



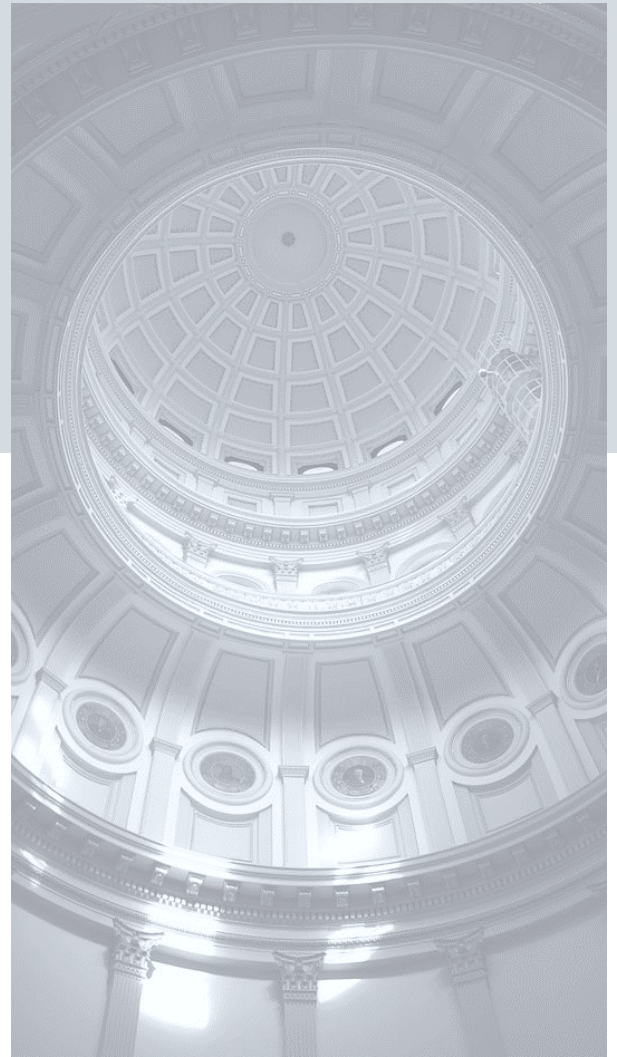
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2020 Sunset Review

Michael Skolnik Medical Transparency Act of 2010



October 15, 2020



COLORADO

**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 Michael Skolnik Medical Transparency Act of 2010. 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 30 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Professions and Occupations staff 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

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of
Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

October 15, 2020

FACT SHEET

Sunset Review: Michael Skolnik Medical Transparency Act of 2010

Background

What is the Skolnik Act?

Regulated health-care practitioners are required to comply with the Michael Skolnik Medical Transparency Act, which is most commonly known as the Healthcare Professions Profile Program (HPPP). The HPPP requires health-care practitioners to create and maintain their professional profiles. Profiles contain information such as disciplinary actions imposed in other jurisdictions (as well as Colorado) on the licensee, malpractice insurance settlements, criminal convictions, any awards or recognitions received and any investments that might cause a conflict of interest (i.e., investments in pharmaceutical companies).

What is the purpose of the HPPP?

The purpose of the HPPP is to provide transparency to the public regarding the competency of persons engaged in the practice of a health-care profession and to assist citizens in making informed health-care decisions.

Who participates in the HPPP?

In fiscal year 19-20, 268,429 health-care practitioners were required to comply with the HPPP.

How does it operate?

The Director of the Division of Professions and Occupations (Director and Division, respectively) in the Department of Regulatory Agencies is vested with the authority to provide oversight of the HPPP. Health-care practitioners enter HPPP information at the time of initial application and upon renewal.

What does it cost?

In fiscal year 18-19, the total expenditures for the HPPP were approximately \$180,252.

What disciplinary activity is there?

In fiscal years 14-15 through 18-19, the Director imposed \$5,875 in fines on health-care practitioners for failing to update their profile after receiving formal discipline against their license, certification or registration. \$3,325 of the fines were collected by the Division.

Key Recommendations

- **Continue the Healthcare Professions Profile Program for seven years, until 2028.**

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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 criteria¹ 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.

¹ 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"> • Profile. • Legal Framework: History of Regulation. • Recommendation 1.
(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"> • Legal Framework: Legal Summary. • Recommendation 1.
(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"> • Legal Framework: Legal Summary. • Program Description and Administration.
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> • Program Description and Administration.
(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"> • HPPP does not have a board.
(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"> • Not applicable.
(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"> • HPPP does not receive or investigate complaints.
(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"> • Program Description and Administration: Fines.

<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"> • HPPP does not regulate and occupation or profession.
<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"> • Administrative Recommendation 1.

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.

The functions of the Director of the Division of Professions and Occupations (Director and Division, respectively), pursuant to the Michael Skolnik Medical Transparency Act of 2010, hereinafter referred to as the Healthcare Professions Profile Program (HPPP), as enumerated in Article 30 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 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 HPPP pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the program 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.

Methodology

As part of this review, COPRRR staff interviewed Division staff, stakeholders, and officials with state and national professional associations and reviewed records, Colorado statutes and rules.

In May 2020, COPRRR staff conducted a survey of all health-care practitioners who are required to comply with the HPPP. The survey was sent to 240,812 health-care

practitioners; 2,540 emails were returned as undeliverable. The survey received 29,133 responses, which is a 12 percent response rate.

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

- Association of Surgical Technologists
- Citizens for Patient Safety
- Colorado Counseling Association
- Colorado Nurses Association
- Division of Professions and Occupations
- Patient Safety Movement

Profile of the Program

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 the program, it is first necessary to understand what it does and who is required to comply.

The HPPP began as the Michael Skolnik Medical Transparency Act (Act), which was created by the General Assembly in 2007. The original Act applied to physicians, and required practitioners to complete online questionnaires or “profiles.”² The purpose of the Act was to provide transparency to the public regarding the competency of physicians, which would enable Coloradoans to make informed health-care decisions.³ Further, the creation of the HPPP enables consumers to access a wealth of information in one place. HPPP is an online database, related to physicians, including, but not limited to, disciplinary actions imposed in other jurisdictions (as well as Colorado) on the licensee, malpractice insurance settlements, criminal convictions and any investments that might cause a conflict of interest (i.e., investments in pharmaceutical companies).

In subsequent years, the General Assembly expanded the number of professions that are required to comply with the HPPP. In fact, there are currently 54 professions encompassing more than 270,000 practitioners who are required to comply with the HPPP.⁴

² Department of Regulatory Agencies. *Healthcare Professionals Profile Program: The Michael Skolnik Story*. Retrieved May 7, 2020 from https://www.colorado.gov/pacific/dora/HPPP_Michael_Skolnik_Story

³ Department of Regulatory Agencies. *Healthcare Professionals Profile Program: The Michael Skolnik Story*. Retrieved May 7, 2020 from https://www.colorado.gov/pacific/dora/HPPP_Michael_Skolnik_Story

⁴ Department of Regulatory Agencies. *Healthcare Professionals Profile Program: The Michael Skolnik Story*. Retrieved May 7, 2020 from https://www.colorado.gov/pacific/dora/HPPP_Michael_Skolnik_Story

Regulated practitioners who are required to comply with the HPPP are responsible for ensuring that their profile is current. Upon initial licensure, certification or registration, renewal, reinstatement or reactivation, practitioners are required to complete profile information required by the Director of the Division of Professions and Occupations (Director).

Additionally, if a practitioner experiences a change in his or her profile information, the practitioner is required to update those changes within 30 days. For example, if a practitioner is formally disciplined, he or she must update the information in the HPPP online system, including the discipline documentation, within 30 days.

Practitioners who fail to comply with the requirement to keep their profile up-to-date are subject to a fine of up to \$5,000. All fines collected for violating the HPPP are credited to the state's General Fund.

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.

The Healthcare Professions Profile Program (HPPP) was originally created as the Michael Skolnik Medical Transparency Act (Act) when the General Assembly passed House Bill 07-1331 (HB-1331). House Bill 1331 included physicians only, and required practitioners to complete questionnaires or “profiles.”

The purpose of HB-1331 was to provide transparency to consumers so they could view the “profiles” of physicians and determine whether they wanted to utilize their services.

In 2010, the General Assembly greatly expanded the Act to include several health-care professions. Specifically, Senate Bill 10-124 required that the following health-care professions to comply with the Act:

- Audiologists,
- Hearing aid providers,
- Acupuncturists,
- Podiatrists,
- Chiropractors,
- Dentists and dental hygienists,
- Physician assistants,
- Direct-entry Midwives,
- Nurses,
- Optometrists,
- Physical therapists, and
- All mental health professionals.

In 2013, the General Assembly again expanded the Act to require additional health-care practitioners to maintain a current profile. Senate Bill 13-026 mandated that several health-care professions comply, including but not limited to: athletic trainers, pharmacists and certified nurse aids.

In 2016, the General Assembly enacted House Bill 16-1157, which required the COPRRR to conduct a sunset review of the HPPP in 2020. The HPPP is scheduled to repeal on September 1, 2021.

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.

Section 12-30-102, C.R.S., provides the statutory framework for the HPPP. The Director of the Division of Professions and Occupations (Director) is responsible for oversight of the HPPP.

The purpose of the HPPP is to provide transparency to the public regarding the competency of persons engaged in the practice of a health-care profession and to assist citizens in making informed health-care decisions.⁵

Health-care practitioners that are required to comply with the HPPP statute include:⁶

- Audiologists;
- Hearing aid providers;
- Acupuncturists;
- Podiatrists;
- Chiropractors;
- Dentists;
- Dental hygienists;
- Physicians;
- Physician assistants and anesthesiologist assistants;
- Direct-entry midwives;

⁵ § 12-30-102(2)(a)(II), C.R.S.

⁶ § 12-30-102(3)(a), C.R.S.

-
- Practical nurses, professional nurses and advanced practice nurses;
 - Optometrists;
 - Physical therapists;
 - Psychologists;
 - Social workers;
 - Marriage and family therapists;
 - Professional counselors;
 - Unlicensed psychotherapists;
 - Addiction counselors;
 - Speech-language pathologists;
 - Athletic trainers;
 - Massage therapists;
 - Certified nurse aids;
 - Occupational therapists;
 - Respiratory therapists;
 - Pharmacists;
 - Psychiatric technicians;
 - Surgical technologists and surgical assistants; and
 - Naturopathic doctors.

Each applicant applying for a new license, certification or registration and any professional renewing, reinstating or reactivating a license, certification or registration must provide certain information to the Director, such as:⁷

- Name, current address and phone number;
- Location of the practice;
- Education and training related to the applicant's practice;
- Any board certifications or specialties, if applicable;
- Any affiliations with or clinical privileges held in hospitals or health care facilities;
- Any public disciplinary action imposed by an applicable regulator in any other state or country (the practitioner must provide a copy of the disciplinary action to the Director);
- Any agreement or stipulation entered into between the practitioner and the regulator in any other state or country (the practitioner must provide a copy of the agreement or stipulation to the Director);
- Any final agency action that results in involuntary limitation or probationary status on, or a reduction, nonrenewal, denial, revocation or suspension of the applicant's medical staff membership or clinical privileges at any hospital or health care facility;

⁷ § 12-30-102(4), C.R.S.

-
- Any final action(s) of an employer that result(s) in the practitioner's loss of employment where the grounds for termination constitute a violation of the laws governing the professional's practice;
 - Any involuntary surrender of the practitioner's U.S. Drug Enforcement Administration registration (the practitioner must provide a copy of the order requiring surrender to the Director);
 - Any criminal conviction or plea arrangement resulting from the commission or alleged commission of a felony or crime of moral turpitude (the practitioner must provide a copy of the plea agreement or plea arrangement to the Director);
 - Any final judgement against, settlement entered into by, or arbitration award paid on behalf of the practitioner for malpractice; and
 - Any refusal by an issuer of professional liability insurance to issue a policy to the applicant due to past claims experience (the practitioner must provide a copy of the refusal to the Director).

Also, an applicant may submit information concerning awards and recognitions that he or she received or charity care the he or she has provided.⁸

Health-care practitioners are required to ensure that their HPPP profile is current. Any changes (e.g., formal discipline imposed on the health-care practitioner) must be updated within 30 days after the date of the action.⁹

The Director is authorized to impose an administrative fine of up to \$5,000 for failing to comply with the HPPP.¹⁰ All administrative fines collected must be deposited into the General Fund.¹¹

Importantly, the imposition of an administrative fine by the Director does not constitute a disciplinary action pursuant to the laws governing the health-care practitioner's practice area.¹² Also, the imposition of an administrative fine by the Director does not preclude the applicable regulator (e.g., the health-care practitioner's regulatory board) from taking disciplinary action for failing to comply with the HPPP statute.¹³ Failing to comply with the HPPP statute constitutes unprofessional conduct or grounds for discipline under each practice act that regulates the health-care practitioner's profession.¹⁴

A health-care practitioner's registration, certification or license cannot be issued, renewed, reinstated, or reactivated if he or she has failed to pay an administrative fine imposed by the Director.¹⁵

⁸ § 12-30-102(5), C.R.S.

⁹ § 12-30-102(8)(a), C.R.S.

¹⁰ § 12-30-102(9)(a), C.R.S.

¹¹ § 12-30-102(9)(a), C.R.S.

¹² § 12-30-102(9)(b), C.R.S.

¹³ § 12-30-102(9)(b), C.R.S.

¹⁴ § 12-30-102(9)(c), C.R.S.

¹⁵ § 12-30-102(9)(b), C.R.S.

Program Description and Administration

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

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures 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. Because there is no board or commission associated with this program, the fifth sunset criterion does not apply.

Section 12-30-102, C.R.S., vests administration of the Healthcare Professions Profile Program (HPPP) in the Director of the Division of Professions and Occupations (Director and Division, respectively).

The purpose of the HPPP is to provide transparency to the public regarding the background of persons engaged in the practice of a health-care profession to assist citizens in making informed health-care decisions.¹⁶

In order to complete an initial registration, certification or licensure application, health-care practitioners establish an account in the Division's Online Services System. This system enables health-care practitioners to complete an on-line application. The HPPP portal is fully integrated in the Online Services System. This allows applicants to complete a licensing application, while also answering questions so the applicant can complete their profile. The HPPP portion asks the applicant about past disciplinary actions (in Colorado and other states), restrictions or suspensions, criminal convictions business interests and malpractice settlements. If the applicant answers "yes" to any of the questions highlighted above, he or she must provide documentation to the Division. Applicants are informed that they are required to keep their profile up-to-date, and any changes (i.e., discipline) that occur must be updated in the HPPP system within 30 days.

¹⁶ § 12-30-102(2)(a)(II), C.R.S.

Upon license renewal, health-care practitioners are required to attest that their profile is up-to-date. Also, during the application process, applicants are required to review each entry and update each field/question. Doing so means that health-care practitioners are also required to update their HPPP profile at each renewal.

Finally, practitioners are able to submit information regarding awards and recognitions they have received, as well as any charity care they may have provided.

Table 1 illustrates the total number of regulated health-care practitioners who are required to comply with HPPP in fiscal years 15-16 through 19-20.

Table 1
Total Number of Regulated Health-care Practitioners

Fiscal Year	Health-care Practitioners
15-16	234,229
16-17	237,250
17-18	255,751
18-19	260,850
19-20	268,429

As indicated in Table 1, the number of health-care practitioners who are required to comply with HPPP increased in each of the last five fiscal years. Generally, the increase is attributable to the increase in demand for health-care related services.

Table 2 highlights the total expenditures and full-time equivalent (FTE) employees allocated for the administration of HPPP in fiscal years 14-15 through 18-19.

Table 2
Total Program Expenditures in Fiscal Years 14-15 through 18-19

Fiscal Year	Total Expenditures	FTE
14-15	\$173,122	2.0
15-16	\$192,029	2.0
16-17	\$172,760	2.0
17-18	\$160,377	2.0
18-19	\$180,252	2.0

HPPP is not a stand-alone program with its own budget. Instead, in fiscal years 14-15, 15-16 and 16-17 it was combined with four other program expenditures within the Division. In fiscal year 18-19, HPPP was combined with five other programs. Since the expenditures for HPPP are combined with other programs, Division staff was not able to provide the exact expenditures related to HPPP. As such, the expenditures in Table 2 are estimates.

In fiscal year 19-20, the Division devoted 2.0 FTE to administer the HPPP. The FTE are as follows:

- Technician V—0.5 FTE—this individual is responsible for, among other things, supervising Technician III staff, file review and rule and policy writing.
- Technician III—1.50 FTE—these three individuals are responsible for, among other things, statute and rule review, case summary preparation and case management.

The aforementioned FTE do not include staff in the centralized offices of the Division, which include the following:

- Director’s Office,
- Office of Investigations,
- Office of Expedited Settlement,
- Office of Examination Services, and
- Office of Licensing.

HPPP Access Rates

Table 3 illustrates the total number of times the HPPP database was accessed (expressed as “hits”) by both internal (Department of Regulatory Agencies (DORA) staff) and external (non-DORA staff) users in fiscal year 18-19. Importantly, the reporting system utilized by Division staff was unable to disaggregate the hits between internal and external users.

**Table 3
HPPP Hit Rates
Public Searches of HPPP in Fiscal Year 18-19**

Credential Type	Searches
Academic Dentist	10
Acupuncturist	578
Anesthesiologist Assistant	134
Athletic Trainer	217
Audiologist	251
Certified Addiction Counselor I	763
Certified Addiction Counselor II	1,157
Certified Addiction Counselor III	1,693
Certified Nurse Aide	13,841
Chiropractic	1,737
Compact Certified Nurse Midwife - C-APN	235
Compact Certified Registered Nurse Anesthetist - C-APN	962
Compact Clinical Nurse Specialist - C-APN	81

Credential Type	Searches
Compact Intravenous Certification	28
Compact Nurse Practitioner - C-APN	3,275
Compact Physician	3,641
Compact Physician Home	1,905
Dental Hygienist	5,518
Dentist	19,645
Direct Entry Midwife	93
Licensed Addiction Counselor	874
Licensed Clinical Social Worker	5,367
Licensed Practical Nurse	4,412
Licensed Professional Counselor	7,085
Licensed Psychologist	3,676
Licensed Social Worker	900
Marriage and Family Therapist	1,186
Massage Therapist	5,358
Naturopathic Doctor	102
Occupational Therapist	6,409
Occupational Therapy Assistant	448
Optometrist	840
Optometrist Volunteer License	5
Pharmacist	5,949
Pharmacist Intern	392
Physical Therapist	3,318
Physical Therapist Assistant	627
Physician	315,045
Physician Assistant	5597
Physician Training License	49,598
Podiatrist	388
Podiatrist Training License	18
Podiatrist Volunteer License	1
Pro Bono Physician	169
Provisional Licensed Professional Counselor	91
Provisional Marriage and Family Therapist	5
Provisional Social Worker	50
Psychiatric Technician - Developmentally Disabled	279
Psychiatric Technician - Mentally Ill	58
Registered Nurse	35,573
Registered Psychotherapist	6,238
Respiratory Therapist	1,231
Speech Language - Pathologist	781
Surgical Assistant	442
Surgical Technologist	849
Total Searches	519,125

Table 3 illustrates that in fiscal year 18-19, physicians had the most “hits.” Although the number of “hits” are highlighted above for the health-care practitioners who are

required to comply with the HPPP, it is unclear who is accessing the various practitioners' profiles.

Profiles of the various health-care practitioners can be accessed by various constituents and other stakeholders. For example, hospital staff may access a health-care practitioner's profile to verify certain credentials, or a consumer could access a practitioner's profile to determine whether a health-care practitioner has been disciplined.

In May 2020, COPRRR conducted a survey of all health-care practitioners who are required to comply with the HPPP. One of the questions in the survey asked health-care practitioners if they have ever reviewed the profile of another professional. The vast majority, 89 percent (25,841), of respondents indicated that they have never reviewed another professional's profile. Eleven percent (3,210) of respondents stated that they reviewed the profile of another professional.

The most common response for why they reviewed the profile of another professional was to verify a credential. In fact, 21 percent (2,165) of health-care practitioners who responded that they reviewed the profile of another professional did so to verify a credential.

Importantly, Table 3 shows that the profiles of health-care practitioners are accessed through the HPPP, regardless of who is accessing them.

Fines

The Director is authorized to impose an administrative fine of up to \$5,000 for failing to comply with the HPPP.¹⁷ Table 4 shows the fines imposed by the Director in fiscal years 14-15 through 18-19.

Table 4
Total Fines in Fiscal Years 14-15 through 18-19

Fiscal Year	Total Fines Assessed	Total Fines Collected	Number of Fines
14-15	\$3,825	\$2,550	7
15-16	\$2,050	\$2,050	3
16-17	\$0	\$0	0
17-18	\$0	\$0	0
18-19	\$0	\$0	0

¹⁷ § 12-30-102(9)(a), C.R.S.

Most commonly, health-care practitioners who were fined by the Director failed to update their profile after receiving formal discipline against their license, certification or registration.

As Table 4 indicates, all of the fines imposed in fiscal year 15-16 were collected. However, in fiscal year 14-15, \$1,275 were not collected. Most commonly, fines were not collected because the health-care practitioner who received the fine did not renew his or her license to practice and did not pay the fine.

Table 4 also shows that the Director did not impose any fines on health-care practitioners in fiscal years 16-17 through 18-19. Beginning in fiscal year 16-17, the Director and Division staff focused on compliance with HPPP requirements rather than imposing fines for violating those requirements.

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.

The HPPP is not a regulatory program, rather it is strictly a database that requires health-care practitioners to report their regulatory information such as credentials, education and disciplinary action(s), if applicable. As such, this criterion is not applicable to the HPPP.

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 Healthcare Professions Profile Program for seven years, until 2028.

Section 12-30-102, Colorado Revised Statutes, provides the statutory framework for the Healthcare Professions Profile Program (HPPP). The Director of the Division of Professions and Occupations (Director and Division, respectively) is responsible for oversight of the HPPP.

The purpose of the HPPP is to provide transparency to the public regarding the competency of persons engaged in the practice of a health-care profession and to assist citizens in making informed health care decisions.¹⁸ The HPPP enables consumers to access information online, including health-care practitioners' history of any disciplinary activity, malpractice insurance settlements, criminal convictions, any awards or recognitions received and any investments that might cause a conflict of interest (i.e., investments in pharmaceutical companies).

Regulated health-care practitioners who are required to comply with the HPPP are responsible for ensuring that their profile is current. Upon initial licensure, certification or registration, renewal, reinstatement or reactivation, practitioners are required to complete and update, as appropriate, profile information required by the Director.

Additionally, if health-care practitioners experience a change in their profile information, they are required to update those changes within 30 days. For example, if a health-care practitioner is formally disciplined, he or she must update the information in the HPPP online system, including the discipline documentation, within 30 days.

Health-care practitioners who fail to comply with the requirement to keep their profile up-to-date are subject to a fine of up to \$5,000 by the Director. All fines collected for violating the HPPP are credited to the state's General Fund.

The first sunset criterion asks whether regulation is necessary to protect the public. Although the HPPP is not a traditional regulatory program, it is an important program that enables consumers to easily access health-care practitioners' profiles.

Information provided for this sunset review illustrates that profiles of health-care practitioners were accessed (expressed as "hits") more than 519,000 times in fiscal

¹⁸ § 12-30-102(2)(a)(II), C.R.S.

year 18-19. Although the reporting system is unable to disaggregate the hits for Department of Regulatory Agencies (DORA) staff and external users, it can be inferred, due to the volume of hits, that the vast majority of hits were by members of the public, including health-care practitioners, and not DORA staff. Consequently, the hit rate provides quantitative evidence that the HPPP is one tool utilized by the public in making health-care decisions.

In May 2020, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) conducted a survey of all health-care practitioners who are required to comply with the HPPP. The survey results are located in Appendix A. The survey was sent to 240,812 health-care practitioners; 2,540 emails were returned as undeliverable. The survey received 29,133 responses, which is a 12 percent response rate.

Some information gleaned from the survey that was sent to more than 200,000 health-care practitioners indicates that more than just consumers access HPPP. When hospitals and other credentialing bodies access the HPPP, it helps them to make informed decisions.

The survey highlighted several important issues associated with the HPPP. For example, one question asked if health-care practitioners were aware of the requirement to ensure their profile is up-to-date. Sixty-six percent (19,162) of respondents indicated that they were aware of this requirement. However, 34 percent (9,971) of respondents were not aware that they are required to keep their profile up-to-date.

Additionally, 73 percent (21,212) of health-care practitioners who responded to the survey indicated that their profile is up-to-date. Conversely, over one quarter of respondents, or 27 percent (7,921) of respondents, indicated that their profile is not up-to-date.

For those who do not have an up-to-date profile, the most common response given as to why was that they were not aware of the requirement. In fact, 22 percent (6,503) of survey respondents were not aware of the requirement.

The survey also asked if the Division provided any outreach/education to health-care practitioners concerning the HPPP in the past few years. An overwhelming majority, 89 percent (26,027), of respondents indicated that the Division did not provide any education/outreach to health-care practitioners. Eleven percent of respondents; (3,106) indicated that they received outreach/education concerning the HPPP. The most common response to the kind of education/outreach provided was email reminders from the Division.

The survey asked health-care practitioners if they have ever reviewed the profile of another professional. The vast majority, 89 percent (25,841), of respondents indicated that they have never reviewed another professional's profile. Eleven percent (3,210) of respondents stated that they reviewed the profile of another professional.

The most common response for why they reviewed the profile of another professional was to verify a credential. In fact, 21 percent (2,165) of health-care practitioners who responded that they reviewed the profile of another professional did so to verify a credential.

Finally, the survey asked health-care practitioners how long it takes to complete their profile. Forty-six percent (13,267) of respondents indicated that completing their profile took them between 30 minutes to 1 hour. Forty-one percent (12,048) of respondents indicated that it took them less than 30 minutes to complete their profile. Nine percent (2,541) of respondents indicated that it took them up to two hours to complete their profile, while two percent (580) indicated that it took them up to three hours to complete their profile.

The second sunset criterion asks whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest. The information in the survey highlighted above indicates that for the most part, completing a profile is not restrictive to health-care practitioners.

The first sunset criterion asks whether the program under review is necessary to protect the health, safety and welfare of the public.

As the data suggest in Table 3 in this sunset report, certain health-care professions receive many hits, such as physicians (315,045 hits in fiscal year 18-19), while other health-care professions receive relatively few hits, such as provisional marriage and family therapist licensees (five hits in fiscal year 18-19). Importantly, all of the regulated healthcare professions who are required to comply with the HPPP received hits.

This demonstrates that the HPPP is an important program to assist in consumer protection by ensuring the public is able to access information regarding their health-care providers. Therefore, the General Assembly should continue the HPPP for seven years, until 2028. Doing so will ensure that the HPPP continues to provide transparency to the public regarding information about their health-care providers, including information related to disciplinary actions, which provides consumers information related to a health-care practitioners' competency and ability to practice safely.

Administrative Recommendation 1 - The Director should create and implement a process to ensure that health-care practitioners' profiles are up-to-date.

During this sunset review, COPRRR staff conducted a survey of health-care practitioners concerning the HPPP. Specifically, the survey was sent to 240,812 health-care practitioners; 2,540 emails were undeliverable. The survey received 29,133 responses from health-care practitioners, which is a 12 percent response rate.

The survey highlighted several important issues associated with the HPPP regarding compliance among health-care practitioners. For example, one question asked if health-care practitioners were aware of the requirement to ensure their profile is up-to-date. Sixty-six percent (19,162) of survey respondents, indicated that they were aware of this requirement. However, 34 percent, (9,971) of survey respondents were not aware that they are required to keep their profile up-to-date.

It is problematic that more than one third of the survey respondents indicated that they were *not* aware that they are required to keep their profile up-to-date. It is reasonable to conclude that this lack of awareness on the part of survey respondents could lead to incomplete or out of date profiles. In order for the HPPP to be effective and provide meaningful and accurate information to the public, health-care practitioners should be aware that their profile must be kept up-to-date.

Additionally, 73 percent (21,212) of health-care practitioners who responded to the survey indicated that their profile is up-to-date. Conversely, over one quarter of survey respondents, or 27 percent (7,921), indicated that their profile is not up-to-date.

A significant percentage of survey respondents indicated that they were aware that their profile was not up-to-date, which is concerning. Recall that the purpose of the HPPP is to provide transparency to the public regarding the competency of persons engaged in the practice of a health-care profession and to assist citizens in making informed health-care decisions.¹⁹

Profiles that are not up-to-date or that are incomplete prevent consumers who choose to access the HPPP from making accurate and informed decisions about whether to utilize the services of a particular health-care professional.

The most common response to the survey question asking health-care practitioners who do not have an up-to-date profile as to why, is that they were not aware of the requirement. In fact, 34 percent (6,503) of these survey respondents were not aware of the requirement, but of those whose profiles actually are not up-to-date, only 22 percent were unaware.

The survey also asked if the Division provided any outreach/education to health-care practitioners concerning the HPPP over the course of the past few years. An overwhelming majority, 89 percent (26,027) of respondents, indicated that the Division did not provide any education/outreach to health-care practitioners. Only 11 percent of respondents (3,106) indicated that they received outreach/education concerning the HPPP. The most common response to the kind of education/outreach provided was email reminders from the Division.

In 2015, COPRRR conducted a sunset review of the Division and one of the administrative recommendations in that report recommended that the Division improve

¹⁹ § 12-30-102(2)(a)(II), C.R.S.

outreach to practitioners who are required to maintain profiles under the HPPP. In response to the administrative recommendation, the Division, in 2015 through 2017, provided information regarding the HPPP at many of the professional associations' annual conferences. Those associations included:

- American Physical Therapy Association (Colorado Chapter) Fall Symposium September 17, 2015;
- Occupational Therapy Association of Colorado Annual Conference October 23, 2015;
- American Speech-Language-Hearing Association Convention November 12, 2015;
- Colorado Counseling Association Conference April 22, 2016;
- Colorado Association for Marriage and Family Therapy Annual Conference October 14, 2016;
- Colorado Association of Addiction Professionals Annual Conference June 18, 2017; and
- Occupational Therapy Association of Colorado Annual Conference September 22, 2017.

Further, in 2017, the Division sent approximately 182,105 emails to health-care practitioners reminding them to review and update their profiles when they renew their license.

As early as 2015, the Division began embedding the HPPP questions into online new, renewal and reinstatement applications. Initially, the Division embedded questions into new licensing applications, then in 2016, they began working on embedding HPPP questions into renewal and reinstatement applications. Indeed, renewal applications also alert the practitioner of the requirement to maintain a current profile, how to do so, and the ramifications (a fine of up to \$5,000) for failing to do so.

Although the Division initially complied with COPRRR's administrative recommendation in the 2015 sunset review to improve outreach to practitioners who are required to maintain profiles under the HPPP, the Division has not provided any outreach to health-care practitioners concerning the HPPP since 2017.

Also, embedding the HPPP questions into new, renewal and reinstatement applications assisted in streamlining the process for obtaining initial information about health-care practitioners and ensuring that profiles are updated at the time of renewal or reinstatement; however, it does little to provide timely information on practitioners' profiles between renewals.

The absence of recent outreach/education to health-care practitioners may at least partially explain the significant number of survey respondents who were not aware that they are required to keep their profile current. It may also explain why a significant number of survey respondents do not have a current profile. As such, health-care practitioners may not be aware that if they experience a reportable change, they are required to update their profile within 30 days. For example, if a health-care

practitioner is formally disciplined, he or she is required to update their profile to reflect the discipline within 30 days.

The HPPP can be an effective and helpful tool for consumers to access information on health-care practitioners' history, such as disciplinary actions or malpractice claims. This information may assist a consumer in choosing whether he or she chooses to utilize the services of a certain physician, for example. However, as indicated in the analysis of the aforementioned survey, many health-care practitioners' profiles are not up-to-date, which calls into question the effectiveness of the HPPP.

In order to ensure that health-care practitioners' profiles are current, the Director should create and implement a process to ensure that health-care practitioners' profiles are current. Doing so will provide assurance to consumers that when they are reviewing a health-care practitioner's profile, that it is current and up-to-date.

This administrative recommendation addresses the tenth sunset criterion, which asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Appendix A - HPPP Survey Results

In May 2020, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all health-care practitioners who are required to comply with the HPPP. The survey was sent to 240,812 health-care practitioners; 2,540 emails were returned as undeliverable. The survey received 29,133 responses, which is a 12 percent response rate.

The questions asked in the survey and the responses are provided below:

Question 1:

Thinking back to when you first completed your profile, approximately how long did it take for you to complete? (Total Responses = 29,133)

- Less than 30 minutes. (12,048 Responses, 41.4%)
- 30 minutes to 1 hour. (13,367 Responses, 45.9%)
- Up to 2 hours. (2,541 Responses, 8.7%)
- Up to 3 hours. (580 Responses, 2.0%)
- Up to 4 hours. (181 Responses, 0.6%)
- Up to 5 hours. (100 Responses, 0.3%)
- More than 5 hours (316 Responses, 1.1%)

Question 2:

Are you aware that you are required to keep your profile current? (Total Responses = 29,133)

- Yes (19,162 Responses, 65.8%)
- No (9,971 Responses, 34.2%)

Question 3:

In the past few years, has the Division of Professions and Occupations provided any outreach/education concerning HPPP? (Total Responses = 29,133)

- Yes (26,027 Responses, 89.3%)
- No (3,106 Responses, 10.7%)

Question 4:

If you answered yes above, please describe what kind of outreach was provided?
(Total Responses = 3,011)

* This was an open ended question. The responses have been categorized into common themes.)

- e-mail. (1,529 Responses, 50.7%)
- Did not know format/method. (362 Responses, 12%)
- Did not actually receive any information about HPPP but answered question anyway as - none, not applicable, did not receive any. (174 Responses, 5.7%)
- Received information about COVID-19 not HPPP. (137 Responses, 4.5%)
- Received training from employer or a professional association. (265 Responses, 8.8%)
- Received information in another way - mostly commonly as part of license renewal or on the DORA website. (361 Responses, 11.9%)
- Received communication on topic other HPPP or COVID-19.(183 Responses, 6.0%)

Question 5:

Is your profile current? (Total Responses = 29,133)

- Yes (21,212 Responses, 72.8%)
- No (7,941 Responses, 27.2%)

Question 6:

If your profile is not current, why not? (Total Responses = 29,133)

- My profile is current. (19,970 Responses, 68.5%)
- I forgot to update it. (1,846 Responses, 6.3%)
- I was not aware of the requirement to keep my profile current. (6,503 Responses, 22.3%)
- It takes too long to update my profile. (115 Responses, 0.4%)
- I have tried updating my profile, but have been unable to do so due to technical difficulties. (699 Responses, 2.4%)

Question 7:

Have you ever looked at the profile of another person? (Total Responses = 29,051)

- Yes. (3,210 Responses, 11%)
- No. (25,841 Responses, 89%)

Question 8:

If you have looked at the profile of another person, what was the primary reason for doing so? (Total Responses = 23,911)

- I have not looked at the profile of another person. (20,552 Responses, 86%)
- Employment. (467 Responses, 2%)
- Verification of a credential. (2,165 Responses, 9.1%)
- Verification of a disclosure. (151 Responses, 0.6%)
- To decide if I wanted to work with a particular individual. (299 Responses, 1.3%)
- To decide if I wanted to use a particular individual for my own/family's member's care. (277 Responses, 1.2%)

Question 9:

If someone has mentioned to you that they have looked at your profile, who was it? (Total Responses = 28,162).

* This was a multiple choice question where respondents could check all options that applied. The numbers listed for the each response represent the total number of times each option was checked. One respondent can select more than one option, so the total responses equal more than 100%.

- No one has mentioned it. (25,589 Responses, 90.8%)
- Patients (330 Responses, 1.2%)
- Colleagues/Coworker (325 Responses, 1.2%)
- Employer/potential employer (2,002 Responses, 7.1%)
- Friends (103 Responses, 0.4%)
- Family (82 Responses, 0.3%)
- Insurance Carrier (120 Responses, 0.4%)
- DORA staff (220 Responses, 0.8%)
- Other (124 Responses, 0.4%)

Question 10:

To the best of your knowledge have you gained any of the following due to someone viewing your profile? (Total Responses = 26,143)

* This was a multiple choice question where respondents could check all options that applied. The numbers listed for the each response represent the total number of times each option was checked. One respondent can select more than one option, so the total responses equal more than 100%.

- Patients (276 Responses, 1.1%)
- Employment (1,674 Responses, 6.4%)
- Hospital Privileges (269 Responses, 1.0%)
- N/A (23,702 Responses, 90%)

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- Other (533 Responses, 2.0%)

Question 11:

To the best of your knowledge have you lost any of the following due to someone viewing your profile? (Total Responses = 25,968)

* This was a multiple choice question where respondents could check all options that applied. The numbers listed for the each response represent the total number of times each option was checked. One respondent can select more than one option, so the total responses equal more than 100%.

- Patients (0 Responses)
- Employment (172 Responses, 0.7%)
- Hospital Privileges (0 Responses)
- N/A (25,968 Responses, 97.6%)
- Other (540 Responses, 2.0%)