

## CHAPTER 314

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**HEALTH AND ENVIRONMENT**

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**HOUSE BILL 02-1323**

BY REPRESENTATIVE(S) Berry, Borodkin, Boyd, Coleman, Daniel, Groff, Jahn, Kester, Larson, Lawrence, Mace, Madden, Marshall, Plant, Ragsdale, Rippey, Romanoff, Sanchez, Stafford, Tapia, Tochtrop, Vigil, and Williams S.;  
also SENATOR(S) Windels, Epps, Fitz-Gerald, Hanna, Nichol, and Pascoe.

**AN ACT****CONCERNING ASSISTED LIVING RESIDENCES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 25-27-101, Colorado Revised Statutes, is amended to read:

**25-27-101. Legislative declaration.** (1) In order to promote the public health and welfare of the people of Colorado, it is declared to be in the public interest to establish minimum standards AND rules ~~and regulations~~ for ~~personal care boarding homes~~ ASSISTED LIVING RESIDENCES in the state of Colorado and to provide the authority for the administration and enforcement of such minimum standards AND rules. ~~and regulations~~. These standards AND rules ~~and regulations~~ shall be sufficient to assure the health, safety, and welfare of ~~personal care boarding home~~ ASSISTED LIVING residents.

(2) THE GENERAL ASSEMBLY FURTHER FINDS THAT THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AS THE EXECUTIVE BRANCH AGENCY ASSIGNED TO ADMINISTER AND ENFORCE MINIMUM STANDARDS FOR ASSISTED LIVING RESIDENCES, IS IN A POSITION TO PROVIDE TECHNICAL ASSISTANCE, EDUCATIONAL MATERIALS, AND TRAINING INFORMATION TO RESIDENCES. THE GENERAL ASSEMBLY DETERMINES THAT A PROACTIVE APPROACH BY THE DEPARTMENT, ACTING AS A MENTOR AND EDUCATOR FOR RESIDENCES, WILL ENHANCE THE QUALITY OF CARE OF RESIDENTS OF ASSISTED LIVING RESIDENCES. ADDITIONALLY, THE GENERAL ASSEMBLY FINDS THAT THE DEPARTMENT SHOULD EXPLORE WHETHER RISK-BASED INSPECTIONS MAY BE IMPLEMENTED TO ALLOCATE RESOURCES MORE EFFECTIVELY AND AT THE SAME TIME ADEQUATELY PROTECT THE HEALTH AND SAFETY OF THE RESIDENTS.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(3) FURTHER, THE GENERAL ASSEMBLY DETERMINES AND DECLARES THAT, IN ADMINISTERING AND ENFORCING STANDARDS FOR ASSISTED LIVING RESIDENCES, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHOULD FOCUS ON THE OUTCOME RELATED TO MEASURES AND TREATMENT OF RESIDENTS.

**SECTION 2.** 25-27-102 (8), (9), and (10), Colorado Revised Statutes, are amended, and the said 25-27-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-27-102. Definitions.** As used in this article, unless the context otherwise requires:

(1.3) "ASSISTED LIVING RESIDENCE" OR "RESIDENCE" MEANS A RESIDENTIAL FACILITY THAT MAKES AVAILABLE TO THREE OR MORE ADULTS NOT RELATED TO THE OWNER OF SUCH FACILITY, EITHER DIRECTLY OR INDIRECTLY THROUGH AN AGREEMENT WITH THE RESIDENT, ROOM AND BOARD AND AT LEAST THE FOLLOWING SERVICES: PERSONAL SERVICES; PROTECTIVE OVERSIGHT; SOCIAL CARE DUE TO IMPAIRED CAPACITY TO LIVE INDEPENDENTLY; AND REGULAR SUPERVISION THAT SHALL BE AVAILABLE ON A TWENTY-FOUR-HOUR BASIS, BUT NOT TO THE EXTENT THAT REGULAR TWENTY-FOUR-HOUR MEDICAL OR NURSING CARE IS REQUIRED. THE TERM "ASSISTED LIVING RESIDENCE" DOES NOT INCLUDE ANY FACILITY LICENSED IN THIS STATE AS A RESIDENTIAL CARE FACILITY FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, OR ANY INDIVIDUAL RESIDENTIAL SUPPORT SERVICES THAT ARE EXCLUDED FROM LICENSURE REQUIREMENTS PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

~~(8) "Personal care boarding home" or "home" means a residential facility that makes available to three or more adults not related to the owner of such facility, either directly or indirectly through a provider agreement, room and board and personal services, protective oversight, and social care due to impaired capacity to live independently, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term "personal care boarding home" does not include a facility holding a current certificate of authority to operate as a life care facility issued pursuant to article 13 of title 12, C.R.S., any facility licensed in this state as a residential care facility for individuals with developmental disabilities, or any individual residential support services which are excluded from licensure requirements pursuant to regulations adopted by the department of public health and environment.~~

(9) "Personal services" means those services ~~which~~ THAT the operator and employees of a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE provide for each resident, including, but not limited to:

- (a) An environment ~~which~~ THAT is sanitary and safe from physical harm;
- (b) Individualized social supervision;
- (c) Assistance with transportation; and
- (d) Assistance with activities of daily living, including but not limited to bathing, dressing, and eating.

(10) "Protective oversight" means guidance of a resident as required by the needs of the resident or as reasonably requested by the resident, including the following:

(a) Being aware of a resident's general whereabouts, although the resident may travel independently in the community; AND

(b) Monitoring the activities of the resident while on the premises to ensure ~~his~~ THE RESIDENT'S health, safety, and well-being, including monitoring ~~of prescribed medications; reminding the resident to carry out daily living activities; and reminding the resident of any important activities, including appointments~~ THE RESIDENT'S NEEDS AND ENSURING THAT THE RESIDENT RECEIVES THE SERVICES AND CARE NECESSARY TO PROTECT THE RESIDENT'S HEALTH, SAFETY, AND WELL-BEING.

**SECTION 3.** The introductory portion to 25-27-103 (1) and 25-27-103 (1) (b), Colorado Revised Statutes, are amended to read:

**25-27-103. License required - criminal and civil penalties.** (1) On or after July 1, ~~1986~~ 2002, it is unlawful for any person, partnership, association, or corporation to conduct or maintain ~~a personal care boarding home~~ AN ASSISTED LIVING RESIDENCE without having obtained a license therefor from the department of public health and environment. Any person who violates this provision:

(b) May be subject to a civil penalty assessed by the department of not less than fifty dollars nor more than one hundred dollars for each day the ~~facility~~ RESIDENCE violates this section. The assessed penalty shall accrue from the date the ~~facility~~ RESIDENCE is found by the department to be in violation of this section. The assessment, enforcement, and collection of the penalty shall be by the department in accordance with article 4 of title 24, C.R.S., for credit to the ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE cash fund created pursuant to section 25-27-107.5. Enforcement and collection of the penalty shall occur following the decision reached in accordance with procedures set forth in section 24-4-105, C.R.S.

**SECTION 4.** 25-27-104 (1), the introductory portion to 25-27-104 (2), and 25-27-104 (2) (a), (2) (b), (2) (f), and (2) (g), Colorado Revised Statutes, are amended, and the said 25-27-104 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

**25-27-104. Minimum standards for assisted living residences - rules.** (1) On or before November 1, ~~1985~~ 2002, the state board shall promulgate ~~regulations~~ RULES pursuant to section 24-4-103, C.R.S., providing minimum standards for the location, sanitation, fire safety, adequacy of facilities, adequacy of diet and nutrition, equipment, structure, operation, provision of personal services and protective oversight, and personnel practices of ~~personal care boarding homes~~ ASSISTED LIVING RESIDENCES within the state of Colorado. Such ~~regulations~~ RULES shall differentiate between homes of different sizes. In formulating such ~~regulations~~ RULES, the state board shall seek recommendations from the advisory committee established pursuant to section 25-27-110.

(2) ~~Regulations~~ RULES promulgated by the state board pursuant to subsection (1) of this section shall include, as a minimum, provisions requiring the following:

(a) Compliance with all applicable zoning, housing, fire, sanitary, and other codes and ordinances of the city, city and county, or county where the ~~home~~ RESIDENCE is situated, to the extent that such codes and ordinances are consistent with the federal "Fair Housing Amendment Act of 1988", as amended, 42 U.S.C. sec. 3601 et seq.;

(b) Annual inspection of ~~personal care boarding homes~~ ASSISTED LIVING RESIDENCES by the department or its designated representative;

(f) Responsibility of the ~~personal care boarding homes~~ ASSISTED LIVING RESIDENCES for social supervision, personal services, and coordination with community resources as needed by the residents; ~~and~~

(g) That the administrator and staff of a ~~home~~ RESIDENCE meet minimum educational, training, and experience standards established by the state board, including a requirement that such persons be of good, moral, and responsible character. In making such a determination, the owner or licensee of a ~~home~~ RESIDENCE may have access to and shall obtain any criminal history record information from a criminal justice agency, subject to any restrictions imposed by such agency, for any person responsible for the care and welfare of residents of such ~~facility~~ RESIDENCE.

(h) INTERMEDIATE ENFORCEMENT REMEDIES AS AUTHORIZED BY SECTION 25-27-106 (2);

(i) WRITTEN PLANS, TO BE SUBMITTED BY RESIDENCES TO THE DEPARTMENT FOR APPROVAL, DETAILING THE MEASURES THAT WILL BE TAKEN TO CORRECT VIOLATIONS FOUND AS A RESULT OF INSPECTIONS; AND

(j) THE DEFINITION FOR HIGH MEDICAID UTILIZATION FACILITY AS A BASIS FOR A MODIFIED FEE SCHEDULE. A HIGH MEDICAID UTILIZATION RESIDENCE SHALL BE A RESIDENCE IN WHICH NO LESS THAN THIRTY-FIVE PERCENT OF THE AVAILABLE BEDS ARE OCCUPIED BY MEDICAID ENROLLEES AS INDICATED BY THE MOST COMPLETE CLAIMS DATA AVAILABLE.

(k) A MODIFIED FEE SCHEDULE FOR RESIDENCES THAT SERVE A DISPROPORTIONATE SHARE OF LOW INCOME RESIDENCES. THE BOARD MAY ADOPT A STANDARD FOR DETERMINING RESIDENCES THAT SERVE A DISPROPORTIONATE SHARE OF LOW INCOME RESIDENCES. SUCH STANDARD MAY REQUIRE A RESIDENCE TO SUBMIT DOCUMENTATION DETERMINED APPROPRIATE BY THE DEPARTMENT FOR VERIFICATION.

**SECTION 5.** 25-27-105 (1), (2), (2.5) (a), (2.5) (b), (2.8), (3), and (4), Colorado Revised Statutes, are amended and the said 25-27-105 (2.5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**25-27-105. License - application - inspection - issuance.** (1) An application for a license to operate a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE shall be submitted to the department annually upon such form and in such manner as prescribed by the department.

(2) The department shall investigate and pass on each original application and each

renewal application for a license. The department shall inspect or cause to be inspected the ~~facilities~~ RESIDENCES to be operated by an applicant for an original license before the license is granted and shall annually thereafter inspect or cause to be inspected the ~~facilities~~ RESIDENCES of all licensees. The department shall make such other inspections as it deems necessary to insure that the health, safety, and welfare of the residents are being protected. THE RESIDENCE SHALL SUBMIT IN WRITING, IN A FORM PRESCRIBED BY THE DEPARTMENT, A PLAN DETAILING THE MEASURES THAT WILL BE TAKEN TO CORRECT ANY VIOLATIONS FOUND BY THE DEPARTMENT AS A RESULT OF INSPECTIONS UNDERTAKEN PURSUANT TO THIS SUBSECTION (2).

(2.5) (a) ON JULY 1, 2002, as part of an original ~~and each renewal~~ application AND ON AND AFTER JULY 1, 2002, ON THE FIRST RENEWAL OF AN APPLICATION FOR ASSISTED LIVING RESIDENCES LICENSED BEFORE JULY 1, 2002, for a license, an owner, applicant, or licensee shall request from a criminal justice agency designated by the department criminal history record information regarding such owner, applicant, or licensee. The information, upon such request and subject to any restrictions imposed by such agency, shall be forwarded by the criminal justice agency directly to the department.

(b) The information shall be used by the department in ascertaining whether the person applying for licensure has been convicted of a felony or of a misdemeanor, which felony or misdemeanor involves moral turpitude or involves conduct that the department determines could pose a risk to the health, safety, and welfare of residents of the ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE. Information obtained in accordance with this section shall be maintained by the department.

(a.5) ON AND AFTER JULY 1, 2002, THE DEPARTMENT MAY REQUIRE THAT AN ADMINISTRATOR REQUEST FROM A CRIMINAL JUSTICE AGENCY DESIGNATED BY THE DEPARTMENT A CRIMINAL HISTORY RECORD ON SUCH ADMINISTRATOR. THE INFORMATION, UPON SUCH REQUEST AND SUBJECT TO ANY RESTRICTIONS IMPOSED BY SUCH AGENCY, SHALL BE FORWARDED BY THE CRIMINAL JUSTICE AGENCY DIRECTLY TO THE DEPARTMENT.

(2.8) No license shall be issued or renewed by the department if the owner, applicant, or licensee of the ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE has been convicted of a felony or of a misdemeanor, which felony or misdemeanor involves moral turpitude or involves conduct ~~which~~ THAT the department determines could pose a risk to the health, safety, and welfare of the residents of the ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE.

(3) Except as otherwise provided in subsection (4) of this section, the department shall issue or renew a license when it is satisfied that the applicant or licensee is in compliance with the requirements set out in this article and the ~~regulations~~ RULES promulgated thereunder. Except for provisional licenses issued in accordance with subsection (4) of this section, a license issued or renewed pursuant to this section shall expire one year from the date of issuance or renewal.

(4) The department may issue a provisional license to an applicant for the purpose of operating a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE for a period of ninety days if the applicant is temporarily unable to conform to all the

minimum standards required under this article; except that no license shall be issued to an applicant if the operation of the applicant's ~~facility~~ RESIDENCE will adversely affect the health, safety, and welfare of the residents of such ~~facility~~ RESIDENCE. As a condition of obtaining a provisional license, the applicant shall show proof to the department that attempts are being made to conform and comply with applicable standards. No provisional license shall be granted prior to the submission of a criminal background check in accordance with subsection (2.5) of this section. A provisional license shall not be renewed.

**SECTION 6.** 25-27-105.5, Colorado Revised Statutes, is amended to read:

**25-27-105.5. Compliance with local government zoning regulations - notice to local governments - provisional licensure.** (1) The department shall require any ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE seeking licensure pursuant to this article to comply with any applicable zoning regulations of the municipality, city and county, or county where the ~~home~~ RESIDENCE is situated. Failure to comply with applicable zoning regulations shall constitute grounds for the denial of a license to a ~~home~~ RESIDENCE; except that nothing in this section shall be construed to supersede the provisions of sections 30-28-115 (2), 31-23-301 (4), and 31-23-303 (2), C.R.S.

(2) The department shall assure that timely written notice is provided to the municipality, city and county, or county where a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE is situated, including the address of the ~~home~~ RESIDENCE and the population and number of persons to be served by the ~~home~~ RESIDENCE, when any of the following occurs:

(a) An application for a license to operate a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE pursuant to section 25-27-105 is made;

(b) A license is granted to a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE pursuant to section 25-27-105;

(c) A change in the license of a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE occurs; or

(d) The license of a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE is revoked or otherwise terminated for any reason.

(3) Notwithstanding the provisions of section 25-27-105 (4), in the event of a zoning or other delay or dispute between a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE and the municipality, city and county, or county where the ~~home~~ RESIDENCE is situated, the department may grant a provisional license to the ~~home~~ RESIDENCE for up to one hundred twenty days pending resolution of the delay or dispute.

**SECTION 7.** 25-27-106 (1) and (2), Colorado Revised Statutes, are amended to read:

**25-27-106. License denial, suspension, or revocation.** (1) When an application for an original license has been denied by the department, the department shall notify

the applicant in writing of such denial by mailing a notice to ~~him~~ THE APPLICANT at the address shown on his OR HER application. Any applicant believing himself OR HERSELF aggrieved by such denial may pursue the remedy for review provided in article 4 of title 24, C.R.S., if ~~he~~ THE APPLICANT, within thirty days after receiving such notice, petitions the department to set a date and place for hearing, affording ~~him~~ THE APPLICANT an opportunity to be heard in person or by counsel. All hearings on the denial of original licenses shall be conducted in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S.

(2) (a) The department may suspend, revoke, or refuse to renew the license of any ~~facility which~~ RESIDENCE THAT is out of compliance with the requirements of this article or the ~~regulations~~ RULES promulgated thereunder. Such suspension, revocation, or refusal shall be done after a hearing thereon and in conformance with the provisions and procedures specified in article 4 of title 24, C.R.S.

(b) (I) THE DEPARTMENT MAY IMPOSE INTERMEDIATE RESTRICTIONS OR CONDITIONS ON A LICENSEE THAT MAY INCLUDE AT LEAST ONE OF THE FOLLOWING:

(A) RETAINING A CONSULTANT TO ADDRESS CORRECTIVE MEASURES;

(B) MONITORING BY THE DEPARTMENT FOR A SPECIFIC PERIOD;

(C) PROVIDING ADDITIONAL TRAINING TO EMPLOYEES, OWNERS, OR OPERATORS OF THE RESIDENCE;

(D) COMPLYING WITH A DIRECTED WRITTEN PLAN, TO CORRECT THE VIOLATION;  
OR

(E) PAYING A CIVIL FINE NOT TO EXCEED TWO THOUSAND DOLLARS IN A CALENDAR YEAR.

(II) (A) IF THE DEPARTMENT IMPOSES AN INTERMEDIATE RESTRICTION OR CONDITION THAT IS NOT A RESULT OF A LIFE-THREATENING SITUATION, THE LICENSEE SHALL RECEIVE WRITTEN NOTICE OF THE RESTRICTION OR CONDITION. NO LATER THAN TEN DAYS AFTER THE DATE THE NOTICE IS RECEIVED FROM THE DEPARTMENT, THE LICENSEE SHALL SUBMIT A WRITTEN PLAN THAT INCLUDES THE TIME FRAME FOR COMPLETING THE PLAN AND ADDRESSES THE RESTRICTION OR CONDITION SPECIFIED.

(B) IF THE DEPARTMENT IMPOSES AN INTERMEDIATE RESTRICTION OR CONDITION THAT IS THE RESULT OF A LIFE-THREATENING SITUATION, THE DEPARTMENT SHALL NOTIFY THE LICENSEE IN WRITING, BY TELEPHONE, OR IN PERSON DURING AN ON-SITE VISIT. THE LICENSEE SHALL IMPLEMENT THE RESTRICTION OR CONDITION IMMEDIATELY UPON RECEIVING NOTICE OF THE RESTRICTION OR CONDITION. IF THE DEPARTMENT PROVIDES NOTICE OF A RESTRICTION OR CONDITION BY TELEPHONE OR IN PERSON, THE DEPARTMENT SHALL SEND WRITTEN CONFIRMATION OF THE RESTRICTION OR CONDITION TO THE LICENSEE WITHIN TWO BUSINESS DAYS.

(III) (A) AFTER SUBMISSION OF AN APPROVED WRITTEN PLAN, A LICENSEE MAY FIRST APPEAL ANY INTERMEDIATE RESTRICTION OR CONDITION ON ITS LICENSE TO THE DEPARTMENT THROUGH AN INFORMAL REVIEW PROCESS AS ESTABLISHED BY THE DEPARTMENT.

(B) IF THE RESTRICTION OR CONDITION REQUIRES PAYMENT OF A CIVIL FINE PURSUANT TO THIS PARAGRAPH (b), THE LICENSEE MAY REQUEST THAT THE INFORMAL REVIEW BE CONDUCTED IN PERSON. IN ADDITION, THE LICENSEE MAY REQUEST AND THE DEPARTMENT SHALL GRANT A STAY IN PAYMENT OF THE FINE UNTIL FINAL DISPOSITION OF THE RESTRICTION OR CONDITION.

(C) IN THE EVENT A LICENSEE IS NOT SATISFIED WITH THE RESULT OF THE INFORMAL REVIEW OR CHOOSES NOT TO SEEK INFORMAL REVIEW, NO INTERMEDIATE RESTRICTION OR CONDITION ON THE LICENSEE SHALL BE IMPOSED UNTIL AFTER AN OPPORTUNITY FOR A HEARING HAS BEEN AFFORDED THE LICENSEE PURSUANT TO SECTION 24-4-105, C.R.S.

(IV) (A) IN THE EVENT THAT THE DEPARTMENT ASSESSES A CIVIL FINE PURSUANT TO THIS PARAGRAPH (b), MONEYS RECEIVED BY THE DEPARTMENT SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE ASSISTED LIVING RESIDENCE IMPROVEMENT CASH FUND, WHICH FUND IS HEREBY CREATED.

(B) THE GENERAL ASSEMBLY SHALL MAKE ANNUAL APPROPRIATIONS FROM THE ASSISTED LIVING RESIDENCE IMPROVEMENT CASH FUND FOR EXPENDITURES OF THE DEPARTMENT PURSUANT TO SUBPARAGRAPH (V) OF THIS PARAGRAPH (b).

(C) NOTWITHSTANDING ANY PROVISION OF SECTION 24-36-114, C.R.S., TO THE CONTRARY, ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS FROM THE ASSISTED LIVING RESIDENCE IMPROVEMENT CASH FUND CREATED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV) SHALL REMAIN IN THE ASSISTED LIVING RESIDENCE IMPROVEMENT CASH FUND.

(V) CIVIL FINES COLLECTED PURSUANT TO THIS PARAGRAPH (b) SHALL BE USED FOR EXPENSES RELATED TO:

(A) CONTINUING MONITORING REQUIRED PURSUANT TO THIS PARAGRAPH (b);

(B) EDUCATION FOR LICENSEES TO AVOID RESTRICTIONS OR CONDITIONS OR FACILITATE THE APPLICATION PROCESS OR THE CHANGE OF OWNERSHIP PROCESS;

(C) EDUCATION FOR RESIDENTS AND THEIR FAMILIES ABOUT RESOLVING PROBLEMS WITH A RESIDENCE, RIGHTS OF RESIDENTS, AND RESPONSIBILITIES OF RESIDENCES;

(D) PROVIDING TECHNICAL ASSISTANCE TO ANY RESIDENCE FOR THE PURPOSE OF COMPLYING WITH CHANGES IN RULES OR STATE OR FEDERAL LAW;

(E) RELOCATING RESIDENTS TO OTHER FACILITIES OR RESIDENCES;

(F) MAINTAINING THE OPERATION OF A RESIDENCE PENDING CORRECTION OF VIOLATIONS, AS DETERMINED NECESSARY BY THE DEPARTMENT;

(G) CLOSING A RESIDENCE; OR

(H) REIMBURSING RESIDENTS FOR PERSONAL FUNDS LOST, AS DETERMINED NECESSARY BY THE DEPARTMENT.

**SECTION 8.** 25-27-107, Colorado Revised Statutes, is amended to read:

**25-27-107. License fees.** (1) (a) ON AND AFTER JULY 1, 2002, a nonrefundable fee of ~~fifty~~ ONE HUNDRED FIFTY dollars shall be submitted to the department with an application for an original or renewal license to operate ~~a personal care boarding home~~ AN ASSISTED LIVING RESIDENCE, and an additional fee of ~~ten~~ TWENTY-THREE dollars per available bed in the ~~facility~~ RESIDENCE shall be submitted to the department once the applicant is notified that the application has been approved; EXCEPT THAT AN ASSISTED LIVING RESIDENCE THAT MEETS THE DEFINITION OF A HIGH MEDICAID UTILIZATION RESIDENCE SHALL SUBMIT AN ADDITIONAL FEE OF FIFTEEN DOLLARS PER AVAILABLE BED IN THE RESIDENCE TO THE DEPARTMENT.

(b) IN ADDITION TO THE FEES SUBMITTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), APPLICANTS SHALL SUBMIT THE FOLLOWING FEES:

(I) A FEE OF FIVE THOUSAND DOLLARS FOR A LICENSE RELATED TO NEW RESIDENCE OPERATIONS; EXCEPT THAT THIS FEE SHALL NOT APPLY TO LIFE CARE FACILITIES IN EXISTENCE PRIOR TO JULY 1, 2002;

(II) A FEE OF TWO THOUSAND FIVE HUNDRED DOLLARS TO REISSUE A NEW LICENSE WHEN THERE HAS BEEN A CHANGE OF OWNERSHIP OF A RESIDENCE; AND

(III) UPON INITIAL APPLICATION, A LICENSEE SHALL SUBMIT A FEE OF ONE THOUSAND ONE HUNDRED FIFTY DOLLARS RELATED TO ESTABLISHING NEW SERVICES FOR RESIDENTS WHO NEED A SECURE ENVIRONMENT.

(c) (I) LICENSEES SHALL SUBMIT TO THE DEPARTMENT ONE HUNDRED FIFTY DOLLARS AS AN APPLICATION FEE AND A FEE OF TWENTY-THREE DOLLARS PER BED ADDED BY THE RESIDENCE WHEN THE LICENSEE INCREASES THE NUMBER OF BEDS IN A RESIDENCE PRIOR TO RENEWAL. THE FEE FOR AN INCREASED NUMBER OF BEDS IN A RESIDENCE SHALL BE PAID AT THE TIME THE REQUEST FOR THE INCREASE IS MADE WITH THE LICENSEE'S APPLICATION.

(II) AN ASSISTED LIVING RESIDENCE THAT MEETS THE DEFINITION OF A HIGH MEDICAID UTILIZATION RESIDENCE SHALL SUBMIT TO THE DEPARTMENT ONE HUNDRED FIFTY DOLLARS AS AN APPLICATION FEE AND A FEE OF FIFTEEN DOLLARS PER BED ADDED BY THE RESIDENCE WHEN THE LICENSEE INCREASES THE NUMBER OF BEDS IN A RESIDENCE PRIOR TO RENEWAL. THE FEE FOR AN INCREASED NUMBER OF BEDS IN A RESIDENCE SHALL BE PAID AT THE TIME THE REQUEST FOR THE INCREASE IS MADE WITH THE LICENSEE'S APPLICATION.

(d) (I) LICENSEES WHO UNDERGO NEW CONSTRUCTION OR SUBSTANTIAL REMODELING OF A RESIDENCE SHALL SUBMIT A FEE AS DETERMINED BY THE BOARD PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (d) TO THE DEPARTMENT UPON COMPLETION OF THE NEW CONSTRUCTION OR SUBSTANTIAL REMODELING OF A RESIDENCE.

(II) FOR THE PURPOSES OF THIS PARAGRAPH (d), "SUBSTANTIAL REMODELING" MEANS ANY PHYSICAL ALTERATION TO AN ASSISTED LIVING RESIDENCE THAT AFFECTS THE FIRE SAFETY RATINGS OF SUCH RESIDENCE AS DETERMINED BY THE DEPARTMENT AND THE PHYSICAL ALTERATION:

(A) IS TO THE USE OR CONFIGURATION OF THE INTERIOR PARTITION OR THE EXTERIOR SHELL OF THE RESIDENCE;

(B) AFFECTS THE BUILDING SYSTEM OF THE RESIDENCE, INCLUDING, BUT NOT LIMITED TO, MECHANICAL, ELECTRICAL, PLUMBING, FIRE PROTECTION AND SUPPRESSION, OR STRUCTURAL SYSTEMS; OR

(C) IMPEDES OR CHANGES INGRESS OR EGRESS TO THE RESIDENCE.

(III) "SUBSTANTIAL REMODELING" DOES NOT INCLUDE PAINTING, CARPETING, OR REDECORATING A RESIDENCE WHEN SUCH ACTIVITIES DO NOT AFFECT THE FIRE SAFETY RATING OF SUCH RESIDENCE.

(IV) THE BOARD SHALL DETERMINE BY RULE VARIOUS SUBSTANTIAL REMODELING FEES; EXCEPT THAT NO SUCH FEE SHALL EXCEED TWO THOUSAND DOLLARS.

(e) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT FEES COLLECTED PURSUANT TO THIS SECTION ARE DESIGNED TO ASSIST THE DEPARTMENT IN TIMELY REVIEWS OR INSPECTIONS OF A RESIDENCE OR PLANS THAT AFFECT SUCH RESIDENCE.

(2) The fees collected pursuant to ~~subsection (1)~~ of this section shall be transmitted to the state treasurer, who shall credit the same to the ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE cash fund created in section 25-27-107.5.

(3) Notwithstanding the amount specified for any fee in ~~subsection (1)~~ of this section, the state board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(4) FEES COLLECTED PURSUANT TO PARAGRAPHS (b) TO (d) OF SUBSECTION (1) OF THIS SECTION SHALL BE USED BY THE DEPARTMENT, IN ADDITION TO REGULATORY AND ADMINISTRATIVE FUNCTIONS, TO PROVIDE TECHNICAL ASSISTANCE AND EDUCATION TO ASSISTED LIVING RESIDENCES RELATED TO COMPLIANCE WITH COLORADO LAW. THE DEPARTMENT MAY CONTRACT WITH PRIVATE ENTITIES TO ASSIST THE DEPARTMENT IN PROVIDING SUCH TECHNICAL ASSISTANCE AND EDUCATION.

**SECTION 9.** 25-27-107.5, Colorado Revised Statutes, is amended to read:

**25-27-107.5. Assisted living residence cash fund created.** The fees collected pursuant to section 25-27-107, plus any civil penalty collected pursuant to section 25-27-103 (1) (b), shall be transmitted to the state treasurer, who shall credit the same to the ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the department in performing its duties under this article. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall

not be credited or transferred to the general fund or any other fund.

**SECTION 10.** 25-27-109, Colorado Revised Statutes, is amended to read:

**25-27-109. List of licensed residences maintained by the department.** The department shall maintain a current list of ~~personal care boarding homes which~~ ASSISTED LIVING RESIDENCES THAT have been licensed and shall make such list available to individuals upon request.

**SECTION 11.** 25-27-110 (1) and (2), Colorado Revised Statutes, are amended to read:

**25-27-110. Advisory committee - sunset review.** (1) There is hereby established an advisory committee to the department for the purposes of making recommendations to the department and reporting to the house ~~and senate committees~~ COMMITTEE on health, environment, welfare, and institutions AND THE SENATE COMMITTEE ON HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES concerning the ~~regulations~~ RULES promulgated by the state board pursuant to this article, implementation of the licensing program, the impact of the program, and the effectiveness of enforcement. The advisory committee shall consist of not less than nine members to be appointed by the executive director of the department. The committee shall elect its own chairperson. Such members shall be representatives from ~~personal care boarding homes~~ ASSISTED LIVING RESIDENCES, the Colorado commission on the aging, local health departments, local boards of health, and consumer and other agencies and organizations providing services to or concerned with residents of ~~personal care boarding homes~~ ASSISTED LIVING RESIDENCES. Members of the advisory committee shall serve on a voluntary basis and shall serve without compensation.

(2) (a) ~~The advisory committee shall conduct an evaluation of the licensing program and shall report its findings annually to the house and senate committees on health, environment, welfare, and institutions not later than January 15, 1990, January 15, 1992, and January 15, 1994.~~ THE DEPARTMENT IN CONSULTATION WITH THE ADVISORY COMMITTEE SHALL DEVELOP RECOMMENDATIONS AND REPORT SUCH RECOMMENDATIONS TO THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES, THE HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES COMMITTEE OF THE SENATE, AND THE JOINT BUDGET COMMITTEE NO LATER THAN FEBRUARY 15, 2003, ON WHETHER OR NOT RISK-BASED INSPECTIONS PROVIDE MORE EFFICIENT EXPENDITURES OF DEPARTMENT RESOURCES AND AT THE SAME TIME ADEQUATELY PROTECT THE HEALTH, SAFETY, AND WELL-BEING OF RESIDENTS OF ASSISTED LIVING RESIDENCES. SUCH REPORT SHALL INCLUDE AN EVALUATION OF AT LEAST THE FOLLOWING ELEMENTS:

(I) THE DETERMINATION OF OTHER STATES REGARDING THE EFFECTIVENESS OF RISK-BASED INSPECTIONS;

(II) NECESSARY COMPONENTS TO BE INCLUDED BY THE DEPARTMENT AS STANDARDS IF A RISK-BASED INSPECTION IS ADOPTED, INCLUDING, BUT NOT LIMITED TO, CHANGES IN MANAGEMENT COMPOSITION OF ASSISTED LIVING RESIDENCES UNDER A RISK-BASED INSPECTION PROCESS AND HOW CHANGES IN SUCH MANAGEMENT SHOULD BE ADDRESSED;

(III) WHETHER A RISK-BASED INSPECTION PROCESS IS THE MOST EFFECTIVE METHOD OF PROTECTING THE HEALTH, SAFETY, AND WELL-BEING OF RESIDENTS OF ASSISTED LIVING RESIDENCES;

(IV) NECESSARY REPORTING REQUIREMENTS FOR A RISK-BASED INSPECTION PROCESS;

(V) ANY DIFFERENCES IN THE COST OF ADMINISTERING A RISK-BASED INSPECTION PROGRAM AND HOW ANY DIFFERENCES IN COSTS WOULD BE REFLECTED IN FEES ASSESSED TO LICENSEES; AND

(VI) ANY OTHER MATTER THE ADVISORY COMMITTEE DETERMINES TO BE NECESSARY FOR THE EVALUATION OF RISK-BASED INSPECTIONS.

(b) THE DEPARTMENT AND THE ADVISORY COMMITTEE MAY CONSULT WITH ANY PARTY NECESSARY TO EVALUATE RISK-BASED INSPECTIONS. IN ADDITION TO THE NINE MEMBERS APPOINTED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE EXECUTIVE DIRECTOR MAY APPOINT MEMBERS TO THE ADVISORY COMMITTEE TO EVALUATE RISK-BASED INSPECTIONS AS DETERMINED NECESSARY BY THE EXECUTIVE DIRECTOR. ANY ADDITIONAL MEMBER TO THE ADVISORY COMMITTEE SHALL SERVE ON A VOLUNTARY BASIS AND WITHOUT COMPENSATION. ANY ADDITIONAL MEMBER SHALL SERVE UNTIL MAY 1, 2003.

**SECTION 12.** 25-27-111, Colorado Revised Statutes, is amended to read:

**25-27-111. Rules.** The state board shall promulgate such ~~regulations~~ RULES as are necessary to implement this article pursuant to the provisions of article 4 of title 24, C.R.S.

**SECTION 13.** Article 27 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**25-27-113. Fees for providers with high medicaid utilization and disproportionate low income residences.** (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT ASSISTED LIVING RESIDENCES PROVIDE NECESSARY SERVICES TO MANY RESIDENTS WHO RECEIVE MEDICAID BENEFITS PURSUANT TO ARTICLE 4 OF TITLE 26, C.R.S. BECAUSE SO MANY COLORADANS BENEFIT FROM ASSISTED LIVING CENTERS THAT SERVE MEDICAID RECIPIENTS, THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT ASSISTED LIVING RESIDENCES THAT HAVE HIGH MEDICAID UTILIZATION SHOULD RECEIVE A MODIFIED FEE SCHEDULE FOR FEES REQUIRED BY THIS ARTICLE.

(2) RESIDENCES IDENTIFIED AS HIGH MEDICAID UTILIZATION RESIDENCES BY THE DEPARTMENT SHALL BE SUBJECT TO A MODIFIED FEE SCHEDULE AS DETERMINED BY THE BOARD.

(3) RESIDENCES IDENTIFIED AS SERVICING A DISPROPORTIONATE NUMBER OF LOW INCOME RESIDENTS MAY BE SUBJECT TO A MODIFIED FEE SCHEDULE AS DETERMINED BY THE BOARD.

**SECTION 14.** 25-1-107 (1) (l) (I) and (4), Colorado Revised Statutes, are

amended to read:

**25-1-107. Powers and duties of the department - repeal.** (1) The department has, in addition to all other powers and duties imposed upon it by law, the following powers and duties:

(1) (I) To annually license and to establish and enforce standards for the operation of general hospitals, hospital units as defined in section 25-3-101 (2), psychiatric hospitals, community clinics, rehabilitation centers, convalescent centers, community mental health centers, facilities for persons with developmental disabilities, habilitation centers for brain-damaged children, chiropractic centers and hospitals, maternity hospitals, nursing care facilities, ~~residential care facilities~~, the pilot project rehabilitative nursing facility, hospice care, ~~personal care boarding homes~~ ASSISTED LIVING RESIDENCES, dialysis treatment clinics, ambulatory surgical centers, birthing centers, and other facilities of a like nature, except those wholly owned and operated by any governmental unit or agency. In establishing and enforcing such standards and in addition to the required announced inspections, the department shall, within available appropriations, make additional inspections without prior notice to the facility. Such inspections shall be made only during the hours of 7 a.m. to 7 p.m. The issuance, suspension, renewal, revocation, annulment, or modification of licenses shall be governed by the provisions of section 24-4-104, C.R.S., and section 25-3-102, and all licenses shall bear the date of issue and cover a twelve-month period. Nothing contained in this paragraph (1) shall be construed to prevent the department from adopting and enforcing, with respect to projects for which federal assistance has been obtained or shall be requested, such higher standards as may be required by applicable federal laws or regulations of federal agencies responsible for the administration of such federal laws.

(4) In the exercise of its powers, the department shall not promulgate any rule, regulation, or standard ~~which~~ THAT limits or interferes with the ability of an individual to enter into a contract with a private pay facility concerning the programs or services provided at the private pay facility. For the purposes of this subsection (4), "private pay facility" means a skilled nursing facility or intermediate care facility subject to the requirements of section 25-1-120 or ~~a personal care boarding home~~ AN ASSISTED LIVING RESIDENCE licensed pursuant to section 25-27-105 that is not publicly funded or is not certified to provide services that are reimbursed from state or federal assistance funds.

**SECTION 15.** 25-1-108 (3), Colorado Revised Statutes, is amended, and the said 25-1-108 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-1-108. Powers and duties of the state board of health - report.** (3) In the exercise of its powers, the department shall not promulgate any rule ~~regulation~~, or standard ~~which~~ THAT limits or interferes with the ability of an individual to enter into a contract with a private pay facility concerning the programs or services provided at the private pay facility. For the purposes of this subsection (3), "private pay facility" means a skilled nursing facility or intermediate care facility subject to the requirements of section 25-1-120 or ~~a personal care boarding home~~ AN ASSISTED LIVING RESIDENCE licensed pursuant to section 25-27-105 that is not publicly funded or is not certified to provide services that are reimbursed from state or federal

assistance funds.

(5) IN CONSULTATION WITH THE ADVISORY COMMITTEE FOR ASSISTED LIVING RESIDENCES, THE BOARD SHALL REPORT TO THE HOUSE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE, THE SENATE HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES COMMITTEE, AND THE JOINT BUDGET COMMITTEE ON OCTOBER 15, 2003, AND EVERY FIVE YEARS THEREAFTER, CONCERNING THE COST OF ADMINISTERING THE ASSISTED LIVING RESIDENCE PROGRAM, STATUTORY AND REGULATORY MANDATES FOR WHICH THE DEPARTMENT DOES NOT HAVE ADEQUATE RESOURCES, AND ANY ADDITIONAL MONEYS NECESSARY TO FUND THE PROGRAM.

**SECTION 16.** 25-3-101 (1), Colorado Revised Statutes, is amended to read:

**25-3-101. Hospitals - health facilities - licensed.** (1) It is unlawful for any person, partnership, association, or corporation to open, conduct, or maintain any general hospital, hospital unit as defined in subsection (2) of this section, psychiatric hospital, community clinic, rehabilitation center, convalescent center, community mental health center, facility for persons with developmental disabilities, habilitation center for brain-damaged children, chiropractic center and hospital, maternity hospital, nursing care facility, ~~residential care facility~~, pilot project rehabilitative nursing facility, hospice care, ~~personal care boarding home~~ ASSISTED LIVING RESIDENCE, except a ~~personal care boarding home~~ AN ASSISTED LIVING RESIDENCE shall be assessed a license fee as set forth in section 25-27-107, dialysis treatment clinic, ambulatory surgical center, birthing center, or other facility of a like nature, except those wholly owned and operated by any governmental unit or agency, without first having obtained a license therefor from the department of public health and environment.

**SECTION 17. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the assisted living residence cash fund not otherwise appropriated, to the department of public health and environment, for allocation to the health facilities division, for the fiscal year beginning July 1, 2002, the sum of two hundred ninety-one thousand four hundred eighty-two dollars (\$291,482) and 3.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2002, the sum of nine thousand three hundred forty-nine dollars (\$9,349), or so much as may be necessary, for the provision of legal services to the department of public health and environment for the implementation of this act. Said sum shall be from cash funds exempt received from the department of public health and environment out of the appropriation made in subsection (1) of this section.

**SECTION 18. Effective date - applicability.** This act shall take effect July 1, 2002, and shall apply to licenses issued or renewed to assisted living residences, fees collected from assisted living residences, and intermediate penalties assessed against assisted living residences on or after said date.

**SECTION 19. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 7, 2002