

STATE OF COLORADO

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Colorado Department
of Public Health
and Environment

To: Members of the State Board of Health

From: Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division

Through: D. Randy Kuykendall, MLS; Director *D.R.K.*

Date: May 21, 2014

Subject: Proposed Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter XXVI, Home Care Agencies, with a Request for the Rulemaking Hearing to occur on July 16, 2014

The Division is proposing amendments to its licensing standards for home care agencies in order to accommodate the provision of home care agency services to developmentally disabled individuals by Community Centered Boards (CCBs) and Program Approved Service Agencies (PASAs).

Senate Bill 10-194 amended the statutory section on Home Care Agencies by requiring licensure for community centered boards and service agencies that directly provide skilled home health services or in-home personal care services to persons with developmental disabilities. Following the passage of that legislation, the Division worked with stakeholders from the developmentally disabled community for over six months to develop amendments to Chapter XXVI that would appropriately implement the statute. Despite the adoption of those amendments in February of 2011, the CCBs and PASAs believed that there were still outstanding issues regarding the uniqueness of the care they provide.

House Bill 12-1294 directed the Department to work with the Departments of Health Care Policy and Financing and Human Services to develop an implementation plan, in consultation with industry representatives, to resolve differing requirements regarding the provision of personal care services to the developmentally disabled and to eliminate obsolete, redundant rules, licensing and work processes pertaining to the regulation of community residential homes. Division representatives have been working towards this goal for the past two years and participating in an interagency regulatory work group formed to resolve such issues.

The proposed amendments are designed to resolve differing state agency requirements with regard to the provision of home care services by CCBs and PASAs to their developmentally disabled clients and reflect the uniqueness of those services.

**STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY**

For Rules Pertaining to the Standards for Hospitals and Health Facilities
6 CCR 1011, Chapter XXVI, Home Care Agencies
May 21, 2014

Basis and Purpose:

In 2010, Senate Bill 194 mandated Department licensure for Community Centered Boards (CCBs) and Program Approved Service Agencies (PASAs) that directly provide skilled home health services or in-home personal care services to persons with developmental disabilities. The Health Facilities and Emergency Medical Services Division is proposing amendments to the above referenced rules in order to accommodate the provision of those home care services to developmentally disabled individuals by CCBs and PASAs. Based in part upon direction from House Bill 12-1294, the proposed amendments are designed to resolve differing state agency requirements with regard to the provision of home care services by CCBs and PASAs to their developmentally disabled clients and reflect the uniqueness of those services.

These rules are promulgated pursuant to the following statutes:

Section 25-1.5-103, C.R.S. (2013).
Section 25-1.5-108, C.R.S. (2013).
Section 25-27.5-104, C.R.S. (2013).
Section 27-10.5-109(2)(b), C.R.S. (2013).

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes The bill number is House Bill 12-1294. The rules are authorized required.
 No

Is this rulemaking due to a federal statutory or regulatory change?

Yes
 No

Does this rule incorporate materials by reference?

Yes
 No

Does this rule create or modify fines or fees?

Yes
 No

REGULATORY ANALYSIS

For Rules Pertaining to the Standards for Hospitals and Health Facilities
6 CCR 1011-1, Chapter XXVI, Home Care Agencies

May 21, 2014

- 1. A description of the classes of persons who will be affected by the rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the rule.**

The classes of persons who will be affected by the proposed amendments are Community Centered Boards and Program Approved Service Agencies that provide in-home personal care services to persons with developmental disabilities.

- 2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected class of persons.**

The proposed amendments are expected to have a positive qualitative and quantitative impact on the Community Centered Boards and Program Approved Service Agencies that provide personal care services to persons with developmental disabilities by reconciling differing agency standards that are perceived to be a barrier to the effective provision of that care.

- 3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The Division does not anticipate any significant additional costs will be incurred by it or any other agency.

- 4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

The probable costs and benefits of the proposed amendments are detailed above. There is no benefit to inaction. Inaction would result in conflict between agency rules that would hinder the effective delivery of services. Therefore, the probable costs and benefits of the proposed rule outweigh the probable costs and benefit of inaction.

- 5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The determination is that there is no less costly or less intrusive method for achieving the purpose of the amendments in light of the statutory direction.

- 6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

Written guidance and policy documents may also be forthcoming, but those items alone would not achieve the desired result of resolving potential conflicts in various agency regulations. Therefore, no other alternatives are deemed appropriate at this time.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The anticipated short-term consequence will be that Community Centered Boards and Program Approved Service Agencies must acquaint themselves with the amended rules and make any necessary changes to their existing policies and procedures. The long-term consequences are updated regulations that do not conflict with those of other agencies and that allow the efficient provision of home care services to the developmentally disabled.

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Health Facilities Regulation Division

3 STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

4 CHAPTER XXVI - HOME CARE AGENCIES

5 6 CCR 1011-1 Chap 26

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7 Section 8. NON-MEDICAL/PERSONAL CARE

8 * * * * *

9 8.5 Personal care worker

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11 (D) In order to delineate the types of services that can be provided by a personal care worker, the
12 following are examples of limitations where skilled home health care would be needed to meet
13 higher needs of the consumer.

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15 (15) Transfers. A personal care worker may assist with transfers only when the consumer
16 has sufficient balance and strength to reliably stand and pivot and assist with the
17 transfer to some extent. Adaptive and safety equipment may be used in transfers,
18 provided that the consumer and personal care worker are fully trained in the use of the
19 equipment and the consumer, consumer's family member or guardian can direct the
20 transfer step by step. Adaptive equipment may include, but is not limited to wheel
21 chairs, tub seats and grab bars. Gait belts may be used in a transfer as a safety device
22 for the personal care worker as long as the worker has been properly trained in its use.

23 (a) A personal care worker shall not perform assistance with transfers when the
24 consumer is unable to assist with the transfer. Personal care workers, with
25 training and demonstrated competency, may assist a consumer in a transfer
26 involving a lift device.

27 (b) A personal care worker may assist the informal caregiver with transferring the
28 consumer provided the consumer is able to direct and assist with the transfer.

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30 (20) Respite care and companionship. A personal care worker may provide respite and
31 companionship in the consumer's home according to the service plan as long as the
32 necessary provision of services during this time does not include skilled ~~personal care~~
33 HOME HEALTH services as described in this regulation.

34 (21) Housekeeping services. IF PERSONAL CARE SERVICES ARE BEING PROVIDED, A personal
35 care worker may ALSO provide housekeeping services, such as dusting, vacuuming,
36 mopping, cleaning bathroom and kitchen areas, meal preparation, dishwashing, linen
37 changes, laundry and shopping in accordance with the service contract. Where meal

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preparation is provided, the personal care worker should receive instruction regarding any special diets required to be prepared.

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