



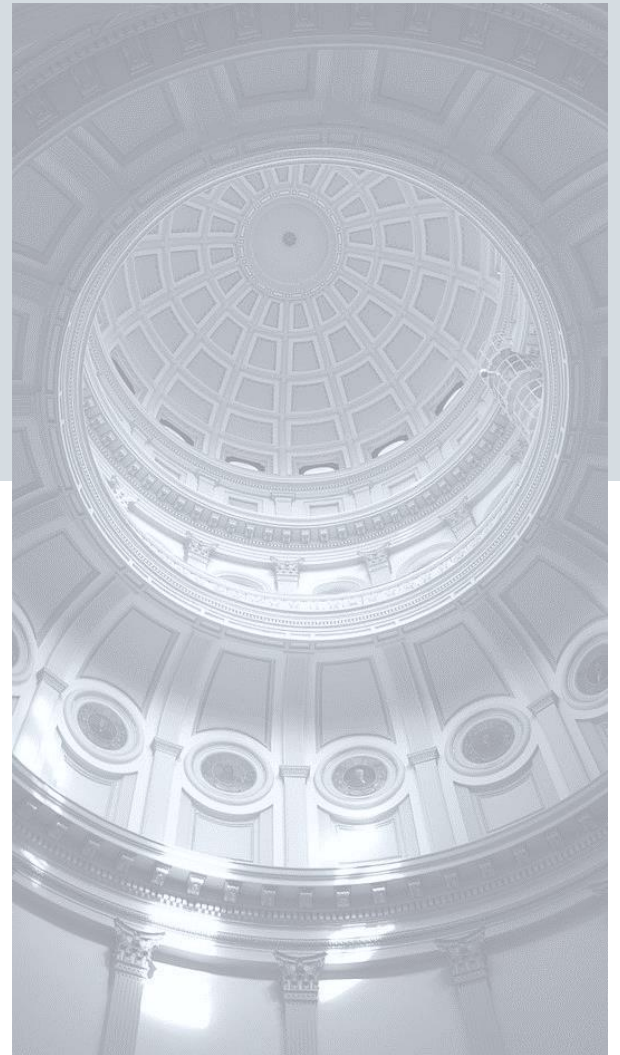
**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

# 2019 Sunset Review

Occupational Therapy Practice Act



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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 Occupational Therapy Practice Act. 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 40.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations 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

#### Occupational Therapy Practice Act

#### SUMMARY

##### ***What is regulated?***

Occupational therapists provide treatment to their patients through the development and improvement of skills needed for daily living and work environments. Occupational therapists often develop treatment plans for their patients, with specific goals and activities which are tailored to the patient in order to meet these goals. Additional equipment may also be recommended for use, including wheelchairs and eating aids, along with specific instructions for the appropriate use of any recommended equipment. Occupational therapy assistants provide a variety of supports including therapeutic activities, assisting patients with the use of specific equipment provided for modifications, tracking patient progress, and providing regular reports to occupational therapists.

##### ***Why is it regulated?***

Much of the work performed by occupational therapists involves working with vulnerable populations to provide evaluation and determination of recommended courses of treatment on a case-by-case basis where accurate assessment and treatment are critical in order to avoid causing harm to the patient. Therefore, it is necessary to regulate occupational therapists and occupational therapy assistants in order to protect the public interest and prevent consumer harm.

##### ***Who is regulated?***

In fiscal year 17-18, the Director of the Division of Professions and Occupations (Director and Division, respectively) located in the Department of Regulatory Agencies licensed 3,772 occupational therapists and 952 occupational therapy assistants.

##### ***How is it regulated?***

All occupational therapists and occupational therapy assistants must be licensed by the Director. In order to apply for a new license as an occupational therapist, each new applicant must submit a licensure application to the Director, pay any required fees, successfully complete any academic requirements including passing the required examination, and complete a minimum period of 24 weeks of fieldwork. In order to obtain an initial license as an occupational therapy assistant, each applicant must submit an application, pay all applicable fees, demonstrate successful completion of all academic requirements including passing the required examination, and complete a minimum period of 16 weeks of supervised fieldwork experience.

##### ***What does it cost?***

In fiscal year 17-18, total program expenditures were \$118,651, and there were 0.40 full-time equivalent employees dedicated to the program.

##### ***What disciplinary activity is there?***

In fiscal year 17-18, the Director issued one revocation, one stipulation, four letters of admonition, and other actions, in eight instances, including cease and desist orders, citations, and injunctions, for both occupational therapists and occupational therapy assistants combined.

## KEY RECOMMENDATIONS

### ***Continue the Occupational Therapy Practice Act for seven years, until 2027.***

Occupational therapists often work with vulnerable populations, and may also assist individuals who have suffered traumatic injuries through accidents or surgical procedures. If improper treatments or modifications were to be recommended, serious damage could be caused to patients in their work toward strength-building, healing, and recovery. The Director works to protect consumers from these types of harm through educational and licensure requirements to ensure that occupational therapists in Colorado are competent. In addition, the Director reviews complaints and can discipline a license for violations of the Occupational Therapy Practice Act (Act). Therefore, the Act should be continued, until 2027.

### ***Add to the grounds for discipline: 1) inadequate or falsified documentation of patient records and 2) insurance fraud or abuse.***

Since neither inadequate or falsified documentation or insurance fraud or abuse are specifically listed as violations in the Act, the Director may need to engage expert testimony in order to determine if inadequate or falsified documentation or insurance fraud or abuse would constitute standard of practice violations. Due to the need for expert testimony in these instances, these disciplinary processes may take more time and utilize more financial resources. Adding these proposed clarifications to the Act could streamline regulatory processes and use fewer financial resources, both of which would be in the public interest. Therefore, violations regarding inadequate or falsified documentation and insurance fraud or abuse should be added to the Act.

## METHODOLOGY

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

## MAJOR CONTACTS MADE DURING THIS REVIEW

American Occupational Therapy Association  
American Physical Therapy Association  
Colorado Hospital Association  
Colorado Medical Society  
Division of Professions and Occupations, Colorado Department of Regulatory Agencies  
National Board for Certification in Occupational Therapy  
Occupational Therapy Association of Colorado

### **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  
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[www.dora.colorado.gov/opr](http://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:<sup>1</sup>

- 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;

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<sup>1</sup> Criteria may be found at § 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.

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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.



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## 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.

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## 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](http://www.dora.colorado.gov/opr).

The functions of the Director of the Division of Professions and Occupations (Director and Division, respectively) as enumerated in Article 40.5 of Title 12, Colorado Revised Statutes (C.R.S.)<sup>2</sup>, 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 Director 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 Director. During this review, the Director 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.

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<sup>2</sup> House Bill 19-1172 re-codified §12-40.5-101, *et seq.*, C.R.S., and moved them to §12-270-101, *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 §12-40.5-101, *et seq.*, C.R.S. A comparison table can be found in Appendix A.

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## Methodology

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

## 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.

Occupational therapists provide treatment to their patients through the development and improvement of skills needed for daily living and work environments.<sup>3</sup> Occupational therapists often review the medical history of a patient, interview the patient to ascertain any questions or concerns, and frequently observe patients in their daily tasks to determine individual needs. A treatment plan is then developed for the patient, with specific goals and activities which are tailored to the patient in order to meet these goals. Additional equipment may also be recommended for use, including wheelchairs and eating aids, along with specific instructions for the appropriate use of any recommended equipment. Occupational therapists also track a patient's progress through regular evaluations, and provide billing and reporting information to other health-care providers.

Occupational therapists assist their clients with the use of adaptive equipment and help their patients perform daily tasks.<sup>4</sup> Some occupational therapists work in educational settings to assist children with disabilities in the participation of school-related activities, to modify classroom equipment, and to perform evaluations to determine a disabled child's abilities. Occupational therapists who assist elderly clients help to increase their patients' independence and activity levels, and may provide assessments of their environment and ability levels in order to make recommendations. Some therapists may also work with their patients to create more functional work environments. The occupational therapist may evaluate the work environment in order to determine if modifications to the workspace or work schedule are needed.

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<sup>3</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: Occupational Therapists*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/occupational-therapists.htm#tab-2>

<sup>4</sup> Bureau of Labor Statistics. *Occupation Outlook Handbook: Occupational Therapists*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/occupational-therapists.htm#tab-2>

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Occupational therapists often work with vulnerable populations and may provide treatment to individuals recovering from a stroke, individuals suffering from chronic conditions such as Parkinson's Disease or Multiple sclerosis, and may also assist individuals who have suffered traumatic injuries through accidents or surgical procedures. Much of the work performed by occupational therapists involves evaluations and the determination of recommended courses of treatment on a case-by-case basis where accurate assessment and treatment are critical in order to avoid causing harm to the patient. If improper treatments or modifications were to be recommended, serious damage could be caused to patients in their work toward strength-building, healing, and recovery.

Additionally, some occupational therapists may work in hospitals or mental health facilities and assist with mental illness, developmental disabilities, recovery from acute trauma, and may work as a part of a health team in tandem with doctors and nurses.

Occupational therapy assistants provide therapeutic activities to patients (i.e. stretching or other exercising), assist children who have developmental disabilities with a variety of activities, assist patients with the use of specific equipment provided for modifications, track patient progress, provide regular reports to occupational therapists, and provide encouragement to patients.<sup>5</sup>

Occupational therapy aides may assist with the setup of treatment areas, help with clerical tasks, clean equipment and treatment areas, assist patients with insurance and billing forms or questions, and provide patient transportation.

Both occupational therapy assistants and aides may work under the supervision of an occupational therapist.<sup>6</sup> However, occupational therapy assistants often provide therapy to patients, while occupational therapy aides offer a supportive role rather than directly providing therapy, and may also be supervised by occupational therapy assistants.

Most occupational therapists hold a master's degree in occupational therapy although some may also have a doctoral degree.<sup>7</sup> There are approximately 200 schools in the United States (including one school in Colorado<sup>8</sup>) that have programs which are accredited by the Accreditation Council for Occupational Therapy Education (ACOTE). Admission into these approved programs typically requires a bachelor's degree with coursework including physiology and biology, and may require volunteer work in an

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<sup>5</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: Occupational Therapy Assistants and Aides*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/occupational-therapy-assistants-and-aides.htm#tab-2>

<sup>6</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: Occupational Therapy Assistants and Aides*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/occupational-therapy-assistants-and-aides.htm>

<sup>7</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: Occupational Therapists*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/occupational-therapists.htm#tab-4>

<sup>8</sup> American Occupational Therapy Association. *OT Master's-Degree-Level Programs - Accredited*. Retrieved August 30, 2019, from <https://www.aota.org/Education-Careers/Find-School/AccreditEntryLevel/OTMasters.aspx>

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occupational therapy setting. Some schools may also offer a dual degree program in which the student can complete both a bachelor's degree and a master's degree within five years. All states require the licensing of occupational therapists, and all candidates for licensure are required to pass a national examination offered by the National Board for Certification in Occupational Therapy in order to be licensed. The completion of a degree from an accredited program is required to sit for the examination, in addition to the completion of any other fieldwork requirements.

Occupational therapy assistants are required to complete an associate's degree through an accredited program.<sup>9</sup> All states provide some regulation of occupational therapy assistants. As of 2017, there were approximately 200 accredited occupational therapy assistant programs in the U.S. (including three programs in Colorado<sup>10</sup>) that are accredited by ACOTE. Occupational therapy assistant programs are typically offered at technical schools and community colleges. These associate degree programs typically require coursework in biology, pediatric health, and psychology. Program participants are also typically required to complete at least 16 weeks of fieldwork training.

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.

As of May 2018, the Bureau of Labor Statistics reported that annual median wages in the top five industries for occupational therapists were: Nursing care facilities (\$90,570); home health care (\$87,570); physical, occupational, and speech therapy offices (\$86,060); private, state and local hospitals (\$84,550); and private, state, and local elementary and secondary schools (\$73,980).<sup>11</sup>

Within the same timeframe, the median annual wage for occupational therapy assistants was \$60,220. The top industries that employed occupational therapists in 2018 provided the following median annual wages: Nursing care facilities (\$65,930); home health care (\$65,330); physical, speech therapy, and occupational therapy offices (\$60,440); private, local, and state hospitals (\$55,680); and private, local, and state educational services (\$50,380).<sup>12</sup>

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<sup>9</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: Occupational Therapy Assistants and Aides*. Retrieved November 27, 2018, from <https://www.bls.gov/ooh/healthcare/occupational-therapy-assistants-and-aides.htm#tab-4>

<sup>10</sup> American Occupational Therapy Association. *OTA Associate-Degree-Level Programs-Accredited*. Retrieved August 30, 2019, from <https://www.aota.org/Education-Careers/Find-School/AccreditEntryLevel/OTAPrograms.aspx>

<sup>11</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: Occupational Therapists*. Retrieved September 17, 2019, from <https://www.bls.gov/ooh/healthcare/occupational-therapists.htm#tab-5>

<sup>12</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: Occupational Therapy Assistants and Aides*. Retrieved September 17, 2019, from <https://www.bls.gov/ooh/healthcare/occupational-therapy-assistants-and-aides.htm#tab-5>

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## 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.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR) conducted multiple sunrise reviews of occupational therapists and one of occupational therapy assistants in 1987, 1990, 1995, and 2006. The 2006 review determined that the instances of harm provided for the review related to the public by unregulated occupational therapists was due to fraudulent activity, and none of the harm demonstrated was due to incompetence. Therefore, COPRRR recommended against regulation of the profession. However, with the passage of Senate Bill 08-152, the Colorado General Assembly created a registration requirement in 2008 for occupational therapists.

The most recent sunset review in 2012 concluded that the Occupational Therapy Practice Act (Act) should be sunset, and the title protection provisions to the Consumer Protection Act be restored due to the lack of demonstrable instances of harm to consumers. However, the General Assembly amended the Act to increase the level of regulation from registration to licensure for occupational therapists, and as of June 1, 2014, each active registrant became an active licensee. The same bill created a licensing system for occupational therapy assistants, and title protections for both occupational therapists and occupational therapy assistants were added. A section was also added to address the supervision of occupational therapy assistants by occupational therapists, and additional disciplinary processes regarding letters of admonition were included.<sup>13</sup>

Finally, effective October 1, 2019, the Act was moved from section 12-40.5-101, *et seq.*, C.R.S., into section 12-270-101, *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 12-40.5-101, *et seq.*, C.R.S. A comparison table can be found in Appendix A.

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<sup>13</sup> Senate Bill 13-180.

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## 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.

Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in various contexts of everyday life activities that effect health, well-being, and quality of life.<sup>14</sup> Occupational therapy is defined as “the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings.”<sup>15</sup>

Only an individual licensed as an occupational therapist may use the protected titles, “occupational therapist licensed,” “licensed occupational therapist,” “occupational therapist,” “doctor of occupational therapy,” or the abbreviations, “O.T.,” “O.T.D.,” “O.T.R.,” “O.T./L.,” “O.T.D./L.,” or “O.T.R./L.,” or any other generally accepted terms to indicate that an individual is a licensed occupational therapist within the state of Colorado.<sup>16</sup>

Additionally, only an individual licensed as an occupational therapy assistant may use the protected titles, “occupational therapy assistant licensed” “licensed occupational therapy assistant” or use the abbreviations “O.T.A./L.” or “C.O.T.A./L.” or use any other terms that may indicate than an individual is a licensed occupational therapy assistant in Colorado.<sup>17</sup>

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<sup>14</sup> § 12-40.5-102(1)(b), C.R.S.

<sup>15</sup> § 12-40.5-103(9), C.R.S.

<sup>16</sup> § 12-40.5-104(1), C.R.S.

<sup>17</sup> § 12-40.5-104(2), C.R.S.

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## Licensure

On June 1, 2014, licensure became a requirement to practice occupational therapy or to serve as an occupational therapy assistant within the state.<sup>18</sup> Prior to that date, statewide registration was required for occupational therapists, and each active registration automatically became an active license on June 1, 2014, by operation of law.<sup>19</sup> All occupational therapy licenses were then set to expire on December 31 of even numbered years.<sup>20</sup>

In order to apply for a new license as an occupational therapist, an applicant must successfully complete the academic requirements of an occupational therapy program recognized by the United States Secretary of Education or another program approved by the Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies. Applicants must also successfully complete a minimum period of 24 weeks of fieldwork supervised by an approved educational program.<sup>21</sup>

Additionally, each new applicant must submit a licensure application to the Director, pay any required fees, and supply all requested supporting documentation.<sup>22</sup> The applicant must also pass the required examination and meet any additional requirements within one year of the application receipt date. If all components of the application are not completed within the one-year timeframe, the applicant must submit a new application.<sup>23</sup>

Eligible applicants may also seek occupational therapist licensure through the process of licensure by endorsement. An individual who currently holds a valid occupational therapist license or registration in another jurisdiction with requirements that are substantially equivalent to Colorado's may apply for licensure.<sup>24</sup>

The applicant must submit evidence of:<sup>25</sup>

- Completion of at least 400 hours of practice in a 12-month period within two years immediately preceding application,
- Maintenance of competency as an occupational therapist by completing 24 hours of continuing education within two years immediately preceding application, or
- Completion of an educational program and supervised fieldwork within two years of application.

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<sup>18</sup> §§ 12-40.5-105(2)(a) and (3), C.R.S.

<sup>19</sup> § 12-40.5-105(2)(b), C.R.S.

<sup>20</sup> Colorado Department of Regulatory Agencies. *Office of Occupational Therapy: Applications and Forms*. Retrieved on May 16, 2019, from [https://www.colorado.gov/pacific/dora/Occupational\\_Therapy\\_Applications](https://www.colorado.gov/pacific/dora/Occupational_Therapy_Applications)

<sup>21</sup> § 12-40.5-106(1), C.R.S.

<sup>22</sup> 3 CCR 715-1-1.A.1, Occupational Therapy Rules.

<sup>23</sup> 3 CCR 715-1-1.A.2, Occupational Therapy Rules.

<sup>24</sup> 3 CCR 715-1-2.A, Occupational Therapy Rules.

<sup>25</sup> 3 CCR 715-1-2.B, Occupational Therapy Rules.



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Occupational therapy assistants are also required to undergo the licensure process.<sup>26</sup> Each applicant must have successfully completed all academic requirements through the completion of an accredited occupational therapy assistant program and must also complete the minimum period of 16 weeks of supervised fieldwork experience prior to licensure.<sup>27</sup> Additionally, in order to receive a license by examination, applicants must:<sup>28</sup>

- Submit a completed application,
- Pay all applicable fees,
- Submit any additional supporting documentation requested by the Director, and
- Pass the required examination.

Occupational therapy assistants may also apply for licensure by endorsement.<sup>29</sup> In order to qualify, applicants must:<sup>30</sup>

- Submit an application and pay all applicable fees,
- Submit any supporting documentation required by the Director, and
- Hold an active license or registration in another jurisdiction where the requirements are considered substantially equivalent to Colorado's requirements.

### Disciplinary Actions

The Director may take disciplinary action. Discipline may be in the form of revocation, suspension, denial, refusal to renew a license, probation, letter of admonition or a cease-and-desist order if proven that the licensee committed a violation of the Act, including:<sup>31</sup>

- Engaging in a sexual act with a client receiving services while a therapeutic relationship existed or within six months following termination of the therapeutic relationship;
- Falsifying information on an application or attempting to obtain a license by fraud, deception, or misrepresentation;
- Using alcohol or controlled substances excessively or habitually;
- Failing to notify the Director of a physical condition, illness, mental health disorder or substance use disorder that could impact the licensees' ability to safely practice;
- Aiding or abetting any person to violate the Act;
- Having a license suspended or revoked for a violation of the Act;

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<sup>26</sup> § 12-40.5-105(3), C.R.S.

<sup>27</sup> § 12-40.5-106.5(1), C.R.S.

<sup>28</sup> 3 CCR 715-1-10.A and 10.C, Occupational Therapy Rules.

<sup>29</sup> § 12-40.5-106.5(5), C.R.S.

<sup>30</sup> 3 CCR 715-1-11.A, Occupational Therapy Rules.

<sup>31</sup> § 12-40.5-110(2), C.R.S.

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- Having been convicted or entered a plea of *nolo contendere* regarding a felony charge;
  - Fraudulently obtaining, selling, or furnishing an occupational therapy license, diploma, certificate, or renewal of a license or record, or aided and abetted such an act;
  - Failing to notify the Director of suspension or revocation of a previously or currently held license, certificate or registration;
  - Refusing to submit to a mental examination when ordered by the Director;
  - Ordering or performing unnecessary laboratory tests;
  - Administering unnecessary treatment;
  - Committing an act or omission that is not considered part of the accepted standards of practice;
  - Failing to provide adequate supervision of an occupational therapy assistant, aide, or any other unlicensed person in the occupational therapy practice; or
  - Violating the Act or any lawful order or rules of the Director.

Further, a licensee is also required to report to the Director, within 30 days, criminal or disciplinary actions including:<sup>32</sup>

- Any felony conviction or the conviction of any criminal action related to the practice of occupational therapy;
- Any disciplinary action imposed on the licensee in another jurisdiction;
- Revocation or suspension issued by another board, state, municipality, or federal agency; or
- Any judgement, award, or settlement of an arbitration or civil action in any jurisdiction in which there was a final judgement or settlement against the licensee regarding the practice of occupational therapy.

If reasonable grounds exist indicating that a licensee may have violated the Act or any other applicable orders or rules of the Director, a disciplinary proceeding may commence.<sup>33</sup> The disciplinary proceeding may be conducted either by the Director or by an administrative law judge at the discretion of the Director.<sup>34</sup>

The Director will notify the occupational therapist licensee by certified mail within 30 days regarding the action taken, any specific charges that led to the action, and the licensees' right to request a hearing regarding the action taken. The licensee may file a written request for a hearing within 30 days after the action was taken by the Director. Upon receipt of the request, the Director will schedule a hearing. If no written request is received within 30 days, the action taken by the Director will be considered final.<sup>35</sup> Final action of the Director is also subject to judicial review by the Colorado Court of Appeals.<sup>36</sup>

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<sup>32</sup> 3 CCR 715-1-15.A, Occupational Therapy Rules.

<sup>33</sup> § 12-40.5-110(4)(a), C.R.S.

<sup>34</sup> § 12-40.5-110(5), C.R.S.

<sup>35</sup> § 12-40.5-110(6), C.R.S.

<sup>36</sup> § 12-40.5-110(9), C.R.S.

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## 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 Director of the Division of Professions and Occupations (Director and Division, respectively) located within the Department of Regulatory Agencies provides regulatory authority for enforcement of the Occupational Therapy Practice Act (Act). In order to provide effective enforcement, the Director utilizes Division staff for administrative support. In fiscal year 18-19, the Division allocated a combined total of 0.40 full-time equivalent (FTE) employees, apportioned in the following manner:

- Program Management - 0.10 FTE - Overall management of the program and staff.
- Technician IV - 0.10 FTE - Provides case management, correspondence, and preparation of case summaries.
- Technician IV - 0.10 FTE - Provides practice monitoring and compliance enforcement.
- Administrative Assistant III - 0.10 FTE - Assists with complaint intake, correspondence, and final action processing.

Table 1 demonstrates the total program expenditures related to FTE for fiscal year 13-14 through fiscal year 17-18.

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**Table 1**  
**Program Expenditures and Full-Time Equivalent (FTE) Employees**

Fiscal Year	Total Program Expenditures	FTE
13-14	\$80,571	0.4
14-15	\$89,458	0.4
15-16	\$93,247	0.4
16-17	\$97,804	0.4
17-18	\$118,651	0.4

Total FTE allocation remained stable during the years reviewed. There were steady increases in total program expenditure due, in part, to the addition of the licensure requirement for both occupational therapists and occupational therapy assistants beginning in fiscal year 13-14, as well as costs associated with increased volume in disciplinary actions.

## Licensing

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.

The Director reviews initial licensure applications upon the completion of mandated requirements and passing the authorized examination. In addition, the Director may approve applications for licensure by endorsement for occupational therapists and occupational therapy assistants who have practiced in another state or jurisdiction with requirements that are substantially equivalent to Colorado's licensure requirements.

Table 2 provides information regarding the number of licensed occupational therapists in Colorado for fiscal year 13-14 through fiscal year 17-18 for each application type, as well as the total active licenses for each fiscal year as of June 30 each year.

**Table 2**  
**Occupational Therapist Licensing Information**

Fiscal Year	Original	Endorsement	Renewal	Reinstatement	Active Licenses as of June 30
13-14	95	201	Not applicable	51	3,039
14-15	129	189	2,843	27	3,049
15-16	145	218	Not applicable	28	3,426
16-17	148	224	3,062	23	3,361
17-18	174	212	Not applicable	28	3,772

It should be noted that license renewal for both occupational therapists and occupational therapy assistants takes place on a two-year cycle, which is demonstrated by the lack of renewal data for fiscal years 13-14, 15-16, and 17-18. Licensed occupational therapists have continued to show steady increases; there were 733 more total licensed occupational therapists as of June 30 in fiscal year 17-18 than in fiscal year 13-14.

Table 3 provides additional information regarding the number of licensed occupational therapy assistants in Colorado for fiscal year 13-14 through fiscal year 17-18 for each application type, as well as the total active licenses for each fiscal year as of June 30 each year.

**Table 3**  
**Occupational Therapy Assistant Licensing Information**

Fiscal Year	Original	Endorsement	Renewal	Reinstatement	Active Licenses as of June 30
13-14	427	75	Not applicable	0	503
14-15	89	58	528	3	627
15-16	71	58	Not applicable	1	757
16-17	87	70	706	5	827
17-18	86	35	Not applicable	7	952

Similar to that of licensed occupational therapists, the total number of licensed occupational therapy assistants has continued to show steady increases, with a total

of 449 additional licensed occupational therapy assistants in fiscal year 17-18 compared to the total number in fiscal year 13-14.

Table 4 demonstrates the total number of both licensed occupational therapists and occupational therapy assistants combined for fiscal year 13-14 through fiscal year 17-18.

**Table 4  
Occupational Therapy - Summary of All License Types**

Fiscal Year	Original	Endorsement	Renewal	Reinstatement	Active Licenses as of June 30
13-14	522	276	Not applicable	51	3,542
14-15	218	247	3,371	30	3,676
15-16	216	276	Not applicable	29	4,183
16-17	235	294	3,768	28	4,188
17-18	260	247	Not applicable	35	4,724

Table 5 illustrates occupational therapist licensing fees for fiscal year 13-14 through fiscal year 17-18.

**Table 5  
Occupational Therapist Licensing Fees**

Fiscal Year	Original	Endorsement	Renewal	Reinstatement
13-14	\$60	\$60	Not applicable	\$51
14-15	\$60	\$60	\$36	\$51
15-16	\$60	\$60	Not applicable	\$51
16-17	\$60	\$60	\$36	\$51
17-18	\$60	\$60	Not applicable	\$51

Table 5 indicates that licensing fees for occupational therapists have remained stable for the years reviewed.

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Table 6 illustrates occupational therapy assistant licensing fees for fiscal year 13-14 through fiscal year 17-18.

**Table 6**  
**Occupational Therapy Assistant Licensing Fees**

Fiscal Year	Original	Endorsement	Renewal	Reinstatement
13-14	\$25	\$25	Not applicable	\$33
14-15	\$25	\$25	\$18	\$33
15-16	\$25	\$25	Not applicable	\$33
16-17	\$25	\$25	\$18	\$33
17-18	\$25	\$25	Not applicable	\$33

Table 6 indicates that licensing fees for occupational therapy assistants have also remained stable for the years reviewed.

## 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.

The Director has adopted occupational therapist and occupational therapy assistant examinations from the National Board of Certified Occupational Therapists (NBCOT) as meeting the examination requirements for licensure in the state of Colorado. Examinations for both the occupational therapist license and the occupational therapy assistant license are administered by Prometric on behalf of NBCOT<sup>37</sup> with multiple testing locations on the Front Range and an additional testing center option in Grand Junction.<sup>38</sup>

The Occupational Therapist Registered (OTR) examination contains four required sections:<sup>39</sup>

- Evaluation and Assessment (25 percent of the examination);

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<sup>37</sup> National Board for Certification in Occupational Therapy. *Get Certified*. Retrieved on June 4, 2019, from <https://www.nbcot.org/en/Students/get-certified#TaketheExam>

<sup>38</sup> Prometric. *Availability: Test Center Selection*. Retrieved on September 23, 2019, from <https://securereg3.prometric.com/siteselection.aspx>

<sup>39</sup> National Board for Certification in Occupational Therapy. *Content Outline for the OTR Examination*. Retrieved August 29, 2019, from [https://www.nbcot.org/-/media/NBCOT/PDFs/2017\\_OTR\\_Outline.ashx?la=en&hash=C6C7BA6D95DFF67A5D2396ABB4EEF65038E01585](https://www.nbcot.org/-/media/NBCOT/PDFs/2017_OTR_Outline.ashx?la=en&hash=C6C7BA6D95DFF67A5D2396ABB4EEF65038E01585)

- Analysis and Interpretation (23 percent of the examination);
- Intervention Management (37 percent of the examination); and
- Competency and Practice Management (15 percent of the examination).

The Certified Occupational Therapy Assistant (COTA) examination contains three required sections:<sup>40</sup>

- Collaborating and Gathering Information (28 percent of the examination);
- Selecting and Implementing Interventions (55 percent of the examination); and
- Upholding Professional Standards and Responsibilities (17 percent of the examination).

Additionally, the OTR examination testing format includes three clinical simulation test items and 170 multiple-choice items, while the COTA examination format includes 200 multiple-choice and six-option multi-select items.<sup>41</sup>

Table 7 depicts the total examinations administered and pass rates for both occupational therapists and occupational therapy assistant examinations taken by candidates with a Colorado address for fiscal year 13-14 through fiscal year 17-18.

**Table 7**  
**Colorado Examination Information**

Fiscal Year	Occupational Therapist Examinations Administered	Pass Rate	Occupational Therapy Assistant Examinations Administered	Pass Rate
13-14	108	92%	70	81%
14-15	145	91%	88	85%
15-16	135	88%	84	75%
16-17	100	90%	93	75%
17-18	123	82%	83	84%

For fiscal years 13-14 through 17-18, the average number of occupational therapist examinations administered was 122, with an approximate 89 percent average pass rate. For occupational therapy assistants, the average number of occupational therapy examinations administered was 84, with an 80 percent average pass rate.

<sup>40</sup> National Board for Certification in Occupational Therapy. *Content Outline for the COTA Examination*. Retrieved August 29, 2019, from [https://www.nbcot.org/-/media/NBCOT/PDFs/2017\\_COTA\\_Outline.ashx?la=en&hash=A2920967BFB0E54B3EB1070520B09C76AE0DB66E](https://www.nbcot.org/-/media/NBCOT/PDFs/2017_COTA_Outline.ashx?la=en&hash=A2920967BFB0E54B3EB1070520B09C76AE0DB66E)

<sup>41</sup> National Board for Certification in Occupational Therapy. *Certification Exam Handbook*. Retrieved on August 29, 2019, from [https://www.nbcot.org/nbcot.org/-/media/NBCOT/PDFs/Cert\\_Exam\\_Handbook.ashx?la=en](https://www.nbcot.org/nbcot.org/-/media/NBCOT/PDFs/Cert_Exam_Handbook.ashx?la=en) - p.19.



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## 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.

The Director reviews complaints filed against licensees and may take disciplinary action if it is proven that the licensee violated the Act.

Table 8 provides the total number of complaints filed with the Director regarding occupational therapists from fiscal year 13-14 through fiscal year 17-18.

**Table 8**  
**Occupational Therapist Total Complaints**

Fiscal Year	Total
13-14	2
14-15	5
15-16	11
16-17	16
17-18	17

These data indicate that complaints have been steadily rising for occupational therapists during the years reviewed for this report. This may be due to the licensure requirement established in fiscal year 13-14, as more complaints may have been filed once the public was aware of the licensure requirement.

Table 9 provides the total number of complaints filed with the Director regarding occupational therapy assistants from fiscal year 13-14 through fiscal year 17-18. Complaints have also trended upward for this license category.

**Table 9**  
**Occupational Therapy Assistants Total Complaints**

Fiscal Year	Total
13-14	1
14-15	2
15-16	7
16-17	7
17-18	5

The Act articulates specific violations that may result in discipline which includes revocation, suspension, denial, refusal to renew, and other actions.

Table 10 displays complaints received from fiscal year 13-14 through fiscal year 17-18 by complaint type.

**Table 10  
Nature of Complaints (Combined)**

Complaint Type	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Practicing without a license	2	0	4	6	5
Standard of Practice	2	5	6	4	20
Scope of Practice	0	0	0	0	0
Sexual Misconduct	0	0	0	2	2
Substance Abuse	0	2	4	3	10
Felony Conviction	0	3	8	5	5
Failed to notify of physical or mental condition	0	0	1	2	1
Other	0	0	6	0	22
<b>Total</b>	<b>4</b>	<b>10</b>	<b>29</b>	<b>22</b>	<b>65</b>

These data demonstrate that the most frequent complaint types in the years reviewed are related to standard of practice (37 total complaints), felony convictions (21 total complaints), and substance abuse (19 total complaints).

Figures in Tables 8, 9, and 10 do not add up because a single complaint (as reflected in Tables 8 and 9) may consist of multiple allegations (as reflected in Table 10).

Table 11 summarizes the final agency actions taken by the Director. The “other” category includes predominantly cease and desist orders, citations, and injunctions.

**Table 11  
Final Agency Actions (Combined)**

Type of Action	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Revocations	0	1	0	0	1
Suspensions	0	0	0	0	0
Revocation/Suspension held in abeyance/stayed/stayed suspended	0	0	0	0	0
Stipulations	0	1	1	3	1
Letters of Admonition	0	0	4	1	4

Type of Action	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Other	0	0	0	0	8
<b>Total Disciplinary Actions</b>	<b>0</b>	<b>2</b>	<b>5</b>	<b>4</b>	<b>14</b>
Dismissals	1	0	4	3	8
Letters of Concern	0	1	9	3	9
<b>Total Dismissals</b>	<b>1</b>	<b>1</b>	<b>13</b>	<b>6</b>	<b>17</b>

Much like the previously mentioned complaint data, disciplinary actions also continued to steadily rise during the years reviewed, resulting in 14 total disciplinary actions in fiscal year 17-18.

### 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.

Table 12 depicts the total number of sanctions for fiscal year 13-14 through fiscal year 17-18.

**Table 12**  
**Collateral Consequences**

Nature of Consequences	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Conditional Licenses	0	1	0	0	0
Denials	0	0	0	0	0
Suspensions	0	0	0	0	0
Revocations	0	0	0	0	0
Other	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

Only one conditional license was issued resulting from a prior voluntary relinquishment as a result of a felony-level forgery conviction, in fiscal year 14-15.

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## 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 Occupational Therapy Practice Act for seven years, until 2027.**

Occupational therapists assist their patients with the development and improvement of skills that are necessary for daily living and in a variety of work environments. They also develop treatment plans for their patients based upon a review of medical history, patient interviews and observation in order to outline specific goals and to develop activities to assist with the incremental development and improvement of skill sets.

Occupational therapists often work with vulnerable populations, and may provide treatment to individuals including those recovering from a stroke, individuals suffering from chronic conditions such as Parkinson's disease or Multiple Sclerosis, and may also assist individuals who have suffered traumatic injuries through accidents or surgical procedures. Much of the work performed by occupational therapists involves the evaluation and determination of a recommended course of treatment on a case-by-case basis where accurate assessment and treatment is critical in order to avoid causing harm to the patient. If improper treatments or modifications were to be recommended, serious damage could be caused to patients in their work toward strength-building, healing, and recovery.

Additionally, some occupational therapists assist patients with redeveloping their ability to drive after a traumatic event or surgery. The occupational therapist may also make recommendations regarding the type of adaptive equipment needed in the vehicle and may make recommendations to a patient's physician regarding whether the patient is ready to begin driving. In this instance, if an occupational therapist does not develop the correct treatment or vehicle modifications to allow the patient to drive with safety, the harm to both the patient and other drivers on the road could be great and could potentially lead to catastrophic consequences, such as a car accident.

The Director of the Division of Professions and Occupations (Director and Division, respectively) protects consumers from these types of harm through educational and licensure requirements to ensure that occupational therapists in Colorado are competent.

In addition, the Director reviews complaints and can discipline a license for violations of the Occupational Therapy Practice Act (Act). In fiscal years 13-14 through 17-18,

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the Director reviewed a total of 73 complaints and issued 25 disciplinary actions against occupational therapists and occupational therapy assistants combined. During the same time frame, there were a total of 10 standard of practice violations resulting in discipline for both occupational therapists and occupational therapy assistants combined.<sup>42</sup> It should also be noted that disciplinary actions continued to steadily rise during the years reviewed, resulting in 14 total disciplinary actions in fiscal year 17-18.

The first sunset criterion asks if regulation is necessary to protect the public health, safety and welfare. The Director provides effective regulatory authority in order to protect the public interest through the administration of the Act. Since this sunset review revealed no major issues, the General Assembly should continue the Act for seven years, until 2027.

**Recommendation 2 - Include “occupational therapy assistant” and “O.T.A.” as protected titles.**

Section 12-40.5-104(2), Colorado Revised Statutes (C.R.S.), describes the types of title protections available to occupational therapy assistants

Only a person licensed as an occupational therapy assistant may use the title, “occupational therapy assistant licensed” or “licensed occupational therapy assistant” use the abbreviation “O.T.A./L.” or “C.O.T.A./L.” or use any other generally accepted terms, letters, or figures indicating that the person is an occupational therapy assistant.

The Act consistently refers to “occupational therapy assistant” as the predominant way to describe the profession, yet it is not listed as a protected title within the Act. Further, the Act explains that there may be other “generally accepted terms” that would also qualify as protected. However, establishing this in any disciplinary matter would require that the Director request the testimony of an expert witness, which may lead to lengthy proceedings with variable opinions and outcomes.

Additionally, within the Act itself the term “occupational therapist” and “O.T.” are listed as protected terms. Further, other practice acts include similarly protected terms. For example, the terms “physical therapy assistant” and “P.T.A.” are protected in the Physical Therapy Practice Act.

The tenth sunset criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The term “occupational therapy assistant” is the primary title used in the Act to describe this profession. Without this title protection, the Director may need to recruit expert testimony in instances where the protection of this widely-used term is challenged,

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<sup>42</sup> Standard of practice violations included records and/or billing issues, felony convictions, sexual relationships, summary suspension for drug use, unlicensed practice prior to licensure, and discipline from another state.

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potentially leading to inconsistent enforcement proceedings, which would not serve the public interest. Therefore, the General Assembly should include the terms “occupational therapy assistant” and “O.T.A.” as protected titles under the Act.

**Recommendation 3 - Add to the grounds for discipline: 1) inadequate or falsified documentation of patient records and 2) insurance fraud or abuse.**

Currently, the Act does not contain specific language that either inadequate or falsified documentation of patient records or insurance fraud or abuse would be violations of the Act.

Section 12-40.5-110(2)(k)(III), C.R.S., states that the Director may take disciplinary action if the licensee has engaged in

An act or omission that is contrary to generally accepted standards of the practice of occupational therapy.

Therefore, the Director presently has the statutory authority to discipline a licensee for these types of general violations.

However, because neither inadequate or falsified documentation or insurance fraud or abuse are specifically listed as violations in the Act, the Director may need to engage expert testimony in order to determine if inadequate or falsified documentation or insurance fraud or abuse would constitute standard of practice violations. Due to the need for expert testimony in these instances, these disciplinary processes may take more time and utilize more financial resources.

Additionally, other practice acts contain specific language surrounding these two violation types. For example, the Physical Therapy Practice Act states that it is a violation if the licensee<sup>43</sup>

Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

Committed abuse of health insurance as set forth in section 18-13-119(3), C.R.S.; or

Committed a fraudulent insurance act, as defined in section 10-1-128, C.R.S.

The first sunset criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare. It is extremely important that a patient’s records are accurate, and reflect all treatments and assessments provided

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<sup>43</sup> §§12-41-115(1)(f), (h), and (i), C.R.S.

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to the patient. If a patient's records are missing essential information or are falsified, necessary treatments may not be offered or a treatment may be provided that is unnecessary, which may endanger the health, safety, and welfare of the public.

The third sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by the existing statutes, rules, procedures, and practices. The current process relating to these two potential violation types often require expert testimony which may lengthen disciplinary processes and require additional resources, and adding these proposed clarifications to the Act could streamline regulatory processes and use fewer financial resources, both of which would be in the public interest.

Therefore, the General Assembly should add specific violations to the Act related to both inadequate or falsified documentation and insurance fraud or abuse.

**Recommendation 4 - Amend section 12-40.5-104(1), C.R.S., to specify that individuals legally practicing temporarily in Colorado may use protected titles.**

Section 12-40.5-108(1)(d), C.R.S., states that the Act does not prevent or restrict the practice of

Occupational therapy in this state by any legally qualified occupational therapist from another state or country when providing services on behalf of a temporarily absent occupational therapist licensed in this state, so long as the unlicensed occupational therapist is acting in accordance with rules established by the Director. The unlicensed practice must not be of more than four weeks' duration, and a person shall not undertake unlicensed practice more than once in any 12-month period.

Although the Act does permit legally qualified applicants that are not licensed in Colorado to provide services in the state on a temporary basis, the Act limits the use of protected titles to those who are licensed in Colorado.

Section 12-40.5-104(1), C.R.S., states

Only a person *licensed* as an occupational therapist may use the title, "occupational therapist licensed," "licensed occupational therapist," "occupational therapist," or "doctor of occupational therapy," or use the abbreviation "O.T.," "O.T.D.," "O.T.R.," "O.T./L.," "O.T.D./L.," or "O.T.R./L.," or any other generally accepted terms, letters, or figures that indicate that the person is an occupational therapist.

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This seems to imply that one must be licensed under the Act in order to use the protected titles.

The second and third sunset criteria ask

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 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.

Although legally qualified occupational therapists may temporarily work in Colorado, they are not permitted by statute to use titles that are protected for occupational therapists while working in the state. This restriction is confusing, both for practitioners and members of the public who may be utilizing the services of an occupational therapist from out of state. Therefore, it is in the public interest for the General Assembly to clarify that occupational therapists working temporarily in Colorado may use protected titles while working in the state.

### **Recommendation 5 - Make further technical amendments to the Act.**

As with any law, the Act contains instances of duplicative and confusing language, and the Act should be revised to eliminate obsolete references and to reflect current terminology and administrative practices. These changes are technical in nature, so they will have no substantive impact on the regulation of the practice of occupational therapists and occupational therapy assistants.

The General Assembly should make the following technical changes:

- **Sections 12-40.5-106(2), C.R.S.**, regarding occupational therapists, and **12-40.5-106.5(2), C.R.S.**, regarding occupational therapy assistants, both discuss the application step in the process for obtaining licensure.

**Sections 12-40.5 106(3), C.R.S.**, regarding occupational therapists, and **12-40.5-106.5(3), C.R.S.**, regarding occupational therapy assistants, both refer to the examination step in the process for obtaining licensure.

These two sets of statutory subsections are not in chronological order. Since both section 12-40.5-106, C.R.S., and section 12-40.5-106.5, C.R.S., address the process for licensure chronologically in every other aspect, and since examination does occur before application, these two subsections should be



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renumbered to switch places in statute so that the examination process is discussed prior to application process.

- **Section 12-40.5-106(2)(a), C.R.S.** Remove the word “examination” from the sentence “When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for examination and licensure upon payment of a fee in an amount determined by the Director” since the applicant does not apply to the Director in order to take the required examination.
- **Section 12-40.5-106(2)(a), C.R.S.** Remove the sentence, “A person who fails an examination may apply for reexamination upon payment of a fee in an amount determined by the Director” since the Director does not set examination or reexamination fees.
- **Sections 12-40.5-110(5) and 12-40.5-110(6)(a) through (6)(c), C.R.S.,** should be combined and renumbered as sections 12-40.5-110(5)(a) through (5)(d), C.R.S., to clarify steps related to disciplinary proceedings. This change would also conform with other practice acts.

## Appendix A - Title 12 Recodification Table

This table shows provisions of Article 40.5 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
12-40.5-101	12-270-101	12-40.5-107(2)	12-270-109(2)
12-40.5-102	12-270-102	12-40.5-107(2)(a)	12-270-109(2)(a)
12-40.5-102 IP(1)	12-270-102 IP(1)	12-40.5-107(2)(b)	12-270-109(2)(b)
12-40.5-102(1)(a)	12-270-102(1)(a)	12-40.5-107(2)(c)	12-270-109(2)(c)
12-40.5-102(1)(b)	12-270-102(1)(b)	12-40.5-107(3)	12-270-109(3)
12-40.5-102 IP(1)(c)	12-270-102 IP(1)(c)	<b>12-40.5-108</b>	<b>12-270-110</b>
12-40.5-102(1)(c)(I)	12-270-102(1)(c)(I)	12-40.5-108 IP(1)	12-270-110 IP(1)
12-40.5-102(1)(c)(II)	12-270-102(1)(c)(II)	12-40.5-108(1)(a)	12-270-110(1)(a)
12-40.5-102(2)	12-270-102(2)	12-40.5-108(1)(b)	12-270-110(1)(b)
<b>12-40.5-103 IP</b>	<b>12-270-104 IP</b>	12-40.5-108(1)(c)	12-270-110(1)(c)
12-40.5-103(1)	12-270-104(1)	12-40.5-108(1)(d)	12-270-110(1)(d)
12-40.5-103(2)	12-270-104(2)	<b>12-40.5-109</b>	<b>12-270-111</b>
12-40.5-103(3) to (5)	Repealed	<b>12-40.5-109.3</b>	<b>12-270-112</b>
12-40.5-103(6)	12-270-104(3)	12-40.5-109.3(1)(a)	12-270-112(1)(a)
12-40.5-103(6.5)	Repealed	12-40.5-109.3 IP(1)(b)	12-270-112 IP(1)(b)
12-40.5-103(7)	12-270-104(4)	12-40.5-109.3(1)(b)(I)	12-270-112(1)(b)(I)
12-40.5-103(8)	12-270-104(5)	12-40.5-109.3(1)(b)(II)	12-270-112(1)(b)(II)
12-40.5-103 IP(9)	12-270-104 IP(6)	12-40.5-109.3(1)(b)(III)	12-270-112(1)(b)(III)
12-40.5-103 IP(9)(a)	12-270-104 IP(6)(a)	12-40.5-109.3 IP(2)	12-270-112 IP(2)
12-40.5-103(9)(a)(I)	12-270-104(6)(a)(I)	12-40.5-109.3(2)(a)	12-270-112(2)(a)
12-40.5-103(9)(a)(II)	12-270-104(6)(a)(II)	12-40.5-109.3(2)(b)	12-270-112(2)(b)
12-40.5-103(9)(a)(III)	12-270-104(6)(a)(III)	12-40.5-109.3(3)(a)	12-270-112(3)(a)
12-40.5-103(9)(a)(IV)	12-270-104(6)(a)(IV)	12-40.5-109.3(3)(b)	12-270-112(3)(b)
12-40.5-103(9)(a)(V)	12-270-104(6)(a)(V)	12-40.5-109.3 IP(4)	12-270-112 IP(4)
12-40.5-103 IP(9)(b)	12-270-104 IP(6)(b)	12-40.5-109.3(4)(a)	12-270-112(4)(a)
12-40.5-103(9)(b)(I)	12-270-104(6)(b)(I)	12-40.5-109.3(4)(b)	12-270-112(4)(b)
12-40.5-103(9)(b)(II)	12-270-104(6)(b)(II)	12-40.5-109.3(5)	12-270-112(5)
12-40.5-103(9)(b)(III)	12-270-104(6)(b)(III)	<b>12-40.5-109.5</b>	<b>12-270-113</b>
12-40.5-103(9)(b)(IV)	12-270-104(6)(b)(IV)	12-40.5-109.5 IP(1)	12-270-113 IP(1)
12-40.5-103 IP(9)(c)	12-270-104 IP(6)(c)	12-40.5-109.5(1)(a)	12-270-113(1)(a)
12-40.5-103(9)(c)(I)	12-270-104(6)(c)(I)	12-40.5-109.5(1)(b)	12-270-113(1)(b)
12-40.5-103(9)(c)(II)	12-270-104(6)(c)(II)	12-40.5-109.5(1)(c)	12-270-113(1)(c)
12-40.5-103(9)(c)(III)	12-270-104(6)(c)(III)	12-40.5-109.5(2)	12-270-113(2)
12-40.5-103(9)(c)(IV)	12-270-104(6)(c)(IV)	12-40.5-109.5(3)	12-270-113(3)
12-40.5-103(9)(c)(V)	12-270-104(6)(c)(V)	12-40.5-109.5(4)	12-270-113(4)
12-40.5-103(9)(c)(VI)	12-270-104(6)(c)(VI)	12-40.5-109.5(5)	12-270-113(5)
12-40.5-103(9)(c)(VII)	12-270-104(6)(c)(VII)	<b>12-40.5-110</b>	<b>12-270-114</b>

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-40.5-103(9)(c)(VIII)	12-270-104(6)(c)(VIII)	12-40.5-110(1)	12-270-114(1)
12-40.5-103(9)(c)(IX)	12-270-104(6)(c)(IX)	12-40.5-110 IP(2)	12-270-114 IP(2)
12-40.5-103(9)(c)(X)	12-270-104(6)(c)(X)	12-40.5-110 IP(2)(a)	12-270-114 IP(2)(a)
12-40.5-103(9)(c)(XI)	12-270-104(6)(c)(XI)	12-40.5-110(2)(a)(I)	12-270-114(2)(a)(I)
12-40.5-103(9)(c)(XII)	12-270-104(6)(c)(XII)	12-40.5-110(2)(a)(II)	12-270-114(2)(a)(II)
12-40.5-103(9)(c)(XIII)	12-270-104(6)(c)(XIII)	12-40.5-110(2)(b)	12-270-114(2)(b)
12-40.5-103(9)(c)(XIV)	12-270-104(6)(c)(XIV)	12-40.5-110(2)(c)	12-270-114(2)(c)
12-40.5-103(10)	12-270-104(7)	12-40.5-110(2)(d)(I)	12-270-114(2)(d)(I)
12-40.5-103(12)	12-270-104(8)	12-40.5-110(2)(d)(II)	12-270-114(2)(d)(II)
12-40.5-103(13)	12-270-104(9)	12-40.5-110(2)(d)(III)	12-270-114(2)(d)(III)
<b>12-40.5-104</b>	<b>12-270-105</b>	12-40.5-110(2)(e)	12-270-114(2)(e)
12-40.5-104(1)	12-270-105(1)	12-40.5-110(2)(f)	12-270-114(2)(f)
12-40.5-104(2)	12-270-105(2)	12-40.5-110(2)(g)	12-270-114(2)(g)
<b>12-40.5-105</b>	<b>12-270-106</b>	12-40.5-110(2)(h)	12-270-114(2)(h)
12-40.5-105(2)(a)	12-270-106(1)(a)	12-40.5-110(2)(i)	12-270-114(2)(i)
12-40.5-105 IP(2)(b)	12-270-106 IP(1)(b)	12-40.5-110(2)(j)	12-270-114(2)(j)
12-40.5-105(2)(b)(I)	12-270-106(1)(b)(I)	12-40.5-110 IP(2)(k)	12-270-114 IP(2)(k)
12-40.5-105(2)(b)(II)	12-270-106(1)(b)(II)	12-40.5-110(2)(k)(I)	12-270-114(2)(k)(I)
12-40.5-105(2)(b)(III)	12-270-106(1)(b)(III)	12-40.5-110(2)(k)(II)	12-270-114(2)(k)(II)
12-40.5-105(2)(c)	12-270-106(1)(c)	12-40.5-110(2)(k)(III)	12-270-114(2)(k)(III)
12-40.5-105(3)	12-270-106(2)	12-40.5-110(2)(l)	12-270-114(2)(l)
<b>12-40.5-106</b>	<b>12-270-107</b>	12-40.5-110(2)(m)	12-270-114(2)(m)
12-40.5-106 IP(1)	12-270-107 IP(1)	12-40.5-110(3)	12-270-114(3)
12-40.5-106(1)(a)	12-270-107(1)(a)	12-40.5-110(4)(a)	12-270-114(4)(a)
12-40.5-106(1)(b)	12-270-107(1)(b)	12-40.5-110(4)(b)	12-270-114(4)(b)
12-40.5-106(2)	12-270-107(2)	12-40.5-110(5)	12-270-114(5)
12-40.5-106(2)(a)	12-270-107(2)(a)	12-40.5-110(6)(a)	12-270-114(6)(a)
12-40.5-106(2)(b)	12-270-107(2)(b)	12-40.5-110(6)(b)	12-270-114(6)(b)
12-40.5-106(3)	12-270-107(3)	12-40.5-110(6)(c)	12-270-114(6)(c)
12-40.5-106(4)	12-270-107(4)	12-40.5-110(7)(a)	12-270-114(7)
12-40.5-106(5)	12-270-107(5)	12-40.5-110(7)(b)(I)	12-270-114(8)
12-40.5-106(5)(a)	12-270-107(5)(a)	12-40.5-110(7)(b)(I)	12-20-403(1)
12-40.5-106(5)(b)	12-270-107(5)(b)	12-40.5-110(7)(b)(II)	12-20-403(2)(a)
12-40.5-106(5)(c)	12-270-107(5)(c)	12-40.5-110(7)(b)(III)	12-20-403 IP(2)(b)(I) to (2)(b)(II)
12-40.5-106(5)(d)	12-270-107(5)(d)	12-40.5-110(7)(c)	12-20-403(3)
12-40.5-106(6)	12-270-107(6)	12-40.5-110(7)(b)(II) to (8)	Repealed
12-40.5-106(6)(a), (6)(b)	12-270-107(6)	12-40.5-110(9)	12-270-114(9)
12-40.5-106(7)	Repealed	12-40.5-110(10)	12-270-114(10)
<b>12-40.5-106.5</b>	<b>12-270-108</b>	12-40.5-110(11)	Repealed
12-40.5-106.5 IP(1)	12-270-108 IP(1)	12-40.5-110(12) to (16)	12-270-114(11)
12-40.5-106.5(1)(a)	12-270-108(1)(a)	12-40.5-110(17)(a)	12-270-114(12)

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-40.5-106.5(1)(b)	12-270-108(1)(b)	12-40.5-110(17)(b), (17)(c)	Repealed
12-40.5-106.5 IP(2)	12-270-108 IP(2)	12-40.5-110(18)	12-270-114(13)
12-40.5-106.5(2)(a)	12-270-108(2)(a)	12-40.5-110(19)	Repealed
12-40.5-106.5(2)(b)	12-270-108(2)(b)	<b>12-40.5-111</b>	<b>12-270-115</b>
12-40.5-106.5(3)	12-270-108(3)	<b>12-40.5-112</b>	<b>12-270-116</b>
12-40.5-106.5(4)	12-270-108(4)	<b>12-40.5-113</b>	Repealed
12-40.5-106.5(5)	12-270-108(5)	<b>12-40.5-114</b>	<b>12-270-117</b>
12-40.5-106.5(5)(a)	12-270-108(5)(a)	12-40.5-114(1)	12-270-117(1)
12-40.5-106.5(5)(b)	12-270-108(5)(b)	12-40.5-114(2)	12-270-117(2)
12-40.5-106.5(5)(c)	12-270-108(5)(c)	12-40.5-114(3)	12-270-117(3)
12-40.5-106.5(5)(d)	12-270-108(5)(d)	12-40.5-114(4)	12-270-117(4)
12-40.5-106.5(6)	12-270-108(6)	<b>12-40.5-114.5</b>	<b>12-270-118</b>
12-40.5-106.5(6)(a)	Repealed	12-40.5-114.5(1) to (4)	12-270-118
12-40.5-106.5(6)(b)	12-270-108(6)	<b>12-40.5-114.7</b>	<b>12-270-119</b>
12-40.5-106.5(7)	Repealed	12-40.5-114.7(1)	12-270-119(1)
<b>12-40.5-107</b>	<b>12-270-109</b>	12-40.5-114.7(2)	12-270-119(2)
12-40.5-107(1)	12-270-109(1)	<b>12-40.5-115</b>	<b>12-270-120</b>