

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

Attachment B

1.10.20

DRAFT

LLS NO. 20-0511.01 Richard Sweetman x4333

SUNSET BILL

**Sunset Process - House Public Health Care and  
Human Services Committee**

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**BILL TOPIC:** "Sunset Occupational Therapy Practice Act"  
**DEADLINES:** Finalize by: JAN 27, 2020 File by: JAN 29, 2020

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**A BILL FOR AN ACT**

101 **CONCERNING THE CONTINUATION OF THE "OCCUPATIONAL THERAPY**  
102 **PRACTICE ACT", AND, IN CONNECTION THEREWITH,**  
103 **IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE**  
104 **2019 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY**  
105 **AGENCIES.**

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**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 implements the recommendations of the

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

department of regulatory agencies (department) in its sunset review and report on the licensing of occupational therapists and occupational therapy assistants (OTAs) by the director of the division of professions and occupations in the department. Specifically:

- **Sections 1 and 2** of the bill implement *Recommendation 1* by continuing the "Occupational Therapy Practice Act" (act) for 7 years until 2027;
- **Section 3** implements *Recommendations 2 and 4* by designating "occupational therapy assistant" and "O.T.A." as protected titles under the act and clarifying that individuals who legally practice temporarily as occupational therapists in Colorado may use protected titles;
- **Sections 4, 5, and 8** implement portions of *Recommendation 5* by reordering and amending certain provisions of the act concerning examinations and applications for licensure by occupational therapists and OTAs; and
- **Sections 6 and 7** implement *Recommendation 3* and a portion of *Recommendation 5* by adding certain prohibited behaviors as grounds for discipline and by reordering certain provisions concerning disciplinary proceedings.

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

2           **SECTION 1.** In Colorado Revised Statutes, **amend** 12-270-120  
3 as follows:

4           **12-270-120. Repeal of article - review of functions.** This article  
5 270 is repealed, effective September 1, ~~2020~~ 2027. Before the repeal, the  
6 director's powers, duties, and functions under this article 270 are  
7 scheduled for review in accordance with section 24-34-104.

8           **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **repeal**  
9 (19)(a)(VII); and **add** (28)(a)(III) as follows:

10           **24-34-104. General assembly review of regulatory agencies**  
11 **and functions for repeal, continuation, or reestablishment - legislative**  
12 **declaration - repeal.** (19) (a) The following agencies, functions, or both,  
13 are scheduled for repeal on September 1, 2020:

1 (VII) ~~The licensing of occupational therapists and occupational~~  
2 ~~therapy assistants in accordance with article 270 of title 12;~~

3 (28) (a) The following agencies, functions, or both, are scheduled  
4 for repeal on September 1, 2027:

5 (III) THE LICENSING OF OCCUPATIONAL THERAPISTS AND  
6 OCCUPATIONAL THERAPY ASSISTANTS IN ACCORDANCE WITH ARTICLE 270  
7 OF TITLE 12.

8 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-270-105  
9 as follows:

10 **12-270-105. Use of titles restricted.** (1) Only a person licensed  
11 as an occupational therapist IN THIS STATE OR WHO IS A LEGALLY  
12 QUALIFIED OCCUPATIONAL THERAPIST FROM ANOTHER STATE OR COUNTRY  
13 PROVIDING SERVICES ON BEHALF OF A TEMPORARILY ABSENT  
14 OCCUPATIONAL THERAPIST LICENSED IN THIS STATE, IN ACCORDANCE WITH  
15 SECTION 12-270-110 (1)(d), may use the title "occupational therapist  
16 licensed", "licensed occupational therapist", "occupational therapist", or  
17 "doctor of occupational therapy"; or use the abbreviation "O.T.",  
18 "O.T.D.", "O.T.R.", "O.T./L.", "O.T.D./L.", or "O.T.R./L."; or USE any  
19 other generally accepted terms, letters, or figures that indicate that the  
20 person is an occupational therapist.

21 (2) Only a person licensed as an occupational therapy assistant IN  
22 THIS STATE may use the title "OCCUPATIONAL THERAPY ASSISTANT",  
23 "occupational therapy assistant licensed", or "licensed occupational  
24 therapy assistant"; use the abbreviation ~~"O.T.A./L." or "C.O.T.A./L."~~  
25 ABBREVIATION "O.T.A.", "O.T.A./L.", OR "C.O.T.A./L."; or use any other  
26 generally accepted terms, letters, or figures indicating that the person is  
27 an occupational therapy assistant.

1           **SECTION 4.** In Colorado Revised Statutes, 12-270-107, amend  
2 (2) and (3) as follows:

3           **12-270-107. Licensure of occupational therapists - application**  
4 **- qualifications - rules. (2) [Similar to subsection (3)] Application.**  
5 ~~(a) When an applicant has fulfilled the requirements of subsection (1) of~~  
6 ~~this section, the applicant may apply for examination and licensure upon~~  
7 ~~payment of a fee in an amount determined by the director. A person who~~  
8 ~~fails an examination may apply for reexamination upon payment of a fee~~  
9 ~~in an amount determined by the director~~ **Examination.** EACH APPLICANT  
10 MUST PASS A NATIONALLY RECOGNIZED EXAMINATION, APPROVED BY THE  
11 DIRECTOR, THAT MEASURES THE MINIMUM LEVEL OF COMPETENCE  
12 NECESSARY FOR PUBLIC HEALTH, SAFETY, AND WELFARE.

13           ~~(b) The application shall be in the form and manner designated by~~  
14 ~~the director.~~

15           **(3) [Similar to subsection (2)] Examination.** Each applicant shall  
16 ~~pass a nationally recognized examination approved by the director that~~  
17 ~~measures the minimum level of competence necessary for public health,~~  
18 ~~safety, and welfare~~ **Application.** AFTER AN APPLICANT HAS FULFILLED  
19 THE REQUIREMENTS OF SUBSECTIONS (1) AND (2) OF THIS SECTION, THE  
20 APPLICANT MAY APPLY FOR LICENSURE UPON PAYMENT OF A FEE IN AN  
21 AMOUNT DETERMINED BY THE DIRECTOR. THE DIRECTOR SHALL  
22 DESIGNATE THE FORM AND MANNER OF THE APPLICATION.

23           **SECTION 5.** In Colorado Revised Statutes, 12-270-108, amend  
24 (2) and (3) as follows:

25           **12-270-108. Occupational therapy assistants - licensure -**  
26 **application - qualifications - rules. (2) [Similar to subsection**  
27 **(3)] Application.** ~~(a) When an applicant has fulfilled the requirements of~~

1 ~~subsection (1) of this section, the applicant may apply for licensure upon~~  
2 ~~payment of a fee in an amount determined by the director Examination.~~  
3 EACH APPLICANT MUST PASS A NATIONALLY RECOGNIZED EXAMINATION,  
4 APPROVED BY THE DIRECTOR, THAT MEASURES THE MINIMUM LEVEL OF  
5 COMPETENCE NECESSARY FOR PUBLIC HEALTH, SAFETY, AND WELFARE.

6 ~~(b) The applicant must submit an application in the form and~~  
7 ~~manner designated by the director.~~

8 (3) [Similar to subsection (2)] ~~Examination.~~ Each applicant must  
9 ~~pass a nationally recognized examination, approved by the director, that~~  
10 ~~measures the minimum level of competence necessary for public health,~~  
11 ~~safety, and welfare Application.~~ AFTER AN APPLICANT HAS FULFILLED  
12 THE REQUIREMENTS OF SUBSECTIONS (1) AND (2) OF THIS SECTION, THE  
13 APPLICANT MAY APPLY FOR LICENSURE UPON PAYMENT OF A FEE IN AN  
14 AMOUNT DETERMINED BY THE DIRECTOR. THE DIRECTOR SHALL  
15 DESIGNATE THE FORM AND MANNER OF THE APPLICATION.

16 SECTION 6. In Colorado Revised Statutes, 12-270-114, amend  
17 (2)(l) and (5); repeal (6); and add (2)(n), (2)(o), and (2)(p) as follows:

18 12-270-114. Grounds for discipline - disciplinary proceedings  
19 - definitions - judicial review. (2) The director may take disciplinary or  
20 other action as authorized in section 12-20-404 against, or issue a  
21 cease-and-desist order under the circumstances and in accordance with  
22 the procedures specified in section 12-20-405 to, a licensee in accordance  
23 with this section, upon proof that the licensee:

24 (l) Has failed to provide adequate or proper supervision of a  
25 licensed occupational therapy assistant, of an aide, or of any unlicensed  
26 person in the occupational therapy practice; or

27 (n) HAS FAILED TO MAKE ESSENTIAL ENTRIES ON PATIENT RECORDS

1 OR FALSIFIED OR MADE INCORRECT ENTRIES OF AN ESSENTIAL NATURE ON  
2 PATIENT RECORDS;

3 (o) HAS COMMITTED ABUSE OF HEALTH INSURANCE AS SET FORTH  
4 IN SECTION 18-13-119 (3); OR

5 (p) HAS COMMITTED A FRAUDULENT INSURANCE ACT, AS  
6 DESCRIBED IN SECTION 10-1-128.

7 (5) (a) THE DIRECTOR SHALL CONDUCT disciplinary proceedings  
8 ~~shall be conducted~~ in accordance with section 12-20-403 and article 4 of  
9 title 24. The director ~~has the authority to~~ MAY exercise all powers and  
10 duties conferred by this article 270 during the disciplinary proceedings.

11 (b) [Similar to subsection (6)(a)] NO LATER THAN THIRTY DAYS  
12 AFTER THE DATE OF THE DIRECTOR'S ACTION, THE DIRECTOR SHALL NOTIFY  
13 A LICENSEE DISCIPLINED UNDER THIS SECTION OF THE ACTION TAKEN, THE  
14 SPECIFIC CHARGES GIVING RISE TO THE ACTION, AND THE LICENSEE'S RIGHT  
15 TO REQUEST A HEARING ON THE ACTION TAKEN. THE DIRECTOR SHALL  
16 PROVIDE THE NOTICE BY SENDING A CERTIFIED LETTER TO THE MOST  
17 RECENT ADDRESS PROVIDED TO THE DIRECTOR BY THE LICENSEE.

18 (c) [Similar to subsection (6)(b)] WITHIN THIRTY DAYS AFTER THE  
19 DIRECTOR SENDS THE NOTICE DESCRIBED IN SUBSECTION (5)(b) OF THIS  
20 SECTION, THE LICENSEE MAY FILE A WRITTEN REQUEST WITH THE  
21 DIRECTOR FOR A HEARING ON THE ACTION TAKEN. UPON RECEIPT OF THE  
22 REQUEST, THE DIRECTOR SHALL GRANT A HEARING TO THE LICENSEE. IF  
23 THE LICENSEE FAILS TO FILE A WRITTEN REQUEST FOR A HEARING WITHIN  
24 THIRTY DAYS, THE ACTION OF THE DIRECTOR BECOMES FINAL ON THAT  
25 DATE.

26 (d) [Similar to subsection (6)(c)] A LICENSEE'S FAILURE TO  
27 APPEAR AT A HEARING WITHOUT GOOD CAUSE IS DEEMED A WITHDRAWAL

1 OF THE LICENSEE'S REQUEST FOR A HEARING, AND THE DIRECTOR'S ACTION  
2 BECOMES FINAL ON THAT DATE. THE DIRECTOR'S FAILURE TO APPEAR AT  
3 A HEARING WITHOUT GOOD CAUSE IS DEEMED CAUSE TO DISMISS THE  
4 PROCEEDING.

5 ~~(6) (a) No later than thirty days following the date of the director's~~  
6 ~~action, a licensee disciplined under this section shall be notified by the~~  
7 ~~director, by a certified letter to the most recent address provided to the~~  
8 ~~director by the licensee, of the action taken, the specific charges giving~~  
9 ~~rise to the action, and the licensee's right to request a hearing on the~~  
10 ~~action taken.~~

11 ~~(b) Within thirty days after notification is sent by the director, the~~  
12 ~~licensee may file a written request with the director for a hearing on the~~  
13 ~~action taken. Upon receipt of the request, the director shall grant a~~  
14 ~~hearing to the licensee. If the licensee fails to file a written request for a~~  
15 ~~hearing within thirty days, the action of the director shall be final on that~~  
16 ~~date.~~

17 ~~(c) Failure of the licensee to appear at the hearing without good~~  
18 ~~cause shall be deemed a withdrawal of his or her request for a hearing,~~  
19 ~~and the director's action shall be final on that date. Failure, without good~~  
20 ~~cause, of the director to appear at the hearing shall be deemed cause to~~  
21 ~~dismiss the proceeding.~~

22 SECTION 7. In Colorado Revised Statutes, 10-1-128, amend (1)  
23 as follows:

24 **10-1-128. Fraudulent insurance acts - immunity for furnishing**  
25 **information relating to suspected insurance fraud - legislative**  
26 **declaration.** (1) For purposes of this title 10, articles 40 to 47 of title 8,  
27 articles 200, 215, 220, 240, 245, 255, ~~270~~, 275, 285, 290, and 300 of title

1 12, and article 20 of title 44, a fraudulent insurance act is committed if a  
2 person knowingly and with intent to defraud presents, causes to be  
3 presented, or prepares with knowledge or belief that it will be presented  
4 to or by an insurer, a purported insurer, or any producer thereof any  
5 written statement as part or in support of an application for the issuance  
6 or the rating of an insurance policy or a claim for payment or other  
7 benefit pursuant to an insurance policy that the person knows to contain  
8 false information concerning any fact material thereto or if the person  
9 knowingly and with intent to defraud or mislead conceals information  
10 concerning any fact material thereto. For purposes of this section, "written  
11 statement" includes a patient medical record as such term is defined in  
12 section 18-4-412 (2)(a) and any bill for medical services.

13 **SECTION 8.** In Colorado Revised Statutes, 12-270-112, **amend**  
14 (1)(b) introductory portion and (1)(b)(III) as follows:

15 **12-270-112. Continuing professional competency - definition.**

16 (1) (b) The director shall establish a continuing professional competency  
17 program that includes: ~~at a minimum, the following elements:~~

18 (III) Periodic demonstration of knowledge and skills through  
19 documentation of activities necessary to ensure at least minimal ability to  
20 safely practice the profession; except that an occupational therapist or  
21 occupational therapy assistant licensed pursuant to this article 270 need  
22 not retake the examination required by section 12-270-107 ~~(3)~~ (2) or  
23 12-270-108 ~~(3)~~ (2), respectively, for initial licensure.

24 **SECTION 9. Act subject to petition - effective date.** This act  
25 takes effect at 12:01 a.m. on the day following the expiration of the  
26 ninety-day period after final adjournment of the general assembly (August  
27 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the  
2 state constitution against this act or an item, section, or part of this act  
3 within such period, then the act, item, section, or part will not take effect  
4 unless approved by the people at the general election to be held in  
5 November 2020 and, in such case, will take effect on the date of the  
6 official declaration of the vote thereon by the governor.