

STATE OF COLORADO

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Colorado Department
of Public Health
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Dedicated to protecting and improving the health and environment of the people of Colorado

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<http://www.cdphe.state.co.us>

To: Home Care Agency Administrator/Manager
From: Health Facilities and Emergency Medical Services Division
Date: November 1, 2011

Re: Proposed Changes to Chapter XXVI, Home Care Agencies -- Request for Comment

The rules regarding the licensure of home care agencies (HCAs) were originally promulgated by the Board of Health in April 2009. Based upon the statutory direction at 25-27.5-104, the license fees were not to exceed \$1,500 for two years from that original effective date. The Department issued an independent report on January 28, 2011, detailing the direct and indirect costs associated with the administration of HCA licensure that concluded the expenses of the HCA licensure program had exceeded revenues for 2011 and would continue to rise based upon existing data. The Department, therefore, requested that the HCA advisory committee re-evaluate the current HCA license fees and make a recommendation regarding the adjustment of those fees. The proposed amendments to the HCA renewal license fees reflect the recommendations of the Department and the advisory committee.

We are requesting your review and comment regarding the proposed amendments to Chapter XXVI, Home Care Agencies (HCA) which are set forth below. The changes are shown in the format required by the Board of Health. Language that we propose to delete is shown with a line through it and the language that we propose to add appears in SMALL CAPITAL letters. Following the draft rule revision, you will find a copy of the statement of basis and purpose and regulatory analysis for this amendment.

If you have comments or questions regarding these changes, please send them to Laurie Schoder, policy analyst, by Monday, November 21, 2011. The fax number is 303-753-6214 and the e-mail address is laurie.schoder@state.co.us.

The Department is requesting that a hearing before the Board of Health on the proposed rule changes be scheduled for January 18, 2012. The exact time of the hearing has not yet been determined, but the agenda for the meeting will be available at <http://www.cdphe.state.co.us/op/bh/index.html> approximately 10 days before the hearing. All Board of Health hearings are open to the public and individuals may participate in the rule-making process by providing written comments to the Board before the hearing or by making oral comments during the hearing.

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Health Facilities Regulation Division

3 6 CCR 1011-1

4 STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

5 CHAPTER XXVI - HOME CARE AGENCIES

6
7 5.4 License fees

8 (A) Unless otherwise specified in this chapter, all license fees paid to the department shall
9 be deemed non-refundable.

10 (B) The appropriate fee total shall accompany an agency's initial or renewal license
11 application. The fee total shall include any applicable branch and workstation fees as
12 set forth in this section. ~~except that the total fee amount shall not exceed \$1,500 for a~~
13 ~~certified agency or \$8,000 for a non-certified agency.~~

14 5.4.1 Initial licensure

15 ~~(A) Any HCA in operation prior to June 1, 2009, shall apply for an initial license consistent~~
16 ~~with the time frames set forth at Section 25-17.5-103(1), C.R.S.~~

17 ~~(1) The initial license fee for an HCA identified in 5.4.1(A) shall be based upon the~~
18 ~~following chart. Reported wages shall be determined by utilizing all wages paid~~
19 ~~to direct home care staff on an annual basis and verified by the most recent~~
20 ~~workers' compensation insurance audit.~~

21 ~~(a) Any agency unable to submit a recent workers' compensation~~
22 ~~insurance audit, shall submit an alternative form of wage verification as~~
23 ~~approved by the department.~~

Reported wages	Certified agency	Non-certified agency
Up to \$150,000	\$525	\$525
Greater than \$150,000	\$525 plus .10% of reported wages, not to exceed \$1,500	\$525 plus .15% of reported wages, not to exceed \$8,000

24 ~~(B) An HCA in operation less than a year without a verifiable annual wage report shall pay~~
25 ~~an initial license fee based upon its license classification as set forth in section 5.1 of~~
26 ~~this chapter. The applicable fee shall be as follows:~~

Class	Certified agency	Non-certified agency
A	\$1,500	\$3,000
B	\$1,500	\$2,200

27 (A) EACH APPLICANT FOR A HOME CARE AGENCY LICENSE SHALL SPECIFY THE TYPE AND EXTENT
28 OF SERVICES TO BE PROVIDED AND REQUEST THE APPROPRIATE LICENSE CATEGORY BASED
29 UPON THE CRITERIA SET FORTH IN SECTION 5.1 OF THIS CHAPTER. THE INITIAL LICENSE FEE
30 SHALL BE:

1 CLASS A - \$3,000

2 CLASS B - \$2,200

3 (B) ANY CURRENTLY LICENSED CLASS B AGENCY THAT DESIRES TO CHANGE ITS LICENSE
4 CATEGORY TO A CLASS A AGENCY SHALL SUBMIT AN INITIAL LICENSE APPLICATION AND INITIAL
5 LICENSE FEE FOR A CLASS A LICENSE.

6 5.4.2 Provisional licensure

7 (A) Any agency approved by the department for a provisional license, shall submit a fee
8 equal to 15 percent of the applicable initial license fee for each provisional license term.

9 (B) The appropriate fee shall be submitted before issuance of the provisional license.

10 (C) If the department finds reasonable compliance by an applicant holding a provisional
11 license, it shall issue an initial license upon receipt of the license application and total
12 fee specified in sections 5.4 and 5.4.1 of this Chapter.

13 5.4.3 Renewal licensure

14 (A) LICENSES WITH A RENEWAL DATE PRIOR TO MARCH1, 2012.

15 The renewal license fee shall be based upon the following chart. Reported wages shall
16 be determined by utilizing all wages paid to direct home care staff on an annual basis
17 and verified by the most recent workers' compensation insurance audit or Medicare
18 cost report.

19 (1) Any agency unable to submit a recent workers' compensation insurance audit
20 shall submit an alternative form of wage verification as approved by the
21 department.

Reported wages	Certified agency	Non-certified agency
Up to \$150,000	\$525	\$525
Greater than \$150,000	\$525 plus .10% of reported wages, not to exceed \$1,500	\$525 plus .15% of reported wages, not to exceed \$8,000

22 (B) LICENSES WITH A RENEWAL DATE EFFECTIVE ON OR AFTER MARCH1, 2012.

23 THE ANNUAL RENEWAL LICENSE FEE SHALL DEPEND UPON THE TYPE AND VOLUME OF
24 SERVICES, INCLUDING CONSIDERATION OF MEDICAID AND MEDICARE SERVICES. THE TOTAL
25 RENEWAL LICENSE FEE SHALL INCLUDE THE APPROPRIATE BASE FEE AND, AS APPLICABLE,
26 ADDITIONAL VOLUME FEE; MEDICAID OR MEDICARE SERVICE DISCOUNT; BRANCH AND WORK
27 STATION FEES; AND REVISIT FEES.

28 (1) BASE FEE

29 THERE SHALL BE A BASE FEE THAT IS DETERMINED BY THE LICENSE CATEGORY AS
30 DEFINED IN SECTION 5.1 OF THIS CHAPTER. THE RENEWAL LICENSE BASE FEE SHALL
31 BE:

32 CLASS A - \$1,550

33 CLASS B - \$1,325

- 1 (2) ADDITIONAL VOLUME FEE
- 2 EACH AGENCY SHALL REPORT ITS ANNUAL ADMISSIONS FOR THE PREVIOUS YEAR ON
- 3 ITS LICENSE RENEWAL APPLICATION. IF THE NUMBER OF ANNUAL ADMISSIONS IS 50
- 4 OR MORE, THE AGENCY SHALL ADD THE FOLLOWING AMOUNT TO ITS BASE FEE:
- 5 50 TO 99 ADMISSIONS --- \$100
- 6 100 OR MORE ADMISSIONS - \$200
- 7 (3) MEDICARE OR MEDICAID SERVICE DISCOUNT
- 8 EACH AGENCY THAT IS CURRENTLY CERTIFIED TO PROVIDE MEDICAID OR MEDICARE
- 9 SERVICES SHALL DEDUCT \$100 FROM ITS BASE FEE.

10 5.4.4 Performance incentive

- 11 (A) An HCA may be eligible for a performance incentive if the department's onsite
- 12 relicensure inspection demonstrates the HCA has no deficiencies that have negatively
- 13 affected, or have the potential to negatively affect, its consumers.
- 14 (1) A negative effect is one that constitutes more than a minor inconvenience to a
- 15 consumer.
- 16 (B) The incentive payment shall be calculated at 10 percent of the agency's renewal license
- 17 fee and shall apply when:
- 18 (1) The inspection is completed with the full and timely cooperation of the agency,
- 19 (2) Inspection findings do not document harm or potential harm to consumers, and
- 20 (3) ~~The plan of correction is submitted and accepted, and~~ Correction of the
- 21 deficient practice is verified by the department on or prior to the respective due
- 22 dates.
- 23 (C) The incentive payment shall be paid to the licensee within 60 days following the
- 24 acceptance of the validation of correction of all cited deficiencies, or within 60 days of
- 25 the inspection exit date if no deficiencies were cited.

26 5.4.5 Branch and workstation fees

- 27 (A) In addition to any other licensure fees, the following fees shall apply to the
- 28 circumstances described. The fees shall be submitted with the license application or as
- 29 otherwise specified.
- 30 (1) An HCA shall submit a \$200 fee for each branch office as defined in section 3.2
- 31 of this chapter.
- 32 (a) For existing branches, the fee shall be submitted with the license
- 33 application.
- 34 (b) For new branches, the fee shall accompany the notice of the agency's
- 35 intent to open a branch office pursuant to section 6.2 of this chapter.

1 (2) An HCA with reportable wages over \$525,000 that operates one or more
2 satellite work stations solely for the convenience of direct care staff shall pay a
3 fee of \$50 per workstation.

4 5.4.6 Revisit fee

5 (A) An agency's annual license fee may be increased as the result of a licensure inspection
6 or substantiated complaint investigation where a deficient practice is cited that has
7 either caused harm or has the potential to cause harm to a consumer and the agency
8 has failed to demonstrate appropriate correction of the cited deficiencies at the first on-
9 site revisit.

10 (B) The fee shall be 50 100 percent of the agency's initial or renewal license fee and shall
11 be assessed for the second on-site inspection and each subsequent on-site inspection
12 pertaining to the same deficiency.

13 5.4.7 Change of ownership fee

14 (A) Any agency meeting the criteria set forth in 6 CCR 1011-1, Chapter II, section 2.7.2
15 shall pay a change of ownership fee. The fee shall be determined according to the
16 license classifications set forth in section 5.1 of this chapter and submitted with the
17 change of ownership notice. The fee shall be:

18 Class A - \$3,000

19 Class B - \$2,200

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

Amendments to Rules Pertaining to the Standards for Hospitals and Health Facilities
6 CCR 1011-1
Chapter XXVI, Home Care Agencies
October 31, 2011

Basis and Purpose:

The rules regarding the licensure of home care agencies (HCAs) were originally promulgated by the Board of Health in April 2009. Based upon the statutory direction at 25-27.5-104, the license fees were not to exceed \$1,500 for two years from that original effective date. The Department was also directed to issue an independent report no later than January 1, 2011, detailing the direct and indirect costs associated with the administration of HCA licensure. This report concluded that the expenses of the HCA licensure program had exceeded revenues for 2011 and would continue to rise based upon existing data. The Department, therefore, requested that the HCA advisory committee re-evaluate the current HCA license fees and make a recommendation to the Department and the Board regarding the adjustment of those fees.

The composition of the HCA advisory committee is established in statute and includes representatives from skilled home health service agencies; personal care service agencies; agencies; members of the disabled community who are home care consumers or seniors; providers of Medicaid services; providers of in-home support services; and representatives of the Departments of Health Care Policy and Financing and Human Services.

These rules are promulgated pursuant to the following statutes:

Section 25-27.5-104, C.R.S. (2011).
Section 25-1.5-103, C.R.S. (2011).

Major Factual and Policy Issues Encountered:

There were two major considerations regarding these rules. One was to structure the annual renewal fee in such a way as to meet the statutory requirement that it reflect the differences in type and volume of services provided by home care agencies including Medicaid and Medicare services. The second major consideration was how to fairly assess HCA license fees so that they would generate sufficient revenue for the Department to fully administer the HCA program, yet not be financially burdensome to the individual HCAs.

In order to address the first consideration, the Department has proposed a base fee, the amount of which will depend upon whether an agency is Class A (provides skilled home health services) or Class B (provides non-medical personal care services). Volume is taken into consideration by the addition of a two-tiered fee assessed upon the amount of admissions per year. This fee will only apply to agencies with 50 or more admissions per year. There is also a \$100 per year discount for those agencies that provide Medicaid or Medicare services.

Regarding the second major issue, a small personal care agency that serves Medicaid clients will experience a fee increase from the prior \$525 to \$1,225 per year. However, it was noted by the advisory committee, including a representative from a small agency, that this amounts to an increase of only \$13 per week and that many small agencies intend to grow so that they do not expect the new fees to be a financial barrier.

Alternative rules considered:

The Department presented the HCA advisory committee with a number of different options designed to increase licensure revenues; decrease Department expenditures; and meet the needs of various stakeholders along with the Department's responsibility for ensuring public health and safety. These options were initially presented to the advisory committee in August of 2011. Based upon the feedback of the committee members, several of those models were refined and again presented to the committee in September of 2011. Several of the options were rejected because they did not meet the statutory criteria that the license fees take into consideration the size of the agency or the type of services provided. Other options were rejected because they were awkward to calculate or difficult to verify. The option proposed here is the one that was chosen by a majority of the HCA advisory committee members because of its simplicity, ease of calculation and lack of administrative burden. The advisory committee believed that it was important to continue to reward agencies for good performance and discourage poor performance. This was the basis for the sections regarding monetary performance incentives and additional revisit fees.

REGULATORY ANALYSIS

For

Amendments to Rules Pertaining to the Standards for Hospitals and Health Facilities

6 CCR 1011-1

Chapter XXVI, Home Care Agencies

October 31, 2011

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 primary classes of persons who will be affected by and bear the costs of the proposed rule are the owners and operators of home care agencies. Consumers of home care services and the Department will also be affected by and benefit from the rule amendment.

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 rule will have a quantitative impact on some home care agencies because those agencies will pay increased renewal license fees. The amount of the increase will vary by agency. Small personal care agencies that are certified to provide Medicaid services will experience a fee increase from the prior \$525 to \$1,225 per year. However, it was noted by the advisory committee that this amounts to a weekly increase of only \$13 and that many small agencies intend to grow so that the new fees are not expected to present a financial barrier to home care agencies.

Qualitatively, the increased revenue from the fee adjustment will benefit consumers, agencies and the Department because it will enable the Department to fully administer the home care agency program which includes inspecting home care agencies for compliance with regulatory standards and investigation of complaints against home care agencies.

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 does not anticipate any significant additional cost with implementing and enforcing the proposed rule. Costs to other state agencies will remain unchanged.

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

Inaction is not a viable option because the current license fee structure does not allow the Department to fulfill its statutory obligation to conduct licensure inspections and enforce the home care agency standards.

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 are no other less costly methods or less intrusive methods for achieving the purpose of the amendment at this time.

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 presented the home care agency (HCA) advisory committee with a number of different options designed to increase licensure revenues; decrease Department expenditures; meet the needs of various stakeholders and preserve the Department's responsibility for protecting public health and safety. These options were initially presented to the advisory committee in August of 2011. Based upon the feedback of the committee members, several of those models were refined and again presented to the committee in September of 2011.

Several different options were considered and rejected including raising fees based upon the assumptions and calculations taken from the original 2008 legislation and fiscal note, updated for present time estimates and costs. This formula would have raised the average renewal fee for agencies providing skilled services to \$2,346, and for agencies providing non-medical personal care services to \$2,009. This method was rejected because it would have had a detrimental fiscal impact on many licensees. Other options were rejected because they were awkward to calculate or difficult to verify.

The option proposed here is the one that was chosen by a majority of the HCA advisory committee members primarily because of its simplicity and ease of calculation. The fee takes into account the type of services because skilled and personal care agencies will pay different amounts. The fee also takes into consideration the volume of services by charging additional amounts for larger agencies that have 50 or more admissions per year and charging a separate fee for branch offices or work stations. The advisory committee believed that it was important for the fees to reward agencies for good performance and discourage poor performance. This was the basis for the sections regarding performance incentives and additional revisit fees. The proposed fee schedule was chosen as the best means of meeting statutory requirements while addressing issues raised by the advisory committee and the Department.

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.**

In the short term, some home care agencies will experience an increase in their renewal license fees under this proposal. However, the proposed fee structure will be less administratively burdensome on all parties than the current fee structure which is based upon wages reported on a workers' compensation audit or similar documentation. Although this fee proposal will not result in the total amount of revenue originally

anticipated based upon the assumptions and calculations presented in the 2008 legislation and fiscal note, it is anticipated that it will support the continued operation of the home care agency program once the Department implements its proposed efficiency measures. Therefore the long term consequence is that the proposed fee structure should be sufficient allow the Department to fulfill its statutory obligation to conduct licensure inspections and enforce the home care agency standards.