

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

www.colorado.gov/cdphe



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 VIII, Facilities for Persons with Developmental Disabilities, with a Request for the Rulemaking Hearing to occur on July 16, 2014

The Division is proposing amendments to its licensing standards for facilities for persons with developmental disabilities due to statutory changes and recommendations from the Community Living Advisory Group regulatory sub-committee and the developmentally disabled group home advisory committee.

House Bill 13-1314 which became effective March 1, 2014, made a number of major changes regarding public services for persons with intellectual and developmental disabilities. Administration of the program was transferred from the Department of Human Services to the Department of Health Care Policy and Financing. This required updating numerous statutory and regulatory references in our Chapter VIII rules. The legislation also changed several technical definitions used in our Chapter VIII rules, including the title of the Chapter itself. The Division proposes amending that title and those definitions to ensure consistency with current statutory language.

Additional amendments regarding staffing and services are being proposed based upon the recommendation of the group home advisory committee. The Division believes that these additional changes are minor in scope and will not have an adverse impact upon resident health or safety.

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

For Rules Pertaining to the Standards for Hospitals and Health Facilities
6 CCR 1011, Chapter VIII, Facilities for the Developmentally Disabled
May 21, 2014

Basis and Purpose:

The Division is proposing amendments to its licensing standards for facilities for persons with developmental disabilities based upon changes required by House Bill 13-1314, which became effective March 1, 2014, and recommendations from the Community Living Advisory Group regulatory sub-committee and the group home advisory committee.

House Bill 13-1314 transferred administration of program services for persons with developmental disabilities from the Department of Human Services to the Department of Health Care Policy and Financing. This necessitated updating numerous statutory and regulatory references. The legislation also changed several technical definitions. The Division is proposing amendments to its rules to ensure consistency with current statutory language.

These rules are promulgated pursuant to the following statutes:

Section 25-1.5-103, C.R.S. (2014).

Section 25-1.5-108, C.R.S. (2014).

Section 25.5-10-214(5), C.R.S. (2014).

House Bill 13-1314

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes The bill number is House Bill 13-1314. 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 VIII, Facilities for the Developmentally Disabled

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 facilities for persons with developmental disabilities and group home residents.

- 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.**

Many of the proposed amendments are technical or minor in nature and will have no substantive impact upon facilities or resident. One of the proposed amendments regarding resident time in the home without staff supervision is expected to have a positive qualitative and quantitative impact on group home residents by recognizing their uniqueness and allowing residents more independence if there is adequate documentation that it can be accomplished in a safe manner.

- 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 conflicting statutory and agency references 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.

- 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.**

The majority of the amendments were mandated by legislation. 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 facilities for persons with developmental disabilities 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 statute or the regulations of other agencies and that allow the efficient provision of services to the developmentally disabled.

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2 **Health Facilities and Emergency Medical Services Division**

3 **STANDARDS FOR HOSPITALS AND HEALTH FACILITIES**

4 **CHAPTER VIII - FACILITIES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

5 **6 CCR 1011-1 Chap 08**

6 * * * * *

7 **Section 2 – Definitions**

8 2.1 Administrator – A person who is responsible for the overall operation and daily administration,
9 management and maintenance of the facility.

10 2.2 Community Residential Home for Persons with Developmental Disabilities – a group living facility
11 accommodating at least four but no more than eight adults PERSONS, WHICH IS LICENSED BY THE STATE,
12 where AND IN WHICH services and supports are provided to persons with INTELLECTUAL AND
13 developmental disabilities.

14 2.3 Department – the Colorado Department of Public Health and Environment or its designee.

15 2.4 Developmental Disability – a disability that is manifested before the person reaches twenty-two years of
16 age, which constitutes a substantial disability to the affected individual, and is attributable to mental
17 retardation or related conditions which include cerebral palsy, epilepsy, autism, or other neurological
18 conditions when such conditions result in impairment of general intellectual functioning or adaptive
19 behavior similar to that of a person with mental retardation.

20 2.5 Facility for Persons with INTELLECTUAL AND Developmental Disabilities – a facility specially designed for
21 the active treatment and habilitation of persons with developmental disabilities OR A COMMUNITY
22 RESIDENTIAL HOME WHICH IS LICENSED AND CERTIFIED PURSUANT TO SECTION 25.5-10-214, C.R.S.

23 2.6 Governing Body – the individuals, service agency or community centered board when acting as a
24 service agency that has the ultimate authority and legal responsibility for the management and
25 operation of the facility.

26 2.7 Intermediate Care Facility for Persons with Developmental Disabilities – INDIVIDUALS WITH INTELLECTUAL Disabilities –
27 a residential facility that is certified by the Centers for Medicare and Medicaid (CMS) to provide
28 habilitative, therapeutic and specialized support services to adults with INTELLECTUAL AND developmental
29 disabilities.

30 2.8 Resident – an individual admitted to and receiving services from a facility for persons with
31 developmental disabilities.

32 **Section 3 – Licensing Requirements**

33 3.1 License Types

34 (A) A facility for persons with developmental disabilities shall be licensed as either an Intermediate
35 Care Facility for Persons with Developmental Disabilities or a
36 Community Residential Home for Persons with Developmental Disabilities, depending upon the
37 size of the facility and the services offered.

1 3.2 General License Requirements

2 (A) A facility for persons with INTELLECTUAL AND developmental disabilities shall demonstrate
3 compliance with local building and zoning codes prior to initial licensure and license renewal.

4 ~~(B) In addition to local requirements, there shall be a minimum distance between such homes of seven
5 hundred and fifty (750) feet. Evidence of such local compliance shall be submitted to the
6 Department in the manner requested.~~

7 (E) A facility for persons with INTELLECTUAL AND developmental disabilities shall comply with the
8 requirements of 6 CCR 1011-1, Chapter II, regarding license application procedures, the
9 process for change of ownership and the continuing obligations of a licensee.

10 ~~(D) Prior to licensure, a Community Residential Home for Persons with Developmental Disabilities shall
11 provide the Department with verification that it has obtained program approval from the
12 Colorado Department of Human Services, Division of Developmental Disabilities to provide the
13 relevant services.~~

14 3.3 License Term

15 (A) The license for an Intermediate Care Facility for ~~Persons with Developmental~~ INDIVIDUALS WITH
16 INTELLECTUAL Disabilities shall be valid for twelve (12) months unless otherwise suspended or
17 revoked.

18 (B) The license for a Community Residential Home for ~~Persons with Developmental Disabilities~~
19 shall be valid for twenty-four months unless otherwise suspended or revoked.

20 (C) In the event of a denial, suspension, or revocation of a facility's license or the facility's program
21 approval, the Department shall assist ~~the Department of Human Services or the Department of~~
22 Health Care Policy and Financing in overseeing the relocation of the residents.

23 3.4 License Fees

24 All license fees are non-refundable. More than one fee may apply depending upon the circumstances.
25 The total fee shall be submitted with the appropriate license application.

26 (A) Initial License

27 Community Residential Home for ~~Persons with Developmental Disabilities~~: \$2,500.

28 Intermediate Care Facility for ~~Persons with Developmental~~ INDIVIDUALS WITH INTELLECTUAL
29 Disabilities: \$6,000.

30 (B) License Renewal

31 Effective July 1, 2011, the renewal fee shall be:

32 Community Residential Home for ~~Persons with Developmental Disabilities~~: \$ 750.

33 Intermediate Care Facility for ~~Persons with Developmental~~ INDIVIDUALS WITH INTELLECTUAL
34 Disabilities: \$1,600.

35 (C) Change of ownership

1 Change of ownership shall be determined in accordance with the criteria set forth in 6 CCR
2 1011-1, Chapter II, Part 2. The change of ownership fee shall be:

3 Community Residential Home for ~~Persons with Developmental Disabilities~~: \$2,500.

4 Intermediate Care Facility for ~~Persons with Developmental~~ INDIVIDUALS WITH INTELLECTUAL
5 Disabilities: \$6,000.

6 * * * * *

7 **Section 4 – Governing Body**

8 * * * * *

9 4.4 The governing body shall appoint an administrator who shall have the authority to implement the
10 policies and procedures and be responsible for the day to day management of the facility.

11 (A) An administrator appointed to manage an intermediate care facility for ~~persons with~~
12 ~~developmental~~ INDIVIDUALS WITH INTELLECTUAL disabilities shall have an active, unrestricted
13 Colorado nursing home administrator license.

14 * * * * *

15 **Section 6 – Personnel and Staffing**

16 * * * * *

17 6.6 The administrator shall ensure that there is sufficient trained staff on duty to meet the needs of all
18 residents at all times. A resident may be allowed to remain unsupervised in the facility only when all of
19 the following criteria are met:

20 (A) The resident's individual plan or safety plan allows for the unsupervised time;

21 (B) The resident has telephone access to a staff member who shall be immediately available by
22 telephone and able to arrive at the facility within 15 minutes, if necessary;

23 (C) The unsupervised period does not exceed four (4) hours at a time UNLESS A LONGER
24 UNSUPERVISED PERIOD IS SPECIFIED IN THE RESIDENT'S INDIVIDUAL PLAN OR SAFETY PLAN;

25 (D) No more than one resident at a time shall be left unsupervised UNLESS THERE HAS BEEN AN
26 EVALUATION THAT TWO OR MORE RESIDENTS MAY BE UNSUPERVISED AT THE SAME TIME; and

27 (E) Any unsupervised time is not merely for the convenience of the staff.

28 * * * * *

29 **Section 7 – Training**

30 * * * * *

31
32 7.2 The administrator shall develop and implement a process for staff monitoring including an annual written
33 evaluation of staff competency specific to the duties required at the facility and resident needs.

1 (A) If a staff member fails the annual competency evaluation, the administrator shall, AT A MINIMUM,
2 provide retraining and reevaluate to demonstrate competency is achieved.

3 * * * * *

4 **Section 9 – Resident Rights**

5 9.1 Each facility shall have written policies and procedures for residents' rights. Those policies and
6 procedures shall address the patient rights set forth in 6 CCR, Chapter II, Part 6, and the standards
7 listed in Section 27-10.5-112 through 128, C.R.S. and 2 CCR 503-1, Section 16, Developmental
8 Disabilities Services Section SECTION 25.5-10-218 THROUGH 225, C.R.S, ALONG WITH THE STANDARDS
9 LISTED IN 10 CCR 1505-10, SECTION 8.600, SERVICES FOR INDIVIDUALS WITH INTELLECTUAL AND
10 DEVELOPMENTAL DISABILITIES. Such policies and procedures shall also include specific provisions
11 regarding the following:

12 * * * * *

13 **Section 13 – Dietary Services**

14 13.1 All food shall be procured, stored and prepared safely. At least a three-day supply of food shall be
15 available in the facility in case of emergency.

16 13.2 Meals shall be planned ~~seven (7) days in advance~~ and in a manner that incorporates resident
17 involvement.

18 * * * * *

19 **Section 15 – Medical Services and Supplies**

20 * * * * *

21 15.8 Residents who use wheelchairs or other assistive technology services shall receive professional
22 reviews, at a prescribed or recommended frequency, to ensure the continued applicability and fitness of
23 such devices.

24 15.9 Wheelchairs and other assistive technology devices shall be maintained in good repair ACCORDING TO
25 THE MANUFACTURER'S GUIDELINES.

26 * * * * *

27
28
29