



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

# 2020 Sunset Review

**Workers' Compensation Classification Appeals Board**



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October 15, 2020



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**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2020

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. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Workers' Compensation Classification Appeals Board. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2021 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 55 of Title 8, C.R.S. The report also discusses the effectiveness of the Board in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit [coprrr.colorado.gov](http://coprrr.colorado.gov).

Sincerely,

Patty Salazar  
Executive Director





## Sunset Review: Workers' Compensation Classification Appeals

### Background

#### *What is the Workers' Compensation Classification Appeals Board?*

The Workers' Compensation Classification Appeals Board (Board), located in the Department of Regulatory Agencies', Division of Insurance, was established in 1996 through section 8-55-101, *et seq.*, C.R.S. The Board reviews appeals brought by employers against insurers regarding classification assignments and the calculation of the experience modification factor. During the years reviewed, the Board heard 12 appeals during the course of four meetings, and overturned or partially overturned insurance company decisions in five instances, which is 41.6 percent of the decisions made.

#### *What purpose does the Board serve?*

With the steady growth of the digital workforce, changes to classification codes occur on a regular basis, which can lead to the possibility that an employer could be overcharged for their premiums through misclassification.

#### *How does the Board operate?*

An employer may appeal to the Board for any issue regarding the calculation of experience modification factors and classification assignment decisions within 30 days after the employer has exhausted all appeal review procedures provided by the insurance company. Decisions of the Board are considered final unless the employer, insurance company, or Pinnacol Assurance provide a written notice of an appeal to the Commissioner of Insurance within 30 days.

The Commissioner will review any properly appealed decision of the Board and will provide a written decision within 30 days after the request for review is received.

#### *What does it cost?*

The National Council of Compensation Insurance pays for any Board expenses. Therefore, no funds or full-time equivalent employees were allocated by the State of Colorado to the Board during the five years reviewed as part of this sunset review.

### Key Recommendations

- **Continue the Board for 11 years, until 2032.**
- **Allow insurance agents to hold industry seats on the Board.**

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## Background

### Sunset Criteria

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<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and 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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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> <li>• Profile of the Profession.</li> <li>• Legal Framework: History of Regulation.</li> <li>• Recommendation 1.</li> </ul>
(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;	<ul style="list-style-type: none"> <li>• Legal Framework: Legal Summary.</li> </ul>
(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;	<ul style="list-style-type: none"> <li>• Legal Framework: Legal Summary.</li> <li>• Program Description and Administration.</li> </ul>
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> <li>• Program Description and Administration.</li> </ul>
(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;	<ul style="list-style-type: none"> <li>• Program Description and Administration.</li> <li>• Recommendation 2.</li> </ul>
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> <li>• Profile of the Industry.</li> </ul>
(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;	<ul style="list-style-type: none"> <li>• The Board does not receive or investigate complaints or take disciplinary action.</li> </ul>
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> <li>• The Board does not regulate an occupation with a scope of practice.</li> </ul>

<p>(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.</p>	<ul style="list-style-type: none"> <li>• The Board does not regulate an occupation or profession.</li> </ul>
<p>(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.</p>	<ul style="list-style-type: none"> <li>• Analysis and Recommendations.</li> </ul>

## Sunset Process

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: [coprrr.colorado.gov](http://coprrr.colorado.gov).

The functions of the Workers’ Compensation Classification Appeals Board (Board) as enumerated in Article 55 of Title 8, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2021, 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 Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed appeals process should be continued and to evaluate the performance of the Board. 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.

## Methodology

As part of this review, COPRRR staff attended Board meetings; interviewed Division of Insurance (Division) staff, Board members, Division of Workers’ Compensation staff, representatives of the National Council on Compensation Insurance, and officials with state and national professional associations; and reviewed Colorado statutes and rules, and the laws of other states.

The major contacts made during this review include, but are not limited to:

- Colorado Association of Mechanical and Plumbing Contractors;

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- Colorado Chamber of Commerce;
  - Colorado Self-Insurers Association;
  - IMA Financial Group;
  - National Council on Compensation Insurance (NCCI);
  - National Federation of Independent Businesses (NFIB);
  - Pinnacol Assurance; and
  - Workers' Compensation Coalition.

## Profile of the Industry

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 the scope of the industry and how it operates.

Workers' compensation insurance provides protection to employees to ensure that they receive adequate care and compensation for loss of wages in the event of a work-related injury. The workers' compensation premium is developed for an employer based upon multiple components, including the assignment of classification codes, standard exceptions, and experience rating modifications.

Classification codes for plan premiums are assigned to an employer by grouping businesses together based upon their type of business operation similarities. The products or services offered by a business as well as the industry with which it is affiliated are important components in making the classification code determination for each business.

The classification code assigned reflects the average circumstances within each classification type, but does not reflect the individualized work performed in various jobs within the business for each employee. For example, a restaurant may receive a classification code based upon its business model and be grouped together with other similar restaurant types.

Once the classification code is assigned to a business, standard exceptions codes may be applied in order to clarify the differences in the types of work performed by employees because some positions within a business may be charged a lower rate than the classification code assigned to the business. For example, clerical staff at a construction company may have a lower workers' compensation rate than a construction worker.

Experience rating is a component in the method for developing the cost of workers' compensation premiums, which is individualized for each employer. Experience ratings are calculated for a business by comparing the payroll and work experience of an



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individual business with that of the industry average experience. The purpose of calculating experience ratings is to provide a unique workers' compensation rate for each employer that more adequately reflects its future claim experience when compared to other similar businesses.

In order to develop a unique experience rating for a business, the business's past experience (typically the most recent three years of data) is reviewed in order to be able to predict if the loss experience may be better or worse when compared with the average employer in a specific classification group in order to project future claims. If a marked difference is observed, this experience modification factor may be applied to the business's workers' compensation insurance premium, which may lead to an increase, decrease, or no change in the cost of a workers' compensation premium for that business.<sup>2</sup>

The National Council on Compensation Insurance (NCCI) is a private rating bureau that oversees the establishment of rules regarding classification codes and experience rating in Colorado, as well as the majority of states within the United States.

Established in 1923, NCCI provides trend analysis, gathers relevant data, and offers recommendations regarding loss costs and insurance rates with the goal of strengthening the workers' compensation system.<sup>3</sup> NCCI has further developed the *Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance*, which contains the administrative processes and governing rules for experience rating.

With few exceptions, both public and private employers in the state of Colorado are required to carry workers' compensation insurance to protect their employees.

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the written premiums within the industry.

Table 1, below, depicts the total workers' compensation written premiums in Colorado for calendar years 2015 through 2019.

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<sup>2</sup> National Council on Compensation Insurance, *ABCs of Experience Rating*, 2019, Pg. 2.

<sup>3</sup> National Council on Compensation Insurance, *ABCs of Experience Rating*, 2019, Pg. 1.

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**Table 1**  
**Colorado Workers' Compensation Written Premiums**

<b>Calendar Year</b>	<b>Total Written Premiums</b>
2015	\$1,057,358,000
2016	\$1,065,344,000
2017	\$1,076,683,000
2018	\$1,096,652,000
2019	\$1,053,233,000
<b>Total</b>	<b>\$5,349,270,000</b>

The data in Table 1 indicate that premiums steadily increased in calendar years 2015 through 2018, and then dropped to 2015 levels in 2019. In calendar year 2019, rates were adjusted downward, which led to less written premiums. An additional factor may be due to an increase in safer work practices and a decline in losses, which may have led to an overall reduction in premiums.

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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 that 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 the late 1980s, workers' compensation insurance rates in Colorado were among the highest in the nation. This prompted the General Assembly to pass several measures designed to reduce rates and simplify the system. The most comprehensive of these measures was the 1991 Omnibus Workers' Compensation Reform bill.

Prior to the creation of the Workers' Compensation Classification Appeals Board (Board), an informal committee comprised of insurance industry professionals reviewed appeals related to workers' compensation classification issues in Colorado. Employers could appeal these decisions to the Colorado Commissioner of Insurance (Commissioner) in the event that an employer did not agree with the outcome of the review.

The Board was established in 1996 through section 8-55-101, *et seq.*, C.R.S. The Board reviews appeals brought by employers against insurers regarding classification assignments and the calculation of the experience modification factor.

COPRRR conducted sunset reviews of the Board in 2000 and 2009. Both reviews provided a recommendation to continue the Board, and an administrative recommendation was also included in the 2000 sunset review for the Division of Insurance and the Board to work with other state agencies to increase awareness of the newly created appeals process among Colorado's employers.

### 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

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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.

Section 8-55-101, *et seq.*, C.R.S., outlines the composition and responsibilities of the Board, which consists of five voting members and one non-voting member:<sup>4</sup>

- Two voting members and one alternate that are either salaried employees of an insurance company that issues workers' compensation insurance policies or who are representatives of Pinnacol Assurance;
- Three voting members who represent private employers that are knowledgeable regarding Colorado's workers' compensation rules and procedures. No private member may be an employee of an insurance company, insurance agent, insurance broker, Pinnacol Assurance, a law firm, or an actuary. At least one of the two private employer members must represent the construction industry; and
- One non-voting member who is an employee of a workers' compensation rating organization. In Colorado, the rating organization which oversees workers' compensation issues is the National Council on Compensation Insurance (NCCI).

All private employer members, insurer representatives, and Pinnacol Assurance representatives are appointed by the Commissioner of Insurance (Commissioner). The non-voting member of a workers' compensation rating organization is appointed by the Chief Executive Officer or designee from the rating organization.

Each voting member of the Board is limited to serving two, three-year terms<sup>5</sup> while the non-voting member may be reappointed without limitation.<sup>6</sup> Each term commences on January 1 and terminates on December 31.<sup>7</sup> The Board meets on an as-needed basis when an appeal has been filed for review. The Board will schedule a hearing, and will provide written notice of the hearing to the appellant and insurer within 30 days. A quorum of Board members is required to conduct any hearing, and Board members are required to recuse themselves from any hearing which would constitute a conflict of interest.<sup>8</sup>

Board members receive no compensation for their participation in the appeals process, but may be reimbursed for expenses incurred through their participation in Board-

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<sup>4</sup> § 8-55-101(1), C.R.S.

<sup>5</sup> § 8-55-101(3)(b), C.R.S.

<sup>6</sup> § 8-55-101(3)(c), C.R.S.

<sup>7</sup> § 8-55-103(1), C.R.S.

<sup>8</sup> § 8-55-103 (3), C.R.S.

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related activities from the Workers' Compensation Cash Fund. Additionally, Board members are immune from any claims for injury that may arise as a tort.

An employer may appeal to the Board for any issue regarding the calculation of experience modification factors and classification assignment decisions within 30 days after the employer has exhausted all appeal review procedures provided by the insurance company.<sup>9</sup>

Section 8-55-102, C.R.S., further requires all insurance companies authorized to transact business in Colorado to provide employers with a written copy or summary of their appeal procedures.

The secretary of the Board (who also serves as the NCCI member) carries out the administrative functions of the Board, including:<sup>10</sup>

- Providing the notice of hearing,
- Preparing the agenda, and
- Arranging the facilities for each hearing.

Decisions of the Board are considered final unless the employer, insurance company, or Pinnacol Assurance provide a written notice of an appeal to the Commissioner within 30 days after the decision of the Board. The Commissioner will review any properly appealed decision of the Board and will provide a written decision within 30 days after the request for review is received.<sup>11</sup>

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<sup>9</sup> § 8-55-102, C.R.S.

<sup>10</sup> § 8-55-103(4), C.R.S.

<sup>11</sup> § 8-55-104(3), 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 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 Workers' Compensation Classification Appeals Board (Board) reviews appeals from employers to determine if a misclassification regarding experience modification factors or classification codes has occurred by either a workers' compensation insurer or the National Council of Compensation Insurance (NCCI).

An employer may file an appeal with the Board within 30 days after all appeals within the insurance company have been exhausted.<sup>12</sup> Decisions of the Board are considered final, but may be appealed to the Commissioner of Insurance (Commissioner).<sup>13</sup>

NCCI pays for any Board-related expenses. Therefore, no funds or full-time equivalent (FTE) employees were allocated by the State of Colorado to the Board during the five years reviewed as part of this sunset review.

The Board consists of five voting members, appointed by the Commissioner, who serve three-year terms, and one non-voting member:<sup>14</sup>

- Two voting members who are salaried employees of a workers' compensation insurance company or who are representatives of Pinnacol Assurance, which cannot both be from Pinnacol Assurance or from the same insurance company.

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<sup>12</sup> § 8-55-103, C.R.S.

<sup>13</sup> § 8-55-104, C.R.S.

<sup>14</sup> § 8-55-101, C.R.S.

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An alternate is also selected in the event of a primary Board member recusal to assure representation of Pinnacol Assurance or insurance companies;

- Three voting members who represent private employers that are knowledgeable regarding Colorado’s workers’ compensation rules and procedures. No private member may be an employee of an insurance company, insurance agent, insurance broker, Pinnacol Assurance, a law firm, or an actuary. At least one of the two private employer members must represent the construction industry; and
- One non-voting member who is a representative of NCCI.

The Board Secretary, the member appointed by NCCI, is responsible for carrying out the administrative functions of the Board, including:<sup>15</sup>

- Arranging facilities for each hearing,
- Providing notices and agendas for each meeting, and
- Developing a memorandum following each hearing which includes the vote of the Board.

Table 2 demonstrates the number of Board meetings that have taken place and the number of appeals reviewed by the Board during fiscal years 14-15 to 18-19.

**Table 2**  
**Workers’ Compensation Classification Appeals Board Meetings**

Fiscal Year	Number of Meetings	Appeals Heard
14-15	2	7
15-16	1	2
16-17	1	3
17-18	0	0
18-19	0	0
<b>Total</b>	<b>4</b>	<b>12</b>

Table 2 indicates that fiscal year 14-15 had the largest number of appeals heard by the Board during the review period, and the number of appeals consistently declined in the following years. Staff in the Division of Insurance (Division) is not aware of any factors leading to the decline in the number of cases appealed to the Board.

Section 8-55-102, C.R.S., requires all insurance companies in the state to provide appeals process information to each employer at the beginning of each policy year and whenever there is a change to the employers’ classification code or experience modification factors, which helps to ensure that employers are aware of the Board’s appeals process.

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<sup>15</sup> § 8-55-103(4), C.R.S.

The Board meets on an as-needed basis to review cases that have been appealed, and the Board must schedule a hearing within 30 days of receipt of the appeal request.<sup>16</sup> Once an appeal is filed, the insurance company provides additional information to the Board relating to the rationale behind the assigned experience modification factor and classification codes.

During the appeal hearing, both parties present their information, and the Board issues a decision regarding whether to uphold or overturn the currently assigned classification and/or experience modification factor.

Table 3 highlights the number of appeals in which the insurance company’s decision was either upheld, overturned, or partially upheld, as well as the total number of appeals reviewed for fiscal years 14-15 through 18-19.

**Table 3**  
**Insurance Company Decisions Upheld, Overturned, or Partially Upheld by the Board in Fiscal Years 14-15 through 18-19**

Fiscal Year	Decision Upheld	Decision Overturned	Decision Partially Upheld	Total Number of Appeals Reviewed
14-15	5	0	2	7
15-16	0	1	1	2
16-17	2	1	0	3
17-18	0	0	0	0
18-19	0	0	0	0
<b>Total</b>	<b>7</b>	<b>2</b>	<b>3</b>	<b>12</b>

Table 3 indicates that insurance company decisions were more often upheld or partially upheld when reviewed by the Board during the years reviewed. In some of the instances noted in fiscal years 14-15 and 15-16, some of the classification codes under review were changed within the appeals’ decisions.

Decisions of the Board are considered final.<sup>17</sup> However, an employer, insurance company or Pinnacol Assurance has the right to file a written notice of appeal with the Commissioner within 30 days after the date of the Board’s decision.<sup>18</sup>

<sup>16</sup> § 8-55-103(3)(a)(b), C.R.S.

<sup>17</sup> § 8-55-104(1), C.R.S.

<sup>18</sup> § 8-55-104(3), C.R.S.



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Table 4 highlights the number of appeals filed with the Commissioner and the Commissioner’s decision for any appeals filed in fiscal years 14-15 through 18-19.

**Table 4  
Commissioner Appeals and Decisions**

<b>Fiscal Year</b>	<b>Number of Appeals to the Commissioner</b>	<b>Commissioner’s Decision</b>
14-15	0	Not applicable
15-16	0	Not applicable
16-17	2	1 upheld 1 overturned
17-18	0	Not applicable
18-19	0	Not applicable
<b>Total</b>	<b>2</b>	<b>1 upheld, 1 overturned</b>

Table 4 demonstrates that fiscal year 16-17 was the only year during those reviewed in which appeals were filed with the Commissioner.

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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 Workers' Compensation Classification Appeals Board for 11 years, until 2032.**

The Workers' Compensation Classification Appeals Board (Board) reviews appeals from employers to determine if a misclassification regarding experience modification factors or classification codes has occurred by either a workers' compensation insurer or the National Council of Compensation Insurance (NCCI).

During the years reviewed, the Board heard 12 appeals during the course of four meetings, and overturned or partially overturned insurance company decisions in five instances, which is 41.6 percent of the decisions made.

With the steady growth of the digital workforce, changes to classification codes occur on a regular basis, and changes in classification codes can lead to the possibility that an employer could be overcharged for their premiums through misclassification.

During the era of COVID-19, many employers are adapting by restructuring their business models and may be expanding or modifying the roles of their employees.

For example, a restaurant that may have employed wait staff for their inside dining rooms may now direct those same employees to work as delivery drivers. These systemic changes may create a fluctuation in the classification codes or experience modifiers for a business, which may lead to a greater need for the appeals process of the Board if there is a dispute regarding any potential reclassifications.

Further, all costs incurred for the Board are paid for by the National Council on Compensation Insurance (NCCI), and neither Colorado taxpayers nor employers in Colorado are responsible for any costs associated with the current appeals process.

The Board provides a cost-effective venue for recourse in the event that a dispute cannot be resolved independently by the insurance company and the employer. Without the oversight of the Board, the current appeals process would not be possible.

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 provides effective oversight in order to protect the public interest. No substantive recommendations have been made in either of the prior sunset reviews in 2000 or 2009,

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and only one slight modification is recommended in this sunset report. Therefore, the General Assembly should continue the Board for 11 years, until 2032.

**Recommendation 2 - Allow insurance agents to hold industry seats on the Board.**

Section 8-55-101(1)(a), C.R.S., defines two specific seats and one alternate seat on the Board to be filled by individuals who work in the insurance industry,

Two members shall be either salaried employees of an insurance company that issues workers' compensation insurance policies in this state or representatives of Pinnacol Assurance. Such two members shall not both represent Pinnacol Assurance or the same insurance company. In addition, one person shall be selected to serve as an alternate member to represent the interests of the insurance industry or Pinnacol Assurance. The alternate shall represent such interests in the event the primary member recuses himself or herself.

Stakeholders have indicated that since these two seats and one alternate can only be filled by salaried insurance company employees or Pinnacol Assurance representatives, it can be challenging to fill all available seats on the Board when multiple vacancies occur at one time. This language is restrictive and does not permit insurance agents to hold any seat.

The fifth sunset criterion asks,

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;

Insurance agents are professionally experienced in working with classification codes and experience modification factors, and this potential inclusion could expand the variety of experience available on the Board, which is in the public interest.

As a result, modification of this statutory provision would allow these two seats and one alternate to be either salaried employees of an insurance company, or insurance agents, or representatives of Pinnacol Assurance.

Therefore, the General Assembly should modify section 8-55-101(1)(a), C.R.S., to allow insurance agents to hold industry seats on the Board.