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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: November 16, 2016

Subject: Proposed Amendment to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter 26, Home Care Agencies, for the Rulemaking Hearing on November 16, 2016

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The Division of Health Facilities and Emergency Medical Services is proposing an amendment to Chapter 26, Home Care Agencies, in order to address a concern raised by the Office of Legislative Legal Services over the wording of one sentence. The proposed amendment is designed to eliminate confusion regarding who is exempt from home care agency licensing and align with current statutory language.

The proposed amendment does not change current practice regarding licensure as a home care agency, but merely deletes a sentence that was perceived to exceed the Department's statutory authority. The Division does not anticipate any controversy regarding this minor, but necessary revision.

**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  
November 16, 2016

**Basis and Purpose:**

The Division proposes removing one sentence in two separate sections of Chapter 26, Home Care Agencies, to address a concern raised by the Office of Legislative Legal Services that the sentence is confusing and does not align with statute. The Division initially proposed merely rephrasing the sentence to paraphrase who is exempt from licensure. However; based upon feedback from the Board during the request for rulemaking presentation as well as feedback from the Office of the Attorney General, staff has determined that it is better to delete the entire sentence and rely upon the statute with regard to who qualifies for exemption from home care licensing.

The Department and stakeholders rely upon the definition of "Home care agency" and "Personal care services" found at Section 25-27.5-102(3) and (6), C.R.S. The statutory definitions are repeated in the rule at Section 3.11 and 3.22. Because the rule sets standards for licensed home care agencies and entities that seek licensure as a home care agency, embedding language that speaks to exemption from licensing within the body of licensing requirements has little to no benefit. Non-licensed entities do not rely upon the rule. Eliminating these sentences will reduce confusion by those reading the rule.

The relevant statutory definitions found at Section 25-27.5-102(3), C.R.S. are:

(3) (a) "Home care agency" means any sole proprietorship, partnership, association, corporation, government or governmental subdivision or agency subject to the restrictions in section 25-1.5-103 (1) (a) (II), not-for-profit agency, or any other legal or commercial entity that manages and offers, directly or by contract, skilled home health services or personal care services to a home care consumer in the home care consumer's temporary or permanent home or place of residence. A residential facility that delivers skilled home health or personal care services which the facility is not licensed to provide shall either be licensed as a home care agency or require the skilled home health or personal care services to be delivered by a licensed home care agency.

(b) "Home care agency" does not include:

- (I) Organizations that provide only housekeeping services;
- (II) Community and rural health networks that furnish home visits for the purpose of public health monitoring and disease tracking;
- (III) An individual who is not employed by or affiliated with a home care agency and who acts alone, without employees or contractors;
- (IV) Outpatient rehabilitation agencies and comprehensive outpatient rehabilitation facilities certified pursuant to Title XVIII or XIX of the "Social Security Act", as amended;
- (V) Consumer-directed attendant programs administered by the Colorado department of health care policy and financing;
- (VI) Licensed dialysis centers that provide in-home dialysis services, supplies, and equipment;

(VII) Subject to the requirements of section 25-27.5-103 (3), a facility otherwise licensed by the department;

(VIII) A home care placement agency as defined in subsection (5) of this section;

(IX) Services provided by a qualified early intervention service provider and overseen jointly by the department of education and the department of human services; or

(X) A program of all-inclusive care for the elderly established in section 25.5-5-412, C.R.S., and regulated by the department of health care policy and financing and the CMS; except that PACE home care services are subject to regulation in accordance with section 25-27.5-104 (4).

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(6) "Personal care services" means assistance with activities of daily living, including but not limited to bathing, dressing, eating, transferring, walking or mobility, toileting, and continence care. It also includes housekeeping, personal laundry, medication reminders, and companionship services furnished to a home care consumer in the home care consumer's temporary or permanent home or place of residence, and those normal daily routines that the home care consumer could perform for himself or herself were he or she physically capable, which are intended to enable that individual to remain safely and comfortably in the home care consumer's temporary or permanent home or place of residence.

**These rules are promulgated pursuant to the following statutes:**

Section 25-27.5-101, *et seq.*, C.R.S. (2016)

Section 25-1.5-103, C.R.S. (2016)

Section 25-3-101, *et seq.*, C.R.S. (2016)

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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  
November 16, 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 proposed amendment clarifies language regarding individuals and groups that are exempt from home care agency licensing requirements, so it theoretically affects that class of persons. In practice, however, the proposed amendment is a technical change to align with the statute and should have no impact on the affected class.

- 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 amendment is necessary to clarify language regarding who is statutorily exempt from the requirements of home care agency licensing. Clarification of that exemption is the quantitative and qualitative impact of the proposed amendment.

- 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.**

There are no costs associated with adoption of this minor amendment.

- 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. Inaction would result in the current rule language not being renewed by the Office of Legislative Legal Services.

- 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 amendment.

- 6. Alternative rules or alternatives to rulemaking considered and why rejected.**

No alternative methods were considered. The proposed amendment is necessary to remove ambiguity and conflict with the statutory language.

- 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.**

**HRG**

No data was analyzed. The proposed amendment is necessary to align the regulatory language with the statute.

**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 Office of Legislative Legal Services and the Office of the Attorney General.

**The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health and early stakeholder participation was encouraged:**

All currently licensed home care agencies, the home care advisory committee, the Home Care Association of America 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 or policy issues encountered because the proposed change is necessary to avoid conflict with the enabling home care agency legislation.

**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 proposed amendment does not have any health equity or environmental justice impact.

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

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7 SECTION 5. DEPARTMENT OVERSIGHT

8 5.1 License classification

9 (A) A home care agency shall be issued a license consistent with the type and extent of services provided.  
10 ~~Organizations with personal care service employees do not have to be licensed as a home care agency~~  
11 ~~if the only services they provide to consumers are housekeeping, companionship and/or respite care~~  
12 ~~that does not involve any other personal care services.~~

13  
14 (1) Unless otherwise specified, each licensed home care agency shall meet the requirements in  
15 section 6 of this chapter as well as sections 7 and/or 8 depending upon the services provided.

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

19  
20 Class B – a home care agency that provides only personal care services. An agency with a  
21 Class B license shall not provide any skilled healthcare service.

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24 8.5 Personal care worker

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26 (A) A personal care worker shall have completed agency training or have verified experience in the  
27 provision of home care tasks to consumers and passed a competency evaluation.

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29 (B) Personal care service employees shall provide services in accordance with the policies and  
30 requirements of the agency as well as the service arrangements spelled out in the service plan.

31

32 (1) ~~Organizations with personal care service employees do not have to be licensed as a home care~~  
33 ~~agency if the only services they provide to consumers are housekeeping, respite care or~~  
34 ~~companionship.~~

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