each of the factors in the assessment of OLAs for potential elimination of licensing authority was based on review of literature and evaluations conducted by other states, and on the availability of quantifiable information from OLAs. The assessment used the following factors and associated scoring methodology to identify the OLAs that should be subject to additional legislative review as a condition of continued licensing authority.

Public harm. This factor identifies the impact to the public's health, safety or economic welfare associated with improper activity in the occupation/profession. Identification of specific instances of severe public harm associated with violations of the practice act of the occupation indicates a continued need for a licensing requirement for the occupation/profession.

Scoring was based on an evaluation of specific instances of public harm associated with violations of the practice act of the occupation. OLAs that did not identify any risk of significant public harm other than those risks associated with business transactions where the consumer could reasonably be expected to be able to make an informed decision received a score of zero. An example would be a consumer who voluntarily entered into an agreement to purchase a good or service provided by a licensed individual, only to find out after delivery and payment that the price exceeded the market rate.

OLAs that did not demonstrate instances of severe harm to the health, safety, or welfare, but provided evidence of the risk of limited physical, emotional or financial harm to the recipient of the service received a score of five. Examples of limited risk of physical, emotional, or financial harm included the risk of emotional harm associated with client/patient relationships.

OLAs that provided instances that demonstrated severe consequences from unlawful activity as specified in the associated practice act received a score of ten. Examples of severe consequences included death, permanent physical disability, contamination of public drinking water, and personal bankruptcy.

Complaints: This factor identifies the level of public concern regarding the impact on health, safety, and welfare, as well as the level of competence of the work performed by individuals in the occupation/profession. A large number of complaints indicate that there is a higher risk of harm to the public's health, safety, and welfare.

Scoring was based on the number of complaints received from the public in Fiscal Year 2013–14. OLAs receiving fewer than 20 complaints received a score of zero. OLAs with more than 20, but less than 100 complaints received a score of five. Any OLA that received more than 100 complaints in Fiscal Year 2013–14 received a score of 10.

Disciplinary actions. This factor identifies the level of activity in the occupation/profession that resulted in significant disciplinary actions. A large percentage of significant disciplinary actions reflect a greater risk that activities associated with the occupation/profession can produce significant public harm. Significant disciplinary actions include license revocation and suspension for licensed activity.

Scoring was based on the ratio of the number of significant disciplinary actions in Fiscal Year 2013–14 to the number of active licenses administered by the OLA on June 30, 2014. OLAs with no significant disciplinary action received a score of zero. OLAs with at least one significant disciplinary action, but fewer than one per 1000 licensees received a score of five. Any OLA that had more than one significant disciplinary action per 1000 licensees in Fiscal Year 2013–14 received a score of 10.

Other states. This factor identifies the number of other states that statutorily require licensure to engage in any of the occupations licensed by the OLA. The number of states that statutorily require licensure as a condition of engaging in a profession reflects determinations of the necessity of licensure made by other states.

Scoring was based on the number of states that statutorily require licensure. OLAs with occupations/professions where fewer than half of states require licensure received a score of zero. OLAs with occupations/professions where more than half but fewer than 40 states require licensure received a score of five. OLAs with occupations

where more than 40 states require licensure received a score of 10. Scoring was based on the number of states that statutorily require licensure as a condition of performing activities according to the occupation's statutorily defined scope of practice.

Finding 6: Criteria for the Assessment of OLAs for Consolidation with Another Regulatory Entity

The selection of each of the factors in the assessment of OLAs for potential consolidation with another regulatory entity was based on a review of literature and evaluations conducted by other states, and on the availability of quantifiable information from OLAs. The assessment used the following factors and associated scoring methodology to identify the OLAs that should be consolidated with another regulatory entity.

Annual Revenue: This factor identifies the size of the OLA. The size of the OLA as measured by the annual revenue generated provides an indication of its ability to effectively provide oversight of the occupation/profession. Scoring was based on the annual revenue generated, as reported for the most recent reporting period. OLAs with less than \$100,000 in annual revenue received a score of zero. Occupational licensing boards with more than \$100,000, but less than \$500,000 in annual revenue received a score of five. OLAs with greater than \$500,000 in annual revenues received a score of ten.

Financial Solvency: This factor compares the operating revenues and expenses generated by the OLA. Operating revenues that consistently exceed expenses provide an indication that the OLA has sufficient revenues to provide adequate protection to the public. Scoring was based on the ratio of the net position to annual expenses as reported on the most recently available financial statement. OLAs with a ratio of net worth to annual expenses of 0.5 or less received of zero. OLAs with a ratio of greater than 0.5 but less than 1.5 received a score of five. OLAs with a ratio of net worth to annual expenditures of greater than 1.5 received a score of ten.

Appendix D: Results of Analysis to Eliminate Licensing Authority and to Consolidate with Another Regulatory Entity

| Profession Regulated by OLA | Review for Elimination of Licensing Authority | Consolidate with Another Regulatory Entity | No Change |
|--|---|--|-----------|
| Acupuncture | | x | |
| Appraisal | | | x |
| Architecture | | | x |
| Athletic Trainers | | x | |
| Auctioneers | | | x |
| Barbers | | | x |
| Cape Fear River Navigation and Pilotage | x | x | |
| Cemetery | | | x |
| Certified Public Accountants | | | x |
| Chiropractic | | | x |
| Cosmetic Art | | | x |
| Dental | | | x |
| Dietetics/Nutrition | | | x |
| Electrical Contractors | | | x |
| Electrolysis | x | | |
| Engineers and Surveyors | | | x |
| Environmental Health Specialist | | x | |
| Fee-Based Practicing Pastoral Counselors | x | x | |
| Foresters | x | x | |
| Funeral Service | | | x |
| General Contractors | | | x |
| Geologists | | | x |
| Hearing Aid Dealers and Fitters | | | x |
| Interpreters and Translators | x | | |
| Irrigation Contractors | | | x |
| Landscape Architects | x | | |
| Landscape Contractors | x | | |
| Law Examiners/State Bar (combined) | | | x |
| Locksmiths | x | x | |
| Marriage and Family Therapy | | | x |
| Massage and Bodywork Therapy | | | x |
| Medical | | | x |
| Midwifery | | | x |
| Morehead City Navigation and Pilotage | x | x | |
| Nursing | | | x |
| Nursing Home Administrators | | x | |
| Occupational Therapy | | | x |
| Onsite Wastewater Contractor Inspectors | | | x |

| | | | |
|---|-----------|-----------|-----------|
| Opticians | x | x | |
| Optometry | | | x |
| Pharmacy | | | x |
| Physical Therapy | | | x |
| Plumbing, Heating and Fire Sprinkler Contractors | | | x |
| Podiatry | | | x |
| Professional Counselors | | | x |
| Psychology | | | x |
| Real Estate | | | x |
| Recreational Therapy | x | | |
| Refrigeration | x | | |
| Respiratory Care | | | x |
| Social Work | | | x |
| Soil Scientists | | | x |
| Speech-Language Pathologists and Audiologists | | | x |
| Substance Abuse Professionals | | | x |
| Veterinary Medical | | | x |
| Total | 12 | 10 | 39 |