Dora

Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2013 Sunset Review: Colorado Workers' Compensation Accreditation Program

October 15, 2013

Executive Director's Office
Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

October 15, 2013

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Workers' Compensation Accreditation Program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2014 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination….

The report discusses the question of whether there is a need for the regulation provided under Article 42, of Title 8, section 101, subsections 3.5 and 3.6, C.R.S. The report also discusses the effectiveness of the Division of Workers' Compensation staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

2013 Sunset Review:
Colorado Workers' Compensation Accreditation Program

Summary

What Is Regulated?
The Workers' Compensation Accreditation Program (WCAP) educates physicians about the medical, administrative, and legal components of participating in the workers' compensation system. It is a process which trains physicians to treat workers and establish the level of permanent impairment a worker sustained from a work-related injury.

Why Is It Regulated?
The WCAP was part of a 1991 overhaul of the workers' compensation system that was meant to make the system more predictable and less litigious.

Who Is Regulated?
During fiscal year 11-12 a total of 950 physicians carried some level of accreditation.

How Is It Regulated?
The WCAP trains physicians to treat workers and establish the level of permanent impairment a worker sustained from a work-related injury. Level I accreditation is required only for chiropractors who wish to be compensated for treating patients with workers' compensation, time-loss injuries. However, any physician may acquire the Level I accreditation. Level II accreditation trains doctors licensed by the Colorado Medical Board to rate the level of injury-caused impairment using American Medical Association, *Guides to the Evaluation of Permanent Impairment, 3rd Edition*.

What Does It Cost?
During the period examined for this sunset review, fiscal year 07-08 through fiscal year 11-12, the WCAP averaged approximately $295,000 per year in operational expenditures.

What Disciplinary Activity Is There?
Complaints are rare. There were less than 50 total complaints received by the Division during the period under review. No physicians had an accreditation revoked during that time.

Key Recommendations

Continue the WCAP for 11 years, until 2025.
The WCAP is not mandatory for all Colorado licensed physicians. One only needs to be accredited if he or she chooses to perform impairment ratings in the workers' compensation system.

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. Standardization protects all involved parties, employers, employees, medical providers, and insurers, against the need for costly litigation.

Training medical professionals to negotiate the workers' compensation system saves time, money and aggravation for both the injured workers and medical professionals.

Direct the Division to conduct a study of the comprehensive impacts on the workers' compensation system, of adopting the most current version of the American Medical Association,* Guides to the Evaluation of Permanent Impairment *as the standard to train physicians and rate workers' compensation impairment cases, and report its findings to the General Assembly no later than December 31, 2014.
Technology and medicine have made enormous strides but Colorado still uses the American Medical Association, *Guides to the Evaluation of Permanent Impairment, 3rd Edition*, published in 1991, to train physicians and evaluate workers' compensation patients. This is the case even though the American Medical Association has promulgated three updates since 1991. An updated version is used in virtually every other jurisdiction in the U.S. and Canada.

A major argument for not changing the standards is that it would upset the entire workers' compensation benefit system which presently works. According to this reasoning, changing one variable in the benefit equation could reverberate through the system. Whether this is true, or the extent to which it is true, are issues beyond the scope of this review, which the General Assembly confined to an examination of the WCAP. Nonetheless, the system-wide consequences of a change to the most current American Medical Association Guides should be explored more fully. This will allow decision-makers to specifically understand and address any impacts on the macro-system prior to adapting a revised version.

Major Contacts Made During This Review

Colorado AFL-CIO
Colorado Division of Workers' Compensation
Colorado Medical Society
Colorado Self Insurers Association
Pinnacol Assurance
Workers' Compensation Education Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr

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Recommendation 3 – Repeal all fees in the statute and direct the Division to set training fees administratively, based on the actual costs of the training. *18*

Background

Introduction

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 Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- 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;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

[1] Criteria may be found at § 24-34-104, C.R.S.

- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

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 via DORA's website at: www.dora.colorado.gov/opr.

The regulatory functions of the Division of Workers' Compensation (Division), in the Department of Labor and Employment, as enumerated in Article 42 of Title 8, section 101, subsections 3.5 and 3.6, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2014, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the Workers' Compensation Accreditation Program (WCAP) pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of WCAP should be continued for the protection of the public and to evaluate the performance of the Division. During this review, the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended an accreditation training seminar, interviewed workers' compensation insurers and physicians, interviewed program staff, reviewed program educational materials, reviewed program records including complaint and disciplinary actions, interviewed officials with professional associations, reviewed Colorado statutes and Division rules, and reviewed the programs of other states.

Profile

During the early 1900s it became obvious to both employers and to labor that a system based on litigating liability to compensate workers for work-related injuries was not cost-effective. By 1920 most states had workers compensation laws in place. These laws generally paid for reasonable medical care, temporary wage loss, and permanent wage loss and/or impairment due to loss of extremities or other significant long-term disabilities.[2]

Colorado's WCAP evolved from this tenet. Established in 1991, the WCAP educates physicians about the medical, administrative, and legal components of participating in the workers' compensation system.[3] The WCAP is a process which trains physicians to treat workers and establish the level of permanent impairment a worker sustained from a work-related injury. After completing the training seminars and examination, physicians are proficient in treating workers' compensation patients.

Impairment is based on the worker's ability to use a damaged body part in his or her 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 expect to improve the condition, is a concept referred to as 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.

Impairment is different from disability. Disability is based on what a worker cannot do after an injury versus what a worker can do. The Social Security Administration (SSA) uses a different method for determining disability. Under its rules a person is either entirely disabled or not disabled at all, a rating system based on percentage of impairment is not necessary. The SSA also considers age and education in a vocational analysis.

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 *Guides to the 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.

[2] Colorado Department of Labor & Employment, Division of Workers' Compensation, "Level II Accreditation Course and Curriculum." p. 7.
[3] *Overview of Division Medical Programs and Related Services, Colorado Department of Labor & Employment, Division of Workers' Compensation,* (November 2011). p. 4.

Legal Framework

History of Regulation

During the 1991 legislative session, the General Assembly passed Senate Bill 218, which created an accreditation system for physicians who work with workers' compensation patients, the Workers Compensation Accreditation Program (WCAP). The WCAP 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*, Guides to the Evaluation of Permanent Impairment*, (1991 AMA Guides), which at the time were just published, as its basis for instruction and measurement.

WCAP

The WCAP is created in subsections 3.5 and 3.6, of section 101, Article 42, Title 8, Colorado Revised Statutes (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 that provide impairment evaluations of injured workers (Level II). No physician can hold an accreditation under the WCAP merely because he or she is licensed. All accredited physicians must successfully complete Division of Workers' Compensation (Division) training.[4]

The term "physician" has multiple definitions when applied by the WCAP. A Level I physician may be a Colorado licensed dentist, podiatrist, chiropractor, or medical doctor.[5] An authorized primary physician treating a patient for a "time-loss injury" must be accredited at Level I. Level I accreditation is voluntary for dentists, podiatrists, and physicians but is mandatory for chiropractors.[6]

A Level II physician may only be a doctor licensed by the Colorado Medical Board.[7] The Division grants two ranks of accreditation, full and limited accreditation. Full accreditation is granted to a qualified physician who passes the entire Level II examination. Once fully accredited, he or she is 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.[8]

[4] § 8-42-101(3.5)(a), C.R.S.
[5] § 8-42-101(3.5)(a)(I), C.R.S.
[6] § 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.
[7] § 8-42-101(3.5)(a)(I), C.R.S.
[8] Workers' Compensation Rules of Procedure, Rule 13-2(E).

The WCAP is cash funded[9] mostly from accreditation training fees. The fee for a Level I accreditation cannot be more than $250 and the fee for Level II cannot exceed $400.[10]

The WCAP requires the Director of the Division of the Workers' Compensation (Director) housed in the Department of Labor and Employment, to promulgate rules establishing guidelines for medical treatment and medical impairment rating based on the 1991 AMA Guides[11] and to maintain a medical impairment rating system.[12]

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 and have experience in occupational medicine.[13]

The accreditation system provides physicians with an understanding of 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.[14] The WCAP requires that the Division make a list of accredited physicians available to insurers, claimants, and employers. The lists must be updated monthly and also specify any physicians whose accreditation has been revoked.[15]

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.[16]

Neither a specialist physician who does not provide impairment evaluations, nor the facility where he or she works, are required to be accredited.[17] Likewise, a physician who provides treatment for non-time-loss injuries need not be accredited to be compensated for the treatment rendered.[18]

If a physician violates the provisions of the WCAP or any associated rule, following a hearing that is subject to review by the Industrial Claim Appeals Office and the Colorado Court of Appeals, the Director must revoke the physician's accreditation.[19] 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.[20]

[9] § 8-42-101(3.6)(m), C.R.S.
[10] § 8-42-101(3.6)(d), C.R.S.
[11] § 8-42-101(3.5)(a)(II), C.R.S.
[12] § 8-42-101(3.5)(b), C.R.S.
[13] § 8-42-101(3.6)(n), C.R.S.
[14] § 8-42-101(3.6)(e), C.R.S.
[15] § 8-42-101(3.6)(k), C.R.S.
[16] § 8-42-101(3.6)(f), C.R.S.
[17] § 8-42-101(3.6)(b), C.R.S.
[18] § 8-42-101(3.6)(i), C.R.S.
[19] § 8-42-101(3.6)(g), C.R.S.
[20] § 8-42-101(3.6)(h), C.R.S.

Specific grounds for accreditation revocation include:

- 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;[21] and
- A misrepresentation on the application for accreditation.[22]

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.[23]

The Medical Director may consult on peer review issues. The 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.C. sec. 1320c-1(1)(A) or (1)(B).[24]

Program Related Rules

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. In doing so it covers:

- 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.

[21] Workers' Compensation Rules of Procedure, Rule 13-4(A)(1).
[22] Workers' Compensation Rules of Procedure, Rule 13-4(A)(2).
[23] § 8-42-101(3.6)(o), C.R.S.
[24] § 8-42-101(3.6)(n), C.R.S.

Rule 17 provides an assessment scheme and treatment guidelines for injuries that occur frequently or have a potential high cost. Its purpose is twofold, to provide appropriate care and assure reasonable costs. Among other items, it lays out provider responsibilities as well as treatment guidelines, including:

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

Program Description and Administration

The Colorado Workers' Compensation Accreditation Program (WCAP) educates physicians about the medical, administrative, and legal impacts of providing medical care in the workers' compensation system.

The WCAP trains physicians to treat workers using guidelines which establish the level of permanent impairment a worker sustained from a work-related injury. Impairment is based on a worker's ability to use the damaged body part or organ in his or her everyday life based on a "maximum medical improvement" standard.

By taking a Division of Workers' Compensation (Division) training course and passing an examination, a Colorado-licensed physician, chiropractor, podiatrist or dentist becomes accredited at Level I or Level II.[25] Accreditation is valid for three years.

The WCAP is cash funded. According to statutory directive it is supported through two sources: the Workers' Compensation Cash Fund (WCCF), which covers Division administrative and personnel costs, and the WCAP Cash Fund, which covers the costs of courses and materials. Table 1 illustrates that during the review period, WCAP operational costs decreased. WCAP expenses declined approximately 15 percent from fiscal year 07-08 to fiscal year 11-12. This occurred at a time when the actual cost of education increased. The decline is due, in part, to personnel expense savings.

Table 1
WCAP Expenditures
Fiscal Years 07-08 through 11-12

	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
WCAP Cash Fund	$127,082	$118,383	$77,033	$115,553	$100,651
WCCF	$192,164	$192,920	$199,795	$180,148	$172,549
TOTAL	$319,246.00	$311,303.00	$276,828.00	$295,701.00	$273,200.00

Table 2 enumerates that for the 08-09 fiscal year, the program cut an administrative position and has operated with 2.5 full-time equivalent (FTE) employees since that time.

Table 2
WCAP Personnel Resources
Fiscal Years 07-08 through 11-12

Fiscal Year	FTE
07-08	3.5
08-09	2.5
09-10	2.5
10-11	2.5
11-12	2.5

[25] Level II accreditation is only available to individuals licensed by the State Medical Board.

The FTE enumerated in Table 2 are split among a full-time Administrative Assistant and partial FTE's comprised of a Health Professional IV, a Compensation Insurance Professional V, and the Workers' Compensation Medical Director.

A physician seeking accreditation must register with WCAP staff and take a WCAP-offered seminar. The cost for the initial Level I accreditation training and examination is $200 and Level II is $400. Reaccreditation is $150 and $400 respectively. The Division offers several training seminars each year.

The WCAP also offers a home-study option to help reach areas where no seminars are held or for any individuals who cannot attend in-person. The examinations are the same as if they attended the seminar and tested there. If the candidate is located in the Denver area, he or she goes to the Division office to take the examination. If the candidate is elsewhere in the state, the WCAP has arrangements with various community colleges around the state to proctor the examination. In those cases the proctor sends the completed test to the WCAP for grading.

Accreditation

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. However, there are also dentists, podiatrists, and doctors with a Level I accreditation. The Level I accreditation provides information about working with both the medical and legal aspects of the workers' compensation system which can be puzzling for someone who is not trained. A Level I accreditation allows a physician to become an authorized treating physician but does not allow that physician to perform impairment ratings.

The Level I training and examination has five main educational objectives:

- Understanding the chronology of a workers' compensation case;
- Explaining to whom the practitioner is responsible;
- Determining causality in workers' compensation cases;
- Exposing practitioners to the Division rules; and
- Understanding the Workers' Compensation Medical Fee Schedule.

Table 3 shows that while there is some variation in the number of individuals acquiring a Level I accreditation, the number stays fairly steady, only varying approximately 13 percent during the period under review. The large drop in the number of initial accreditations during fiscal year 09-10 appears to be an outlier not driven by any particular marketplace or regulatory influence.

Table 3
Level I Accreditation
Fiscal Years 07-08 through 11-12

Fiscal Year	Initial Accreditation	Reaccreditation	Total Level I Accreditation
07-08	30	112	366
08-09	26	64	373
09-10	4	132	343
10-11	33	95	332
11-12	18	68	324

<u>Level II Accreditation</u>

Level II accreditation is designed to provide only doctors licensed by the Colorado Medical Board with an understanding of the administrative, legal, and medical aspects of the workers' compensation system. Beyond those basics it also trains physicians in using the American Medical Association, *Guides to the Evaluation of Permanent Impairment, 3rd Edition*, (1991 AMA Guides).

The Division offers a two-day seminar with lectures, workshops and demonstrations using the 1991 AMA Guides as the foundation. All physicians seeking a Level II accreditation are tested on the legal, ethical, administrative, and neurological sections of the seminar. If a physician chooses, he or she may examine for a full accreditation or take a specialized examination for a limited accreditation. A limited accreditation allows a physician to rate patients only in specific diagnostic categories.

The Level II training and examination is quite ambitious. It has 13 main educational objectives:

- Identify the duties and limitations associated with Level I and Level II accreditation;
- Define "authorized treating physician";
- Define "maximum medical improvement" (MMI) and identify the party responsible for determining MMI;
- Identify the possible payment and benefit consequences of not complying with a request for work status;
- Explain the procedure used to report an employee's failure to attend a scheduled physician appointment;

- Explain the manner in which a temporary disability and permanent medical impairment benefit are determined under the Workers' Compensation Act;
- Explain the utilization review process and method for revocation of fees under utilization review;
- Describe the mechanism for revocation of Level II accreditation;
- Acquaint oneself with the required time limits for reports and describe the reimbursement method;
- Demonstrate the ability to appropriately complete the Division's Report of Workers' Compensation Injury and explain what information belongs in each of the appropriate sections;
- List recognized physician and non-physician providers under Rule 16 of the Workers' Compensation Rules of Procedure;
- Explain billing for cancellation fees; and
- Define the automatic waiver of patient/doctor privileges in a workers' compensation case.

Table 4 indicates that the number of Level II accredited physicians has stayed relatively static, varying less than five percent during the period examined for the sunset review.

Table 4
Level II Accreditation
Fiscal Years 07-08 through 11-12

Fiscal Year	Initial Accreditation	Reaccreditation	Total Level II
07-08	35	233	656
08-09	45	143	625
09-10	39	96	620
10-11	62	209	617
11-12	57	142	626

Complaints/Disciplinary Actions

A complaint concerning an accredited physician may come into the Division from a claimant, insurer, employer, or a medical provider. In the context of this sunset review, the WCAP's authority to act is limited to cases involving impairment ratings and reporting. Table 5 includes all of the provider complaints received by the WCAP.

Table 5
Complaints Received
Fiscal Years 07-08 through 11-12

Complaint	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Unprofessional conduct	0	3	1	2	4
Substandard treatment	1	1	1	1	1
Substandard medical reporting	1	2	1	4	2
Late reports: Independent Medical Examination (IME) Program	2	0	0	0	2
Late other medical reports	1	2	4	1	2
HIPAA Concern	0	0	0	1	0
Failure to refund IME fee	0	0	0	0	1
Other rule violation	0	0	2	2	1
Total	5	8	9	11	13

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(s).

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

The Division is not automatically informed if a Level I or Level II provider has been disciplined by his or her 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.

Criminal History

During the 2013 legislative session the General Assembly added a reporting condition to the sunset review criteria.

> Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section must include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification.[26]

The WCAP lists no criminal history-specific disqualifications that would prevent a licensed physician from gaining or losing an accreditation.

[26] § 24-34-104(9)(b)(VII.5), C.R.S.

Analysis and Recommendations

Recommendation 1 – Continue the Workers' Compensation Accreditation Program for 11 years, until 2025.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. It is clear that the physician accreditation program does that on multiple levels.

The fundamental goals of the Workers' Compensation Accreditation Program (WCAP) are to educate physicians who treat workers injured on the job about the workings of the workers' compensation system and train them to evaluate physical impairment post-injury with a standardized, predictable methodology.

The first concept that must be understood is "impairment." 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 get the worker back on the job being productive. 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. Impairment is assessed by applying a multilayered methodology to a specific case.

The second sunset criterion directs reviewers to examine if regulations establish the least restrictive form of regulation consistent with the public interest. Currently, only trained, Level II accredited physicians may provide impairment ratings on workers' compensation patients. Given these specifics, a pertinent question is, "Why must the physicians who apply the impairment methodology and guidelines be trained and accredited?"

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. The inverse can also be expected. If there were no mandatory training of Level II physicians, each person would read and interpret the guidelines according to his or her own individual understanding. Additionally, the WCAP is not mandatory for all Colorado-licensed physicians. One only needs to be accredited if he or she chooses to perform impairment ratings in the workers' compensation system.

A second, more systemic, goal of the WCAP is key to grasping why standardization is so important to the workers' compensation system. Standardization protects involved parties, employers - employees, medical providers, and insurers - against the need for costly litigation. Prior to the enactment of the WCAP, impairment ratings were more subjective than they are today. Treating and measuring impairment in a standardized manner eliminates arbitrariness and a cause for litigation. It does so without affecting medical standards of care, the legal standards of care, and any future claim against the employer. Though there are no data verifying that the number of cases being litigated has declined, it is universally accepted that the number is significantly less than it would be otherwise.

Requiring training only for those physicians who choose to participate in the workers' compensation process and the need for standardization help the WCAP satisfy the need to be the least restrictive regulation consistent with the public interest.

Training medical professionals to negotiate the workers' compensation system saves time, money and aggravation for both the injured workers and medical professionals. It is clear that a well-trained medical workforce is necessary to protect the health, safety, and welfare of the people of Colorado.

For these reasons, the General Assembly should continue the WCAP for 11 years, until 2025.

Recommendation 2 – Direct the Division to conduct a study of the comprehensive impacts on the workers' compensation system, of adopting the most current version of the American Medical Association,* Guides to the Evaluation of Permanent Impairment *as the standard to train physicians and rate workers' compensation impairment cases, and report its findings to the General Assembly no later than December 31, 2014.

Medical science has changed radically during the last 20 years. There are so many human joints replaced that major airports have installed scanners that allow passengers with artificial joints to pass without being subjected to personal examinations. Not only are organ transplants performed routinely but limbs and faces have been successfully transplanted. Things that were scoffed at in the near past are, or will soon be, a reality.

Technology and medicine have made enormous strides but Colorado still uses the 22-year-old American Medical Association, *Guides to the Evaluation of Permanent Impairment, 3rd Edition*, published in 1991, (1991 AMA Guides), to train physicians and evaluate workers' compensation patients. This is the case even though the American Medical Association (AMA) has promulgated three updates since 1991. The guides are currently on the sixth edition published in 2007. At this point, the 1991 AMA Guides are no longer in print for mass circulation. The WCAP must order copies directly from the AMA which has a small cache.

Both the 1995 and 2002 sunset reviews recommended that the General Assembly update the AMA guides and the recommendation was not adopted. Because of this inaction, Colorado is alone in using outdated standards that are more than two decades old. In 2010, Colorado and Oregon were the only states that still used the 1991 AMA Guides.[27] Since that time, Oregon has stopped and now uses a state-specific impairment rating system leaving Colorado as the singular state that uses the 1991 AMA Guides to rate worker impairment. What is more, the U.S. federal government and every Canadian province and territory use the sixth edition to rate worker impairment.

According to *The Denver Post*, Colorado is home to 53,000 federal employees.[28] This means that not only every injured worker in the U.S. and Canada, outside of Colorado, is evaluated by a different system but a sizable amount of the Colorado workforce is also covered by a system that utilizes a more recent version of the AMA guides.

In addition to federal government entities, private insurance companies also use the up-to-date standards when assessing impairment of individuals injured in non-work related accidents.

A major justification for adopting standards of any kind is a desire for uniformity and consistency. In the current system, workers are evaluated differently depending on where they work: federal government or other Colorado employer. They are evaluated differently depending on when they are injured: on the job or on the way to the job. Physicians that perform impairment ratings must be trained in multiple systems. It appears that in this regard there is a lack of the desired uniformity and consistency. Physicians are forced to move back and forth between the 1991 AMA Guides and sixth edition depending on the reason for seeing a particular patient, or based on that patient's employer.

That Colorado is an outlier in using the 1991 AMA Guides is troubling but not enough on its own to demand a change. Medical experts explained to representatives of the Department of Regulatory Agencies (DORA) that some of the medical protocols that Colorado trains physicians to use in evaluating patients are no longer the medical standard. For example, the spinal ratings in the 1991 AMA Guides are obsolete because they are based on the older standard of assessing range of motion and not the newer standard of assessing functionality. According to the medical experts, this is but one of several examples of the obsolescence. Updating standards will more accurately reflect the degree to which a person is actually impaired according to current medical wisdom. Ratings will correctly reveal medical improvement as it relates to total body function.

[27] LexisNexis. *AMA Guides State-by-State Chart*. Retrieved July 8, 2013, from http://www.lexisnexis.com/en-us/search.page?q=ama%20guides

[28] Denver Post. The Spot for Politics & Policy; Report: Colorado No. 1 in number of federal employees paid more than Hick. Retrieved August 12, 2013, from http://blogs.denverpost.com/thespot/2011/06/02/beltway-blog-report-colorado-no-1-in-number-of-federal-employees-paid-more-than-hick/32475/#disqus_thread

Opponents of change may also have medical experts to support their position. However, in 1991, the General Assembly valued the AMA expertise to the extent that it designated its guides in statute as the standards to follow when rating permanent impairment. Those standards have been changed multiple times in the intervening two-plus decades because that organization saw the need to keep step with modern practices.

A major argument for not changing the standards is that it would upset the entire workers' compensation benefit system which presently works. According to this reasoning, changing one variable in the benefit equation could reverberate through the system. Whether this is true, or the extent to which it is true, are issues beyond the scope of this review which the General Assembly confined to an examination of the WCAP. Nonetheless, the system-wide consequences of a change to the most current AMA guides should be explored more fully. This will allow decision-makers to specifically understand and address any impacts on the macro-system prior to mandating that the Division adopt the revised version.

Therefore, the General Assembly should direct the Division to conduct a study of the comprehensive impacts on the workers' compensation system, of adopting the most current version of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the standard to train physicians and rate workers' compensation impairment cases, and report its findings to the General Assembly no later than December 31, 2014.

Recommendation 3 – Repeal all fees in the statute and direct the Division to set training fees administratively, based on the actual costs of the training.

According to the authorizing statutes, WCAP educational functions are cash funded by training fees deposited into the Workers' Compensation Accreditation Program Cash Fund. Statute states that, "The registration fee for each program shall cover the cost of all accreditation course work and materials."[29] However, the fees were set in statute in 1991 and have not changed since. They are $250 for Level I accreditation and $400 for Level II accreditation.

The cost of educational materials has changed in the ensuing two decades since this section of the statutes was adopted but the Division is still saddled with 23-year-old standards. Because educational costs are variable, the Division needs the flexibility to evaluate and charge for expenses directly related to the training process.

After adopting this recommendation, all fee changes will have to be justified to, and approved by the General Assembly in the Division's Long Bill appropriation.

Therefore, the General Assembly should repeal the fees in statute and instruct the Division to set training fees administratively, based on the actual costs of the training.

[29] § 8-42-101(3.6)9(d), C.R.S.