



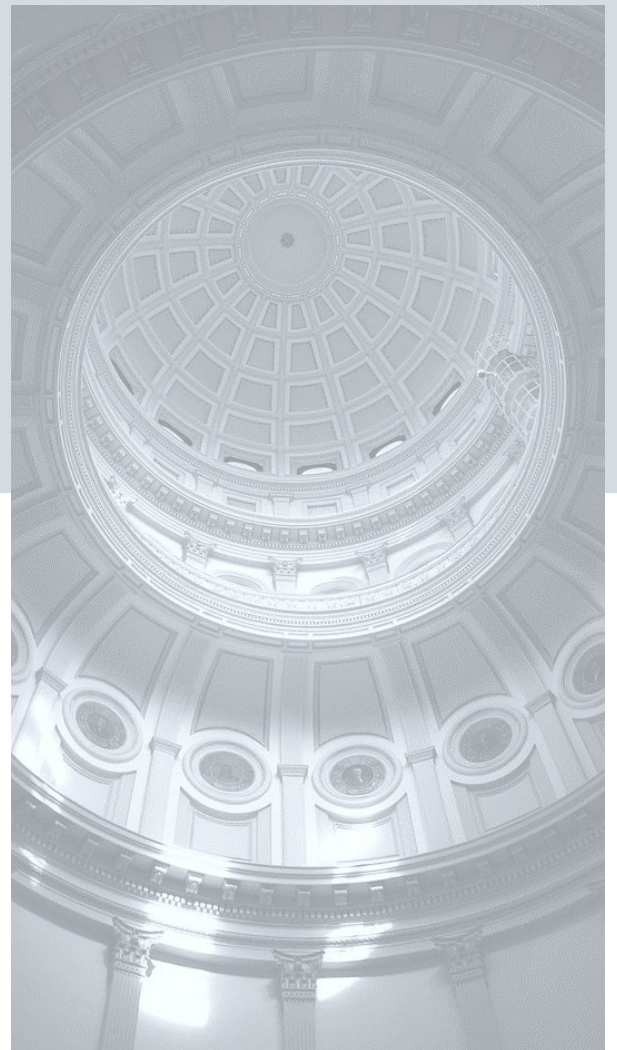
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2024 Sunset Review

Workers' Compensation
Accreditation of Health Care
Providers Program



October 15, 2024



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2024

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 accreditation of health care providers program. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2025 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Subsections 3.5 and 3.6 of Section 101 of Article 42 of Title 8, C.R.S. The report also discusses the effectiveness of Division of Workers' Compensation staff in carrying out the intent of the statutes and makes recommendations for statutory 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





Workers' Compensation Accreditation of Health Care Providers Program

Background

What is regulated?

The Workers' Compensation Accreditation of Health Care Providers Program (Program), which is housed in the Division of Workers' Compensation (Division), is a two-tiered qualification structure that establishes requirements for primary care providers who treat patients injured in the workplace (Level I) and for physicians who provide impairment evaluations of injured workers (Level II). The accreditation system was established by the General Assembly to provide practitioners with an understanding of the administrative, legal and medical roles related to workers' compensation.

Why is it regulated?

The purpose of the Program is to educate health care-practitioners about the medical, administrative, and legal components of participating in the workers' compensation system. The Program, among other things, provides training to practitioners to treat workers and establish the level of permanent impairment a worker sustained from a work-related injury.

Who is regulated?

In fiscal year 22-23, there were 656 health care providers who held a Level I accreditation and 361 Medical Doctors and Doctors of Osteopathic Medicine who held a Level II accreditation.

How is it regulated?

In order to obtain a Level I or II accreditation, health-care practitioners must complete required coursework offered by the Division and take and pass an examination.

What does it cost?

In fiscal year 22-23, the Program cash fund expenditures for administrative and operational costs were \$486,864.

What disciplinary activity is there?

In fiscal year 22-23, there were 11 complaints filed against Level I and II accredited providers for inaccurate impairment ratings and rule violations, none of which resulted in disciplinary action.

Key Recommendations

- **Continue the Program for 11 years, until 2036.**
- **Authorize regulated health-care practitioners who provide care for workers' compensation related injuries to obtain a Level I accreditation from the Division.**

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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 the program under review 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 address the second sunset criterion--whether conditions that led to the initial creation of the program 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 fifth 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 or the agency's board 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 fourteenth 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.

Table 1
Application of Sunset Criteria

Sunset Criteria	Where Applied
(I) Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.	<ul style="list-style-type: none"> • Profile of the Profession • History of Regulation • Recommendation 1
(II) Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight.	<ul style="list-style-type: none"> • History of Regulation
(III) If the program is necessary, whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms.	<ul style="list-style-type: none"> • Legal Framework • Recommendations 1 and 2
(IV) If the program is necessary, whether agency rules enhance the public interest and are within the scope of legislative intent.	<ul style="list-style-type: none"> • Legal Framework
(V) 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 • Program Description and Administration
(VI) Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.	<ul style="list-style-type: none"> • Program Description and Administration • Recommendation
(VII) 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"> • Not applicable
(VIII) Whether regulatory oversight can be achieved through a director model.	<ul style="list-style-type: none"> • Not Applicable
(IX) The economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.	<ul style="list-style-type: none"> • Profile of the Profession

Sunset Criteria	Where Applied
(X) If reviewing a regulatory program, 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 or regulated entity.	<ul style="list-style-type: none"> • Program Description and Administration
(XI) If reviewing a regulatory program, whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.	<ul style="list-style-type: none"> • Program Description and Administration
(XII) Whether entry requirements encourage equity, diversity, and inclusivity.	<ul style="list-style-type: none"> • Program Description and Administration • Administrative Recommendation 1
(XIII) If reviewing a regulatory program, whether the agency, through its licensing, certification, or registration 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, certifications, or registrations that the agency denied based on the applicant's criminal history, the number of conditional licenses, certifications, or registrations issued based upon the applicant's criminal history, and the number of licenses, certifications, or registrations 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.	<ul style="list-style-type: none"> • Not applicable
(XIV) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> • Recommendations 1 and 2 • Administrative Recommendation 1

Sunset Process

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

The functions of the workers' compensation accreditation of health care providers program (Program) and Division of Workers' Compensation (Division), as enumerated in Subsections 3.5 and 3.6 of Section 101 of Article 42 of Title 8, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2025, 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 Program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program should be continued and to evaluate the performance of the Program and Division. During this review, Division staff 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, practitioners, and officials with state and national professional associations; and Colorado statutes and rules.

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

- American Medical Association
- Colorado Chiropractic Association
- Colorado Division of Workers' Compensation
- Colorado Medical Society - Workers' Compensation and Personal Injury Committee
- Colorado Self Insured Association
- Concentra Healthcare
- Pinnacol Assurance

Profile of the Profession

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), C.R.S. The first criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.

To understand the need for the workers' compensation accreditation of health care providers program (Program), it is first necessary to recognize what it does, how it works, who it serves and any necessary qualifications.

Workers' compensation insurance provides cash benefits or medical care to workers who are injured or become ill at their place of employment.² In Colorado, all employers are required to possess and maintain workers' compensation insurance regardless of the size of the business. Employees, whether they are full-time, part-time or family members, are entitled to workers' compensation benefits if they are injured on the job.³

Employers purchase workers' compensation insurance through an insurance agent and the process is similar to the process when individuals purchase liability or automobile insurance.⁴

The State of Colorado established the Program in 1991, and the purpose of the Program is to educate health-care practitioners about the medical, administrative, and legal components of participating in the workers' compensation system.⁵ The Program, among other things, provides training to physicians to treat workers and establish the level of permanent impairment a worker sustained from a work-related injury.

Impairment is based on the worker's ability to use a damaged body part in their everyday life compared to that same fully functioning part or how that body part functioned prior to the injury. Post-injury, when damage is stable and no further treatment can be expected to improve the condition, the patient is considered to have achieved maximum medical improvement (MMI). Once MMI is determined, impairment is assessed by comparing the body part's function to its role pertaining to the function of the entire body.

To determine the amount of compensation a worker receives for a work-related impairment, some states, such as Colorado, rely on the percentage of whole-person impairment rating published in the American Medical Association's *Guides to the*

² USAGov. *Workers' Compensation*. Retrieved July 9, 2024, from <https://www.usa.gov/workers-compensation>

³ Colorado Department of Labor and Employment, Division of Workers' Compensation. *What is Workers' Compensation?* Retrieved July 9, 2024, from <https://cdle.colorado.gov/dwc>

⁴ Colorado Department of Labor and Employment, Division of Workers' Compensation. *What is Workers' Compensation?* Retrieved July 9, 2024, from <https://cdle.colorado.gov/dwc>

⁵ § 8-42-101(3.6)(e), C.R.S.

Evaluation of Permanent Impairment. Other states establish their own impairment rating system.

The guides offer a system for measuring impairment. Colorado currently uses the revised third edition of the guides published in 1991.

The ninth sunset criterion questions the economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.

In 2022, there were more than 54,000 private industry injuries and illnesses in Colorado. Of the more than 54,000 injuries reported, approximately 34,000 injuries or illnesses were severe, requiring days away from work, transfers or restriction of duty.⁶

⁶ U.S. Bureau of Labor Statistics. *Employer-Reported Workplace Injuries and Illnesses in Colorado - 2022*. Retrieved August 30, 2024, from https://www.bls.gov/regions/mountain-plains/news-release/workplaceinjuryandillness_colorado.htm

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 and second sunset criteria question:

Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare; and

Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less or the same degree of governmental oversight.

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

During the 1991 legislative session, the General Assembly passed Senate Bill 91-218, which created an accreditation system for physicians who work with workers' compensation patients, the workers' compensation accreditation of health care providers program (Program). The Program was part of an overhaul of the workers' compensation system that was meant to make the system more predictable and less litigious. Senate Bill 91-218 also adopted the revised third edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (1991 AMA Guides), which at the time, had just been published, as its basis for instruction and measurement.

COPRRR conducted a sunset review of the Program in 1995, 2002 and 2013. The 2013 sunset report, among other things, recommended continuation of the Program and removing the fee schedule from statute and authorizing the Director the Division of Workers' Compensation (Director and Division, respectively) to set fees administratively.

Both recommendations were adopted by the General Assembly in the 2014 legislative session.

Legal Summary

The third, fourth and fifth sunset criteria question:

Whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms;

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.

The Program is created in Subsections 3.5 and 3.6, of Section 101, Article 42, Title 8, C.R.S. It is a two-tiered qualification structure that establishes requirements for primary care physicians who treat patients injured in the workplace (Level I) and for physicians who provide impairment evaluations of injured workers (Level II). No physician can hold a Program accreditation merely because they are licensed. The accreditation system was established by the General Assembly to provide physicians an understanding of the administrative, legal and medical roles related to workers' compensation.⁷

For the purposes of Level I and Level II accreditation, the statute defines the term "physician" as a licensed doctor, dentist, podiatrist and chiropractor.⁸ An authorized primary physician treating a patient for a "time-loss injury" must be accredited at Level II. Level I accreditation is voluntary for dentists, podiatrists, and physicians but is mandatory for chiropractors who treat injuries for more than three days of lost time.⁹

Physicians licensed under the Medical Practice Act are the only practitioners eligible to obtain a Level II accreditation and provide impairment ratings.¹⁰ The Division has two options for Level II accreditation: full and limited. Full accreditation is granted to a qualified physician who passes the entire Level II examination. Once fully accredited, they are able to determine permanent impairment ratings for any work-related injury or illness. Limited accreditation is granted to a qualified physician who passes specified portions of the Level II examination to rate impairment only in connection with an area of medical specialty.¹¹

The Program is cash funded.¹² Level I and II accreditation programs must operate so that the cost of the Programs is fully funded by the registration fees.¹³

⁷ § 8-42-101(3.6)(e), C.R.S.

⁸ § 8-42-101(3.5)(a)(I)(A), C.R.S.

⁹ § 8-42-101(3.6)(a)(I), C.R.S. Time-loss injuries are those in which patients who have, as a result of their injury, been unable to return to work for more than three working days.

¹⁰ §§ 8-42-101(3.5)(a)(I)(E) and 8-42-306(b), C.R.S.

¹¹ 7 CCR § 1101-3.13-2(B)(5), Colorado Division of Workers' Compensation Rules

¹² § 8-42-101(3.6)(m), C.R.S.

¹³ § 8-42-101(3.6)(d), C.R.S.

The statute requires the Director to promulgate rules establishing guidelines for medical treatment and medical impairment rating based on the 1991 AMA Guides¹⁴ and to maintain a medical impairment rating system.¹⁵

To advise the Director on issues of accreditation, impairment rating guidelines, medical treatment guidelines and utilization standards, and case management, the Director contracts with the University of Colorado Medical School for the services of a Medical Director. The Medical Director must hold a Colorado physician's license (Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO)) and have experience in occupational medicine.¹⁶

The accreditation system provides physicians with an understanding of the administrative, legal, and medical roles in the workers' compensation system. It must be accessible to every physician, with consideration given to specialty and geographic diversity.¹⁷ The statute requires that the Division make a list of accredited physicians available to insurers, claimants, and employers. The lists must be updated monthly and reflect any physicians whose accreditation has been revoked.¹⁸

Initially, a physician's accreditation is valid for three years and it may be renewed for three-year periods. The Director may determine, in rule, if additional training is required prior to an accreditation renewal.¹⁹

Neither a specialist physician who does not provide impairment evaluations, nor the facility where they work, are required to be accredited.²⁰ Also, a physician who provides treatment for non-time-loss injuries need not be accredited to be compensated for the treatment rendered.²¹

The Director must revoke the accreditation of a physician who violates the provisions of the Program or any associated rule, following a hearing that is subject to review by the Industrial Claim Appeals Office and the Colorado Court of Appeals.²² Subsequently, if a physician with a revoked accreditation submits a claim for payment of services, the physician is committing insurance fraud. In those cases, neither an insurance carrier nor a self-insured employer is obligated to pay the claim.²³

Specific grounds for accreditation revocation include:

¹⁴ § 8-42-101(3.5)(a)(II), C.R.S.

¹⁵ § 8-42-101(3.5)(b), C.R.S.

¹⁶ § 8-42-101(3.6)(n), C.R.S.

¹⁷ § 8-42-101(3.6)(e), C.R.S.

¹⁸ § 8-42-101(3.6)(k), C.R.S.

¹⁹ § 8-42-101(3.6)(f), C.R.S.

²⁰ § 8-42-101(3.6)(b), C.R.S.

²¹ § 8-42-101(3.6)(i), C.R.S.

²² § 8-42-101(3.6)(g), C.R.S.

²³ § 8-42-101(3.6)(h), C.R.S.

-
- A refusal to comply, substantial failure to comply, or two or more incidents of failure to comply with the provisions of the Workers' Compensation Rules of Procedure and all relevant statutes;²⁴ and
 - A misrepresentation on the application for accreditation.²⁵

Additionally, the Director has promulgated rules covering permanent impairment rating guidelines: Division of Workers' Compensation Rule 12 - *Permanent Impairment Rating Guidelines*, and Division of Workers' Compensation Rule 17 - *Medical Treatment Guidelines*.

Rule 12 is based on the 1991 AMA Guides. It describes how to implement the impairment rating methodology and report impairment ratings, which includes the following:²⁶

- Provider responsibilities,
- Apportionment of injuries,
- Permanent physical impairment ratings,
- Permanent mental and behavioral disorder impairment ratings,
- Permanent impairment rating of extremities, and
- Permanent impairment ratings for cumulative trauma.

Rule 12 also includes impairment work sheets and impairment scoring instructions.

Rule 17 provides treatment guidelines to assure an efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers. These rules highlight treatment guidelines for the following:²⁷

- Low Back Pain,
- Moderate/Severe Traumatic Brain Injury,
- Carpal Tunnel Syndrome,
- Thoracic Outlet Syndrome,
- Shoulder Injury,
- Cumulative Trauma Conditions,
- Lower Extremity,
- Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy,
- Cervical Spine Injury,
- Chronic Pain Disorder, and
- Traumatic Brain Injury Medical Treatment Guidelines.

²⁴ 7 CCR § 1101-3.13-4(A)(1), Colorado Division of Workers' Compensation Rules.

²⁵ 7 CCR § 1101-3.13-4(A)(2), Colorado Division of Workers' Compensation Rules.

²⁶ 7 CCR § 1101-3.12, Colorado Division of Workers' Compensation Rules.

²⁷ 7 CCR § 1101-3.17. Colorado Division of Workers' Compensation Rules.

If an evaluating physician does not hold a Level II accreditation and determines that there is a permanent medical impairment, then no insurance carrier, self-insured employer, or injured worker is liable for impairment evaluation-associated costs.²⁸

The Medical Director may consult on peer review issues. The Division Director may also contract with a private organization to review activities to recommend whether adverse action is warranted. The organization must meet the definition of a utilization and quality control peer review organization as set forth in 42 U.S. Code section 1320c-1.²⁹

²⁸ § 8-42-101(3.6)(o), C.R.S.

²⁹ § 8-42-101(3.6)(n), 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 fifth and sixth sunset criteria question:

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

Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria. The workers' compensation accreditation of health care providers program (Program) educates physicians about the medical, administrative, and legal impacts of providing medical care in the workers' compensation system.

The Program trains physicians to treat workers using guidelines which establish the level of permanent impairment a worker sustained from a work-related injury. Impairment is defined as what is wrong with a body part or organ system and its functioning.

By taking a Division of Workers' Compensation (Division) Level I and Level II training course and passing an examination, a Colorado-licensed physician (Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO)), chiropractor, podiatrist or dentist becomes accredited at Level I or Level II.³⁰ Level II accreditation is available to MDs and DOs only. Accreditation is valid for three years.

The Program is cash funded through two sources: the Workers' Compensation Cash Fund (WCCF) and the Program Cash Fund. The WCCF covers Division administrative and personnel costs. WCCF funds are derived from a surcharge billed to all insurance carriers in the workers' compensation system.

The Program Cash Fund, which covers the costs of courses and materials, is funded through the accreditation fees assessed to practitioners seeking both Level I and Level II accreditations. Program Cash Funds received in the past five fiscal years are as follows:

- FY 18-19 - \$96,000;
- FY 19-20 - \$118,555;
- FY 20-21 - \$101,825;
- FY 21-22 - \$98,720; and
- FY 22-23 - \$118,050.

³⁰ Level II accreditation is only available to physicians licensed by the State Medical Board.

Table 2 illustrates, for the fiscal years indicated, the expenditures from both sources.

Table 2
Program Cash Fund and WCCF Expenditures
Fiscal Years 18-19 through 22-23

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23
Program Cash Fund	\$62,118	\$77,700	\$92,623	\$160,613	\$67,170
WCCF	\$368,546	\$428,696	\$357,527	\$402,656	\$486,864
Total	\$430,664	\$506,396	\$450,150	\$563,269	\$554,034

Table 2 shows that Program expenditures increased in each of the five fiscal years reviewed. The increase is attributable to the COVID-19 pandemic. Prior to the COVID-19 pandemic, courses were held in person; however, during the COVID-19 pandemic, Division staff developed online content, which included upgrading the Division's learning management system. The implementation of online contact increased expenditures regarding the Program.

Table 3 delineates the full-time equivalent (FTE) employees utilized to administer the Program.

Table 3
Program Personnel Resources
Fiscal Years 18-19 through 22-23

Fiscal Year	FTE
18-19	4.5
19-20	4.5
20-21	4.0
21-22	5.0
22-23	5.0

The current FTE associated with the Program are as follows:

- 0.5 FTE - Health Professional VI, who is responsible for overall management of the Program;
- 1.0 FTE - Training Specialist IV, who develops online modules for courses;
- 1.0 FTE - Training Specialist IV, who develops Program content and serves as the lead for the Program and oversees day-to-day operations;
- 1.0 FTE - Program Assistant I, who oversees the budget, procurement and database updates;
- 1.0 FTE - Health Professional V, who is an expert in impairment ratings; and
- 0.5 FTE - Administrative Assistant III, who manages customer service, registrations and enrollment and file management.

Accreditation

The eleventh and twelfth sunset criteria question whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage equity, diversity and inclusivity (EDI).

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

The Program offers two levels of accreditation: Level I and Level II.

Level I Accreditation

Level I accreditation is *required* only for chiropractors who wish to be compensated for treating patients with workers' compensation, time-loss injuries. Dentists, podiatrists, nurse practitioners with prescriptive authority, physician assistants and physicians may also obtain a Level I accreditation. A Level I accreditation provides education and training to practitioners regarding the administrative, legal and medical aspects of the current workers' compensation system in Colorado.³¹

Physicians who obtain a Level I accreditation can be authorized as treating physicians for workers' compensation injuries, but such accreditation does not allow that physician to perform impairment ratings. To perform impairment ratings, a physician must possess a Level II accreditation.

The Division offers a 12-week Level I accreditation course, which can be completed at a practitioner's own pace within the allotted timeframe, via on-line course modules three times per year (fall, spring and summer).³²

The Level I course objectives are as follows:³³

- Apply the Colorado Medical Treatment Guidelines meaningfully in clinical practice,
- Synthesize principles of chronology to appropriately proceed through a workers' compensation case,
- Implement Division rules and procedures into practice,

³¹ Colorado Department of Labor and Employment. *Level I Accreditation*. Retrieved August 1, 2024, from [https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20\(MMI\)](https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20(MMI))

³² Colorado Department of Labor and Employment. *Level I Accreditation*. Retrieved August 1, 2024, from [https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20\(MMI\)](https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20(MMI))

³³ Colorado Department of Labor and Employment. *Level I Accreditation*. Retrieved August 1, 2024, from [https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20\(MMI\)](https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20(MMI))

- Evaluate medical and ethical issues pertaining to workers' compensation cases,
- Demonstrate proper use of Division forms, and
- Evaluate a patient's functional status and defend a determination of maximum medical improvement.

Once the aforementioned coursework for Level I accreditation is complete, a practitioner is eligible to take the examination. The examination is taken on-line in a proctored setting, and practitioners have two opportunities to pass the examination.³⁴ The examination contains 60 multiple choice questions.

In developing examination content for the Level I accreditation, the Division did not take into consideration principles involving EDI.

The pass rates for the Level I examination for the past five fiscal years are as follows:

- FY 18-19 - 100 percent;
- FY 19-20 - 99 percent;
- FY 20-21 - 98 percent;
- FY 21-22 - 95 percent; and
- FY 22-23 - 95 percent.

The Level I accreditation, including the examination, is \$200.

The Level I accreditation is valid for three years. After three years, practitioners who wish to continue to be Level I accredited must complete the re-accreditation process, which includes completing on-line coursework.

The Level I re-accreditation fee is \$200.

Table 4 highlights the number of Level I initial accreditations, re-accreditations and total number Level I accreditations.

Table 4
Level I Accreditation
Fiscal Years 18-19 through 22-23

Fiscal Year	Initial Accreditation	Reaccreditation	Total Level I Accreditation
18-19	93	49	500
19-20	162	87	592
20-21	122	82	654
21-22	107	95	656
22-23	134	90	656

³⁴ Colorado Department of Labor and Employment. *Level I Accreditation*. Retrieved August 1, 2024, from [https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20\(MMI\)](https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20(MMI))

As Table 4 indicates, the total number of Level I accredited practitioners increased. The increase in each of the past five fiscal years is attributable to the addition of physician assistants and nurse practitioners with prescriptive authority, which were added to the statute in 2016 and 2019, respectively, being eligible to obtain a Level I accreditation.

Level II Accreditation

Level II accreditation is limited to licensed Medical Doctors (MDs) and Doctor of Osteopathic Medicine (DOs) licensed by the Colorado Medical Board. The purpose of Level II accreditation is to further understanding of the administrative, legal, and medical aspects of the workers' compensation system. Level II accreditation also educates physicians in performing impairment ratings utilizing the American Medical Association's *Guides to the Evaluation of Permanent Impairment, 3rd Edition* (1991 AMA Guides).³⁵

There are two types of Level II accreditation available for doctors: full and limited. Full accreditation enables doctors to perform impairment ratings for all body parts and systems. A limited accreditation allows a physician to rate patients only in specific diagnostic categories.

The Division offers Level II accreditation courses, which can be completed at a practitioner's own pace, via on-line course modules two times per year (summer/fall and winter/spring).³⁶

The Level II course objectives are as follows:³⁷

- Apply the Colorado Medical Treatment Guidelines meaningfully in clinical practice,
- Synthesize principles of chronology to appropriately proceed through and complete a workers' compensation case,
- Create a comprehensive narrative report for an impairment rating,
- Construct an impairment rating through application of the 1991 AMA Guides,
- Distinguish between the principles of normalization and apportionment, and
- Construct an impairment rating that requires apportionment.

Once the coursework for Level II accreditation is complete, a practitioner is eligible to take the examination. Practitioners have two opportunities to pass the examination.³⁸ The examination contains 64 multiple choice questions. Level II candidates are also

³⁵ Colorado Department of Labor and Employment. *Level II Accreditation*. Retrieved August 5, 2024, from <https://cdle.colorado.gov/dwc/level-ii-accreditation>

³⁶ Colorado Department of Labor and Employment. *Level II Accreditation*. Retrieved August 5, 2024, from <https://cdle.colorado.gov/dwc/level-ii-accreditation>

³⁷ Colorado Department of Labor and Employment. *Level II Accreditation*. Retrieved August 5, 2024, from <https://cdle.colorado.gov/dwc/level-ii-accreditation>

³⁸ Colorado Department of Labor and Employment. *Level II Accreditation*. Retrieved August 5, 2024, from <https://cdle.colorado.gov/dwc/level-ii-accreditation>

required to complete eight case examples where the physician is graded on the performance of impairment ratings.

After passing the Level II accreditation examination, the health-care practitioner is placed on probation for up to one year. During the one-year probationary period, the practitioner must provide three impairment rating reports, which are graded using a rubric. The practitioner must receive a passing score of at least 80 percent on all three impairment ratings. If a practitioner does not receive a passing score on the impairment ratings, they are able to resubmit them. If they complete this requirement of submitting three impairment ratings with a passing score, the initial accreditation is valid for three years from the date of the examination.

In developing examination content for the Level II accreditation, the Division did not take into consideration principles involving EDI.

The pass rate for the Level II examination in each of the past five fiscal years was 100 percent.

The Level II accreditation, including the examination, is \$400.

Practitioners who possess a Level II accreditation must complete the Level II re-accreditation every three years to maintain their accreditation. To maintain a Level II accreditation, practitioners are required to complete course modules related to problem-solving regarding the 1991 AMA Guides. Level II re-accreditation also requires practitioners to take skill-building workshops on cumulative trauma, complex regional pain syndrome and traumatic brain injury impairment ratings.³⁹ Level II accredited practitioners are also required to submit an impairment rating report that is graded using a rubric. They must obtain an 80 percent or higher in order to pass the Level II re-accreditation course.

The Level II re-accreditation, including course modules, is \$400.

Table 5 highlights the number of initial, re-accreditation and total number of Level II accreditations in the past five fiscal years.

Table 5
Level II Accreditation
Fiscal Years 18-19 through 22-23

Fiscal Year	Initial Accreditation	Reaccreditation	Total Level II
18-19	24	88	470
19-20	8	139	419
20-21	22	113	385
21-22	26	84	389
22-23	19	118	361

³⁹ Colorado Department of Labor and Employment. *Level II Re-Accreditation*. Retrieved August 12, 2024, <https://cdle.colorado.gov/dwc/level-ii-re-accreditation>

Table 5 shows that the number of Level II accredited physicians has decreased in the five fiscal years reviewed. The decrease is attributable to the Division encouraging MDs and DOs who do not perform impairment ratings to obtain a Level I accreditation instead of a Level II accreditation.

Complaints and Disciplinary Actions

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

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

A complaint concerning an accredited physician may come into the Division from a claimant, insurer, employer or a medical provider. Table 6 includes all of the complaints received by the Program for the fiscal years indicated.

Table 6
Complaints Received
Fiscal Years 18-19 through 22-23

Complaint	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23
Inaccurate Impairment Rating	1	5	0	1	6
Rule Violation	0	1	2	2	5
Total	1	6	2	3	11

The legal, administrative, or medical context of a complaint determines the nature of the Division's action. When complaints involve substandard treatment, the complainant is informed that the Colorado Medical Board or other licensing authority may also be an avenue to pursue the matter.

For investigations involving impairment ratings, Program staff reviews the details of the rating in question. In some cases, the physician may be contacted to make a revision. The only disciplinary tool available to the Director is revocation. Data indicate that no physicians have had their Level I or II accreditations revoked during the time period covered by this sunset review.

Additionally, the Division is not automatically informed if a Level I or Level II provider has been disciplined by their licensing board. However, because a provider must be a licensed practitioner to be accredited, Division staff checks the Department of Regulatory Agencies' licensee disciplinary data monthly for revocations.

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 accreditation of health care providers program for 11 years, until 2036.

The purpose of the workers’ compensation accreditation of health care providers program (Program) is to educate physicians who treat workers injured on the job about the workers’ compensation system and train them to evaluate physical impairment post-injury with a standardized, predictable methodology.

Impairment means that a person has lost a percentage of the usability of a body function and the function will not improve. The objective is to assess the level of impairment of the function in conjunction with its significance to the function of the entire body and return the employee to work. This is opposed to disability, which assesses what a worker cannot do and does not have the worker returning to the workplace as an objective.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. The Program offers protection to the public by ensuring dentists, podiatrists, chiropractors, nurse practitioners with prescriptive authority, physician assistants and physicians are properly trained to treat workers who sustain workers’ compensation injuries via Level I accreditation.

Also, Level II accreditation enables a licensed Medical Doctor (MD) and Doctor of Osteopathic Medicine (DO) to perform impairment ratings.

The third sunset criterion asks whether regulations establish the least restrictive form of regulation consistent with the public interest. Level I accreditation is optional for dentists, podiatrists, nurse practitioners with prescriptive authority, physician assistants, MDs and DOs, and it is required for chiropractors, to treat workers’ compensation patients.

The Division provides certain health-care practitioners the opportunity to obtain a Level I accreditation. In order to obtain a Level I accreditation, health-care practitioners must complete training modules offered by the Division and pass an examination. Importantly, although Level I accreditation is offered by the Division, only chiropractors are required to obtain a Level I accreditation to provide treatment to injured workers. Since the other health-care practitioners highlighted above are not required to obtain a Level I accreditation to provide treatment to injured workers, the current system provides the least restrictive form of regulation.

Currently, only trained, Level II accredited physicians may provide impairment ratings on workers' compensation patients. The standardization of impairment evaluation means that regardless of where and how a worker is injured, that worker will be evaluated based on the same criteria and measured against the same standard, "maximum medical improvement," as other injured workers. When physicians are trained and examined to apply the methodology the same way, outcomes are the same or very similar. Additionally, the Program is not mandatory for all Colorado-licensed physicians. One only needs to be accredited if they choose to perform impairment ratings in the workers' compensation system.

Additionally, the standardization offered by the Program protects involved parties - employers, employees, medical providers, and insurers - against the need for costly litigation. Prior to the enactment of the Program, impairment ratings were more subjective than they are today.

Requiring training only for those physicians who choose to participate in the workers' compensation process and the need for standardization assist the Program in accomplishing the directive of the third statutory sunset criterion, which is to ensure the least restrictive regulation consistent with the public interest.

The purpose of Level II accreditation is to provide a further understanding of the administrative, legal, and medical aspects of the workers' compensation system. Level II accreditation also educates physicians in performing impairment ratings utilizing the American Medical Association's *Guides to the Evaluation of Permanent Impairment, 3rd Edition* (1991 AMA Guides).⁴⁰ The Program serves to provide a framework to protect the health, safety, and welfare of the people of Colorado.

Therefore, the General Assembly should continue the Program for 11 years, until 2036. Since this sunset review did not identify substantive issues with Level I and II accreditation, an 11-year continuation is justified.

Recommendation 2 – Authorize regulated health-care practitioners who provide care for workers' compensation related injuries to obtain a Level I accreditation from the Division of Workers' Compensation.

Currently, only dentists, podiatrists, chiropractors, nurse practitioners with prescriptive authority, physician assistants and physicians can obtain a Level I accreditation. A Level I accreditation provides education and training to practitioners regarding the administrative, legal and medical aspects of the current workers' compensation system in Colorado.⁴¹ There are other health care professionals, such

⁴⁰ Colorado Department of Labor and Employment. *Level II Accreditation*. Retrieved August 5, 2024, from <https://cdle.colorado.gov/dwc/level-ii-accreditation>

⁴¹ Colorado Department of Labor and Employment. *Level I Accreditation*. Retrieved August 1, 2024, from [https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20\(MMI\)](https://cdle.colorado.gov/level-i-accreditation#:~:text=Course%20Objectives&text=Implement%20Colorado%20DOWC%20rules%20and,Maximum%20Medical%20Improvement%20(MMI))

as physical therapists, who currently provide treatment to patients who sustain injuries on the job. However, physical therapists are not authorized to obtain a Level I accreditation.

Health care professionals who are not authorized to obtain a Level I accreditation may complete the training offered by the Division of Workers' Compensation (Division). Once the training is complete, a health-care practitioner is considered "Division trained."

It is unclear as to why any regulated health-care practitioner who provides care to injured workers under the workers' compensation system in Colorado is unable to secure a Level I accreditation. In fact, authorizing any regulated health care worker to obtain a Level I accreditation would ensure that they receive training and education regarding the legal and medical aspects of the workers' compensation system in Colorado. Doing so will ensure that health-care practitioners who provide services are adequately trained and educated to provide care.

The third sunset criterion asks whether the existing statutes and regulations establish the least restrictive form of government oversight. The current system of enabling only certain health-care practitioners to obtain a Level I accreditation is overly restrictive because it bars other practitioners who are providing treatment to workers in the workers' compensation system from obtaining a Level I accreditation and learning about the legal and administrative aspects of the state's Worker's compensation system. Enabling other health-care practitioners to obtain a Level I accreditation would ensure that a broader range of health-care practitioners have received minimum training to provide services to workers who are injured on the job.

Importantly, any regulated health care professional who practices beyond their scope of practice is subject to formal discipline from their regulated entity (e.g., licensing board or licensing administrator). As such, health-care practitioners who practice beyond their scope of practice, whether in the workers' compensation or other setting, are subject to formal discipline.

Authorizing any regulated health-care practitioner to obtain a Level I accreditation would not provide greater risk to consumers; instead, it would ensure that practitioners have completed the necessary training and education to provide effected treatment to workers who are injured while working on the job.

Therefore, the General Assembly should authorize any regulated health-care practitioner who is providing treatment in the workers' compensation system to obtain a Level I accreditation from the Division.

Administrative Recommendation 1 – The Division should review and update the Level I and Level II examinations to include equity, diversity and inclusion considerations in examination development.

The Program implemented examinations for both Level I and Level II accreditation beginning in 1991. That is, in order to obtain a Level I or Level II accreditation from the Division of Workers' Compensation (Division), a health-care practitioner must pass an examination. The examinations were created and are administered by Division staff.

Level I accreditation is available to dentists, podiatrists, chiropractors, nurse practitioners with prescriptive authority, physician assistants and physicians. The Level I accreditation examination tests a practitioner's knowledge concerning the administrative, legal and medical aspects of the current workers' compensation system in Colorado.

Level II accreditation is limited to licensed Medical Doctors and Doctor of Osteopathic Medicine licensed by the Colorado Medical Board. The Level II examination tests a practitioner's understanding of the administrative, legal, and medical aspects of the workers' compensation system. Level II examination also tests a practitioner's knowledge in performing impairment ratings utilizing the 1991 AMA Guides.

When the Level I and II examinations were originally developed, they did not take into consideration the principles of equity, diversity and inclusion (EDI). These principles are often operationalized during examination development by ensuring that the subject matter experts participating in item development come from diverse backgrounds and ensuring that examination items portray scenarios that take such principles into account.

The twelfth sunset criterion asks whether entry requirements encourage EDI.

Since EDI principles have not played a role in Level I and II examination development, Division staff should conduct a review of the examinations and update them to ensure that any deficiencies related to EDI are addressed. Division staff should also take steps to help make the Level I and II examinations accessible to a wide audience.