

**Agenda Item : 1.3.1**  
**Kathy Thomas**  
**Mark Majek**  
**Meeting Date: April 2010**

**Summary of Request:**

As a separate item within the Strategic Plan, staff is requesting formal approval to move forward in the 82<sup>nd</sup> Legislative Session to request Self-Directed Semi-Independent Status.

**Historical Perspective:**

The Texas Board of Nursing has made the request to move to Self-Directed Semi-Independent Status since June, 2002.

**Pros:**

Discussed in following report.

**Cons:**

Discussed below in following report.

**Staff Recommendation:**

Move that the Texas Board of Nursing seek the status of self-directed, semi-independent state agency in the 82<sup>nd</sup> Legislative Session.

### **Self-Directed, Semi-Independent Status**

The Texas Board of Nursing (BON) will pursue authorization to function as a self-directed, semi-independent agency. The Board is self-funded raising funds in excess of its operating budget through licensure fees. The legislature approves the Board's operating budget each biennium and utilizes a fraction of the funds the Board has deposited in the State Treasury. Additionally, the Board is required each biennium to fund any additional new program with new fees rather than the use of any of the current funds it deposits in the treasury.

The rapid changes occurring in nursing practice and the changing demands and pressures on the Board's resources have prompted concern by the Board that it may not have the financial resources and the flexibility to meet its responsibilities efficiently and effectively. The notion of having self-directed and semi-independent status to function with flexibility and not be anchored to a legislatively set biennial budget constraints is not a new concept for regulating agencies.

During the 76<sup>TH</sup> Legislative Session, Senate Bill 1438 was passed to allow three state agencies, Board of Public Accountancy, Board of Professional Engineers and the Board of Architectural Examiners, to participate in a self-directed and semi-independent pilot program. In particular, the agencies were permitted to move their funds outside the state treasury, pay their own bills and reimburse the State for all services rendered. The agencies enabling statutes are still under direct control of the legislature and each agency must still report certain information to the state demonstrating accountability for funds, services and goals. The agencies are still subject to audit by the Office of the State Auditor.

During the 81<sup>st</sup> Legislative Session, four additional state agencies were granted semi-independent status by House Bill 2774. These included the Texas Finance Commission, the Texas Department of Banking, the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner and the Credit Union Department.

If granted self-directed, semi-independent status, the Texas Board of Nursing would be removed from the legislative budgeting process and the budget would be adopted and approved by the board members appointed by the Governor. On the first day of each regular legislative session, the BON would be required to submit a report to the Legislature and the Governor describing all of the agency's activities in the previous biennium. In addition, the BON would be required to report its two year expenses and revenue collections by November 1 of each year to the Legislature, the Legislative Budget Board, and the Governor. The BON employees would remain members of the Employees Retirement System of Texas under Chapter 812 of the Government Code. The pilot would require the State Auditor to contract with the BON to conduct financial and performance audits and would allow the Attorney General to collect fees for their legal services. All agency supplies, materials, records, equipment, and facilities would be transferred to the BON. The pilot would make an appropriation of an amount equal to 50 percent of the amount of the General Revenue appropriated to the BON for fiscal year 2011 for a two-year period beginning fiscal year 2012. Under the provisions of this status, the amount could be spent as the agency directs and would be repaid to the General Revenue Fund in the fiscal year in which it was appropriated.

The Board recognizes that semi-independent status may truly be a misnomer and such legislatively granted authority is well balanced by accountability through reporting and significant auditing processes. Furthermore, the current level of revenue deposited into the treasury in excess of the Board's operating budget will remain unaffected. The current fees charged by the Board remain relatively low compared to the national average of Board's of nursing. Therefore, it is realistic to assume that the Board has the ability to support current treasury deposits and successfully implement the self-directed model with minimal increase in fees.

The advantages of self-directed, semi-independent Agency move would be:

- Board direction over agency funds.
- Board direction over agency programs.
- Agency would have more flexibility in staff compensation.
- A decrease in the number of reports to oversight agencies.
- Most reports would be on an annual basis.
- Agency would have a budget set by the Board and not the legislature.
- The strategic plan, biennial operating plan, etc. would be directed by the Board.
- Would not be subject to the State mandated FTE and Travel caps.
- The Board is held to a higher accountability to their constituents.
- The agency budget is held to a higher level of scrutiny by licensees and constituent associations.
- Reduces administrative burden to state for constant oversight.

The move to self-directed, semi-dependent is a major change to how the agency finances are managed. This shift from direct state oversight to an agency driven process is a significant change but has been tested by seven licensing agencies and has proven to be successful and effective. By virtue of past State Auditor, Comptroller and State Office of Risk Management audits, the Texas Board of Nursing has proven to be an effective, efficient and well-managed state agency. With changes in the health care environment, this move allows the Texas Board of Nursing flexibility to adapt quickly to nursing practice and education changes, nurse license compact issues and effective enforcement and licensing challenges. This flexibility would have been advantageous to the Texas BON after 81<sup>st</sup> legislative session, when our time frame for approving advanced practice registered nurse applications doubled due to rule changes and the number of schools participating in the new student background checks went from 57 to 115. We had to request four additional staff and now must wait for approval. In this case, if we had the self-directed, semi-independent status, staff could request the additional staff and resources directly from the governing board which meets quarterly.

From a financial point of view, the Texas Board of Nursing has consistently paid encumbrances in a timely manner, contracted within state parameters, collected fees to support agency appropriations and provided significant additional funding to the State Treasury. The Texas BON understands the importance of these additional funds and would continue to provide this source each fiscal year as agreed upon by the Texas BON and the Legislature. The Texas BON revenues have been consistent and there should be seamless transfer to self-directed, semi-independent status.