



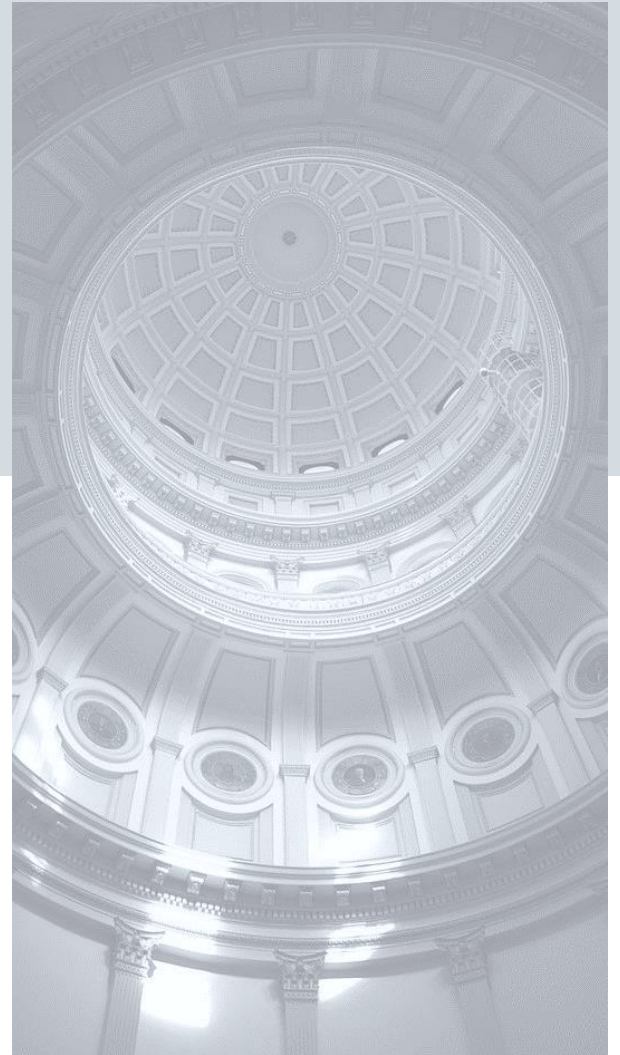
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Certification of Nurse Aides



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the Office of Legislative Legal Services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the certification of nurse aides. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 38.1 of Title 12, C.R.S. The report also discusses the effectiveness of the State Board of Nursing in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review Certification of Nurse Aides

SUMMARY

What is regulated?

Nurse aides provide basic health-care services for patients in a variety of settings including hospital and long-term care settings, as well as in-home care. Nurse aides assist patients with a variety of basic health-care and daily tasks, including: bathing, dressing, eating and personal hygiene; taking vital signs; and assistance with transference between beds and wheelchairs. Some nurse aides may also receive additional training to dispense medications to patients.

Why is it regulated?

Nurse aides provide basic health-care services to vulnerable populations, and may assist patients with tasks that involve very specific training in order to ensure safety. If a nurse aide provided improper care to a patient it could lead to significant harm, including permanent damage.

Who is regulated?

The State Board of Nursing (Board) issued 46,057 nurse aide certificates in fiscal year 17-18.

How is it regulated?

All nurse aides must be certified by the Board. Each new applicant must demonstrate they have completed an approved education program, passed the required examination, paid the license fee, and cannot have committed any act that would be grounds for discipline.

What does it cost?

In fiscal year 17-18, total program expenditures were approximately \$1.3 million, and there were 4.75 full-time equivalent employees dedicated to the program.

What disciplinary activity is there?

In fiscal year 17-18, the Board issued 51 revocations, one stipulation, 67 letters of admonition, and other actions in 10 instances, including cease and desist orders, citations, and injunctions.

KEY RECOMMENDATIONS

Continue the Nurse Aide Practice Act for seven years, until 2027.

Nurse aides provide basic health-care services for vulnerable patients in hospitals, long-term care, and in-home care settings. A nurse aide could cause significant harm to a patient if improper care were provided, or if necessary care was not provided. The Nurse Aide Advisory Committee (Advisory Committee) works under the instruction of the Board to protect consumers from these potential types of harm through educational and certification requirements to ensure that nurse aides are properly trained and competent. The Advisory Committee also reviews complaints, and can discipline certificants for violations of the Act. Therefore, the Nurse Aide Practice Act (Act) should be continued until 2027.

Combine the Act with the Nurse Practice Act.

Combining the two licensing acts would allow the programs to be more fully integrated. The Division of Professions and Occupations (Division) would only need to manage one licensing act, and the sections in the separate licensing acts that are the same could be combined. Additionally, the sections that are different could be maintained in separate parts of the new act. By integrating the two acts, additional procedural efficiencies would occur for both the Division and the Board by streamlining statutory provisions, which will allow for further public transparency and participation. Therefore, the Act and the Nurse Practice Act should be combined.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended Advisory Committee and Board meetings; interviewed Division staff, practitioners, and officials with state and national professional associations; and reviewed summaries of complaint data, Colorado statutes and rules, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Attorney General's Office
Colorado Department of Human Services
Colorado Department of Public Health and Environment
Colorado Department of Regulatory Agencies, Division of Professions and Occupations
Colorado Health Care Association
Colorado Hospital Association
Colorado Medical Society
Colorado Nurses Association
Consortium for Citizens with Disabilities
Peer Assistance Services

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:¹

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ § 24-34-104(6)(b), C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
 - X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the State Board of Nursing (Board) as enumerated in Article 12 of Title 38.1, Colorado Revised Statutes (C.R.S.),² shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the certification of nurse aides pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Board and the Division of Professions and Occupations (Division). During this review, the Board must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

² House Bill 19-1172 re-codified §12-38.1-101, *et seq.*, C.R.S., and moved them to §12-260-101, *et seq.*, C.R.S. In order to avoid confusion and erroneous citations and references, this sunset report consistently refers to the statutory provisions as if they remained in §12-38.1-101, *et seq.*, C.R.S. A comparison table can be found in Appendix B.

Methodology

As part of this review, Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff attended Advisory Committee and Board meetings; interviewed Division staff, practitioners, and officials with state and national professional associations; and reviewed summaries of complaint data, Colorado statutes and rules, and the laws of other states.

In August 2019, COPRRR conducted a survey, and a link to the survey was sent to 107 nurse aide educators. Of these, an estimated 99 were successfully delivered and 32 individuals responded. This represents a response rate of 32.3 percent. Survey data are located in Appendix A.

Although COPRRR was able to review detailed data related to a limited number of files during this review, COPRRR was unable to review complete complaint files because the Director of the Division (Director) did not provide the case files to COPRRR pursuant to section 12-38.1-114(13), C.R.S., and corresponding legal advice from the Office of the Attorney General.

COPRRR relies on access to complaint files to gain a better understanding of the actual harm related to the practice under review, which informs recommendations for changes to the statute under review and to the administration of the program. Moreover, COPRRR also relies on these files to determine whether final dispositions of complaints are in the public interest or self-serving to the profession.

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the profession does, where they work, who they serve and any necessary qualifications.

Nurse aides provide basic health-care services for patients in a variety of settings including in-home care as well as hospital and long-term care settings, such as nursing homes. Nurse aides typically assist patients with a variety of basic health care and daily tasks, including:³

³ Bureau of Labor Statistics. *Occupational Outlook Handbook: Nursing Assistants and Orderlies*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/nursing-assistants.htm#tab-2>

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- Taking the patient’s vital signs;
 - Discussing the patient’s health concerns and recording information to report to nurses;
 - Assistance with tasks such as personal hygiene, bathing, and dressing;
 - Assisting patients with transference between beds and wheelchairs;
 - Turning and repositioning patients that are in bed; and
 - Serving meals and assisting patients with eating.

Some nurse aides may also receive additional training to dispense medication.

Nurse aides are required to complete a program approved by their state that encompasses the basic principles of nursing, and supervised clinical work is also typically required. Schools that may offer nurse aide programs include vocational and technical schools, community colleges, high schools, and some programs are also offered in nursing homes and hospitals. Nurse aides may also receive some job training while working in order to learn some of the specific policies and procedures at their employer’s facility.⁴

In Colorado, nurse aides are required to pass a competency examination after the completion of a state-approved educational program,⁵ or may receive a certificate based upon an endorsement that the nurse aide is certified in another state, has no record of disciplinary action, and has completed the necessary educational requirements.⁶ To be certified in Colorado, nurse aides are required to apply to the Board and pay the required application fees.⁷ In addition, nurse aides are required to renew their certification on a regular basis and pay required renewal fees.⁸

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession and the projected growth in the profession.

According to the Bureau of Labor Statistics, the median annual wage for nurse aides on a national level was \$28,540 in 2018. The median annual wages for the top industries in which nurse aides worked in May 2018 were:⁹

- Government facilities (\$33,800);
- Private, local and state hospitals (\$30,050);
- Nursing facilities (\$27,840);
- Home health care (\$27,290); and

⁴ Bureau of Labor Statistics. *Occupational Outlook Handbook: Nursing Assistants and Orderlies*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/nursing-assistants.htm#tab-4>

⁵ § 12-38.1-105, C.R.S.

⁶ § 12-38.1-106, C.R.S.

⁷ § 12-38.1-104, C.R.S.

⁸ § 12-38.1-109, C.R.S.

⁹ Bureau of Labor Statistics. *Occupational Outlook Handbook: Nursing Assistants and Orderlies*. Retrieved September 4, 2019, from <https://www.bls.gov/ooh/healthcare/nursing-assistants.htm#tab-5>

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- Assisted living and retirement communities (\$27,200).

The nurse aide profession is expected to grow nine percent from 2018 to 2028, which is faster than the national average for all other occupations. This increase is due largely to the aging baby-boomer generation, as there will be more need for care for chronic conditions.¹⁰

According to the Bureau of Labor Statistics, nurse aides held approximately 1.5 million jobs in the United States in 2018. The largest of employers of nurse aides in 2018 were:¹¹

- Skilled nursing care facilities (38 percent);
- Private, local, and state hospitals (27 percent);
- Continuing care retirement communities and assisted living (11 percent);
- Home health care (5 percent); and
- Government facilities (4 percent).

Between 2018 and 2020, the number of nurse aides in Colorado is projected to increase from 20,710 to 21,450, which is a 3.6 percent increase,¹² and the long-term projection for nurse aides as a profession in the United States is expected to increase from approximately 1.5 million in 2016 to approximately 1.7 million by 2026, for an increase of 11.5 percent.¹³

¹⁰ Bureau of Labor Statistics. *Occupational Outlook Handbook: Nursing Assistants and Orderlies*. Retrieved September 4, 2019, from <https://www.bls.gov/ooh/healthcare/nursing-assistants.htm#tab-6>

¹¹ Bureau of Labor Statistics. *Occupational Outlook Handbook: Nursing Assistants and Orderlies*. Retrieved September 4, 2019, from <https://www.bls.gov/ooh/healthcare/nursing-assistants.htm#tab-3>

¹² Projections Central. *Short Term Occupational Projections (2018 - 2020)*. Retrieved September 19, 2019, from <http://www.projectionscentral.com/Projections/ShortTerm>

¹³ Projections Central. *Long Term Occupational Projections (2016 - 2026)*. Retrieved September 19, 2019, from <http://www.projectionscentral.com/Projections/LongTerm>

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

In 1987, Congress passed the Omnibus Budget Reconciliation Act (OBRA), which mandated that all nurse aides working in long-term care facilities and nursing homes that receive Medicaid or Medicare funds be required to receive minimum levels of training and testing. OBRA also directed states to develop a registry system for all nurse aides who meet federal training requirements.

In response to the OBRA, the Colorado General Assembly established a certification program with the enactment of the Nurse Aide Practice Act (Act), on July 1, 1989.

The Act placed authority for administration under the State Board of Nursing (Board), which additionally regulates registered nurses (RNs), licensed practical nurses (LPNs), and licensed psychiatric technicians (LPTs). Also in 1989, the Board developed rules to further define nurse aide training program requirements and certification requirements. The General Assembly also authorized the Board to create a nurse aide advisory committee (Advisory Committee) to assist with the fulfillment of the Board's legislative mandates.

In 2002, two bills were passed by the General Assembly related to nurse aide regulation:

- House Bill 02-1090 established the Medication Administration Advisory Committee, which was instructed to offer guidance to the Department of Regulatory Agencies (DORA) regarding whether certified nurse aides should be authorized to administer medications.
- House Bill 02-1447 established the Direct Care Provider Career Path Pilot Program, which was proposed to offer three levels of employment for nurse aides with each progressive level requiring increased education, and providing additional responsibility and income opportunities.

In addition, a sunset review of the Act was also conducted in 2002. The review led to the implementation of Senate Bill 03-134, which further modified the Act by increasing the number of Advisory Committee members from five to seven, and directed the Board to implement a feasibility study regarding the requirement of fingerprint-based criminal history record checks. The bill also created two separate statutory provisions for the terms, “abuse” and “neglect” as separate grounds for discipline.

In 2005, the General Assembly passed Senate Bill 05-155, which created a Medication Administration Authority for nurse aides as a result of the work performed by the Medication Administration Advisory Committee. This bill developed the scope of authority and additional educational and experiential requirements necessary in order to qualify for the authority. Nurse aide applicants were also required to submit to a fingerprint-based criminal history background check in order to meet certification requirements.

Based upon the recommendations in the 2008 sunset report, the General Assembly proposed and enacted Senate Bill 09-138 (SB 09-138) which continued the program until 2020. In addition, SB 09-138 removed specific requirements for the two Advisory Committee public members, provided for a committee member per diem, repealed the Medication Administration Advisory Committee, and modified existing statutory language regarding habitual or excessive substance abuse. Senate Bill 09-138 also expanded the statutory language regarding unauthorized practice, mental and physical competency examination requirements, added an exemption from the open meetings provision of the Colorado Open Records Act, established the authority of the Board to create rules regarding medication aides, and gave the Board authority to require up to 25 percent more hours than the federal minimum for nurse aide training programs.

In subsequent years, the General Assembly has enacted several bills that expanded the scope of practice and modified elements of grounds for discipline. House Bill 15-1182 added section 12-38.1-108.5, C.R.S., to include additional allowable tasks that can be performed by nurse aides, such as the placement of presorted medication in a patient’s mouth and tube feedings.

Finally, effective October 1, 2019, the statutes governing the certification of nurse aides were moved from section 12-38.1-101, *et seq.*, C.R.S., into section 12-260-101, *et seq.*, C.R.S., with the passage of House Bill 19-1172. Notwithstanding this recodification, in order to avoid confusion and erroneous citations and references, this sunset report consistently refers to statutory provisions as if they remained in section 12-38.1-101, *et seq.*, C.R.S. A comparison table can be found in Appendix B.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

In 1987, Congress passed OBRA, which provided substantial reform of the long-term care system. The legislation provided additional improvements to the quality of care provided in nursing facilities through the establishment of minimum competency and training requirements as well as additional standards for nursing care.

Specifically, rules developed for the implementation of OBRA required long-term facilities to employ nurse aides only after the completion of training and competency evaluation within four months of hire, or to have otherwise demonstrated competency in providing nurse aide services.¹⁴ The law also required that each state establish a registry of all individuals who have successfully completed the nurse aide training and competency evaluation program by no later than January 1, 1989.¹⁵ OBRA further directed that the secretary of the Centers for Medicare and Medicaid Services establish standards for the approval of certified nurse aid (CNA) training programs.¹⁶ Similar requirements were also subsequently developed for home health aides (HHAs).

OBRA categorized CNAs and HHAs as separate professions, with separate yet comparable educational and certification requirements. As a result of the mandates within OBRA, Colorado established a solitary certification program for both HHAs and CNAs, referring to them simply as "CNAs."

The fifth sunset criterion questions whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

¹⁴ 42 C.F.R. § 483.75(d)(3).

¹⁵ 42 U.S.C. § 1395i-3(e)(2)(A) and 42 C.F.R. § 483.156.

¹⁶ 42 U.S.C. § 1395i-3(f)(2)(A).

In Colorado statutes, the Act is located in Title 12, Article 38.1, C.R.S. The provisions within the Act and the additional rules established correspond to federal requirements.

The Board located within the Division of Professions and Occupations (Division) at DORA oversees the enforcement of the Act. Federal Medicaid and Medicare programs provide funding for the certification of nurse aides, and the Colorado Department of Health Care Policy and Financing secures the Medicaid funding sources, while the Colorado Department of Public Health and Environment (CDPHE) secures the Medicare funding sources. The allocated funds are then forwarded to DORA for the operation of the nurse aide certification program.¹⁷

The Board's authority and duties for the administration of the program include:

- The certification of nurse aides to practice in the state of Colorado,¹⁸
- The promulgation of rules and regulations to ensure compliance with relevant federal laws and regulations,¹⁹
- The maintenance of a registry of all certified nurse aides in Colorado as well as any final disciplinary actions taken against them,²⁰ and
- The approval of nurse aide training programs held both in and outside of medical facilities.²¹

The Board is further provided with the authority to designate an advisory committee to assist with the duties of the Board, and appoints the advisory committee members. The Advisory Committee is comprised of seven members with the following representation:²²

- One member must be a nurse aide,
- One member must be a licensed professional nurse or a licensed practical nurse who supervises nurse aides,
- One member must represent a home health agency,
- One member must represent a nursing facility,
- One member must be an employee of CDPHE, and
- Two members must represent the public.

Members receive a per diem allowance for compensation of their services, and are authorized for reimbursement of Advisory Committee-related expenses.

¹⁷ § 12-38.1-103(6), C.R.S.

¹⁸ § 12-38.1-103(1), C.R.S.

¹⁹ § 12-38.1-103(3), C.R.S.

²⁰ § 12-38.1-103(4), C.R.S.

²¹ § 12-38.1-108(1), C.R.S.

²² § 12-38.1-110, C.R.S.

Nurse Aide Certification Training Programs

The Board is responsible for approving nurse aide education programs.²³ In order to receive approval to provide nurse aide training, any institution, facility, agency, home health agency or individual must submit a written application to the Board, designate a program coordinator to comply with the Board's rules, and may make inquiries of the Board to clarify the rules for program approval.²⁴

The Board or its designee is responsible for: ²⁵

- Providing program application forms upon request,
- Reviewing applications within 90 days of the receipt of the application to provide the applicant with a decision regarding whether or not the training program meets applicable standards,
- Requesting additional information from the applicant, and
- Conducting a survey to determine if all applicable standards are met by the applicant.

In addition, each applicant must demonstrate that the training program seeking approval will authorize a governing body to determine general policies for the program and to provide financial support, with an organizational plan that establishes and describes the relationship of the governing body to the training program.²⁶

Nurse aide training programs are further required to develop a curriculum that meets the established standards provided within the Board's rules. For example, each training program must establish a curriculum that provides: ²⁷

- A minimum of 75 hours of instruction with no less than 16 hours of classroom instruction and no less than 16 hours of clinical instruction under the direct supervision of an LPN or RN;
- Competencies expected of the student;
- A list of skills required to be learned by the program's students; and
- Instruction must be relevant to the facility's population.

The training curriculum must include a variety of classroom and laboratory instruction in core competencies including basic nursing skills, personal care skills, meeting the psychosocial/mental health needs of the client, care for cognitively impaired clients, basic restorative services, and knowledge/skills that promote the patients' rights.²⁸

In addition, students are required to demonstrate specific competencies, including:²⁹

²³ § 12-38.1-108(1), C.R.S.

²⁴ 3 CCR 716-1-11-3.1, Colorado State Board of Nursing Rules and Regulations.

²⁵ 3 CCR 716-1-11-3.2, Colorado State Board of Nursing Rules and Regulations.

²⁶ 3 CCR 716-1-11-4.1, Colorado State Board of Nursing Rules and Regulations.

²⁷ 3 CCR 716-1-11-5.2, Colorado State Board of Nursing Rules and Regulations.

²⁸ 3 CCR 716-1-11-5.3, Colorado State Board of Nursing Rules and Regulations.

²⁹ 3 CCR 716-1-11-5.2.B, Colorado State Board of Nursing Rules and Regulations.

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- Demonstrate relationship formulation and communication;
 - Offer sensitivity to the emotional, social, and mental needs of patients;
 - Provide assistance to clients in order to attain and maintain independence;
 - Display behavior in support of patients' rights;
 - Demonstrate skills needed to assess patients' physical condition, health and well-being; and
 - Display an understanding of the Act.

Training programs must prepare students to demonstrate competency in the following areas:³⁰

- Basic nursing skills;
- Personal care skills;
- Recognition of mental health and social service needs;
- Basic restorative services; and
- Resident or patient rights.

Nurse Aide Certification

Applicants who successfully complete a nurse aide training course may apply for certification by examination. Every such applicant must demonstrate they have completed an approved education program, pay the required fee, and cannot have committed any act that would be grounds for discipline.³¹ The Board reviews and may accept a competency evaluation for nurse aides, which is administered at least once per quarter, and applicants receive the results of their examinations in writing.³²

Additionally, each applicant is required to have successfully completed both the written and skills tests within two years of application. Each applicant must pass the competency evaluation within three attempts or must repeat the nurse aide training program.³³

Applicants may also apply for certification by endorsement, which requires that individuals listed on the nurse aide registry in another state may receive certification by submitting an application to the Board and paying the applicable fees. The applicant must also meet all state and federal requirements in order to receive certification.³⁴

Once certification is issued, CNA certificates must be renewed or reinstated based upon an established schedule set by the Director of the Division.³⁵ Currently, certification must be renewed every two years. At the time of renewal, each

³⁰ § 12-38.1-108(4), C.R.S.

³¹ § 12-38.1-105, C.R.S.

³² 3 CCR 716-1-10-2, Colorado State Board of Nursing Rules and Regulations.

³³ 3 CCR 716-1-10-2.12, Colorado State Board of Nursing Rules and Regulations.

³⁴ 3 CCR 716-1-10-3.1, Colorado State Board of Nursing Rules and Regulations.

³⁵ § 12-38.1-109, C.R.S.

applicant must attest that they have performed at least eight hours of nursing care activities during the prior 24 months.³⁶

Medication Aide Training Programs

The curriculum for medication aide training programs must be developed, implemented, managed, and evaluated by a program director and primary instructors, and must utilize a Board-approved textbook. Training programs must include no less than 100 hours of training with no less than 60 hours of classroom and laboratory instruction and no less than 40 hours of clinical experience.

Medication Aide Authority

CNAs may qualify to administer medications as medication aides by meeting specific requirements established by the Board.³⁷ To meet the requirements to enroll in a training program as a medication aide, the CNA must:³⁸

- Provide proof of a High School Diploma or General Equivalency Diploma (GED);
- Provide proof that the applicant is at least 18 years of age;
- Possess an active, unencumbered Colorado nurse aide certification;
- Demonstrate at least 1,000 hours of work experience as a CNA within the prior 24 months;
- Provide a recommendation from the CNA's current supervising nurse, program director or program administrator;
- Complete an approved medication aide training program with a final grade of not less than a "C" or demonstrate substantially equivalent training that meets the curriculum requirements;
- Submit an application for medication aide authority within one year of completion of the medication aide training program or its U.S. military equivalent and pay the applicable fee; and
- Pass the written competency evaluation in three or fewer attempts within one year of the completion of the medication aide training program.

Once a medication aide authority is issued, it must be renewed or reinstated based upon an established schedule set by the Director of the Division.³⁹ Currently, the medication aide authority must be renewed every two years. At the time of renewal, each applicant must attest that they have received monetary compensation for performing at least 40 hours of medication aide-related activities during the prior 24 months.⁴⁰

³⁶ 3 CCR 716-1-10-4.2, Colorado State Board of Nursing Rules and Regulations.

³⁷ § 12-38.1-110.5, C.R.S.

³⁸ 3 CCR 716-1-19-6.1, Colorado State Board of Nursing Rules and Regulations.

³⁹ 3 CCR 716-1-19-7.1, Colorado State Board of Nursing Rules and Regulations.

⁴⁰ 3 CCR 716-1-19-7.2, Colorado State Board of Nursing Rules and Regulations.

A CNA authorized as a medication aide may perform a variety of additional tasks, including:⁴¹

- Observing and reporting to the supervising licensed nurse any and all side effects or reactions to medications that are exhibited by the patient;
- Measuring and documenting vital signs prior to the administration of medications that may affect or change vital signs;
- Administering and preparing medications that the medication aide has been trained to administer, and documenting all medications administered by the CNA in the patient's clinical record. Any refusal or non-administered medications must be reported to the supervising licensed nurse;
- Initiating oxygen via nasal cannula or non-sealing mask only in an emergency. The medication aide must report this immediately following the emergency to the supervising licensed nurse and appropriately document the action and notification;
- Obtaining oxygen saturation using a calibrated oximeter, and reporting such results to the supervising licensed nurse;
- Administering practitioner-ordered oral, buccal, sublingual, ophthalmic, otic, nasal, vaginal, rectal, and transdermal medications as ordered;
- Crushing and administering medications by practitioner order, if the preparation is appropriate per the manufacturer's instructions and verified by the supervising licensed nurse;
- Counting, administering, and documenting controlled substances; and
- Administering medications per gastronomy tube, jejunostomy tube, or nasogastric tube.

CNAs authorized as medication aides must also adhere to specific supervision requirements:⁴²

- The medication aide must generally be supervised by a registered nurse with an active Colorado or multi-state license;
- If direct, on-site supervision is unavailable, the medication aide must have prompt, direct telephone access to a supervising licensed nurse;
- The supervising licensed nurse is responsible for ensuring that the medication aide's patient load is not so large that it would prevent the medication aide from being able to administer medications in a timely manner; and
- The employer of the medication aide must establish policies and procedures for care which limit or prohibit delegations by nurses in some circumstances.

Complaints and Enforcement

The Board is authorized to issue letters of admonition, suspend, revoke, or deny any individual's certification as a nurse aide or medication aide. The Board may also deny

⁴¹ 3 CCR 716-1-19-3.2, Colorado State Board of Nursing Rules and Regulations.

⁴² 3 CCR 716-1-19-5, Colorado State Board of Nursing Rules and Regulations.

certification to an applicant who has violated the Act. Grounds for discipline include:⁴³

- Procuring or attempting to procure a certification by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;
- Having been convicted of a felony or accepting a plea of *nolo contendere* to a felony;
- Willfully or negligently violating any order, rule, or regulation of the Board;
- Having had a certification to practice as a nurse aide or any other health care occupation suspended or revoked in any jurisdiction;
- Verbally or physically abusing a person under the care of the CNA;
- Habitually abusing or excessively using alcohol or habit-forming drugs;
- Having an alcohol use disorder or substance abuse disorder, or excessively using any habit-forming drug or controlled substance;
- Having a physical or mental disability that renders the CNA unable to practice as a nurse aide with reasonable skill and safety to the patients and which may endanger the health or safety of persons under the care of the CNA;
- Misappropriating patient or facility property;
- Engaging in any conduct constituting a crime as defined in Title 18, C.R.S., if such conduct relates to employment as a CNA;
- Neglecting a person under the care of the CNA; and
- Practicing as a nurse aide during a period when the person's certificate has been suspended or revoked.

Complaints may be filed with the Board by any person who believes that a CNA may have violated the Act, and the Board may initiate disciplinary proceedings if there are reasonable grounds to believe that a CNA has violated the Act.⁴⁴

If the Board determines that a violation of the Act has occurred, the Board may revoke or otherwise discipline the CNA.⁴⁵ The Board will notify any CNA disciplined under the Act by certified mail no later than 30 days following the date of the Board's action, and the Board will also notify the CNA of their right to request a hearing.⁴⁶

The CNA may file a written request for a hearing with the Board within 30 days after receiving notification from the Board. If a written request is received, the Board will grant a hearing. However, if the CNA fails to file a written request, the Board's action will be considered final.⁴⁷

If the CNA fails to appear at the Board hearing without good cause, the request for a hearing will be considered withdrawn and the Board's action will be final.⁴⁸

⁴³ § 12-38.1-111(1), C.R.S.

⁴⁴ § 12-38.1-114(2), C.R.S.

⁴⁵ § 12-38.1-114(3), C.R.S.

⁴⁶ § 12-38.1-114(4), C.R.S.

⁴⁷ § 12-38.1-114(5)(a), C.R.S.

⁴⁸ § 12-38.1-114(8), C.R.S.

All final disciplinary actions of the Board are subject to judicial review by the Colorado Court of Appeals in accordance with section 24-4-106, C.R.S.⁴⁹

Section 12-38.1-114(13), C.R.S., explains the Board's restrictions regarding open meetings and open records,

Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board or its designee and notice of formal complaint is drafted and served on the licensee by first-class mail, any investigations, examinations, hearings, meetings, or any other proceedings of the Board related to discipline that are conducted pursuant to the provisions of this section shall be exempt from the open records provisions of article 72 of title 24, C.R.S., requiring that the proceedings of the Board be conducted publicly or that the minutes or records of the board with respect to action of the Board taken pursuant to the provisions of this section be open to public inspection.

⁴⁹ § 12-38.1-116, C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.) The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The State Board of Nursing (Board), located within the Department of Regulatory Agencies' Division of Professions and Occupations (Division) is tasked with enforcing the Nurse Aide Practice Act (Act). The Nurse Aide Advisory Committee (Advisory Committee), designated by the Board, assists with regulation of the nurse aide certification program. In order to provide effective enforcement, the Board utilizes staff within the Division for administrative support.

Table 1 illustrates the total program expenditures and full-time equivalent (FTE) employees for fiscal years 13-14 through 17-18.

Table 1
Program Expenditures and FTE

Fiscal Year	Total Program Expenditures	FTE
13-14	\$670,660	5.0
14-15	\$1,225,190	5.0
15-16	\$1,221,149	5.0
16-17	\$1,189,833	4.75
17-18	\$1,318,995	4.75

Although there was a slight drop in staffing levels of 0.25 FTE in fiscal years 16-17 and 17-18, staffing levels for the program have remained reasonably consistent. Total expenditures appear much lower in fiscal year 13-14 due to a misreporting of funds in fiscal year 12-13, which was remedied the following year. According to Division staff, reporting for fiscal years 14-15 through 17-18 reflect accurate expenditures.

The FTE reflected in Table 1 does not include employees in the centralized offices of the Division that provide management, licensing, administrative, technical, and investigative support to the Board. However, the cost of those FTE is reflected in the total program expenditures.

In fiscal year 18-19, the Division allocated a combined total of 3.85 full-time equivalent (FTE) employees, apportioned in the following manner:

- Program Director (Program Management II) - 0.30 FTE - responsible for the overall management of the program;
- Enforcement Manager - (Technician IV) - 0.30 FTE - responsible for managing Board follow-up activities and hearing processes; following up on initial decisions; executing certain Board stipulations, ESP and the Office of the Attorney General referrals; and supervising the enforcement specialist;
- Compliance Manager (Compliance Specialist IV) - 0.50 FTE - responsible for peer assistance compliance monitoring, probation monitoring and supervising one Compliance Specialist;
- Administrative Manager (Technician IV) - 0.50 FTE - responsible for Board and constituent communication, managing the rulemaking process and providing staff support at Board meetings;
- Education Manager (Health Professional VI) - 0.25 FTE - responsible for inspection and compliance of nursing educational programs and supervising the Compliance Specialist for nurse aide training programs;
- Administrative Assistant III - 1.40 FTE - responsible for intake for the NAAC and processing enforcement activities;
- Assistant Program Director (Administrator IV) - 0.30 FTE - responsible for supervising staff for intake, compliance and follow-up activities and providing staff support to the Nurse Aide Advisory Committee (NAAC); and
- Compliance Specialist (Technician IV) - 0.30 FTE - responsible for processing priority Board orders and tracking compliance with Board orders.

The Advisory Committee meets on a monthly basis to consider applications for certification and to review complaints.

The Advisory Committee consists of two public members, and five additional professional members designated accordingly:

- One member who is a nurse aide,
- One member who is a licensed professional nurse or a licensed practical nurse who supervises nurse aides,

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- One member who represents a home health agency,
 - One member who represents a nursing facility, and
 - One member who is a Department of Public Health and Environment employee.

Certification

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Nurse Aide Certification

Applicants who successfully complete a nurse aide training course in Colorado may apply for certification by examination. Every such applicant must demonstrate they have completed an approved education program, pay the required fee, and cannot have committed any act that would be grounds for discipline.⁵⁰ The Board reviews and may accept a competency evaluation for nurse aides, which is administered at least once per quarter, and applicants receive the results of their examinations in writing.⁵¹

Applicants may also apply for certification by endorsement, which requires that individuals listed on the nurse aide registry in another state may receive certification by submitting an application to the Board and paying the applicable fees. The applicant must also meet all state and federal requirements in order to receive certification.⁵²

Once certification is issued, nurse aide certificates must be renewed or reinstated based upon an established schedule set by the Director of the Division.⁵³ Currently, certification must be renewed every two years. At the time of renewal, each applicant must attest that they have performed at least eight hours of nursing care activities during the prior 24 months.⁵⁴

The Board, with the assistance of the Advisory Committee, oversees the certification of nurse aides in Colorado, by competency evaluation for first-time applicants, or through the process of endorsement if the applicant is certified in another state or territory of the United States with similar requirements.

⁵⁰ § 12-38.1-105, C.R.S.

⁵¹ 3 CCR 716-1-10-2, Colorado State Board of Nursing Rules and Regulations.

⁵² 3 CCR 716-1-10-3.1, Colorado State Board of Nursing Rules and Regulations.

⁵³ § 12-38.1-109, C.R.S.

⁵⁴ 3 CCR 716-1-10-4.2, Colorado State Board of Nursing Rules and Regulations.

Table 2 illustrates the number of active nurse aide certifications for fiscal years 13-14 through 17-18 by each certification method. The table also depicts the total number of active certifications per fiscal year as of June 30 each year.

**Table 2
Certification Information**

Fiscal Year	Examination	Endorsement	Renewal	Reinstatement	Active Certifications as of June 30
13-14	4,842	1,012	35,194	455	39,749
14-15	4,884	936	0	413	46,062
15-16	4,839	900	34,616	393	48,945
16-17	4,898	1,231	32,876	1,053	38,093
17-18	5,617	1,489	0	1,073	46,057

Since fiscal year 15-16, the total number of certifications by examination, endorsement, and reinstatements has increased each year. Renewal periods are typically on a two-year cycle. However, the renewal cycle was shifted between fiscal years 15-16 and 16-17 as a result of staffing needs and workload adjustments. Certificants were then required to renew two years in a row with a reduced renewal fee, and the renewal cycle was then shifted to a new two-year cycle beginning in fiscal year 16-17.

According to Table 2, reinstatements also significantly increased in fiscal years 16-17 and 17-18, which may be due to the change in renewal cycle, as some individuals may have inadvertently allowed their certification to lapse if they did not renew both years in fiscal years 15-16 and 16-17.

Table 3, below, provides information regarding the fees required for certification for fiscal years 13-14 through 17-18.

**Table 3
Certification Fees**

Fiscal Year	Examination	Endorsement	Renewal	Reinstatement
13-14	N/A	\$10	\$12	\$27
14-15	N/A	\$10	Not applicable	\$27
15-16	N/A	\$10	\$6	\$21
16-17	N/A	\$10	\$12	\$27
17-18	N/A	\$10	Not applicable	\$27

Fees remained stable with the exception of fiscal year 15-16, which resulted from the shifting of the certification renewal cycle in the same fiscal year. Since certificants

were required to renew annually in both fiscal year 15-16 and 16-17, certificants paid for only one year of renewal and renewed annually two years in a row. It should be noted that fees for certification by examination are paid by the licensee directly to the vendor administering the examination and the Board does not collect any additional fees.

Medication Aide Authority

A certified nurse aide (CNA) may qualify to administer medications as a medication aide by meeting specific requirements established by the Board.⁵⁵ To meet the requirements to enroll in a training program as a medication aide, the CNA must:⁵⁶

- Provide proof of a high school diploma or general equivalency diploma (GED);
- Provide proof that the applicant is at least 18 years of age;
- Possess an active, unencumbered Colorado nurse aide certification;
- Demonstrate at least 1,000 hours of work experience as a CNA within the prior 24 months;
- Provide a recommendation from the CNA's current supervising nurse, program director or program administrator;
- Complete an approved medication aide training program with a final grade of not less than a "C" or demonstrate substantially equivalent training that meets the curriculum requirements;
- Submit an application for medication aide authority within one year of completion of the medication aide training program or its U.S. military equivalent and pay the applicable fee; and
- Pass the written competency evaluation in three or fewer attempts within one year of the completion of the medication aide training program.

Once a medication aide authority is issued, it must be renewed or reinstated based upon an established schedule set by the Director of the Division.⁵⁷ Currently, the medication aide authority must be renewed every two years. At the time of renewal, each applicant must attest that they have received monetary compensation for performing at least 40 hours of medication aide-related activities during the prior 24 months.⁵⁸

A CNA authorized as a medication aide may perform a variety of additional tasks, including:⁵⁹

- Observing and reporting to the supervising licensed nurse any and all side effects or reactions to medications that are exhibited by the patient;

⁵⁵ § 12-38.1-110.5, C.R.S.

⁵⁶ 3 CCR 716-1-19-6.1, Colorado State Board of Nursing Rules and Regulations.

⁵⁷ 3 CCR 716-1-19-7.1, Colorado State Board of Nursing Rules and Regulations.

⁵⁸ 3 CCR 716-1-19-7.2, Colorado State Board of Nursing Rules and Regulations.

⁵⁹ 3 CCR 716-1-19-3.2, Colorado State Board of Nursing Rules and Regulations.

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- Measuring and documenting vital signs prior to the administration of medications that may affect or change vital signs;
 - Administering and preparing medications that the medication aide has been trained to administer, and will document all medications administered by the CNA in the patient's clinical record. Any refusal or non-administered medications must be reported to the supervising licensed nurse;
 - Initiating oxygen via nasal cannula or non-sealing mask only in an emergency. The medication aide must report this immediately following the emergency to the supervising licensed nurse and appropriately document the action and notification;
 - Obtaining oxygen saturation using a calibrated oximeter, and report such results to the supervising licensed nurse;
 - Administering practitioner-ordered oral, buccal, sublingual, ophthalmic, otic, nasal, vaginal, rectal, and transdermal medications as ordered;
 - Crushing and administering medications by practitioner order, if the preparation is appropriate per the manufacturer's instructions and verified by the supervising licensed nurse;
 - Counting, administering and documenting controlled substances; and
 - Administering medications per gastronomy tube, jejunostomy tube, or nasogastric tube.

CNAs authorized as medication aides must also adhere to specific supervision requirements:⁶⁰

- The medication aide must generally be supervised by a registered nurse with an active Colorado or multi-state license;
- If direct, on-site supervision is unavailable, the medication aide must have prompt, direct telephone access to a supervising licensed nurse;
- The supervising licensed nurse will be responsible for ensuring that the medication aide's patient load is not so large that it would prevent the medication aide from being able to administer medications in a timely manner; and
- The employer of the medication aide must establish policies and procedures for care which limit or prohibit delegations by nurses in some circumstances.

As of September 2019, there were 158 medication aide authorities in Colorado. Additional historical data relating to medication aides is not available.

Training Programs

The Board also maintains sole authority to approve all nursing educational training programs, including those for nurse aides and medication aides, as is designated in sections 12-38.1-102(1) and 12-38.1-108, C.R.S.

⁶⁰ 3 CCR 716-1-19-5, Colorado State Board of Nursing Rules and Regulations.

Nurse Aide Certification Training Programs

To receive approval to provide nurse aide training, any institution, facility, agency, home health agency or individual must submit a written application to the Board, designate a program administrator to comply with the Board’s rules, and may make inquiries of the Board to clarify the rules for program approval.⁶¹

The Board will review the program application within 90 days of the date of receipt, and will request any additional information from the applicant that may be required. Additionally, the Board will conduct a site visit to determine if the applicant meets any applicable standards, and may grant interim approval to the program. The Board may withdraw its approval if it is determined that the program is non-compliant with any applicable rules and regulations.⁶²

There are currently 142 active nurse aide training programs in the state of Colorado. In fiscal years 13-14 through 18-19, the Board received nine complaints regarding six Board-approved programs, and one program which was not approved by the Board. Final agency actions related to these complaints included five dismissals, one cease-and-desist order with a referral to local law enforcement, and two program closures.

According to the Division, the nature of the complaints against nurse aide training facilities are typically associated with a violation of Board rules, including:

- Violating rules regarding finances,
- Violating required classroom hours,
- Violating clinical supervision provisions,
- Not adhering to posted learning opportunities,
- Using unqualified instructors, and
- Not complying with Board requests.

Table 4 demonstrates the total number of nurse aide training program inspections performed in fiscal years 13-14 through fiscal year 17-18.

Table 4
Nurse Aide Training Program Inspections Performed

Fiscal Year	Total
13-14	55
14-15	79
15-16	60
16-17	72
17-18	81

⁶¹ 3 CCR 716-1-11-3.1, Colorado State Board of Nursing Rules and Regulations Board Rules.

⁶² 3 CCR 716-1-11-3.2, 3.3, and 3.4, Colorado State Board of Nursing Rules and Regulations Board Rules.

The table indicates that fiscal year 14-15, fiscal year 16-17, and fiscal year 17-18 all saw increases in the total inspections performed. No readily apparent explanation is available regarding the increase in inspections. Initial inspections are performed when a new facility is opened, and programs continue to be inspected on a random basis or if a complaint is received.

Medication Aide Training Programs

In addition, the Board is responsible for approving medication aide training programs. In order to receive approval to provide medication aide training, any institution, facility, agency, or individual must submit a written application, designate a program director, and may make any necessary inquiries to the Board regarding program approval.⁶³

The Board will review and notify applicants within 90 days of the date of the receipt of application and may conduct a site visit to determine if all applicable standards have been met. The Board may also grant interim approval based upon a demonstration of compliance following the site visit. If the applicant is not approved for interim approval, the Board will provide the program director with a written description of any non-compliance that was observed during the site visit.⁶⁴

There are currently eight active medication aide training programs in Colorado. In fiscal years 13-14 through 18-19, the Board received no complaints regarding any of these programs.

Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

In Colorado, nurse aide examinations are administered by Pearson Vue as a part of the National Nurse Aide Assessment Program (NNAAP).⁶⁵ The NNAAP is an examination program that was developed by the National Council of State Boards of Nursing (NCSBN) in order to comply with both federal and state laws and regulations regarding nurse aide examination requirements. The test includes both written or oral examination and skills competency evaluation portions.

⁶³ 3 CCR 716-1-XII-3.1, Colorado State Board of Nursing Rules and Regulations Board Rules.

⁶⁴ 3 CCR 716-1-XII-3.2, Colorado State Board of Nursing Rules and Regulations Board Rules.

⁶⁵ *Pearson Vue*, Colorado Nurse Aide Candidate Handbook (2019), p.1.

The written examination consists of 70 multiple-choice questions written in English. However, the written examination is also offered in an oral format, including oral testing options in both English and Spanish.

The oral examination consists of 60 multiple-choice questions, with an additional 10 multiple-choice reading comprehension questions that must be completed using an MP3 player and headphones. The MP3 player provides an audio version of the test including both instructions and test items (audio is also spoken in Spanish for the Spanish oral examination), and students are asked to follow along in their test booklets, which are also printed in Spanish for the Spanish oral examination.⁶⁶

Both the written and oral examinations include testing in the following subject matter areas:

- Physical care skills,
- Psychosocial care skills, and
- The role of the nurse aide.

Both the written and oral examinations utilize a test booklet and an answer sheet, and candidates are allowed two hours to complete both examination types.⁶⁷

The competency skills evaluation portion of the examination consists of the performance of five skills to be performed by the nurse aide that are randomly selected from a set of skills that are expected to be performed by nurse aides in their work. All five skills must be performed correctly in order to pass the practical skills examination.⁶⁸

Skills testing includes five skills to be performed by the candidate from the following list of possible skills:⁶⁹

- Hand hygiene (hand washing),
- The application of one knee-high elastic stocking,
- Providing assistance to ambulate using a transfer belt,
- Assisting with the use of a bedpan,
- Cleaning of upper or lower dentures,
- Counting and recording radial pulse,
- Counting and recording respirations,
- Donning and removing gown and gloves,
- Dressing the client with a weak right arm,
- Feeding a client that cannot feed themselves,
- Giving a modified bed bath,

⁶⁶ Pearson Vue, Colorado Nurse Aide Candidate Handbook (2019), p.14.

⁶⁷ Pearson Vue, Colorado Nurse Aide Candidate Handbook (2019), p.14.

⁶⁸ Pearson Vue, Colorado Nurse Aide Candidate Handbook, (2019), p. 2.

⁶⁹ Pearson Vue, Colorado Nurse Aide Candidate Handbook, (2019), p. 26 - 39.

- Measuring and recording electronic blood pressure,
- Measuring and recording urinary output,
- Measuring and recording the weight of an ambulatory client,
- Performing a modified passive range of motion for one knee and one ankle,
- Performing modified passive range of motion for one shoulder,
- Positioning the client on their side,
- Providing catheter care for a female,
- Providing foot care on one foot,
- Providing mouth care,
- Providing perineal care for female, and
- Transferring from bed to wheelchair using a transfer belt.

Table 5 provides the cost of the examination sections ranging between \$50 and \$135.⁷⁰

**Table 5
Examination Costs**

Examination Type	Total Fee
Written and Skills combined	\$135
Oral-English and Skills combined	\$135
Oral-Spanish and Skills combined	\$135
Written only	\$50
Oral-English only	\$50
Oral-Spanish only	\$50
Skills only	\$85

There are multiple testing locations available across the Front Range of Colorado, and several available in more rural areas such as Burlington, Cortez, Delta, Grand Junction, Steamboat Springs, La Junta and Pueblo.⁷¹

Table 6 provides data for nurse aide applicants seeking certification in Colorado regarding the number of written and practical examinations administered per calendar year, as well as the pass rate per examination section type.

⁷⁰ Pearson Vue, Colorado Nurse Aide Exam Information, (2019), p. 7.

⁷¹ Pearson Vue. *Colorado NNAAP Regional Test Sites*. Retrieved May 31, 2019, from <https://home.pearsonvue.com/getattachment/e34253ba-5bdb-44fe-b2d3-40d22e2314da/Colorado%20NNAAP%20Regional%20Test%20Sites%20and%20Test%20Schedules%20-070617.aspx>

Table 6
Written and Competency Examination Pass Rate Information

Calendar Year	Number of Written Examinations Given	Pass Rate	Number of Skills Competency Evaluation Examinations Given	Pass Rate
2013	6,544	93%	7,210	78%
2014	5,832	94%	7,037	70%
2015	6,036	94%	7,205	74%
2016	5,634	94%	6,477	78%
2017	6,021	94%	7,309	72%

It is notable that in the calendar years presented, candidates had significantly higher pass rates on the written portion of the examination than on the practical portion of the examination, with a 94 percent average pass rate the written examination, and a 74 percent pass rate on the practical skills competency evaluation section. According to Division staff, during this same five-year period, the average pass rate was 89 percent (written) and 73 percent (skills) on each portion of the competency evaluation across 25 jurisdictions that utilize the NNAAP competency evaluation examination.

Table 7 provides Colorado applicants' pass rates for both English and Spanish oral written examinations. Further, the test vendor only offers the Spanish language version of the examination as an oral administration.

Table 7
Oral Examination Pass Rate Information

Fiscal Year	Oral Spanish Examinations Given	Pass Rate	Oral English Examinations Given	Pass Rate
13-14	79	67%	111	62%
14-15	86	63%	95	47%
15-16	Not available	Not available	Not available	Not available
16-17	81	60%	81	73%
17-18	74	62%	110	75%

Due to changes in reporting, data were unavailable for fiscal year 15-16. Over the four years of available data, candidates taking the oral examination in English had an average pass rate of approximately 64 percent, while candidates taking the oral examination in Spanish had an average pass rate of 63 percent.

While a direct comparison of Tables 6 and 7 cannot be made given the low number of oral examinations administered, it should be noted that candidates who took the written examination had an average pass rate of approximately 94 percent, which is approximately 30 percent higher than candidates completing the oral examination in English, and approximately 31 percent higher than candidates completing the oral examination in Spanish.

The Medication Aide Authority (MAA) credential also requires passing an examination. Table 8 provides the number of MAA examinations administered and the pass rate for fiscal years 13-14 through 17-18.

Table 8
Medication Aide Authority Pass Rate Information

Fiscal Year	MAA Examinations Given	Pass Rate
13-14	17	47%
14-15	46	63%
15-16	37	59%
16-17	17	53%
17-18	43	74%

During fiscal years 13-14 through 17-18, the average number of examinations given was 32, with an average pass rate of approximately 59 percent.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Although COPRRR was able to review detailed data related to a limited number of files during this review, COPRRR was unable to review complete complaint files because the Director of the Division (Director) did not provide the case files to COPRRR pursuant to section 12-38.1-114(13), C.R.S., and corresponding legal advice from the Office of the Attorney General.

COPRRR relies on access to complaint files to gain a better understanding of the actual harm related to the practice under review, which informs recommendations for changes to the Act and to the administration of the program. Moreover, COPRRR also relies on these files to determine whether final dispositions of complaints are in the public interest or self-serving to the profession.

The Advisory Committee works on behalf of the Board to review complaints filed against individual nurse aides. Table 9 provides data for each fiscal year from fiscal year 13-14 through fiscal year 17-18 regarding the total number of complaints received per year.

**Table 9
Complaint Information**

Fiscal Year	Total
13-14	222
14-15	246
15-16	219
16-17	442
17-18	568

This table demonstrates that complaints against nurse aides more than doubled in fiscal years 16-17 and 17-18 from previous years. This increase is due, in part, to the change in renewal cycle dates in fiscal years 15-16 and 16-17 which required certificants to renew their registrations two years in a row; this led to additional complaints as some certificates were not renewed on time. Additionally, the Division changed its processes during the years reviewed to require complaint files to be created if a certificant answered “yes” to any of the mandatory disclosures on both initial and renewal applications.

Table 10 displays complaints received from fiscal year 13-14 through fiscal year 17-18 by complaint type. Complaint processing may vary based upon the option selected by the complainant on the original complaint form. The totals in Table 10 do not match those in Table 9 because a single complaint may contain multiple allegations.

**Table 10
Nature of Complaints**

Complaint Type	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Procured or attempted to procure a license through fraud or deceit.	7	7	2	4	4
Convicted of a felony or has had a court accept a plea of guilty to a felony.	18	12	9	12	15
Certification suspended or revoked in any jurisdiction.	0	0	0	0	5
Violated any provision of the Act or has knowingly permitted any person to violate the Act.	1	5	2	4	16
Has violated any order from the Board.	14	7	9	11	18
Verbally or physically abused a person under their care.	59	69	51	61	12
Habitual intemperance or excessively uses or abuses any habit-forming drug or any controlled substance, or other drugs having similar effects, or is diverting controlled substances.	12	22	17	21	22
Misused any drug or controlled substance.	8	11	3	29	17
Has a physical or mental disability that renders him/her unsafe to practice.	5	2	1	0	17
Violated the confidentiality of information related to any patient.	0	11	0	0	0
Misappropriated patient or facility property.	7	11	16	9	9
Engaged in any conduct that would constitute a crime related to the practice of a nurse aide.	45	56	27	57	59
Neglected a person under their care.	51	86	91	143	103

Complaint Type	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Acted in a manner inconsistent with the health or safety of persons under his or her care.	112	106	134	158	172
Practiced as a medication aide in a manner that does not meet generally accepted standards.	0	0	0	7	6
Violated any order or rule pertaining to the practice as a medication aide.	0	0	1	0	0
Practiced in a medical facility except as provided in the Act.	38	92	55	95	202
Practiced during a period where their certification was expired or suspended.	3	0	0	2	1
Sold or fraudulently obtained a certification or has abetted therein.	4	3	2	0	0
Failed to respond in a factual and timely manner to a complaint.	12	4	0	16	41
Failed to report a criminal conviction.	12	5	5	22	3
Total	408	509	425	651	722

These data demonstrate that the most frequent complaint types in the years reviewed are practicing in a medical facility except as specified in the Act (482 total complaints), neglected a person under the certificant’s care (474 total complaints), acting in a manner inconsistent with the health or safety of persons under his or her care (474 total complaints), and verbally or physically abused a person under the certificant’s care (252 total complaints).

Final Agency Actions

Table 11 illustrates the final agency actions taken by the Board as a result of complaints filed against nurse aides. The “other” category listed in the table includes cease and desist orders, citations, and injunctions.

Table 11
Final Agency Actions

Type of Action	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Revocations	13	27	27	37	51
Suspensions	6	1	0	3	0
Revocation/Suspension held in abeyance/stayed/stayed suspended	0	0	0	0	0
Stipulations	0	0	0	0	1
Letters of Admonition	74	43	44	67	67
Other	3	2	1	3	10
Total Disciplinary Actions	96	73	72	110	129
Dismissals	38	39	38	108	160
Letters of Concern	42	80	45	231	209
Total Dismissals	80	119	83	339	369

According to Division staff, the “other” final agency actions reflected in the table increased significantly in fiscal year 17-18 due to a change in processing time of cease and desist orders which now has a quicker turnaround time in the event that an individual is practicing without a certificate. Revocations, letters of admonition and letters of concern also increased in fiscal years 16-17 and 17-18. It should also be noted that the Board has no fining authority relating to nurse aides.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Section 12-38.1-111(1)(b), C.R.S., provides the Board with the authority to suspend, revoke, or deny the certification of any nurse aide or medication aide or issue a letter of admonition on the basis of a felony conviction, or the acceptance by a court of a plea of guilty or *nolo contendere* to a felony.

Table 12 displays the total number of collateral consequences for fiscal years 13-14 through 17-18. The “other” category displayed includes interim cessation of practice agreements.

Table 12
Collateral Consequences

Nature of Consequence	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Denials	0	1	0	3	3
Suspensions (only Summary)	3	2	1	7	13
Revocations	9	19	22	21	30
Other	0	0	0	2	2
Total	12	22	23	33	48

These data demonstrate that the total number of sanctions has steadily increased each year from fiscal year 13-14, with the most significant increase in revocations. During fiscal years 13-14 through 17-18, revocations were based on felony convictions such as causing bodily injury to an at risk adult, felony drug possession, neglect of an at-risk adult, theft, and sexual assault.

Additionally, suspension disqualifications were based on felony convictions of sexual assault, diversion, drug sales, illicit drug use, conspiracy with a terrorist organization, and child abuse/neglect.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the Nurse Aide Practice Act for seven years, until 2027.

Nurse aides provide basic health-care services for vulnerable patients in hospitals, long-term care, and in-home care settings. Nurse aides typically assist patients with a variety of basic health care and daily tasks, and may also assist patients with tasks that involve very specific training in order to ensure safety, such as the operation of a mechanical hoist to transfer a patient. Nurse aides may also receive additional training as medication aides, and may administer medications to patients. If a nurse aide or medication aide provided improper care to a patient—and in some instances by *not* providing critical care—it could lead to significant harm, including permanent damage.

The Nurse Aide Advisory Committee (Advisory Committee) works under the instruction of the State Board of Nursing (Board) to protect consumers from these types of harm through educational and certification requirements to ensure that nurse aides are properly trained and competent. The Advisory Committee also reviews and investigates complaints, and may discipline certificants for any violation of the Nurse Aide Practice Act (Act), up to and including certificate revocation for severe violations.

The first sunset criterion asks if regulation is necessary to protect the public health, safety and welfare. The Board is comprised of both public and professional members, and with the assistance of the Advisory Committee, provides effective regulatory oversight that protects the public interest through the administration of the Act.

The seventh sunset criterion asks whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

Although the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) was able to review detailed data related to a limited number of files during this review, COPRRR was unable to review complete complaint files because the Director of the Division (Director) did not provide the case files to COPRRR pursuant to section 12-38.1-114(13), C.R.S., and corresponding legal advice from the Office of the Attorney General.

COPRRR relies on access to complaint files to gain a better understanding of the actual harm related to the practice under review, which informs recommendations for changes to the Act and to the administration of the program. Moreover, COPRRR also relies on these files to determine whether final dispositions of complaints are in the public interest or self-serving to the profession.

Additionally, Recommendation 2 of this sunset report advocates for the consolidation of the Act with the Nurse Practice Act. Although this consolidation is not expected to create substantive changes, it would be beneficial to set the next sunset review of the Act within a shorter timeframe to evaluate whether any further statutory adjustments may be needed.

Therefore, due to the reduced access to complaint files and the recommendation for consolidation of the two practice acts, the General Assembly should continue the program for seven years, until 2027.

Recommendation 2 - Combine the Act with the Nurse Practice Act.

In 1989, the Colorado General Assembly established the nurse aide certification program with the enactment of the Act. The Act placed administration of the certification program under the authority of the Board, which delegates many of its regulatory duties to the Advisory Committee.

Combining the two licensing acts would allow the programs to be more fully integrated. The Division of Professions and Occupations (Division) would need to manage only one licensing act, and the sections in the separate licensing acts that are the same could be combined. However, in instances where the Nurse Practice Act and the Act slightly vary in language on a procedural issue, the necessary language changes should default to the Nurse Practice Act. Throughout the course of this sunset review, multiple issues have been identified that could easily be remedied by allowing the Nurse Practice Act to be the prevailing language utilized in instances where small language changes may be necessary to fully integrate the two acts.

Additionally, the sections that are different could be maintained in separate parts of the new act. This would create a more efficient rulemaking process for the various license types. When the rules are changed that relate to all license types, it would only require one stakeholder process and one rulemaking hearing. Rulemaking can consume a significant amount of administrative and legal resources, so combining the two acts would help to streamline the regulation of nurses and nurse aides.

Although nurses and nurse aides have different scopes of practice and different qualifications, they both provide medical support to patients in a variety of settings. Currently, many other practice acts have combined similar professions into one act. For example, the Medical Practice Act regulates physicians, physician assistants, and anesthesiologist assistants. Further, the Dental Practice Act regulates dentists and

dental hygienists, and the Physical Therapy Practice Act regulates physical therapists and physical therapy assistants.

The third sunset criterion asks whether the agency operates in the public interest, and whether its operation is impeded or enhanced by existing statutes. By integrating the two acts, additional procedural efficiencies would occur for both the Division and the Board by streamlining statutory provisions and simplifying rulemaking hearings, which will allow for further public transparency and participation, thus, further protecting public interests.

Therefore, the General Assembly should combine the Act with the Nurse Practice Act.

Recommendation 3 - Amend the grounds for discipline regarding the excessive use of alcohol or controlled substances.

Pursuant to section 12-38.1-111(1)(i), Colorado Revised Statutes (C.R.S.), a nurse aide may be disciplined upon a finding that the certificant:

Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or excessively uses any habit-forming drug or any controlled substance, as defined in section 18-18-102(5)...

This provision should be amended to instead prohibit the habitual or excessive use or abuse of alcohol or controlled substances, and references to “alcohol use disorder” and “substance use disorder” should be repealed.

In *Robinson v. California*, 370 U.S. 660 (1962), the U.S. Supreme Court held that narcotic addiction is an illness and that any state law that seeks to punish a person because of an illness violates the Fourteenth Amendment. Although this case involved a criminal prohibition, it may be considered persuasive in the administrative context.

Furthermore, in *Colorado State Board of Nursing v. Crickenberger*, 757 P.2d 1167 (Colo. App. 1988), the Colorado Court of Appeals addressed a provision in the Nurse Practice Act substantially similar to the one at issue here. In vacating the Board’s disciplinary action, the court held that the plain language of the statute requires addiction at the time of hearing.

These two cases, taken together, suggest that disciplinary action based on addiction is not the best way to discipline practitioners who abuse alcohol or controlled substances.

In *Colorado State Board of Medical Examiners v. Davis*, 893 P.2d 1365 (Colo. App. 1995), the Colorado Court of Appeals held that disciplinary action based on excessive

use of alcohol or a controlled substance does not require current addiction or use of alcohol or controlled substances at the time of the disciplinary hearing.

The second sunset criterion asks if regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest. Since it may be unconstitutional to discipline a practitioner based on addiction to controlled substances or alcohol and since “excessive use” does not require current addiction or use at the time of the disciplinary hearing, the current language should be amended to remove references regarding drug or alcohol use disorders.

Therefore, the General Assembly should repeal the prohibition against an alcohol or substance use disorder in the grounds for discipline of the Act.

Recommendation 4 - Resolve the inconsistency between sections 12-38.1-103(5)(b) and 12-38.1-115(3), C.R.S., to indicate that a two-year waiting period is required following suspension, revocation, or surrender of a nurse aide certification before a certificant can reapply.

Two separate sections within the Act discuss a required waiting period prior to reapplication in the event of a suspension, revocation, or surrender of a nurse aide certification.

Section 12-38.1-103(5)(b), C.R.S., states,

No nurse aide certificate holder who has had a certificate revoked may apply for recertification before a one-year waiting period after such revocation.

Section 12-38.1-115(3), C.R.S., states,

The Board shall not issue a certificate of a former holder of a certificate whose certificate has been denied, revoked, or surrendered unless a two-year waiting period has passed since the date of the surrender and the applicant has met the requirements of the [Act]...

The first section indicates that an applicant must wait one year before reapplying in instances where revocation has occurred. However, the second section indicates that no reinstatement of a certificate can occur until a two-year waiting period has passed. Therefore, it may be deduced that a certificant can begin applying one year following the revocation, but will not be considered by the Board for another year.

It is standard among many practice acts to require a two-year waiting period prior to the issuance of a certificate in the event of a denial, revocation, or surrender.

Further, given the seriousness of the types of violations that often lead to revocation, the longer of the two waiting periods may be appropriate in order for the practitioner to correct behaviors that led to the initial action, which would better protect the public welfare. Therefore, section 12-38.1-103(5)(b), C.R.S., should be changed to reflect a two-year waiting period, to be consistent with section 12-38.1-115(3), C.R.S.

The third sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes. The sections above provide an apparent conflict, and may confuse practitioners and the general public regarding the rules for reapplying for a nurse aide certification. In order to streamline these statutory provisions and to protect the public welfare, the General Assembly should amend section 12-38.1-103(5)(b), C.R.S., to reflect that a two-year waiting period is required.

Recommendation 5 - Repeal the requirement that disciplinary communication be sent by certified mail.

Section 12-38.1-114(4), C.R.S., requires the Board to send communication regarding disciplinary actions via certified mail. While this delivery method allows Division staff to verify that a delivery attempt was made, it does not guarantee that the addressee actually received the notice. The addressee can decline to sign for or pick up the notice, and then claim he or she never received it. This defeats the purpose of sending a notice by certified mail. Additionally, sending a notice by certified mail costs more than sending one by first-class mail or email.

The third sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes. Repealing this requirement would save money and streamline the administrative communication process without compromising the Board's enforcement authority.

Therefore, the General Assembly should repeal the requirement that notices of disciplinary action be sent by certified mail.

Recommendation 6 - Modify section 12-38.1-117(1)(d), C.R.S., to limit the ability of non-certified individuals to practice for up to four months as a part of an approved training program prior to the completion of certification by examination.

Section 12-38.1-117(1)(d), C.R.S., states that the requirements of the Act do not apply to:

A person who is directly employed by a medical facility while acting within the scope and course of such employment for the first four consecutive months of such person's employment at such medical facility if such person is pursuing initial certification as a nurse aide.

Federal requirements⁷² state that, among other things:

A facility must not use any individual who has worked less than four months as a nurse aide in that facility unless the individual:

Is a full-time employee in a state-approved training and competency evaluation program;

Has demonstrated competence through satisfactory participation in a state-approved nurse aide training and competency evaluation program or competency evaluation program;

Has been deemed or determined to satisfy the requirement of training and competency evaluation approved by the state, or has successfully completed a training and competency evaluation program before July 1, 1989.

The allowance for an individual to work for four months in a facility without a nurse aide certification is a federal requirement, and the Act allows for this four month exclusion from certification. However, the federal requirement also specifies that an individual utilizing this exclusion must also have completed or be in the process of completing a state-approved nurse aide training and competency program. Since the Act does not mention the requirement for participation in an approved training and competency program while working for the initial four months in a nursing facility, but rather merely requires the person to be pursuing initial certification, there may be instances where an individual who has not received proper training may potentially be eligible within the requirements of the Act to work for four months at a nursing facility. Since nursing facilities often serve vulnerable populations, allowing an individual to perform care without proper training could present significant harm to consumers.

The third, eighth and tenth sunset criteria ask

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes;

Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel; and

Whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

By modifying the Act to include the requirement of participation or completion of an approved training and competency program in order to utilize the four-month

⁷² 42 C.F.R. § 483.35(d)(3).

exclusion, the public interests will be more effectively preserved and protected from harm by ensuring that all nurse aides can meet minimum competencies.

Therefore, the General Assembly should modify section 12-38.1-117(1)(d), C.R.S., to limit the ability of non-certified individuals to practice for up to four months as a part of an approved training program prior to certification. Additionally, the statutory modification should be limited so that this exclusion does not apply to those seeking certification by endorsement, which would mirror the intent of federal regulations.

Administrative Recommendation 1 - The Board should convene a stakeholder process regarding the nurse aide certification examination.

Applicants who seek nurse aide certification by competency evaluation are required to pass both written or oral as well as competency skills evaluation sections of the nurse aide certification examination, which is required in both federal law and state statutes.

Throughout the course of this sunset review, stakeholders voiced concerns related to both the competency skills evaluation section of the examination, as well as the Spanish oral version of the written examination. For example, some of the concerns expressed related to the current format utilized for the competency skills evaluation examination, the relevance of some of the types of specific skills tested, and the technology utilized in the Spanish-speaking oral examination.

As a result, COPRRR created and administered a survey of nurse aide educators throughout the state to further clarify any issues related to the examination. The Division supplied COPRRR with all of the Colorado nurse aide educator email addresses on record, and the survey invitation was sent to all 107 nurse aide educators. Of those, 99 emails were successfully delivered, and 32 educators elected to participate in the survey, which is approximately one-third of the total population. Survey results can be found in Appendix A. The results of the survey indicate some areas of the certification examination that may warrant further discussion.

For example, participants of the survey were asked if the format of the competency skills examination is sufficient to demonstrate competency, and approximately 56 percent of survey respondents agreed that the examination format was sufficient to demonstrate competency, while only approximately 34 percent disagreed.

Stakeholders also indicated that they believe that not all of the skills tested reflected current best practices for Colorado's nurse aides. For example, when asked if the competency skills examination effectively evaluates skills critical to the profession, approximately 56 percent of survey respondents agreed, while approximately 41 percent disagreed. Further, survey participants were asked if the skills tested within the competency skills examination reflect current best practices and procedures for nurse aides in Colorado. Of the participant responses, approximately 44 percent agreed, while approximately 38 percent disagreed.

Lastly, stakeholders mentioned that the technology utilized in the Spanish-speaking oral examination may negatively impact pass rates of applicants. Survey participants were asked if the technology utilized by the student for completion of the Spanish-speaking oral examination allows the student to sufficiently demonstrate competency. Approximately 25 percent of the respondents indicated that they provide services to Spanish speakers, and only one agreed that the technology utilized is sufficient to demonstrate competency.

Further feedback was also received from stakeholders throughout the course of the sunset review process that the format utilized in the current competency testing method, which requires applicants to perform skills in front of an unfamiliar proctor, may increase test anxiety and reduce the overall pass rates for the skills competency examination. It was also mentioned that individual proctors may have varying approaches to scoring, which could lead some applicants to be tested more stringently than others.

The third and the eighth sunset criterion ask

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances.

Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether the entry requirements encourage affirmative action.

It is critical for a nurse aide to properly perform care with patients, and the demonstration of required skills through examination is an important component from a public safety perspective to ensure that nurse aides are sufficiently skilled in any task required as a part of their scope of practice. Further, many of the processes regarding the examination of nurse aide applicants are federally required. However, if any procedural elements of the current examination processes are possibly creating a barrier to entry into the profession, the accessibility of nurse aides may be further diminished, which could also affect consumer choice.

During the course of this sunset review, multiple stakeholders expressed concern relating to the current examination process, which is also reflected in the aforementioned survey results. Given the complexity of this issue, it would be appropriate for the Board to engage stakeholders in a public process in order to determine if any additional changes to the examination processes are necessary, rather than to make any specific recommendations within the sunset review.

Through the use of a public process, any interested participant could express their concerns in an open setting, which would help to ensure that the public interests are being considered.

Therefore, the Board should convene a stakeholder process to ensure that nurse aides are being required to demonstrate critical skills while not unintentionally inhibiting entry into the profession.

Appendix A -Survey

In August 2019, the Colorado Office of Policy, Research and Regulatory Reform conducted a survey, and a link to the survey was sent to 107 nurse aide educators throughout Colorado. Of these, an estimated 99 were successfully delivered and 32 individuals responded. This represents a response rate of approximately 32 percent.

1. The competency skills examination segment required for Colorado nurse aide certification effectively evaluates skills critical to the profession.

Strongly agree	6.3%
Agree	50.0%
Neither agree nor disagree	3.1%
Disagree	31.3%
Strongly disagree	9.4%

2. The skills tested within the competency examination segment reflect current best practices and procedures for nurse aides in Colorado.

Strongly agree	12.5%
Agree	31.3%
Neither agree nor disagree	18.8%
Disagree	18.8%
Strongly disagree	18.8%

3. The time allocated for the completion of the competency skills examination segment is sufficient to demonstrate competency.

Strongly agree	9.4%
Agree	56.3%
Neither agree nor disagree	9.4%
Disagree	21.9%
Strongly disagree	3.1%

4. The format of the competency skills examination segment is sufficient to demonstrate skills competency.

Strongly agree	9.4%
Agree	46.9%
Neither agree nor disagree	9.4%
Disagree	18.8%
Strongly disagree	15.6%

5. If a student of a CNA program fails the competency examination segment, the student will retake the examination.

Very frequently	21.9%
Frequently	43.8%
Occasionally	28.1%
Rarely	6.3%
Very Rarely	0.0%

6. In your experience as a trainer, what is the average length of time between the initial examination attempt and the retake attempt if the student did not initially pass the competency skills portion of the exam?

Less than one month	9.4%
One to three months	59.4%
Three to six months	15.6%
Six months to one year	6.3%
One year or greater	0.0%
Most students do not retake the exam	0.0%
Most students do not NEED to retake the exam	0.0%
Don't know/unsure	9.4%

7. In your experience as a trainer, please estimate of the number of students in your program who have passed the competency skills examination segment within the past year.

85% to 100%	43.8%
70% to 84%	21.9%
55% to 69%	18.8%
40% to 54%	15.6%
Less than 40%	0.0%

8. Does your school/facility provide CNA training to Spanish speakers?

Yes	25.0%
No	75.0%

9. The time allocated for the Spanish-speaking exam is sufficient to demonstrate competency.

Strongly agree	0.0%
Agree	9.4%
Neither agree nor disagree	21.9%
Disagree	12.5%
Strongly disagree	0.0%
Not applicable	56.3%

10. The technology utilized by the student for completion of the Spanish-speaking examination allows the student to sufficiently demonstrate competency.

Strongly agree	0.0%
Agree	3.1%
Neither agree nor disagree	15.6%
Disagree	9.4%
Strongly disagree	18.8%
Not applicable	53.1%

11. Please estimate the percentage of Spanish-speaking students participating in your training program who passed the examination over the last calendar year.

85% to 100%	6.3%
70% to 84%	6.3%
55% to 69%	6.3%
40% to 54%	9.4%
Less than 40%	18.8%
Not applicable	53.1%

Appendix B - Title 12 Recodification Table

This table shows provisions of Article 38.1 of Title 12 of the Colorado Revised Statutes that were relocated as a result of the passage of House Bill 19-1172, concerning an organizational recodification of Title 12.

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-38.1-101	12-260-101	12-38.1-111(1)(b)	12-260-114(1)(b)
12-38.1-102 IP	12-260-103 IP	12-38.1-111(1)(d)	12-260-114(1)(c)
12-38.1-102(1), (1)(a)	12-260-103(1)	12-38.1-111(1)(e)	12-260-114(1)(d)
12-38.1-102(2)	12-260-103(2)	12-38.1-111(1)(g)	12-260-114(1)(e)
12-38.1-102(3)	12-260-103(3)	12-38.1-111(1)(h)	12-260-114(1)(f)
12-38.1-102(3.5)	12-260-103(4)	12-38.1-111(1)(i)	12-260-114(1)(g)
12-38.1-102(4)	12-260-103(5)	12-38.1-111(1)(j)	12-260-114(1)(h)
12-38.1-102(4.5)	12-260-103(6)	12-38.1-111(1)(k)	12-260-114(1)(i)
12-38.1-102(5)	12-260-103(7)	12-38.1-111(1)(l)	12-260-114(1)(j)
12-38.1-103	12-260-104	12-38.1-111(1)(m)	12-260-114(1)(k)
12-38.1-103(1)	12-260-104(1)	12-38.1-111(1)(n)	12-260-114(1)(l)
12-38.1-103(2)	12-260-104(2)	12-38.1-111(1)(o)	12-260-114(1)(m)
12-38.1-103(3)	12-260-104(3)	12-38.1-111(1)(p)	12-260-114(1)(n)
12-38.1-103(4)	12-260-104(4)	12-38.1-111(1)(q)	12-260-114(1)(o)
12-38.1-103(5)(a)	12-260-104(5)(a)	12-38.1-111(1)(r)	12-260-114(1)(p)
12-38.1-103(5)(b)	12-260-104(5)(b)	12-38.1-111(1)(s)	12-260-114(1)(q)
12-38.1-103(6)	12-260-104(6)	12-38.1-111(1)(u)	12-260-114(1)(r)
12-38.1-104	12-260-105	12-38.1-111(1)(v)	12-260-114(1)(s)
12-38.1-104(1)	12-260-105(1)	12-38.1-111(1)(w)	12-260-114(1)(t)
12-38.1-104(2)(a)	12-260-105(2)(a)	12-38.1-111(1)(x)	12-260-114(1)(u)
12-38.1-104(2)(b)	12-260-105(2)(b)	12-38.1-111(2)	12-260-114(2)
12-38.1-105	12-260-106	12-38.1-111(4)	12-260-114(3)
12-38.1-105 IP(1)	12-260-106 IP(1)	12-38.1-112	12-260-115
12-38.1-105(1)(a)	12-260-106(1)(a)	12-38.1-112 IP(1)	12-260-115 IP(1)
12-38.1-105(1)(b)	12-260-106(1)(b)	12-38.1-112(1)(a)	12-260-115(1)(a)
12-38.1-106	12-260-107	12-38.1-112 IP(1)(b)	12-260-115 IP(1)(b)
12-38.1-106 IP(1)	12-260-107 IP(1)	12-38.1-112(1)(b)(I)	12-260-115(1)(b)(I)
12-38.1-106(1)(a)	12-260-107(1)(a)	12-38.1-112(1)(b)(II)	12-260-115(1)(b)(II)
12-38.1-106(1)(b)	12-260-107(1)(b)	12-38.1-112(1)(c)	12-260-115(1)(c)
12-38.1-106(1)(c)	12-260-107(1)(c)	12-38.1-112(1)(d)	12-260-115(1)(d)
12-38.1-106(1)(d)	12-260-107(1)(d)	12-38.1-112(1)(e)	12-260-115(1)(e)
12-38.1-107	12-260-108	12-38.1-113	12-260-116
12-38.1-107 IP(1)	12-260-108 IP(1)	12-38.1-113(1)	12-260-116(1)
12-38.1-107(1)(a)	12-260-108(1)(a)	12-38.1-113(2)(a)	12-260-116(2)(a)
12-38.1-107(1)(b)	12-260-108(1)(b)	12-38.1-113(2)(b)	12-260-116(2)(b)
12-38.1-107(1)(c)	12-260-108(1)(c)	12-38.1-113(3)	12-260-116(3)
12-38.1-107(1)(d)	12-260-108(1)(d)	12-38.1-113(4)	12-260-116(4)

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-38.1-107(1)(e)	12-260-108(1)(e)	12-38.1-113(5)	12-260-116(5)
12-38.1-107(2)	12-260-108(2)	12-38.1-114	12-260-117
12-38.1-108	12-260-109	12-38.1-114(1)	12-260-117(1)
12-38.1-108(1)	12-260-109(1)	12-38.1-114(2)	12-260-117(2)
12-38.1-108(2)	12-260-109(2)	12-38.1-114(3)	12-260-117(3)
12-38.1-108 IP(3)	12-260-109 IP(3)	12-38.1-114(4)	12-260-117(4)
12-38.1-108(3)(a)	12-260-109(3)(a)	12-38.1-114(5)(a)	12-260-117(5)
12-38.1-108(3)(b)	12-260-109(3)(b)	12-38.1-114(6)	Repealed
12-38.1-108(3)(c)	12-260-109(3)(c)	12-38.1-114(7)	12-260-117(6)
12-38.1-108(3)(d)	12-260-109(3)(d)	12-38.1-114(8)	12-260-117(7)
12-38.1-108(3)(e)	12-260-109(3)(e)	12-38.1-114(9)(a)	12-260-117(8)(a)
12-38.1-108 IP(4)	12-260-109 IP(4)	12-38.1-114(9)(b)	12-260-117(8)(b)
12-38.1-108(4)(a)	12-260-109(4)(a)	12-38.1-114(10)(a)	12-260-117(9)
12-38.1-108(4)(b)	12-260-109(4)(b)	12-38.1-114(10)(b)	Repealed
12-38.1-108(4)(c)	12-260-109(4)(c)	12-38.1-114(10.5)	12-260-117(10)
12-38.1-108(4)(d)	12-260-109(4)(d)	12-38.1-114(11)	Repealed
12-38.1-108(4)(e)	12-260-109(4)(e)	12-38.1-114(12)	12-260-117(11)
12-38.1-108(5)	12-260-109(5)	12-38.1-114(13)	12-260-117(12)
12-38.1-108(6)	12-260-109(6)	12-38.1-114(14) to (18)	12-260-117(13)
12-38.1-108.5	12-260-110	12-38.1-115	12-260-118
12-38.1-108.5 IP(1)	12-260-110 IP(1)	12-38.1-115(1)	12-260-118(1)
12-38.1-108.5(1)(a)	12-260-110(1)(a)	12-38.1-115(2)	12-260-118(2)
12-38.1-108.5(1)(b)	12-260-110(1)(b)	12-38.1-115(3)	12-260-118(3)
12-38.1-108.5(1)(c)	12-260-110(1)(c)	12-38.1-115(4)	12-260-118(4)
12-38.1-108.5(2)	12-260-110(2)	12-38.1-116	12-260-119
12-38.1-108.5(3)	12-260-110(3)	12-38.1-117	12-260-120
12-38.1-108.5(4)	12-260-110(4)	12-38.1-117 IP(1)	12-260-120 IP(1)
12-38.1-109	12-260-111	12-38.1-117(1)(a)	12-260-120(1)(a)
12-38.1-110	12-260-112	12-38.1-117(1)(b)	12-260-120(1)(b)
12-38.1-110(1)	12-260-112	12-38.1-117(1)(c)	12-260-120(1)(c)
12-38.1-110.5	12-260-113	12-38.1-117(1)(d)	12-260-120(1)(d)
12-38.1-110.5(1)	12-260-113(1)	12-38.1-117(1)(e)	12-260-120(1)(e)
12-38.1-110.5(4)	12-260-113(2)	12-38.1-117(1)(f)	12-260-120(1)(f)
12-38.1-110.5(5)	12-260-113(3)	12-38.1-118	12-260-121
12-38.1-111	12-260-114	12-38.1-118(2)	12-260-121
12-38.1-111 IP(1)	12-260-114 IP(1)	12-38.1-119	12-260-122
12-38.1-111(1)(a)	12-260-114(1)(a)	12-38.1-120	12-260-123