



Dora

Department of Regulatory Agencies
Executive Director's Office

NEWS RELEASE

For Immediate Release
October 14, 2011

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DORA Releases 2011 Sunset Reviews Ensuring Consumer Protection and Government Accountability

DENVER – Barbara J. Kelley, Executive Director of the Colorado Department of Regulatory Agencies (DORA), announces today the release of nine sunset reviews, which provide recommendations to the Colorado General Assembly to repeal unnecessary regulation in state government programs or divisions, and enhance the performance of continued programs. “We take our charge to ensure Government programs are necessary and efficient very seriously. The Sunset review process fits hand in glove with the Governor’s mandate to make government more efficient, more effective and more elegant,” said Kelley.

This year, DORA conducted sunset reviews throughout state government including programs and boards within the Departments of Public Safety, Public Health and Environment and DORA. The legislature determines when and which programs are reviewed.

Colorado was the first state in the country to pass a regulatory sunset law in 1976. The sunset process was one of the first accountability tools designed to examine the need for and impact of state regulation on the economy and the effectiveness of state regulation in protecting consumers.

Bruce Harrelson directs DORA’s Office of Policy, Research and Regulatory Reform, which includes a team of analysts who conduct the sunset reviews. “The criteria and timeline for sunset reviews are created in Colorado law. We strive to make the process as inclusive as possible, engaging consumers, businesses and interest groups into the discussion,” said Harrelson.

Following are short excerpts of DORA’s 2011 recommendations with the complete sunset reviews available online at www.dora.state.co.us/opr/.

Colorado Commission for Individuals Who Are Blind or Visually Impaired Continue the Colorado Commission for Individuals Who Are Blind or Visually Impaired.

The 15-member Colorado Commission for Individuals Who Are Blind or Visually Impaired (Commission) was created to make recommendations regarding the provision of services to those who are blind or visually impaired, to serve as an information resource and to serve as a liaison between government and the blind and visually impaired community. The Commission has ambitious plans moving forward and should be continued.

Advisory Committee on Covering All Children Sunset the Advisory Committee on Covering All Children.

The Advisory Committee on Covering All Children (Advisory Committee) has worked diligently to fulfill its statutory mandate of increasing health care coverage to Colorado’s children via Medicaid and the Child Health Plan Plus. However, much of what the Advisory Committee does is also performed by advocacy groups working on the same issues. To avoid this duplication of efforts, the Advisory Committee should be sunset.

Forest Restoration Pilot Program Technical Advisory Panel

Sunset the Forest Restoration Pilot Program Technical Advisory Panel.

The purpose of the eight-member Forest Restoration Pilot Program Technical Advisory Panel (Advisory Panel) is to evaluate the proposals for forest restoration demonstration grants received by the Director of the State Forest Service, and to make recommendations to the Director as to which proposals would best meet the objectives of the Colorado Forest Restoration Act (Restoration Act). The Advisory Panel has been an active participant in the pilot program and most of its recommendations have resulted in grant awards. The Restoration Act and the Advisory Panel were both parts of a pilot program that is now complete. If the Restoration Act is allowed to sunset, the Advisory Panel should be repealed. Conversely, if the underlying program is retained and funded, then the Advisory Panel should similarly be continued.

Audiologists and Hearing Aid Providers

Continue the licensure of audiologists and hearing aid providers for seven years, until 2019.

The laws that govern audiologists and hearing aid providers protect the public by requiring qualifications to ensure competency, and the Director protects the public by ensuring that incompetent audiologists and hearing aid providers are removed from practice. Audiologists or hearing aid providers may harm consumers with unscrupulous sales practices. For example, an audiologist or hearing aid provider may collect money for hearing aids and not provide the promised goods or services. The elderly are especially vulnerable to unscrupulous sales practices.

Amend the qualifications required to obtain a hearing aid provider license.

In order to become a hearing aid provider, a candidate must pass the National Competency Exam. This examination does not test for entry-level competency, and it creates some unnecessary complexity in the licensure of hearing aid providers. If the examination were changed to an appropriate entry-level examination, then the regulatory program could be streamlined with the elimination of the associate license as excessive and obsolete.

Bail Bonding Agents and the Bail Bond Advisory Committee

Continue the regulation of bail agents for five years, until 2017.

Given Colorado's regulatory and marketplace circumstances, regulation of bail agents by the Division of Insurance is essential to protecting public health, safety, and welfare. During the time examined for this sunset review, the DOI revoked or suspended roughly 1 out of every 20 active bail agent licenses because of misconduct. Also, approximately one-quarter to one-half of all licensees faced disciplinary action in each fiscal year. Such high ratios vividly illustrate that regulatory oversight is needed.

Create a license for bail bonding agencies.

Currently, the Bail Act prohibits the licensing of agencies, a prohibition that does not exist for other lines of insurance. Recent market conduct examinations revealed multiple problems related to the way in which bail bonding agents (BBAs) and the insurance companies that appoint them interact. Compliance and accountability were identified as structural problems in this segment of the industry. Removing the prohibition on the licensing of bail bonding agencies will allow for greater industry oversight of the day-to-day operations of individual BBAs.

Continue the Bail Bond Advisory Committee for five years until 2017, change its membership, and assign it new duties.

The sunset report recommends numerous changes to the Bail Act. As a result, the Bail Bond Advisory Committee could become an invaluable part of the transition into the new regulatory environment. If its membership and mission are revised, it can help steer both the Division of Insurance and the regulated community through the changes that are on the horizon for the industry.

Colorado Cold Case Task Force

Continue the Colorado Cold Case Task Force for seven years, until 2019.

Although the Colorado Cold Case Task Force (Task Force) has completed its initial charge of the creation of a best practices model for reviewing cold cases, there is a need to continue the Task Force and refine and possibly re-develop its mission. The Task Force also provides a useful forum for law enforcement and members of the public to have an open dialog related to cold case investigations.

Amend the current membership of the Task Force to include a forensic pathologist.

The addition of a forensic pathologist to the Task Force would provide an additional perspective in the consideration and analysis of best practices of cold case investigations. This expertise could be useful to ensure that valuable information is preserved during a death investigation, which, if necessary, could be used in cold case investigations.

Hemodialysis Technicians

Continue the regulation of hemodialysis technicians for seven years, until 2019.

Dialysis is an inherently risky procedure. Given the nature of dialysis, and the central role of hemodialysis technicians in delivering care, it is important that technicians have sufficient training to perform the tasks competently, recognize symptoms that are out of the ordinary, and know when to appropriately refer to other staff. Requiring hemodialysis technicians to be nationally certified assures that technicians are minimally competent, and placing them under the supervision of an RN or physician assures that help and guidance is immediately available should problems arise.

Clarify that the Colorado Department of Public Health and Environment verifies the credentials of hemodialysis technicians as part of the survey/inspection process for dialysis treatment clinics.

Section 25-1.5-108(2), Colorado Revised Statutes, establishes that Colorado Department of Public Health and Environment (CDPHE) must verify the credentials of hemodialysis technicians as part of its licensing of dialysis treatment clinics. This wording implies that such credentials are verified only at the time of initial licensure. In fact, CDPHE verifies the qualifications of all clinic staff, including those of hemodialysis technicians, each time it conducts a routine survey of a licensed dialysis clinic. This provision should be revised accordingly.

Pharmacy Board

Continue the Colorado State Board of Pharmacy for nine years, until 2021.

The purpose of the Pharmaceuticals and Pharmacists Act is to ensure consumer protection regarding prescription drugs, including controlled substances. This sunset review revealed that the overall regulatory oversight of pharmacists, pharmacy interns and pharmacy businesses was functioning well and provided the appropriate level of protection to consumers. Specifically, the most common complaint filed against practitioners was for dispensing errors. A dispensing error occurs when a licensed pharmacist has given the final interpretation of the prescription order, counseled the patient and the order is dispensed to the consumer and the medication received 1) is the incorrect drug, quantity or strength, 2) it is incorrectly labeled (including incorrect directions for use) or 3) dispensing a prescription without conducting a proper drug regimen review. This sunset review also revealed that the Board consistently imposed discipline on licensees for dispensing errors.

Expand the current definition of the “other outlet” registration to allow ambulatory surgery centers and medical clinics operated by hospitals as well as long-term care facilities to register as an “other outlet.”

Currently, both ambulatory surgery centers (ASCs) and medical clinics operated by hospitals procure prescription drugs and controlled substances by utilizing the individual medical license of a facility's medical director. Drugs procured for ASCs and medical clinics are utilized by every practitioner working in the facility, not only the practitioner who is legally responsible for them. Allowing ASCs and medical clinics to obtain an “other outlet” registration provides greater flexibility to and reduces the compliance burden on the hospital, as well as the prescribing physician. Similarly, the function and role of long-term care facilities are continually changing. More hospital patients are discharged to these facilities, often at times when there is not a pharmacist available. As such, long-term care facilities are utilizing the prescription drugs and controlled substances in emergency kits as a “first dose” for medication. Expanding the definition of “other outlet” to include long-term care facilities would provide greater latitude for facilities to have a larger variety and quantity of drug stock to administer to patients.

**Professional Review Committees and the Committee on Anticompetitive Conduct
Continue the Colorado professional review act (CPRA) for seven years, until 2019.**

Professional review is required by The Joint Commission, in its standards of accreditation, and by the Centers for Medicare and Medicaid Services' Medicare Conditions of Participation. Thus, any health care entity that is accredited by The Joint Commission or that serves Medicare patients must conduct professional review. For those health care entities that conduct professional review and comply with enumerated due process provisions, CPRA ensures the professional review process remains confidential and it provides immunity to those who participate. CPRA embodies the best known mechanisms for promoting patient safety, and affording reviewed physicians a process to challenge adverse, and possibly unwarranted, professional review actions.

Sunset the Committee on Anticompetitive Conduct.

The jurisdiction of the Committee on Anticompetitive Conduct (CAC) is relatively limited. Only those final adverse actions of a professional review entity that a reviewed physician asserts were the result of anticompetitive conduct can be raised before the CAC. Any claims based on grounds other than antitrust can be taken directly to district court. In the 22 years since it was created, only 11 cases have been filed with the CAC. The continued necessity and utility of the CAC is, therefore, questionable.

Any interested party may provide input on reviews by contacting DORA directly at 303-894-2992 or on-line at http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.



DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado. Consumer protection is our mission.

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