

DEPARTMENT OF REGULATORY AGENCIES
FY 2024-25 JOINT BUDGET COMMITTEE HEARING AGENDA

Wednesday, December 20, 2023

3:30 pm – 4:30 pm

3:30-3:35 INTRODUCTIONS AND OPENING COMMENTS

Presenter: Patty Salazar, Executive Director

3:35-3:45 COMMON QUESTIONS

Main Presenters:

- Patty Salazar, Executive Director
- Justin Lippard, Director of Budget and Business Operations

Supporting Presenters:

- Ken Boldt, Colorado Banking Commissioner
- Sam Delp, Division Director, Professions and Occupations

Topics:

- Question 1: Page 1, Question is not applicable and therefore not included in the packet
- Question 2: Page 1 and 2, Question 2 in the packet
- Question 3: Page 2, Question 3 in the packet

3:45-3:55 HIGH-LEVEL FUNDING OVERVIEW

Main Presenters:

- Patty Salazar, Executive Director
- Justin Lippard, Director of Budget and Business Operations

Supporting Presenters:

- Ken Boldt, Colorado Banking Commissioner

Topics:

- Question 4: Page 2, Cash Funds
- Question 5: Page 3, Centrally Appropriated Line Items

3:55-4:10 R1 INCREASE BANKING STAFF

Main Presenters:

- Patty Salazar, Executive Director
- Justin Lippard, Director of Budget and Business Operations
- Topics: Request Details, Questions 6-8, Pages 3 and 4

Supporting Presenters:

- Ken Boldt, Colorado Banking Commissioner

4:10-4:30 CERTIFIED NURSE AIDE APPLICATIONS

Main Presenters:

- Sam Delp, Division Director for Professions and Occupations

Topics:

- Certification and Examination: Questions 9-12, Pages 5-7 in the packet (with map on slide 7).
- Next Steps: Questions 13-15, Pages 7 and 8 in the packet

DEPARTMENT OF REGULATORY AGENCIES
FY 2024-25 JOINT BUDGET COMMITTEE HEARING

Wednesday, December 20, 2023

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COMMON QUESTIONS FOR DISCUSSION AT DEPARTMENT HEARINGS

- 1 Please describe one-time state and federal stimulus funds that have been allocated to the Department but are not expended as of September, 30, 2023, by bill, budget action, executive action, or other source that allocated funds. The description should include but is not limited to funds that originate from one-time or term-limited General Fund or federal funds originating from the American Rescue Plan Act (ARPA)/State and Local Fiscal Recovery Funds/Revenue Loss Restoration Cash Fund. Please describe the Department's plan to obligate or expend all allocated funds that originate from ARPA by December 2024.

Please further describe any budget requests that replace one-time General Fund or ARPA funded programs with ongoing appropriations, including the following information:

- a. Original fund source (General Fund, ARPA, other), amount, and FTE;
- b. Original program time frame;
- c. Original authorization (budget decision, legislation, other);
- d. Requested ongoing fund source, amount, and FTE; and
- e. Requested time frame (one-time extension or ongoing).

Response: The Department has no such funds or budget requests.

- 2 Please provide a description, calculation, and the assumptions for the fiscal impact of implementing compensation provisions of the Partnership Agreement, as well as a qualitative description of any changes to paid annual, medical, holiday or family leave as a result of the Agreement. Please describe any compensation and leave changes for employees exempt from the Agreement if applicable.

Response: Salary Survey appropriations, which include compensation related to across-the-board (ATB) increases and movement to range minimums, were \$1.5 million in FY 22-23 (3% ATB) and are \$2.6 million in FY 23-24 (5% ATB); these changes are deliberated by the General Assembly each year. JBC is considering any increases related to the implementation of Step Pay as a part of total compensation funding for FY 24-25 with a present request of \$3.4 million for the Department.

With respect to paid leave, while the Partnership Agreement resulted in modest increases in leave accruals, no specific expenditures can be calculated for annual leave as payouts do not occur until an employee separates.

Additional discussion is referenced in the central response from the Department of Personnel and Administration on Friday, December 8th, which includes statewide data. With respect to our Department, no expenses occurred related to stewards or holiday 1.5-time expenditures. The Temporary Employees Related to Authorized Leave appropriation for DORA was \$36,163 for FY 2022-23, and none of this appropriation was required to be used to backfill any positions.

- 3 Provide a prioritized list of budget reductions the Department would propose if 10.0 percent General Fund appropriation reductions were required of every Department.

Response: We appreciate the question and the desire to partner with the Department on identifying reductions. On November 1st, the governor submitted a balanced budget that provided decision items for increases and reductions that we spent over half a year identifying and prioritizing across the executive branch. The proposed budget is balanced, maintains a reserve of 15%, and does not require a 10.0 percent reduction in the General Fund to balance. If the economic conditions change, the Governor will take action to propose reduced expenditures and submit a plan to address the shortfall to the General Assembly. If the Joint Budget Committee wants feedback on specific reduction proposals, we welcome the opportunity to work with JBC staff on estimating the impacts and tradeoffs of those proposals.

HIGH-LEVEL FUNDING OVERVIEW

CASH FUNDS

4. [Sen. Kirkmeyer] When submitting the waiver for the Division of Professions and Occupations Cash Fund, please explain why the Department has been out of compliance with the excess reserve requirement for ten years.

Additionally, please provide this explanation during the hearing.

Response: The DPO cash fund has been non-compliant only four times in the last ten years. Given the size of the fund and its variable multi-year license cycles, excesses occasionally occur in step with the variability of license populations, permit and inspection revenue, and program expenditures across over 50 different programs. These are routinely addressed and rectified by the Department, often before appearing in the excess reserves report.

In this case, compliance was planned for 2023/24, with \$4.9 million in fee revenue reductions in response to an excess balance of \$3.8 million during 2022 -- which was more than enough to result in compliance as planned for 2023/24. However, two bills (HB22-1298 and HB22-1299) passed during the 2022 session that transferred \$15.4 million General Fund transfers to the fund during 2023. This one-time General Fund revenue was included by the Office of the State Controller in its methodology to estimate fee-related fund balance for the same fiscal year, and the excess sharply increased as a result of this non-fee revenue. A waiver is now necessary for this reason.

The following table shows the impact of this non-fee GF revenue on the excess fund balance, increasing it by \$7.7 million and doubling the excess (vs. \$3.8 million) from 2022 despite fee reductions:

<i>DPO Fund Balance with \$15.4 million General Fund transfer</i>			
	June 30, 2022	June 30, 2023	Change
Total Balance	8,929,615	20,840,952	11,911,337
Uncommitted Reserves	8,515,672	12,928,173	4,412,501
Excess	3,882,428	7,812,728	3,930,300
Fee Revenue	31,517,851	26,620,667	(4,897,184)

<i>DPO Fund Balance without \$15.4 million General Fund transfer</i>			
	June 30, 2022	June 30, 2023	Change
Total Balance	8,929,615	5,422,088	(3,507,527)
Uncommitted Reserves	8,515,672	5,249,635	(3,266,037)
Excess	3,882,428	134,190	(3,748,238)
Fee Revenue	31,517,851	26,620,667	(4,897,184)

CENTRALLY APPROPRIATED LINE ITEMS

5. [Rep. Taggart] Legal Services and Payments to OIT show significant increases from the FY 2023-24 appropriation to the FY 2024-25 request. Please provide additional details and justification for those increases.

Response: The Legal Services and OIT line items are common policy line items proposed separately and independently by the Department of Law and the Office of Information Technology. The Department must insert these requests, which will be acted on independently at JBC’s common policy figure-settings.

In the case of legal services, cumulative increases have resulted from their billable hourly rate (\$109.63 to \$128.02 for FY 23-24, for instance), while the increase for FY 24-25 results from actual hours billed by the Department of Law for FY 2022-23 -- this is according to Department of Law’s data and calculations for their annual statewide ‘true-up.’ In the case of payments to OIT, the increases reflect statewide OIT decision items and evolving methods of measuring consumption across State agencies associated with their real-time billing implementation. The Department has not significantly increased its use of OIT services.

R1 INCREASE BANKING STAFF

REQUEST DETAILS

6. [Rep. Sirota] Is the Department suggesting that Colorado is at risk for similar bank failures because the Division is understaffed and not conducting sufficient examinations? What is the implication of the request, and if it is not funded? What is the risk in Colorado?

Response: Colorado state-chartered banks are in sound financial condition and do not exhibit any of the risks evident at the banks that failed in March and April 2023. Common risks present among the banks that failed include the following: a lack of diversified deposits, loans, and investments, and the failed banks had asset and deposit concentrations in a single industry or economic sector. In contrast, Colorado state-chartered banks have diversified deposits, loans, and investments. No Colorado state-chartered bank has significant concentrations in a single industry or economic sector. Colorado state-chartered bank management and board of directors have developed and implemented strong risk management policies, procedures, and practices.

The division did not intend to imply that understaffing would lead to bank failures. The Division's position is that growth in Colorado's banking and money transmitter sector requires regulatory resources to increase accordingly. This will help ensure that Colorado's state-chartered banking system remains safe and sound.

The Division of Banking's policy and written agreement with the federal regulators is to provide 50 percent of examination resources for each examination that is conducted jointly with the federal regulators. If the Division's request is not funded, the FDIC must provide the necessary examination resources.

7. *[Rep. Bird]* Not all banks are state-chartered. Are these charts on page 13 of the briefing document all state chartered and state-regulated? Please provide additional detail on the growth of workload that is specific to the Department's regulatory portfolio. Is that what is captured in the charts?

Response: As of June 30, 2023, 126 FDIC-insured financial institutions operate 1,361 branch locations in Colorado that provide banking services to Coloradans. Of the 126 financial institutions, 50 are Colorado state-chartered banks for which the Division of Banking has chartering authority and supervisory responsibility. The remaining financial institutions are either national banks supervised by the Office of the Comptroller of the Currency or state-chartered financial institutions by other states that are supervised by their home state supervisor/regulator.

The growth in total assets that is highlighted is for Colorado state-chartered banks. As banks grow, more resources are required for examinations, and the bank becomes more complex by offering expanded products and services that are reviewed during the examination.

8. *[Rep. Taggart]* Going back to the bank merger on page 13. Were the two banks in that merger both state-chartered? Or is a state charter taking on more of a national bank? If they were both state-chartered institutions, then the Department has already done some work on both of them; why would it take an additional 3,382 hours to oversee the consolidated bank if they were working on both banks before?

Response: The newly merged \$20 billion (in total assets) Colorado state-chartered bank represents the completion of ten bank mergers of affiliated (defined as common ownership) banks into the Colorado bank. The merged banks were chartered and supervised in Iowa, Kansas, Wisconsin, Minnesota, Montana, New Mexico, California, Texas, Arizona, and Illinois and were not supervised by the Colorado Division of Banking. The \$20B bank is now headquartered in Colorado, and bank locations in the states listed above have become branches of the Colorado bank. The Division of Banking did not have supervisory responsibility for the other state banks before the merger and, therefore, has not completed any examinations. Given the broad geographic footprint, this merger creates a new and unique supervisory responsibility.

CERTIFIED NURSE AIDE (CNA) APPLICATIONS

CERTIFICATION AND EXAMINATION

9. [Sen. Kirkmeyer] What is DORA doing to address the backlog for CNA testing? Is there an issue with the contract as to why DORA hasn't been able to get the contractor to fix this issue?

Response: The Division of Professions and Occupations passed emergency rules in Spring 2020 to correspond with actions taken by Governor Jared Polis through Executive Orders in response to COVID-19. These emergency rules included a temporary nurse aide license type permitted by federal COVID-19 national public health emergency declarations. Temporary nurse aides were required to complete the state-approved training course and pass the written exam but were not required to pass the skills exam.

The Division stopped issuing temporary nurse aide licenses on May 4, 2023, and the last one expired on June 30, 2023. The national and public health emergency declarations expired on May 11, meaning people holding these temporary licenses were no longer eligible for federal (Medicare/Medicaid) reimbursement. The expiration of this temporary license type caused an increased demand for CNA skills exams because those working as nurse aides in Colorado were once again required to obtain full certification. In preparation for the end of the temporary certification, the division sent weekly communications to all temporary nurse aid licensees.

Due to the information above, the demand for exams has increased significantly from 2022 to 2023. In 2022, 5,145 written exams and 6,713 skills exams were taken. In 2023, 6,419 written exams and 8,173 skills exams were taken. This is an increase of approximately 25% in written and 22% in skills exams.

DORA contracts with Credentia to administer CNA tests. Credentia provides an online resource where students are able to take the written exam and schedule a skills exam. Credentia contracts with several states to administer CNA testing programs. Credentia employs all skills exam evaluators and sets up all exams. Once a student completes the exams through Credentia, they are able to apply for licensure through Crednetia. Credentia sends this information to the division to ensure who reviews the information to ensure that the requirements are met.

Additional strategies that are currently deployed or are being piloted to respond to increased demand for testing include:

- **Improving Enrollment Data:** All active/approved nurse aide training programs now send their Enrollment Data to allow Credentia to better plan for exam events in the future. In the past, Credentia based its event scheduling on historical data, which does not reflect the increase in demand.
- **Increasing Teaching Staff:** Credentia is working on adding additional nurse aide evaluators. They are actively reviewing 78 applicants for new positions and have hired five new evaluators in the past two weeks with the intent of hiring at least ten more in the coming weeks. Additionally, Credentia had previously tried to find evaluators within 25 miles to proctor exams. They have increased that range to 100 miles.
- **Pending Technology Updates:** Credentia is piloting remote proctoring options where skills exam proctors can participate in the exam remotely. The candidates would

attend a test event to access the necessary equipment, but the proctor would be remote. The goal is to open additional events for candidates and increase the number of events a proctor could participate in. Credentia plans to run additional pilots to offer skills exams through this method beginning in Spring 2024.

10. [Sen. Kirkmeyer] What opportunities are available for non-English speaking applicants to take the test?

Response: The division understands the need to translate both the written and skills exams into multiple languages, and the division is partnering with the contractor to address this. As background, two tests (written and skills) are required for an individual to become a Certified Nurse Aide (CNA). The CNA written exam is only available in English. However, a candidate may opt for an oral Spanish language exam. The skills exam is only available in English. In 2022, 107 students took the oral Spanish language exam. In 2023, 171 students took this exam. Credentia uses the National Council of State Boards of Nursing.

11. [Sen. Kirkmeyer] Why should someone have to take the written test multiple times if the contractor is so behind?

Response: The written exam is available online, on demand. The candidate must pass the written and skills exams to qualify for licensure. The pass rate for the written exam in 2023 is 92%. The pass rate for the skills exam in 2023 is approximately 74%. A candidate who passes both exams would only need to take each exam once.

Candidates would need to retake the test if they failed a previous test. Additionally, if a candidate fails the skills exam three times, they must retake the training, written, and skills exams. This is both a state and federal requirement. They must pass the written and skills exam before being eligible for licensure.

Candidates have two years from applying with Credentia to take both the written and skills exam. They may apply with Credentia after completing a state-approved training program.

12. [Sen. Zenzinger] Would the Department be able to provide more information about the distribution and availability of testing sites for CNA applicants?

Response: Skills exams are conducted at both in-facility and regional testing sites. In-facility testing sites are all-in-one programs where CNA candidates receive training and complete their testing within the facility. Those candidates work in the facility during and after training. Regional testing sites are open to students who have completed the required training and the written exam. The locations of these sites are (available with addresses [here](#) and map on Slide 7):

- Aims Community College - Ft Lupton
- Aims Community College - Greeley
- Ann Rose School Of Nursing Arts Inc
- Arapahoe Community College - Castle Rock
- Arapahoe Community College - Littleton
- Beo Training Center
- Community Health Institute
- Compass Nursing Arts
- Doak Walker House At Casey's Pond

- Front Range Community College - Fort Collins
- Geriatric Education Center
- Intellitec College Of Pueblo
- Morgan Community College - Burlington Center
- Morgan Community College - Fort Morgan
- Nightingale School Of Nursing Arts
- Northern Colorado Training Institute
- Nursing & Therapy Services of Colorado (NTSOC) - Colorado Springs
- Otero Junior College
- Pueblo Community College - Pueblo Campus
- Technical College Of The Rockies
- Trinidad State Junior College - Alamosa
- Western Colorado Area Health Ed Ctr WCAHEC

NEXT STEPS

13. [Sen. Kirkmeyer] What funding, if any, does DORA need to get this fixed?

Response: The division is researching, while a funding source has not been identified, the details of offering a package of incentives for teachers, facilities and equipment. To improve the As noted above, the vendor (Credentialia) and the division are already exploring solutions to address unmet testing needs. In addition to increasing the number of tests offered, the division is exploring future strategies to increase the number of testing locations available. These strategies are still in development but should reduce the distance students and proctors must travel to test.

Specifically, the division is also exploring offering a stipend the feasibility and impact of stipends, one-time expenditures on equipment, and grants for one-time equipment purchases. Specifically, the division is analyzing whether a stipend to proctors would incentivize them to instruct multiple classes. The division is also exploring the feasibility of subsidizing equipment used for many classes or over many years. This could defray significant one-time costs that limit the ability of new testing facilities to open. No cost assessment has been performed and a funding source has not yet been identified for these strategies.

14. [Sen. Kirkmeyer] When was the last time DORA reviewed the contract and service agreement with Credentialia?

Response: The Division has bi-weekly meetings with Credentialia where the contract terms are regularly reviewed. The current contract ends December 31, 2023, and a recent RFP process, which began in January 2023 and ended in February 2023, continued the contract award to Credentialia. The pending contract that begins January 1, 2024, has been reviewed and amended as recently as last week.

15. [Sen. Kirkmeyer] Does the JBC need to run legislation to waive requirements on CNA students until the contractor can fulfill their duties?

Response: Over the last few months, the division has investigated one state statutory issue that was a reoccurring complaint. C.R.S. § 12-255-214(1)(d) and BON Policy 10-07 allow nurse aides trained at an in-facility program to work for 120 days within that same facility.

However, federal law allows nurse aides who train in any facility to work in any long-term care facility (even if it's not where their training took place) for up to 120 days without jeopardizing Medicare or Medicaid funding. Since Colorado state law is more restrictive than federal law, Colorado could change this requirement to match federal law so that nurse aides may work for 120 days in any long-term facility, not just the one in which they received their training.

Department of Regulatory Agencies Joint Budget Committee Hearing

December 20, 2023



COLORADO
Department of
Regulatory Agencies

DORA's Mission & Vision

The **Department of Regulatory Agencies** (DORA) is dedicated to **preserving the integrity of the marketplace** and is committed to promoting **a fair and competitive business environment** in Colorado.

Consumer protection is our mission.


DORA's Organizational Chart



DEPARTMENT OF REGULATORY AGENCIES
Patty Salazar, Executive Director

Deputy Executive Director, Ginny Brown Communications & Stakeholder Engagement Legislative Affairs Energy Modernization Colorado Office of Policy, Research, & Regulatory Reform		 EXECUTIVE DIRECTOR'S OFFICE (35.4 FTE)	Chief Administrative Officer, Marisol Larez Human Resources Office Department Operations Budget Office Office of Accounting & Purchasing	
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 **DIVISION OF BANKING**
 Ken Boldt, Commissioner
 (40.0 FTE)

 **COLORADO CIVIL RIGHTS DIVISION**
 Aubrey Elenis, Director
 (37 FTE)

 **DIVISION OF CONSERVATION**
 Aaron Welch, Director
 (5.8 FTE)

 **DIVISION OF FINANCIAL SERVICES**
 Mark Valente, Commissioner
 (15.6 FTE)

 **DIVISION OF INSURANCE**
 Michael Conway, Commissioner
 (110.6 FTE)

 **OFFICE OF THE UTILITY CONSUMER ADVOCATE**
 Cindy Schonhaut, Director
 (11 FTE)

 **DIVISION OF PROFESSIONS & OCCUPATIONS**
 Sam Delp, Director
 (218.5 FTE)

 **PUBLIC UTILITIES COMMISSION**
 Rebecca White, Director
 (122.1 FTE)

 **DIVISION OF REAL ESTATE**
 Marcia Waters, Director
 (48.9 FTE)

 **DIVISION OF SECURITIES**
 Tung Chan, Commissioner
 (24.0 FTE)

What DORA Regulates

Financial Services



Accounting Firms
Broker-Dealer Firms
Broker-Dealer Sales
Representatives
Certified Public Accountants
Investment Adviser Firms
Investment Adviser
Representatives
Money Transmitters
Mortgage Broker-Dealers
Mortgage Loan Originators
State-Chartered Savings & Loans
State-Chartered Commercial

Banks

Insurance

Insurance Agents/Brokers
Insurance Companies

Real Estate, Buildings & Repair



Appraisers
Architects
Electricians
Engineers
Homeowners Associations (via HOA
Information and Resource Center)
Land Surveyors
Landscape Architects
Plumbers
Radon Professionals
Real Estate Brokers
Title Insurance Agents/Agencies

Cosmetology

Barbers
Barber/Cosmetology Shops
Cosmetologists
Estheticians
Hair Stylists

Nail Technicians

Healthcare & Wellness

Acupuncturists
Addiction Counselors
Athletic Trainers
Audiologists
Chiropractors
Dental Hygienists
Dentists
Direct-entry Midwives
Hearing Aid Providers
Marriage and Family Therapists
Massage Therapists
Naturopathic Doctors
Nurses
Nursing Home Administrators
Occupational Therapists/Occupational
Optometrists
Pharmacists
Pharmacies
Physical Therapy
Physicians (all types)
Physician Assistants
Professional Counselors
Psychiatric Technicians
Psychologists
Respiratory Therapists
Speech Language Pathologists
Social Workers
Surgical Assistants/Surgical Technologists

Transportation



Children's Activity and Charter Buses, Limousines,
Off-road Charters, Moving Companies (household
goods), Non-consensual Towing, Passenger
Tramways, Shuttles, Taxis and Transportation
Network Companies (TNC's)
Public Highway Railroad Crossings
Rail Fixed Guideway (RFG)

Utilities



Investor-owned electric, gas,
steam and water
Some telecommunications

services

Other

Bail Bonds/Bail Bonds Agents
Boxing
Conservation Easement Holders
Conservation Easement Tax Credits
Funeral Homes, Crematories
Medicare Assistance - home of State Health Insurance
Assistance Program (SHIP)
Medicare Assistance - Senior Medicare Patrol (SMP)
Outfitters
Enforce anti-discrimination laws



JBC Common Questions 1 thru 3 and High Level Funding Overview and R1 Increase in Banking Staff

Patty Salazar, DORA Executive Director &
Justin Lippard, DORA Budget Director

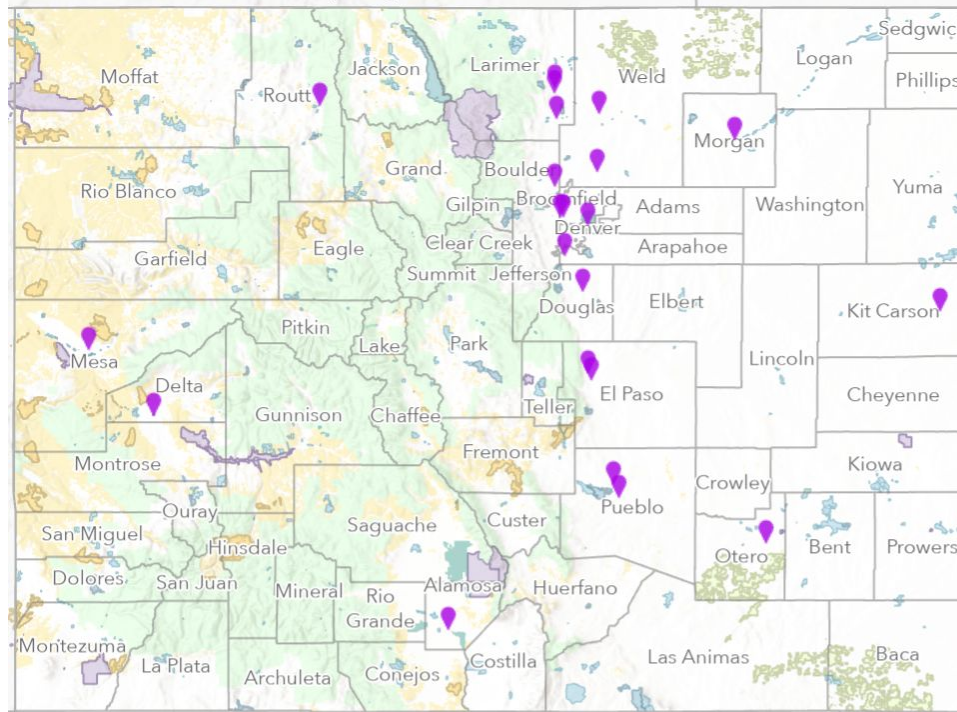
Certified Nurse Aide (CNA) Applications

Sam Delp, Division Director for Professions and Occupations



COLORADO
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Current Nurse Aide Skills Testing Sites



Closing

Patty Salazar
DORA Executive Director



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