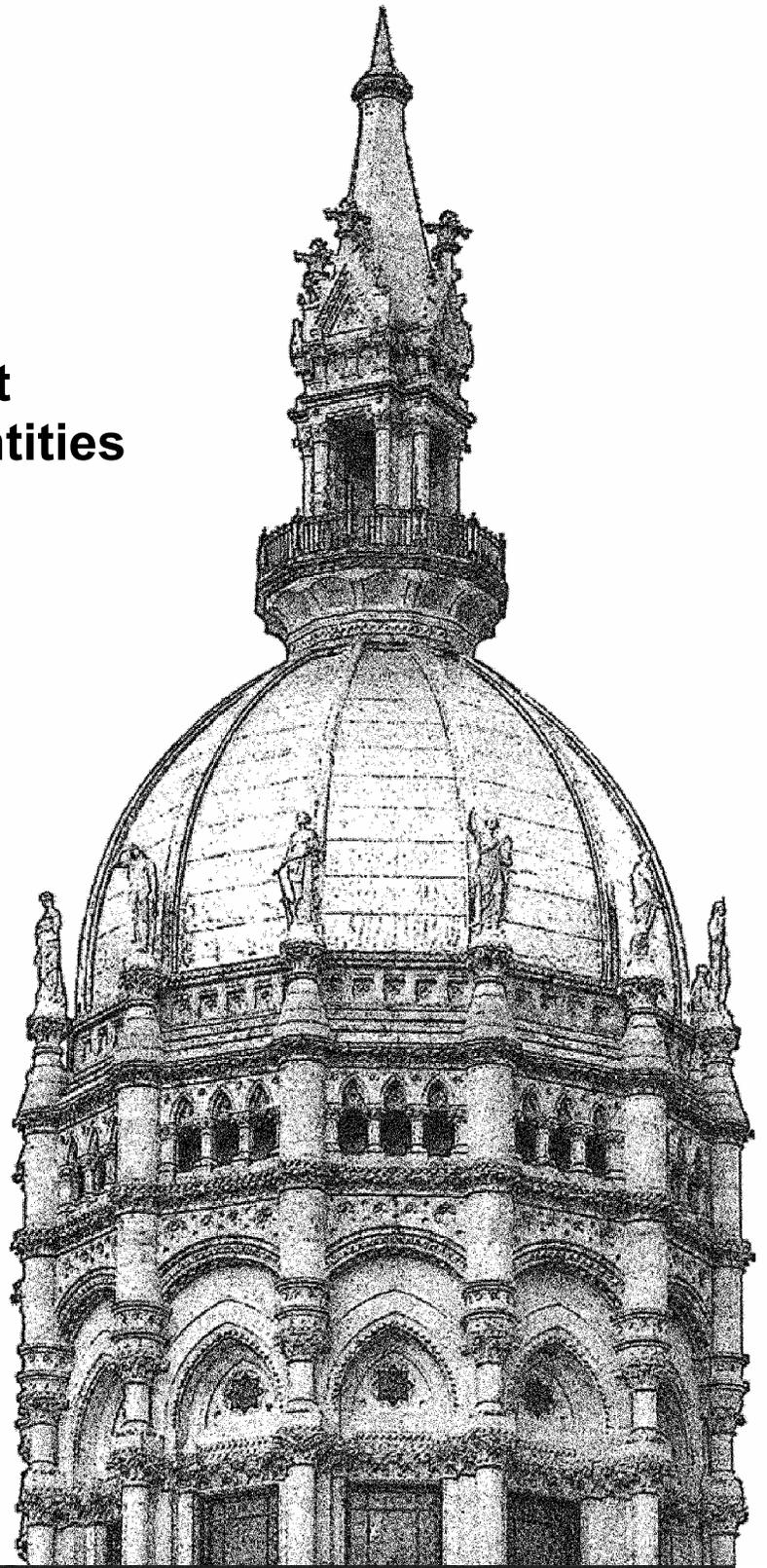


Connecticut Sunset Law: An Overall Assessment and Reviews of Two Entities Subject to the Law

March 2012



PRI

**Legislative Program Review and
Investigations Committee**

Connecticut General Assembly

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a bipartisan statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

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Executive Summary

Connecticut Sunset Law

The PRI committee found value in conducting the two recent sunset review performance audits. As summarized in Chapters II and III, while the PRI committee recommends continuing licensure of embalmers, funeral directors, and funeral homes, it also makes recommendations to address several concerns. For embalmers and funeral directors, for example, a pre-need funeral service contract guaranty fund is recommended to address instances when funds are misdirected away from escrow accounts (i.e., reimburse consumers for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home). Similarly, while the PRI committee also recommends continuing licensure for hearing instrument specialists, it also recommends the elimination of duplicative and conflicting statutory requirements for audiologists fitting and dispensing hearing aids. Thus, to the extent sunset requires a focused review of state programs, it is a tool that can be valuable to improving programs in the monitoring and oversight role of the general assembly and should be retained.

In studying the Board of Examiners of Embalmers and Funeral Directors, and hearing instrument specialists, both the current sunset criteria and results-based accountability (RBA) questions were applied to compare the processes and results of a traditional sunset performance audit with those of an RBA assessment. There are advantages and disadvantages to both approaches. The specific sunset criteria are important and serve as standards by which to review programs and entities. The RBA approach focuses on outcomes and encourages thinking about ways to improve the current regulation of the program or entity. Another benefit of RBA is the report card format, which provides a quick snapshot of sunset review results, and is a good way to organize and present the information obtained by addressing each of the traditional criteria.

As was found in this current sunset review experience and in at least one previous sunset study, there are advantages to retaining the sunset law. While it considered several possible changes to the sunset law, the PRI committee ultimately recommended transferring responsibility for the sunset review performance audit to the committees of cognizance. *The committee believes PRI is better suited to doing larger studies as it more typically takes on, and the committees of cognizance would be a better choice for conducting the sunset review performance audits.*

Regulation of Embalmers, Funeral Directors and Funeral Homes

Continue licensure. Based on a review of the sunset criteria, evidence suggests there is a public need for continuing licensure of embalmers, funeral directors, and funeral homes in order to help protect the mental health of mourners and potential physical health threatened by the spread of communicable diseases should sanitary safeguards be eliminated. It is further suggested that a less restrictive method of regulation would not adequately protect the public from practitioners lacking training and educational requirements. The licensure requirements contribute negligible expense to the professional, making it unlikely that they significantly impact the cost to the public. The development of regulations pertaining to funeral homes would further enhance the department's ability to regulate funeral homes.

As demonstrated by the experience during which full regulation of embalmers, funeral directors, and funeral homes was not occurring, such level of regulation is needed to protect the

public health, safety, and welfare of Connecticut residents.

Continue board. The department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of boards or commissions. It is uncertain, however, what advantage would be gained by eliminating the Board of Examiners of Embalmers and Funeral Directors. There is little to no expense to the department or public, and the board provides readily available expertise to draw upon for the processing of complaints. A potential downside to eliminating the board would be an increase in the time to resolve some complaints, exposing the public to unscrupulous practitioners for a longer period of time. *Evidence exists that the board provides a value-added service to DPH in its regulation of embalmers, funeral directors and funeral homes, and plays a role in protecting public health, safety and welfare.* Recommended modifications to the regulation of embalmers, funeral directors and funeral homes are shown in Table 1.

Table 1. RECOMMENDED MODIFICATIONS	
▶	<p>Expand current funeral home regulations</p> <ul style="list-style-type: none"> ○ The current regulations pertaining to embalmers and funeral directors are limited ○ DPH staff recommends expanding the current regulations to clarify statutory requirements related to funeral homes, addressing issues such as definition of “funeral service” and specific requirements for funeral home inspections
▶	<p>Include five years of data in DPH licensure report</p> <ul style="list-style-type: none"> ○ Data on the numbers of licensed personnel and facilities are reported annually in DPH’s publication, “Total Active Licenses” ○ To improve ease of analyzing trends, have five years of licensing data in the report
▶	<p>Clarify where consumers file pre-need funeral service contract complaints</p> <ul style="list-style-type: none"> ○ DCP website could specifically stating that it handles pre-need funeral service contract and other business-practice related complaints, and DPH handles service-related complaints ○ DPH website could reduce consumer confusion by providing this same information so that complainants are clear as to where to register their complaints
▶	<p>Make consumers aware of DCP Pre-Need Funeral Service Contracts Fact Sheet</p> <ul style="list-style-type: none"> ○ Beyond having the fact sheet on the DCP website, DPH and DSS websites should provide links to the document to help better inform consumers ○ Funeral directors and embalmers should distribute paper copies of the fact sheet to customers considering or purchasing a pre-need funeral service contract
▶	<p>Establish a Pre-Need Funeral Service Contract Guaranty Fund</p> <ul style="list-style-type: none"> ○ DCP currently maintains five guaranty funds and could make a similar arrangement to address the occasional diversion of pre-need funeral service contract funds ○ The guaranty fund would be available to reimburse consumers for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home
▶	<p>Request timeframe for when board member vacancy will be filled</p> <ul style="list-style-type: none"> ○ More than six months have passed since DPH notified the Governor’s Office of a public board member vacancy; however, it has not yet been filled ○ The DPH commissioner should request of the Governor’s Office the anticipated timeframes for the filling of DPH board and commission vacancies
▶	<p>Institute a board hearing attendance requirement</p> <ul style="list-style-type: none"> ○ There are no requirements for board member attendance at board hearings on complaints ○ Because the perspective of both the public and the professional is important to the work of the board, at least one public board member and one professional board member should be present at board hearings on complaints

Regulation of Hearing Instrument Specialists

Continue licensure. Based on a review of the sunset criteria, *evidence suggests there is a public need for licensure of hearing instrument specialists* in order to protect against further hearing loss due to improperly fitted hearing aids for a patient population consisting of many frail and elderly clients.

Hearing instrument specialists are regulated in all 50 states, most often through licensure (92 percent of the time). Hearing aids are classified as medical devices by the FDA. The FDA website notes that hearing aids should be properly fitted so that amplification matches the individual’s hearing loss. If the hearing aid is not properly fitted, then too much amplification may cause additional hearing loss. The experience of Colorado following its sunseting of the regulation of hearing instrument specialists found significant actual public harm by the unregulated practice of hearing aid sales, and led to re-regulation of the profession.

A less restrictive method of regulation would not adequately protect the public from practitioners lacking training and educational requirements. Further, the licensure requirements contribute negligible expense to the professional, making it unlikely that they significantly impact the cost to the public.

The DPH (rather than DCP) is the appropriate agency for the regulation of this profession as hearing aids are classified as FDA-regulated medical devices, and hearing instrument specialists screen clients for eight medical conditions.

Recommended modifications to the regulation of hearing instrument specialists are shown in Table 2.

Table 2. RECOMMENDED MODIFICATIONS	
▶	<p>Add continuing education requirement for licensure renewal</p> <ul style="list-style-type: none"> ○ Hearing aid technology is a rapidly changing field, with new software and products approximately every three years ○ The public may be better served by having a continuing education requirement
▶	<p>Eliminate requirements for audiologists under the hearing instrument specialist statute</p> <ul style="list-style-type: none"> ○ The hearing instrument specialist statute requires audiologists to pass an exam, get another license, or submit documentation to DPH before they can fit and dispense hearing aids ○ This statutory requirement is unnecessary as the practice of audiology includes fitting or selling hearing aids (C.G.S. Sec. 20-395a), and audiology licensure requires a doctorate
▶	<p>Include five years of data in DPH licensure report</p> <ul style="list-style-type: none"> ○ Data on the numbers of licensed personnel and facilities are reported annually in DPH’s publication, “Total Active Licenses” ○ To improve ease of analyzing trends, have five years of licensing data in the report

RECOMMENDATIONS

1. The Committees of Cognizance shall conduct the performance audits required under the Connecticut sunset law.

Recommendations Regarding the Regulation of Embalmers, Funeral Directors, and Funeral Homes:

2. The regulation at the licensure level of embalmers, funeral directors, and funeral homes should be continued.
3. The Board of Examiners of Embalmers and Funeral Directors shall be reestablished.
4. DPH shall expand the current regulations pertaining to funeral homes to address issues including but not limited to a definition for “funeral service” and specific requirements related to funeral home inspection certificates.
5. DPH’s report, “Total Active Licenses,” be formatted to include data from each of the past five years.
6. DPH should consider developing a system to monitor timeliness of complaint processing for all cases, with the ability to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.
7. Specifically state on the DCP website that DCP handles consumer complaints about pre-need funeral service contracts. Other complaints related to services received from embalmers, funeral directors and funeral homes are handled by DPH.
8. Specifically state on the DPH website that DPH handles complaints related to services received by from embalmers, funeral directors and funeral homes. Complaints about pre-need funeral service contracts are handled by DCP.
9. DPH and DSS should make consumers aware of the pre-need funeral service contracts fact sheet by providing a link to the document on the DCP website.
10. Funeral directors and embalmers shall distribute paper copies of the DCP pre-need funeral service contracts fact sheet to customers considering or purchasing such a contract.
11. A Pre-Need Funeral Service Contract Guaranty Fund shall be established and managed by DCP.
12. DPH Commissioner should request of the Governor’s Office the anticipated timeframes for the filling of DPH board and commission vacancies.
13. At least one public board member and one professional board member shall be present at DPH board hearings.

Recommendations Regarding the Regulation of Hearing Instrument Specialists:

- 14. The regulation at the licensure level of hearing instrument specialists should be continued.**
- 15. C.G.S. Sec. 20-398 shall be amended so that audiologists will not have to meet the additional hearing instrument specialist requirements in order to fit and dispense hearing aids.**
- 16. DPH's report, "Total Active Licenses," be formatted to include data from each of the past five years.**
- 17. Hearing instrument specialists shall be required to complete 16 continuing education units prior to licensure renewal.**

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Introduction

CONNECTICUT SUNSET LAW

The Connecticut sunset law is contained in the Connecticut statutes and sets out a list of 75 specifically named entities or programs that will automatically terminate on a date certain (i.e., sunset) unless the legislature specifically acts to re-establish each one (The complete Connecticut Sunset Law is found in Appendix A of this report). Enacted in 1977 as part of a larger government reorganization effort¹, the Connecticut sunset law is based on two statutory findings made at the time:

- “There has been a proliferation of governmental entities and programs, which has occurred without sufficient legislative oversight or regulatory accountability.”
- “There is a need for periodic comprehensive review of certain entities and programs, and for the termination and modification of those which did not significantly benefit the public health, safety, or welfare.”

Review Process

The law sets out a review process for each entity or program prior to its automatic termination date that includes:

- a ***PRI performance audit*** that is guided by, but not limited to, statutory criteria;
- a ***PRI written report*** (submitted to the Government Administration and Elections Committee (GAE) and the General Assembly) addressing the criteria, summarizing the PRI performance audit findings, and making recommendations based on those findings to abolish, reestablish, modify, or consolidate the specific entity or program under review; and
- a ***GAE public hearing***, and the authority for GAE to recommend to the General Assembly that the entity or program be modified, consolidated with another entity or program, or re-established.

If the outcome of the review process is a recommendation to continue an entity or program, with or without modifications, the only way for the entity or program to continue is if the General Assembly agrees and passes explicit legislation re-establishing the entity or program. If the review process recommendation is to terminate, and the General Assembly agrees, it does not need to act at all.

¹ P.A. 77-614 State Government Reorganization

Review Criteria

Two sets of criteria guide the sunset review process. The first set of criteria is to help determine **whether there is a public need for the continued existence of the entity or program;** the legislature is to consider, among other things:

1. whether termination of the entity or program would significantly endanger public health, safety or welfare;
2. whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation;
3. whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and
4. whether the effective operation of the entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

The second set of criteria is to help determine **whether a regulatory entity or program serves the general public, and not merely the persons regulated;** the legislature is to consider, among other things:

1. the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program;
2. the extent to which the governmental entity involved has complied with federal and state affirmative action requirements;
3. the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated;
4. the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and
5. the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation.

Study Scope

The Legislative Program Review and Investigations Committee (PRI) voted to conduct this sunset review performance audit on September 27, 2011. The study reviewed two entities/programs on the first year of the sunset list (set to terminate July 1, 2013): 1) the Board of Examiners of Embalmers and Funeral Directors, located within and assisted by the Department of Public Health (DPH); and 2) the hearing aid dealer regulation program, administered totally by DPH. Both the current sunset criteria and results-based accountability (RBA) questions were applied to compare the processes and results of a traditional sunset performance audit with those of an RBA assessment.

The purpose of this approach was to provide a first-hand opportunity to observe and understand the benefits and drawbacks of the current sunset performance audit process and results. Changes to the sunset law were to be considered to improve the efficiency and effectiveness of this legislative oversight tool. A related question not explicitly stated in the scope was whether any aspect of the sunset law should continue.

Study Methodology

For the performance audits of the two programs/entities, program review committee staff conducted several interviews and obtained information from members of the Board of Examiners of Embalmers and Funeral Directors, and staff from the Department of Public Health (DPH), Department of Consumer Protection (DCP), Auditors of Public Accounts, and the Office of the Attorney General. Program review committee staff also met with the Connecticut Funeral Directors Association, Connecticut Hearing Aid Dispenser's Organization, and the Connecticut Academy of Audiology. Staff also toured a funeral home and the offices of a hearing instrument specialist.

As part of the sunset review performance audit, agency complaint files were reviewed and surveys distributed to the parties involved in the regulation of the entity or program.² In this review, surveys were completed by both members of the Board of Examiners of Embalmers and Funeral Directors, and the Department of Public Health's Practitioner Licensing and Investigations Section staff (Appendix B). This experience was used to help inform the overall assessment of the Connecticut sunset law.

Also in examining the overall Connecticut sunset law, telephone interviews were conducted with personnel in several states with sunset laws including Texas, Florida, Missouri, and Washington. Previous Legislative Program Review and Investigations Committee studies of the Connecticut sunset law, individual performance audit reports from 1979 to 1983, and national literature were also reviewed.

Report Organization

This report contains three chapters. The first chapter provides an overall examination of the Connecticut sunset law and recommended changes to the current process. The second chapter contains the sunset review performance audit of the regulation of embalmers, funeral directors and funeral homes and recommendations to improve efficiency and effectiveness. It also contains information on the Board of Examiners of Embalmers and Funeral Directors. Chapter III contains the sunset review performance audit of the regulation of hearing instrument specialists and recommended improvements based on the audit findings.

Response from Agency

It is the policy of the Legislative Program Review and Investigations Committee to provide agencies subject to a study with an opportunity to review and comment on the recommendations prior to publication for the final report. Appendix J contains the response from the Board of Examiners of Embalmers and Funeral Directors.

² The sunset law requires each entity or program under review to provide PRI with an analysis of its activities that specifically address the two sets of criteria found in statute (C.G.S. Secs. 2c-7, 2c-8).

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EXAMINATION OF OVERALL CONNECTICUT SUNSET LAW

Connecticut Past Experience

Programs or entities on Connecticut's sunset review list regulate occupations or professions, formulate or guide specific state policies, advise state officials in specific areas, enforce industry standards, or provide services to the public or other state agencies. The largest category of entities regulates a profession or occupation.

Unlike the Texas sunset review process which has an expansive list of approximately 130 programs and entities, Connecticut's law includes 75 programs and entities to undergo sunset reviews. This is obviously not an exhaustive list, and thirty years after most of the programs and entities were selected, it is difficult to identify a clear rationale for the placement of these particular programs and entities on the sunset list. There are other professions regulated by DPH, such as acupuncturists and athletic trainers, for example, which are not included on the sunset list.

In the first and only completed five-year sunset review cycle, PRI examined 94 entities and made approximately 350 recommendations, of which 270 were implemented. Overall, PRI proposed terminating 32 entities, and 17 were acted upon favorably by the General Assembly with the remaining 15 being rejected.

In summary, since the first sunset review cycle was completed in 1984:

- The **legislature has postponed doing sunset reviews for almost 30 years.**
- The legislature has periodically **eliminated programs or entities independent of a sunset review** (e.g., eliminated Veterans Home and Hospital Commission (P.A. 88-285) and the Tri-State Regional Planning Commission (P.A. 81-463)).
- The legislature has occasionally **taken currently existing programs or entities off of the sunset list without benefit of a sunset review** (e.g., Department of Economic and Community Development (P.A. PA 09-234) and the State Tree Protection Examining Board (P.A. 99-73)).
- **Given the many postponements, the purpose of the sunset law has not been achieved,** which was to address the "...proliferation of governmental entities and programs" that has occurred due to insufficient legislative oversight or regulatory accountability. The Connecticut sunset law is intended to fill a need for "...periodic comprehensive review of certain entities and programs, and for the termination or modification of those which do not significantly benefit the public health, safety or welfare."
- There continues to be concern about the proliferation of governmental entities and programs and over-regulation.

Current Connecticut Experience

The PRI committee found value in conducting the two recent sunset review performance audits. As summarized in Chapters II and III, while the PRI committee recommends continuing licensure of embalmers, funeral directors, and funeral homes, there are recommendations to address several concerns. For embalmers and funeral directors, for example, a pre-need funeral service contract guaranty fund is recommended to address instances when funds are misdirected away from escrow accounts (i.e., reimburse consumers for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home.). Similarly, while the PRI committee also recommends continuing licensure for hearing instrument specialists, it also recommends the elimination of duplicative and conflicting statutory requirements for audiologists fitting and dispensing hearing aids. Thus, to the extent sunset requires a focused review of state programs, it is a tool that can be valuable to improving programs in the monitoring and oversight role of the general assembly and should be retained.

Comparison of Traditional Sunset Performance Review and Results-Based Accountability Framework

In studying the Board of Examiners of Embalmers and Funeral Directors, and hearing instrument specialists, both the current sunset criteria and RBA questions were applied to compare the processes and results of a traditional sunset performance audit with those of an RBA assessment. Informed in part by these reviews, the benefits and drawbacks of each methodology are now summarized.

Traditional Sunset Review

The benefits and drawbacks of traditional sunset reviews are summarized in Table I-1. The benefits range from requiring consideration of various aspects of how well the regulated program or entity is protecting public health, safety and welfare, to requiring the program or entity to participate in a self-evaluation.

Drawbacks include the paucity of readily available information to conduct sunset reviews, a challenge that also exists with regular PRI performance audits, and the lack of timeliness and legislative interest in the current programs and entities on the sunset review list.

Results-Based Accountability

The benefits and drawbacks of using a results-based accountability approach in conducting sunset reviews are summarized in Table I-2. Advantages to using RBA to conduct sunset reviews include its readily accessible format, and generation of recommended improvements to the regulated program or entity. The primary drawback is the general nature of the RBA questions can lead to assessments that do not include aspects of regulation that are spelled out in the sunset law.

Table I-1. Benefits and Drawbacks of Traditional Sunset Review

Benefits
<ul style="list-style-type: none">• Requires consideration of important areas/issues in the regulation of a particular program or entity• Focuses on specific criteria when assessing the importance of regulation of a particular program or entity• Requires the governmental regulatory body to be involved in the process and self-assessment• Leads to generation of recommended improvements that can benefit the public• Identifies areas where the regulation is not protecting the public, having a potentially detrimental impact on health, safety and welfare• Has the potential to reduce the size of government• Has the potential to eliminate unnecessary regulation that is detrimental to those required to adhere to the regulations• With additional criteria proposed by PRI staff, has the potential to find ways to streamline the regulatory process to be advantageous to all involved—the public, those falling under the regulation, and the government entity mandated to oversee the regulation
Drawbacks
<ul style="list-style-type: none">• The government entity overseeing the regulation does not provide an in-depth response to questions/superficial• Information is not readily available; PRI staff—as occurs with regular PRI performance audits—is required to develop data in order to attempt to address the criteria• Uses committee and staff time that could otherwise be spent doing regular PRI performance audits—is a limited resource• Interest in the programs and entities on the list may not be present—there is nothing timely about reviewing a particular program or entity• It is questionable whether there is a need to conduct additional sunset reviews of programs or entities reviewed 25-30 years ago, reestablished, and still languishing on the sunset list—maybe once is enough• There is an anti-business element in the second set of sunset criteria that does not fit with the current need to support businesses, particularly when trying to grow jobs and improve the economy• There have not been any new additions to the sunset list in many years—some states attach sunset reviews to newly developed programs or entities, including tax credits and other pieces of regulation

Table I-2. Benefits and Drawbacks of Results-Based Accountability to Conduct Sunset Reviews
Benefits
<ul style="list-style-type: none"> • The three questions are easy to understand, and boil the information down in a simple, logical way • The emphasis on outcomes and whether the program or entity is having any impact is important, and reflective of the bottom line of the original purpose of sunset laws, which was to eliminate unnecessary and ineffectual government regulation • The second question about how well did we do it encourages thinking about ways to improve the current regulation of the program or entity • The RBA process led to more recommendations, particularly from the second question (<i>how well did we do it?</i>) • Requires consideration of how the particular program or entity under sunset review fits into the bigger picture • The report card format provides a quick snapshot of the sunset review results
Drawbacks
<ul style="list-style-type: none"> • There are certain issues that are important and specific to regulation that could be overlooked in the RBA process, such as whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost • Given the latitude in how the questions may be answered—especially the last two questions—there is danger that certain issues will not be addressed, such as whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation

Conclusion

There are advantages and disadvantages to both the traditional sunset review and RBA approach for the current sunset list entities. The specific sunset criteria are important and serve as standards by which to review programs and entities. The RBA approach focuses on outcomes and encourages thinking about ways to improve the current regulation of the program or entity. Another benefit of RBA is the report card format, which provides a quick snapshot of sunset review results, and is a good way to organize and present the information obtained by addressing each of the traditional criteria.

Should Sunset be “Sunsetted”?

The purpose of the sunset law is to provide the legislature with an oversight tool to control the proliferation of governmental entities. As was found in this current sunset review experience and in at least one previous sunset study, there are advantages to retaining the sunset law. While it considered several possible changes to the sunset law (Appendix C), the PRI committee ultimately recommended transferring the responsibility for the sunset review performance audit to the committees of cognizance. *The committee believes PRI is better suited to doing larger studies as it more typically takes on, and the committees of cognizance would be a better choice for conducting the sunset review performance audit.*

Chapter II

Regulation of Embalmers, Funeral Directors and Funeral Homes

Background

Connecticut, like all other states except Colorado, regulates the death industry. There are a number of Connecticut laws controlling the treatment of a deceased person's body, many involving a licensed funeral director or embalmer.³ In Connecticut, when a person dies, only a licensed embalmer or funeral director may move the corpse (They must first temporarily wrap the body). A **death certificate**⁴ must be completed and filed with the registrar of vital statistics in the town where the person died (within 5 days of death for paper filing, and within 3 days for electronic filing). Also, the embalmer or funeral director must obtain a **removal, transit and burial permit** within 5 days of death from the town registrar before burial or cremation can occur. The permit specifies where the burial/interment is, and that the death certificate has been recorded.

By law, each funeral home must employ an embalmer, who may serve as a funeral director. An embalmer's license allows the person to act as a funeral director. A licensed funeral director, however, may not assume the duties of an embalmer. In 2010, Connecticut had **828 licensed embalmers, 59 licensed funeral directors, and 19 embalmer apprentices**. Connecticut also had **295 funeral homes** in 2010. A summary profile of the board is shown in Table II-1.

Embalmers. Embalmers are responsible for the injection of fluid into the corpse for the purpose of preservation. Figure II-1 shows the typical tasks of an embalmer.

Figure II-1. Typical Tasks of Embalmers

- Conform to laws of health and sanitation, and ensure that legal requirements concerning embalming are met.
- Apply cosmetics to impart lifelike appearance to the deceased.
- Incise stomach and abdominal walls and probe internal organs, using trocar, to withdraw blood and waste matter from organs.
- Close incisions, using needles and sutures.
- Reshape or reconstruct disfigured or maimed bodies when necessary, using derma-surgery techniques and materials such as clay, cotton, plaster of paris, and wax.
- Make incisions in arms or thighs and drain blood from circulatory system and replace it with embalming fluid, using pump.
- Dress bodies and place them in caskets.

Source: CT Department of Labor Training & Education Planning System (TEPS).

³ Appendix D contains a legislative history of the Board of Examiners of Embalmers and Funeral Directors.

⁴ The medical portion of the death certificate is completed by specified medical personnel, and forwarded to the licensed funeral director or embalmer.

**Table II-1. BOARD OF EXAMINERS OF EMBALMERS AND FUNERAL DIRECTORS
SUMMARY PROFILE**

ENTITY:	Connecticut Board of Examiners of Embalmers and Funeral Directors
STATUTORY REFERENCE:	C.G.S. 20-207 to 20-233, inclusive
ESTABLISHED:	1903 established CT Board of Examiners of Embalmers; 1903 began licensure of embalmers; 1941 began licensure of funeral directors; and 1951 began CT Board of Examiners of Embalmers and Funeral Directors.
ORGANIZATION LOCATION:	Department of Public Health
DUTIES OF BOARD:	<ol style="list-style-type: none"> 1. hear and decide matters concerning suspension or revocation of licensure 2. adjudicate complaints filed against practitioners 3. impose sanctions where appropriate
REGULATIONS:	The Commissioner of Public Health, with advice and assistance from the board, shall from time to time adopt regulations for the purpose of carrying out the board's duties.
PRACTICE DEFINED:	Funeral directing entails the business of providing funeral services, handling and transporting bodies, and maintaining an establishment for funeral services. Embalmers are responsible for the injection of fluid into the corpse for the purpose of preservation.
STAFF:	<ul style="list-style-type: none"> • The DPH Office of Practitioner Licensing and Certification in the Bureau of Healthcare Systems carries out licensing functions • There is a DPH liaison to the board • One full-time inspector and investigator
BUDGET:	Approximately \$117,385 (in FY 11)
NUMBER OF MEETINGS:	<ul style="list-style-type: none"> • at least once per calendar quarter and at other times as the chair deems necessary • special meeting held at the request of a majority of board • Board met four times in 2010
NUMBER OF ACTIVE LICENSES IN 2010:	<ul style="list-style-type: none"> • 828 Embalmers • 19 Embalmer Apprentices • 59 Funeral Directors • 295 Funeral Homes
FEES:	<ul style="list-style-type: none"> • Initial Application Fee: \$210 • Renewal Application Fee: \$110 • Reinstatement Fee: \$210
REVENUE GENERATED IN FY 11:	<ul style="list-style-type: none"> • Approximately \$182,960: <ul style="list-style-type: none"> • \$163,960 from licensing • \$19,000 from fines
EXAMINATIONS:	Offered six times per year by DPH
COMPLAINTS:	<ul style="list-style-type: none"> • 69 complaints against embalmers, funeral directors and funeral homes investigated 2009-2011.

The control of the spread of communicable diseases continues to be a responsibility of embalmers today. For example, both embalmers and funeral directors are required to report incidences of death due to any of the approximately 80 communicable diseases listed and published annually by DPH, file an affidavit that the body has been disinfected and prepared in accordance with the Public Health Code, and notify the family (or building owner where death occurred), that they need to thoroughly disinfect any infectious material, clothing, instruments etc. According to the latest mortality tables published on the Connecticut DPH website, there were causes of death listed for 28,749 deaths in Connecticut in 2008, and 3,588 of them (12.48 percent) were attributed to a communicable disease.⁵

Funeral Directors. Funeral directing is the business of providing funeral services, handling and transporting bodies, and maintaining an establishment for funeral services. Figure II-2 shows the typical tasks of a funeral director.

Figure II-2. Typical Tasks of Funeral Directors

- Consult with families and/or friends of the deceased to arrange funeral details such as obituary notice wording, casket selection, and plans for services.
- Plan, schedule and coordinate funerals, burials, and cremations, arranging such details as the time and place of services.
- Obtain information needed to complete legal documents such as death certificates and burial permits.
- Oversee the preparation and care of the remains of people who have died.
- Contact cemeteries to schedule the opening and closing of graves.
- Provide information on funeral service options, products, and merchandise, and maintain a casket display area.
- Manage funeral home operations, including hiring and supervising embalmers, funeral attendants, and other staff.

Source: CT Department of Labor Training & Education Planning System (TEPS).

Appendix E contains additional background information on embalmers, funeral directors and funeral homes, including the average cost of a funeral, requirements for entry into the profession, licensing trends, federal regulations, and regulation in other states.

Responsibility of Entity/Program Subject to Review

According to the sunset law, each listed entity or program “shall have the burden of demonstrating a public need for the reestablishment of the entity or program” and “shall also have the burden of demonstrating that it served the public interest and not merely the interests of the persons regulated.”

⁵ Includes deaths caused by infectious and parasitic diseases (978), septicemia related (1,807), HIV (115), and pneumonia and influenza (688).

The Board of Examiners of Embalmers and Funeral Directors (the board) is one of 75 entities or programs currently on the sunset list. Because it is one of the items included in the first year of the five-year cycle, the board will terminate July 1, 2013 unless re-established by the General Assembly.

The Board’s Current Regulatory Role Is Largely Limited to Enforcing Licensing Requirements for Embalmers and Funeral Directors.

When PRI reviewed the board during the first sunset cycle in 1979, it was still a largely independent entity with significant direct control over the regulation of all aspects of embalmers, funeral directors, and funeral homes. Now, DPH has the major role in regulating embalmers and funeral directors. The board has a much more circumscribed role to: hear and decide matters concerning license suspension or revocation; adjudicate complaints filed against licensed embalmers and funeral directors; and impose sanctions where appropriate. The board also provides advice and assistance to DPH.

Taking a broader view, the current sunset review considers the underlying need for the DPH regulatory program within which the board operates—if there is a reason to license and otherwise regulate embalmers, funeral directors, and funeral homes—then, secondarily whether there is a need for the board. Thus, need for regulation of embalmers, funeral directors, and funeral homes overall and then, specifically the need for the board, are addressed.

Both the Department of Public Health and the Board of Examiners of Embalmers and Funeral Directors responded to survey questions based on the two sets of criteria. Interviews, attendance at board meetings and hearings, and record reviews rounded out the information used to address the criteria in this report. The following performance audit information is organized according to the traditional sunset review criteria. Appendix F reviews the same information and presents it within a results-based accountability framework.

Part 1: Is There a Public Need to Continue Regulating Embalmers, Funeral Directors, and Funeral Homes through Licensing, or to Have the Board?

Criteria #1. Would the termination of embalmer, funeral director and funeral home regulation significantly endanger public health, safety or welfare?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> The public does not have the capability and experience to select and assess the quality of embalmers, funeral directors, and funeral homes
	<ul style="list-style-type: none"> The mental health of mourners could be threatened at a vulnerable time as demonstrated by instances (complaints) where the embalmer and funeral director did not adhere to licensure requirements
	<ul style="list-style-type: none"> Sanitary safeguards to prevent the spread of communicable diseases contracted from corpses would no longer be in place to protect the health of the embalmer and public
	<ul style="list-style-type: none"> The welfare of the public would be threatened by allowing embalmers and funeral directors (and funeral homes) who had lost their licenses due to imposed sanctions for such reasons as incompetence, to re-enter (re-open) the profession

Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> • The department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of boards or commissions
	<ul style="list-style-type: none"> • The board reports that its professional and public members provide a unique and combined ability to hear and fully understand issues involving both public health and safety, grief, and consumer protection issues that are unique to the funeral industry
	<ul style="list-style-type: none"> • The DPH board liaison noted that board members generally ask questions that may not necessarily be posed by a hearing officer in a non-board profession case, particularly for cases concerning standards of care
	<ul style="list-style-type: none"> • Without the board, consultation with professionals could be required in certain instances, potentially extending the time before disciplinary action was taken, and exposing the public to unscrupulous individuals for a longer period of time

Discussion of Criteria #1 Key Findings

Consumer knowledge. In a previous assessment of whether practitioners need to be regulated,⁶ the PRI committee considered whether it would be reasonable to expect that consumers have the capability to assess and assume the risks. In its response to the PRI Sunset Survey, the board noted that the public is not always able to judge the quality of the service. Further, at this vulnerable time, the family member or other person handling the arrangements, is open to being taken advantage of; they do not have access to the embalming room or how the body is stored or embalmed; they trust that the correct body or ashes are taken care of; and that the deceased will be prepared for viewing in an acceptable manner.

Others are stopped from experiencing the same problems when the licenses of problematic embalmers, funeral directors and/or funeral homes are revoked, surrendered, or agreed not to be renewed. Without licensure (regulation), former embalmers and funeral directors who are no longer licensed (due to revocation, voluntary surrender, etc.) would be able to re-enter the profession, and thus, the public would no longer be protected from these practitioners who had previously evidenced harm to the public.

Period of time when regulation was not being fully implemented. In addition to funeral home inspections, the inspector also investigated complaints against embalmers and funeral directors. The department had a part-time funeral home inspector who retired in 1989. For more than a decade, until a widely publicized incident⁷ led to the 2002 hiring of the current funeral home inspector, funeral homes were not being inspected annually as required (C.G.S. Sec. 20-222). While complaints were still being investigated, regular inspections did not occur during this time period. Therefore, the period prior to the hiring of the current funeral home inspector offers insight into how the funeral industry might function without the current level of regulation. Table II-2 highlights some of the differences that could occur in a less regulated situation.

⁶ *Sunset Review Process in Connecticut*. Legislative Program Review & Investigations Committee, December 1998.

⁷ Police discovered five decomposed bodies more than three years old at the Wade Funeral Home in New Haven.

Table II-2. Complaint Handling Before and After Funeral Home Inspector Hired		
Complaint Factor	1998-2000 No inspector/ less regulated time	2002-2004 Inspector/more regulated time
	Dismissed Complaints	
Number of complaints	14	14
Plan of correction required as condition of complaint dismissal	0	5
# of complaints brought forward by DPH	1	4
	Consent Orders	
Number of consent orders	5	12
Reprimand	3	2
Probation imposed	2	2
Median probation (in months)	12	42
Civil penalty imposed	3	5
Median civil penalty	\$1,500	\$5,000
Revocation	0	2
Voluntary surrender/agreed not to renew license	1	6
Source: PRI staff analysis.		

As can be seen, plans of correction were required as a condition of complaint dismissal when there was an inspector. Consent orders were more than twice as prevalent as were civil penalties—and at higher amounts, when there was an inspector. Additionally, licenses were more likely to be revoked or voluntarily surrendered (or agreed not to be renewed) when there was an inspector. These more frequent and serious sanctions may act as both a deterrent for other professionals as well as help protect the public health, safety and welfare from these currently unscrupulous practitioners.

Sanitary safeguards. Licensed embalmers and funeral directors are required to follow certain sanitary standards. The sanitary standards are in place to deter the spread of disease from dead human bodies by requiring the use of specific safeguards in the handling of corpses. There is the potential for public health to be endangered by the threat of communicable diseases. There have been instances of embalmers being exposed and subsequently becoming infected with communicable diseases that can then be spread to others. There are documented cases of embalmers and funeral home technicians becoming infected with HIV, tuberculosis, and Hepatitis B from a cadaver (see Table II-3 for more detailed information). Lastly, P.A. 07-104, An Act Concerning Funerals, requires embalmers and funeral directors, regardless of whether the death is due to a communicable disease, to take appropriate measures to ensure that the body is not a public health threat.

Table II-3. Incidence of Communicable Diseases Among Embalmers, Funeral Directors and Related Personnel

- Turner et al (1989) undertook a survey of 133 embalmers who worked in eastern Massachusetts. They found the seropositivity rate of hepatitis B virus (13%) was approximately twice that of a blood donor comparison group. Embalmers who did not routinely wear gloves were almost 10 times more likely to have serologic markers of hepatitis B virus infection than those who did.
- McKenna et al (1996) analyzed occupational information collected on all patients with clinically active tuberculosis in 29 U.S. states from 1984 to 1985. Information on employment and occupation was ascertained for 9,534 (working age) tuberculosis patients. The overall rate of tuberculosis in the study area was 8.4 per 100,000 persons, which was slightly lower than national rate of 9.3 per 100,000 persons. However, elevated rates were observed for funeral directors, inhalation therapists, lower paid health care workers, and farm workers.
- The Centers for Disease Control and Prevention (CDC)⁸ investigated cases of HIV infection in healthcare personnel without identified risk factors. In coordination with state health department HIV surveillance staff, they found one documented case and two possible cases from 1981-2010 for embalmers and morgue technicians. In their report, the CDC noted that, because of the voluntary nature of the reporting system, there is likely underreporting of cases, and the relatively low numbers of documented and possible cases may not reflect the true numbers of cases in the United States.

Emotional well-being. Mental health, considered part of the definition of health,⁹ could be impacted by the termination of licensure (regulation) of embalmers and funeral directors. During a naturally stressful time, mourners rely on embalmers and funeral directors to appropriately handle funeral arrangements and preparation of the body. As instances where embalmers and funeral directors did not adhere to the requirements for their profession demonstrate, mourners report experiencing significant distress.

Assessment of board. DPH reported that, in instances where a regulated profession does not have a board, experts are asked to review cases and provide their opinions gratis. The length of time to resolve a complaint against a professional can take additional time as opposed to those professions who have a ready-made panel of professionals on standby to hear the complaint case. As occurs with all professional boards under DPH, the Board of Examiners of Embalmers and Funeral Directors serves without any compensation. The board, while not a prerequisite to regulating the profession/industry, does appear to provide a value-added service gratis, particularly for the processing of complaints.

Since June 2011, the board has had a vacant position for a public board member. Vacant positions are also found for other occupational boards. A recent Connecticut Auditors' Report on the Department of Public Health for the Fiscal Years ended June 30, 2006 and 2007, for

⁸ CDC, Surveillance of Occupationally Acquired HIV/AIDS in Healthcare Personnel, as of December 2010 (Updated May, 2011).

⁹ The World Health Organization defines health as a "...state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." From September 2010 Fact sheet, "Mental health: strengthening our response." (www.who.int/mediacentre/factsheets/fs220/en/)

example, found the following condition, “Due to vacancies, the membership of 10 boards did not meet the requirements for the number of licensed practitioners and public members.”

As a result, the auditors further noted the effect that, boards that do not have a full complement of participating members may not benefit from the intended representation of various public and private sector groups. In their report, the auditors stated the cause of this situation—not considered a significant deficiency—was due to the Governor’s Office not replacing members in a timely manner. In the current instance of the public member vacancy for the Board of Examiners of Embalmers and Funeral Directors, DPH notified the Governor’s Office of the vacancy over six months ago, on the same day the resignation letter was received by the board (June 27, 2011).

Although there are requirements about board member representation of public and professional members, there are not requirements for representation at hearings to consider sanctioning professionals. DPH does not specifically track attendance at hearings. Hearing testimony is transcribed and available to all board members, and if a board member has missed a hearing date, he/she is expected to read the transcripts and exhibits before voting on a final decision. However, lack of attendance at the hearing prevents the opportunity to question witnesses. Having at least one public board member and one professional board member present at the hearing provides that opportunity and reinforces the importance of having this representation on boards. This is consistent with the Connecticut Medical Examining Board medical hearing panel requirement to represent the profession and public, and have all panel members present to hear any evidence (C.G.S. Sec. 20-8a(i)).

Criteria #2. Would the public be adequately protected by another statute, entity or program, or by a less restrictive method of regulation?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> Although there are consumer protection statutes, crematory requirements, and municipality-related statutes, these other statutes would not fully protect the public with the requirements and safeguards contained in C.G.S. Sec. 20-207 through 20-233
	<ul style="list-style-type: none"> The public would—and does now—have recourse for complaints related to pre-need funeral service and other contractual issues through the Department of Consumer Protection (DCP); however, DCP does not regularly review funeral home contracts—their investigations are prompted by particular complaints. Thus, annual funeral home inspections (which include reviewing pre-need funeral service contracts) currently performed by DPH, would be lost as a deterrent to such problems as well as an avenue for DCP to become aware of potential pre-need funeral service contract irregularities
	<ul style="list-style-type: none"> The public would not have readily available recourse for complaints unrelated to business practices, such as incompetence and negligence issues; claims would need to be filed in court
	<ul style="list-style-type: none"> A less restrictive method of regulation, such as registration or certification, would not adequately protect the public from practitioners lacking training and educational requirements who entered the field. Inadequate job performance could be detrimental to mourners, practitioners, and the public

Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> As discussed under criteria #1, the department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of a board
	<ul style="list-style-type: none"> The board reports that its professional and public members provide a unique and combined ability to hear and fully understand issues involving both public health and safety, grief, and consumer protection issues that are unique to the funeral industry
	<ul style="list-style-type: none"> The DPH board liaison noted that board members generally ask questions that may not necessarily be posed by a hearing officer in a non-board profession case, particularly for cases concerning standards of care

Discussion of Criteria #2 Key Findings

Consumer protection. Certain consumer protection statutes¹⁰ address funeral service contract requirements, including escrow accounts for pre-need funeral service contracts. There are statutes pertaining to crematory requirements (C.G.S. Sec. 19a-320 thru 19a-324). There are municipality-related statutes regarding death certificates, disposal and removal of bodies, and removal, transit and burial permits found in C.G.S. Sec. 7-62 thru 7-71. However, none of these statutes encompass the requirements contained in C.G.S. Sec. 20-207 thru 20-233, such as credential requirements, and restrictions on who may embalm, care and dispose of bodies. Annual funeral home inspections, record-keeping and reporting requirements, and grounds for disciplinary actions are also not contained anywhere else in the statutes.

Complaint investigation relating to embalmers, funeral directors and funeral homes, is shared across DPH and the Department of Consumer Protection (DCP). DPH is prohibited from regulating business practices of health-related professions, although DCP is authorized to do so. Violations of the provisions of the funeral service contracts statutes (C.G.S. Sec. 42-200 through 42-207) are considered unfair or deceptive trade practices and are investigated by DCP under the Connecticut Unfair Trade Practices Act. However, DCP does not currently audit funeral contracts and reports that it would not have the personnel to do so.

Pre-need funeral service contracts. A number of states have established pre-need funeral service contract guaranty funds (Table II-4). These funds are available to reimburse consumers for pre-need funeral service contracts when funds were misdirected away from escrow accounts (i.e., to reimburse a consumer for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home).

Beyond business practices, there are also other complaints from consumers relating to such issues as incompetence and negligence. Complaints also arise from annual funeral home inspections performed by DPH. The loss of annual funeral home inspections could be seen as the loss of a deterrent to some funeral homes acting in an incompetent and negligent manner as well as an avenue for DCP to become aware of potential pre-need funeral service contract irregularities. In a review of information provided by DPH on 20 complaints the department received during 2001-2006, 30 percent were classified as business practice type complaints, with

¹⁰ C.G.S. Sec. 42-200 thru 42-207

Table II-4. States with Pre-Need Guaranty Funeral Funds	
State	Funding Source for Pre-Need Funeral and Burial Agreements
Florida	<ul style="list-style-type: none"> • for each contract of \$1,500 or less, \$2.50; • for each contract in excess of \$1,500, \$5.00 (If bond used, \$5.00 for each contract of \$1,500 or less; • \$10.00 for each contract over \$1,500
Indiana	<ul style="list-style-type: none"> • each seller deposits \$2.50 per contract under \$1,000 or • \$5 per contract of at least \$1,000
Kentucky	<ul style="list-style-type: none"> • cemetery pre-need; \$5 for every contract with a gross sales price of \$500 or less, • and \$10 for each contract with a gross sales price of over \$500
North Carolina	<ul style="list-style-type: none"> • funded by \$2 per contract
Oregon	<ul style="list-style-type: none"> • the seller pays \$5 per contract
Texas	<ul style="list-style-type: none"> • the seller pays not more than \$1 per unmaturred prepaid funeral benefits contract sold during each calendar year
Vermont	<ul style="list-style-type: none"> • the funeral establishment pays \$6 per funeral, burial, or disposition
West Virginia	<ul style="list-style-type: none"> • the buyer pays \$20 per contract to the seller, who forwards the monies to the fund • forty percent of this fund is placed in Pre-need Guarantee Fund
Source: Preneed Funeral and Burial Agreements: A Summary of State Statutes, AARP Public Policy Institute, December 1999.	

others placed into such categories as incompetence/negligence (35 percent), fraud/deceit (15 percent), and professional ethics (10 percent). With the narrowness of focus on complaints handled by consumer protection, there would be no readily available recourse for the remainder of the complaints. Currently, DPH and DCP work together to cross-refer cases arising from complaints or inspections. The Office of the Attorney General also receives complaints and becomes involved when issues fall under the Connecticut Unfair Trade Practices Act.

Oversight by DCP or DPH. Embalment, cremation and other funeral-related services make these professions distinctly different from trades that fall under the auspices of DCP for purposes of consumer protection, such as electricians, propane dealers, and architects.

Traditionally, prevention of the spread of disease is more often considered under the auspices of the state health department as opposed to the consumer protection department. Of the six New England states, only one (Massachusetts) regulates embalmers and funeral directors under its consumer protection agency, while three states (Connecticut, New Hampshire, and Rhode Island) regulate it under its health department (Maine and Vermont regulate it under professional regulation departments).

Certification or registration. If a less restrictive method of regulation was adopted, such as registration or certification of embalmers and funeral directors, then those not professionally schooled would be able to enter the profession. If certification replaced licensing, for example, and the voluntary certification requirements were similar to the current mandatory licensing requirements, then consumers could choose certified businesses and get the benefit of

professionally schooled practitioners. This would assume a certain level of awareness and time to research funeral services for vulnerable consumers in mourning. Additionally, those whose licenses were revoked would be able to come back into the profession. Also, statutes that require only a licensed embalmer/funeral director to act would be eliminated from the books, such as:

- transferring the dead;
- signing a death certificate;
- meeting hospital and cemetery requirements of only a licensed person transferring/burying a body; and
- entering into pre-need/pre-funded funeral service contracts.

These potential changes would appear to work against protecting public health, safety and welfare.

In August 2011, DPH announced plans to stop licensing and regulating funeral homes and embalmers and funeral directors, and eliminate the funeral home inspector position as part of a proposed \$20 million budget cut. Following concerns about this change from the Board of Examiners of Embalmers and Funeral Directors, the Connecticut Funeral Directors Association and others, DPH reversed this decision within five days of its announcement.

Assessment of board. It is uncertain what advantage would be gained by eliminating the Board of Examiners of Embalmers and Funeral Directors. There is little to no expense to the department or public, and readily available expertise to draw upon for the processing of complaints.

Criteria #3: Does the regulation of embalmers, funeral directors, and funeral homes have the effect of increasing the cost of goods or services to the public either directly or indirectly?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> • The out-of-pocket costs that newly licensed embalmers and funeral directors might pass along to the public is \$610 for testing and licensure application fees
	<ul style="list-style-type: none"> • The out-of-pocket costs that newly opened funeral homes might pass along to the public is \$375 for the mandatory initial inspection certificate
	<ul style="list-style-type: none"> • The out-of-pocket costs to renew an embalmer or funeral director license that might be passed along to the public is \$210-\$330 for the continuing education requirement and licensure renewal fee
	<ul style="list-style-type: none"> • The out-of-pocket costs to renew a funeral home certificate that might be passed along to the public is \$190
	<ul style="list-style-type: none"> • Indirect costs for educational expenses, depending on how the applicant fulfilled the training requirement, might be passed along to the public
	<ul style="list-style-type: none"> • The licensing program may have an indirect effect of increasing the cost of goods and services in that mandated contract formats and money-back trial period contracts may be passed on to the public; however, these same requirements are mandated at the federal level (16 C.F.R. Part 453)
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> • The board is made up of volunteers
	<ul style="list-style-type: none"> • Board members receive no compensation, including reimbursement for travel expenses

Discussion of Criteria #3 Key Findings

Licensure expenses and associated revenue. The expenses and revenue identified by the Department of Public Health for the regulation of embalmers, funeral directors, and funeral homes are shown in Table II-5.

- The testing fees for the national exam go directly to the national company (DPH doesn't handle this money at all)
- There is no fee for the state written exam for embalmers and funeral directors
- There is no fee for the state practical exam for embalmers and funeral directors

Table II-5. Expenses Incurred and Associated Revenue in Licensure of Embalmers, Funeral Directors and Funeral Homes	
Expenses Incurred by New Licensure/Certificate Applicants	Amount
New license application fee for:	
Embalmers	\$210
Funeral Directors	\$210
Funeral Homes	\$375
Testing fee for national board exam	\$400
Testing fee for state written exam	\$0
Testing fee for practical exam	\$0
TOTAL EXPENSES	\$375-\$610
Expenses Incurred by Renewing Licensure/Certificate Applicants	
License renewal application fee for:	
Embalmers	\$110
Funeral Directors	\$230
Funeral Homes	\$190
Continuing education (for embalmers and funeral directors)	\$100
TOTAL EXPENSES	\$190-\$330
Expenses Incurred by DPH	
Salary for 1 full time DPH staff person to conduct funeral home inspections and investigations of embalmers and funeral directors	\$75,416
Estimated personnel costs associated with licensure of embalmers, funeral directors and funeral homes	\$9,815
Printing documents and postage	\$30,654
Estimated personnel costs associated with hearing officer's time and board liaison's support of the board	\$1,500
TOTAL EXPENSES	\$117,385
Revenue Collected by DPH in FY 11	
<i>From New Applications For:</i>	
Embalmers (22 @ \$210 per application)	\$4,620
Funeral Directors (1 @ \$210 per application)	\$210
Funeral Home Certificates (8 @ \$375 per application)	\$3,000
<i>From License/Certificate Renewals For:</i>	
Embalmers (791 @ \$110 per renewal)	\$87,010
Funeral Directors (56 @ \$230 per renewal)	\$12,880
Funeral Home Inspection Certificates (296 @ \$190 per renewal)	\$56,240
<i>From Civil Penalties:</i>	\$19,000
TOTAL REVENUE	\$182,960
Source: DPH.	

Additionally, as specified in C.G.S. Sec. 20-219a, licensed embalmers and funeral directors are required to complete at least six hours of continuing education annually. According to a board member and DPH staff member, continuing education costs range from \$50 to \$150, with an estimated average cost of \$100. This relatively modest expense is unlikely to significantly impact funeral costs for the consumer.

On the sunset questionnaire completed by DPH, the agency noted that it does not maintain data that would demonstrate the effect that licensing has on the costs of goods or services to the public.

Assessment of board. The board does not appear to contribute, either directly or indirectly, to costs charged to the public by embalmers, funeral directors, and funeral homes.

Criteria #4: Is the effective operation of regulating embalmers, funeral directors, and funeral homes impeded by existing statutes, regulations or policies, including budgetary and personnel policies?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> There are no overall budgetary, personnel or other policy-related barriers to effectiveness of DPH in the regulation of embalmers and funeral directors; however, the department noted that limited resources impact the ability to be more proactive in its enforcement activities and in educating the public/consumers and license holders about current laws and regulations
	<ul style="list-style-type: none"> Unlike other DPH-licensed professions, embalmers and funeral directors have a fulltime funeral home inspector and investigator
	<ul style="list-style-type: none"> DPH staff believes regulations are needed to further clarify statutory requirements
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> There were no budgetary, personnel or other policy-related barriers identified relating to board effectiveness

Discussion of Criteria #4 Key Findings

Overall regulation. In interviews with staff, DPH responded that the licensing program was not impeded by existing statutes, regulations or policies, including budgetary and personnel policies. The fulltime funeral home inspector and investigator was highlighted, a position that is not found in other professions under the aegis of the department.

In an effort to improve an already satisfactory program, DPH staff believes that regulations are needed to further clarify statutory requirements related to funeral homes. The regulations would address issues including—but not limited to—a definition for “funeral service,” and specific requirements related to funeral home inspection certificates (e.g., physical plant requirements, instruments/supplies, compliance with OSHA, etc.).

Public Need and Level of Regulation Conclusion

Continue Licensure

Based on a review of the four criteria, the available evidence suggests there is a public need for continuing licensure of embalmers, funeral directors, and funeral homes in order to help protect the mental health of mourners and potential physical health threatened by the spread of communicable diseases should sanitary safeguards be eliminated. It is further suggested that a less restrictive method of regulation would not adequately protect the public from practitioners lacking training and educational requirements. Further, the licensure requirements contribute negligible expense to the professional, making it unlikely that they significantly impact the cost to the public. The development of regulations pertaining to funeral homes would further enhance the department's ability to regulate funeral homes.

As demonstrated by the experience during which full regulation of embalmers, funeral directors, and funeral homes was not occurring, such level of regulation is needed to protect the public health, safety, and welfare of Connecticut residents. Therefore, the **PRI committee recommends:**

The regulation at the licensure level of embalmers, funeral directors, and funeral homes should be continued.

Continue Board

The department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of boards or commissions. It is uncertain, however, what advantage would be gained by eliminating the Board of Examiners of Embalmers and Funeral Directors. There is little to no expense to the department or public, and readily available expertise to draw upon for the processing of complaints. A potential downside would be increasing the time to resolve some complaints, exposing the public to unscrupulous practitioners for a longer period of time. *Evidence exists that the board provides a value-added service to DPH in its regulation of embalmers, funeral directors and funeral homes, and plays a role in protecting public health, safety and welfare.*

The board, while not a prerequisite to regulating the profession/industry, does appear to provide a value-added service gratis, particularly for the processing of complaints. Therefore, the **PRI committee recommends:**

The Board of Examiners of Embalmers and Funeral Directors shall be reestablished.

Part 2: Does the Regulation through Licensure of Embalmers, Funeral Directors, and Funeral Homes Serve the General Public, and Not Merely the Persons Regulated

A second set of five criteria spelled out in statute assess whether the regulatory entity or program serves the general public, and not merely the persons regulated. Part 2 would only be

considered if it had been determined from Part 1 that there was a public need for any level of regulation. The available evidence to assess the licensure of embalmers, funeral directors, and funeral homes against each of the criteria is now described.

Criteria #1: To what extent have qualified applicants been permitted to engage in the embalmer, funeral director, and funeral home business?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	The average length of time for DPH to process licenses is 6-9 months, with the process driven by the speed with which the applicant completes training, tests, and submits required paperwork
	DPH offers tests relatively frequently to reduce applicant waiting periods for exams
	During FY 09, there were 20 applications received for embalmer licensure, and all 20 applicants (100%) were granted licenses
	During FY 09, there were three applications for funeral director licensure, and all three applicants (100%) were granted licenses
Board of Examiners of Embalmers and Funeral Directors	
	The board is not involved in the initial licensure of applicants; however, the board approves or denies reinstatement applications
	The board sets the requirements for applicants wishing to return to the profession
	Over the past five years (2007-2011), there were six applications for licensure reinstatement, and 83% were granted reinstatement after fulfilling the requirements set by the board

Discussion of Criteria #1 Key Findings

Licensure applicants. Although the statute (CGS Sec. 20-217(b)) requires exams to be scheduled at least twice a year, DPH schedules them six times per year, thereby reducing the waiting period for applicants. Given the granting of licenses to all applicants during the year examined, evidence suggests that qualified applicants have been permitted to engage in the profession.

Statutory changes over the years have made it easier for applicants to engage in the profession, such as reducing the practical training requirement from two years to one year (P.A. 88-163) and deleted the requirement that the principals (owners) be licensed as embalmers or funeral directors (P.A. 95-271).

Assessment of board. As a condition of licensure reinstatement, the board will typically require applicants to successfully pass the state written exam, state practical exam, and become compliant with continuing education requirements.

Criteria #2: To what extent has DPH or the board complied with federal and state affirmative action requirements?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	There are no specific federal affirmative action requirements for the licensing of embalmers and funeral directors
	There are no specific state affirmative action requirements for the licensing of embalmers and funeral directors
	DPH does not recruit individuals to apply for licensure or to engage in any profession
Board of Examiners of Embalmers and Funeral Directors	
	There are no specific federal affirmative action requirements for the licensing of embalmers and funeral directors
	There are no specific state affirmative action requirements for the licensing of embalmers and funeral directors

Discussion of Criteria #2 Key Findings

There does not appear to be any evidence that affirmative action requirements, if applicable, have been violated.

Criteria #3: To what extent has DPH or the board recommended statutory changes which would benefit the public as opposed to the persons regulated?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> DPH reports that it has not developed any additional changes to the statutes or regulations governing the licensure or investigation activities related to this profession within the past five years
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> Made continuing education requirements mandatory

Assessment of board. The board supported making continuing education requirements mandatory, and making sure the course content is consistent with recommendations of the Academy of Funeral Services. P.A. 07-104, An Act Concerning Funerals, requires that two of the six continuing education hours required for licensed embalmers and funeral directors address state and federal laws on funeral services, including applicable Federal Trade Commission regulations.

Criteria #4: To what extent has DPH or the board encouraged public participation in the formulation of their regulations and policies?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> DPH reports that it has not developed any new policies or regulations regarding embalmers and funeral directors within the past five years
	<ul style="list-style-type: none"> In general, any time regulatory changes are proposed, the department solicits feedback from interested stakeholders including the board, regulated professionals and their membership organizations, and the public
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> Two of the five board members are members of the public
	<ul style="list-style-type: none"> Board meetings have an “Open Forum” agenda item, providing up to 30 minutes for members of the public and others to speak before the board and ask questions

Assessment of board. The two public members of the board fulfill the statutory requirement that not less than one-third of the members of each board and commission within the Executive branch are members of the public (CGS Sec. 4-9a(b)). Examples of topics discussed during the Open Forum portion of the board meeting include: requirements for holding rooms for deceased in convalescent homes; use of permission slips allowing mortuary students to be involved in the embalming process; and continuing education programs offered by particular colleges and associations.

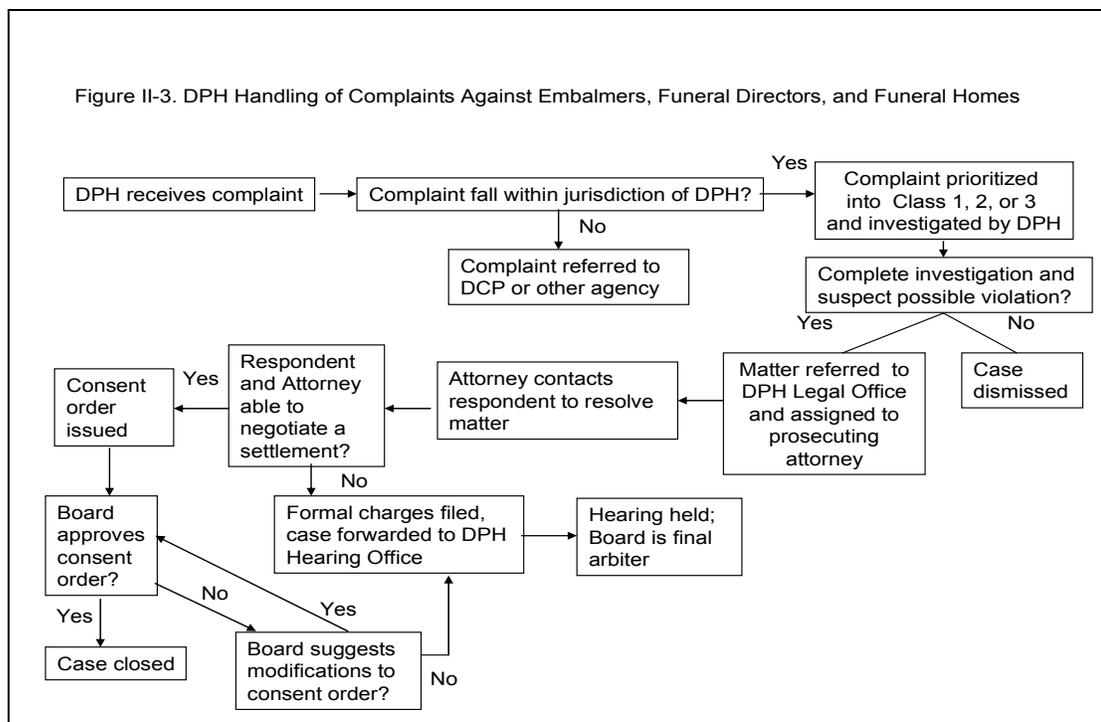
Criteria #5. How has DPH and the board processed and resolved public complaints concerning persons subject to regulation?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> DPH is mandated to investigate complaints against licensed embalmers and funeral directors who are alleged to have violated statutes, regulations and standards governing the profession
	<ul style="list-style-type: none"> Complaints are investigated by the practitioner investigator within the DPH Practitioner Investigations area, who is a licensed embalmer
	<ul style="list-style-type: none"> Complaints are prioritized (Class 1, 2, 3) based on their potential threat to public health and safety
	<ul style="list-style-type: none"> Investigations that conclude there is possible cause to suspect a violation are referred to the Legal Office
	<ul style="list-style-type: none"> Cases are then resolved in an office conference or through a board hearing
	<ul style="list-style-type: none"> Two-thirds of the investigations take longer to complete than called for by DPH guidelines
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> The board has held two hearings during each of the last two years regarding charges filed against embalmers and/or funeral homes
	<ul style="list-style-type: none"> During the past two years, the board has imposed sanctions 27 times including reprimands, probation, suspension, revocation, and imposed civil penalties

Cause for disciplinary action. As specified in CGS Sec. 20-227, disciplinary action may be taken in the following instances:

- (1) fraud/deceit in attempting to obtain licensure, etc.
- (2) violation of statute or regulation
- (3) crime conviction related to embalming/funeral directing in CT
- (4) incompetency, negligence, misconduct
- (5) violation of or noncompliance with chapter provisions or rules
- (6) fraud/deceit regarding license/certificate, etc. once awarded by DPH
- (7) involvement with embalming or funeral directing by an unlicensed person
- (8) physical or mental illness, emotional disorder or loss of motor skill (e.g., deterioration due to aging)
- (9) alcohol or substance abuse

Complaint handling process. Figure II-3 shows how DPH handles complaints against embalmers, funeral directors, and funeral homes. With approximately 20 complaints received annually, it is estimated that 10 percent may actually get to the administrative hearing step, i.e., the board.



As part of the investigative process, DPH obtains records, interviews relevant parties, and requests a response to the allegations from the respondent. Expert consultant opinions may be sought when necessary. If determined that a violation has occurred, then the department pursues disciplinary action. More detailed information on DPH’s investigatory and hearing process are found in a consumer guide on the agency’s website.¹¹

¹¹ Consumer Guide to the Department of Public Health’s Investigation and Hearing Process (http://www.ct.gov/dph/lib/dph/facility_licensing_and_investigations/pdf/consumer_guide.pdf)

Since 2009 to the present, DPH has processed 69 complaints against embalmers, funeral directors, and funeral homes. The Department provides consumers with a link to access a printable complaint form that may be completed and mailed to DPH. Consumers are also given the option of contacting the DPH Practitioner Investigations Unit by telephone, email or fax. Unlike the Better Business Bureau, for example, there is currently no way to complete the complaint form online.

Timeliness. PRI staff reviewed information that was available for 20 complaints lodged during 2001-2006 and subsequently dismissed (i.e., did not receive a hearing before the board). The timeliness of processing the cases is reflected in Figure II-4.

As shown, half the complaints were opened within eight calendar days or less. Following investigations that ranged from two weeks to 1.5 years,¹² disposition letters were then often sent to the complainant and respondent on the same day the complaint was resolved.

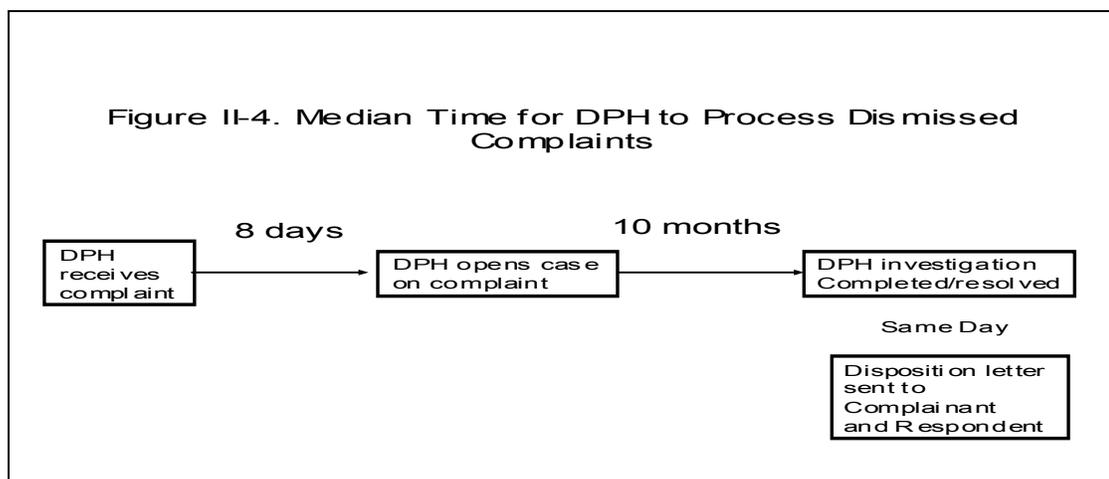
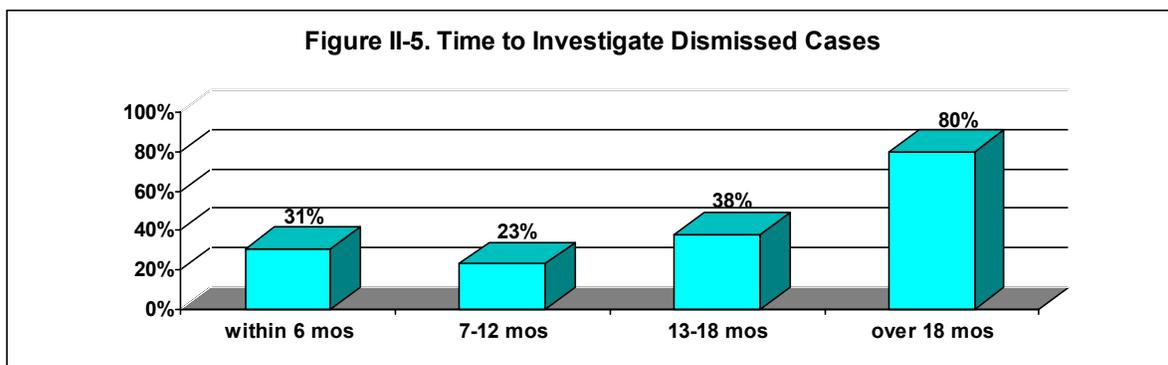


Figure II-5 shows the time to complete investigations, regardless of the priority level (Class 1-3) assigned to the complaint.¹³ Approximately two-thirds of the complaints take longer

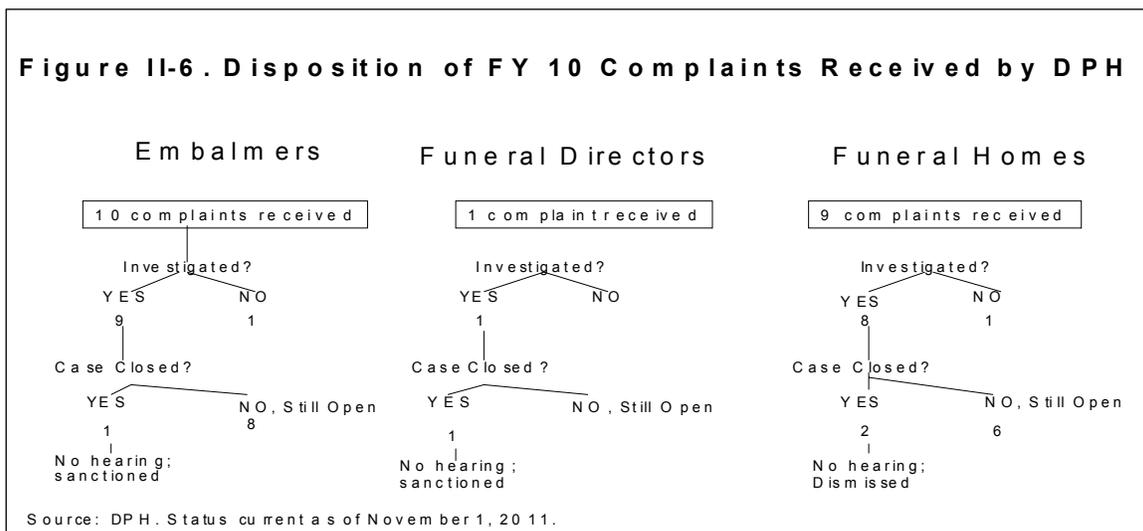


¹² The 1.5-year-long complaint investigation was a fraud and deception complaint brought by the Department of Social Services.

¹³ Class 1 complaints require immediate action or response because the situation poses an immediate threat to public health and safety. Class 1 complaints include cases associated with patient death, practitioner impairment, sexual misconduct, or infection control issues. Class 2 complaints have direct or indirect impact on quality of care, quality of life, or public health and safety. Class 3 complaints appear to be violations of standards of practice, laws or regulations such as failure to release records, patient confidentiality, failure to complete physician profile, etc.

than the six month maximum standard established by DPH, suggesting that many of the complaints are not investigated in a timely manner. Overall, DPH does not maintain reports on complaint processing time by classification.

Figure II-6 provides information on complaints that were processed by DPH more recently, in FY 10. Although there are more complaints received for embalmers as compared with funeral directors, there are also many more licensed embalmers than funeral directors (828 vs. 59 in December 2010). Of the 20 complaints received in FY 10, 18 were investigated (90%) and 2 dismissed. Following the investigation, four cases were closed without hearings: two were closed without action (i.e., dismissed); and two were sanctioned through consent order (i.e., negotiated agreement between DPH and the licensee that is presented to the board for approval).



No detailed information was available on the dates complaints were received, investigated, etc. Conservatively assuming that the 20 FY 10 complaints were received on June 30, 2010, the last day of the fiscal year, 14 complaints (70%) remained open at least 16 months. As previously noted by DPH, resources and availability of consultants may increase the timeline.

Consumer perspective. Information is not readily available on the percent of consumers understanding how to file a complaint. Both DCP and DPH have their complaint forms online.

Consumers may not be aware that, depending on the nature of the problem, complaints are handled by either DPH or DCP. As noted earlier in the report, while DPH investigates complaints against licensed embalmers, funeral directors, and funeral homes, DCP investigates suspected unfair trade practices, such as pre-need funeral service contract complaints.

Visitors to the DCP website are informed that funeral homes are licensed and regulated by the State Department of Public Health. However, the DCP website provides brief information on funeral service contracts, escrow accounts, cancellation of contracts, irrevocable funeral contracts, and revocable funeral contracts. It does not state that complaints related to these topics are handled by DCP rather than DPH.

Of the 11 DCP cases closed during 2009-2011 for which information was available, three of the four complaints pertaining to pre-need funeral service contracts were brought to the attention of DCP by DPH, rather than directly from a consumer.

DCP and DPH are aware of the overlap in the handling of complaints pertaining to embalmers, funeral directors, and funeral homes. Consistent with some overlap in regulation of the funeral industry, there is an “elicense” lookup tool that is accessible from both the DPH and DCP websites, and includes licensee information on funeral homes, funeral directors and embalmers.

The DPH website does not direct consumers to DCP to complain about pre-need funeral service contracts.

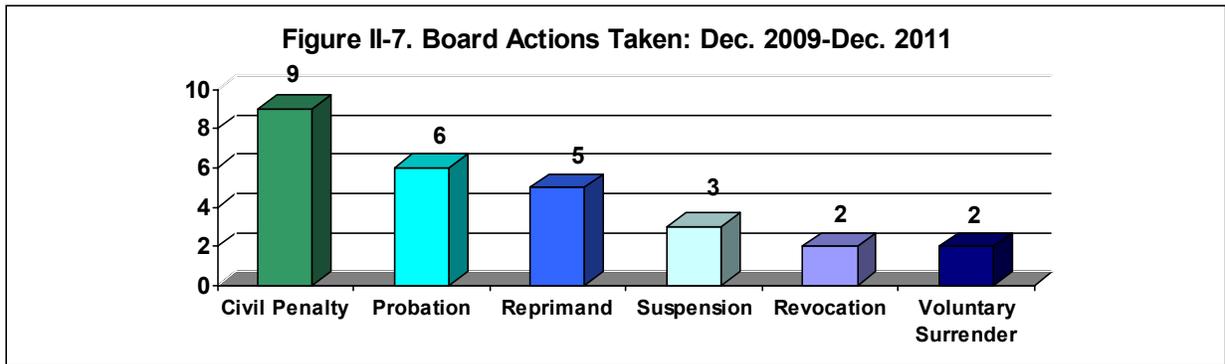
Pre-need funeral service contracts. Many of the individuals entering into pre-need funeral service contracts are considered frail and vulnerable elderly at risk for being taken advantage of by unscrupulous practitioners. The Federal Trade Commission, for example, in its investigation of funeral services has determined that the consumer of funeral services “is often vulnerable and susceptible to exploitation.”¹⁴ One way to decrease the potential risk of such an occurrence is to have a knowledgeable consumer. Just as requirements pertaining to price and information disclosure are made in order to have an informed consumer, DCP prepared a fact sheet for consumers that explains pre-need funeral service contracts. Not all consumers with pre-need funeral service contracts understand, for example, that annual statements from the escrow account agent must be sent to the consumer, and therefore are not able to recognize that there is a problem should they not receive the annual statement. Also, because not all pre-need funeral service contract accounts are audited, it is possible that there are more cases of diverted funds that are yet to be restored.

To decrease any confusion on the part of the funeral industry, DCP has also taken steps to ensure that practitioners are knowledgeable about the requirements of pre-need funeral service contracts and maintaining funds in escrow accounts by preparing a similar document for those in the funeral industry.

Assessment of board. PRI staff examined the actions of the board regarding complaints during the past two years. Because the analysis was based on summary information contained in board minutes, no information was available on the timeliness of processing complaints. However, PRI staff observed the scheduling of hearings to occur in a timely manner (for example, within two weeks of hearing request).

Figure II-7 shows the 27 board actions taken during December 2009-December 2011. There were five instances where the board disagreed with the Consent Order. In three of those cases, for example, the board denied the motion for summary suspension because the allegations did not rise to the level of immediate threat to public safety or welfare. In another instance the consent order was denied with a recommendation that the proposed order be modified to require a period of monitoring for at least one year.

¹⁴ Funeral Industry Practices Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 453), Bureau of Consumer Protection, June 1978.



Service to Public Conclusion

Licensing supports the general public

Qualified applicants are not barred from entering the profession, nor does there appear to be any evidence that affirmative action requirements, if applicable, have been violated. The amount of time needed to close/dispose of dismissed complaints averaged 10 months, with a range of two weeks to 1.5 years. While the public might be better served if complaints could be resolved more quickly, there is no indication from DPH that embalmer, funeral director, or funeral home cases take any longer to process than complaints against other professionals under the auspices of the department. *Evidence suggests that licensing supports the general public as opposed to the persons regulated.*

The board supports the general public

The board is not involved in the entry of applicants into the profession. Further, during 2007-2011, five of six applicants for licensure reinstatement were accepted by the board. There also does not appear to be any evidence that affirmative action requirements, if applicable, have been violated.

The board has supported making continuing education requirements mandatory, specifying that two of the six hours be spent in education about state and federal laws on funeral services, including applicable Federal Trade Commission regulations. The board encourages public participation through its Open Forums held at each board meeting. There is further participation by the public in that two of the board members represent the public as opposed to the profession. Lastly, through hearings and consent orders, the board processes and resolves public complaints. One-third of the consent orders presented to the board by the department are rejected (5 of 14 consent orders). *There is no evidence to suggest that the board serves the persons regulated as opposed to the general public.*

While it is recommended to continue licensing embalmers, funeral directors, and funeral homes, and continue the board in its quasi-judicial role, several modifications to this regulatory area are suggested in the next section.

Recommended Modifications to Overall Embalmer, Funeral Director and Funeral Home Regulation

Expand current regulations. The current regulations pertaining to embalmers and funeral directors are limited to clarifying employment of student embalmers and funeral directors, display of licenses, certificates, and signs, serving food or drink, mandatory disclosures, and cash advanced billing (R.C.S.A. Sec. 20-211). There are also regulations pertaining to preparation, transportation, reporting, and care of bodies dead of a communicable disease (R.C.S.A. Sec. 19a-36). DPH staff recommends expanding the current regulations to clarify statutory requirements related to funeral homes. Therefore, the **PRI committee recommends:**

DPH shall expand the current regulations pertaining to funeral homes to address issues including but not limited to a definition for “funeral service” and specific requirements related to funeral home inspection certificates.

DPH licensure report. Data on the number of licensed embalmers, funeral directors, and funeral homes is reported annually as part of the DPH report, “Total Active Licenses.” To assess trends, data from each year’s separate report must be compiled manually. By having columns for each of the years on the same report, viewers can see trends over time for the number of licensed embalmers, funeral directors, and funeral homes—as well as the 87 other categories of licensed professions. To improve the ease of acquiring (and therefore analyzing) multi-year data on licenses, the **PRI committee recommends:**

DPH’s report, “Total Active Licenses,” be formatted to include data from each of the past five years.

DPH monitoring of timeliness of complaint processing. Despite department guidelines on the time to process complaints according to the severity of the complaint (i.e., Class 1, 2 or 3), DPH does not maintain reports on complaint processing time by classification. To assess whether complaints are addressed in a timely fashion, the **PRI committee recommends that:**

DPH should consider developing a system to monitor timeliness of complaint processing for all cases, with the ability to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.

DCP website. The DCP website could reduce consumer confusion by clarifying that consumer complaints regarding pre-need funeral service contracts are handled by DCP. Therefore, the **PRI committee makes the following no-cost recommendation:**

Specifically state on the DCP website that DCP handles consumer complaints about pre-need funeral service contracts. Other complaints related to services received from embalmers, funeral directors and funeral homes are handled by DPH.

DPH website. The DPH website could also reduce consumer confusion by providing the same information so that complainants are clear as to where to register their complaints. Therefore, the **PRI committee makes the following no-cost recommendation:**

Specifically state on the DPH website that DPH handles complaints related to services received by from embalmers, funeral directors and funeral homes. Complaints about pre-need funeral service contracts are handled by DCP.

Pre-need funeral service contracts fact sheet. The PRI committee believes the consumer fact sheet on pre-need funeral service contracts will help to better inform consumers. Beyond having the fact sheet on the DCP website, the DPH and DSS websites should make consumers aware of the fact sheet on funeral service contracts. Therefore, the **PRI committee makes the following no-cost recommendation:**

DPH and DSS should make consumers aware of the pre-need funeral service contracts fact sheet by providing a link to the document on the DCP website.

Beyond providing the fact sheet on pre-need funeral service contracts on agency websites, another avenue for receipt of the information would be directly from the funeral directors and embalmers. Therefore, the **PRI committee makes the following low-cost recommendation:**

Funeral directors and embalmers shall distribute paper copies of the DCP pre-need funeral service contracts fact sheet to customers considering or purchasing such a contract.

When inspecting the funeral, the DPH inspector can then check that the paper copies are available for distribution to future customers.

Pre-need funeral service contract guaranty fund. DCP currently maintains five guaranty funds.¹⁵ The DCP website explains that, through these special funds, DCP is sometimes able to offer repayment to consumers who have been financially damaged as a result of some problem transaction. The funds to provide this compensation come from a small allocation from the required annual registration fees for the associated businesses.

A similar arrangement can be established for restoration of diverted pre-need funeral service contract funds. As described earlier, at least eight other states currently have pre-need funeral service contract guaranty funds. These funds would be available to reimburse consumers for pre-need funeral service contracts when funds were misdirected away from escrow accounts (i.e., reimburse consumers for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home). Ten dollars each from the \$110 embalmer license renewal fee and \$230 funeral director license renewal fee could be transferred into the pre-need funeral

¹⁵ The current five DCP guaranty funds are the Home Improvement Guaranty Fund, New Home Construction Guaranty Fund, Real Estate Guaranty Fund, Health Club Guaranty Fund, and Itinerant Vendor Guaranty Fund.

service contract guaranty fund, established and administered by DCP. Therefore, the **PRI committee recommends:**

A Pre-need Funeral Service Contract Guaranty Fund shall be established and managed by DCP.

Recommended Modifications to Board of Examiners of Embalmers and Funeral Directors

Board member vacancy. The Board of Examiners of Embalmers and Funeral Directors is required to have five members, two of whom are members of the public, and three of whom are actively licensed and practicing embalmers. DPH notified the Governor's Office of a public board member vacancy the day it received the letter of resignation. More than six months have passed since the Governor's Office was notified of the vacancy; however, it has not yet been filled. As the state auditors pointed out, boards without a full complement of participating members may not benefit from the intended representation of various public and private sector groups. Therefore, the **PRI committee makes the following no-cost recommendation:**

DPH Commissioner should request of the Governor's Office the anticipated timeframes for the filling of DPH board and commission vacancies

Board attendance requirement. There are no requirements for board member attendance at board hearings. Because the perspective of the public and the professional was considered important to the work of the board, there should be representation of these two viewpoints at board hearings. Therefore, the **PRI committee recommends:**

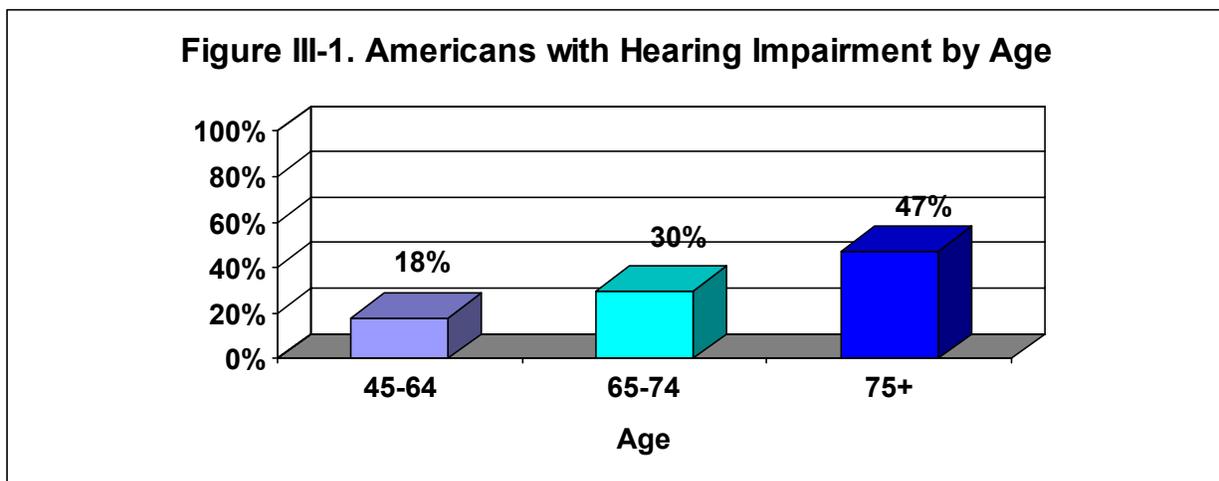
At least one public board member and one professional board member shall be present at DPH board hearings

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Regulation of Hearing Instrument Specialists

Background

The National Institute of Deafness and Other Communication Disorders website states that approximately 36 million American adults (17 percent) report some degree of hearing loss. As shown in Figure III-1, there is a strong relationship between age and reported hearing loss. With hearing loss one of the country's most prevalent chronic health conditions, many Americans can benefit from hearing aid devices. Based on a July 2009 Consumer Reports test of hearing aids,¹⁶ professional fitting, purchase, and follow-up services in the New York City metropolitan area ranged from \$1,800 to \$6,800 per pair of hearing aids. They further noted that two-thirds of the 48 hearing aids Consumer Reports purchased were misfit—they either amplified too little or too much.



A hearing instrument specialist (previously known as a “hearing aid dealer”) is a person who fits and sells hearing amplification systems to individuals in retail establishments.¹⁷ Their responsibilities include testing the auditory system of hearing-impaired persons, using test equipment and applying standardized evaluation procedures, and evaluating results to select, fit, adapt, and modify hearing amplification systems. Figure III-2 shows the typical tasks of a hearing aid dealer (also referred to as a “hearing aid specialist” and “hearing instrument specialist”). A summary profile of the regulation of hearing instrument specialists is shown in Table III-1.

¹⁶ Consumer Reports, July 2009, “Hear well in a noisy world: Hearing aids, hearing protection & more.” (<http://www.consumerreports.org/health/healthy-living/home-medical-supplies/hearing/hearing-aids/overview/hearing-aids-ov.htm>)

¹⁷ Appendix G contains a legislative history of the regulation of hearing instrument specialists.

Table III-1. REGULATION OF HEARING INSTRUMENT SPECIALISTS SUMMARY PROFILE	
ENTITY:	Hearing Instrument Specialists
STATUTORY REFERENCE:	C.G.S. 20-396 to 20-407, inclusive
ESTABLISHED:	Hearing aid dealers were first licensed in 1972
ORGANIZATION LOCATION:	Department of Public Health
PURPOSE:	<ol style="list-style-type: none"> 1. administer the licensure examination 2. determine the subject matter and scope of the examination 3. investigate complaints against licensed hearing aid dealers and holders of temporary permits 4. suspend or revoke licenses
PRACTICE DEFINED:	A hearing instrument specialist is a person who fits or sells hearing aids
STAFF:	<ul style="list-style-type: none"> • The DPH Office of Practitioner Licensing and Certification in the Bureau of Healthcare Systems carries out licensing functions
BUDGET:	Approximately \$6,855 (in FY 11)
NUMBER OF ACTIVE LICENSES IN 2010:	<ul style="list-style-type: none"> • 122 Hearing Instrument Specialists • 10 Hearing Instrument Specialists-Training Permits
FEES:	<ul style="list-style-type: none"> • Initial Application Fee: \$250 • Renewal Application Fee: \$250
REVENUE GENERATED IN FY 11:	<ul style="list-style-type: none"> • Approximately \$16,300 in licensing and exam fees
EXAMINATIONS:	Offered two times per year by DPH
COMPLAINTS:	3 complaints received in FY 10

Figure III-2. Typical Tasks of Hearing Instrument Specialists

- Select and administer tests to evaluate hearing or related disabilities.
- Administer basic hearing tests including air conduction, bone conduction, or speech audiometry tests.
- Train clients to use hearing aids or other augmentative communication devices.
- Create or modify impressions for earmolds and hearing aid shells.
- Maintain or repair hearing aids or other communication devices.
- Demonstrate assistive listening devices (ALDs) to clients.
- Perform basic screening procedures such as pure tone screening, otoacoustic screening, immittance screening, and screening of ear canal status using otoscope.
- Assist audiologists in performing aural procedures such as real ear measurements, speech audiometry, auditory brainstem responses, electronystagmography, and cochlear implant mapping.
- Read current literature, talk with colleagues, and participate in professional organizations or conferences to keep abreast of developments in audiology.

Source: Hearing Aid Specialists Summary Report from O*NET, the national Occupational Information Network classification and database (www.onetcenter.org).

In Connecticut, hearing instrument specialists must comply with a number of business practice standards as outlined in state statute. These include:

- Allow the hearing aid purchaser to return the item during a 30-day period
- Advise a patient to consult a physician if the patient exhibits certain symptoms
- Require a person under the age of 18 to be examined by a physician before being sold a hearing aid
- Properly supervise those holding temporary permits
- Provide adequate information concerning their place of business and the product being sold
- Retain business records for three years
- Not violate FDA or FTC regulations
- Not print false or misleading advertising

Appendix H contains additional background information, including the requirements for entry into the profession, distinction between hearing instrument specialists and audiologists, licensing trends, federal regulations, and regulation in other states.

Responsibility of Entity/Program Subject to Review

According to the sunset law, each listed entity or program “shall have the burden of demonstrating a public need for the reestablishment of the entity or program” and “shall also have the burden of demonstrating that it served the public interest and not merely the interests of the persons regulated.”

The regulation of hearing instrument specialists is one of 75 entities or programs currently on the sunset list. Because it is one of the items included in the first year of the five-year cycle, it will terminate July 1, 2013 unless re-established by the General Assembly.

The Department of Public Health responded to survey questions based on the two sets of criteria. Interviews and record reviews rounded out the information used to address the criteria in this report. The following performance audit information is organized according to the traditional sunset review criteria. Appendix I reviews the same information and presents it within a results-based accountability framework.

Part 1: Is There a Public Need to Continue Regulating Hearing Instrument Specialists?

Criteria #1. Would the termination of hearing instrument specialist regulation significantly endanger public health, safety or welfare?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> The physical health and safety, emotional well-being, and economic welfare of the public would be threatened by allowing unqualified, untrained hearing instrument specialists to incorrectly fit and dispense hearing aids
	<ul style="list-style-type: none"> There is evidence that incorrectly fit hearing aids, such as devices with too much amplification, can damage remaining hearing
	<ul style="list-style-type: none"> The public would find it difficult to determine competence and whether they received quality services, particularly for an elderly, vulnerable population
	<ul style="list-style-type: none"> The welfare of the public would be further threatened by allowing hearing instrument specialists who had lost their licenses due to imposed sanctions for such reasons as incompetence, to re-enter the profession (re-open)

Discussion of Criteria #1 Key Findings

Safety concerns. Hearing instrument specialists frequently take deep canal ear impressions and also screen for medical conditions (eight red flags) that would require a referral to a physician. The FDA website contains information on medical devices, including hearing aids.¹⁸ Under safety issues that consumers should know about, the FDA says that hearing aids should be properly fitted so that amplification matches the individual’s hearing loss. If the hearing aid is not properly fitted, then too much amplification may cause additional hearing loss.

On the hearing instrument specialist sunset, DPH responded that current licensure requirements protect the public by ensuring that all hearing instrument specialists adhere to the same minimum standards with regard to education and training.

¹⁸ “Medical Devices: Benefits and Safety Issues”
 (<http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/HearingAids/ucm181477.htm>)

Without licensure (regulation), former hearing instrument specialists who are no longer licensed (due to revocation, voluntary surrender, etc.) would be able to re-enter the profession, and thus, the public would no longer be protected from practitioners who had previously evidenced harm to the public.

Other state experience with de-regulation. Colorado is a state with experience regulating, de-regulating, and re-regulating hearing instrument specialists. Colorado sunsetted its regulation of hearing instrument specialists by its Board of Hearing Aid Dealers in 1986 because the sunrise-sunset committee judged the board to be an ineffective enforcement tool, having denied no licenses nor taken any disciplinary actions in a 10-year period. After terminating the board and regulation of hearing instrument specialists, however, a subsequent review found significant actual public harm by the unregulated practice of hearing aid sales (e.g., the AG’s Office investigated 100 complaints in 1990 alone regarding hearing aid sales), and began regulating the profession through its Department of Health. The bulk of these complaints concerned failure to issue refunds, as well as cases of abuse of elderly clients, and outright fraud. Local Colorado district attorneys also believed it would be harder to obtain an injunction without a statewide regulatory program.

Hearing aid technology. Nearly all hearing aids currently use digital technology, which allow the devices to be programmed to meet an individual’s exact hearing loss needs across each frequency tested. Hearing aid features include directional microphones, feedback cancellation and noise suppression. Adjustments are often made over a period of time to tailor the hearing aids to the wearer’s particular lifestyle listening needs and demands.

Criteria #2. Would the public be adequately protected by another statute, entity or program, or by a less restrictive method of regulation?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> • A less restrictive method of regulation such as registration or certification would not adequately protect the public from practitioners lacking training and educational requirements from entering the field, and inadequately performing their jobs to the detriment of the public, including many elderly and vulnerable consumers
	<ul style="list-style-type: none"> • Complaints received by DCP about hearing aids and hearing instrument specialists are referred to DPH. However, many of the complaints are related to business practices and contract purchase disputes, that could fall under the auspices of DCP
	<ul style="list-style-type: none"> • Hearing aids are classified as FDA-regulated medical devices, involving public health, an argument that supports the regulation of hearing instrument specialists remaining with DPH as opposed to transferring to DCP

Discussion of Criteria #2 Key Findings

Oversight by DCP or DPH. Consideration was given to DCP as a potential agency that could regulate hearing instrument specialists and adequately protect the public. It is not uncommon for a consumer to think that hearing aid/hearing instrument specialist types of complaints are handled by DCP, and to then call or visit the DCP website. Should this occur,

however, the consumer is then redirected to DPH—DCP does not handle complaints pertaining to hearing aids or hearing instrument specialists, regardless of whether the complaint relates to a business practice.

Hearing aids, however, are classified by the FDA as medical devices, an area more consistent with public health regulation. Also more in line with a public health-regulated area, hearing instrument specialists are required to advise clients to consult a physician or otolaryngologist before being fitted for a hearing aid if the consumer is found to have a history of:

- (1) visible congenital or traumatic deformity of the ear;
- (2) active drainage from the ear within the last 90 days;
- (3) sudden, or rapidly progressive, hearing loss within the past 90 days;
- (4) acute or chronic dizziness;
- (5) unilateral hearing loss of sudden or recent onset within the past 90 days;
- (6) audiometric air-bone gap equal to at least 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;
- (7) visible evidence of cerumen (earwax) accumulation, or a foreign body in the ear canal; and/or
- (8) pain or discomfort in the ear within the past 60 days.

Certification or registration. If a less restrictive method of regulation were to be adopted, such as registration or certification of hearing instrument specialists, then those not professionally schooled would be able to enter the profession. If certification replaced licensing, for example, and the voluntary certification requirements were similar to the current mandatory licensing requirements, then consumers could choose certified businesses and get the benefit of professionally schooled practitioners. This would assume a certain level of awareness and sophistication to research hearing instrument specialists. Additionally, those whose licenses were revoked would be able to come back into the profession. Such changes would appear to work against protecting the public health, safety and welfare.

Criteria #3: Does the regulation of hearing instrument specialists have the effect of increasing the cost of goods or services to the public either directly or indirectly?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> • The out-of-pocket costs that newly licensed hearing instrument specialists might pass along to the public is \$605 for testing and licensure application fees
	<ul style="list-style-type: none"> • The out-of-pocket costs to renew a hearing instrument specialist license that might be passed along to the public is \$250 every two years for the licensure renewal fee
	<ul style="list-style-type: none"> • Indirect costs for educational expenses, depending upon how the applicant fulfilled the training requirement might be passed along to the public
	<ul style="list-style-type: none"> • This licensing program may have an indirect effect on increasing the cost of goods and services in that mandated contract formats and money-back trial period contracts may be passed onto the public; however, these same requirements are also mandated at the federal level (21 CFR 801.420)

Discussion of Criteria #3 Key Findings

Licensure expenses and associated revenue. The expenses for licensure, and the expenses and revenue identified by DPH for the regulation of hearing instrument specialists are shown in Table III-2.

Table III-2. FY 11 Expenses Incurred and Associated Revenue in Licensure of Hearing Instrument Specialists	
Expenses Incurred by New Licensure Applicants	Amount
New license application fee for Hearing Instrument Specialists	\$250
Temporary permit (apprenticeship) fee	\$60
Testing fee for national board exam	\$95
Testing fee for practical exam	\$200
TOTAL EXPENSES	\$605
Expenses Incurred by Renewing Licensure Applicants	
License renewal application fee for Hearing Instrument Specialists:	\$250
Expenses Incurred by DPH	
Estimated personnel costs associated with licensure of hearing instrument specialists	\$5,400
Printing documents and postage	\$600
TOTAL EXPENSES	\$6,000
Revenue Collected by DPH	
From New Applications For Hearing Instrument Specialists (7 @ \$250 per application)	\$1,750
From practical exam testing fee for new applicants (7 @ \$200 per applicant)	\$1,400
From Training/Temporary Permits (15 @ \$60 per application)	\$900
From License Renewals For Hearing Instrument Specialists (49 @ \$250 per renewal)	\$12,250
From Civil Penalties:	\$0
TOTAL REVENUE	\$16,300
Source: DPH.	

On the sunset questionnaire completed by DPH, the agency noted that it does not maintain data that would demonstrate the effect that licensing has on the costs of goods or services to the public.

Criteria #4: Is the effective operation of regulating hearing instrument specialists impeded by existing statutes, regulations or policies, including budgetary and personnel policies?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> There are no overall budgetary, personnel or other policy-related barriers to effectiveness of DPH in the regulation of hearing instrument specialists
	<ul style="list-style-type: none"> The department noted that limited resources impact the ability to be more proactive in its enforcement activities and in educating the public/consumers and license holders about current laws and regulations

Discussion of Criteria #4 Key Findings

In interviews with staff, DPH responded that the licensing program was not impeded by existing statutes, regulations or policies, including budgetary and personnel policies. In their survey response, DPH noted that limited resources impact their ability to be more proactive and educate the public and license holders about current laws and regulations.

Public Need and Level of Regulation Conclusion

Continue Licensure

Based on a review of the four criteria, *the available evidence suggests there is a public need for licensure of hearing instrument specialists* in order to protect against further hearing loss due to an improperly fitted hearing aid for a patient population consisting of many frail and elderly clients.

Hearing instrument specialists are regulated in all 50 states, most often through licensure (92 percent of the time). Hearing aids are classified as medical devices by the FDA. The FDA website notes that hearing aids should be properly fitted so that amplification matches the individual's hearing loss. If the hearing aid is not properly fitted, then too much amplification may cause additional hearing loss. The experience of Colorado following its sunseting of the regulation of hearing instrument specialists found significant actual public harm by the unregulated practice of hearing aid sales, and led to re-regulation of the profession.

A less restrictive method of regulation would not adequately protect the public from practitioners lacking training and educational requirements. Further, the licensure requirements contribute negligible expense to the professional, making it unlikely that they significantly impact the cost to the public.

The DPH (rather than DCP) is an appropriate agency for the regulation of this profession as hearing aids are classified as FDA-regulated medical devices, and hearing instrument specialists screen clients for eight medical conditions. Therefore, the **PRI committee recommends:**

The regulation at the licensure level of hearing instrument specialists should be continued.

Part 2: Does the Regulation through Licensure of Hearing Instrument Specialists Serve the General Public, and Not Merely the Persons Regulated

A second set of five criteria spelled out in statute assess whether the regulatory entity or program serves the general public, and not merely the persons regulated. Part 2 would only be considered if it had been determined from Part 1 that there was a public need for any level of regulation. The available evidence to assess the licensure of hearing instrument specialists against each of the criteria is now described.

Criteria #1: To what extent have qualified applicants been permitted to engage in the hearing instrument specialist profession?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> The average length of time for DPH to process licenses is 6-9 months, with the process driven by the speed with which the applicant completes training, tests, and submits required paperwork
	<ul style="list-style-type: none"> DPH offers tests relatively frequently to reduce applicant waiting periods for exams
	<ul style="list-style-type: none"> With an apprentice permit, licensing applicants may practice under the direct supervision of a licensed hearing instrument specialist for up to two years while completing additional training and passage of the licensing exam
	<ul style="list-style-type: none"> During FY 09, there were nine applications received for hearing instrument specialist licensure, and all nine applicants (100%) were granted licenses

Discussion of Criteria #1 Key Findings

Licensure applicants. The amount of time it took to process hearing instrument specialist licenses in Connecticut is similar to the Massachusetts statutorily-required eight month median processing time for hearing aid dispenser licensure applications.¹⁹ Thus, compared with expectations considered reasonable by Massachusetts, processing time is not a barrier to qualified applicants engaging in the profession in Connecticut.

During the period students are completing their training and waiting to take the licensure exam, they may obtain a temporary permit, which allows them to enter the field and practice under the direct supervision of a licensed hearing instrument specialist for up to two years. Given the granting of licenses to all applicants during the year examined, evidence suggests that qualified applicants have been permitted to engage in the profession.

Criteria #2: To what extent has DPH complied with federal and state affirmative action requirements?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> There are no specific federal affirmative action requirements for the licensing of hearing instrument specialists
	<ul style="list-style-type: none"> There are no specific state affirmative action requirements for the licensing of hearing instrument specialists
	<ul style="list-style-type: none"> DPH does not recruit individuals to apply for licensure or to engage in any profession

Discussion of Criteria #2 Key Findings

As indicated in their response to the sunset survey, all applicants who meet the statutory requirements are eligible to receive a hearing instrument specialist license from DPH. There does

¹⁹ M.G.L.A. Sec. 1399.113. Review of Hearing Aid Dispenser Applications; Processing Time.

not appear to be any evidence that affirmative action requirements, if applicable, have been violated.

Criteria #3: To what extent has DPH recommended statutory changes which would benefit the public as opposed to the persons regulated?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> DPH reports that it has not developed any additional changes to the statutes or regulations governing the licensure or investigation activities related to this profession within the past five years

Criteria #4: To what extent has DPH encouraged public participation in the formulation of their regulations and policies?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> DPH reports that it has not developed any new policies or regulations regarding hearing instrument specialists
	<ul style="list-style-type: none"> In general, any time regulatory changes are proposed, the department solicits feedback from interested stakeholders including the regulated professionals and their membership organizations, and the public

Criteria #5. How has DPH processed and resolved public complaints concerning persons subject to regulation?

Key Findings for:	
Hearing Instrument Specialist Regulation	
	<ul style="list-style-type: none"> DPH is mandated to investigate complaints against licensed hearing instrument specialists who are alleged to have violated statutes, regulations and standards governing the profession
	<ul style="list-style-type: none"> Complaints are investigated by a practitioner investigator within the DPH Practitioner Investigations area
	<ul style="list-style-type: none"> Complaints are prioritized (Class 1, 2, 3)²⁰ based on their potential threat to public health and safety
	<ul style="list-style-type: none"> Investigations that conclude there is possible cause to suspect a violation are referred to the Legal Office
	<ul style="list-style-type: none"> Cases are then resolved in an office conference or through a DPH hearing

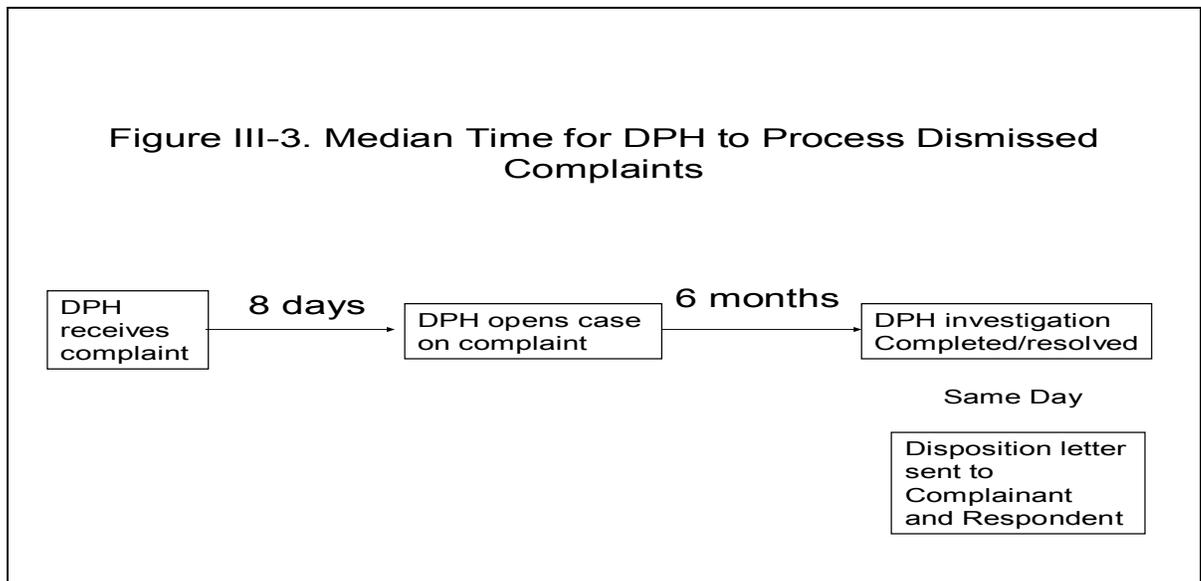
²⁰ Class 1 complaints require immediate action or response because the situation poses an immediate threat to public health and safety. Class 1 complaints include cases associated with patient death, practitioner impairment, sexual misconduct, or infection control issues. Class 2 complaints have direct or indirect impact on quality of care, quality of life, or public health and safety. Class 3 complaints appear to be violations of standards of practice, laws or regulations such as failure to release records, patient confidentiality, failure to complete physician profile, etc.

Cause for disciplinary action. As specified in C.G.S. Sec. 20-404, disciplinary action may be taken in the following instances:

1. conviction of a crime in the course of professional activities
2. procuring a license by fraud or deceit
3. unethical conduct including fraudulent misrepresentation and deception, and employing unlicensed individuals
4. incompetence or negligence
5. selling a hearing aid to a person under 18 years old without prior ear exam by an otolaryngologist and audiological exam performed or supervised by an audiologist
6. fitting or selling a hearing aid to anyone with a history of ear infection within the past 90 days without first requiring an exam by an otolaryngologist
7. failing to comply with exam procedures and tests specified in statute
8. failing to properly supervise a hearing instrument specialist apprentice
9. failing to provide customer with complete receipts for hearing aid including return policy
10. failing to retain purchaser records for three years
11. violating any provisions in statute and regulation
12. violating any provision of the FDA and FTC regulations pertaining to hearing instrument specialists
13. physical or mental illness, emotional disorder or loss of motor skill
14. abuse or excessive use of drugs including alcohol, narcotics or chemicals

Complaint handling process. As part of the investigative process, DPH obtains records, interviews relevant parties, and requests a response to the allegations from the respondent. Expert consultant opinions may be sought when necessary. If determined that a violation has occurred, then the department pursues disciplinary action.

Timeliness. PRI staff reviewed information that was made available for six complaints lodged during 2001-2006 and subsequently dismissed (i.e., did not receive a hearing). The timeliness of processing the cases is reflected in Figure III-3.



As shown, half the complaints were opened within eight calendar days or less. Following investigations that ranged from 3 months to 13 months,²¹ disposition letters were then often sent to the complainant and respondent on the same day the complaint was resolved.

Frequency of complaints. There was also one consent order involving a hearing instrument specialist who had failed to adequately test the patient's hearing and failed to adequately document the patient's treatment. As a result, the hearing instrument specialist received one year of probation and was required to attend and successfully complete a course in documentation standards.

DPH receives very few complaints about hearing instrument specialists. The next most recent consent order occurred in 2005, when a hearing instrument specialist had allowed a temporary permittee to practice as a hearing instrument specialist without the presence of a licensed supervisor. This violation resulted in the hearing instrument specialist paying a civil penalty of \$500. There have been no other consent orders, and no hearings have been held within the past 10 years.

On their survey response, DPH reported that, during each of the last three years, the department has investigated an average of two complaints filed by the public against licensed hearing instrument specialists. They further noted that:

- all of these complaints were related to either unlicensed practice and/or payment/advertising issues;
- DPH efforts have focused more in the domain of consumer protection rather than public health and safety; and
- the complaint pattern does not demonstrate a serious or imminent risk to public health or safety.

However, not all complaints involving hearing instrument specialists are filed with DPH, as the Better Business Bureau identified six businesses that had received complaints from consumers within the past three years, many classified as “problems with product/service.”

Service to Public Conclusion

Licensing supports the general public

Qualified applicants are not barred from entering the profession, nor does there appear to be any evidence that affirmative action requirements, if applicable, have been violated. The amount of time needed to close/dispose of dismissed complaints averaged three months, with a range of 3 months to 13 months. While the public might be better served if complaints could be resolved more quickly, there is no indication from DPH that hearing instrument specialist cases take any longer to process than complaints against other professionals under the auspices of the department, and timelines are similar to standards in Massachusetts statute. *Evidence suggests that licensing supports the general public as opposed to the persons regulated.*

²¹ Fraud and deception complaint brought by a patient.

While it is recommended to continue licensing hearing instrument specialists, several modifications to this regulatory area are suggested in the next section.

Recommended Modifications to Regulation of Hearing Instrument Specialists

Audiologist requirements. There are different educational and training requirements for audiologists and hearing instrument specialists. Prior to 2007, audiologists needed to earn a master's degree to be a licensed audiologist. Since 2007, audiologists must earn a doctorate in audiology and participate in a one-year externship following receipt of the doctoral degree. Consistent with this increased amount of education, audiologists also have a wider scope of practice. While hearing instrument specialists more narrowly dispense and fit hearing aids for adults, including ongoing follow-up care and counseling as needed, audiologists also treat pediatric patients, and have special training in the prevention, diagnosis and non-medical treatment of hearing disorders.

Almost all audiologists dispense hearing aids. Further, in statute, the practice of audiology includes fitting or selling hearing aids (C.G.S. Sec. 20-395a). Despite this statute and greater degree of training, in order for a licensed audiologist to fit and dispense hearing aids, C.G.S. Sec. 20-398 requires one of the following:

- obtain a hearing instrument specialist license;
- provide DPH with documentation showing satisfactory completion of at least six semester hours of coursework in selecting and fitting hearing aids, and 80 hours of supervised clinical experience with children and adults in selecting and fitting hearing aids; or
- pass the written exam required for a hearing instrument specialist license.

Even though their educational requirements are much greater, audiologists must submit paperwork to DPH to show that they received training in fitting and dispensing hearing aids (which all of them have received as part of their doctoral training). This paperwork is a burden for both the audiologists and DPH.

One potential area for streamlining existing regulations is to eliminate the additional requirements for audiologists under the hearing instrument specialist statute. Audiologists have the education and practical training to fit and dispense hearing aids that makes the current requirements unnecessary. Therefore, the **PRI committee recommends:**

C.G.S. Sec. 20-398 shall be amended so that audiologists will not have to meet the additional hearing instrument specialist requirements in order to fit and dispense hearing aids.

DPH licensure report. Statistics on the number of licensed hearing instrument specialists is reported annually as part of the DPH report, "Total Active Licenses." To assess trends in the number of licensed hearing instrument specialists over the past five years, for example, statistics from each separate annual report must be gathered. By having columns for each of the years on the same report, viewers can see trends over time for the number of licensed

hearing instrument specialists—as well as the 87 other categories of licensed professions. Presenting the information in this format would be a no-cost improvement. Therefore, the **PRI committee makes the following no-cost recommendation:**

DPH’s report, “Total Active Licenses,” be formatted to include data from each of the past five years.

Continuing education requirement. Hearing instrument specialist licensure does not currently require continuing education as a condition of licensure renewal. However, it is a rapidly changing field, with new software and products changing approximately every three years. The public may therefore be better protected and served by having a continuing education requirement. For these reasons, the Connecticut Hearing Aid Dispenser’s Organization (CHADO) favors having a mandatory continuing education requirement. The National Board for Certification in Hearing Instrument Sciences (NBC-HIS) requires 24 hours of continuing education units (CEUs) within a three-year period for board recertification. Given the two-year license renewal for hearing instrument specialists, a requirement of 16 CEUs within a two-year time period would be consistent with this standard. The continuing education hours would be approved by NBC-HIS, AAA, or ASHA, the three national organizations that currently certify almost all (CHADO estimates 99%) continuing education courses. Therefore, the **PRI committee recommends:**

Hearing instrument specialists shall be required to complete 16 continuing education units prior to licensure renewal.

CHADO noted that there would be little to no additional cost to hearing instrument specialists to have CEUs. Manufacturers offer several NBC-HIS-ASHA/AAA accredited seminars per year within easy driving distance at no charge to promote their products. CEUs are also available online at minimal cost.

APPENDICES

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APPENDIX A

TITLE 2c REVIEW AND TERMINATION OF GOVERNMENTAL ENTITIES AND PROGRAMS

CHAPTER 28

CONNECTICUT SUNSET LAW (updated to 1/1/12)

Sec. 2c-1. Legislative finding. The General Assembly finds that there has been a proliferation of governmental entities and programs, and that this proliferation has occurred without sufficient legislative oversight or regulatory accountability. The General Assembly further finds that there is a need for periodic comprehensive review of certain entities and programs, and for the termination or modification of those which do not significantly benefit the public health, safety or welfare.

Secs. 2c-2 and 2c-2a. Governmental entities and programs terminated on July 1, 1981; July 1, 1982; July 1, 1983; July 1, 1984; July 1, 1985; July 1, 1986; July 1, 1987, and July 1, 1988. Termination of ombudsmen office under sunset law. Sections 2c-2 and 2c-2a are repealed.

Sec. 2c-2b. Governmental entities and programs terminated on July 1, 2013; July 1, 2014; July 1, 2015; July 1, 2016; and July 1, 2017. (a) *The following governmental entities and programs are terminated, effective July 1, 2013, unless reestablished in accordance with the provisions of section 2c-10:*

- (1) Regulation of hearing aid dealers pursuant to chapter 398;
- (2) Repealed by P.A. 99-102, S. 51;
- (3) Connecticut Homeopathic Medical Examining Board, established under section 20-8;
- (4) State Board of Natureopathic Examiners, established under section 20-35;
- (5) Board of Examiners of Electrologists, established under section 20-268;
- (6) Connecticut State Board of Examiners for Nursing, established under section 20-88;
- (7) Connecticut Board of Veterinary Medicine, established under section 20-196;
- (8) Liquor Control Commission, established under section 30-2;
- (9) Connecticut State Board of Examiners for Optometrists, established under section 20-128a;
- (10) Board of Examiners of Psychologists, established under section 20-186;
- (11) Regulation of speech and language pathologists pursuant to chapter 399;
- (12) Connecticut Examining Board for Barbers and Hairdressers and Cosmeticians established under section 20-235a;
- (13) Board of Examiners of Embalmers and Funeral Directors established under section 20-208;
- (14) Regulation of nursing home administrators pursuant to chapter 368v;
- (15) Board of Examiners for Opticians established under section 20-139a;
- (16) Medical Examining Board established under section 20-8a;
- (17) Board of Examiners in Podiatry, established under section 20-51;
- (18) Board of Chiropractic Examiners, established under section 20-25;

- (19) The agricultural lands preservation program, established under section 22-26cc;
- (20) Nursing Home Ombudsmen Office, established under section 17a-405;
- (21) Mobile Manufactured Home Advisory Council established under section 21-84a;
- (22) Repealed by P.A. 93-262, S. 86, 87;
- (23) The Child Day Care Council established under section 17b-748;
- (24) The Connecticut Advisory Commission on Intergovernmental Relations established under section 2-79a;
- (25) The Commission on Children established under section 46a-126;
- (26) The task force on the development of incentives for conserving energy in state buildings established under section 16a-39b;
- (27) Repealed by P.A. 10-106, S. 16;
- (28) The State Dental Commission, established under section 20-103a;
- (29) Repealed by P.A. 11-131, S. 5;
- (30) Repealed by P.A. 95-257, S. 57, 58;
- (31) Repealed by P.A. 10-93, S. 12; and
- (32) Regulation of audiologists under sections 20-395a to 20-395g, inclusive.

(b) The following governmental entities and programs are terminated, effective July 1, 2014, unless reestablished in accordance with the provisions of section 2c-10:

- (1) Program of regulation of sanitarians, established under chapter 395;
- (2) Program of regulation of subsurface sewage disposal system installers and cleaners, established under chapter 393a;
- (3) Program of regulation of bedding and upholstered furniture established by sections 21a-231 to 21a-236, inclusive;
- (4) Regional mental health boards, established under section 17a-484;
- (5) Repealed by P.A. 88-285, S. 34, 35;
- (6) All advisory boards for state hospitals and facilities, established under section 17a-470;
- (7) Repealed by P.A. 85-613, S. 153, 154;
- (8) State Board of Examiners for Physical Therapists, established under section 20-67;
- (9) Commission on Medicolegal Investigations, established under subsection (a) of section 19a-401;
- (10) Board of Mental Health and Addiction Services, established under section 17a-456;
- (11) Repealed by P.A. 95-257, S. 57, 58;
- (12) Commission on Prison and Jail Overcrowding established under section 18-87j; and
- (13) Repealed by section 140 of public act 11-80*.

(c) The following governmental entities and programs are terminated, effective July 1, 2015, unless reestablished in accordance with the provisions of section 2c-10:

- (1) Board of Firearms Permit Examiners, established under section 29-32b;
- (2) State Board of Landscape Architects, established under section 20-368;
- (3) Repealed by P.A. 89-364, S. 6, 7;
- (4) Police Officer Standards and Training Council, established under section 7-294b;
- (5) State Board of Examiners for Professional Engineers and Land Surveyors, established under section 20-300;

- (6) State boards for occupational licensing, established under section 20-331;
- (7) Commission of Pharmacy, established under section 20-572;
- (8) Connecticut Real Estate Commission, established under section 20-311a;
- (9) State Codes and Standards Committee, established under section 29-251;
- (10) Commission on Fire Prevention and Control, established under section 7-323k;
- (11) Program of regulation of building demolition, established under section 29-401;
- (12) Repealed by P.A. 93-262, S. 86, 87 and P.A. 93-423, S. 7; and
- (13) Connecticut Food Policy Council, established under section 22-456.

(d) The following governmental entities and programs are terminated, effective July 1, 2016, unless reestablished in accordance with the provisions of section 2c-10:

- (1) State Insurance and Risk Management Board, established under section 4a-19;
- (2) Connecticut Marketing Authority, established under section 22-63;
- (3) Occupational Safety and Health Review Commission, established under section 31-376;
- (4) Connecticut Siting Council, established under section 16-50j;
- (5) Connecticut Public Transportation Commission, established under section 13b-11a;
- (6) State Board of Accountancy, established under section 20-280;
- (7) Repealed by P.A. 99-73, S. 10;
- (8) Repealed by P.A. 85-613, S. 153, 154;
- (9) State Milk Regulation Board, established under section 22-131;
- (10) Deleted by P.A. 99-73, S. 1;
- (11) Council on Environmental Quality, established under section 22a-11;
- (12) Repealed by P.A. 85-613, S. 153, 154;
- (13) Repealed by P.A. 83-487, S. 32, 33;
- (14) Employment Security Board of Review, established under section 31-237c;
- (15) Repealed by P.A. 85-613, S. 153, 154;
- (16) Connecticut Energy Advisory Board, established under section 16a-3;
- (17) Obsolete;
- (18) Investment Advisory Council, established under section 3-13b;
- (19) State Properties Review Board, established under subsection (a) of section 4b-3;
- (20) Commission on Human Rights and Opportunities, established under section 46a-52;
- (21) The coastal management program, established under chapter 444;
- (22) Repealed by P.A. 09-234, S. 15;
- (23) Family support grant program of the Department of Social Services, established under section 17b-616;
- (24) Program of regulation of occupational therapists, established under chapter 376a;
- (25) Repealed by P.A. 85-613, S. 153, 154;
- (26) Architectural Licensing Board, established under section 20-289;
- (27) Repealed by June Sp. Sess. P.A. 01-5, S. 17, 18; and
- (28) Repealed by P.A. 11-61, S. 188.

(e) The following governmental entities and programs are terminated, effective July 1, 2017, unless reestablished in accordance with the provisions of section 2c-10:

- (1) Regional advisory councils for children and youth center facilities, established under section 17a-30;
- (2) Repealed by P.A. 93-262, S. 86, 87;
- (3) Advisory Council on Children and Families, established under section 17a-4;
- (4) Board of Education and Services for the Blind, established under section 10-293;
- (5) Repealed by P.A. 84-361, S. 6, 7;
- (6) Commission on the Deaf and Hearing Impaired, established under section 46a-27;
- (7) Advisory and planning councils for regional centers for persons with intellectual disability, established under section 17a-273;
- (8) Repealed by P.A. 01-141, S. 15, 16;
- (9) Repealed by P.A. 94-245, S. 45, 46;
- (10) Repealed by P.A. 85-613, S. 153, 154;
- (11) State Library Board, established under section 11-1;
- (12) Advisory Council for Special Education, established under section 10-76i;
- (13) Repealed by June 30 Sp. Sess. P.A. 03-6, S. 248;
- (14) Repealed by June 30 Sp. Sess. P.A. 03-6, S. 248;
- (15) Repealed by P.A. 89-362, S. 4, 5;
- (16) Repealed by June Sp. Sess. P.A. 91-14, S. 28, 30;
- (17) Repealed by P.A. 90-230, S. 100, 101;
- (18) State Commission on Capitol Preservation and Restoration, established under section 4b-60;
- (19) Repealed by P.A. 90-230, S. 100, 101; and
- (20) Examining Board for Crane Operators, established under section 29-222.

Secs. 2c-2c to 2c-2g. Termination under sunset law of: Mobile and Manufactured Home Advisory Council; Human Resources Advisory Council and human services area advisory councils; Child Day Care Council; Advisory Commission on Intergovernmental Relations; Dental Commission. Sections 2c-2c to 2c-2g, inclusive, are repealed.

Sec. 2c-3. Performance audits by Legislative Program Review and Investigations Committee. The Legislative Program Review and Investigations Committee, established by the provisions of section 2-53e, shall conduct a performance audit of each governmental entity and program scheduled for termination under section 2c-2b. The Legislative Program Review and Investigations Committee shall complete its performance audit by January first of the year in which the governmental entity and program are scheduled for termination under section 2c-2b. In conducting the audit, the committee shall take into consideration, but not be limited to considering, the factors set forth in sections 2c-7 and 2c-8. The entities enumerated in section 2c-2b shall cooperate with the Legislative Program Review and Investigations Committee in carrying out the purposes of sections 2c-1 to 2c-12, inclusive, and shall provide such information, books, records and documents as said committee may require to conduct its performance audit. Each governmental entity or program scheduled for termination pursuant to section 2c-2b shall provide at the request of the Program Review and Investigations Committee an analysis of its activities which specifically addresses the factors enumerated in sections 2c-7 and 2c-8.

Sec. 2c-4. Report to General Assembly. The Legislative Program Review and Investigations Committee shall submit to the General Assembly a written report on each governmental entity and program by January first of the year in which such entity and program are scheduled for termination. Such report shall specifically address the factors set forth in sections 2c-7 and 2c-8 and shall include recommendations regarding the abolition, reestablishment, modification or consolidation of such entity and program. On and after October 1, 1996, the report shall be submitted to the joint standing committee of the General Assembly having cognizance of matters relating to state government organization and reorganization, structures and procedures, to any other joint standing committee of the General Assembly having cognizance and, upon request, to any member of the General Assembly. A summary of the report shall be submitted to each member of the General Assembly if the summary is two pages or less and a notification of the report shall be submitted to each member if the summary is more than two pages. Submission shall be by mailing the report, summary or notification to the legislative address of each member of the committees or the General Assembly, as applicable.

Sec. 2c-5. Committee to hold hearing prior to termination or reestablishment of governmental entity. Prior to the termination, modification, consolidation or reestablishment of any governmental entity or program, the joint standing committee of the General Assembly having cognizance of matters relating to government administration, organization and reorganization shall hold a public hearing, receiving testimony from the public and the governmental entity involved.

Sec. 2c-6. Governmental entity to demonstrate public need. Recommendations by committee. Each governmental entity enumerated in section 2c-2b shall have the burden of demonstrating a public need for the reestablishment of the entity or program. Each such entity shall also have the burden of demonstrating that it has served the public interest and not merely the interests of the persons regulated. The joint standing committee of the General Assembly having cognizance of matters relating to government administration, organization and reorganization may recommend to the General Assembly that the governmental entity or program be modified, consolidated with another entity or program or reestablished.

Sec. 2c-7. Criteria for determining public need. In determining whether there is a public need for the continued existence of an entity or program, the General Assembly shall consider, among other things:

- (a) Whether termination of the entity or program would significantly endanger the public health, safety or welfare;
- (b) Whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation;
- (c) Whether the governmental entity or program produces any direct or indirect increase in the cost of goods or services, and if it does, whether the public benefits attributable to the entity or program outweigh the public burden of the increase in cost, and
- (d) Whether the effective operation of the governmental entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

Sec. 2c-8. Criteria for determining whether a regulatory entity or program has served the general public. In determining whether a regulatory entity or program has served the general public, and not merely the persons regulated, the General Assembly shall consider, among other things:

- (a) The extent to which qualified applicants have been permitted to engage in any profession, occupation, trade or activity regulated by the entity or program;
- (b) The extent to which the governmental entity involved has complied with federal and state affirmative action requirements;
- (c) The extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated;
- (d) The extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies, and
- (e) The manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation.

Sec. 2c-9. Terminated entity or program to continue for one year for purpose of concluding its affairs. Upon termination, a governmental entity or program listed in section 2c-2b shall continue in existence for one year for the purpose of concluding its affairs. During the one-year period, termination shall not reduce the powers or authority of the entity or program. Upon the expiration of the one-year period, the entity or program shall cease all activities; all regulations promulgated by the entity or pursuant to the program shall cease to exist, and all unexpended balances of appropriations or other funds shall revert to the fund from which they were appropriated, or if that fund is abolished, to the General Fund.

Sec. 2c-10. Reestablishment of entity or program by General Assembly. Any governmental entity or program scheduled for termination under section 2c-2b may be reestablished by the General Assembly for periods not to exceed five years, at the end of which the entity or program shall again be subject to review under the provisions of sections 2c-1 to 2c-12, inclusive. Any such reenactment may provide for the consolidation of governmental entities or programs or for the transfer of governmental functions from one entity or program to another.

Sec. 2c-11. Termination of entity not to affect any claim, right or cause of action. Termination of a governmental entity or program shall not affect any claim, right or cause of action by or against the entity or program. Any such claim, right or cause of action pending on the date the entity or program is terminated, or instituted thereafter, shall be prosecuted or defended in the name of the state by the Attorney General.

Sec. 2c-12. Early termination of entity or program, other legislation, not prohibited. Nothing in this section or in sections 2c-1 to 2c-11, inclusive, shall prohibit the General Assembly from terminating a governmental entity or program prior to the termination date established in section 2c-2b or from considering any other legislation concerning any such entity or program.

Secs. 2c-13 to 2c-20. Reserved for future use.

APPENDIX B

Responses to the 2011 Sunset Questionnaire on the Board of Examiners of Embalmers and
Funeral Directors

Responses to the 2011 Sunset Questionnaire on the Regulation of Hearing Instrument Specialists

Responses to the 2011 Sunset Questionnaire on the Board of Examiners of Embalmers and Funeral Directors

1. WOULD THE TERMINATION OF THE BOARD OF EXAMINERS OF EMBALMERS AND FUNERAL DIRECTORS (BOARD) SIGNIFICANTLY ENDANGER PUBLIC HEALTH, SAFETY, OR WELFARE? PLEASE EXPLAIN.

From Board:

- Yes, there must be a board comprised of professionals that understand the goings on of the profession
- The professional member can immediately recognize the need for action
- If a situation cannot be recognized by a layman, yes, an impact would be created to endanger the health, welfare and safety of the people

From DPH:

- DPH currently regulates over 70 categories of health and health related professional license types and several categories of health and health related facilities/agencies
- Only a small number of these professions have a board such as the Board of Examiners of Embalmers and Funeral Directors
- For the more than 50 categories of health profession license types with no board or commission, DPH successfully performs all respective activities handled by a board or commission

2. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY ANOTHER STATUTE, OFFICE, OR PROGRAM, OR BY A LESS RESTRICTIVE METHOD OF REGULATION SUCH AS ABSENCE OF THE BOARD? PLEASE EXPLAIN.

From Board:

- No, the public cannot be adequately protected by another state statute, office, or program
- What currently is in place with DPH is fine
- There needs to be oversight of the approximately \$400 million in pre-need funeral trusts and insurance
 - Connecticut is not checking the four major trust companies and their records
- Consider two licenses for the profession (from DPH and DCP)

From DPH:

- The Department of Consumer Protection currently has statutory oversight of pre-need funeral service contracts
- DPH currently regulates over 70 categories of health and health related professional license types and several categories of health and health related facilities/agencies
- Only a small number of these professions have a board such as the Board of Examiners of Embalmers and Funeral Directors
- For the more than 50 categories of health profession license types with no board or commission, DPH successfully performs all respective activities handled by a board or commission

3. DOES THE BOARD HAVE THE EFFECT OF INCREASING THE COSTS OF GOODS OR SERVICES TO THE PUBLIC EITHER DIRECTLY OR INDIRECTLY? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.

From Board:

- No, the fee structure for the licensing of the individual embalmer is under \$200 per year and \$300 for funeral homes
- The board does not have an impact on increasing the costs to the general public

From DPH:

- DPH does not maintain statistics regarding the costs of goods and services to the public
- DPH does not have any data to demonstrate the effect that the board has on the costs of goods or services to the public
- Board members are volunteers and there is no reimbursement associated with their activities
- DPH staff provides administrative and legal support to the board since the board has no budget

4. IS THE EFFECTIVENESS OF THE BOARD'S OPERATION IMPEDED BY EXISTING STATUTES, REGULATIONS OR POLICIES, INCLUDING BUDGETARY AND PERSONNEL POLICIES? IF SO, PLEASE BE SPECIFIC IN YOUR ANSWER.

From Board:

- No, however, we find that we are hearing matters that occurred a year or two years ago
- Some of the issues presented to the Dept. of Health cannot get settled or heard in a timely manner because of the many matters that fall under the DPH umbrella
 - If directed straight to the board, or a request to go before the board would move matters faster, then it should be considered a method to dispense with issues in a more timely method

From DPH:

- DPH is meeting its statutory mandates related to licensing and investigations as well as adjudication of complaints and inspections related to funeral homes
- Limited resources impacts the Department's ability to be more proactive in its enforcement activities (e.g., the investigation process is complaint driven) and in educating the public/consumers and license holders about current laws and regulations and the nature of our work as well as the work of the board

5. WOULD THE TERMINATION OF LICENSING REQUIREMENTS FOR EMBALMERS AND FUNERAL DIRECTORS SIGNIFICANTLY ENDANGER PUBLIC HEALTH, SAFETY, OR WELFARE? PLEASE EXPLAIN.

From Board:

- Yes, those not professionally schooled would enter the profession
- Those whose licenses were revoked would be able to come back into the profession
- The statutes that require only a licensed embalmer/funeral director to act would be eliminated from the books, such as:

- transferring the dead
- signing a death certificate
- meeting hospital and cemetery requirements of only a licensed person transferring/burying a body
- only licensed funeral directors entering into preneed/prefunded contracts
- How would an agency have jurisdiction over a non licensed person? There would be no authority in place

From DPH:

- Current licensure requirements protect the public by ensuring that all embalmers and funeral directors adhere to the same minimum standards with regard to education, training and maintenance of competence
- Other related requirements such as standards regarding pre-need funeral service contracts ensure that consumers are protected and professional standards such as requirements related to the proper handling and storage of bodies provide additional protection for the public
- During each of the last 3 years, DPH has investigated an average of 8 complaints filed by the public or that arose from a funeral home inspection/investigation against licensed embalmers and 1 complaint against licensed funeral directors
 - Most of these complaints were related to issues surrounding pre-need funeral service contracts, compliance with administrative laws and regulations such as the availability of price lists, filing paperwork such as burial, removal and transit permits in a timely fashion and making timely arrangements for families
 - Our investigative efforts have focused primarily in the domain of consumer protection rather than public health and safety
 - The funeral home inspection process is focused primarily on the evaluation of sanitary conditions in the funeral homes

6. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY A LESS RESTRICTIVE METHOD OF REGULATION THAN THE CURRENT EMBALMERS AND FUNERAL DIRECTORS LICENSING REQUIREMENTS, SUCH AS CERTIFICATION OR REGISTRATION? PLEASE EXPLAIN.

From Board:

- The vehicle called regulation mandates the individual to successfully complete and pass a prescribed course of instruction as well as knowing that their compliance is necessary since they are a member of a regulated profession
- The profession is also regulated by the federal government (OSHA and Federal Trade Commission)

From DPH:

- A certification or registration program would have similar outcomes and would provide a comparable level of public protection
- The current licensure process is not onerous and because the investigation process is complaint driven, minimal resources are necessary to maintain this program

7. DOES THE LICENSING OF EMBALMERS AND FUNERAL DIRECTORS HAVE THE EFFECT OF INCREASING THE COSTS OF GOODS OR SERVICES TO THE PUBLIC EITHER DIRECTLY OR INDIRECTLY? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.

From Board:

- No, licensing does not directly have any impact on the public
- It is the case that, a person licensed in this field has completed a required course of instruction which like any other college has a debt service, and should expect compensation reflective of this effort and expense
 - This is similar to many other licensed professions

From DPH:

- DPH does not maintain statistics regarding the costs of goods and services to the public
- DPH does not have any data to demonstrate the effect that licensing has on the costs of goods or services to the public

8. IF THE LICENSING OF EMBALMERS AND FUNERAL DIRECTORS HAS THE EFFECT OF INCREASING COSTS, DO BENEFITS TO THE PUBLIC OUTWEIGH THIS ADDITIONAL COST? PLEASE EXPLAIN.

From Board:

- Yes, the benefits outweigh any additional cost if any
- The public is working with an individual who has been trained, examined and licensed in the profession and now meets the required high standards of the profession

9. TO WHAT EXTENT HAVE QUALIFIED APPLICANTS BEEN PERMITTED TO ENGAGE IN THE PROFESSIONS LICENSED BY THE BOARD? PLEASE COMMENT ON WAITING PERIODS, DELAYS, PAPERWORK, ETC.

From Board:

- Qualified applicants have been given the right to practice alongside the older professionals
- Once an individual has met the criteria, including waiting periods, DPH processes paperwork and it moves in a most acceptable fashion without delay

From DPH:

- Once an applicant has filed the necessary application form and required fees and all supporting documents have been received, a determination is made as to whether the applicant has met the licensing requirements
- If determined to have met the licensing requirements, the applicant is scheduled for the practical licensing examination that is administered by a licensed embalmer under the direction of the Department of Public Health and the board
- Practical examinations are administered as frequently as necessary because it is a one-on-one evaluation of a candidate's competency
- Upon successful completion of the practical examination, the license is issued

- Prior to becoming eligible for licensure, embalmer applicants are issued an apprentice permit that authorizes them to obtain the required practical experience under the supervision of a licensed embalmer and until they have successfully passed the licensing examination
- There have been no substantial waiting periods and delays in the issuance of licenses or permits to these applicants

10. WHAT ACTIONS HAS THE BOARD TAKEN TO INSURE COMPLIANCE WITH FEDERAL AND STATE AFFIRMATIVE ACTION REQUIREMENTS? ARE THERE POLICIES TO ENCOURAGE ACCESS BY WOMEN AND MINORITIES INTO THE EMBALMER AND FUNERAL DIRECTOR PROFESSIONS?

From Board:

- The board itself will stress compliance with the federal and state rules and regulations (affirmative action and other requirements)

From DPH:

- All applicants who meet the statutory requirements are eligible and receive a license
- The licensing section does not recruit individuals to apply for licensure or to engage in any profession

11. WITHIN THE PAST FIVE YEARS, WHAT CHANGES IN STATUTE, RULES OR REGULATIONS HAS THE BOARD PROPOSED OR ADVOCATED FOR THAT WOULD BENEFIT THE PUBLIC AS OPPOSED TO LICENSEES, INCLUDING PREVENTING THE LICENSURE OF UNQUALIFIED PERSONS?

From Board:

- The board has been a strong advocate for raising the bar
- Made continuing education requirements mandatory, making sure the course content is consistent with recommendations of the Academy of Funeral Services
 - For example, it is now mandatory that 2 hours of each year of continuing education be dedicated to state law and/or OSHA rules and regulations
- The board has also pursued the suspension and revocation of individual and or funeral home licenses after hearing discovered improprieties that warrant strong disciplinary action

From DPH:

- Existing statutory provisions allow the department to take action against individuals who are found to have been practicing this profession without a license
- DPH has not proposed any additional changes to the statutes or regulations governing the licensure or investigation activities related to this profession

12. WHAT HAS THE BOARD/AGENCY DONE TO ENCOURAGE PUBLIC PARTICIPATION IN THE FORMULATION OF THE BOARD'S REGULATIONS AND POLICIES?

From Board:

- The board presently has two board members referred to as public members (non-licensed embalmers/funeral directors)
- The board also works with the independent funeral consumer groups to help establish a good relationship and give the necessary weight to issues they may discuss with us affecting the public or the public's misconceptions

From DPH:

- DPH has not developed any new policies or regulations regarding this profession
- However, any time regulatory changes are proposed, DPH solicits feedback from interested stakeholders including but not limited to the board, regulated professionals and their membership organizations as well as the public

13. WHAT HAS BEEN THE PROCESS USED BY THE BOARD/AGENCY TO RESOLVE PUBLIC COMPLAINTS CONCERNING EMBALMERS, FUNERAL DIRECTORS AND FUNERAL HOMES?

From Board:

- The process has been one of in-house handling of matters with the respondent
 - However, there are times when the board is asked after many months or even years to listen to a case and conduct a hearing
 - Some of the delay is due to the ongoing investigative work which occurs before the case comes before the board
 - Other times, the board is asked to agree with the parties on a settlement between the Department of Public Health and the individual
- Some matters could be handled directly by the board in an effort to resolve issues in a hopefully amicable and more timely fashion

From DPH:

- Pursuant to Section 19a-14 of the General Statutes, DPH investigates public complaints concerning licensed embalmers and funeral directors who are alleged to have violated the laws, regulations and standards governing the profession. As part of the investigative process, DPH investigators communicate with the petitioner, obtain records and other pertinent documents, ask the respondent licensee to provide a response to the allegations and seek expert consultant opinions when necessary. If it is determined that the respondent has violated the standards of the profession or the standards of care, or violated other laws or regulations governing the profession, the department pursues a disciplinary action

14. HOW WELL WOULD YOU SAY THE BOARD OF EXAMINERS OF EMBALMERS AND FUNERAL DIRECTORS IS PERFORMING? PLEASE EXPLAIN.

From Board:

- In an excellent manner
- The board is knowledgeable about the funeral service personnel
- The DPH also contributes to the high regard in our state and many states around us
- This board as many boards does not take their charge lightly and is in place to ensure the health, safety and welfare to the citizens of our state and to the funeral profession

From DPH:

- The board can only adjudicate complaints that are brought from the department upon conclusion of an investigation
- These statistics fail to consider the number of complaints received and investigated that do not go before the board or result in disciplinary action
- An absence of complaints and low disciplinary statistics could also demonstrate that a program is performing well
- Although statistics concerning the number of disciplinary actions against license holders in a particular profession are relevant to the discussion, they may not be the most effective measure of the success of a board without taking other factors into consideration

15. WHAT COULD THE BOARD OF EXAMINERS OF EMBALMERS AND FUNERAL DIRECTORS DO TO PERFORM EVEN BETTER?

From Board:

- Not any easy question. The board handles matters of concern that are presented to us by the department and in our open forum during the first thirty minutes of our board meetings
- We are delivering what the department needs to know as well as our peers and general public

From DPH:

- The board and DPH could engage in educational campaigns with the public and license holders regarding licensing requirements, how/when to contact the department to file a complaint and the respective roles of the board and DPH

16. HOW WELL WOULD YOU SAY DPH IS DOING IN THEIR ROLE OF REGULATING EMBALMERS AND FUNERAL DIRECTORS? PLEASE EXPLAIN.

From Board:

- DPH is handling matters of funeral service in an exceptional manner
- Considering the personnel, we cannot ask or expect any more
- The public health facet is being handled well. The complaints are being handled and the funeral homes are being inspected
- The greatest concern now is for oversight of preneed/prefunding of funeral contracts
 - While DPH does a wonderful job protecting public health, now is the time for another agency to get involved in assuring citizens that the money is and will be there for their needs in days and years to come

From DPH:

- DPH is meeting its statutory mandates related to licensing and investigations as well as adjudication of complaints
- The investigation process is complaint driven and the number of complaints DPH receives regarding this profession is relatively small
- These statistics also fail to consider the number of applications received and licenses granted as well as complaints received and investigated that do not result in disciplinary action
- An absence of complaints and low disciplinary statistics could also demonstrate that a program is performing well
- Although statistics concerning the number of disciplinary actions against license holders in a particular profession are relevant to the discussion, they may not be the most effective measure of a successful program without taking other factors into consideration
- The board and DPH could engage in educational campaigns with the public and license holders regarding licensing requirements, how/when to contact the department to file a complaint and the respective roles of the board and DPH. Additionally, DPH and DCP can collaborate on educational initiatives related to pre-need funeral service contracts
- DPH is timely and thorough in conducting the required annual inspections of funeral homes and the issuance of inspection certificates

DPH Response to the 2011 Sunset Questionnaire on the Hearing Instrument Specialist Licensing Program

1. WOULD THE TERMINATION OF LICENSING REQUIREMENTS FOR HEARING INSTRUMENT SPECIALISTS SIGNIFICANTLY ENDANGER PUBLIC HEALTH, SAFETY, OR WELFARE? PLEASE EXPLAIN.
 - Current licensure requirements protect the public by ensuring that all hearing instrument specialists adhere to the same minimum standards with regard to education and training
 - Other practice related requirements such as standards for advertising also ensure that consumers are protected
 - During each of the last three years, DPH has investigated an average of two complaints filed by the public against licensed hearing instrument specialists
 - All of these complaints were related to either unlicensed practice and/or payment/advertising issues
 - Our efforts have focused more in the domain of consumer protection rather than public health and safety
 - The complaint pattern does not demonstrate a serious or imminent risk to public health or safety
2. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY ANOTHER STATUTE, OFFICE, OR PROGRAM? IF SO, WHICH ONE(S)?
 - DPH is not aware of any other state agency that has regulatory oversight of hearing instrument specialists
 - Consideration could be given to transferring this program to another agency
3. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY A LESS RESTRICTIVE METHOD OF REGULATION THAN THE CURRENT HEARING INSTRUMENT SPECIALIST LICENSING REQUIREMENTS, SUCH AS CERTIFICATION OR REGISTRATION? PLEASE EXPLAIN.
 - The current licensure process is not onerous and because the investigation process is complaint driven, minimal resources are necessary to maintain this program
 - A certification or registration program would have similar outcomes and would provide a comparable level of public protection
4. DOES THE HEARING INSTRUMENT SPECIALIST LICENSING PROGRAM (*PROGRAM*) HAVE THE EFFECT OF INCREASING THE COSTS OF GOODS OR SERVICES TO THE PUBLIC EITHER DIRECTLY OR INDIRECTLY? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.
 - DPH does not maintain statistics regarding the costs of goods and services to the public
 - DPH does not have any data to demonstrate the effect that licensing has on the costs of goods or services to the public
 - Licenses are renewed biennially at a cost of \$250.00 and all licensing revenue is deposited directly into the General Fund

5. IS THE EFFECTIVENESS OF THE PROGRAM'S OPERATION IMPEDED BY EXISTING STATUTES, REGULATIONS OR POLICIES, INCLUDING BUDGETARY AND PERSONNEL POLICIES? IF SO, PLEASE BE SPECIFIC IN YOUR ANSWER.
 - DPH is meeting its statutory mandates related to licensing and investigations as well as adjudication of complaints
 - Limited resources impact the department's ability to be more proactive in its enforcement activities (e.g., the investigation process is complaint driven) and in educating the public/consumers and license holders about current laws and regulations and the nature of our work

6. TO WHAT EXTENT HAVE QUALIFIED APPLICANTS BEEN PERMITTED TO ENGAGE IN THE OCCUPATION OF HEARING INSTRUMENT SPECIALIST? PLEASE COMMENT ON WAITING PERIODS, DELAYS, PAPERWORK, ETC.
 - Once an applicant has filed the necessary application form and required fees and all supporting documents have been received, a determination is made as to whether the applicant has met the licensing requirements
 - If determined to have met the licensing requirements, the applicant is scheduled to sit for the practical licensing examination that is administered by DPH
 - The practical examination is administered twice per year
 - Applicants may also apply to receive a temporary permit that authorizes them to practice under direct supervision of a licensed hearing instrument specialist for up to two years while they complete additional training and until they have successfully passed the licensing examination
 - Upon successful completion of the practical examination, the license is issued
 - There have been no substantial waiting periods and delays in the issuance of licenses to these applicants

7. WHAT ACTIONS HAS THE PROGRAM TAKEN TO INSURE COMPLIANCE WITH FEDERAL AND STATE AFFIRMATIVE ACTION REQUIREMENTS? ARE THERE POLICIES TO ENCOURAGE ACCESS BY WOMEN AND MINORITIES INTO THE HEARING INSTRUMENT SPECIALIST PROFESSION?
 - All applicants who meet the statutory requirements are eligible and receive a license
 - The licensing section does not recruit individuals to apply for licensure or to engage in any profession

8. WITHIN THE PAST FIVE YEARS, WHAT CHANGES IN STATUTE, RULES OR REGULATIONS HAS DPH RECOMMENDED REGARDING THE LICENSING OF HEARING INSTRUMENT SPECIALISTS?
 - None

9. WHAT HAS DPH DONE TO ENCOURAGE PUBLIC PARTICIPATION IN THE FORMULATION OF REGULATIONS AND POLICIES REGARDING THE HEARING INSTRUMENT SPECIALIST LICENSING PROGRAM?
 - DPH has not developed any new policies or regulations regarding this profession

- However, any time regulatory changes are proposed, DPH solicits feedback from interested stakeholders including but not limited to regulated professionals and their membership organizations as well as the public

10. WHAT HAS BEEN THE PROCESS USED BY DPH TO RESOLVE PUBLIC COMPLAINTS CONCERNING HEARING INSTRUMENT SPECIALISTS?

- Pursuant to Section 19a-14 of the General Statutes, DPH investigates public complaints concerning licensed hearing instrument specialists who are alleged to have violated the laws, regulations and standards governing the profession
 - As part of the investigative process, DPH investigators communicate with the petitioner, obtain records and other pertinent documents, ask the respondent licensee to provide a response to the allegations and seek expert consultant opinions when necessary
- If it is determined that the respondent has violated the standards of the profession or the standards of care, or violated other laws or regulations governing the profession, the department pursues a disciplinary action.

11. WITHIN THE PAST FIVE YEARS, WHAT STATUTES, RULES OR REGULATIONS HAS DPH PROPOSED OR ADVOCATED TO PROTECT THE PROFESSION FROM THE LICENSURE OF UNQUALIFIED PERSONS?

- Existing statutory provisions allow the department to take action against individuals who are found to have been practicing this profession without a license
- DPH has not proposed any additional changes to the statutes or regulations governing this profession

12. HOW WELL WOULD YOU SAY THE HEARING INSTRUMENT SPECIALIST LICENSING PROGRAM IS PERFORMING? PLEASE EXPLAIN.

- DPH is meeting its statutory mandates related to licensing and investigations as well as adjudication of complaints
- The investigation process is complaint driven and the number of complaints DPH receives regarding this profession is very small
- An absence of complaints and low disciplinary statistics could also demonstrate that a program is performing well
- Although statistics concerning the number of disciplinary actions against license holders in a particular profession are relevant to the discussion, they may not be the most effective measure of a successful program without taking other factors into consideration

13. WHAT COULD DPH DO TO PERFORM EVEN BETTER?

- DPH could engage in educational campaigns with the public and license holders regarding licensing requirements and how/when to contact the department to file a complaint

APPENDIX C

Changes to the Sunset Law Considered, But Not Adopted, by PRI Committee

The purpose of the sunset law is to provide the legislature with an oversight tool to control the proliferation of governmental entities. As was found in this current sunset review experience and in at least one previous sunset study, there are advantages to retaining the sunset law. While it considered the following possible changes to the sunset law, the PRI committee ultimately recommended transferring the responsibility for the sunset review performance audit to the committees of cognizance. *The committee believes PRI is better suited to doing larger studies as it more typically takes on, and the committees of cognizance would be a better choice for conducting the sunset review performance audits.*

The PRI committee considered, but did not recommend, possible changes to the sunset review: 1) list; 2) criteria; 3) sunset review cycle; and 4) agency data and reporting requirements.

1. The List

Current Sunset Review List

The governmental entities and programs originally listed in the Connecticut sunset law were primarily small regulatory boards and commissions, although there was also some large agencies and programs. The original sunset review list contained 94 entities and programs. According to the 1998 PRI study of the sunset law, almost everything with the word “board” or “commission” in its title was selected, along with “...a few other entities and programs that had, for one reason or another, caught the attention of the proponents of reorganization.”²²

The current list of 75 programs and entities is contained in Sec. 2c-2b of the Connecticut sunset law. Any program or entity that terminated under the law is given one year to conclude its affairs. As part of the five-year sunset review cycle, any program or entity that is reestablished is scheduled for another sunset review five years later.

As was noted earlier, the legislature has periodically eliminated programs or entities on the sunset list without benefit of a sunset review. That was the case when the Tri-State Regional Planning Commission and the Veterans Home and Hospital Commission were eliminated in 1981 and 1988, respectively. The legislature has also occasionally removed ongoing programs and entities from the sunset list without conducting a sunset review. For example, the State Tree Protection Examining Board and the Department of Economic and Community Development were removed in 1999 and 2009, respectively.

Other States with Sunset Laws

The PRI committee considered that some states focus their sunset laws on new programs as opposed to existing programs. Missouri, for example, conducts sunset reviews on new program and entities, with raised bills stipulating that the program automatically sunset six years from its effective date. The Missouri General Assembly Joint Committee on Legislative Research listed the following recently completed and varied sunset reviews on its website:²³

²² Sunset Review Process in Connecticut, December 1998, Legislative Program Review and Investigations Committee.

²³ <http://www.moga.mo.gov/oversight/Sunset%20Reviews.htm>

APPENDIX C
Changes to the Sunset Law Considered, But Not Adopted, by PRI Committee

1. Children in Crisis Tax Credit
2. Residential Treatment Center Tax Credit
3. Internet Cyber Crime Grant
4. Pregnancy Resource Tax Credits
5. Sunset Review of the Food Pantry Tax Credit
6. Missouri Military Family Relief Fund Check-Off
7. Review of the Model School Wellness Program
8. Review of the National Violent Death Reporting System

Washington State similarly applies sunset review to new programs at the discretion of the legislature. Similar to Missouri, the sunset review is attached as a provision of new legislation. It is applied only to new programs selected by the legislature—it is not automatically applied to all new programs. Recent examples in Washington State of new programs with sunset review provisions are:

- Washington Manufacturing Innovation and Modernization Extension Service Program (purpose to increase availability of innovation and modernization services to Washington manufacturers); and
- Alternative Public Works Procedures (allow public entities to design and construct public facilities without following the traditional procedure).

Considered Recommendation

Reports and members of the legislature have expressed concern in recent years about the preponderance of regulation in Connecticut. The PRI committee considered whether it would be useful to the legislature to apply the sunset review action forcing mechanism/automatic termination to assess whether a new regulatory requirement, upon implementation, is actually providing a public benefit.

Similar to Missouri and Washington State, the PRI committee considered whether the Connecticut legislature could choose to include a sunset review requirement for any newly established regulatory requirement. This could foster improvement and continuation of new regulations deemed necessary, while eliminating those that are no longer necessary or that were found to be ineffective or otherwise unnecessary. New regulatory requirements could include new licensure, certification, registration, and permitting, or other new business mandates. The governmental entities and programs currently on the sunset review list could be removed, with this new approach used to identify any new regulatory requirement the legislature wants to subject to a sunset review performance audit prior to its automatic termination date.

Table C-1 shows some of the new regulatory requirements that passed in the 2011 legislative session. If this redirection of sunset had been in place, the PRI committee considered that the legislature could have included a sunset review requirement in any of these Acts.

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Table C-1. New Regulatory Requirements that Passed in the 2011 Legislative Session	
Public Act Number:	Act:
11-52	AA Mandating Employers Provide Paid Sick Leave to Employees
11-76	AAC Patient Access and Control Over Medical Test Results
11-100	AAC the Licensing and Record Keeping of Pawnbrokers, Secondhand Dealers and Precious Metals or Stones Dealers , the Retention of Certain Goods and Certain Fees Charged by Pawnbrokers
11-164	AA Authorizing the Sale of Connecticut Wine at Farmers' Markets and Establishing a Farmers' Market Wine Permit
11-183	AA Requiring Certificate of Need Approval for the Termination of Inpatient and Outpatient Services by a Hospital
11-190	AA Requiring a Permit for Certain Commercial Projects that Involve Quarrying
11-245	AA Requiring the Adoption of Regulations for the Siting of Wind Projects
11-248	AA Requiring Carbon Monoxide Detectors in all Public and Nonpublic Schools
11-81	AA Concerning the Licensing of Swimming Pool Installers , Electronic Notice of Proposed Agency Regulations and Minor and Technical Changes to Department of Consumer Protection Statutes. (The act requires the DCP commissioner to establish requirements for obtaining and renewing a swimming pool builder's license.)

2. The Criteria

Current Criteria

As described earlier, the sunset law provides two sets of criteria to guide the General Assembly in carrying out the sunset review process. Per C.G.S. Sec. 2c-7, the first set of criteria is used to help determine whether there is a *public need for continuing the regulatory entity or program*:

1. whether termination of the entity or program would significantly endanger public health, safety or welfare;
2. whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation;
3. whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and
4. whether the effective operation of the entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

In addition to the first set of criteria, the second set of criteria (per C.G.S. Sec. 2c-8) is used to help determine *whether a regulatory entity or program serves the general public, and not merely the persons regulated*:

1. the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program;
2. the extent to which the governmental entity involved has complied with federal and state affirmative action requirements;

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3. the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated;
4. the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and
5. the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation.

The December 1998 PRI study of the sunset review process in Connecticut offered four options for modification of Connecticut's sunset law. Two of the options recommended elimination of the second set of review criteria outlined in C.G.S. Sec. 2c-8. The explanation given for recommending the elimination of these criteria was that their focus was solely on regulatory matters rather than on how well entity or program complies with state rules and regulations.

Other States with Sunset Laws

Many of the other states that have sunset laws were developed in the 1970's around the same time as the Connecticut sunset law was established; thus, the criteria are strikingly similar. The criteria tend to fall into two broad categories:

- need for the state to be involved in the area under review, and the appropriate level of involvement; and
- extent to which goals have been met and resources used efficiently.

Considered Recommendations

Whether examining programs and entities or regulatory requirements, there is still a need to have a uniform set of standards by which to guide the associated performance audit. The current criteria focusing on whether the public health, safety and welfare are protected is still important, as that is the public policy goal for regulatory requirements. The PRI committee considered whether the criteria could be further improved by making the modifications described below.

Consideration given to adding a new criterion to address the streamlining of regulatory processes. The following new criterion was considered: *the extent to which the regulatory requirement has been implemented in a streamlined way that avoids inconsistent, duplicative and/or unnecessary requirements or procedures.* Unjustified burdens and costs as well as processing delays could be reduced through elimination of inconsistencies and duplication of effort without adversely impacting the health, safety and welfare of the public. Statutory changes could be recommended that have a neutral impact on the public, but benefit the persons regulated such as streamlining processes and cutting red tape. Given the need for job growth in the state, there is increased focus on reduction of unnecessary or cumbersome regulations in Connecticut.

Consideration given to combining two criteria into one pertaining to the treatment of qualified applicants. There are currently two sunset criteria that relate to the treatment of applicants: 1) the extent to which qualified applicants have been permitted to engage in any

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profession, occupation, trade, or activity regulated by the entity or program; and 2) the extent to which the governmental entity involved has complied with federal and state affirmative action requirements. Since both criteria relate to the treatment of qualified applicants in a fair and equitable manner, the PRI committee considered reducing the two criteria into one broader criterion that addresses this area.

Consideration given to deleting two criteria. One consideration is to delete the criterion that pertains to *the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated*. The PRI committee considered that, since there are already criteria to assess the extent to which the regulated program or entity has been beneficial to the public health, safety and welfare, it would not be harmful to consider statutory changes that have a neutral impact on the public, but are beneficial to the persons regulated. Reducing the time to process permitting applications, for example, could be beneficial to new or existing businesses in Connecticut.

Another criterion the PRI committee considered eliminating relates to *the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies*. This criterion could be less relevant if there was a redirected focus toward new regulatory requirements.

Consideration given to retaining the remaining criteria. With minor adjustments to the wording, the PRI committee considered whether the remaining criteria could all be relevant to the assessment of new regulatory requirements. Although not recommended by the PRI committee, the slight wording changes considered are shown in Table C-2.

Table C-2. Comparison of Remaining Criteria	
Current Criterion	Proposed Criterion
1. whether termination of the entity or program would significantly endanger public health, safety or welfare	(a) whether elimination of the regulatory requirement would significantly endanger public health, safety or welfare
2. whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation	(c) whether the public could be adequately protected by a less restrictive regulatory requirement
3. whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost	(d) whether the regulatory requirement produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the regulatory requirement outweigh the public burden of the increase in cost
4. whether the effective operation of the entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies	(e) whether the effective implementation of the regulatory requirement is impeded by existing statutes, other regulatory requirements, or policies, including budgetary and personnel policies
5. the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation	(g) the extent to which the governmental entity responsible for implementing the regulatory requirement has processed and resolved public complaints concerning persons or organizations subject to the regulatory requirement

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3. The Sunset Review Cycle

Background on the Five-Year Schedule for Periodic Review of Each Entity/Program

The Connecticut sunset review process currently has a five-year cycle. The 1998 PRI study of sunset review recommended increasing the length of the cycle from five to eight years. Rationale for this recommended change included allowing the program review committee to devote more resources to non-sunset activities in any given cycle year, without reducing the quantity or quality of the sunset reviews.

The PRI committee considered that it is possible that sunset reviews have been postponed because the vast majority of the programs and entities currently on the sunset list have been reviewed once and found to be worthy of continuing for at least five years. In the current PRI study, sunset reviews of both the hearing instrument specialists and embalmers and funeral directors concluded that the professions should continue to be regulated. There were no significant changes that were uncovered that would have led to recommendations to eliminate the regulation of either profession. Thus, for many of the regulatory programs and entities, perhaps the first sunset review is the most critical and after that, it is less of an issue as to whether the program or entity should continue.

In considering the redirection of sunset reviews to new regulatory requirements, PRI staff noted that some regulations may take more or less time to become established. A larger, more complex regulation may take years to be established, whereas a more narrowly-focused, smaller regulation that is similar to other already-established regulations may require less start-up time. Therefore, a one-size-fits-all timeframe may not be the best solution for sunset dates for new regulatory requirements.

Other States with Sunset Laws

The review cycle length identified for 21 states ranged from four to 15 years, with eight states saying the life of agencies/associated review cycles varied.²⁴ A number of the states that reported a variable review cycle set maximum limits, such as “up to six years” (e.g., Louisiana, Tennessee) or a range (e.g., 6 to 12 years (Missouri)).

Considered Recommendations

First sunset review. The PRI committee considered that five years out from the date the regulation was established could be a reasonable amount of time to give before conducting the sunset review. However, some more complex regulations could require more time to become established, and others less time to become established. Consistent with some of the other states with variable cycles, a variable time with an upper limit of six years might be a compromise solution. A longer period of time prior to the initial sunset review could contribute to the expansion of government regulation without oversight.

Subsequent sunset reviews. Although not recommended, the PRI committee considered whether an automatic repeated sunset cycle is necessary for the regulatory requirements. An alternative is to conduct the first sunset review within six years of establishment of the new

²⁴ The Council of State Governments’ survey, January 2009 with updates August 2009.

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regulatory requirement. If the legislature then chose to reauthorize the regulatory requirement, it could be removed from any future sunset review list, unless the legislature wished to schedule a new date for termination, not to exceed six years from the date of the last sunset review.

4. Agency Data and Reporting Requirements: Considered Recommendations

The Sunset Review Performance Audit Report

As is currently the case with the sunset law, the PRI committee could submit to the General Assembly a written report on each new regulatory requirement by January first of the year in which the regulatory requirement would be scheduled for termination. The assessment of the regulatory requirement would address the seven criteria described earlier. Although not recommended, the PRI committee considered having a report that could contain recommendations regarding the termination, continuation, modification, or streamlining of the regulatory requirement. The report could present the findings in a concise and outcomes-oriented format.

The State Agency Data Requirements

Although not recommended, the PRI committee considered that the state agency responsible for implementing the new regulatory requirement containing the sunset provision, could establish results-based measures by which to assess progress in addressing the seven criteria described earlier. As is currently the case with the sunset law, the agency could have the burden of demonstrating the extent to which the performance results have been achieved.

Although not recommended, it was further considered that the state agency responsible for implementing the regulatory requirement could develop results-based measures and a data collection plan and submit it to the PRI committee for review and comment. The results-based measures and data collection plan could be submitted within one year of the effective date of the legislation establishing the sunset termination.

In instances where more than one agency was responsible for implementing the new regulatory requirement, a lead agency could be named in the sunset termination legislation. This lead agency could have responsibility for developing and implementing the data collection plan and submitting the resulting performance information to the PRI committee for its review and comment. In summary, although not recommended, the PRI committee considered the following:

New regulatory requirement focus

- After July 1, 2012, the General Assembly may add a sunset date to any new regulatory requirement.²⁵ The sunset date shall not be more than six years after the effective date of the regulatory requirement.
- The Legislative Program Review and Investigations Committee shall conduct a performance audit of each regulatory requirement scheduled for termination under the sunset law.

²⁵ New regulatory requirements would include new licensure, certification, registration, and permitting, or other new business mandates.

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Criteria

- Criteria for determining public need. In determining whether there is a public need for the continuation of a regulatory requirement, and whether the regulatory requirement is being implemented in an efficient and effective manner, the General Assembly shall consider, among other things:
 - (a) whether elimination of the regulatory requirement would significantly endanger public health, safety or welfare;
 - (b) the extent to which the regulatory requirement has been implemented in a streamlined way that avoids inconsistent, duplicative and/or unnecessary requirements or procedures;
 - (c) whether the public could be adequately protected by a less restrictive regulatory requirement;
 - (d) whether the regulatory requirement produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the regulatory requirement outweigh the public burden of the increase in cost;
 - (e) whether the effective implementation of the regulatory requirement is impeded by existing statutes, other regulatory requirements, or policies, including budgetary and personnel policies;
 - (f) the extent to which the governmental entity responsible for implementing the regulatory requirement has treated qualified applicants or regulated individuals or organizations in a fair and equitable manner; and
 - (g) the extent to which the governmental entity responsible for implementing the regulatory requirement has processed and resolved public complaints concerning persons or organizations subject to the regulatory requirement.

State agency data requirements

- The state agency responsible for implementing the new regulatory requirement (being subject to a sunset review performance audit) shall establish results-based measures to address the criteria set forth in recommendation #3. The agency has the burden of demonstrating the extent to which performance results have been achieved.

The sunset termination legislation shall name a lead agency, if more than one agency is affected by scheduled termination. The affected agency or lead agency has the responsibility for developing and implementing a data collection plan and submitting the resulting performance information to the Legislative Program Review and Investigations Committee.

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The affected agency or lead agency shall develop results-based measures and a data collection plan and submit them for review and comment to the Legislative Program Review and Investigations Committee within one year of the effective date of the legislation establishing the sunset termination.

Reporting requirements

- The Legislative Program Review and Investigations Committee shall submit to the General Assembly a written report on each regulatory requirement by January first of the year in which the regulatory requirement is scheduled for termination. Such report shall specifically address the criteria set forth in recommendation #3 and present findings in a concise, outcomes oriented format. Such report shall include recommendations regarding the termination, continuation, modification, or streamlining of such regulatory requirement.

Managing sunset list

- Any regulatory requirement reauthorized by the General Assembly shall be removed from the sunset review list, unless the legislature schedules a new date for termination, not to exceed six years from date of last sunset review.
- All governmental entities and programs contained in Sec. 2c-2b scheduled to terminate no later than July 1, 2017, shall be removed from the sunset list.

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APPENDIX D

Legislative History of Board of Examiners of Embalmers and Funeral Directors

The practice of preserving corpses through embalming became an increasingly acceptable American practice during the Civil War and at the time of Abraham Lincoln’s death, when his embalmed body was on display as it was transported from Washington, D.C. to Springfield, IL. As shown in Table D-1, in Connecticut, the regulation of embalmers through state licensure began in 1903. The primary purpose at that time was the disinfection of bodies to control the spread of communicable diseases.

Table D-1 shows legislative changes that have occurred over the years in the regulation of embalmers and funeral directors, a responsibility shared by the board (*Board of Examiners of Embalmers and Funeral Directors*) and a state agency (currently *Department of Public Health*).

Table D-1. Legislative History of Board of Examiners of Embalmers and Funeral Directors	
Year	Change
1903	<ul style="list-style-type: none"> • Established CT Board of Examiners of Embalmers • Licensure of embalmers initiated
1941	Licensure of funeral directors initiated
1951	Established CT Board of Examiners of Embalmers and Funeral Directors
1977 (P.A. 77-614)	<ul style="list-style-type: none"> • Revised membership of board to include two public members in place of two embalmers • Transferred licensing and other regulatory powers from board to agency • Transferred selection of licensing exam questions from agency to board • Transferred responsibility for sanitary standards from board to agency
1980 (P.A. 80-484)	<ul style="list-style-type: none"> • Transferred selection of licensing exam questions from board to agency • Board’s power to suspend or revoke licenses was expanded to include other disciplinary actions (e.g., reprimand, probation) • Deems resignation of any board member failing to attend three consecutive meetings or half of all meetings held during any calendar year
1991 (P.A. 91-12)	Eliminated expense reimbursement for board members
Source: Connecticut General Statutes.	

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APPENDIX E

Additional Background Information on Embalmers, Funeral Directors and Funeral Homes

Cost of a funeral. Table E-1 shows the national average cost of an adult funeral in 2009. As a note, cremations may range from \$2,000-\$3,000 and are reportedly growing in popularity. Approximately one-third (37 percent) of persons who died in Connecticut in 2006 were cremated. Nationally, it is projected that 46 percent will be cremated in 2015 and 59 percent by 2025.²⁶ Note that bodies going to a crematory need to be accompanied by a cremation permit. The town registrar authorizes the cremation certificate and issues a cremation permit.

Table E-1. National Average¹ Cost of an Adult Funeral in 2009	
Item	Cost
Non-declinable basic services fee	\$1,817
Removal/transfer of remains to funeral home	\$250
Embalming	\$628
Other preparation of the body	\$200
Use of facilities/staff for viewing	\$395
Use of facilities/staff for funeral ceremony	\$450
Hearse	\$275
Service car/van	\$125
Basic memorial printed package	\$125
<i>Subtotal without casket</i>	<i>\$4,265</i>
Metal casket (average charge for the most frequently purchased item)	\$2,295
AVERAGE COST OF A FUNERAL	\$6,560
<i>Vault (average charge for the most frequently purchased item)</i>	<i>\$1,195</i>
Total with vault	\$7,755
¹ Median price was used (i.e., half fall below and half are above the price shown)	
Source: NFDA ²⁷ 2010 member General Price List survey.	

Requirements for entry into the profession. Except for the embalmer license requirement of embalming 50 bodies under the supervision of a licensed embalmer and passing a practical exam where the candidate actually demonstrates his/her embalming skills on a cadaver, the license requirements for embalmers and funeral directors are the same. Both student funeral directors and student embalmers have to study and observe embalming and pass a national test that includes questions about embalming. Because an embalmer's license allows the person to act as a funeral director (but not the reverse), the vast majority become licensed as embalmers. However, Connecticut continues to offer the funeral director's license.

²⁶ Cremation Association of North America, August 2009 Report: "2007 Statistics and Projections to the Year 2025: 2008 Preliminary Data."

²⁷ The National Funeral Directors Association (NFDA) is the largest funeral service association, serving 18,500 individual members representing over 9,900 funeral homes in the United States and internationally.

To receive an embalmer or funeral director license, an applicant must fulfill the following requirements:

- **Educational Requirement:** Successful completion of either: 1) an *associate's degree* in mortuary science from an education institution accredited by the American Board of Funeral Service Education (ABFS); or 2) a *diploma* (not an associate's degree) in mortuary science from an ABFS program plus a *baccalaureate degree* with six semester hours (or nine trimester hours) in the following content areas related to funeral service: business management, accounting, finance, merchandising, business law, computer applications, ethics, counseling, and psychology.²⁸
- **Apprenticeship Requirement:** After successful completion of the educational requirement, an applicant is required to obtain a permit from DPH to complete the required apprenticeship training. The one-year apprenticeship training must be:
 - full-time;
 - paid employment;
 - under the supervision of a licensed embalmer; and
 - (for embalmer apprentices only) embalming or assistance in embalming at least 50 human bodies.
- **Examination Requirements:**
 - passage of the written Arts and Sciences examination of the national Conference of Funeral Service Examining Boards (approximately 77% national passage rate);
 - passage of the written Connecticut state laws/regulations examination;²⁹ and
 - (for embalmer applicants only) passage of practical examination (requires the embalming of a human cadaver under the direction of an examiner designated by the Department and the Connecticut Board of Examiners of Embalmers and Funeral Directors).

Licensing statistics. During FY 09, there were 20 applications received for embalmer licensure, and all 20 applicants were granted licenses. Similarly, there were three applications for funeral director licensure, and all three applicants were granted licenses.

Figure E-1 shows there has been a relatively steady number of licensed embalmers in Connecticut over the past five years.

²⁸ Lincoln College of New England in Southington, CT is the only state school (for-profit) to offer mortuary science degrees: an associate degree (Mortuary Science Associate of Applied Science) and a bachelor's degree (Bachelor of Science Degree in Funeral Service Management).

²⁹ Exam tests applicant's knowledge of the Connecticut General Statutes, Connecticut Public Health Code, and federal guidelines pertaining to the funeral industry.

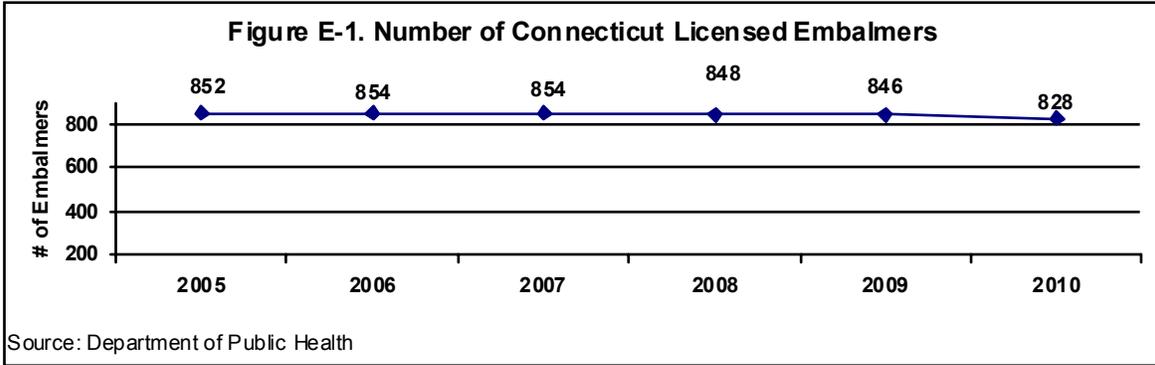


Figure E-2 shows there has been a 20 percent decrease in the number of licensed funeral directors in Connecticut over the past five years.

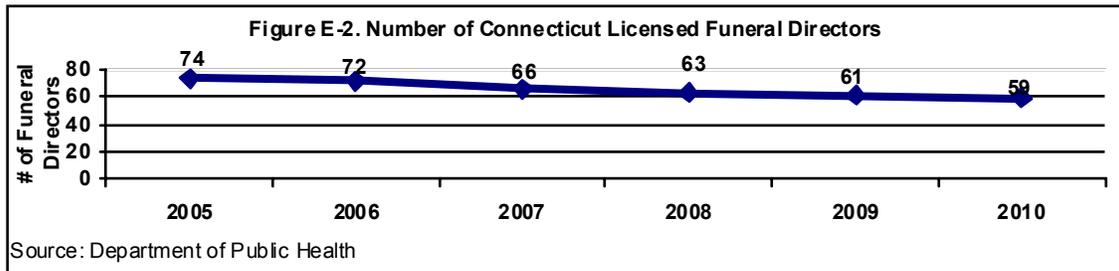
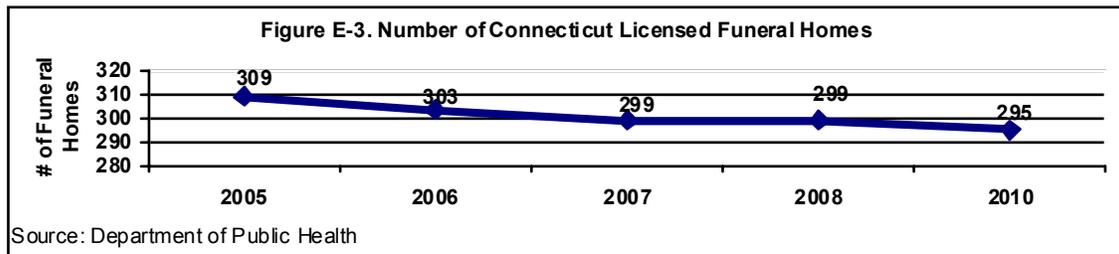


Figure E-3 shows a gradual decreasing trend in the number of licensed funeral homes in Connecticut over the past five years. Factors contributing to this decrease include consolidation of funeral home locations and funeral director retirements.



Federal regulations. In addition to state statutes and regulations, the industry must also abide by federal regulations. The Trade Regulation Rule of Funeral Industry Practices, 16 C.F.R. Part 453, of the *Federal Trade Commission*, commonly referred to as the “Funeral Rule,” was adopted in 1982 and became fully effective in 1984. All funeral providers in the United States are required to follow the Funeral Rule and to comply with its preventive requirements in order to avoid unfair or deceptive acts or practices. The Funeral Rule requirements include:

- disclosing prices over the telephone and providing printed, itemized price lists for all merchandise and services offered
- all required disclosures provided in a clear and conspicuous manner
- funeral director to provide descriptions and prices of caskets prior to showing customer the caskets
- not providing embalming services without permission, and disclosing that embalming is not required for direct cremations nor by law except in certain special cases
- funeral provider retention of copies of price lists for at least one year after date last distributed to customers
- funeral provider may not refuse, or charge a fee, to handle a casket the customer bought elsewhere

Although the Federal Trade Commission (FTC) cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations. The commission advises consumers to try to resolve problems concerning funeral matters with the funeral director or the state consumer protection agency. From 1984 through 1994, the FTC brought 43 enforcement actions against funeral homes for failing to comply with the Funeral Rule, and in subsequent years, conducted sweeps in which investigators posed as consumers, and test shopped funeral homes. In 2011, for example, funeral homes in Chicago and Washington, D.C. were charged with violating the FTC Funeral Rule following undercover inspections where FTC staff posed as consumer seeking to make funeral arrangements.

The federal *Occupational Safety and Health Administration* (OSHA) classifies morticians and their employees as healthcare workers and as such, are considered to be at occupational risk because they are exposed to blood-borne pathogens and certain body fluids. Blood-borne pathogens of greatest risk include hepatitis B (HBV) and human immunodeficiency virus (HIV). In addition to blood-borne pathogens, OSHA has standards applying to personal protective equipment, formaldehyde and hazardous chemicals.

Under the federal Clean Water Act, hazardous materials such as embalming fluid must be disposed of in compliance with guidelines, while emissions from crematories must meet standards established by the Clean Air Act.

How profession is regulated in other states. PRI staff reviewed regulatory requirements and structures in all 50 states (and the District of Columbia). It found that:

- Approximately half the states have a single (combined) license for both embalmers and funeral directors
- Most embalmer and funeral director licenses require at least some college coursework
- Responsibility for regulating embalmers and funeral directors is most often found in the state's Department of Professional Regulation or in the Board of Examiners of Embalmers and Funeral Directors (Figure E-4)
- Passage of the national exam is required in all but six states (88 percent), with 13 states requiring passage for embalmers, but not funeral directors
- At least 44 states (86%) have a board of funeral directors/embalmers

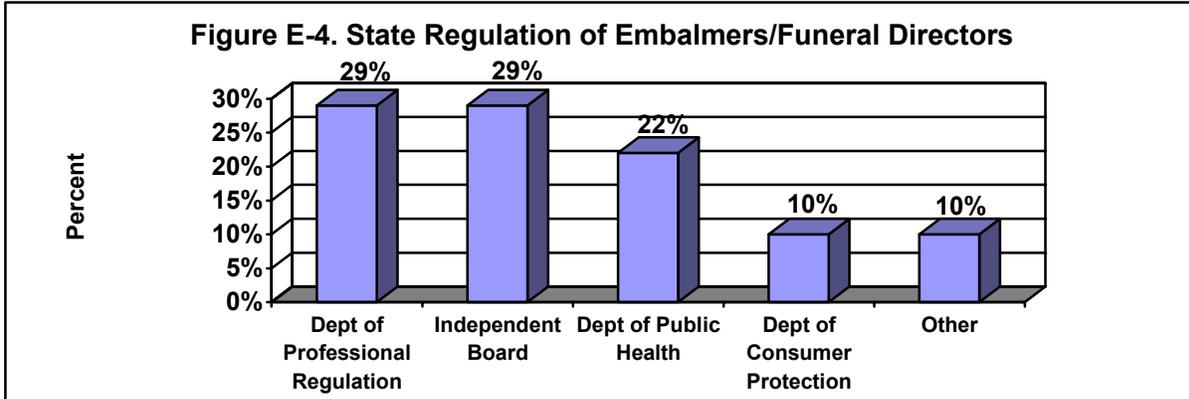


Table E-2 compares Connecticut with the other New England states.

State	Annual Hours of Continuing Educ.	Require National Exam Passage?	State Body with Licensing Responsibility	State Have a Funeral Board?
Connecticut	6 hrs per yr	Yes	public health department	Yes
Maine	12 hrs per 2 yrs	Yes	professional regulation department	Yes
Massachusetts	5 hrs per yr	Yes	consumer affairs department	Yes
New Hampshire	7 hrs per 2 yrs	Yes	public health agency	Yes
Rhode Island	5 hrs per yr	Yes	public health department	Yes
Vermont	20 hrs per 2 yrs	Yes	professional regulation department	Yes

Sources: International Conference of Funeral Service Examining Boards, National Funeral Directors Association.

As can be seen:

- Connecticut’s continuing education requirements fall within the 5-10 hour range found in New England states;
- all New England states require passage of the national board examination³⁰ in order to become licensed; and
- like Connecticut, all the other New England states also have a board for embalmers and funeral directors.

³⁰ The International Conference of Funeral Service Examining Boards develops, administers and provides score reporting services to the state licensure boards. The 340 exam items cover such topics as funeral service law and merchandising, sociology and psychology, embalming and restorative art.

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APPENDIX F

Results-Based Accountability

Assessment of

**Regulation of Embalmers, Funeral
Directors and Funeral Homes**

Prepared By

**Legislative Program Review and Investigations Committee
Per C.G.S. Sec. 2c-4**

February 22, 2012

Committee Staff on Project

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RESULTS-BASED ACCOUNTABILITY FRAMEWORK: REGULATION OF HEALTH PROFESSIONALS				
POPULATION LEVEL ACCOUNTABILITY				
QUALITY OF LIFE RESULTS STATEMENT: “All Connecticut residents experience good physical, mental and economic health, safety and welfare through the regulation of health professionals.”				
KEY INDICATORS of Progress Toward Population Level Results				
Indicator 1: Physical health and safety <i>Percent of time clients unharmed by a licensed professional</i>	Indicator 2: Emotional well-being <i>Rate with which consumers are treated fairly and with dignity</i>	Indicator 3: Economic welfare <i>Percent of time clients have trouble-free financial transactions with licensed professional</i>		
PARTNERS CONTRIBUTING TO RESULTS STATEMENT				
CT General Assembly Congress Governor State Agencies: DPH, DCP, OAG Municipalities	Federal Agencies: FDA, FTC, OSHA Boards and Commissions Medical personnel and other Professionals/Practitioners Better Business Bureau Advocacy groups	Educational and Health Care Institutions Businesses Colleges, training institutions producing professionals Professional associations		
MAIN STATE STRATEGIES FOR ACHIEVING RESULTS STATEMENT				
Ensure minimum level of compliance with licensure and regulations	Ensure safe and sanitary conditions at regulated facilities and businesses	Enforce fair and honest financial practices	Investigate and resolve complaints	
AGENCY AND PROGRAM LEVEL ACCOUNTABILITY				
AGENCY AND BOARD CONTRIBUTIONS TO RESULTS STATEMENT: MAIN ROLES AND RELATED MAJOR PROGRAMS				
Set and apply standards for trained and competent practitioners	Protect public from the spread of disease, risk and physical injury by licensed professionals	Safeguard the public from negligent and unscrupulous professional practices	Protect public from economic harm by professionals in the field	Establish and implement processing for complaints about services received by the professional
<ul style="list-style-type: none"> DPH license processing and setting standards 	<ul style="list-style-type: none"> DPH facilities inspections DPH licensing examinations DPH continuing education requirements 	<ul style="list-style-type: none"> DPH complaint investigation DPH/board hearing process and sanctioning 	<ul style="list-style-type: none"> DCP investigation of unscrupulous business practices DPH sanctioning of licensed individuals 	<ul style="list-style-type: none"> DPH complaint receipt and investigation DPH/board hearing process and sanctioning
PROGRAM LEVEL PERFORMANCE MEASURES: REGULATION OF PROFESSIONS				
<ul style="list-style-type: none"> DPH and any associated boards are in full compliance with relevant statutory and regulatory requirements Efforts are made to prevent and detect any negative impact on the physical health of consumers caused by the actions of the licensed professionals Unscrupulous practitioners are removed or monitored to limit further complaints Efforts are made to prevent, detect, and resolve financial fraud or dishonesty All complaints regarding deceptive practices are successfully resolved 				

**RBA PROGRAM PERFORMANCE REPORT CARD:
REGULATION OF EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL HOMES**

Contributes to the Quality of Life Results Statement:

All Connecticut residents experience good physical, mental and economic health, safety and welfare through the regulation of health professionals.

Main Contribution: The regulation of embalmers, funeral directors, and funeral homes helps protect public health from illness spread through the deceased, safeguard the emotional well-being of consumers by ensuring the deceased’s descendants are treated fairly and with dignity, and economic welfare through the enforcement of fair and honest financial practices.

PROGRAM BACKGROUND

- In 1903, the CT Board of Examiners of Embalmers was established with responsibility for licensure of embalmers and other regulatory powers.
- In 1977, embalmer, funeral director, and funeral home licensing and other regulatory powers were transferred from the board to the DPH.
- DPH is responsible for initial and renewal of licenses and receiving and investigating complaints pertaining to the quality of services provided. There is one full-time DPH inspector/investigator who is assigned solely to inspecting all funeral homes annually, and investigating complaints against embalmers, funeral directors, and funeral homes.
- While DPH investigates complaints pertaining to quality of services, DCP investigates complaints relating to business practices, such as pre-need funeral service contract issues.

REGULATION OF EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL HOMES PERFORMANCE SUMMARY

Five key measures of performance for public health-related regulation are highlighted below, followed by separate discussions of four areas – licensure; complaints and sanctioning; public, physical, and financial safety; and board functioning. Within each, two of the three RBA program performance questions –How much did we do? And How well did we do it?– are answered. The final section answers the key, third question: Is anyone better off?

KEY MEASURES	STATUS	CURRENT DATA
1. The board and DPH are in full compliance with relevant statutory and regulatory requirements	+	<ul style="list-style-type: none"> • The board has complied with its activity-related statutory and regulatory requirements. <ul style="list-style-type: none"> ○ In 2010, the board met the required four times, and held hearings (two). ○ In 2010, the board imposed sanctions (seven times). • But because the board has been awaiting the governor’s appointment of a public member since June 2011, it is out of compliance with the requirement that one-third of its members be public. • DPH has complied with all statutory and regulatory requirements to license, inspect and investigate embalmers, funeral directors and funeral homes. <ul style="list-style-type: none"> ○ 828 embalmers and 59 funeral directors were licensed in 2010. ○ 295 funeral homes were licensed that same year. ○ 69 complaints against embalmers, funeral directors and funeral homes were investigated from 2009-2011.

<p>2. Efforts are made to prevent and detect any negative impact on the physical health of consumers caused by the actions of the licensed professionals</p>	<p>+</p>	<ul style="list-style-type: none"> • Licensure requirements and processes are intended to prevent public health incidents. <ul style="list-style-type: none"> ○ Personnel licensure has a continuing education requirement that specifically involves the importance of and methods for maintaining sanitary conditions and preventing the spread of communicable disease. ○ Facility licensure involves annual DPH inspections, which focus on assessing whether sanitary conditions and procedures are used. When necessary, sanctioning / plans are implemented to bring the facility up to an acceptable condition. • There is some indication that although communicable illnesses can be spread from the deceased to funeral home personnel, serious public health incidents are rare. Within Connecticut, there do not appear to have been any recorded or reported incidents.
<p>3. Unscrupulous practitioners are removed or monitored to limit further complaints</p>	<p>+</p>	<ul style="list-style-type: none"> • Due to DPH and actions of board, during 2008-2011: 20 incompetent and negligent/unscrupulous embalmers and/or funeral directors, and 12 funeral homes, were removed or otherwise sanctioned, thereby increasing potential for peace of mind. • These actions were taken due to such harmful acts as: mixing up two bodies and cremating the wrong body, delaying embalming the deceased resulting in a gross disfiguration, reselling top-tier coffins that were already bought by families, and switching coffins after families had left the grave.
<p>4. Efforts are made to prevent, detect, and resolve financial fraud or dishonesty</p>	<p>+</p>	<ul style="list-style-type: none"> • Pre-need funeral service contracts are examined as part of the annual DPH funeral home inspection and any suspected irregularities forwarded to DCP. • DCP investigates approximately eight consumer complaints annually related to funeral home business practices, and also investigates and handles pre-need funeral service contract problems found through the DPH funeral home inspection. • DCP investigations can result in the restoration of funds to consumers (e.g., recent investigations of four incidences benefited 27 customers). • When financial malfeasance involves licensed practitioners, DPH and the board become involved and handle licensure-related penalties, if any. • To help the consumer be as informed as possible, DCP prepared a fact sheet on pre-need funeral service contracts for the public and funeral industry; the PRI committee recommends this fact sheet be shared with every potential pre-need funeral service contract customer. • To ensure that practitioners are knowledgeable about the requirements of pre-need funeral service contracts and the maintaining of funds in escrow accounts, there are pre-need funeral service contract courses available to practitioners as part of continuing education requirements.

<p>5. All complaints regarding deceptive practices are successfully resolved</p>	<p>+</p>	<ul style="list-style-type: none"> • All DPH-processed complaints are investigated or dismissed. In FY 10, for example: <ul style="list-style-type: none"> ○ 18 of the 20 complaints received (90%) were investigated. ○ 6 of the 20 complaints were closed as of November 1, 2011 (30%). • All complaints received by the DPH Practitioner Licensing & Investigations Section are prioritized by level of immediate threat of the situation to public health and safety. Section staff is required to investigate complaints within specific timeframes. • Target timeframes within which to resolve DPH-processed complaints are not met at least 70% of the time. • A review of 19 DCP-processed complaints received during a two-year period (10/1/09-10/03/11) found: <ul style="list-style-type: none"> ○ 84% were closed as of 10/24/11. ○ The median amount of time it took to resolve the 16 closed cases was approximately three months. • Consumers may not be aware that depending on the nature of the problem, complaints are handled by either DPH or DCP; PRI committee recommends clarifying this matter on the departments' websites.
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LICENSURE

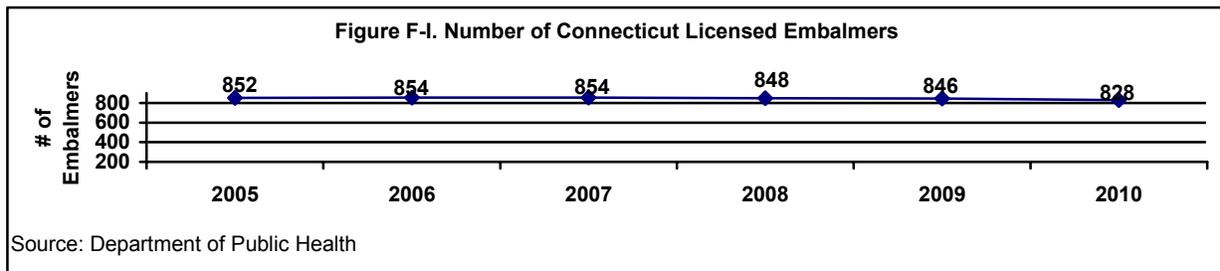
In 2010, the Department of Public Health oversaw the licensure of embalmers and funeral directors. The agency held licensing exams and also inspected and certified funeral homes. Continuing education is required for embalmer and funeral director licensure renewal.

I. HOW MUCH DID WE DO?

Performance Measure 1: Number of Licenses Issued

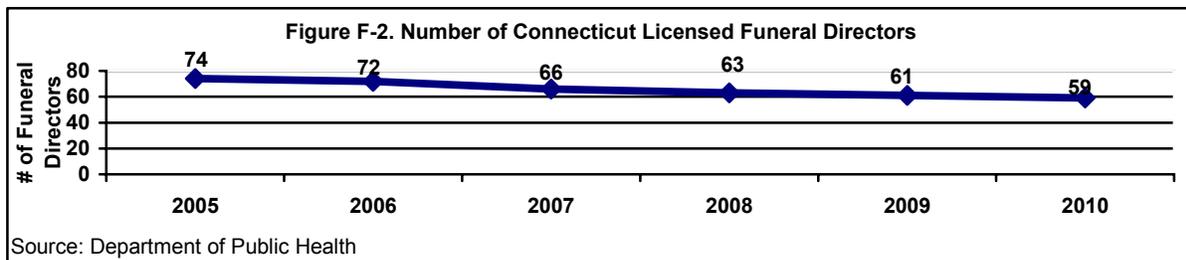
For embalmers:

- DPH licensed 828 embalmers in 2010 (Figure F-1).
- There were 22 applications for new embalmer licenses in FY 11.



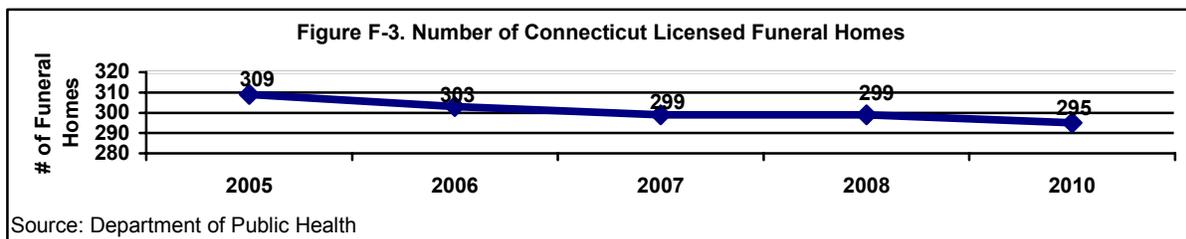
For funeral directors:

- DPH licensed 59 funeral directors in 2010 (Figure F-2).
- There was 1 application for a new funeral director license in FY 11.



For funeral homes inspected and certified by DPH:

- DPH inspected and certified 295 funeral homes in 2010 (Figure F-3).
- There were 8 applications for new funeral home certificates in FY 11.



Trend: The number of licenses newly issued or renewed each year has declined substantially for funeral directors and less so for embalmers. The number of funeral homes licensed or re-licensed has dropped slightly.

Performance Measure 2: Number of Licensure Exams Held Annually

- By statute, DPH is required to hold licensure exams for embalmers and funeral directors at least twice per year.
- On a regular basis, DPH offers required exams six times per year.

II. HOW WELL DID WE DO IT?

Performance Measure 3: Percent of Trained and Competent Applicants Who Received Licenses

- Embalmer and funeral director licenses are only granted to applicants who have successfully completed the education, apprenticeship and examination requirements.
- In FY 09:
 - 100% of the 20 embalmer applicants met the embalmer licensing requirements and were licensed.
 - 100% of the 3 funeral director applicants met the funeral director licensing requirements and were licensed.

Performance Measure 4: Presence of a Requirement for Continuing Education

- Continuing education is intended to ensure that practitioners maintain competency and keep up-to-date and knowledgeable about changes in their profession's field.
- Continuing education is required to renew embalmer and funeral director licenses.
- At least six hours of continuing education must be completed during a two-year period.
 - Two of the hours have to be in the area of federal and state laws.
 - Four of the hours must be in areas related to the licensee's practice, such as pre-need funeral service contracts and sanitation and infection control.

Performance Measure 5: DPH Application Processing Time

- On average, in 2010, it took 6-9 months for new applicants to become licensed.
- DPH and the board reported the licensing process was conducted in a timely fashion.
- Processing time depended primarily on when education, apprenticeship and exam requirements were completed by the applicant.

Story Behind the Data

There have been a relatively steady number of licensed embalmers during the past five years. On the other hand, there has been a 20 percent decrease in the number of licensed funeral directors. Because licensed embalmers may also act as funeral directors, the decline in the number of funeral directors licensed or re-licensed per year – coupled with nearly a steady number of embalmers who received or renewed licensure – has not impacted the state's funeral industry. It has, however, led to a slightly lower workload, in this particular area, for the DPH

staff who process license applications. The decline in the number of funeral homes has been at least partially caused by consolidation and retirements of funeral directors.

DPH exceeded the minimum statutory requirement for offering exams to embalmers and funeral director licensing applicants. By DPH offering exams three times as often as statutorily required, the applicant waiting period for test-taking is reduced. According to DPH, there is minimal cost incurred to administer the licensing exam six times as opposed to the required minimum two times annually.

Data on the numbers of licensed personnel and facilities are reported annually in DPH's publication, "Total Active Licenses." To assess trends, data from each year's separate report must be compiled manually.

Action to Turn the Curve

To improve the ease of acquiring (and therefore analyzing) multi-year data on licenses, the **PRI committee recommends:**

DPH's report, "Total Active Licenses," be formatted to include data from each of the past five years.

COMPLAINTS & SANCTIONING

The public, professionals, and state agencies may register complaints against embalmers, funeral directors, and funeral homes. Complaint investigation is shared across DPH and the Department of Consumer Protection (DCP). DPH investigates and makes recommendations about complaints regarding the quality of service provided, while DCP investigates and makes recommendations about those concerning business practices, such as pre-need funeral service contract issues.

When complaints regarding business practices involve licensed personnel, DCP may issue cease and desist orders, order restitution, and enter into consent agreements, while the board (within DPH) may sanction the professional including license revocation, suspension, probation, and civil fines. Violations might also be uncovered during a DPH inspection of a funeral home, which occurs annually for every home.

I. HOW MUCH DID WE DO?

Performance Measure 1: Number of Complaints Received by DPH

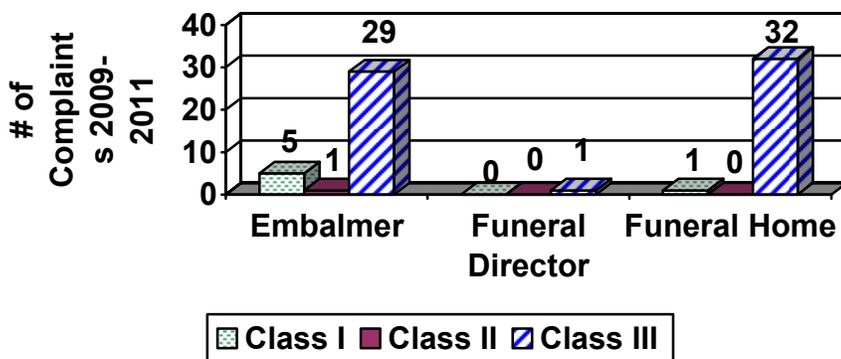
- DPH received and processed 69 complaints against embalmers, funeral directors and funeral homes from 2009-2011. Of 20 complaints DPH received during 2001-2006, issues pertained primarily to:
 - incompetence/negligence (35%);
 - business practice (30%);
 - fraud/deceit (15%); and
 - professional ethics (10%).

Performance Measure 2: Severity of Complaints Received by DPH

- Since 2009 to the present, of the 69 complaints against embalmers, funeral directors, and funeral homes, DPH staff have classified:
 - six (9%) at the highest priority level (Class 1);
 - one (1%) at the middle level (Class 2); and
 - 62 (90%) at the lowest level (Class 3) (see Figure F-4).³¹

³¹ Class 1 complaints require immediate action or response because the situation poses an immediate threat to public health and safety. Class 1 complaints include cases associated with patient death, practitioner impairment, sexual misconduct, or infection control issues. Class 2 complaints have direct or indirect impact on quality of care, quality of life, or public health and safety. Class 3 complaints appear to be violations of standards of practice, laws or regulations such as failure to release records, patient confidentiality, failure to complete physician profile, etc.

Figure F-4. Severity of Complaints Against Embalmers, Funeral Directors and Funeral Homes



Performance Measure 3: Number of Complaints Closed by DCP

- DCP processed 19 complaints during a recent two-year period (October 2009-October 2011). Of 11 closed cases, issues pertained primarily to:
 - pre-need funeral service contract funds not being deposited into escrow accounts (4 complaints);
 - parties with pre-need funeral service contracts complained of overcharges (2 complaints); and
 - others complaining about high prices and billing practices (3 complaints).

II. HOW WELL DID WE DO IT?

Performance Measure 4: Timeliness of DPH Processing of Dismissed Complaints

- DPH guidelines state that Class 1 categorized investigations are to be “...completed as quickly as possible, but within ninety (90) days unless the PHSM [Public Health Services Manager] determines that an extended investigation is necessary and there is no threat to the public health and safety.”
 - The department guidelines further state that the goal is to complete Class 2 and Class 3 investigations within 180 days.
- Overall, DPH does not maintain reports on complaint processing time by classification.
- DPH does not retain records on complaint processing time for cases that are resolved by consent order; however, such information is retained for cases that are dismissed.

- For 20 complaints lodged during 2001-2006 and subsequently dismissed (i.e., did not receive a hearing before the board or result in consent order)³²:
 - Half the complaints were opened for DPH investigation within eight calendar days or less.
 - Investigations ranged from two weeks to 1.5 years.³³
 - Disposition letters were often sent to the complainant and respondent on the same day the complaint was resolved.

This process and median timeframes is shown in Figure F-5.

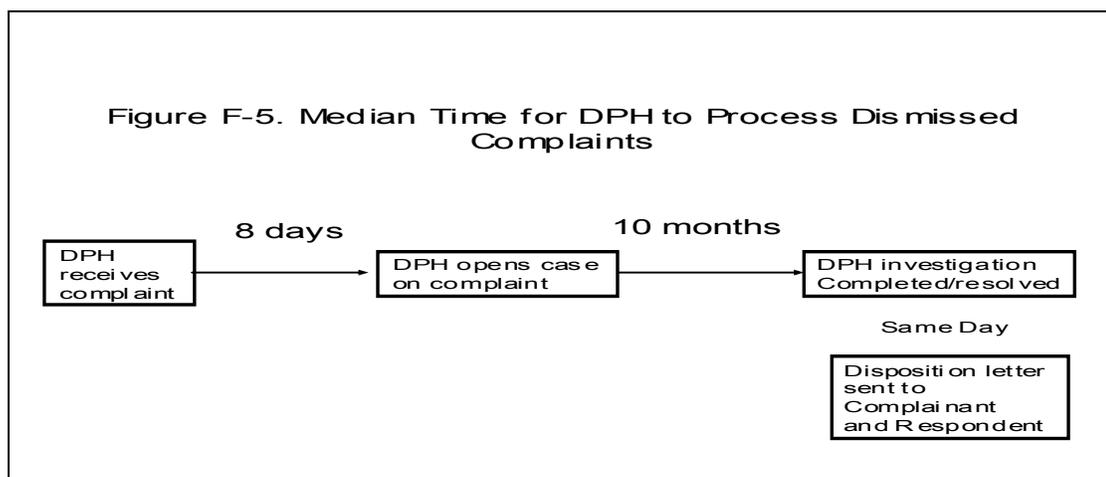
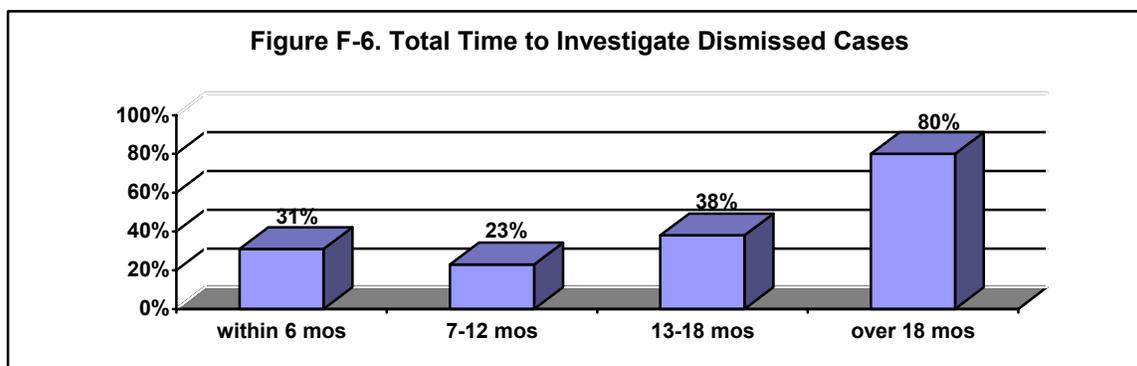


Figure F-6 shows the total time to process the 20 dismissed complaints.



³² DPH was unable to provide detailed information on timeframes for complaints that were resolved by consent order.

³³ The 1.5-year-long complaint investigation was a fraud and deception complaint brought by the Department of Social Services.

- Approximately two-thirds of the complaints take longer than the six month maximum standard established by DPH.
- This data indicates that many of the complaints are not investigated in a timely manner.

Performance Measure 5: Timeliness of DCP Investigations

The Department of Consumer Protection (DCP) received 19 complaints during the two-year period (10/1/09-10/03/11):

- 16 of the 19 cases were closed as of October 24, 2011 (84%);
- the median amount of time it took to resolve the 16 closed cases was approximately three months; and
- the range for the 16 cases was as short as zero—two were closed on the same day they were received—to as long as approximately 18 months for four of the cases.

Performance Measure 6: Percent of Consumers Understanding How to File a Complaint

- Information is not readily available on the percent of consumers understanding how to file a complaint.
- Both DCP and DPH have their complaint forms online.

Story Behind the Data

The departments of public health and consumer protection have separate systems for handling complaints related to the funeral service industry. There is natural overlap of some cases, as the business practice complaints registered with DCP often contain improper actions by a licensed professional, who may only be sanctioned by DPH.

Consumers may not be aware that, depending on the nature of the problem, complaints are handled by either DPH or DCP. The DPH website, for example, does not direct consumers to DCP to complain about pre-need funeral service contracts. Visitors to the DCP website, on the other hand, are informed that funeral homes are licensed and regulated by the State Department of Public Health. However, the DCP website then provides brief information on funeral service contracts, escrow accounts, cancellation of contracts, irrevocable funeral contracts, and revocable funeral contracts, and does not state that complaints related to these topics are handled by DCP rather than DPH.

Of the 11 DCP cases closed during 2009-2011 for which information was available, three of the four complaints pertaining to pre-need funeral service contracts were brought to the attention of DCP by DPH, rather than directly from a consumer.

Because DPH does not monitor and report on complaint processing time by classification, it is difficult to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.

Action to Turn the Curve

The DCP website could reduce consumer confusion by clarifying that consumer complaints regarding pre-need funeral service contracts are handled by DCP. Therefore, the **PRI committee makes the following no-cost recommendation:**

Specifically state on the DCP website that DCP handles consumer complaints about pre-need funeral service contracts. Other complaints related to services received from embalmers, funeral directors and funeral homes are handled by DPH.

The DPH website could also reduce consumer confusion by providing the same information so that complainants are clear as to where to register their complaints. Therefore, the **PRI committee makes the following no-cost recommendation:**

Specifically state on the DPH website that DPH handles complaints related to services received by from embalmers, funeral directors and funeral homes. Complaints about pre-need funeral service contracts are handled by DCP.

To assess whether complaints are addressed in a timely fashion, the **PRI committee recommends that:**

DPH should consider developing a system to monitor timeliness of complaint processing for all cases, with the ability to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.

PUBLIC, PHYSICAL, AND FINANCIAL SAFETY

Licensure requires certain sanitary conditions be met that are intended to prevent the spread of communicable diseases from dead bodies. The required maintenance of pre-need funeral service contract funds in escrow accounts assures that set-aside funds will be available when needed.³⁴

I. HOW MUCH DID WE DO?

Prevention of Spread of Communicable Disease from Dead Bodies

The licensure of embalmers and funeral directors requires adherence to certain sanitary standards. The standards are in place to deter the spread of disease from dead human bodies by requiring the use of specific safeguards in the handling of dead bodies.

To reinforce the need to take measures to prevent the spread of communicable diseases by dead bodies, P.A. 07-104, An Act Concerning Funerals, requires embalmers and funeral directors, regardless of whether the death is due to a communicable disease, to take appropriate measures to ensure that the body is not a public health threat.

Performance Measure 1: Percent of Time Unsanitary Funeral Home Conditions are Brought up to Public Health Standards

- Sanitary conditions intended to prevent the spread of communicable diseases are assessed annually as part of the DPH inspection of all 295 funeral homes.
 - DPH reports that there have been very few sanitation concerns in recent years, with most of these issues addressed in the first year after inspections resumed.
 - Unsanitary conditions are either remedied at the time they are pointed out by the inspector or corrected by the time a follow-up visit by the inspector occurs.
 - In rare instances of non-compliance, DPH would issue a violation letter.

II. HOW WELL DID WE DO IT?

Performance Measure 2: Incidents of communicable disease spread from a corpse to a live person

- There is no information available on the incidence of communicable diseases being spread from a corpse to a live person in Connecticut.

³⁴ Pre-need funeral service contracts are legal agreements whereby the consumer pays for funeral services, property, and/or merchandise in advance of the time when it is actually needed. The advance payments are kept in escrow accounts until such time as they are needed.

- National data from the Centers for Disease Control and Prevention CDC³⁵ confirms that the spread of communicable disease by dead bodies is possible, but occurs rarely.
 - Embalmers and funeral home technicians have occasionally become infected with HIV, tuberculosis, and Hepatitis B from a cadaver.³⁶

Performance Measure 3: Percent of Pre-Need Funeral Service Contract Funds Maintained in Escrow Accounts

In 1985, Connecticut passed a law allowing licensed embalmers and funeral directors to sell pre-need funeral service contracts (P.A. 85-376). The funds given to the funeral home (up to \$5,400 for irrevocable contracts, and unlimited for revocable contracts (unless the beneficiary is a Title XIX recipient)) must be put in a secure escrow account, with the account interest helping to fund the future need.

- No state agency maintains specific information on the number of pre-need funeral service contracts in Connecticut.
- The board estimates that there is approximately \$400 million in these funds, and their popularity is increasing.
- Of four closed DCP cases involving misuse of pre-need funeral service contract funds:
 - three cases were successfully resolved, with \$92,001 in funds restored to 27 individual accounts; and
 - one case resulted in a loss of \$3,600 for the consumer.
 - DCP could not recover the misappropriated funds due to the death of embalmer and passage of too much time.

Story Behind the Data

One strategy employed to reinforce the need for and techniques to maintain sanitary conditions, is through the continuing education requirements. Four of the six hours must be in areas related to the licensee’s practice, including sanitation and infection control.

As the data suggests, the spread of communicable diseases from corpses to the living occurs rarely. It is unknown, however, if this low incidence is the direct result of implemented sanitary precautions or the minimal threat of spread of disease in this manner—regardless of sanitary precautions taken.

Many of the individuals entering into pre-need funeral service contracts are considered frail and vulnerable elderly at risk for being taken advantage of by unscrupulous practitioners. The Federal Trade Commission, for example, in its investigation of funeral services has determined that the consumer of funeral services “is often vulnerable and susceptible to

³⁵ CDC, Surveillance of Occupationally Acquired HIV/AIDS in Healthcare Personnel, as of December 2010 (Updated May, 2011).

³⁶ From 1981-2010, there was one documented case and two possible cases of embalmers and morgue technicians--without identified risk factors--contracting HIV from dead human bodies.

exploitation.”³⁷ One way to decrease the potential risk of such an occurrence is to have a knowledgeable consumer. Not all consumers with pre-need funeral service contracts understand, for example, that annual statements from the escrow account agent must be sent to the consumer, and therefore are not able to recognize that there is a problem should they not receive the annual statement. Also, because not all pre-need funeral service contract accounts are audited, it is possible that there are more cases of diverted funds that are yet to be restored.

Additionally, there are pre-need funeral service contract courses available to practitioners as part of continuing education requirements for embalmer and funeral director licensure renewal.

Because DCP does not proactively inspect pre-need funeral service contracts to uncover irregularities, discovery of violations relies primarily on direct consumer complaints and information from DPH that was uncovered by the DPH funeral home inspector during his examination of a sample of pre-need funeral service contracts.

Action to Turn the Curve

Just as requirements pertaining to price and information disclosure are made in order to have an informed consumer, DCP has prepared a fact sheet for consumers to explain pre-need funeral service contracts. The PRI committee believes the consumer fact sheet on pre-need funeral service contracts will help to better inform consumers. Beyond having the fact sheet on the DCP website, the DPH and DSS websites should make consumers aware of the fact sheet for consumers on funeral service contracts. Therefore, the **PRI committee makes the following no-cost recommendation:**

DPH and DSS should make consumers aware of the pre-need funeral service contracts fact sheet by providing a link to the document on the DCP website.

To decrease any confusion on the part of the funeral industry, DCP has also taken steps to ensure that practitioners are knowledgeable about the requirements of pre-need contracts and maintaining funds in escrow accounts by preparing a similar document for those in the funeral industry.

Beyond providing the fact sheet on funeral service contracts on the DCP website, another avenue for receipt of the information would be directly from the funeral directors and embalmers. Therefore, the **PRI committee makes the following low-cost recommendation:**

Funeral directors and embalmers shall distribute paper copies of the DCP pre-need funeral service contracts fact sheet to customers considering or purchasing such a contract.

When inspecting the funeral, the DPH inspector can then check that the paper copies are available for distribution to future customers.

³⁷ Funeral Industry Practices Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 453), Bureau of Consumer Protection, June 1978.

BOARD FUNCTIONING

The Board of Examiners of Embalmers and Funeral Directors is composed of five volunteer members appointed by the Governor. Three of the board members must be actively licensed and practicing embalmers and two must be members of the public.

One way to remove unscrupulous practitioners or provide greater oversight is through revoking practitioner licenses or other sanctioning measures such as probation and civil fines. The board hears and decides matters concerning suspension or revocation of licensure, adjudicates complaints filed against practitioners, and imposes sanctions where appropriate.

Sanctions are contained in consent orders that must be approved by the board following either a negotiated settlement (between practitioner and DPH) or board hearing. Sanctions imposed range from reprimands to license revocation. Civil penalties may also be imposed.

I. HOW MUCH DID WE DO?

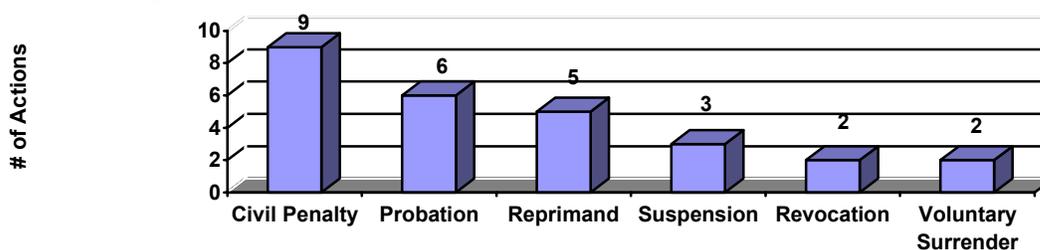
Performance Measure 1: Number of Board Meetings

- There were four board meetings in calendar year 2010.
- The board held an average of two hearings per year in calendar years 2009 and 2010.

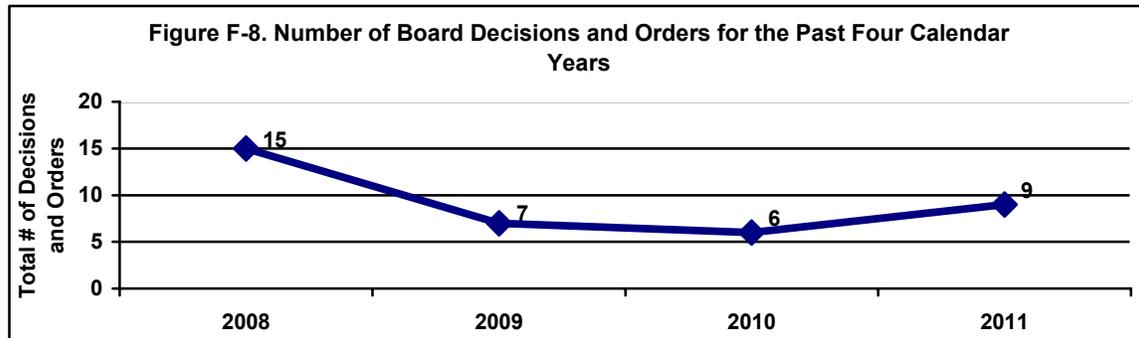
Performance Measure 2: Number of Board Actions Taken

- There were 27 board actions taken between December 2009-December 2011 (Figure F-7):
 - civil penalties ranged from \$500 to \$20,000 and had a median of \$2,500;
 - probationary periods ranged from 12 months to 4.5 years and had a median of 12 months; and
 - the board imposed sanctions (e.g., license revocations, civil penalties) an average of 7-8 times annually in 2009-2010.

Figure F-7. Number of Board Actions Taken Between December 2009-December 2011



- In the past four calendar years, the board annually made between 6 and 15 decisions (including denial of consent order or motion for summary suspension) and orders (such as board actions described in Figure F-7) (Figure F-8).



II. HOW WELL DID WE DO IT?

Performance Measure 3: Board Met At Least Once Each Calendar Quarter

- The board statutorily must meet at least once per calendar quarter, and did so in 2010.
- Between four and five members were present at each board meeting (90% attendance rate)

Performance Measure 4: Board Composition Complies With Statute

- Board members are appointed by the Governor.
- One of its two public member slots has been vacant since June 2011. Consequently, the board is out of compliance with the requirement that at least one-third of its members be public.

Performance Measure 5: Incidence of Sanctioning to Remove Unscrupulous/Incompetent Practitioners

- From December 2009-December 2011, **licenses were revoked, suspended or voluntarily surrendered** five times for embalmers and two times for funeral homes.
- These actions were taken due to such harmful acts as:
 - mixing up two bodies and cremating the wrong body, delaying embalming the deceased resulting in a gross disfiguration,
 - reselling top-tier coffins that were already bought by families, and
 - switching coffins after families had left the grave site

Examples of the types of complaints that led to sanctioning embalmers and funeral directors are shown in Appendix A.

Story Behind the Data

Since June 27, 2011 when DPH notified the Governor's Office of the vacancy, the board has been without one public board member. A recent Connecticut Auditors' Report on DPH for the Fiscal Years ended June 30, 2006 and 2007, found that boards that do not have a full complement of participating members may not benefit from the intended representation of various public and private sector groups.

Although there are requirements about board member representation of public and professional members, there are not requirements for representation at hearings to consider sanctioning professionals. DPH does not specifically track attendance at hearings. Hearing testimony is transcribed and available to all board members, and if a board member has missed a hearing date, he/she is expected to read the transcripts and exhibits before voting on a final decision. However, lack of attendance at the hearing prevents the opportunity to question witnesses. Having at least one public board member and one professional board member present at the hearing provides that opportunity and reinforces the importance of having this representation on boards.

Action to Turn the Curve

To ensure that vacancies are filled in a timely manner, the **PRI committee makes the following no-cost recommendation:**

DPH Commissioner should request of the Governor's Office the anticipated timeframes for the filling of DPH board and commission vacancies.

To ensure there is adequate representation at board hearings, the **PRI committee recommends:**

At least one public board member and one professional board member shall be present at DPH board hearings.

III. IS ANYONE BETTER OFF?

Consumers are better off dealing with trained and competent (i.e., licensed) embalmers, funeral directors, and funeral homes, with the vast majority of funerals and cremations handled without complaint. By both requiring annual funeral home inspections and investigating complaints, negligent and unscrupulous practitioners are more likely to be removed from the field through license revocation, probation, fines and other sanctions. This increases the likelihood that mourners will be treated fairly and with dignity, consumers will have confidence that any funds in pre-need funeral service contract escrow accounts are protected.

The ability to appropriately sanction embalmers, funeral directors, and funeral homes is enhanced by having sanctions determined by a board, a group of expert professionals and members representing the public's interest. The efforts of both DPH and DCP in investigating pre-need funeral service contract complaints increases the odds that diverted pre-need funeral service contract funds are restored to the appropriate escrow accounts, making the consumers better off than if the investigation and resulting actions had not occurred.

Regulation Protects the Public from Negligent and Unscrupulous Embalmers/Funeral Directors/Funeral Homes

Performance Measure 1: Percent of Deaths Handled Without Complaint

- Information is not available on the percent of deaths handled annually without complaint.
- The approximately 828 licensed embalmers, 59 funeral directors, and 295 funeral homes handle as many as approximately 29,000 deaths annually.
- However, of the approximately 887 licensed embalmers and funeral directors, there have been no revocations, suspensions or other disciplinary actions taken against 866 of them (98%) during the last three calendar years (between February 2008-December 2011³⁸).
- Also, of the approximately 295 funeral homes, there have been no revocations, suspensions or other disciplinary actions taken against 284 of them (96%).

Performance Measure 2: Frequency of Sanctioning Before and After Funeral Home Inspectors Hired to Annually Inspect all Homes

- Funeral homes are required to be inspected annually by the DPH funeral home inspector (CGS 20-222).³⁹
- For a period of time, from approximately 1989-2001, there was no DPH staff person specifically assigned to funeral home inspections/investigations due to the retirement in 1989 of the state's part-time funeral home inspector.

³⁸ DPH Board of Examiners of Embalmers and Funeral Directors website page on "Embalmer, Funeral Director, Funeral Home Discipline" (http://www.ct.gov/dph/cwp/view.asp?a=3143&q=388896&dphNav_GID=1830)

³⁹ Inspections include: all facilities including general facilities, embalming and preparation facilities; forms in use; and pre-need funeral service contract and escrow accounts and agents.

- Compared to when there were no inspections, the more recent period when there were funeral home inspectors (Table F-1) shows that:
 - Consent orders were more than twice as prevalent.
 - Civil penalties were imposed more often and at higher amounts.
 - Licenses were more likely to be revoked or voluntarily surrendered.

Table F-1. DPH Complaint Handling Before and After Funeral Home Inspector Hired		
Complaint Factor	1998-2000 No inspector/less regulated time	2002-2004 Inspector/more regulated time
	Dismissed Complaints	
Number of complaints	14	14
Plan of correction required as condition of complaint dismissal	0	5
# of complaints brought forward by DPH	1	4
	Consent Orders	
Number of consent orders	5	12
Reprimand	3	2
Probation Imposed	2	2
Median Probation (in months)	12	42
Civil Imposed	3	5
Median Civil Penalty	\$1,500	\$5,000
Revocation	0	2
Voluntary Surrender/Agreed Not to Renew License	1	6
Source: PRI staff analysis.		

Performance Measure 3: Number of Times Pre-Need Funeral Service Contract Funds Were Restored After Inappropriately Being Diverted From Secure Escrow Accounts

- DCP investigates approximately eight consumer complaints annually related to funeral home business practices.
- Of three recently closed cases, \$92,001 in pre-need funeral service contract funds for 27 individuals had been diverted, and following DCP complaint investigation, were properly deposited into escrow accounts (One additional case for \$3,600 could not be corrected due to the death of embalmer and passage of too much time).

Story Behind the Data:

In 2001, local police discovered five bodies that had been decomposing for more than three years in a funeral home garage. Two full-time inspectors were subsequently hired in 2002 to fill investigator positions that had remained vacant for more than a decade. In comparing complaint handling before and after a funeral home inspector was hired, it is clear that the presence of funeral home inspectors is associated with more required plans of correction, consent

orders, civil penalties, and most importantly, revocation or voluntary surrender of licenses. Thus, this position is critical to the regulation of the funeral industry, and a vacancy in this position could have a direct impact on the public health, safety and welfare by failure to remove or otherwise sanction negligent and unscrupulous practitioners.

As is the case with all professional boards under DPH, the Board of Examiners of Embalmers and Funeral Directors serves without any compensation. DPH reported that, in instances where a profession does not have a board, experts are asked to review cases and provide their opinions gratis. The length of time to resolve a complaint against a professional can take additional time as opposed to those professions who have a ready-made panel of professionals on standby to hear the complaint case. Further, the DPH board liaison noted that board members generally ask questions that may not necessarily be posed by a hearing officer in a non-board profession case, particularly for cases concerning standards of care. The board is a useful, no/low-cost asset to the regulation of embalmers and funeral directors.

DCP currently maintains five guaranty funds.⁴⁰ The DCP website explains that, through these special funds, DCP is sometimes able to offer repayment to consumers who have been financially damaged as a result of some problem transaction. The funds to provide this compensation come from a small allocation from the required annual registration fees for the associated businesses.

A similar arrangement can be established for restoration of diverted pre-need funeral service contract funds. At least eight other states currently have pre-need funeral service contract guaranty funds. These funds would be available to reimburse consumers for pre-need funeral service contracts when funds were misdirected away from escrow accounts (i.e., reimburse consumers for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home.). Ten dollars each from the \$110 embalmer license renewal fee and \$230 funeral director license renewal fee could be transferred into the pre-need funeral service contract guaranty fund, established and administered by DCP.

DPH staff believes the current regulations pertaining to funeral homes are somewhat limited.⁴¹ The current regulations do not, for example, define “funeral service” or specify requirements related to funeral home inspection certificates.

Overall, DPH doesn’t collect and retain complaint handling data on a regular basis. Thus, information on classification of type of complaint and time to process complaints is unavailable. Lacking this information makes trend analyses—an integral part of RBA—not possible.

⁴⁰ The current five DCP guaranty funds are the Home Improvement Guaranty Fund, New Home Construction Guaranty Fund, Real Estate Guaranty Fund, Health Club Guaranty Fund, and Itinerant Vendor Guaranty Fund.

⁴¹ Current regulations cover employment of student embalmers and funeral directors, display of licenses, certificates, and signs, serving food or drink, mandatory disclosures, and cash advanced billing.

Actions to Turn the Curve

To maintain the level of regulation needed to protect the public health, safety, and welfare of Connecticut residents, the **PRI committee recommends:**

The regulation at the licensure level of embalmers, funeral directors, and funeral homes should be continued.

The board, while not a prerequisite to regulating the profession/industry, does appear to provide a value-added service gratis, particularly for the processing of complaints. Therefore, the **PRI committee recommends:**

The Board of Examiners of Embalmers and Funeral Directors shall be reestablished.

To address potential misdirection of pre-need funeral service contract funds away from the appropriate escrow account and provide peace of mind to those purchasing such contracts, the **PRI committee recommends:**

A Pre-Need Funeral Service Contract Guaranty Fund shall be established and managed by DCP.

DPH staff believes the regulatory program for embalmers, funeral directors, and funeral homes would be improved by an expansion of the current DPH regulations. Therefore, the **PRI Committee recommends:**

DPH shall expand the current regulations pertaining to funeral homes to address issues including but not limited to a definition for “funeral service” and specific requirements related to funeral home inspection certificates.

APPENDIX A

Complaints Against Embalmers/Funeral Directors/Funeral Homes Processed by DPH		
Year Resolved, Type of Case	Issue	Outcome
Complaint #1 (2011)	Funeral home had unlicensed persons embalming human remains; exceeded the number of apprentice embalmers permitted; offered, sold and/or delivered goods and services not listed on the general price list; told families they would provide goods and/or services, that were not actually supplied; improper billing; submission of inaccurate death certificates; failure to obtain removal, transit and burial permits in a timely manner; and stole money and other valuables from homes of the deceased.	Embalmer voluntarily surrendered license; Superior Court judge sentenced embalmer to eight months in prison, and to pay almost \$63,000 in restitution to victims's families, and to state agencies he double-billed
Complaint #2 (2010) incompetence/ negligence	Funeral Director incorrectly identified remains, leading to embalming, preparing and casketing of the misidentified human remains; remains of one decedent incorrectly displayed at the wake; and remains of other decedent incorrectly cremated.	Funeral Director put on probation for 1 year, reprimanded, and fined \$2,000
Complaint #3 (2010) incompetence/ negligence	Embalmer failed to provide two families with itemized list of services and merchandise purchased and used; funeral home delayed burying cremains for more than 18 months in one case; and funeral home delayed installing grave markers for three years in one case.	Embalmer reprimanded and fined \$2,000
Complaint #4 (2010) illegal conduct; substance abuse/drug related	Embalmer has history of substance abuse, including the abuse of alcohol	Embalmer placed on probation for four years with requirements to receive therapy, urine screens, attend support group meetings
Complaint #5 (2009)	Embalmer entered into pre-need funeral service contracts but failed to appoint required escrow agent for each contract and deposit funds into escrow accounts	Embalmer's license revoked and fined \$20,000
Complaint #6 (2009) Scope of practice	Embalmer buried deceased prior to filing the death certificate and obtaining a burial, removal and transit permit	Embalmer reprimanded and fined \$2,000
Complaint #7 (2009) professional ethics	DPH investigator was inspecting funeral home and found remains had been refrigerated, and had not been wrapped, disinfected, or embalmed for at least five months; and delayed filing death certificate and securing removal, burial, and transit permit	Funeral home fined \$25,000 and licensed embalmer put on probation for 1 year
Complaint #8 (2008) Incompetence/ negligence	Embalmer cremated body prior to obtaining a cremation permit	Embalmer reprimanded, fined \$2,000, put on probation for 1 year
Source: DPH electronic license look-up (November 4, 2011).		

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APPENDIX G

Legislative History of the Regulation of Hearing Instrument Specialists

Hearing instrument specialists were first licensed in Connecticut in 1972 when the legislature recognized a need to protect the public from unqualified, incompetent and unscrupulous practitioners. An Advisory Council on Hearing Aids, which had also been created in 1972, was subsequently abolished in 1979 as part of the state governmental reorganization (P.A. 77-614). The purpose of the council was to advise the Agency on technical aspects of the licensing functions. Table G-1 shows the changes that have occurred over the years in the state regulation of hearing aid dealers, now referred to as hearing instrument specialists.

Table G-1. Legislative History of Regulation of Hearing Instrument Specialists	
Year	Change
1972 (P.A. 72-295)	Established license for persons <i>both</i> fitting and selling hearing aids
1977 (P.A. 77-473)	<ul style="list-style-type: none"> • Changed to license for persons <i>either</i> fitting or selling hearing aids • Required 30-day trial period in the purchase of a hearing aid, with allowable refund for cancelled order (minus up to 12% cancellation fee) • Clarified and expanded offenses that may result in licensure revocation or suspension including failure to provide written sales receipt, and retention of sales records for three years
1979 (P.A. 77-614)	Abolished Advisory Council on Hearing Aids
1982 (P.A. 82-123)	Added a requirement that every hearing instrument specialist to include in every receipt and contract a conspicuous statement concerning the cancellation fee (maximum of 12 percent)
1999 (P.A. 99-111)	<ul style="list-style-type: none"> • Added a requirement that all hearing aid receipts, contracts and orders must disclose to the buyer the right to cancel order and full refund of deposit if hearing aid unavailable for inspection within 45 days of seller’s receipt of deposit • Changed references to “hearing aid dealers” with “hearing instrument specialists”

Source: Connecticut General Statutes.

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APPENDIX H

Additional Background Information on Hearing Instrument Specialists

Requirements for entry into the profession. To receive a hearing instrument specialist license, an applicant must fulfill the following requirements:

- Educational Requirement: 1) high school graduate or have successfully completed a high school equivalency; *and* 2) successful completion of an approved education/training in hearing aid fitting and dispensing which included the core content areas of:
 - the basic physics of sound;
 - anatomy and physiology of the ear;
 - the function of hearing aids;
 - practical knowledge of fitting and dispensing of hearing aids;
 - taking of ear mold impressions;
 - use of equipment employed in the fitting and dispensing of hearing aids; and
 - state and federal laws and regulations governing hearing instrument specialists and hearing aid devices.

The education/training in hearing aid fitting and dispensing may occur in one of the following four ways:

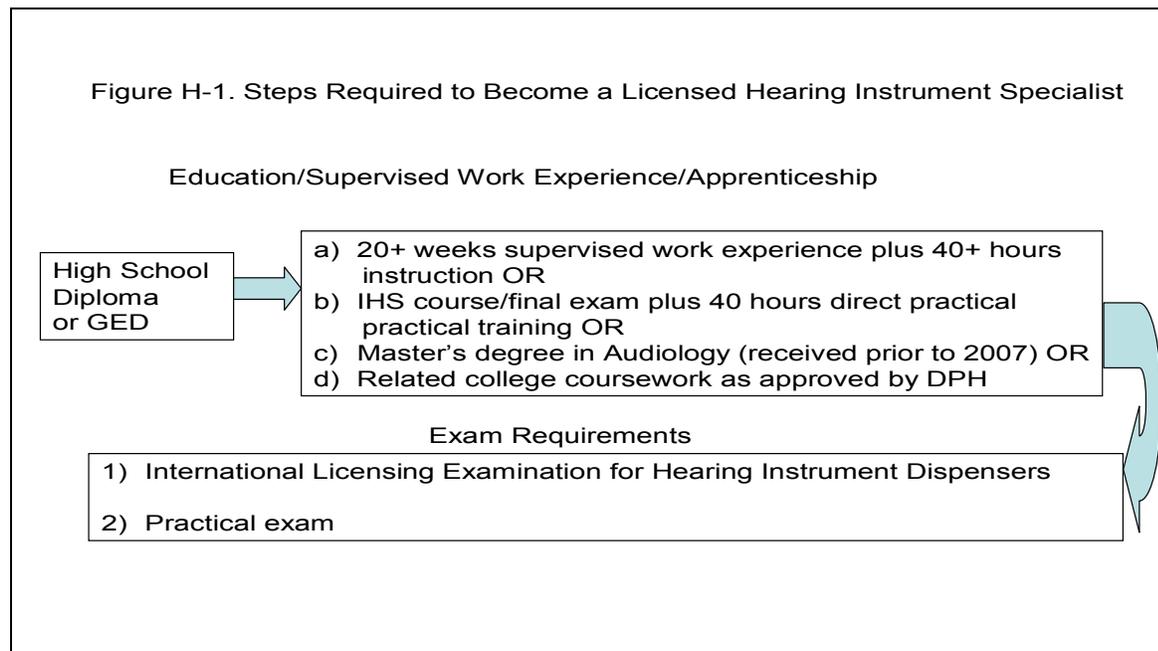
1. A minimum of at least 30 hours per week for at least 20 weeks of directly supervised work experience by a Connecticut licensed hearing instrument specialist, and a practical course of study of at least 40 hours of instruction covering the core content areas;
 2. the International Hearing Society home study course and final examination, in conjunction with 40 hours of direct practical training by a Connecticut licensed hearing instrument specialist;
 3. Master's degree in audiology from a regionally accredited institution of higher education, which included coursework covering the core content areas; or
 4. post-secondary coursework in hearing aid dispensing at a regionally accredited institution of higher education, to be reviewed and approved on a case-by-case basis by DPH as covering the core content areas.
- Examination Requirements: Successful completion of the: 1) written International Licensing Examination for Hearing Instrument Dispensers;⁴² and 2) practical examination where the applicant is expected to make an ear impression and perform a full audiometric examination.

Supervised Work Experience/Apprenticeship Requirement: Successful completion of a minimum of twenty weeks supervised training by a Connecticut-licensed hearing instrument specialist, consisting of at least 30 hours per week of directly supervised work experience or a

⁴² Exam was developed by the International Institute for Hearing Instruments Studies, a division of the International Hearing Society.

practical course of study of not less than forty hours of instruction covering the core content areas.

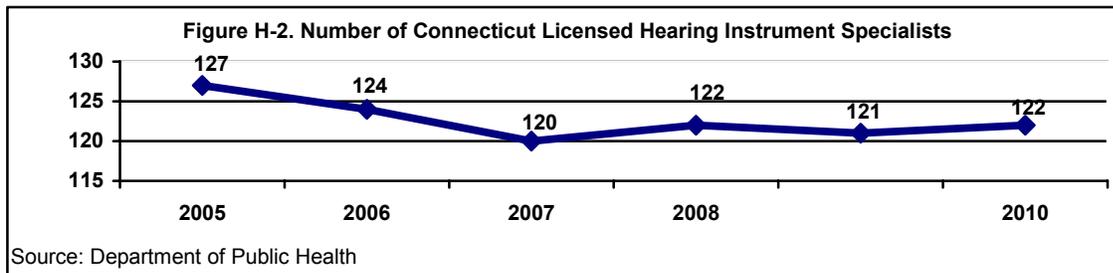
Figure H-1 summarizes the steps required to become a licensed hearing instrument specialist.



Distinction between hearing instrument specialists and audiologists. Hearing instrument specialists are an older profession, pre-dating audiology (a profession that grew after WWII). While both hearing instrument specialists and audiologists may fit and dispense hearing aids, there are several distinctions between the two professions. Audiologists require more education than hearing instrument specialists. Prior to 2007, audiologists needed to earn a master's degree to be a licensed audiologist. Since 2007, audiologists must earn a doctorate in audiology and participate in a one-year externship following receipt of the doctoral degree. Consistent with this increased amount of education, audiologists also have a wider scope of practice. While hearing instrument specialists more narrowly dispense and fit hearing aids for adults, including ongoing follow-up care and counseling as needed, audiologists also treat pediatric patients, and have special training in the prevention, diagnosis and non-medical treatment of hearing disorders. Audiologists may work in medical settings, private practice, and in schools.

Licensing statistics. During FY 09, there were 9 applications received for hearing instrument specialist licensure, and all 9 applicants were granted licenses. Preliminary statistics for FY 10 show that 17 applications were received, 11 licenses were granted, and the remainder are pending. In data provided by DPH from July 2008 through October 2011, there have been no applications denied for hearing instrument specialist licensure.

Figure H-2 shows there has been a relatively steady number of licensed hearing instrument specialists in Connecticut over the past five years, with 122 hearing instrument specialists in 2010.



Federal regulations. In addition to state statutes and regulations, the industry must comply with certain federal regulations. The U.S. *Food and Drug Administration* (FDA) classifies hearing aids as medical devices. As such, 21 C.F.R. Part 801 requires certain professional and patient labeling, and conditions for sale. For example, hearing aids must be clearly labeled with manufacturer, model and serial number, and accompanying statement if hearing aid is used or rebuilt.

With regard to dispensing hearing aids, FDA regulations specify that:

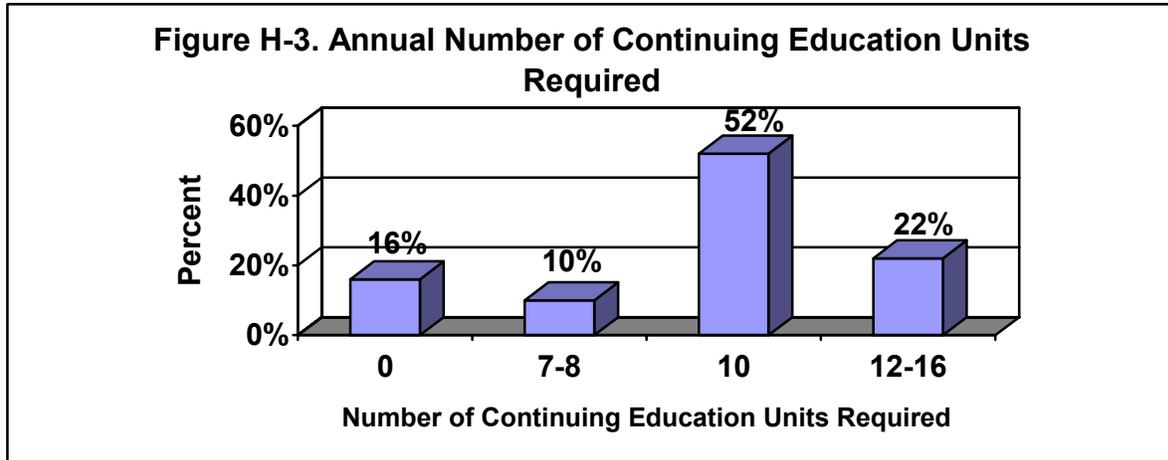
- Prospective hearing aid users are required to have a medical evaluation by a licensed physician before purchasing a hearing aid unless waived by the client.
- Hearing aid dispensers must refer clients to a licensed physician before dispensing a hearing aid if certain medical conditions are present.
- Prospective hearing aid user must be provided with a copy of the user instructional brochure and opportunity to review the information.
- Hearing aid dispensers must retain records of all medical evaluation statements and waivers for at least three years from the date of dispensing the hearing aid.

In addition, the FDA is authorized to inspect the hearing aid at the manufacturing site. In the past, the federal agency has filed an order-enforcement action against one of the largest hearing aid manufacturers in the U.S. for making false and unsubstantiated claims about its hearing aid. In another instance, it charged in federal court a company with exaggerating the benefits of its hearing aid.

Under U.S. *Federal Trade Commission* regulations, hearing aid dispensers must adhere to the “three day right to cancel rule” when hearing aids are sold in the consumer’s home. This “cooling-off rule” (16 CFR Part 429), gives consumers up to three days to cancel the sale when the sale occurred away from the seller’s place of business (often known as “door-to-door sales”). There are some hearing instrument specialists in Connecticut who provide in-home service, and must therefore, adhere to this FTC regulation.

How profession is regulated in other states. Hearing instrument specialists are regulated in all 50 states, most often through licensure (92 percent of the time). Additionally:

- Many states, unlike Connecticut, require continuing education as a condition of licensure renewal (Figure H-3)
- Passage of at least the written portion of the national exam⁴³ is required and administered in 37 states (74 percent), including Connecticut



Approximately 3,200 hearing instrument specialists nationally are certified by the National Board for Certification in Hearing Instrument Sciences⁴⁴ (including 33 of the 122 hearing instrument specialists in Connecticut). The national board requires 24 hours of continuing education units within a three-year period for board recertification.

Table H-1 compares Connecticut with the other New England states.

As can be seen:

- The New England states are split in requiring continuing education for hearing instrument specialists
 - DPH has the option to establish continuing education requirements, but has not as yet exercised that option;

⁴³ The International Hearing Society produces the International License Examination (ILE), a practice-oriented written exam which tests competency in five areas: 1) Assess Presenting Problem and Needs; 2) Test and Analyze Hearing; 3) Prescribe and Analyze Hearing; 4) Fit, Adjust and Service Hearing Aid; and 5) Education and Maintain Professional Relations.

⁴⁴ According to the NBC-HIS website, the National Board for Certification in Hearing Instrument Sciences (NBC-HIS) is an independent, non-profit, credentialing organization, established to promote continuing competency assurance of hearing health professionals and to provide a standard of excellence in hearing health care for consumers. (www.nbc-his.com)

- Two-thirds require passage of the written national exam in order to become licensed as a hearing instrument specialist; and
- Pre-requisite training requirements range from none to one year (under the supervision of a licensed hearing instrument specialist).

Table H-1. Comparison of Connecticut with Other New England States				
State	Annual Hours of Continuing Educ.	Require Passing Written National Exam?	State Body with Licensing Responsibility	Time Training Under Licensed Supervisor Needed for Licensure
Connecticut	0	Yes	public health department	20 weeks @ 30 hrs/week
Maine	8 hrs annually	Yes	professional regulation department	750
Massachusetts	20 hrs biennially	No	consumer affairs department	1 yr
New Hampshire	8 hrs annually	Yes	hearing care providers board	Yes, no minimum
Rhode Island	0	Yes	public health department	No
Vermont	0	No	professional regulation department	No
Source: International Hearing Society 2011 State/Provincial Survey Regarding Statutory and Regulatory Requirements Governing Hearing Aid Dispensing, September 2011.				

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APPENDIX I

Results-Based Accountability

Assessment of

Regulation of Hearing Instrument Specialists

Prepared By

**Legislative Program Review and Investigations Committee
Per C.G.S. Sec. 2c-4**

February 22, 2012

Committee Staff on Project

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RESULTS-BASED ACCOUNTABILITY FRAMEWORK: REGULATION OF HEALTH PROFESSIONALS				
POPULATION LEVEL ACCOUNTABILITY				
<u>QUALITY OF LIFE RESULTS STATEMENT:</u>				
“All Connecticut residents experience good physical, mental and economic health, safety and welfare through the regulation of health professionals.”				
KEY INDICATORS of Progress Toward Population Level Results				
Indicator 1: Physical health and safety <i>Percent of time clients unharmed by a licensed professional</i>	Indicator 2: Emotional well-being <i>Rate with which consumers are treated fairly and with dignity</i>	Indicator 3: Economic welfare <i>Percent of time clients have trouble-free financial transactions with licensed professional</i>		
PARTNERS CONTRIBUTING TO RESULTS STATEMENT				
CT General Assembly Congress Governor State Agencies: DPH, DCP, OAG Municipalities	Federal Agencies: FDA, FTC, OSHA Boards and Commissions Medical personnel and other Professionals/Practitioners Better Business Bureau Advocacy groups	Educational and Health Care Institutions Businesses Colleges, training institutions producing professionals Professional associations		
MAIN STATE STRATEGIES FOR ACHIEVING RESULTS STATEMENT				
Ensure minimum level of compliance with licensure and regulations	Ensure safe and sanitary conditions at regulated facilities and businesses	Enforce fair and honest financial practices	Investigate and resolve complaints	
AGENCY AND PROGRAM LEVEL ACCOUNTABILITY				
AGENCY AND BOARD CONTRIBUTIONS TO RESULTS STATEMENT: MAIN ROLES AND RELATED MAJOR PROGRAMS				
Set and apply standards for trained and competent practitioners	Protect public from the spread of disease, risk and physical injury by licensed professionals	Safeguard the public from negligent and unscrupulous professional practices	Protect public from economic harm by professionals in the field	Establish and implement processing for complaints about services received by the professional
<ul style="list-style-type: none"> DPH license processing and setting standards 	<ul style="list-style-type: none"> DPH facilities inspections DPH licensing examinations DPH continuing education requirements 	<ul style="list-style-type: none"> DPH complaint investigation DPH/board hearing process and sanctioning 	<ul style="list-style-type: none"> DCP investigation of unscrupulous business practices DPH sanctioning of licensed individuals 	<ul style="list-style-type: none"> DPH complaint receipt and investigation DPH/board hearing process and sanctioning
PROGRAM LEVEL PERFORMANCE MEASURES: REGULATION OF PROFESSIONS				
<ul style="list-style-type: none"> DPH and any associated boards are in full compliance with relevant statutory and regulatory requirements Efforts are made to prevent and detect any negative impact on the physical health of consumers caused by the actions of the licensed professionals Unscrupulous practitioners are removed or monitored to limit further complaints Efforts are made to prevent, detect, and resolve financial fraud or dishonesty All complaints regarding deceptive practices are successfully resolved 				

**RBA PROGRAM PERFORMANCE REPORT CARD:
REGULATION OF HEARING INSTRUMENT SPECIALISTS**

Contributes to the Quality of Life Results Statement:

All Connecticut residents experience good physical, mental and economic health, safety and welfare through the regulation of health professionals.

Main Contribution: The regulation of hearing instrument specialists helps protect public health by having practitioners who are competent and will not further hearing loss or other physical harm through improper fitting of hearing aids, safeguard emotional well-being by ensuring that clients are treated with fairness and dignity, and economic welfare through enforcement of fair and honest financial practices.

PROGRAM BACKGROUND

- Licensure of persons both fitting and selling hearing aids was initiated in 1972, and changed in 1977 to licensure for persons either fitting or selling hearing aids.
- Over the years, consumer protections were added including requirements for 30-day trial periods, refunds and cancellation policies, and required written sales receipts.
- Terminology changed from “hearing aid dealers” to “hearing instrument specialists” in 1999.

REGULATION OF HEARING INSTRUMENT SPECIALISTS PERFORMANCE SUMMARY

Five key measures of performance for public health-related regulation are highlighted below, followed by separate discussions of two areas—licensure, and complaints and violations. Within each, two of the three RBA program performance questions—How much did we do? And How well did we do it?—are answered. The final section answers the key, third question: Is anyone better off?

KEY MEASURES	STATUS	CURRENT DATA
1. DPH is in full compliance with relevant statutory and regulatory requirements	+	<ul style="list-style-type: none"> • DPH has complied with all statutory and regulatory requirements to license, investigate and sanction hearing instrument specialists: <ul style="list-style-type: none"> ○ 122 licensed hearing instrument specialists were licensed in 2010. ○ three complaints against hearing instrument specialists were received in 2009, and all three were investigated by DPH. • Although audiology licensure requires greater educational and training requirements and the state statute on the practice of audiology includes the fitting and selling of hearing aids, the current hearing instrument specialist statute requires audiologists to either obtain a hearing instrument specialist license, provide DPH with documentation showing certain coursework and supervised clinical experience, or pass the written exam required for a hearing instrument specialist license. <ul style="list-style-type: none"> ○ The PRI committee recommends this additional requirement be eliminated as it is unnecessary and potentially burdensome for both the audiologists and DPH.

<p>2. Efforts are made to prevent and detect any negative impact on the physical health of consumers caused by the actions of the licensed professionals</p>	<p>+</p>	<ul style="list-style-type: none"> • Hearing aids are classified as medical devices by the FDA who notes, if the hearing aid is not properly fitted, then too much amplification may cause additional hearing loss • Unlike many other states, continuing education is not required to renew the hearing instrument specialist license in Connecticut. Given the highly technical and rapidly changing nature of the field, The PRI committee recommends adoption of continuing education requirements.
<p>3. Unscrupulous practitioners are removed or monitored to limit further complaints</p>	<p>?</p>	<ul style="list-style-type: none"> • Due to DPH actions, two incompetent and negligent/unscrupulous hearing instrument specialists have been sanctioned during the past 10 years • Limited information is known about complaints received by the Better Business Bureau (BBB) rather than DPH regarding hearing instrument specialists.
<p>4. Efforts are made to prevent, detect, and resolve financial fraud or dishonesty</p>	<p>+</p>	<ul style="list-style-type: none"> • Hearing instrument specialists are required to provide a 30-day trial period in the purchase of a hearing aid • Hearing instrument specialists are required to provide the consumer with a written sales receipt showing the 30-day trial period • DPH has received very few complaints involving potentially fraudulent or deceptive practices
<p>5. All complaints regarding deceptive practices are successfully resolved</p>	<p>+</p>	<ul style="list-style-type: none"> • All DPH-processed complaints may be investigated or dismissed. In FY 10, for example: <ul style="list-style-type: none"> ○ three of the three complaints received (100%) were investigated ○ two of the three complaints were subsequently dismissed with no action taken ○ one complaint resulted in sanctioning the licensee to one year of probation and successful completion of a DPH-approved course in documentation standards • The median amount of time it took to process hearing instrument specialist complaints was six months, with investigations ranging from 3-13 months. • Consumers complaining to the BBB about a hearing instrument specialist, may not be aware that only DPH can sanction hearing instrument specialists

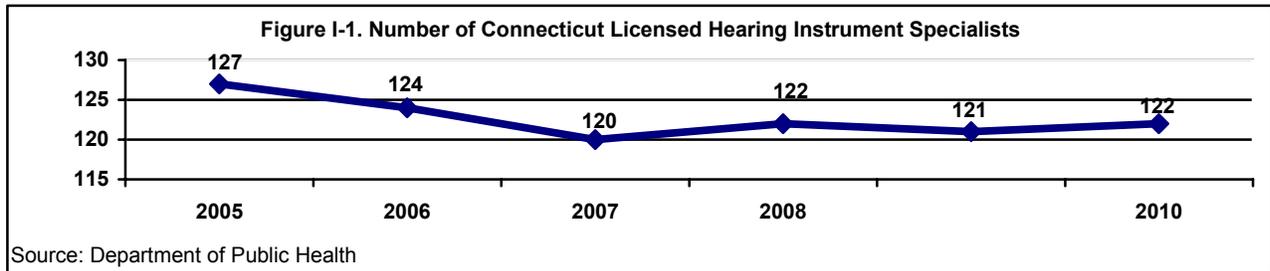
LICENSURE

In 2010, the Department of Public Health oversaw the licensure of hearing instrument specialists including holding licensing exams.

I. HOW MUCH DID WE DO?

Performance Measure 1: Number of Licenses Issued

- DPH licensed 122 hearing instrument specialists in 2010 (Figure I-1).
- There were 17 applications for new hearing instrument specialist licenses in FY 10.



Performance Measure 2: Number of Licensure Exams Held Annually

- By statute, DPH is required to hold licensure exams for hearing instrument specialists at least twice per year.
- On a regular basis, DPH offers required licensure exams twice per year.

II. HOW WELL DID WE DO IT?

Performance Measure 3: Percent of Trained and Competent Applicants Who Received Licenses

- Hearing instrument specialist licenses are only granted to applicants who have successfully completed the education, supervised work experience/apprenticeship, and examination requirements.
- In FY 09, 100% of the nine hearing instrument specialist applicants met the hearing instrument specialist licensing requirements and were licensed.

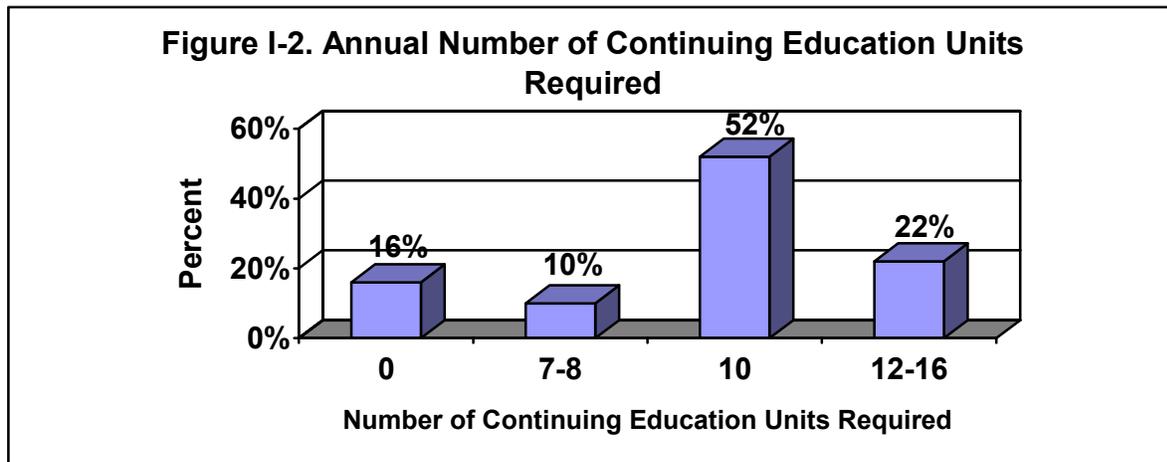
Performance Measure 4: Presence of Requirements for Audiologists Wishing to Fit and Dispense Hearing Aids

- Almost all audiologists fit and dispense hearing aids.
- Audiologists must meet two sets of requirements to fit and dispense hearing aids:
 - licensure as an audiologist; and
 - one of the following:
 - obtain a hearing instrument specialist license;

- provide DPH with documentation showing satisfactory completion of relevant coursework and supervised clinical experience; or
- pass the written exam required for a hearing instrument specialist license.

Performance Measure 5: Presence of a Requirement for Continuing Education

- Continuing education is intended to ensure that practitioners maintain competency and keep up-to-date and knowledgeable about changes in their profession’s field.
- Continuing education is not required to renew the hearing instrument specialist license.
- Many states require continuing education as a condition of licensure renewal (Figure I-2) including the New England states of Maine and New Hampshire.



Performance Measure 6: DPH Application Processing Time

- On average, in 2010, it took 6-9 months for new applicants to become licensed.
- DPH reported the licensing process was conducted in a timely manner.
- Processing time depended primarily on when education, supervised work experience/apprenticeship and exam requirements were completed by the applicant.

Story Behind the Data

Hearing instrument specialists are regulated in all 50 states, most often through licensure (92 percent of the time). There have been a relatively steady number of licensed hearing instrument specialists during the past five years.

Data on the numbers of licensed personnel and facilities are reported annually in DPH’s publication, “Total Active Licenses.” To assess trends, data from each year’s separate report must be compiled manually.

DPH met the minimum statutory requirement of offering exams to hearing instrument specialists twice a year. Applicants also have the option of obtaining an apprentice permit prior to passage of the licensing exam, allowing them to practice under the direct supervision of a

licensed hearing instrument specialist for up to two years while completing additional training and awaiting exams.

Because all applicants had met the requirements for licensure, it is likely that the requirements are easily accessible and made clear to those interested in becoming licensed. Further, the amount of time it took to process hearing instrument specialist licenses in Connecticut is similar to the Massachusetts statutorily-required eight month median processing time for hearing aid dispenser licensure applications.⁴⁵

Given that it is a rapidly changing field, and national board certification and the majority of states have such a requirement, Connecticut's residents may be better protected and served by having a continuing education requirement for hearing instrument specialist licensure renewal.

Although their educational requirements are much greater,⁴⁶ audiologists must at the very least, submit paperwork to DPH showing they received training in fitting and dispensing hearing aids (which all of them have received as part of their doctoral training). This paperwork is potentially burdensome for both the audiologists and DPH.

Actions to Turn the Curve

To improve the ease of acquiring (and therefore analyzing) multi-year data on licenses, the **PRI committee recommends:**

DPH's report, "Total Active Licenses," be formatted to include data from each of the past five years.

Given the highly technical and rapidly changing nature of this field, and consistent with current continuing education requirements to maintain national board certification, the **PRI committee recommends:**

Hearing instrument specialists shall be required to complete 16 continuing education units prior to licensure renewal.

To streamline unnecessary regulatory requirements, the **PRI committee recommends:**

C.G.S. Sec. 20-398 shall be amended so that audiologists will not have to meet the additional hearing instrument specialist requirements in order to fit and dispense hearing aids.

⁴⁵ M.G.L.A. Sec. 1399.113. Review of Hearing Aid Dispenser Applications; Processing Time.

⁴⁶ Prior to 2007, audiologists needed to earn a master's degree to be a licensed audiologist. Since 2007, audiologists must earn a doctorate in audiology and participate in a one-year externship following receipt of the doctoral degree.

COMPLAINTS AND VIOLATIONS

The public, professionals, and state agencies may register complaints against hearing instrument specialists with DPH. In the department's investigation of complaints, violations may be uncovered and sanctions imposed.

I. HOW MUCH DID WE DO?

Performance Measure 1: Number of Complaints Received by DPH

- DPH reports they investigate an average of two complaints per year against hearing instrument specialists.
- DPH received and investigated three complaints against hearing instrument specialists in 2009:
 - two complaints were dismissed with no action taken.
 - one complaint pertained to inadequate testing of a patient's hearing, and failure to adequately document the patient's treatment.

Performance Measure 2: Severity of Complaints Received by DPH

- Of four records reviewed by PRI staff for which this information was known, DPH staff classified the severity of complaints as follows:⁴⁷
 - none (0%) at the highest priority level (Class 1);
 - two (50%) at the middle level (Class 2); and
 - two (50%) at the lowest level (Class 3).
- DPH staff report that complaints lodged with DPH against hearing instrument specialists generally do not demonstrate a serious or imminent risk to public health or safety.
 - Complaints tend to relate to unlicensed practice and/or payment/advertising issues.

Performance Measure 3: Number of Actions Taken by DPH Against Hearing Instrument Specialists

- DPH takes very few actions against hearing instrument specialists.
- One hearing instrument specialist was sanctioned through consent order in 2009 and:
 - received one year probation and was required to successfully complete a DPH-approved course in documentation standards.
- The next most recent consent order for a hearing instrument specialist occurred in 2005 and the respondent:
 - Was required to pay a civil fine of \$500.

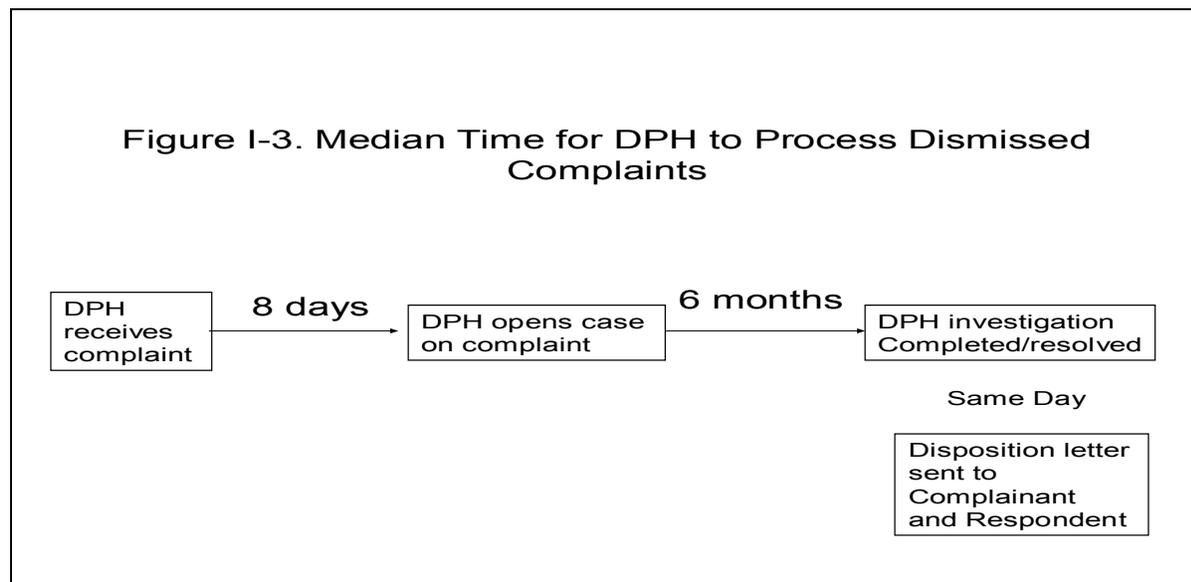
⁴⁷ Class 1 complaints require immediate action or response because the situation poses an immediate threat to public health and safety. Class 1 complaints include cases associated with patient death, practitioner impairment, sexual misconduct, or infection control issues. Class 2 complaints have direct or indirect impact on quality of care, quality of life, or public health and safety. Class 3 complaints appear to be violations of standards of practice, laws or regulations such as failure to release records, patient confidentiality, failure to complete physician profile, etc.

II. HOW WELL DID WE DO IT?

Performance Measure 4: Timeliness of DPH Processing of Dismissed Complaints

- DPH guidelines state that Class 1 categorized investigations are to be “...completed as quickly as possible, but within ninety (90) days unless the PHSM [Public Health Services Manager] determines that an extended investigation is necessary and there is no threat to the public health and safety.”
 - The department guidelines further state that the goal is to complete Class 2 and Class 3 investigations within 180 days.
- Overall, DPH does not retain records on complaint processing time for cases that are resolved by consent order; however, such information is retained for cases that are dismissed.
- For six complaints lodged during 2001-2006 and subsequently dismissed (i.e., did not receive a hearing or result in negotiated consent order):⁴⁸
 - half the complaints were opened for DPH investigation within eight calendar days or less;
 - investigations ranged from three months to 13 months;⁴⁹ and
 - disposition letters were often sent to the complainant and respondent on the same day the complaint was resolved.

The process and median timeframes is shown in Figure I-3.



⁴⁸ DPH was unable to provide detailed information on timeframes for complaints that were resolved by consent order.

⁴⁹ Fraud and deception complaint brought by a patient.

Performance Measure 5: Percent of Consumers Understanding How to File a Complaint

- Information is not readily available on the percent of consumers understanding how to file a complaint.
- The DPH complaint form is online.
- There were at least as many complaints against hearing instrument specialists filed with the Better Business Bureau within the past three years as there were with DPH:
 - The Better Business Bureau website listed seven closed complaints against six businesses listed under “Hearing Aids & Assistive Devices.”

Story Behind the Data

Because DPH does not monitor and report on complaint processing time by classification, it is difficult to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.

DPH receives very few complaints about hearing instrument specialists. Limited information is known about complaints received by the BBB, and the BBB did not respond to PRI’s request for additional information.

Colorado experienced an increase in complaints following de-regulation of hearing instrument specialists. That state’s Attorney General Office, for example, found significant actual public harm by the unregulated practice of hearing aid sales based on investigation of 100 complaints in one year alone. The bulk of these complaints concerned failure to issue refunds, as well as cases of abuse of elderly clients, and outright fraud. Colorado subsequently re-regulated the profession through its department of health.

Action to Turn the Curve

To assess whether complaints are addressed in a timely fashion, the **PRI committee recommends** that:

DPH should consider developing a system to monitor timeliness of complaint processing for all cases, with the ability to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.

III. IS ANYONE BETTER OFF?

Hearing instrument specialists are regulated in all 50 states, most often through licensure. Hearing aids are classified as medical devices by the FDA who notes, if the hearing aid is not properly fitted, then too much amplification may cause additional hearing loss. Consumers are better off dealing with trained and competent (i.e., licensed) hearing instrument specialists, with the vast majority of hearing aids and related services handled without complaint.

Performance Measure 1: Number of Negligent and Unscrupulous Practitioners Sanctioned

- Within the past 10 years, the following sanctions were imposed on two hearing instrument specialists:
 - 12 months probation and successful completion of a DPH-approved course in documentation standards (ordered for one hearing instrument specialist who failed to adequately test a patient's hearing, and adequately document the patient's treatment).
 - Civil penalty of \$500 (ordered for one hearing instrument specialist who had allowed a temporary permittee to practice as a hearing instrument specialist without the presence of a licensed supervisor).

Story Behind the Data

There have been very few unscrupulous or negligent hearing instrument specialists that have come to the attention of DPH. However, without licensure (regulation), former hearing instrument specialists who are no longer licensed in Connecticut, or who lost their licenses in other states (due to revocation, voluntary surrender, etc.) would be able to re-enter the profession, and the public would no longer be protected from practitioners who had previously evidenced harm to the public.

However, hearing aids are classified as medical devices by the FDA.⁵⁰ The experience of Colorado following its de-regulation of hearing instrument specialists found significant actual public harm by the unregulated practice of hearing aid sales, and led to re-regulation of the profession.

Action to Turn the Curve

To maintain the level of regulation needed to protect the public health, safety, and welfare of Connecticut residents, the **PRI committee recommends:**

The regulation at the licensure level of hearing instrument specialists should be continued.

⁵⁰ "Medical Devices: Benefits and Safety Issues"

(<http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/HearingAids/ucm181477.htm>)

Appendix J: Board Response

(email received Fri 3/9/2012 10:34 AM from Chairman of the Board of Examiners of Embalmers and Funeral Directors)

Dear Dr. Kluger,

Upon review, there are several points which I believe can be considered:

1. The guaranty fund administered by the DCP should be funded by a the renewal of the three licenses issued by the state of CT. Funeral Director, Funeral Home and Embalmer. I believe the funeral director and embalmer should pay \$50 into the fund and funeral home \$100. I do not know how the attorney fund is figured but I know they pay into the fund each year. Also, a consideration of each trust/insurance company that writes preneed in CT be given a one time fee plus a \$5. fee for each preneed written after July 1. We need at least \$300, 000. I can't tell you the number of accounts still being researched by families funded through now defunct funeral homes.

2. I believe the cases to be heard need to come to the Board in a much more expedient fashion...Hearing cases that happended three years ago! Since the staffing in DPH is at a minmal. If the case can't be heard within 12 months then it should go away.

3. I believe the funeral homes should be licensed by both the DPH and DCP. The yearly inspection by the inspector should be of preneed accounts as well as the public health issues of the funeral home. Or, two inspectors visit each calendar year...one from DCP to exam pre need and DPH to inspect the prep and funeral home plant.

I agree with everything in your report and would like to elaborate and make a few reccomendations just to stay in tune.

Thank you for your help in this matter,

Dan Jowdy