

Governor's Office of Management and Budget

Alexis Sturm

Director



IL Regulatory Sunset Act Review of The Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act

April 14, 2023

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

Governor Pritzker:

The Governor's Office of Management and Budget ("GOMB"), in compliance with the requirements set forth in the Illinois Regulatory Sunset Act (5 ILCS 80), has conducted a review of the Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act (225 ILCS 130), which is scheduled to sunset on January 1, 2024. As a result of this review, GOMB makes the following recommendation:

The Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act (410 ILCS 130) should be continued with the following modifications to its existing statutory and administrative rule framework:

- Updating the language to comport with recently updated acts; and
- Removing outdated language (i.e., sections allowing for grandfathering if applied for licensure prior to the effective date of the act, roster language, etc.) that currently allows for confusion.

GOMB's examination of this act was conducted considering 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 May 19, 2022, there were 510 total registrants under the Act. Below are the numbers of new registrants issued in the previous five years.

Table 1: Total Number of Licensees FY18 - Present

| License Type | 2018 | 2019 | 2020 | 2021 | 2022 |
|----------------------------------|------|------|------|------|------|
| Registered Surgical Technologist | 72 | 77 | 80 | 62 | 64 |
| Registered Surgical Assistant | 363 | 416 | 455 | 412 | 446 |

Surgical Technologists and Assistants have the following licensure fee structure:

Table 2: Surgical Technologists and Assistants Licensure Fee Structure

| License Type | Fee Amount |
|-------------------------|---|
| Initial Application | |
| - Surgical Technologist | \$100.00 |
| - Surgical Assistant | \$100.00 |
| Renewal Fee | \$62.50/ year |
| Restoration after Lapse | \$20.00 fee, plus all lapsed renewal fees |

There are several surgical assistant and technologist programs throughout the state of Illinois. These programs are accredited by the Commission on Accreditation of Allied Health Education Programs and the Accrediting Bureau of Health Education Schools.

Surgical Assistants must pass a national certifying examination from the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification for Surgical Technologists as a certified first assistant, or the American Board of Surgical Assistants.

Surgical Technologists must successfully complete of the Surgical Technologist National Certification Examination provided by the Liaison Council on Certification for the Surgical Technologist or its successor agency.

The statutory citation for this requirement is Administrative Code Title 68 Section 1485.10 and Section 1485.20. The examinations are provided by the National Surgical Assistant Association on the Certification of Surgical Assistants. Exams are offered daily, however IDFPR does not control administrating the exam. The exams are administered by the National Surgical Assistant Association on the Certification of Surgical Assistants. The exam is used nationwide.

There are several states with regulatory legislation regarding Surgical Assistant practice in the United States. The states listed below regulate surgical assistants and surgical technologists:

- Texas
- Washington D.C.
- Kentucky
- Colorado
- Virginia
- Nebraska
- New Hampshire

- Tennessee

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.”

The Illinois Department of Financial and Professional Regulation (“IDFPR”) has not received any complaints alleging discrimination by surgical assistants or technologists. IDFPR does not collect information on the gender, race, or ethnicity of registrants. IDFPR has received no complaints citing discrimination in the registration process, and no external sources of have published any information regarding discriminatory practices of registrants.

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 1.2 million professionals practicing in the State of Illinois. IDFPR has adopted internal policies, sought legislative and administrative rule changes, and developed enhanced licensing processes to maintain efficiency and efficacy. Implementation of online, paperless licensing is one example of such a policy that has proved to be successful. While some procedures, such as the disciplinary process for licensees, can be lengthy, this is done to ensure thoroughness and proper due process for complaints against regulated professionals.

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.”

N/A

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 promulgates rules through the process established by the Joint Committee on Administrative Rules (“JCAR”), the administrative body responsible for approving rule proposals by state agencies. Rules may be shared with the professional’s boards, associations, and industry prior to being filed. The rulemaking process includes a public comment period after which IDFPR responds to the comments received during that period. This process allows for input from industry and community stakeholders impacted by IDFPR’s proposed changes. IDFPR works with lawmakers, community stakeholders, and members of industry to ensure that regulations effectively protect Illinois citizens.

Additionally, IDFPR works with lawmakers, community stakeholders, and members of industry to ensure that regulations effectively protect Illinois citizens. While this is not codified into statute, such informal approaches have been shown to strengthen the relationships between various stakeholders, including regulators, legislators, industry, and consumer advocates.¹

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.”

¹ https://documents.ncsl.org/wwwncsl/Labor/NCSL_DOL_Report_05_web_REVISED.pdf

The Administrative Rules of Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act allows the Department to suspend or revoke registration, refuse to issue or renew registration, or take disciplinary action based upon its finding of dishonorable, unethical, or unprofessional conduct within the meaning of Section 75 of the Act.

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 JCAR and the Illinois General Assembly (“ILGA”) for approving rule proposals, legislative changes, and internal policies. Promulgated rules are consistent with agency Acts and statutory changes. Decisions made by the agency are based on the Acts and Rules and legislative intent. JCAR reviews rules to ensure that the agency does not exceed their rule-making authority granted to them by the General Assembly. Additionally, IDFPR 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.”

Over the last five years, the Division of Professional Regulation’s Complaint Intake Unit opened 23 complaints against licensees under the Act. Of these complaints, one case resulted in public disciplines being issued.

Complaints made against registrants of IDFPR’s Division of Professional Regulation may be filed via mail, e-mail, or phone to DPR’s Complaint Intake Unit in the Statewide Enforcement Section.

After processing, a complaint is referred to the Investigations Unit and assigned to an investigator. An investigator may collect documents, interview witnesses, conduct inspections, and gather information to review the complaint for potential licensing law violations. Investigations may close a complaint for various reasons. Investigations may refer the case to the Prosecutions Unit for further review.

When a complaint is referred to the Prosecutions Unit, it is referred to as a “case.” Cases are assigned to a prosecuting attorney who may seek additional information and/or pursue non-disciplinary or disciplinary action. Disciplinary action includes revocation, suspension, probation, and reprimand of a license. Illinois law also allows for the imposition of disciplinary fines. Non-disciplinary action includes administrative fees, the completion of continuing education, and other similar activities. Prosecutions may take a variety of steps, such as filing a formal pleading and/or conducting an informal settlement conference. The Department and the licensee may enter into a negotiated written agreement regarding the case. Alternatively, Prosecutions may close the case due to various reasons, such as insufficient evidence, the allegations are not a violation or are unfounded, or an expiration of the statute of limitations. If needed, a formal hearing is held before an administrative law judge, where evidence may be submitted and where witnesses may testify. After the hearing, the administrative law judge submits a recommendation to a professional board or committee, if applicable. The board or committee then delivers its recommendation to the Director of the Division of Professional Regulation. The Director then issues a final administrative order. Following the Director’s order, the licensee may appeal the decision in circuit court under the Illinois Administrative Review Act. When applicable, the Division works with outside entities such as state’s attorneys, the Illinois Attorney General, other states, and federal and state governmental agencies to pursue further action, such as criminal or civil action.

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 the sunset of the Act be extended and that statutory language be modernized to implement more streamlined and efficient regulation of this profession, which will ensure safety and welfare of the public and ease the burden of regulatory compliance by:

- Updating the language to comport with recently updated acts; and
- Removing outdated language (i.e., sections allowing for grandfathering if applied for licensure prior to the effective date of the act, roster language, etc.) that currently allows for confusion.

Conclusion:

The Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act (“Act”) governs the practice of registered surgical assistants and registered surgical technologists in the state of Illinois. The absence of regulation of surgical assistants would pose a significant and direct harm to the safety and welfare of the public. It also would jeopardize the ethical standards that help to preserve the best interests of consumers and the services provided by surgical assistants and surgical technologists. Surgical assistants and technologists typically work in the operating room during a surgical procedure. They anticipate the needs of the surgical team and during an operation, assist the surgeon with tasks such as selecting equipment, holding open incisions, stopping bleeding, closing the incision, among many other technical tasks. Therefore, the public health and safety of the public is put at risk without proper qualifications, education, training, and experience.

It is recommended that the sunset of the Act be extended, and the statutory language be modernized, to implement more streamlined and efficient regulation of this profession, which will ensure safety and welfare of the public and ease the burden of regulatory compliance. IDFPR recommends and GOMB concurs that several revisions to the Act to reduce unnecessary administrative mandates, provide for more efficient administration of the Act, and allow for more equitable access to licensure for all qualified individuals.