

Governor's Office of Management and Budget

Alexis Sturm

Director



IL Regulatory Sunset Act Review of The Pharmacy Practice Act

April 8, 2019

**To the Honorable JB Pritzker
Governor of Illinois**

Governor Pritzker:

The Governor's Office of Management and Budget (GOMB) in collaboration with the Illinois Department of Financial and Professional Regulation (IDFPR), in compliance with the requirements set forth in the Illinois Regulatory Sunset Act (5 ILCS 80), has conducted a review of the Pharmacy Practice Act (225 ILCS 85), which is scheduled to sunset on January 1, 2020. The following recommendation is pursuant to this review:

The Pharmacy Practice Act (225 ILCS 85) should be continued with the following modifications to its existing statutory and administrative rule framework.

- Allow applicants to apply for "Licensure by Endorsement" without providing education or test information to IDFPR, if: (1) the applicant has been licensed for 10 consecutive years in another state, (2) the other state sends verification of consecutive licensure of the applicant, and (3) the applicant has never been disciplined.

The examination of this Act considered the nine factors set out in Section 6 of the Illinois Regulatory Sunset Act. The following report details the criteria and data utilized to come to the above recommendation.

Very sincerely and respectfully,

Alexis Sturm
Director
Governor's Office of Management and Budget

Criteria (1) “The extent to which the agency or program has permitted qualified applicants to serve the public.”

As of September 2018, there are 19,383 licensed pharmacists in Illinois. There are 33,332 licensed pharmacy technicians, 3,211 licenses for pharmacy controlled substances, 3,751 Division I pharmacy licenses and 550 controlled substance manufacturer/distributor licenses. There are no data readily available on the number of persons who would wish to participate in this profession but are prevented due to either education requirements or fee structures.

License Type	2014	2015	2016	2017	2018
Licensed Wholesale Drug Distributor	1,400	1,298	1,447	1,241	1,389
Pharmacy Technician	40,152	40,196	40,153	39,306	38,037
Registered Pharmacist	18,774	18,751	19,710	19,130	19,967
Licensed Pharmacist	3,653	3,740	4,424	3,897	4,217
Controlled Substance	494	470	535	498	540
Licensed Controlled Substance Drug Distribution	467	447	498	407	460
Licensed Controlled Substance	3,394	3,353	3,925	3,432	3,651

The current licensure fee structure is as follows:

Type	Fee Amount
Initial Application – Pharmacist	\$75
Registration – Pharmacist registered or licensed by another state	\$200
Initial Application – Pharmacy Technician	\$40
Initial Application – Pharmacy	\$100
Renewal Fee – Pharmacist	\$75/year
Renewal – Pharmacy Technician	\$25/year
Renewal – Pharmacy	\$100/year, plus \$25 to change pharmacist-in-charge
Restoration After Lapse	\$50 fee, plus all lapsed renewal fees up to \$450

Licensed pharmacists must take an examination and meet initial education requirements, as well as continuing education requirements as set forth in Title 68, Section 1330.100 of the Illinois Administrative Code. All 50 states license pharmacists.

There are no data readily available on the number of persons who would wish to participate in this profession but are prevented due to either education requirements or fee structures. Since January 2015, there have been 116 disciplinary actions taken against pharmacists under the Act, as well as 112 disciplinary actions against pharmacies.

Criteria (2) “The extent to which the trade, business, profession, occupation, or industry being regulated is being administered in a nondiscriminatory manner both in terms of employment and rendering of services.”

IDFPR adheres to strict guidelines and requirements established for each profession regulated by the Department. Licensing decisions are based on an applicant’s ability to meet the requirements established by statute and administrative rule. Neither race nor any other identifier is a consideration for licensure under any of the professional licenses regulated by the Department. Consequently, the Department does not collect information from applicants to disclose their race or other social identifiers that could potentially lead to the act or perception

of discrimination in licensing decisions.

Criteria (3) "The extent to which the regulatory agency or program has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of any other department of state government, and any other circumstances, including budgetary resources, and personnel matters."

IDFPR is tasked with processing applications for licenses and renewal licenses for over 1 million professionals practicing in the state of Illinois. As resources continue to be strained in the state of Illinois, the Department has adopted internal policies, sought legislative and administrative rule changes, and developed enhanced licensing processes to maintain efficiency and efficacy. Though these changes have proved to be successful, there is no substitute for the labor resources needed to maintain and improve licensing efficiencies. Over the last calendar year, IDFPR completed 80 new hires. However, in spite of the new hires, the agency ended the year with a net decrease in headcount. The agency maintains that personnel rules and laws often make it difficult to fill vacant positions in a timely manner.

Criteria (4) "The extent to which the agency running the program has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons it regulates."

In 2016, IDFPR supported Public Act 99-863, which the agency believes improved IDFPR's ability to protect public safety by requiring pharmacies to report to IDFPR when a pharmacist or pharmacist technician licensed by the Department is terminated for actions which may have threatened patient safety.

In 2017, IDFPR sponsored Public Act 100-262, the purpose of which was to streamline and modernize the Agency's licensure and administrative case process. The Act enhances the Department's e-license initiative to streamline the initial licensure and renewal as well as allow recipients to know the results of an administrative case with greater immediacy so they can react more quickly and appropriately. This helps ensure that regulated professions are able to use their time to address the needs of their clients, rather than addressing regulatory requirements. Furthermore, this benefits the members of the public at large in that it enables the department to more efficiently suspend the licenses determined to be in violation of rules and statutes. The agency maintains that this ensures a fairer marketplace for the consumer.

Also in 2017, IDFPR engaged in discussion on Public Act 100-497, which modernized provisions of the Pharmacy Practice Act, including defining "email address of record" and providing for certain services to be rendered electronically. This Act also created the Collaborative Pharmaceutical Task Force, to discuss how to advance the practice of pharmacy in a manner that recognizes the needs of the healthcare system, patients, pharmacies, pharmacists and pharmacy technicians.

In 2018, IDFPR supported Public Act 100-872, which removed the requirement that IDFPR refuse professional licenses to individuals who default on student loan debt that is guaranteed by the state. The agency believes this change removed a barrier to employment that can help people pay such debts.

Criteria (5) "The extent to which the agency or program has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency or the impact of the program on the public regarding improved service, economy of service, and availability of service."

IDFPR establishes rules and makes regulatory decisions through the process established by the Joint Committee on Administrative Rules (JCAR), the administrative body responsible for approving rule proposals by state agencies. This process allows for input from industry and community stakeholders impacted by the Department's proposed changes. The Department works with lawmakers, community stakeholders and members of industry to ensure that regulations effectively protect Illinois citizens.

Criteria (6) "The extent to which persons regulated by the agency or under the program have been required to assess the problems in their industry that affect the public."

Full information on this criterion was not available at the time of this report.

Criteria (7) "The extent to which the agency or program has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates and the extent to which such rules and decisions are consistent with statutory authority."

IDFPR adheres to the guidelines and requirements established by the Joint Committee on Administrative Rules (JCAR) and the Illinois General Assembly (ILGA) for approving rule proposals, legislative changes and internal policies. In addition, the Department adheres to the requirements established in the Illinois Open Meetings Act (5 ILCS 120).

Criteria (8) "The efficiency with which formal public complaints filed with the regulatory agency or under the program concerning persons subject to regulation have been processed to completion, by the executive director of the regulatory agencies or programs, by the Attorney General and by any other applicable department of the State government."

IDFPR accepts public complaints via its website and by phone. The average time from a complaint being received to an investigation being opened is five days. The average time to complete an investigation varies according to how the investigation proceeds:

- Average time to close a case at Investigations: 9 months
- Average time to refer a case from Investigations to Prosecutions: 4 months
- Average time to close a case at Prosecutions: 13 months
- Average time to close a case at Prosecutions with Discipline: 35 months

These average times represent Department complaints overall. Individual complaint data for each regulated profession are not available.

Criteria (9) "The extent to which changes are necessary in the enabling laws of the agency or program to adequately comply with the factors listed in this section."

IDFPR recommends that any proposed language for sunset extension provide for modernizations necessary to implement more streamlined and efficient regulation of this profession, which will ensure public safety and ease the burden of regulatory compliance:

- Allow applicants to apply for "Licensure by Endorsement" without providing education or test information

to IDFPR, if: (1) the applicant has been licensed for 10 consecutive years in another state, (2) the other state sends verification of consecutive licensure of the applicant, and (3) the applicant has never been disciplined.

Conclusion:

Pharmacists and pharmacist technicians are responsible for dispensing prescription medications and counseling patients on their use. Unregulated and irresponsible pharmaceutical practice can seriously impact the health, safety and welfare of the public. There is currently not sufficient evidence to suggest the burdens imposed by regulation outweigh the benefits to the health, safety and welfare of the people of Illinois in continuing the regulation of this profession.