COLORADO
Department of Public Health & Environment

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

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: April 15, 2015

Subject: Proposed Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter 7, Assisted Living Residences, with a request for the Rulemaking Hearing to occur on June 17, 2015

The Health Facilities and Emergency Medical Services Division is proposing an amendment to the initial and renewal license fees for assisted living residences (ALRs).

License fees for ALRs were last raised in January of 2009 based upon House Bill 08-1038, which directed the Board of Health to promulgate rules establishing a schedule of fees sufficient to meet the direct and indirect costs of administration and enforcement of the ALR program. In January 2012, the ALR license renewal fees were reduced from $56 to $30 per bed primarily because the fund balance had risen above the target reserve amount and the division did not have the spending authority to spend down the fund balance.

Since adoption of the reduced renewal fee in 2009, the ALR fund balance has steadily decreased to the point that an increase is now necessary for the continued operation of the program. The estimated total fee revenue for FY 2014-15 is $957,662. The total increase needed is $286,000 to $290,000 annually. The ALR fund balances are as follows:

Current Fund balance as of June 30, 2014	$237,444
Projected fund balance June 30, 2015	$147,778
Projected fund balance June 30, 2016 (with fee increase effective July 2015).	$25,059

The current and estimated costs for operation of the program are:

FY 2014-15: Direct - $865,400, Indirect - $213,866
FY 2015-16: Direct - $1,120,541, Indirect - $277,964

During the 2015 legislative session, the Joint Budget committee authorized additional staff to support ALR licensing. The cost estimates for FY 2015-16 enable the department to survey all facilities every three years and ensure that the survey process meets the increasing complex needs of ALR residents.

In January of this year the division presented stakeholders and the ALR advisory committee with several different proposals for raising the necessary revenue. Based upon feedback from the ALR community, the division narrowed those proposals to two options which were again presented to stakeholders and the ALR advisory committee on March 26th. The current proposed fee increase that raises initial license fees along with renewal license base fees and bed fees is the option agreed upon by the vast majority of stakeholders.

The number of assisted living facilities has continually risen over the last few years. In 2009, the division licensed 510 facilities. Today there are 605 licensed assisted living facilities, of which 167 are high Medicaid use facilities. A high Medicaid utilization facility is defined as an assisted living residence in which at least 35% of its beds are occupied by residents receiving Medicaid. The statute requires that the department's regulations set a lower fee for high Medicaid utilization facilities (HMUF).

In 2002, the statute set the license renewal fee for HMUFs at $150 per facility and $15 per bed. Although the statute changed in 2009 to give the Board of Health discretion in fee setting, the HMUF fees have remained unchanged for the last 13 years.

The department proposes to increase the license renewal fees. The current fees are $150 per facility and $30 per bed for non-HMUFs and $150 per facility and $15 per bed for HMUFs. The proposal increases the renewal fee to $180 per facility and $47 per bed for non-HMUFs and $180 per facility and $19 per bed for HMUFs. Increasing the renewal license fees is appropriate as the costs for initially licensing have increased. The department believes that adopting a $30 facility increase and a $4 increase per bed for HMUFs, compared to a $17 increase per bed for all other facilities, should not be overly burdensome for the high Medicaid utilization facilities.

Lastly, the department proposes to also raise the initial license fee for new assisted living residences, of which there are three categories. For facilities serving a disproportionate share of low income residents, there will be a $500 increase from the current $2,500 to $3,000 for an initial license. For small facilities with three to eight beds, there will be a $1,000 increase from the current $5,000 to $6,000. For facilities with nine or more beds, there will be a $1,200 increase from the current $6,000 to $7,200 for an initial license. The department anticipates one new application per year for the category serving a disproportionate share of low income residents; six new applications per year for the three to eight bed facilities; and four new applications per year for the nine or more bed category. Increasing the initial license fee is appropriate as the costs for initially licensing have increased.

The total anticipated revenue from the license fee increases is projected to be $282,265 annually, which comes close to the estimated amount of revenue that is necessary for continued operation of the program. The department recognizes that it will continue to rely upon the fund balance and that a fee increase likely will be necessary in a few years; however, the fees as proposed allows for an incremental increase and provide an opportunity to adjust the estimates without giving rise to a concern that the cash fund reserve will exceed the statutory authorization.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY

For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 7, Assisted Living Residences
April 15, 2015

Basis and Purpose:

The Department of Public Health and Environment is proposing raising the initial and renewal license fees for assisted living residences. Section 25-27-107, C.R.S. requires a schedule of fees for licensing assisted living residence that is sufficient to meet the direct and indirect costs of administration and enforcement of the licensing standards. In addition to regulatory and administration functions, the statute also requires that the department use the licensing fees to provide technical assistance and education to assisted living residences.

License fees for ALRs were last raised in January of 2009. In January 2012, the ALR license renewal fees were reduced from $56 to $30 per bed primarily because the fund balance had risen above the target reserve amount and the Health Facilities and Emergency Medical Services Division did not have the spending authority to spend down the fund balance.

Since adoption of the reduced renewal fee in 2009, the ALR fund balance has steadily decreased to the point that an increase is now necessary for the continued operation of the program. The total increase needed is $286,000 to $290,000 annually. The proposed fee increases that were negotiated with stakeholders are estimated to raise an additional $282,265 in revenue annually.

These rules are promulgated pursuant to the following statutes:

Section 25-27-107, C.R.S. (2014)
Section 25-1.5-103, C.R.S. (2014)
Section 25-3-101, C.R.S. (2014)

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

______ Yes
__X___ No

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

_______ Yes
__X___ No

Does this rule incorporate materials by reference?

______ Yes
__X___ No

Does this rule create or modify fines or fees?

__X___ Yes
______ No

REGULATORY ANALYSIS

For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 7, Assisted Living Residences
April 15, 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 proposed rule will be the owners/operators of assisted living residences. Residents of assisted living residences could potentially be affected if a facility makes the business decision to increase resident rates as a result of the license fee increase. Both owner/operators and residents will benefit from the proposed rule, however, because the fee increase will ensure that the assisted living program is fully funded and able to continue administration and enforcement of the program along with providing technical assistance and education to assisted living residences.

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.

As set forth above, the probable quantitative and qualitative impact of the proposed rule will be the continued operation of the assisted living program. Without the proposed fee increases, the program would be unable to fulfill its statutory obligations of administering and enforcing the assisted living standards and providing technical assistance and education to assisted living residences.

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 minor administrative costs associated with changing the fee amounts on application forms. No costs are anticipated for any other state agency regarding implementation and enforcement of the proposed rule.

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 rule outweigh the probable costs and benefits of inaction since inaction would cause the assisted living program to not be fully operation due to lack of funds. The proposed fee increases enable the department to survey all facilities every three years and ensure that the survey process meets the increasing complex needs of ALR residents.

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 initially presented stakeholders with five different proposals for raising the revenue needed. The options ranged from no increase in initial license fees and no increase in license renewal base fees with a $21 per bed fee increase for non high Medicaid utilization facilities only, to raising initial fees for all facility types and a 10% base fee increase with a $20 per bed fee increase for non high Medicaid utilization facilities. Stakeholders reviewed these proposals and made suggestions which the department refined and narrowed down to two options. After further review of the two options, the vast majority of the stakeholders involved agreed upon the current proposal for raising all initial license fees along with a 20 percent increase in the license renewal base fee and a per bed increase -- $4 for high Medicaid utilization facilities and $17 for non high Medicaid utilization facilities.

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 department has determined that it currently needs $286,000 to $290,000 annually to operate the assisted living residence program. In addition to regulatory and administrative functions, the statute requires that the department use license fees to provide technical assistance and education to assisted living residences. The current and estimated costs are as follows:

FY 2014-15: Direct - $865,400, Indirect - $213,866
FY2015-16: Direct -$1,120,54, Indirect - $277,964

The ALR fund balances are as follows:

Fund balance as of June 30, 2014	$237,444
Projected fund balance June 30, 2015	$147,778
Projected fund balance June 30, 2016 (with fee increase effective 07/01/15)	$ 25,059

There are currently 604 licensed assisted living residences, of which 167 are high Medicaid utilization facilities. The department anticipates that there will be one facility serving a disproportionate share of low-income residents per year applying for an initial license, along with 6 small ALRs (3-8 beds) and four larger ALRs (9+ beds). The revenue from the increased initial fees is projected to be $11,300. The revenue from the increased renewal license base fees is projected to be $18,120, while the revenue from the increased renewal license bed fees is projected to be $252,845. The total anticipated annual revenue from all license fee increases is $282,265.

STAKEHOLDER Comment
For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 7, Assisted Living Residences

The following individuals and/or entities were included in the development of these proposed rules: The assisted living residence advisory group, Leading Age Colorado, Colorado Health Care Association and Colorado Assisted Living Association.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health: The assisted living residence advisory group, all licensed assisted living residences, Leading Age Colorado, Colorado Health Care Association and Colorado Assisted Living Association.

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. The major policy issue was determining the most equitable method to structure the fee increases in order to raise the necessary amount of revenue.

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 attempted to ensure that the proposed rules impact all Coloradoans equally and equitably. In order to minimize the impact of fee increases on facilities that have a high percentage of Medicaid residents, the division offered several options with no fee increases for high Medicaid utilization facilities. Ultimately, the majority of stakeholders rejected these options and consensus was developed around a proposal with a small increase for high Medicaid utilization residents. Given that there have been no fee increases for these type of facilities for almost 14 years, the small increase is not expected to have any adverse health equity or environmental justice impact.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

CHAPTER VII - ASSISTED LIVING RESIDENCES

6 CCR 1011-1 Chap 07

……………………

1.103(2) ***License Fees***

Unless otherwise specified in this chapter, all licensing ~~and plan review~~ fees paid to the Department shall be deemed non-refundable.

103(2)(a) High Medicaid Utilization Facilities

(i) Fee. High Medicaid utilization facilities shall pay a modified license fee as set forth below.

(ii) Eligible facilities. Facilities identified as high Medicaid utilization are those that have:

(A) no less than 35 percent of the licensed beds occupied by Medicaid enrollees as indicated by complete and accurate fiscal year claims data; and

(B) served Medicaid clients and submitted claims data for a minimum of nine (9) months of the relevant fiscal year.

103(2)(b) Facilities Serving a Disproportionate Share of Low Income Residents

(i) Fee. Facilities serving a disproportionate share of low-income residents shall pay a reduced initial license fee of $~~2,500~~ 3,000.

(ii) Eligible facilities. Facilities eligible for the reduced initial license fee shall:

(A) have qualified for federal or state low income housing assistance;

(B) plan to serve low income residents with incomes at or below 80 percent of the area median income; and

(C) submit evidence of such qualification, as required by the Department.

103(2)(c) Initial License

(i) The appropriate fee, as set forth below, shall accompany a facility's application for initial license.

Three to eight licensed beds: $~~5,000~~ 6,000.

Nine beds or more: $~~6,000~~ 7,200.

103(2)(d) License Renewal

~~(i) For licenses with a renewal between December 31, 2009 and December 31, 2011, the appropriate fee, as set forth below, shall accompany the renewal application:~~

~~(A) $150 per facility plus $56 per bed.~~

~~(B) for a high Medicaid utilization facility, $150 per facility plus $15 per bed.~~

~~(ii) For licenses with a renewal date on or after January 1, 2012, the appropriate fee, as set forth below, shall accompany the renewal application:~~

~~(A) $150 per facility plus $30 per bed.~~

~~(B) $150 per facility plus $15 per bed for a high Medicaid utilization facility.~~

(i) FOR LICENSES THAT EXPIRE PRIOR TO SEPTEMBER 1, 2015, THE APPROPRIATE FEE, AS SET FORTH BELOW, SHALL ACCOMPANY THE RENEWAL APPLICATION.

(A) $150 PER FACILITY PLUS $30 PER BED.

(B) $150 PER FACILITY PLUS $15 PER BED FOR A HIGH MEDICAID UTILIZATION FACILITY.

(ii) FOR LICENSES THAT EXPIRE ON OR AFTER SEPTEMBER 1, 2015, THE APPROPRIATE FEE, AS SET FORTH BELOW, SHALL ACCOMPANY THE RENEWAL APPLICATION:

(A) $180 PER FACILITY PLUS $47 PER BED.

(B) $180 PER FACILITY PLUS $19 PER BED FOR A HIGH MEDICAID UTILIZATION FACILITY.

…………………………………..