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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 *DRK*

Date: February 18, 2015

Subject: Proposed Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter 26, Home Care Agencies, with a Request for the Rulemaking Hearing to occur on April 15, 2015

The Health Facilities and Emergency Services Division is proposing amendments to Chapter 26, Home Care Agencies, in order to comply with House Bill 14-1360 concerning the continuation of the department's regulation of home care agencies and implementing the recommendations contained in the Department of Regulatory Agencies' Sunset Report, as modified by the House Public Health Care and Human Services Committee.

The proposed amendments address the following items that were included in the legislation:

- Requiring that owners, managers and administrators of home care agencies and home care placement agencies undergo a state and national fingerprint based criminal history record check when applying for a license or registration.
- Authorizing the Board of Health to set fees for the costs of the department's oversight of placement agencies; adopt rules regarding the employment or placement of home care workers with criminal convictions; and adopt rules regarding placement agency record retention and inspection.
- Authorizing the department to inspect home care placement agencies and remove placement agencies from the registry for noncompliance.

The division has been meeting with stakeholders on a regular basis since House Bill 14-1360 was signed by the Governor in June 2014. The division and stakeholders have reached consensus on the majority of the proposed amendments, but differences of opinion remain regarding the disclosure notice and registration fees for placement agencies. The division continues to work with stakeholders in hopes of resolving these remaining issues to everyone's satisfaction prior to the rule-making hearing.

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

For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 26, Home Care Agencies
February 18, 2015

Basis and Purpose:

House Bill 14-1360 modified certain elements of the Department of Public Health and Environment's regulation of home care agencies and granted the department additional authority regarding the registration of home care placement agencies. Specifically, the proposed regulations incorporate the following legislative directives:

- Requiring that owners, managers and administrators of home care agencies and home care placement agencies undergo a state and national fingerprint based criminal history record check when applying for a license or registration.
- Setting fees to cover the direct and indirect costs of the department's oversight of placement agencies.
- Factors to be considered regarding the employment or placement of a home care worker with a criminal history.
- Time frames for placement agency record retention and department inspection of records.
- Authorizing the department to inspect home care placement agencies and remove placement agencies from the registry for noncompliance.

These rules are promulgated pursuant to the following statutes:

Section 25-27.5-101, *et seq.*, C.R.S. (2014)

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

Section 25-3-101, *et seq.*, C.R.S. (2014)

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes
 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 Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 26, Home Care Agencies
February 18, 2015

- 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 affected by the rule will be home care agencies, home care placement agencies, individuals seeking employment as home care workers and the consumers of home care services. Potentially all classes will bear some cost of the proposed rules and all classes will benefit from the proposed rules.

- 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.**

Home care agencies and placement agencies will be responsible for the cost of complying with the mandate regarding fingerprint based criminal history record checks of owners, managers and administrators. Home care agencies and placement agencies will bear the cost of developing policies to address the potential employment or placement of home care workers with criminal convictions. Home care placement agencies will bear the cost of the registration fee authorized by legislation. As a result of these increased agency costs, some agencies may raise the fees that they charge consumers.

Home care consumers will benefit the most from the proposed rules because of the requirements regarding background checks and disclosures which will result in greater consumer protection. Agencies and individuals seeking employment as home care workers will also benefit from the proposed rules because they will have a clearer understanding of exactly what standards apply to them.

- 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 Department of Public Health and Environment will incur costs associated with implementation and enforcement of the proposed rules for home care placement agencies, which it anticipates will be covered by the new registration fee. The Department of Public Safety will incur costs associated with implementation of the criminal history check requirements which should be primarily covered by the fees it charges individuals who request the criminal history checks.

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

Inaction is not an alternative. Action is required to comply with House Bill 14-1360. Inaction would result in non-compliance with statutory mandates.

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 rule.

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 department developed the proposed rules primarily to align with the statute. The department has been collaborating with stakeholders on a regular basis since House Bill 14-1360 was signed by the Governor in June 2014 and has modified the proposed rules several times based upon stakeholder input. The department is continuing to work with stakeholders to achieve full consensus regarding the registration fee and consumer disclosure notice, but 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 revised fiscal impact statement that accompanied House Bill 14-1360 described the fee impact on individuals and businesses. Regarding the background check fees, those are separate from license and registration fees and total \$39.50 each (\$22.25 for a CBI check and \$17.25 for an FBI check). In calculating the proposed registration fee for home care placement agencies, the department analyzed the initial and renewal fee costs for Class B home care agencies that provide personal care as a basis from which to extrapolate the fees for placement agencies. Placement agencies warrant a lower fee than a home care agency because there are fewer records to be reviewed during the inspection process. Nevertheless, the fee must take into consideration the basic costs of registration application processing, complaint handling, regulation maintenance, records and public information requests, management, administrative and fiscal operations, along with department surveyor inspection time and travel. Unlike home care agencies, the department has determined that there should be no difference between a placement agency initial registration fee and the renewal fee because there are no higher initial costs for placement agencies. By contrast, there are many items that contribute to higher initial license fees for home care agencies such as the extensive fitness reviews, on-site inspections before serving consumers, and additional costs based on census requirements.

STAKEHOLDER Comment

For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 26, Home Care Agencies

The following individuals and/or entities were included in the development of these proposed rules: The home care advisory committee, representatives of several home care placement agencies, Aponte & Busam Public Affairs, representing the National Private Duty Association, and the Home Care Association of Colorado.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health: All currently licensed home care agencies, all currently registered home care placement agencies, the home care advisory committee, representatives of several home care placement agencies, Aponte & Busam Public Affairs, representing the National Private Duty Association, and the Home Care Association of Colorado.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

There were no major factual issues since the legislation that generated this proposed rule-making was reasonably explicit regarding the changes to be made. Two major policy issues arose. The first concerns the consumer disclosure notice mandated by the statute. The current rules require both placement agencies and home care agencies to disclose the same information. Placement agency representatives assert that the legislation overrides the current requirements and that the rule language should be reduced to contain only what is specifically stated in statute. Home care agency representatives disagree with this approach because the items specified in statute are set forth as the *minimum* requirements and do not provide sufficient consumer protection or disclosure. The division believes that the most prudent course of action is to merely reiterate the new statutory language for placement agencies. The second policy issue concerns the placement agency registration fee. Placement agencies believe that the registration renewal fee should be lower than the initial registration fee. The division believes that the same fee for initial and renewal registrations is appropriate as detailed in our response to item 7 on the regulatory analysis.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The division is unaware of any adverse health equity or environmental justice impacts. The division attempted to ensure that the proposed rules impact all Coloradoans equally and equitably yet also comply with the statutorily mandated requirements for home care agencies and home care placement agencies.

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Health Facilities and Emergency Medical Services Division

3 STANDARDS FOR HOSPITALS AND HEALTH FACILITIES: CHAPTER 26 - HOME CARE AGENCIES

4 6 CCR 1011-1 Chap 26

5
6 SECTION 3. DEFINITIONS
7

8 3.6 "~~Community Centered Board~~" means ~~a private corporation, for profit or not for profit, that, when~~
9 ~~designated pursuant to section 25.5-10-208, C.R.S., provides case management services to~~
10 ~~persons with intellectual and developmental disabilities, is authorized to determine eligibility of~~
11 ~~those persons within a specified geographical area, serves as the single point of entry for persons~~
12 ~~to receive services and supports under C.R.S. Title 25.5, article 10, and provides authorized~~
13 ~~services and supports to those persons either directly or by purchasing services and supports~~
14 ~~from service agencies.~~ A COMMUNITY-CENTERED BOARD, AS DEFINED IN SECTION 25.5-10-202,
15 C.R.S., THAT IS DESIGNATED PURSUANT TO SECTION 25.5-10-209, C.R.S., BY THE DEPARTMENT OF
16 HEALTH CARE POLICY AND FINANCING.

17

18 3.11

19 (B) "Home care agency" does not include:

20

21 (8) A home care placement agency as defined in this section; ~~or~~

22 (9) Services provided by a qualified early intervention service provider and overseen
23 jointly by the Department of Education and the Department of Human Services
24 OR

25 (10) A PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE) ESTABLISHED IN
26 SECTION 25.5-5-412, C.R.S., AND REGULATED BY THE DEPARTMENT OF HEALTH CARE
27 POLICY AND FINANCING AND THE CMS, EXCEPT THAT PACE HOME CARE SERVICES
28 ARE SUBJECT TO REGULATION IN ACCORDANCE WITH SECTION 25-27.5-104(4).

29 3.12 "HOME CARE CONSUMER" MEANS A PERSON WHO RECEIVES SKILLED HOME HEALTH SERVICES OR
30 PERSONAL CARE SERVICES IN HIS OR HER TEMPORARY OR PERMANENT HOME OR PLACE OF RESIDENCE
31 FROM A HOME CARE AGENCY OR FROM A PROVIDER REFERRED BY A HOME CARE PLACEMENT AGENCY.

32 ~~3.42~~13 "Home care placement agency" means an organization that, for a fee, provides only referrals of
33 providers to home care consumers seeking services. A home care placement agency does not
34 provide skilled home health services or personal care services to a home care consumer in the
35 home care consumer's temporary or permanent home or place of residence directly or by
36 contract. Such organizations shall follow the requirements of Sections 25-27.5-101 ~~ET SEQ.403(2),~~
37 ~~25-27.5-104(1)(c), and 25-27.5-107,~~ C.R.S., THAT PERTAIN TO HOME CARE PLACEMENT AGENCIES
38 and section 4 of this chapter 26.

39 ~~3.43~~14 "Informal caregiver" means a person who provides care to the consumer when the paid caregiver
40 is not in the home.

- 1 3.4415 "Intermediate care provider" means a nurse practitioner or physician assistant.
- 2 3.4516 "Life-limiting illness" means a medical condition that, in the opinion of the medical specialist
3 involved, has a prognosis of death that is highly probable before a child reaches adulthood at age
4 19.
- 5
6 3.17 "Manager" or "administrator" means any person who controls and supervises or offers or attempts
7 to control and supervise the day-to-day operations of a home care agency or home care
8 placement agency.
- 9 3.4618 "Nurse aide" means a nurse aide certified by the Colorado Department of Regulatory Agencies or
10 a nurse aide who has completed the requisite training and is within four (4) months of achieving
11 certification.
- 12
13 3.19 "Owner" means a shareholder in a for-profit or nonprofit corporation, a partner in a partnership or
14 limited partnership, member in a limited liability company, a sole proprietor, or a person with a
15 similar interest in an entity, who has at least a fifty-percent ownership interest in the business
16 entity.
- 17
18 3.20 "PACE home care services" means skilled home health services or personal care services:
19
20 (A) Offered as part of a comprehensive set of medical and nonmedical benefits, including
21 primary care, day services and interdisciplinary team care planning and management, by
22 PACE provides to an enrolled participant in the program of all-inclusive care for the
23 elderly established in section 25.5-5-412, C.R.S., and regulated by the Department of
24 Health Care policy and Financing and the CMS; and
25
26 (B) Provided in the enrolled participant's temporary or permanent place of residence.
- 27 3.4721 "Parent home care agency" means the agency that develops and maintains administrative control
28 of branch offices.
- 29 3.4822 "Personal care services" means assistance with activities of daily living, including but not limited
30 to bathing, dressing, eating, transferring, walking or mobility, toileting, and continence care. It also
31 includes housekeeping, personal laundry, medication reminders, and companionship services
32 furnished to a home care consumer in the home care consumer's temporary or permanent home
33 or place of residence, and those normal daily routines that the home care consumer could
34 perform for himself or herself were he or she physically capable, which are intended to enable
35 that individual to remain safely and comfortably in the home care consumer's temporary or
36 permanent home or place of residence.
- 37 3.4923 "Plan of correction" means a written plan prepared by the ~~HCA~~ HOME CARE AGENCY OR HOME
38 CARE PLACEMENT AGENCY and submitted to the department for approval that specifies the
39 measures the ~~HCA~~ AGENCY shall take to correct all cited deficiencies.
- 40 3.2024 "Primary agency" means the agency responsible for the consumer's direct care coordination
41 when a secondary or subcontracted agency is also providing care and services.
- 42 3.2425 "Qualified Early Intervention Service Provider" has the same meaning set forth in section 27-10.5-
43 702, C.R.S.
- 44 3.2226 "Respite care" means services provided to a consumer who is unable to care for himself or
45 herself on a short term basis because of the absence or need for relief of those persons normally
46 providing care.

- 1 ~~3.2327~~ "Service Agency" means ~~a person or any publicly or privately operated programs, organization, or~~
 2 ~~business providing services or supports for persons with intellectual and developmental~~
 3 ~~disabilities.~~ MEANS A SERVICE AGENCY, AS DEFINED IN SECTION 25.5-10-202, C.R.S., THAT HAS
 4 RECEIVED CERTIFICATION FROM THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING AS A
 5 DEVELOPMENTAL DISABILITIES SERVICE AGENCY UNDER RULES PROMULGATED BY THE MEDICAL SERVICE
 6 BOARD AND IS PROVIDING SERVICES PURSUANT TO THE SUPPORTED LIVING SERVICES WAIVER OF THE
 7 CHILDREN'S EXTENSIVE SERVICE SUPPORT WAIVER OR THE HOME AND COMMUNITY-BASED SERVICES
 8 WAIVERS ADMINISTERED BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING UNDER PART 4
 9 OF ARTICLE 6 OF TITLE 25.5, C.R.S.
- 10 3.2428 "Service note" means a written notation that is signed, with date and time, by an employee of the
 11 home care agency furnishing the non-medical services.
- 12 3.2529 "Skilled home health services" means health and medical services furnished in the consumer's
 13 temporary or permanent place of residence that include wound care services; use of medical
 14 supplies including drugs and biologicals prescribed by a physician; in-home infusion services;
 15 nursing services; or certified nurse aide services that require the supervision of a licensed or
 16 certified health care professional acting within the scope of his or her license or certificate;
 17 occupational therapy; physical therapy; respiratory care services; dietetics and nutrition
 18 counseling services; medication administration; medical social services; and speech-language
 19 pathology services. "Skilled home health services" does not include the delivery of either durable
 20 medical equipment or medical supplies.
- 21 3.2630 "Subdivision" means a component of a multi-function health agency, such as the home care
 22 department of a hospital or the nursing division of a health department, which independently
 23 meets the licensure requirements for HCAs. A subdivision that has branch offices is considered a
 24 parent agency.
- 25 3.2731 "Summary report" means the compilation of the pertinent factors of a home care consumer's
 26 clinical notes that is submitted to the consumer's physician by the skilled home health care
 27 agency.
- 28 3.2832 "Supervision" means authoritative procedural guidance by a qualified person for the
 29 accomplishment of a function or activity.

30 SECTION 4. PLACEMENT AGENCIES

31 4.1 Registration

- 32 (A) On or after June 1, ~~2009~~ 2015, IT IS UNLAWFUL FOR A PERSON TO CONDUCT OR MAINTAIN A
 33 HOME CARE PLACEMENT AGENCY UNLESS THE PERSON HAS SUBMITTED A COMPLETED
 34 APPLICATION FOR REGISTRATION AS A HOME CARE PLACEMENT AGENCY. ~~each home care~~
 35 ~~placement agency shall notify the department in writing that it provides referrals for home~~
 36 ~~care services to consumers and shall annually update such notice.~~
- 37 (B) ~~The individuals(s) responsible for the operation of any placement agency that fails to~~
 38 ~~register with the department may be subject to a civil penalty assessed by the~~
 39 ~~department of not less than \$500 per year or more than \$1,000 per year. ON OR AFTER~~
 40 JANUARY 1, 2016, IT IS UNLAWFUL FOR A PERSON TO CONDUCT OR MAINTAIN A HOME CARE
 41 PLACEMENT AGENCY WITHOUT A VALID, CURRENT HOME CARE PLACEMENT AGENCY
 42 REGISTRATION ISSUED BY THE DEPARTMENT.
- 43 (C) AS A CONDITION OF OBTAINING AN INITIAL OR RENEWAL HOME CARE PLACEMENT AGENCY
 44 REGISTRATION, THE PLACEMENT AGENCY SHALL:
 45

- 1 (1) SUBMIT, IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT, PROOF THAT IT
2 HAS OBTAINED AND IS MAINTAINING GENERAL LIABILITY INSURANCE COVERAGE THAT
3 COVERS THE HOME CARE PLACEMENT AGENCY AND THE PROVIDERS IT REFERS TO
4 HOME CARE CONSUMER CLIENTS IN THE AMOUNT SPECIFIED IN THE REGISTRATION
5 PROCEDURE AT SECTION 4.8 AND
- 6 (2) MAINTAIN PROOF THAT BEFORE REFERRING A PROVIDER TO A HOME CARE CONSUMER
7 CLIENT, IT IS PROVIDING THAT HOME CARE CONSUMER CLIENT WITH A WRITTEN
8 DISCLOSURE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT.
- 9 (D) A PERSON WHO VIOLATES ANY PART OF THIS SECTION IS:
- 10 (1) GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY
11 A FINE OF NOT LESS THAN \$50, NOR MORE THAN \$500; AND
- 12 (2) MAY BE SUBJECT TO A CIVIL PENALTY ASSESSED BY THE DEPARTMENT OF UP TO
13 \$10,000 FOR EACH VIOLATION. THE PENALTY SHALL BE ASSESSED, ENFORCED AND
14 COLLECTED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND ANY PENALTIES
15 COLLECTED BY THE DEPARTMENT SHALL BE TRANSFERRED TO THE STATE TREASURER
16 FOR DEPOSIT IN THE HOME CARE AGENCY CASH FUND CREATED IN SECTION 25-27.5-
17 105, C.R.S.
- 18 4.2 Criminal history record check
- 19 (A) ~~On or after June 1, 2009~~ EFFECTIVE JUNE 1, 2015, the home care placement agency shall
20 require any individual PROVIDER seeking placement to submit to a criminal history record
21 check TO ASCERTAIN WHETHER THE PROVIDER APPLYING HAS BEEN CONVICTED OF A FELONY
22 OR MISDEMEANOR, WHICH FELONY OR MISDEMEANOR INVOLVES CONDUCT THAT THE AGENCY
23 DETERMINES COULD POSE A RISK TO THE HEALTH, SAFETY OR WELFARE OF HOME CARE
24 CONSUMERS.
- 25 (B) The criminal history record check shall, AT A MINIMUM, INCLUDE A SEARCH OF CRIMINAL
26 HISTORY IN THE STATE OF COLORADO AND be conducted not more than 90 days prior to
27 placement of the ~~applicant~~ PROVIDER.
- 28 (C) The cost of such inquiry shall be paid by either the home care placement agency or the
29 individual seeking placement.
- 30 (D) IN ASSESSING WHETHER TO REFER A PROVIDER WITH A FELONY OR MISDEMEANOR CONVICTION,
31 THE HOME CARE PLACEMENT AGENCY SHALL CONSIDER THE FOLLOWING FACTORS:
- 32 (1) THE HISTORY OF CONVICTIONS, PLEAS OF GUILTY OR NO CONTEST,
- 33 (2) THE NATURE AND SERIOUSNESS OF THE CRIMES;
- 34 (3) THE TIME THAT HAS ELAPSED SINCE THE CONVICTION(S);
- 35 (4) WHETHER THERE ARE ANY MITIGATING CIRCUMSTANCES; AND
- 36 (5) THE NATURE OF THE POSITION FOR WHICH THE PROVIDER WOULD BE REFERRED.
- 37 (E) THE HOME CARE PLACEMENT AGENCY SHALL DEVELOP AND IMPLEMENT POLICIES AND
38 PROCEDURES REGARDING THE REFERRAL OF ANY PROVIDER WHO IS CONVICTED OF A FELONY
39 OR MISDEMEANOR TO ENSURE THAT THE PROVIDER BEING REFERRED DOES NOT POSE A RISK TO
40 THE HEALTH, SAFETY AND WELFARE OF THE HOME CARE CONSUMER CLIENT.

1 4.3 Disclosures

2 (A) The placement agency shall provide a written disclosure notice to the HOME CARE
 3 CONSUMER CONCERNING THE DUTIES AND EMPLOYMENT STATUS OF THE INDIVIDUAL PROVIDING
 4 SERVICES. ~~consumer or authorized representative, before services are rendered, that~~
 5 ~~specifies the service provided by the placement agency and the consumer's obligation~~
 6 ~~regarding the home care worker.~~

7 (B) The disclosure notice, IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT, shall be
 8 signed by the consumer or authorized representative before the start of services and
 9 shall include, AT A MINIMUM, THE FOLLOWING information ~~as to who is responsible for the~~
 10 ~~following items:~~

11 (1) THAT THE HOME CARE PLACEMENT AGENCY IS NOT THE EMPLOYER OF ANY PROVIDER IT
 12 REFERS TO A HOME CARE CONSUMER; AND

13 (2) THAT THE HOME CARE PLACEMENT AGENCY DOES NOT DIRECT, CONTROL SCHEDULE, OR
 14 TRAIN ANY PROVIDER IT REFERS.

15 ~~(1) — Employment of the home care worker,~~

16 ~~(2) — Liability for the home care worker while in the consumer's home,~~

17 ~~(3) — Payment of wages to the home care worker,~~

18 ~~(4) — Payment of employment and social security taxes,~~

19 ~~(5) — Payment of unemployment, workers' compensation general liability insurance,~~
 20 ~~and, if provided, bond insurance,~~

21 ~~(6) — Supervision of the home care worker,~~

22 ~~(7) — Scheduling of the home care worker,~~

23 ~~(8) — Assignment of duties to the home care worker,~~

24 ~~(9) — Hiring, firing and discipline of the home care worker,~~

25 ~~(10) — Provision of material or supplies for the home care worker's use in providing~~
 26 ~~services to the consumer, and~~

27 ~~(11) — Training and ensuring qualifications that meet the needs of the consumer.~~

28 4.4 INSPECTIONS

29 (A) THE DEPARTMENT MAY INSPECT, AS IT DEEMS NECESSARY, A HOME CARE PLACEMENT AGENCY'S
 30 RECORDS ON WEEKDAYS BETWEEN 9 A.M. AND 5 P.M. TO ENSURE THAT THE HOME CARE
 31 PLACEMENT AGENCY IS IN COMPLIANCE WITH THE CRIMINAL HISTORY RECORD CHECK, GENERAL
 32 LIABILITY INSURANCE, AND DISCLOSURE REQUIREMENTS.

33 (1) THE HOME CARE PLACEMENT AGENCY SHALL RETAIN ITS RECORDS FOR A PERIOD OF
 34 SEVEN (7) YEARS AND THOSE RECORDS SHALL BE READILY AVAILABLE TO THE
 35 DEPARTMENT DURING INSPECTION.

- 1 (B) THE DEPARTMENT SHALL MAKE INSPECTIONS AS IT DEEMS NECESSARY TO ENSURE THAT THE
2 HEALTH, SAFETY AND WELFARE OF A HOME CARE PLACEMENT AGENCY'S HOME CARE
3 CONSUMERS ARE BEING PROTECTED. INSPECTIONS OF A HOME CARE CONSUMER'S HOME ARE
4 SUBJECT TO THE CONSENT OF THE CONSUMER TO ACCESS THE PROPERTY.
- 5 4.5 PLAN OF CORRECTION
- 6 (A) A HOME CARE PLACEMENT AGENCY SHALL SUBMIT TO THE DEPARTMENT A WRITTEN PLAN OF
7 CORRECTION DETAILING MEASURES THAT WILL BE TAKEN BY THE AGENCY TO CORRECT
8 DEFICIENCIES FOUND AS A RESULT OF INSPECTIONS AND SHALL BE SUBMITTED IN THE FORM AND
9 MANNER REQUIRED BY THE DEPARTMENT.
- 10 (B) PLANS OF CORRECTION SHALL BE:
- 11 (1) SUBMITTED WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE OF THE DEPARTMENT'S
12 WRITTEN NOTICE OF DEFICIENCIES, AND
- 13 (2) SIGNED BY THE AGENCY MANAGER.
- 14 (C) CORRECTIVE ACTIONS SHALL BE IMPLEMENTED WITHIN 45 CALENDAR DAYS OF THE EXIT DATE
15 OR AS DETERMINED BY THE DEPARTMENT.
- 16 (D) THE DEPARTMENT HAS THE DISCRETION TO APPROVE, MODIFY OR REJECT PLANS OF
17 CORRECTION.
- 18 (1) IF THE PLAN OF CORRECTION IS ACCEPTABLE, THE DEPARTMENT SHALL NOTIFY THE
19 AGENCY.
- 20 (2) IF THE PLAN OF CORRECTION IS UNACCEPTABLE, THE DEPARTMENT SHALL NOTIFY THE
21 AGENCY IN WRITING AND THE AGENCY SHALL RE-SUBMIT CHANGES TO THE DEPARTMENT
22 WITHIN THE TIME FRAME SPECIFIED BY THE DEPARTMENT.
- 23 (3) IF THE AGENCY FAILS TO COMPLY WITH THE REQUIREMENTS OR DEADLINES FOR
24 SUBMISSION OF A PLAN OR FAILS TO SUBMIT REQUESTED CHANGES TO THE PLAN, THE
25 DEPARTMENT MAY REJECT THE PLAN OF CORRECTION AND IMPOSE INTERMEDIATE
26 RESTRICTIONS OR OTHER DISCIPLINARY SANCTIONS AS SET FORTH BELOW.
- 27 (4) IF THE AGENCY FAILS TO TIMELY IMPLEMENT THE ACTIONS AGREED TO IN THE PLAN OF
28 CORRECTION, THE DEPARTMENT MAY IMPOSE INTERMEDIATE RESTRICTIONS OR OTHER
29 DISCIPLINARY SANCTIONS AS SET FORTH BELOW.
- 30 4.6 INTERMEDIATE RESTRICTIONS OR CONDITIONS
- 31 (A) THE DEPARTMENT MAY IMPOSE INTERMEDIATE RESTRICTIONS OR CONDITIONS ON A PLACEMENT
32 AGENCY THAT MAY INCLUDE AT LEAST ONE OF THE FOLLOWING:
- 33 (1) RETAINING A CONSULTANT TO ADDRESS CORRECTIVE MEASURES;
- 34 (2) MONITORING BY THE DEPARTMENT FOR A SPECIFIC PERIOD;
- 35 (3) PROVIDING ADDITIONAL TRAINING TO EMPLOYEES, OWNERS, OR OPERATORS OF THE
36 HOME CARE PLACEMENT AGENCY;
- 37 (4) COMPLYING WITH A DIRECTED WRITTEN PLAN TO CORRECT THE VIOLATION, OR

- 1 (5) PAYING A CIVIL FINE NOT TO EXCEED \$10,000 PER CALENDAR YEAR FOR ALL
2 VIOLATIONS.

- 3 (B) IF THE DEPARTMENT IMPOSES AN INTERMEDIATE RESTRICTION OR CONDITION THAT IS NOT THE
4 RESULT OF A SERIOUS AND IMMEDIATE THREAT TO HEALTH OR WELFARE, THE DEPARTMENT
5 SHALL PROVIDE THE AGENCY WITH WRITTEN NOTICE OF THE RESTRICTION OR CONDITION. NO
6 LATER THAN TEN (10) CALENDAR DAYS AFTER RECEIPT OF THE NOTICE, THE AGENCY SHALL
7 SUBMIT A WRITTEN PLAN THAT INCLUDES THE TIME FRAME FOR COMPLETING THE DIRECTED PLAN
8 THAT ADDRESSES THE RESTRICTION OR CONDITION SPECIFIED.

- 9 (C) IF THE DEPARTMENT IMPOSES AN INTERMEDIATE RESTRICTION OR CONDITION THAT IS THE
10 RESULT OF A SERIOUS AND IMMEDIATE THREAT TO HEALTH, SAFETY OR WELFARE, THE
11 DEPARTMENT SHALL NOTIFY THE AGENCY IN WRITING, BY TELEPHONE, OR IN PERSON DURING AN
12 ON-SITE VISIT.

- 13 (1) THE AGENCY SHALL REMEDY THE CIRCUMSTANCES CREATING THE HARM OR POTENTIAL
14 HARM IMMEDIATELY UPON RECEIVING NOTICE OF THE RESTRICTION OR CONDITION.

- 15 (2) IF THE DEPARTMENT PROVIDES NOTICE OF A RESTRICTION OR CONDITION BY
16 TELEPHONE OR IN PERSON, THE DEPARTMENT SHALL SEND WRITTEN CONFIRMATION OF
17 THE RESTRICTION OR CONDITION TO THE AGENCY WITHIN TWO (2) BUSINESS DAYS.

- 18 (D) AFTER SUBMISSION OF AN APPROVED WRITTEN PLAN, THE AGENCY MAY APPEAL ANY
19 INTERMEDIATE RESTRICTION OR CONDITION TO THE DEPARTMENT THROUGH AN INFORMAL
20 REVIEW PROCESS AS SPECIFIED BY THE DEPARTMENT.

- 21 (E) IF THE DEPARTMENT IMPOSES AN INTERMEDIATE RESTRICTION OR CONDITION THAT REQUIRES
22 PAYMENT OF A CIVIL FINE, THE AGENCY MAY REQUEST AND THE DEPARTMENT SHALL GRANT A
23 STAY IN PAYMENT OF THE FINE UNTIL FINAL DISPOSITION OF THE RESTRICTION OR CONDITION.

- 24 (F) IF A PLACEMENT AGENCY IS NOT SATISFIED WITH THE RESULT OF THE INFORMAL REVIEW OR
25 CHOOSES NOT TO SEEK INFORMAL REVIEW, NO INTERMEDIATE RESTRICTION OR CONDITION
26 SHALL BE IMPOSED UNTIL AFTER THE OPPORTUNITY FOR A HEARING HAS BEEN AFFORDED THE
27 PLACEMENT AGENCY PURSUANT TO SECTION 24-4-105, C.R.S.
28

29 4.7 ENFORCEMENT AND DISCIPLINARY SANCTIONS

- 30
- 31 (A) THE DEPARTMENT MAY DENY AN APPLICATION FOR AN INITIAL OR RENEWAL HOME CARE
32 PLACEMENT AGENCY REGISTRATION THAT IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF
33 SECTION 25-27.5-101, *ET SEQ.*, C.R.S. OR THESE REGULATIONS. THE DEPARTMENT SHALL NOT
34 ISSUE A REGISTRATION IF THE OWNER, MANAGER OR ADMINISTRATOR OF THE HOME CARE
35 PLACEMENT AGENCY HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR WHICH FELONY
36 OR MISDEMEANOR INVOLVES CONDUCT THAT THE DEPARTMENT DETERMINES COULD POSE A
37 RISK TO THE HEALTH, SAFETY OR WELFARE OF THE HOME CARE CONSUMERS OF THE HOME CARE
38 PLACEMENT AGENCY.

- 39
- 40 (1) IF THE DEPARTMENT DENIES AN APPLICATION FOR AN INITIAL OR RENEWAL HOME CARE
41 PLACEMENT AGENCY REGISTRATION, THE DEPARTMENT SHALL NOTIFY THE APPLICANT
42 IN WRITING OF SUCH DENIAL BY MAILING A NOTICE TO THE APPLICANT AT THE ADDRESS
43 SHOWN ON THE APPLICATION.
44
- 45 (2) ANY APPLICANT THE BELIEVES IT HAS BEEN AGGRIEVED BY SUCH DENIAL MAY SEEK
46 REVIEW OF THE DECISION IF THE APPLICANT, WITHIN 60 CALENDAR DAYS AFTER
47 RECEIVING THE WRITTEN NOTICE OF DENIAL, PETITIONS THE DEPARTMENT TO SET A
48 HEARING.
49

- 1 (3) ALL HEARINGS ON REGISTRATION DENIALS SHALL BE CONDUCTED IN ACCORDANCE WITH
- 2 THE COLORADO ADMINISTRATIVE PROCEDURE ACT, SECTION 24-4-101, *ET SEQ.*,
- 3 C.R.S.
- 4
- 5 (B) THE DEPARTMENT MAY REVOKE OR SUSPEND THE REGISTRATION OF A HOME CARE PLACEMENT
- 6 AGENCY THAT IS OUT OF COMPLIANCE WITH THE REQUIREMENTS OF SECTION 25-27.5-101, *ET*
- 7 *SEQ.*, C.R.S. OR THESE REGULATIONS.
- 8
- 9 (1) APPEALS OF DEPARTMENTAL REVOCATIONS OR SUSPENSIONS SHALL BE CONDUCTED IN
- 10 ACCORDANCE WITH THE COLORADO ADMINISTRATIVE PROCEDURE ACT, SECTION 24-4-
- 11 101, *ET SEQ.*, C.R.S.
- 12
- 13 (C) THE DEPARTMENT MAY SUMMARILY SUSPEND AN AGENCY'S REGISTRATION IF IT FINDS, AFTER
- 14 INVESTIGATION, THAT THE AGENCY HAS ENGAGED IN A DELIBERATE AND WILLFUL VIOLATION OF
- 15 THESE REGULATIONS OR THAT THE PUBLIC HEALTH, SAFETY OR WELFARE REQUIRES IMMEDIATE
- 16 ACTION.
- 17
- 18 (1) IF THE DEPARTMENT SUMMARILY SUSPENDS AN AGENCY'S REGISTRATION, IT SHALL
- 19 PROVIDE THE AGENCY WITH A NOTICE EXPLAINING THE BASIS FOR THE SUMMARY
- 20 SUSPENSION. THE NOTICE SHALL ALSO INFORM THE AGENCY OF ITS RIGHT TO APPEAL
- 21 AND THAT IT IS ENTITLED TO A PROMPT HEARING ON THE MATTER.
- 22
- 23 (2) APPEALS OF SUMMARY SUSPENSIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE
- 24 COLORADO ADMINISTRATIVE PROCEDURE ACT, SECTION 24-4-101, *ET SEQ.*, C.R.S.
- 25
- 26 (D) IF THE DEPARTMENT SUSPENDS, REVOKES OR REFUSES TO RENEW A HOME CARE PLACEMENT
- 27 AGENCY REGISTRATION, THE HOME CARE PLACEMENT AGENCY SHALL BE REMOVED FROM THE
- 28 REGISTRY MAINTAINED BY THE DEPARTMENT PURSUANT TO SECTION 25-27.3-103(2)(a)(I),
- 29 C.R.S.

30 4.8 REGISTRATION PROCEDURE

- 31 (A) AN APPLICANT FOR AN INITIAL OR RENEWAL HOME CARE PLACEMENT AGENCY REGISTRATION
- 32 SHALL PROVIDE THE DEPARTMENT WITH A COMPLETE APPLICATION INCLUDING ALL INFORMATION
- 33 AND ATTACHMENTS SPECIFIED IN THE APPLICATION FORM AND ANY ADDITIONAL INFORMATION
- 34 REQUESTED BY THE DEPARTMENT. EACH APPLICATION SHALL INCLUDE, AT A MINIMUM, THE
- 35 FOLLOWING:
- 36 (1) A NON-REFUNDABLE ANNUAL REGISTRATION FEE OF \$870. REGISTRATIONS WILL BE
- 37 VALID FOR ONE-YEAR FROM THE DATE OF ISSUE.
- 38 (2) EVIDENCE OF GENERAL LIABILITY INSURANCE COVERAGE THAT COVERS THE HOME CARE
- 39 PLACEMENT AGENCY AND THE PROVIDERS IT REFERS TO HOME CARE CONSUMERS.
- 40 SUCH COVERAGE SHALL BE MAINTAINED FOR THE DURATION OF THE LICENSE PERIOD.
- 41 THE MINIMUM AMOUNT OF COVERAGE IS \$100,000 PER OCCURRENCE AND \$300,000
- 42 AGGREGATE.
- 43 (3) THE LEGAL NAME OF THE ENTITY AND ALL OTHER NAMES USED BY IT TO PROVIDE HOME
- 44 CARE PLACEMENT SERVICES. THE APPLICANT HAS A CONTINUING DUTY TO NOTIFY THE
- 45 DEPARTMENT OF ALL NAME CHANGES AT LEAST THIRTY (30) CALENDAR DAYS PRIOR TO
- 46 THE EFFECTIVE DATE OF THE CHANGE.
- 47 (4) CONTACT INFORMATION FOR THE ENTITY INCLUDING MAILING ADDRESS, TELEPHONE
- 48 AND FACSIMILE NUMBERS, E-MAIL ADDRESS AND, IF APPLICABLE, WEBSITE ADDRESS.

(5) THE IDENTITY OF ALL PERSONS AND BUSINESS ENTITIES WITH A CONTROLLING INTEREST IN THE HOME CARE PLACEMENT AGENCY, INCLUDING ADMINISTRATORS, DIRECTORS AND MANAGERS. A SOLE PROPRIETOR SHALL INCLUDE PROOF OF LAWFUL PRESENCE IN THE UNITED STATES IN COMPLIANCE WITH SECTION 24-76.5-103(4), C.R.S.

(C) WITH THE SUBMISSION OF AN APPLICATION FOR REGISTRATION OR WITHIN TEN (10) CALENDAR DAYS AFTER A CHANGE IN THE OWNER, MANAGER OR ADMINISTRATOR, EACH OWNER OF A HOME CARE PLACEMENT AGENCY AND EACH MANAGER OR ADMINISTRATOR OF A HOME CARE PLACEMENT AGENCY SHALL SUBMIT A COMPLETE SET OF HIS OR HER FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK.

(1) EACH OWNER, MANAGER OR ADMINISTRATOR IS RESPONSIBLE FOR PAYING THE FEE ESTABLISHED BY THE COLORADO BUREAU OF INVESTIGATION FOR CONDUCTING THE CRIMINAL HISTORY RECORD CHECK.

(2) IF THE OWNER, MANAGER OR ADMINISTRATOR OF THE HOME CARE PLACEMENT AGENCY HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR WHICH FELONY OR MISDEMEANOR INVOLVES CONDUCT THAT THE DEPARTMENT DETERMINES COULD POSE A RISK TO THE HEALTH, SAFETY OR WELFARE OF THE HOME CARE PLACEMENT AGENCY'S CONSUMERS, THE DEPARTMENT WILL NOT APPROVE THE APPLICATION FOR REGISTRATION.

SECTION 6. GENERAL REQUIREMENTS FOR ALL LICENSE CATEGORIES

6.3 Criminal history record checks

(A) ~~On or after June 1, 2009~~ EFFECTIVE JUNE 1, 2015, the HCA shall require any individual seeking employment with the agency to submit to a criminal history record check to ASCERTAIN WHETHER THE INDIVIDUAL SEEKING EMPLOYMENT HAS BEEN CONVICTED OF A FELONY OR MISDEMEANOR, WHICH FELONY OR MISDEMEANOR INVOLVES CONDUCT THAT THE AGENCY DETERMINES COULD POSE A RISK TO THE HEALTH, SAFETY OR WELFARE OF HOME CARE CONSUMERS.

(B) The criminal history record check shall, AT A MINIMUM, INCLUDE A SEARCH OF CRIMINAL HISTORY IN THE STATE OF COLORADO AND be conducted not more than 90 days prior to employment of the individual.

(C) The cost of such inquiry shall be paid by either the home care agency or the individual seeking employment.

(D) IN ASSESSING WHETHER TO EMPLOY AN APPLICANT WITH A FELONY OR MISDEMEANOR CONVICTION, THE HCA SHALL CONSIDER THE FOLLOWING FACTORS:

(1) THE HISTORY OF CONVICTIONS, PLEAS OF GUILTY OR NO CONTEST,

(2) THE NATURE AND SERIOUSNESS OF THE CRIMES;

(3) THE TIME THAT HAS ELAPSED SINCE THE CONVICTION(S);

(4) WHETHER THERE ARE ANY MITIGATING CIRCUMSTANCES; AND

- 1 (5) THE NATURE OF THE POSITION FOR WHICH THE APPLICANT WOULD BE EMPLOYED.
- 2 (DE) The HCA shall develop and implement policies and procedures regarding the
- 3 employment of any individual who is convicted of a felony or misdemeanor to ensure that
- 4 the individual does not pose a risk to the health, safety and welfare of the consumer.

5

6 6.7 Disclosure notice

- 7 (A) The HCA shall provide a written disclosure notice to the consumer or authorized
- 8 representative within one (1) business day of the start of services that specifies the
- 9 service provided by the HCA and the consumer's obligation regarding the home care
- 10 worker.

- 11 (B) The disclosure notice, IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT, shall be
- 12 signed by the consumer or authorized representative and shall include information as to
- 13 who is responsible for the following items:

14



COLORADO

Board of Health

Department of Public Health & Environment

NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Colorado Board of Health will conduct a public rule-making hearing on April 15, 2015 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation rule amendments to 6 CCR 1011-1, Chapter 26, Home Care Agencies. The proposed rules have been developed by the Health Facilities and Emergency Medical Services Division of the Colorado Department of Public Health and Environment pursuant to Sections 25-27.5-101, *et seq.*, 25-1.5-103 and 25-3-101, *et seq.* C.R.S. The proposed amendments are necessary to comply with House Bill 14-1360 which requires the Department to set fees for the registration of home care placement agencies; establish criteria regarding criminal history background checks of owners, managers and administrators of home care and home care placement agencies as well as potential home care workers; and adopt rules regarding consumer disclosure notices and placement agency record retention and inspection.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, www.colorado.gov/cdphe/BoardOfHealth at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Health Facilities and Emergency Medical Services Division HFEMS-C1, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-2836.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m., Thursday, April 9, 2015. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Dated this 24th day of February, 2015

Deborah Nelson
Board of Health Administrator