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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: January 20, 2016

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 March 16, 2016.

The Health Facilities and Emergency Medical Services Division is proposing amendments to Chapter 26, Home Care Agencies, in order to comply with House Bill 14-1360. Section 25-27.5-106(2)(a.5)(II), as amended by H.B. 14-1360, directed the Departments of Public Health and Environment and Health Care Policy and Financing to form a workgroup and develop a plan to identify gaps and conflicts in the requirements imposed by each department with regard to the regulation of home care providers.

The Department assembled a 1360 workgroup comprised of individuals from both skilled and personal care agencies; front range, western slope and rural agencies; consumers and/or family members of consumers; representatives of agencies providing home and community based waiver services such as In Home Support Services, Intellectually and Developmentally Disabled services, Supported Living Services and Children's Extensive Support Services; Representatives from Community Centered Boards and Program Approved Service Agencies; as well as community advocates and a representative from the Department of Health Care Policy and Financing (HCPF).

The 1360 workgroup compared Department and HCPF requirements in the following areas of home care agency services: Client rights, personal care definitions, specific care situations, supervision requirements, training requirements and various policies and procedures. The majority of the gaps and conflicts identified by the workgroup will be resolved through Departmental guidance or HCPF rule changes. The proposed amendments presented here will address the remaining issues that needed clarification.

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
January 20, 2016

Basis and Purpose:

Section 25-27.5-106(2)(a.5)(II), as amended by House Bill 14-1360, directed the Departments of Public Health and Environment and Health Care Policy and Financing (HCPF) to form a workgroup and develop a plan to identify gaps and conflicts in the requirements imposed by each department with regard to the regulation of home care providers. Subsection (C) then directed the Board of Health to adopt any rules necessary to resolve the gaps and conflicts that were identified.

The Department assembled a 1360 workgroup that compared Department and HCPF requirements in the following areas of home care agency services: Client rights, personal care definitions, specific care situations, supervision requirements, training requirements and various policies and procedures. The majority of the gaps and conflicts identified by the workgroup will be resolved through Departmental guidance or HCPF rule changes. The remaining issues that were deemed to need clarification are being addressed here through the proposed amendments.

These rules are promulgated pursuant to the following statutes:

Section 25-27.5-106, C.R.S. (2015)

Section 25-1.5-103, C.R.S. (2015)

Section 25-3-101, *et seq.*, C.R.S. (2015)

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes House Bill 14-1360.
 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
January 20, 2016

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 amendments will be home care agencies and the consumers of home care services. The amendments consist of relatively minor clarifications in language and are not anticipated to generate costs for any class of persons.

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

The proposed amendments are expected to have a positive qualitative and quantitative impact on all licensed home care agencies by resolving gaps and conflicts in the corresponding regulations of two state agencies - the Department of Health Care Policy and Financing and the Department of Public Health and Environment. These changes will reduce regulatory confusion and clarify regulatory expectations for all 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.

No significant costs are expected to be incurred by the Department 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.

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

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

Many changes are being accomplished through policy and guidance. Additional changes will be made by the Department of Health Care and Financing through a future rule-making before the Medical Service Board. In the interim, the determination is that there is no less costly or less intrusive method for achieving the purpose of these 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.

As mentioned above, the Department is also issuing written guidance and policy documents, but those items alone do not achieve the desired result of clarifying certain regulatory requirements. 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 all home care agencies must acquaint themselves with these few clarifying amendments and make any necessary changes to their existing policies and procedures. The long-term consequences are updated regulations that do not conflict with those of other agencies and that allow the efficient and effective provision of home care.

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:

A 1360 Workgroup was assembled to address the issues. That workgroup was comprised of individuals from both skilled and personal care agencies; front range, western slope and rural agencies; consumers and/or family members of consumers; representatives of agencies providing home and community based waiver services such as In Home Support Services, Intellectually and Developmentally Disabled services, Supported Living Services and Children's Extensive Support Services; Representatives from Community Centered Boards and Program Approved Service Agencies; as well as community advocates and a representative from the Department of Health Care Policy and Financing.

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, the 1360 Workgroup members, the home care advisory committee, 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.

The stakeholders and Department representatives were able to come to consensus on all issues discussed.

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?

Since the proposed amendments are minor, the Department is unaware of any health equity and environmental justice impact.

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Health Facilities Regulation Division

3 STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

4 CHAPTER XXVI - HOME CARE AGENCIES

5 6 CCR 1011-1 Chap 26

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8 SECTION 5. DEPARTMENT OVERSIGHT

9 5.1 License classification

10 (A) A home care agency shall be issued a license consistent with the type and extent of services
11 provided. ORGANIZATIONS WITH PERSONAL CARE SERVICE EMPLOYEES DO NOT HAVE TO BE LICENSED
12 AS A HOME CARE AGENCY IF THE ONLY SERVICES THEY PROVIDE TO CONSUMERS ARE HOUSEKEEPING,
13 COMPANIONSHIP AND/OR RESPITE CARE THAT DOES NOT INVOLVE ANY OTHER PERSONAL CARE
14 SERVICES.

15 (1) Unless otherwise specified, each LICENSED HOME CARE agency shall meet the
16 requirements in section 6 of this chapter as well as sections 7 and/or 8 depending upon
17 the services provided.

18 Class A – a home care agency that provides any skilled healthcare service. Agencies
19 with a Class A license may also provide personal care services.

20 Class B – a home care agency that provides only personal care services. An agency
21 with a Class B license shall not provide any skilled healthcare service.

22 (B) An agency providing home care services that are regulated by the Colorado Department of
23 Health Care Policy and Financing (HCPF), excluding certified agencies defined in section 3.4 of
24 this chapter, shall be licensed as a Class B agency unless otherwise specified below.

25 (1) Any agency providing services regulated by HCPF or the Department of Human
26 Services that also provides skilled care or services delivered by a licensed professional
27 shall be licensed as a Class A agency.

28 (a) In reviewing compliance with the requirements of this chapter by the Program
29 of All-Inclusive Care for the Elderly (PACE) established in Section 25.5-5-412,
30 C.R.S., the department shall coordinate with HCPF in regulatory interpretation
31 of both license and certification requirements to ensure the intent of similar
32 regulations is congruently met.

33 (b) Any agency participating in the In-Home Support Service program (~~HSS~~), THE
34 SUPPORTED LIVING SERVICES PROGRAM OR THE CHILDREN’S EXTENSIVE SUPPORT
35 SERVICES PROGRAM administered by HCPF, shall MAY be licensed as a Class A
36 OR B agency and shall comply with both HCPF’s regulations concerning ~~HSS~~
37 THOSE PROGRAMS and the applicable portions of ~~section 8~~ of this chapter. The
38 department shall coordinate with HCPF in regulatory interpretation of both
39 license and certification requirements to ensure the intent of similar regulations
40 is congruently met.

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2 **SECTION 8. NON-MEDICAL/PERSONAL CARE**

3 * * * *

4 8.5 Personal care worker

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

9 * * * *

10 (17) Respiratory care is considered skilled care and shall not be performed by a personal
11 care worker. Respiratory care includes postural drainage, cupping, adjusting oxygen
12 flow within established parameters, nasal, endotracheal and tracheal suctioning.

13 (a) Personal care workers may temporarily remove and replace a cannula or mask
14 from the consumer's face for the purposes of shaving, washing a consumer's
15 face.

16 (b) Personal care workers may set a consumer's oxygen flow according TO written
17 instruction when changing tanks, provided the personal care worker has been
18 specifically trained and demonstrated competency for this task.

19 * * * *

20 20) Respite care and companionship. A personal care worker may provide respite CARE and
21 companionship in the consumer's home according to the service plan as long as the
22 necessary provision of services during this time does not include skilled home health
23 services as DEFINED IN SECTION 3.29 OF THIS CHAPTER. ~~described in this regulation.~~

24 * * * * *

25 (E) In addition to the exclusions prescribed in the preceding section, the agency shall not allow
26 personal care workers to:

27 (1) Perform skilled home health services as defined in section ~~3-20~~ 3.29 of this chapter;

28 (2) Perform or provide medication set-up for a consumer; or

29 (3) Perform other actions specifically prohibited by agency policy, regulations or law.

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