A ematic Analysis of Existing Sunrise Provisions: Challenges, Findings, and Best Practices

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CONTENTS

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The National Council of State Boards of Nursing (NCSBN) has begun an ambitious endeavor to encourage contemporary approaches to reforming professional regulation. In 2016, NCSBN hosted the *Regulation 2030 Conference* involving nursing and other health-professional regulators from across multiple organizations, countries, and U.S. states, territories, and the District of Columbia (Benton & Alexander, 2017). Several of the ideas identified during the conference led toward the formulation of the objectives underpinning NCSBN's 2020 to 2022 strategic initiatives. The objectives were developed in partnership with NCSBN's membership resulting in a total of 11 objectives between the following four initiatives: (1) promote agile regulatory systems for relevance and responsiveness to change; (2) champion regulatory solutions to address borderless healthcare delivery; (3) expand active engagement and leadership potential of all members; and (4) pioneer competency assessments to support the future of healthcare and the advancement of regulatory excellence (NCSBN, n.d.). The intent was to use a collaborative software platform (Trello) to enable NCSBN members and staff to collaborate asynchronously in cross-functional teams.

The first objective—promoting agile regulatory systems—requires the NSCBN to develop, pilot, and evaluate a regulatory excellence accreditation system using a mixed-method approach. Associated with this objective are a series of sub-goals. This article reports on one sub-goal of analysis of existing U.S. sunrise provisions and their application (the production of sunrise reviews) and contrasting these provisions and reviews with similar processes and outputs in other jurisdictions and countries.

Sunrise review reports, are the outputs generated as a result of sunrise provisions that provide the framework for the analysis of the need to regulate an occupation to protect public health, safety, and welfare. Created in response to the growing number of regulated occupations, sunrise reviews are prepared for state legislatures, which then if proven necessary will go on to introduce and adopt laws that regulate the occupation.

In the context of professional regulation, a sunrise provision in the United States is predominantly a stand-alone legislative act, or occasionally it is a series of clauses within an act, that identifies the steps needed prior to the enactment of legislation that establishes the regulation, associated processes, and required structures for an occupation or profession (Hentze, 2018). In some states, the sunrise review report process is also used prior to consideration of major changes to the powers exercised by the regulatory body or in relation to significant amendments to the scope of practice of the discipline being regulated.

Background and Application

Sunrise provisions are aligned with the principles of *regulatory impact analysis* or *regulatory impact assessment*, terms that are used interchangeably and often referred to as a *RIA*. Prior to examining the evolution and application of sunrise review provisions, as they relate to professional regulation, it is important to examine what lessons can be learned from the literature on RIAs.

Over the past 20 years, RIAs have emerged as a major tool to ensure regulatory systems are fit for purpose. These systems must strike the right balance between restrictions that may inhibit the delivery of a service and safe provision of the service to a required standard (Organisation for Economic Co-operation and Development [OECD], 1997). Stroňová (2014) characterized the purpose of a RIA as "a tool for increasing evidence-based policy making." Stroňová (2014) also noted that a RIA is often integrated into decision-making processes across a wide range of domains. Benton et al. (2013a), in their wider analysis of the principles underpinning professional self-regulation, highlighted the diversity of the techniques used and the breadth of sectors and countries where they have been applied. Additionally, many countries have collaborated to define, develop, and implement the RIA process, resulting in the co-creation of recommended guidance by the member states of the OECD (2009). Over the years, various authors who have been proponents of the RIA approach have argued that by providing evidence, more rational decisions can be reached, more effective change pursued, and the quality and benefits of regulation improved (Keynes, 1931; Hahn & Litan, 1997; Mandelkern Group, 2001; Hahn et al., 2000).

Depending on the policy domain, the emphasis of the RIA can vary, but the core elements tend to mirror those identified by the European Commission (2010) in their work on smart regulation, which is summarized in Table 1.

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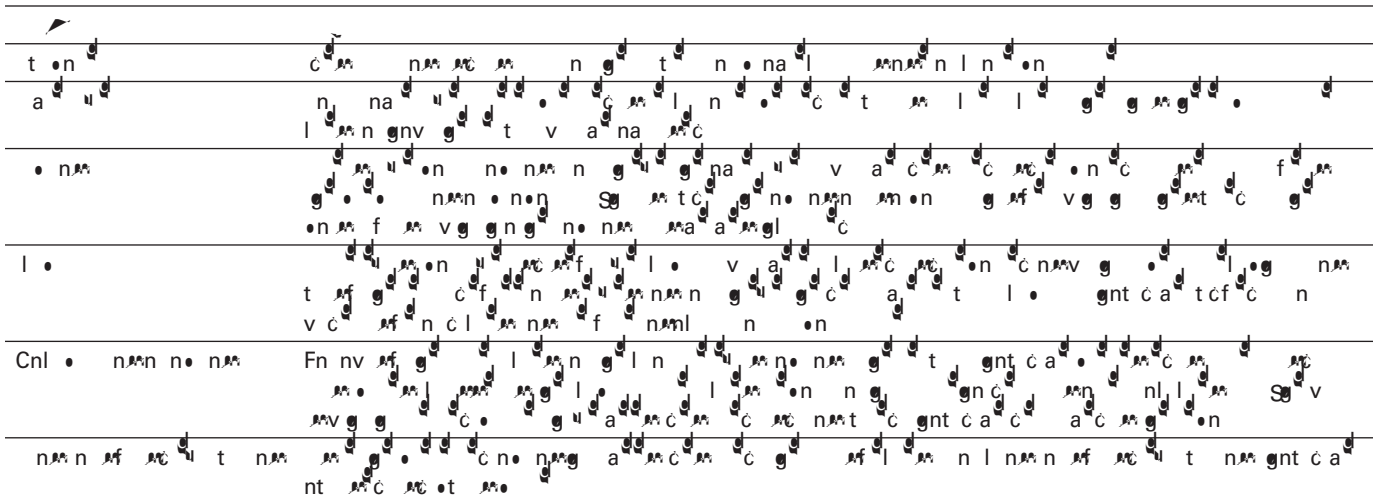

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With the wide-scale use of RIAs and their promotion by many individual governments, the European Union and the OECD have provided many toolkits and resources, as well as collations of best practices, which are available to help support the application of the techniques needed to conduct a RIA. While many of the resources are available as grey literature, several peer-reviewed publications, such as the work by Ballantine and Devonald (2006), have collated lessons from multiple sources in the European Union. Table 2 provides a synopsis of a sample of the resources available.

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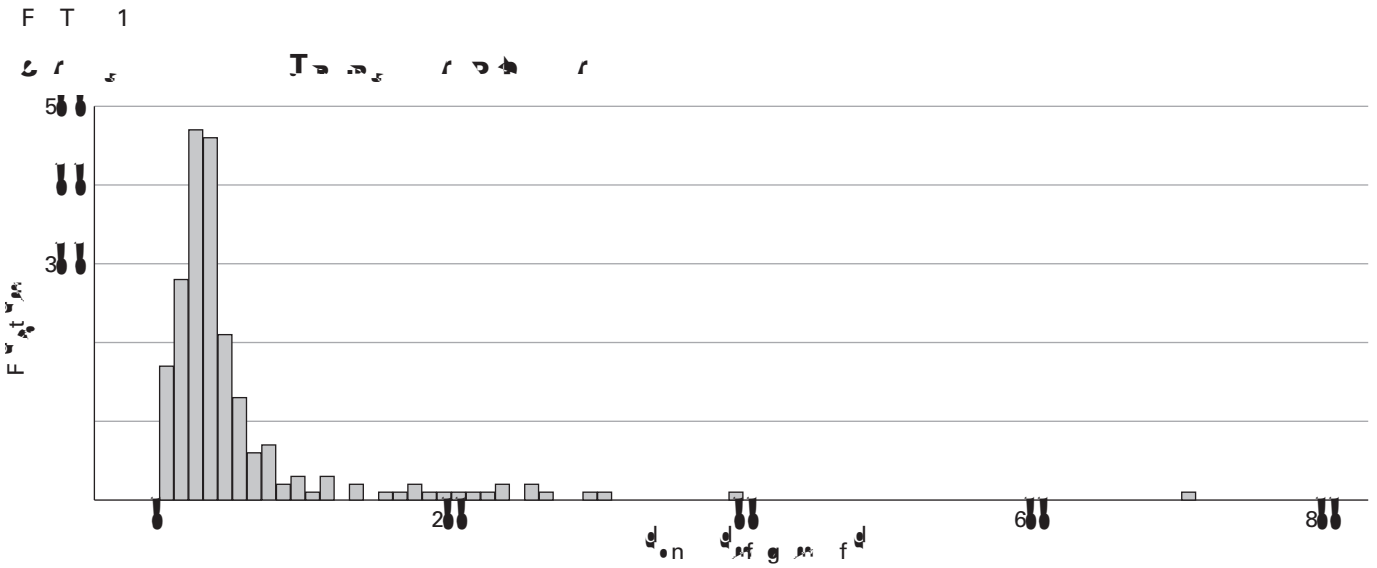
substantive alteration of a regulatory framework for state certification or licensure of an occupation or profession. This process provides a means to objectively assess the relative advantages and disadvantages of regulating an occupation. The entity conducting the review can vary but is normally either an executive or legislative agency (Council of State Governments, 2020b). In short, the profession or group seeking certification, licensure, or an adjustment to their regime must convince the legislators that consumers of the service will be unduly harmed if the proposed legislation is not adopted and that the benefits outweigh the costs of the regulatory action. Within the past decade, repeated reports have strongly advocated for the minimal level of regulatory intervention necessary to secure the desired reduction of harms and maintain safe services (White House, 2015; Baugus & Bose, 2015; Roth & Ramlow, 2016; Professional Standards Authority, 2018)

It has been noted that professions rather than consumer groups usually seek regulation, and one explanation for this is that practitioners understand the harm associated with professional practice better than the consumers of the service (Kleiner, 2006). This phenomenon is sometimes referred to as the problem of information asymmetry (Stephen & Love, 1999).

themes that emerged through the manual inductive approach described by Thomas (2006). This process facilitates triangulation of perspectives, which increases the trustworthiness and robustness of the analysis (Elo et al., 2014).

Looking at the foci of these reports, it can be noted that over the years and across the jurisdictions considerable work took place in relation to midwives, therapists, counselors, chiropractors, assistant staff, and the expansions of scopes of practice. Of the 213 U.S. reports identified, 73% (n = 156) focused on whether an occupation should be licensed or not. The remaining 57 reports (27%) related to requests for alterations to existing scopes of practice.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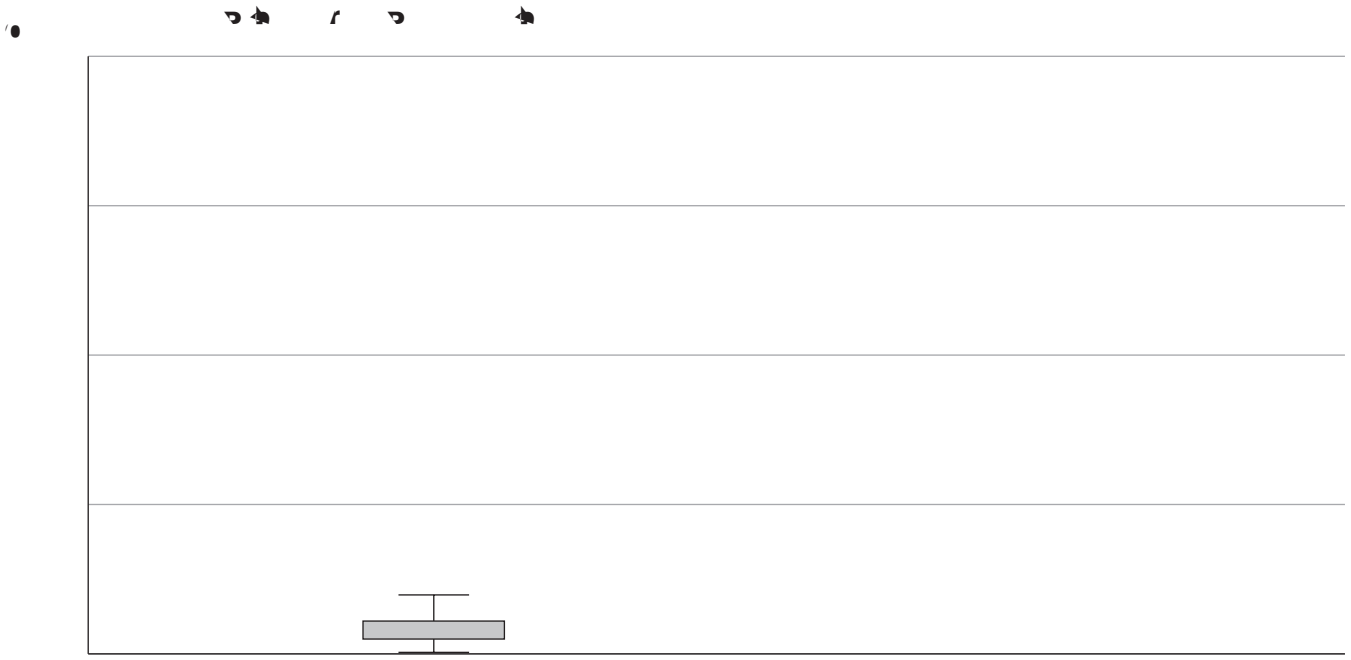

Sunrise Theme

Starting at point A in Figure 6, the sunrise content reports had a lot of information on the issues being considered. Data were specific and, in many cases, presented in a general framework designed to ensure relevant information was available to those seeking to decide whether legislative action was needed. In short, the authors of those reports spent time offering context.

C

Criteria (point B) sets out the dimensions used to assist legislators in the determination as to whether the requested legislative action is justifiable. These criteria typically focus on whether the discipline in its entirety or through an alteration to scope of practice

perhaps an expected finding as the analysis is restricted to health disciplines with direct access to patients. The reports all provided considerable detail regarding the regulatory requirements needed to gain licensure, certification, or registration. However, there is no calibration between these requirements and the risk of harm or the components of that risk other than disjointed elements, such as the Colorado example above in which the stability of the patient's condition, the nature (degree of risk) of the intervention, the predictability of outcome, and the competence of the individual delivering the treatment are identified. By systematically identifying these components and calibrating them against the options available in the regulatory pyramid, a more systematic set of decisions may be possible, and we contend that they certainly warrant further research.

It is not the intention of this analysis to detail the entire mapping of relationships identified regarding the entire set of all 40 themes. Instead, we sought to highlight the utility of the approach, the potential to generate further areas of research inquiry, and the complex and recursive nature of the various elements identified. By examination of the various themes and their relatedness, a series of insights were generated and are documented in Appendix A along with commentary on the mapping and relatedness of the themes and subthemes.

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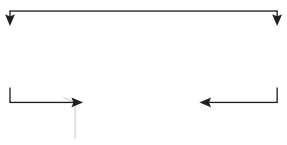

United Kingdom

Since the establishment of the Council for Healthcare Regulatory Excellence in 2002 and its subsequent transition to the Professional Standards Authority for Health and Social Care (PSA), work on assessing the level of risk that any profession offers occurred. Several studies comment on the topic of "right touch regulation," and perhaps one of the most conceptually interesting of these is the PSA (2016) document on methodology. In this document, an initial attempt is made to record a set of criteria in the form of a flowchart or decision tree that identifies whether there is a need to consider regulation of a new discipline.

Consideration of the various examples highlight contributions that address the currency of guidance, transparency, clarity and accountability, criteria, standardization and comparability, and mobility. The following observations linked to the content of Appendix A could be used to substantially improve the specificity of the occupational board reform act templated language proposed by the American Legislative Exchange Council (2019). Furthermore, these points could augment the recommendations offered by Skorup and Hemphill (2020) who provided guidance on how to analyze occupational licensing laws.

Several U.S. states produce guidance that is updated on a regular basis, such as Arizona's guidance compendium and Nebraska's website that details the work that is planned for the year ahead. Other states offer guidance, but it can be several years old. Such guidance may still be current, but frequently material does not indicate whether it is extant. In some cases, guidance refers to material such as Shimberg and Roederer (1994) on questions legislators should consider, but this text has been updated by Schmitt (2018). Some states target their guidance at different audiences, such as professional groups wishing to submit proposals for licensure or the public who may be impacted by such actions. Furthermore, short videos, like Colof-1.2Abw[(Sevepshorfuenpmay sswmo-d R-d ami(1994)

differentiate criteria that will result in a proportionate response. In some cases, literature on differentiation of practice or the conditions under which delegation of practice can occur may offer valuable insights (Ballard et al., 2016).

By specifying criteria and the relationship across levels of practitioner, we contend that transparency is added and the potential to move toward more consistency of judgment is increased. Virginia conducted a structured review of their criteria and as a result updated them some time ago. However, no state or province has clearly delineated the degree of harm or the other measures used that would equate with a decision to license, certify, or register a particular discipline. This would not be an easy task considering that in reality, it is the interaction of multiple criteria that needs to be considered before a calibrated and consistent response can be determined. To do this, lessons may be learned from some of the work currently underway using discrete choice experiments that have been used by the World Health Organization (2012) on related health workforce issues. We contend, having examined the reports covered by this study, that further research on developing instruments or algorithms to quantifiably assess the level of risk that a proposed discipline presents would be necessary if consistent mapping of risk against a range of potential regulatory responses (e.g., licensure, certification, registration) is to be achieved. Only then would it be possible to assess whether the various regulatory tools (standards of education, practice, and conduct; entry to practice examinations; continuing competence assessment and continuing professional development; hours of practice and how recent practice was) can be deployed in a proportionate manner to mitigate potential harms.

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The use of templates and criteria offers the possibility of standardizing sunrise reviews both within a jurisdiction where relative risk across different disciplines can be compared and across jurisdictions where consistency of decision-making may ultimately be facilitated. With regards to comparative datasets, Pennsylvania produced a comprehensive analysis of the requirements needed for a wide range of health disciplines across multiple U.S. jurisdictions. Furthermore, the National Conference of State Legislatures has also curated a database on national occupational licensure (https://www.ncsl.org/research/labor-and-employment/occupational-licensing-statute-database.aspx) that could prove helpful in furthering comparability and standardization. If a focus on nursing were to be pursued, the global regulatory atlas (https://regulatoryatlas.com/) assembled by NCSBN would likewise be valuable.

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Closely linked to the focus on standardization is the impact that regulation can have on mobility of licensure. Georgia explicitly

With weightings calculated, it then would be possible to develop algorithms or flowcharts that could guide the decision-making process in a more structured, replicable, and measurable manner. The concept of using decision trees or flowcharts to guide regulatory decision-making is not new; however, the formulation of such decision-making tools from a public safety perspective requires the need for regulatory controls that tend to lack quantifiable measures (U.K. Commission for Employment and Skills, 2013). The work of the Allen Consulting Group (2007) offers some interesting insights, and although the work was not specifically designed to inform health-professional regulation, it is a useful starting point in developing decision-support tools should quantifiable weightings be generated through discrete choice or other approaches.

As previously mentioned, recent work by researchers at the OECD, such as von Rueden and Bambalaite (2020), started to develop scoring systems for occupational entry requirements and to map these to different levels of regulatory control. This research, along with work by other economists and entities seeking to reform occupational licensure, have started to provide useful data and metrics for communicating information, tracking change, and generating narratives for further exploration. Sadly, to this point, this work has focused almost exclusively on wage, mobility, employment statistics, and productivity (Katsuyama, 2010; Oxford Economics, 2021). We therefore suggest there is an urgent need to look at these issues from a public safety perspective. This work could be achieved through collaboration between employers and regulators where the actions of licensees are documented in the patient record and their impact assessed in terms of patient outcomes that are then correlated with educational and conduct histories.

While every attempt was made to identify relevant pieces of work, we were not able to digitally access some of the work conducted on sunrise reviews in some U.S. states and international jurisdictions. Some states have only digitized more recent work; as a result, some data may be missing. However, a relatively large sample of reports from a range of states and jurisdictions were obtained, and we believe that the analysis identified the key points as they relate to healthcare disciplines. Nonetheless, to develop a comprehensive model, we recommend that all sunrise reports based on any occupational group seeking regulation or change in scope would need to be collected, curated, and analyzed if legislators are to implement a consistent, transparent, and proportionate system of regulation.

Analysis of existing U.S. sunrise reviews and their equivalents in non-U.S. jurisdictions resulted in the identification of several best and promising practices. While no one jurisdiction is currently using all of these practices, there is potential to further improve the quality and transparency as well as potentially enhance the efficiency and effectiveness of current regimes by adopting or adapting these into current processes.

While there is a wealth of evidence in terms of the criteria that jurisdictions use to reach a determination on whether to regulate a discipline or extend their scope of practice, there is still considerable work needed to clearly identify, define, and quantify these criteria so they can be systematically mapped to the proportionate level of response needed (licensure, certification, registration,

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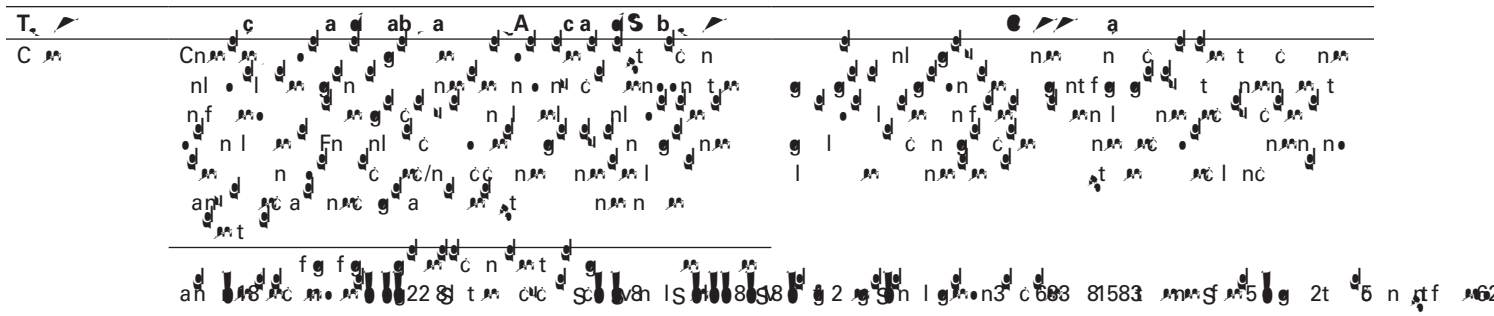

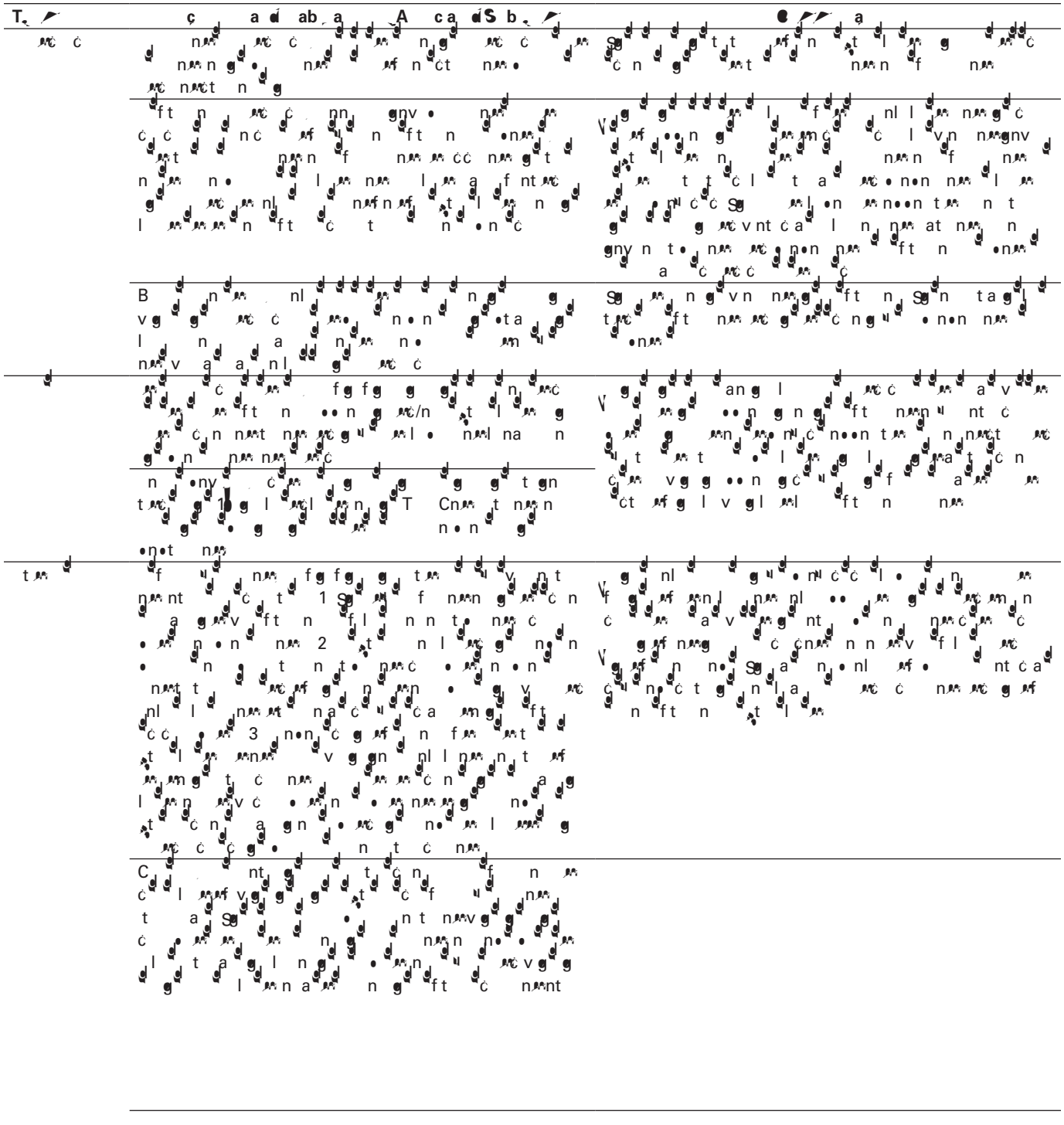

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