

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

Attachment P

DRAFT

LLS NO. 20-0516.01 Kristen Forrester x4217

SUNSET BILL

Sunset Process - House Public Health Care
and Human Services Committee

BILL TOPIC: "Sunset Mental Health Professionals"
DEADLINES: Finalize by: JAN 27, 2020 File by: JAN 29, 2020

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE REGULATION OF MENTAL**
102 **HEALTH PROFESSIONALS, AND, IN CONNECTION THEREWITH,**
103 **IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE**
104 **2019 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY**
105 **AGENCIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Sunset Process - House Public Health Care and Human Services Committee. The bill:

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- Continues the regulation of mental health professionals until 2029 (*recommendation 1, sections 1 and 2* of the bill);
- Clarifies that mental health professionals may administer opiate antagonists (*recommendation 6, section 3*);
- Exempts students who are enrolled in a school program and are practicing as part of a school practicum or clinical program from licensing, certification, and registration requirements (*recommendation 9, section 4*);
- Grants title protection to additional persons practicing in the mental health field (*recommendation 12, section 5*);
- Makes the conviction of a crime that is related to mental health practice a violation of the mental health practice acts; (*recommendation 3, section 6*);
- Makes the failure to report the conviction of a felony a violation of the mental health practice acts (*recommendation 4, section 6*);
- Authorizes the appropriate regulatory board to suspend a mental health professional's license, certification, or registration for the failure to comply with a board-ordered mental or physical examination (*recommendation 5, section 7*);
- Repeals specific requirements that must be included in the continuing professional development program rules for licensed psychologists and makes the requirements less specific and in alignment with other mental health practice acts (*recommendation 8, section 8*);
- Repeals the requirement that a candidate for a social work license must be supervised by a licensed social worker and allows supervision as approved by the state board of social work examiners (*recommendation 7, sections 9 through 11*);
- Repeals the requirement that members of the mental health boards must be United States citizens (*recommendation 10, sections 12 through 16*); and
- Grants general rule-making authority to the state board of addiction counselor examiners and requires the state board of human services in the department of human services to establish by rule education requirements for addiction counselors (*recommendation 2, sections 17 and 18*).

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 *Recommendation 1*

1 **SECTION 1.** In Colorado Revised Statutes, **amend** 12-245-234
2 as follows:

3 **12-245-234. Repeal of article - subject to review.** This article
4 245 is repealed, effective September 1, 2020 2029. Before the repeal, all
5 of the boards relating to the licensing, registration, or certification of and
6 grievances against any person licensed, registered, or certified pursuant
7 to this article 245 are scheduled for review in accordance with section
8 24-34-104.

9 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **repeal**
10 (19)(a)(III); and **add** (30)(a)(III) as follows:

11 **24-34-104. General assembly review of regulatory agencies**
12 **and functions for repeal, continuation, or reestablishment - legislative**
13 **declaration - repeal.** (19) (a) The following agencies, functions, or both,
14 are scheduled for repeal on September 1, 2020:

15 (III) ~~Notwithstanding subsection (7)(a) of this section, the~~
16 ~~functions of the boards specified in article 245 of title 12, relating to the~~
17 ~~licensing, registration, or certification of and grievances against a person~~
18 ~~licensed, registered, or certified pursuant to article 245 of title 12;~~

19 (30) (a) The following agencies, functions, or both, are scheduled
20 for repeal on September 1, 2029:

21 (III) NOTWITHSTANDING SUBSECTION (7)(a) OF THIS SECTION, THE
22 FUNCTIONS OF THE BOARDS SPECIFIED IN ARTICLE 245 OF TITLE 12,
23 RELATING TO THE LICENSING, REGISTRATION, OR CERTIFICATION OF AND
24 GRIEVANCES AGAINST A PERSON LICENSED, REGISTERED, OR CERTIFIED
25 PURSUANT TO ARTICLE 245 OF TITLE 12.

26 ***Recommendation 6***

27 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-245-210

1 as follows:

2 **12-245-210. Drugs - medicine.** (1) Nothing in this article 245
3 permits psychologists, social workers, marriage and family therapists,
4 licensed professional counselors, psychotherapists, and addiction
5 counselors licensed, registered, or certified under this article 245 to
6 administer or prescribe drugs or in any manner engage in the practice of
7 medicine as defined by the laws of this state.

8 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, A
9 PSYCHOLOGIST, SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST,
10 LICENSED PROFESSIONAL COUNSELOR, PSYCHOTHERAPIST, OR ADDICTION
11 COUNSELOR LICENSED, REGISTERED, OR CERTIFIED UNDER THIS ARTICLE
12 245 MAY POSSESS, FURNISH, OR ADMINISTER AN OPIATE ANTAGONIST IN
13 ACCORDANCE WITH SECTION 12-30-110.

14 ***Recommendation 9***

15 **SECTION 4.** In Colorado Revised Statutes, 12-245-217, **amend**
16 (2)(e)(IV) and (2)(f); and **add** (2)(g) as follows:

17 **12-245-217. Scope of article - exemptions.** (2) The provisions
18 of this article 245 shall not apply to:

19 (e) A person who resides in another state and who is currently
20 licensed or certified as a psychologist, marriage and family therapist,
21 clinical social worker, professional counselor, or addiction counselor in
22 that state to the extent that the licensed or certified person performs
23 activities or services in this state, if the activities and services are:

24 (IV) Disclosed to the public that the person is not licensed or
25 certified in this state; or

26 (f) A professional coach, including a life coach, executive coach,
27 personal coach, or business coach, who has had coach-specific training

1 and who serves clients exclusively as a coach, as long as the professional
2 coach does not engage in the practice of psychology, social work,
3 marriage and family therapy, licensed professional counseling,
4 psychotherapy, or addiction counseling, as those practices are defined in
5 this article 245; OR

6 (g) STUDENTS WHO ARE ENROLLED IN A SCHOOL PROGRAM AND
7 ARE PRACTICING AS PART OF A SCHOOL PRACTICUM OR CLINICAL
8 PROGRAM.

9 ***Recommendation 12***

10 **SECTION 5.** In Colorado Revised Statutes, **amend** 12-245-218
11 as follows:

12 **12-245-218. Title use restrictions.** (1) A psychologist, social
13 worker, marriage and family therapist, professional counselor,
14 PSYCHOTHERAPIST, or addiction counselor may only use the title for
15 which ~~he or she~~ THE PERSON is licensed, certified, or registered under this
16 article 245 OR FOR WHICH THE PERSON HAS OBTAINED THE REQUIRED
17 CREDENTIALS. Except as provided in section 12-245-306 (3), no other
18 person shall:

19 (a) Hold himself or herself out to the public by any title or
20 description of services incorporating the terms "licensed clinical social
21 worker", "clinical social worker", "LCSW", "licensed social worker",
22 "LSW", "PROVISIONAL SOCIAL WORKER", "SWP", "marriage and family
23 therapist", "LMFT", "MFT", "MARRIAGE AND FAMILY THERAPIST
24 CANDIDATE", "MFT CANDIDATE", "MFTC", "professional counselor",
25 "LICENSED PROFESSIONAL COUNSELOR", "LPC", "LICENSED PROFESSIONAL
26 COUNSELOR CANDIDATE", "LPCC", "PROVISIONAL LICENSED
27 PROFESSIONAL COUNSELOR", "psychologist", "PROVISIONAL

1 PSYCHOLOGIST", "psychologist candidate", "psychology",
2 "psychological", "REGISTERED PSYCHOTHERAPIST", "addiction counselor",
3 "licensed addiction counselor", "LAC", "certified addiction counselor",
4 or "CAC"; ~~and no other person shall~~; OR

5 (b) State or imply that ~~he or she~~ THE PERSON is licensed,
6 CERTIFIED, OR REGISTERED to practice social work, marriage and family
7 therapy, professional counseling, psychology, PSYCHOTHERAPY, or
8 addiction counseling.

9 (2) Nothing in this section shall prohibit a person from stating or
10 using the educational degrees that the person has obtained.

11 ***Recommendations 3 and 4***

12 **SECTION 6.** In Colorado Revised Statutes, 12-245-224, **amend**
13 (1)(a) as follows:

14 **12-245-224. Prohibited activities - related provisions -**
15 **definition.** (1) A person licensed, registered, or certified under this
16 article 245 violates this article 245 if the person:

17 (a) (I) Has been convicted of or pled guilty or nolo contendere to
18 a felony OR TO ANY CRIME RELATED TO THE PERSON'S PRACTICE, or
19 received a deferred sentence to a felony charge. A certified copy of the
20 judgment of a court of competent jurisdiction of the conviction or plea is
21 conclusive evidence of the conviction or plea. In considering the
22 disciplinary action, each board is governed by sections 12-20-202 (5) and
23 24-5-101.

24 (II) HAS FAILED TO REPORT TO THE BOARD THAT REGULATES THE
25 PERSON'S PROFESSION OF A CONVICTION OF A CRIME WITHIN THIRTY DAYS
26 AFTER THE CONVICTION.

27 ***Recommendation 5***

1 **SECTION 7.** In Colorado Revised Statutes, 12-245-226, amend
2 (2)(d)(I) as follows:

3 **12-245-226. Disciplinary proceedings - judicial review - mental**
4 **and physical examinations - multiple licenses.** (2) (d) (I) If a board has
5 reasonable cause to believe that a licensee, registrant, or certificate holder
6 whom the board licenses, registers, or certifies pursuant to this article 245
7 is unable to practice with reasonable skill and safety to patients, the board
8 may require the licensee, registrant, or certificate holder to submit to
9 mental or physical examinations designated by the board. Upon the
10 failure of the licensee, registrant, or certificate holder to submit to a
11 mental or physical examination, and unless the person shows good cause
12 for the failure, the board may ~~act pursuant to subsection (2)(c) of this~~
13 ~~section or enjoin a licensee, registrant, or certificate holder pursuant to~~
14 ~~section 12-245-230~~ SUSPEND THE LICENSE, CERTIFICATION, OR
15 REGISTRATION OF THE PERSON until the person submits to the required
16 examinations.

17 ***Recommendation 8***

18 **SECTION 8.** In Colorado Revised Statutes, 12-245-307, amend
19 (2) as follows:

20 **12-245-307. Continuing professional development - rules.**

21 (2) The board shall adopt rules establishing a continuing professional
22 development program that includes, at a minimum, the following
23 elements:

24 ~~(a) The development, execution, and documentation of a learning~~
25 ~~plan;~~

26 ~~(b) A requirement that, every two years, a licensed psychologist~~
27 ~~complete at least forty hours of continuing professional development;~~

1 including one or more of the following activities, in any combination,
2 chosen by the licensed psychologist:

3 ~~(f) (A) Attending workshops; seminars; symposia; colloquia;~~
4 ~~invited speaker sessions; postdoctoral institutes; or scientific or~~
5 ~~professional programs offered at meetings of local, state, regional,~~
6 ~~national, or international professional or scientific organizations. The~~
7 ~~activities completed pursuant to this subsection (2)(b)(f) may include~~
8 ~~online continuing education but must qualify as continuing education~~
9 ~~units or continuing medical education credit approved by the American~~
10 ~~Psychological Association, state medical association, or Accreditation~~
11 ~~Council for Continuing Medical Education or by a regionally accredited~~
12 ~~institution of higher education; except that up to five of the continuing~~
13 ~~professional development hours completed pursuant to this subsection~~
14 ~~(2)(b)(f) may come from attendance at nonaccredited programming that~~
15 ~~meets the other requirements of this subsection (2)(b)(f).~~

16 ~~(B) A licensed psychologist must retain a transcript or a certificate~~
17 ~~of attendance, including a statement of the credits earned, provided at the~~
18 ~~end of the workshop, seminar, symposium, colloquium, invited speaker~~
19 ~~session, postdoctoral institute, or scientific or professional program~~
20 ~~offered at a meeting of a local, state, regional, national, or international~~
21 ~~professional or scientific organization as documentation of completion.~~

22 ~~(H) Satisfactorily completing an ethics course offered by the~~
23 ~~American Psychological Association, state medical association, or~~
24 ~~Accreditation Council for Continuing Medical Education, or a regionally~~
25 ~~accredited institution of higher education. A licensed psychologist must~~
26 ~~retain a certificate of attendance or a transcript as documentation of~~
27 ~~completion. One continuing education hour is equivalent to one~~

1 professional development hour:

2 ~~(III) Developing and teaching an academic course in psychology~~
3 ~~at an institution accredited by a regional accrediting association. Credit~~
4 ~~is given for the first time within a given licensure cycle that the licensed~~
5 ~~psychologist teaches the course, as documented by the dean or head of the~~
6 ~~department of the institution in which the course was taught, and is based~~
7 ~~on the number of credit hours, units, or hours assigned by the institution.~~
8 ~~One academic credit, unit, or hour is equivalent to ten continuing~~
9 ~~professional development hours.~~

10 ~~(IV) Satisfactorily completing a graduate course in psychology~~
11 ~~offered by an institution accredited by a regional accrediting association~~
12 ~~and documented by an academic transcript showing the graduate credits~~
13 ~~earned. One academic credit, unit, or hour is equivalent to ten continuing~~
14 ~~professional development hours.~~

15 ~~(V) Developing and presenting for the first time within a given~~
16 ~~licensure cycle a workshop, seminar, symposium, colloquium, or invited~~
17 ~~speaking session at a meeting of a professional or scientific organization~~
18 ~~or a postdoctoral institute, documented by a printed program or agenda.~~
19 ~~One hour of workshop, seminar, symposium, colloquial presentation, or~~
20 ~~invited speaking session is equivalent to three continuing professional~~
21 ~~development hours.~~

22 ~~(VI) Authoring or editing a psychology publication documented~~
23 ~~by a cover sheet, masthead, or table of contents from the publication. The~~
24 ~~maximum hours that may be earned are as follows:~~

25 ~~(A) Authoring a professional or scientific book is equivalent to~~
26 ~~forty hours of continuing professional development hours;~~

27 ~~(B) Authoring a professional or scientific book chapter or journal~~

1 ~~article is equivalent to twenty hours of continuing professional~~
2 ~~development hours;~~

3 ~~(C) Editing a professional or scientific book or journal is~~
4 ~~equivalent to thirty hours of continuing professional development hours.~~

5 ~~(VH) Providing editorial review of a professional psychological~~
6 ~~or scientific journal article at the request of the journal's editorial staff.~~
7 ~~Editorial review, as documented by acknowledgment of the completed~~
8 ~~review by the editorial staff, is equivalent to one continuing professional~~
9 ~~development hour.~~

10 ~~(c) A requirement that each licensed psychologist maintain all~~
11 ~~documentation for his or her continuing professional development hours.~~

12 (a) A SELF-ASSESSMENT OF THE KNOWLEDGE AND SKILLS OF A
13 LICENSED PSYCHOLOGIST SEEKING TO RENEW OR REINSTATE A LICENSE;

14 (b) DEVELOPMENT, EXECUTION, AND DOCUMENTATION OF A
15 LEARNING PLAN BASED ON THE ASSESSMENT; AND

16 (c) PERIODIC DEMONSTRATION OF KNOWLEDGE AND SKILLS
17 THROUGH DOCUMENTATION OF ACTIVITIES NECESSARY TO ENSURE AT
18 LEAST MINIMAL ABILITY TO SAFELY PRACTICE THE PROFESSION.

19 ***Recommendation 7***

20 **SECTION 9.** In Colorado Revised Statutes, 12-245-404, **amend**
21 **(2)(c)** as follows:

22 **12-245-404. Qualifications - examination - licensure and**
23 **registration.** (2) The board shall license as a licensed clinical social
24 worker a person who files an application, in a form and manner required
25 by the board, submits the fee required by the board pursuant to section
26 12-245-205, and submits evidence satisfactory to the board that the
27 applicant:

1 (c) Has practiced social work for at least two years under the
2 supervision of a licensed clinical social worker AS APPROVED BY THE
3 BOARD, which practice includes training and work experience in the area
4 of clinical social work practice; and

5 **SECTION 10.** In Colorado Revised Statutes, 12-245-406, amend
6 (3) as follows:

7 **12-245-406. Scope of part. (3)** No person may supervise the
8 practice of social work for the purpose of licensure compliance or
9 disciplinary proceedings unless licensed APPROVED BY THE BOARD
10 pursuant to section 12-245-404. ~~except that, in cases where no licensed~~
11 ~~clinical social worker is available for supervision for licensure, the~~
12 ~~licensee may apply to the board for approval to be supervised by a person~~
13 ~~with equivalent experience as determined by the board.~~

14 **SECTION 11.** In Colorado Revised Statutes, amend 12-245-408
15 as follows:

16 **12-245-408. Clinical social work practice of psychotherapy.**
17 For the purpose of licensure, the practice, under this part 4, of
18 psychotherapy and other clinical activities within the definition of social
19 work practice in section 12-245-403 is limited to licensed clinical social
20 workers or licensed social workers supervised by licensed clinical social
21 workers IN ACCORDANCE WITH SECTION 12-245-404 (2)(c).

22 ***Recommendation 10***

23 **SECTION 12.** In Colorado Revised Statutes, 12-245-302, amend
24 (2) introductory portion as follows:

25 **12-245-302. State board of psychologist examiners - created**
26 **- members - terms. (2)** The board consists of seven members who are
27 ~~citizens of the United States and residents of the state of Colorado as~~

1 follows:

2 **SECTION 13.** In Colorado Revised Statutes, 12-245-402, **amend**
3 (1) as follows:

4 **12-245-402. State board of social work examiners - created -**
5 **members - terms.** (1) There is hereby created under the supervision and
6 control of the division the state board of social work examiners, which
7 ~~shall consist~~ CONSISTS of seven members who are ~~citizens of the United~~
8 ~~States and~~ residents of the state of Colorado.

9 **SECTION 14.** In Colorado Revised Statutes, 12-245-502, **amend**
10 (1) as follows:

11 **12-245-502. State board of marriage and family therapist**
12 **examiners - created - members - terms.** (1) There is hereby created
13 under the supervision and control of the division the state board of
14 marriage and family therapist examiners, which ~~shall consist~~ CONSISTS of
15 seven members who are ~~citizens of the United States and~~ residents of the
16 state of Colorado.

17 **SECTION 15.** In Colorado Revised Statutes, 12-245-602, **amend**
18 (1) as follows:

19 **12-245-602. State board of licensed professional counselor**
20 **examiners - created - members - fines.** (1) There is hereby created the
21 state board of licensed professional counselor examiners under the
22 supervision and control of the division. The board ~~shall consist~~ CONSISTS
23 of seven members who are ~~citizens of the United States and~~ residents of
24 the state of Colorado.

25 **SECTION 16.** In Colorado Revised Statutes, 12-245-802, **amend**
26 (2) introductory portion as follows:

27 **12-245-802. State board of addiction counselor examiners -**

1 **created - members - terms.** (2) The board consists of seven members
2 who are ~~citizens of the United States and~~ residents of the state of
3 Colorado. The governor shall appoint the members of the board as
4 follows:

5 ***Recommendation 2***

6 **SECTION 17.** In Colorado Revised Statutes, 12-245-804, **amend**
7 (3) as follows:

8 **12-245-804. Requirements for licensure and certification -**
9 **rules.** (3) The state board of ~~human services in the department of human~~
10 ~~services~~ ADDICTION COUNSELOR EXAMINERS shall promulgate rules with
11 ~~approval of the board,~~ for certification of addiction counselors; EXCEPT
12 THAT THE STATE BOARD OF HUMAN SERVICES IN THE DEPARTMENT OF
13 HUMAN SERVICES SHALL ESTABLISH BY RULE EDUCATION REQUIREMENTS
14 FOR CERTIFICATION in accordance with section 27-80-108 (1)(e).

15 **SECTION 18.** In Colorado Revised Statutes, 12-245-806, **amend**
16 (1)(b) introductory portion as follows:

17 **12-245-806. Continuing professional competency - rules -**
18 **definition.** (1) (b) The board, ~~in consultation with the~~ office of
19 behavioral, health in the department of human services, and IN
20 CONSULTATION WITH other stakeholders, shall adopt rules establishing a
21 continuing professional competency program that includes, at a minimum,
22 the following elements:

23 **SECTION 19. Act subject to petition - effective date.** This act
24 takes effect September 1, 2020; except that, if a referendum petition is
25 filed pursuant to section 1 (3) of article V of the state constitution against
26 this act or an item, section, or part of this act within the ninety-day period
27 after final adjournment of the general assembly, then the act, item,

1 section, or part will not take effect unless approved by the people at the
2 general election to be held in November 2020 and, in such case, will take
3 effect on the date of the official declaration of the vote thereon by the
4 governor.