

CHAPTER 436

HEALTH AND ENVIRONMENT

SENATE BILL 08-153

BY SENATOR(S) Boyd, Hagedorn, Morse, Tochtrop, Williams, Shaffer, and Tupa;
 also REPRESENTATIVE(S) Ferrandino, Gagliardi, Marostica, McGihon, Green, Hodge, Jahn, Kerr A., Marshall, Merrifield,
 Middleton, Peniston, Stafford, and Todd.

AN ACT

CONCERNING LICENSURE OF HOME CARE AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 25-1.5-103 (1) (a) (I), Colorado Revised Statutes, is amended to read:

25-1.5-103. Health facilities - powers and duties of the department - limitations on rules promulgated by the department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a)(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, acute treatment units, facilities for persons with developmental disabilities, habilitation centers for brain-damaged children, chiropractic centers and hospitals, maternity hospitals, nursing care facilities, the pilot project rehabilitative nursing facility, hospice care, assisted living residences, dialysis treatment clinics, ambulatory surgical centers, birthing centers, HOME CARE AGENCIES, 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,

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

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 (a) 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.

SECTION 2. 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, acute treatment unit, facility for persons with developmental disabilities, habilitation center for brain-damaged children, chiropractic center and hospital, maternity hospital, nursing care facility, pilot project rehabilitative nursing facility, hospice care, assisted living residence, except 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, HOME CARE AGENCY, 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 3. Title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 27.5
Home Care Agencies

25-27.5-101. 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 FOR HOME CARE AGENCIES IN THE STATE OF COLORADO AND TO PROVIDE THE AUTHORITY FOR THE ADMINISTRATION AND ENFORCEMENT OF SUCH MINIMUM STANDARDS AND RULES. THESE STANDARDS AND RULES SHALL BE SUFFICIENT TO ASSURE THE HEALTH, SAFETY, AND WELFARE OF HOME CARE CONSUMERS.

(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 HOME CARE AGENCIES, 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 HOME CARE CONSUMERS. RISK SHALL BE EVALUATED BASED ON THE HOME CARE AGENCY'S COMPLIANCE HISTORY, QUALITY PERFORMANCE MEASURES, AND OTHER RELEVANT FACTORS SET FORTH IN RULES PROMULGATED BY THE STATE BOARD OF HEALTH.

(3) FURTHER, THE GENERAL ASSEMBLY DETERMINES AND DECLARES THAT, IN ADMINISTERING AND ENFORCING STANDARDS FOR HOME CARE AGENCIES, THE INSPECTIONS BY THE DEPARTMENT SHOULD FOCUS ON HOME CARE CONSUMER SAFETY AND OUTCOMES.

25-27.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CERTIFIED HOME CARE AGENCY" MEANS AN AGENCY THAT IS CERTIFIED BY EITHER THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES OR THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO PROVIDE SKILLED HOME HEALTH OR PERSONAL CARE SERVICES.

(2) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(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; OR

(VIII) A HOME CARE PLACEMENT AGENCY AS DEFINED IN SUBSECTION (5) OF THIS SECTION.

(4) "HOME CARE CONSUMER" MEANS A PERSON WHO RECEIVES SKILLED HOME HEALTH SERVICES OR PERSONAL CARE SERVICES IN HIS OR HER TEMPORARY OR

PERMANENT HOME OR PLACE OF RESIDENCE FROM A HOME CARE AGENCY OR HOME CARE PLACEMENT AGENCY.

(5) "HOME CARE PLACEMENT AGENCY" MEANS AN ORGANIZATION THAT, FOR A FEE, PROVIDES ONLY REFERRALS OF PROVIDERS TO HOME CARE CONSUMERS SEEKING SERVICES. A HOME CARE PLACEMENT AGENCY DOES NOT PROVIDE 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 DIRECTLY OR BY CONTRACT. SUCH ORGANIZATIONS SHALL FOLLOW THE REQUIREMENTS OF SECTIONS 25-27.5-103 (2), 25-27.5-104 (1) (c), AND 25-27.5-107.

(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.

(7) "SKILLED HOME HEALTH SERVICES" MEANS HEALTH AND MEDICAL SERVICES FURNISHED TO A HOME CARE CONSUMER IN THE HOME CARE CONSUMER'S TEMPORARY OR PERMANENT HOME OR PLACE OF RESIDENCE THAT INCLUDE WOUND CARE SERVICES; USE OF MEDICAL SUPPLIES INCLUDING DRUGS AND BIOLOGICALS PRESCRIBED BY A PHYSICIAN; IN-HOME INFUSION SERVICES; NURSING SERVICES; HOME HEALTH AIDE OR CERTIFIED NURSE AIDE SERVICES THAT REQUIRE THE SUPERVISION OF A LICENSED OR CERTIFIED HEALTH CARE PROFESSIONAL ACTING WITHIN THE SCOPE OF HIS OR HER LICENSE OR CERTIFICATE; OCCUPATIONAL THERAPY; PHYSICAL THERAPY; RESPIRATORY CARE SERVICES; DIETETICS AND NUTRITION COUNSELING SERVICES; MEDICATION ADMINISTRATION; MEDICAL SOCIAL SERVICES; AND SPEECH-LANGUAGE PATHOLOGY SERVICES. "SKILLED HOME HEALTH SERVICES" DOES NOT INCLUDE THE DELIVERY OF EITHER DURABLE MEDICAL EQUIPMENT OR MEDICAL SUPPLIES.

(8) "STATE BOARD" MEANS THE STATE BOARD OF HEALTH.

25-27.5-103. License required - civil and criminal penalties. (1) ON OR AFTER JUNE 1, 2009, IT IS UNLAWFUL FOR ANY PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION TO CONDUCT OR MAINTAIN A HOME CARE AGENCY THAT PROVIDES SKILLED HOME HEALTH SERVICES WITHOUT HAVING SUBMITTED A COMPLETED APPLICATION FOR LICENSURE AS A HOME CARE AGENCY TO THE DEPARTMENT. ON OR AFTER JANUARY 1, 2010, IT IS UNLAWFUL FOR ANY PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION TO CONDUCT OR MAINTAIN A HOME CARE AGENCY THAT PROVIDES SKILLED HOME HEALTH SERVICES WITHOUT HAVING OBTAINED A LICENSE THEREFOR FROM THE DEPARTMENT. ON OR AFTER JANUARY 1, 2010, IT IS UNLAWFUL FOR ANY PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION TO CONDUCT OR MAINTAIN A HOME CARE AGENCY THAT PROVIDES IN-HOME PERSONAL CARE SERVICES WITHOUT HAVING SUBMITTED A COMPLETED APPLICATION FOR

LICENSURE AS A HOME CARE AGENCY TO THE DEPARTMENT. ON OR AFTER JANUARY 1, 2011, IT IS UNLAWFUL FOR ANY PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION TO CONDUCT OR MAINTAIN A HOME CARE AGENCY THAT PROVIDES IN-HOME PERSONAL CARE SERVICES WITHOUT HAVING OBTAINED A LICENSE THEREFOR FROM THE DEPARTMENT. ANY PERSON WHO VIOLATES THIS PROVISION:

(a) IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT LESS THAN FIFTY DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS; AND

(b) MAY BE SUBJECT TO A CIVIL PENALTY ASSESSED BY THE DEPARTMENT OF UP TO TEN THOUSAND DOLLARS FOR EACH VIOLATION OF THIS SECTION. THE DEPARTMENT SHALL ASSESS, ENFORCE, AND COLLECT THE PENALTY IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., FOR CREDIT TO THE HOME CARE AGENCY CASH FUND CREATED IN SECTION 25-27.5-105. 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.

(2) (a) ON OR AFTER JUNE 1, 2009, ANY HOME CARE PLACEMENT AGENCY SHALL NOTIFY THE DEPARTMENT IN WRITING THAT IT PROVIDES REFERRALS FOR SKILLED HOME HEALTH SERVICES OR PERSONAL CARE SERVICES, AND SHALL ANNUALLY UPDATE SUCH NOTICE. THE DEPARTMENT SHALL MAINTAIN A LIST OF ALL HOME CARE PLACEMENT AGENCIES, AND SHALL MAKE THE LIST ACCESSIBLE TO THE PUBLIC.

(b) A PERSON WHO VIOLATES THIS SECTION MAY BE SUBJECT TO A CIVIL PENALTY ASSESSED BY THE DEPARTMENT THAT IS NOT LESS THAN FIVE HUNDRED DOLLARS PER YEAR OR MORE THAN ONE THOUSAND DOLLARS PER YEAR FOR FAILURE TO REGISTER WITH THE DEPARTMENT. THE DEPARTMENT SHALL ASSESS, ENFORCE, AND COLLECT THE PENALTY IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S. ANY MONEYS COLLECTED SHALL BE DEPOSITED IN THE HOME CARE AGENCY CASH FUND CREATED IN SECTION 25-27.5-105.

(3) IF A FACILITY THAT IS LICENSED PURSUANT TO THIS TITLE PROVIDES SKILLED HOME HEALTH OR PERSONAL CARE SERVICES ALSO PROVIDES THE SERVICES OUTSIDE THE PREMISES OF THE LICENSED FACILITY, THE FACILITY LICENSE SHALL BE AMENDED TO INCLUDE THE SERVICES AND THE FACILITY SHALL MEET THE REQUIREMENTS PROMULGATED BY THE STATE BOARD.

25-27.5-104. Minimum standards for home care agencies - rules. (1) ON OR BEFORE MAY 1, 2009, THE STATE BOARD SHALL PROMULGATE RULES PURSUANT TO SECTION 24-4-103, C.R.S., PROVIDING MINIMUM STANDARDS FOR THE OPERATION OF HOME CARE AGENCIES WITHIN THE STATE OF COLORADO. IN PROMULGATING THESE RULES, THE STATE BOARD SHALL CONSIDER THE DIFFERENT REQUIREMENTS APPROPRIATE TO THE VARIOUS TYPES OF SKILLED HOME HEALTH AND PERSONAL CARE SERVICES, INCLUDING DIFFERENTIATING REQUIREMENTS FOR PROVIDERS THAT ARE SUBSTANTIALLY FUNDED THROUGH MEDICARE AND MEDICAID REIMBURSEMENT, PROVIDERS FOR THE PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY ESTABLISHED IN SECTION 25.5-5-412, PROVIDERS THAT ARE ALREADY LICENSED UNDER THIS TITLE, AND PROVIDERS THAT ARE SOLELY OR SUBSTANTIALLY PRIVATELY FUNDED. THIS DIFFERENTIATION MAY CONSIDER THE REQUIREMENTS ALREADY IMPOSED BY OTHER FEDERAL AND STATE REGULATORY AGENCIES. SUCH

RULES SHALL INCLUDE BUT NEED NOT BE LIMITED TO THE FOLLOWING:

(a) INSPECTION OF HOME CARE AGENCIES BY THE DEPARTMENT OR ITS DESIGNATED REPRESENTATIVE;

(b) MINIMUM EDUCATIONAL, TRAINING, AND EXPERIENCE STANDARDS FOR THE ADMINISTRATOR AND STAFF OF AN AGENCY, INCLUDING A REQUIREMENT THAT SUCH PERSONS BE OF GOOD, MORAL, AND RESPONSIBLE CHARACTER;

(c) REQUIREMENTS FOR DISCLOSURE NOTICES TO BE PROVIDED BY HOME CARE AGENCIES AND HOME CARE PLACEMENT AGENCIES TO HOME CARE CONSUMERS CONCERNING THE DUTIES AND EMPLOYMENT STATUS OF THE INDIVIDUAL PROVIDING SERVICES;

(d) INTERMEDIATE ENFORCEMENT REMEDIES AS AUTHORIZED BY SECTION 25-27.5-108;

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

(f) ESTABLISHING OCCURRENCE REPORTING REQUIREMENTS PURSUANT TO SECTION 25-1-124, C.R.S.;

(g) FEES FOR HOME CARE AGENCY LICENSURE, WHICH SHALL NOT EXCEED ONE THOUSAND FIVE HUNDRED DOLLARS PER YEAR FOR TWO YEARS FROM THE EFFECTIVE DATE OF FEES ESTABLISHED BY RULE FOR HOME CARE AGENCIES THAT ARE CERTIFIED PROVIDERS THROUGH THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES OR THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING. HOME CARE AGENCY FEES SHALL BE PAYABLE TO THE HOME CARE AGENCY CASH FUND. THE ANNUAL FEE SHALL INCLUDE A COMPONENT THAT REFLECTS WHETHER A SURVEY IS PLANNED FOR THE YEAR BASED ON THE AGENCY'S COMPLIANCE HISTORY. THE FEE SCHEDULE SHALL ALSO BE TIERED TO REFLECT THE DIFFERENCES IN TYPE AND VOLUME OF SERVICES OF VARIOUS HOME CARE AGENCIES, INCLUDING BUT NOT LIMITED TO THEIR VOLUME OF MEDICAID AND MEDICARE SERVICES. THE FEE SCHEDULE SHALL ALSO PROVIDE FOR REDUCED FEES FOR HOME CARE AGENCIES THAT ARE CERTIFIED PRIOR TO INITIAL LICENSE APPLICATION. THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL NOT CHARGE A DUPLICATE FEE FOR SURVEY WORK CONDUCTED PURSUANT TO ITS ROLE AS STATE SURVEY AGENCY FOR THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES OR THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING. NO LATER THAN JANUARY 1, 2011, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL ISSUE AN INDEPENDENT REPORT DETAILING THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE ADMINISTRATION OF HOME CARE AGENCY LICENSURE.

(h) REQUIREMENTS FOR HOME CARE AGENCIES TO PROVIDE EVIDENCE OF AND MAINTAIN EITHER LIABILITY INSURANCE COVERAGE OR A SURETY BOND IN LIEU OF LIABILITY INSURANCE COVERAGE, IN AMOUNTS SET THROUGH RULES OF THE STATE BOARD.

(2) RULES PROMULGATED BY THE STATE BOARD ARE SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 24-4-106, C.R.S.

(3) THERE IS HEREBY ESTABLISHED A HOME CARE ADVISORY COMMITTEE WHICH SHALL MAKE RECOMMENDATIONS TO THE DEPARTMENT AND THE STATE BOARD OF HEALTH CONCERNING THE RULES PROMULGATED PURSUANT TO THIS ARTICLE AND IMPLEMENTATION OF THE LICENSING OF HOME CARE AGENCIES. THE HOME CARE ADVISORY COMMITTEE SHALL BE APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT. THE ADVISORY COMMITTEE SHALL, AT A MINIMUM, CONSIST OF REPRESENTATIVES FROM SKILLED HOME HEALTH SERVICES AGENCIES, PERSONAL CARE SERVICES AGENCIES, MEMBERS OF THE DISABLED COMMUNITY WHO ARE HOME CARE CONSUMERS, SENIORS OR REPRESENTATIVES OF SENIORS WHO ARE HOME CARE CONSUMERS, PROVIDERS OF MEDICAID SERVICES, PROVIDERS OF IN-HOME SUPPORT SERVICES, AND REPRESENTATIVES OF THE DEPARTMENTS OF HEALTH CARE POLICY AND FINANCING AND HUMAN SERVICES. MEMBERS OF THE ADVISORY COMMITTEE SHALL SERVE AT THE PLEASURE OF THE APPOINTING AUTHORITY ON A VOLUNTARY BASIS AND SHALL SERVE WITHOUT COMPENSATION.

25-27.5-105. Home care agency cash fund created. THE FEES COLLECTED PURSUANT TO SECTION 25-27.5-104 (1), PLUS ANY CIVIL PENALTY COLLECTED PURSUANT TO SECTION 25-27.5-103 (1) (b), SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE HOME CARE AGENCY 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 IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

25-27.5-106. License - application - inspection - issuance. (1) AN APPLICATION FOR A LICENSE TO OPERATE A HOME CARE AGENCY SHALL BE SUBMITTED TO THE DEPARTMENT ANNUALLY UPON SUCH FORM AND IN SUCH MANNER AS PRESCRIBED BY THE DEPARTMENT.

(2) (a) THE DEPARTMENT SHALL INVESTIGATE AND REVIEW EACH ORIGINAL APPLICATION AND EACH RENEWAL APPLICATION FOR A LICENSE. THE DEPARTMENT SHALL DETERMINE AN APPLICANT'S COMPLIANCE WITH THE RULES ADOPTED PURSUANT TO SECTION 25-27.5-104 BEFORE A LICENSE IS ISSUED OR RENEWED. A CERTIFIED HOME CARE AGENCY THAT APPLIES FOR A LICENSE BY JUNE 1, 2009, SHALL BE EXEMPT FROM LICENSURE INSPECTION PRIOR TO ISSUANCE OF THE INITIAL LICENSE. THE DEPARTMENT SHALL MAKE SUCH INSPECTIONS AS IT DEEMS NECESSARY TO ENSURE THAT THE HEALTH, SAFETY, AND WELFARE OF THE HOME CARE AGENCY HOME CARE CONSUMERS ARE BEING PROTECTED. INSPECTIONS OF A HOME CARE CONSUMER'S HOME SHALL BE SUBJECT TO THE CONSENT OF THE HOME CARE CONSUMER TO ACCESS THE PROPERTY. THE HOME CARE AGENCY 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).

(b) THE DEPARTMENT SHALL KEEP ALL MEDICAL RECORDS OBTAINED DURING AN

INSPECTION OR INVESTIGATION OF A HOME CARE AGENCY CONFIDENTIAL AND THE MEDICAL RECORDS SHALL BE EXEMPT FROM DISCLOSURE PURSUANT TO SECTIONS 24-72-204, C.R.S., AND 25-1-124.

(3) (a) WITH THE SUBMISSION OF AN APPLICATION FOR A LICENSE GRANTED PURSUANT TO THIS ARTICLE, EACH OWNER, APPLICANT, OR LICENSEE SHALL SUBMIT A COMPLETE SET OF HIS OR HER FINGERPRINTS TO THE DEPARTMENT. THE DEPARTMENT SHALL FORWARD SUCH FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING THE RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION. THE OWNER, APPLICANT, OR LICENSEE SHALL PAY THE COSTS ASSOCIATED WITH THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK TO THE COLORADO BUREAU OF INVESTIGATION.

(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, OR WELFARE OF HOME CARE CONSUMERS OF THE HOME CARE AGENCY. THE DEPARTMENT SHALL MAINTAIN INFORMATION OBTAINED IN ACCORDANCE WITH THIS SECTION.

(4) NO LICENSE SHALL BE ISSUED OR RENEWED BY THE DEPARTMENT IF THE OWNER, APPLICANT, OR LICENSEE OF THE HOME CARE AGENCY 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, OR WELFARE OF THE HOME CARE CONSUMERS OF THE HOME CARE AGENCY.

(5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (6) AND (7) 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 RULES PROMULGATED PURSUANT TO THIS ARTICLE. EXCEPT FOR PROVISIONAL LICENSES ISSUED IN ACCORDANCE WITH SUBSECTIONS (6) AND (7) OF THIS SECTION, A LICENSE ISSUED OR RENEWED PURSUANT TO THIS SECTION SHALL EXPIRE ONE YEAR AFTER THE DATE OF ISSUANCE OR RENEWAL.

(6) THE DEPARTMENT MAY ISSUE A PROVISIONAL LICENSE TO AN APPLICANT FOR THE PURPOSE OF OPERATING A HOME CARE AGENCY FOR A PERIOD OF NINETY DAYS IF THE APPLICANT IS TEMPORARILY UNABLE TO CONFORM TO ALL OF THE MINIMUM STANDARDS REQUIRED UNDER THIS ARTICLE; EXCEPT THAT NO LICENSE SHALL BE ISSUED TO AN APPLICANT IF THE OPERATION OF THE APPLICANT'S HOME CARE AGENCY WILL ADVERSELY AFFECT THE HEALTH, SAFETY, OR WELFARE OF THE HOME CARE CONSUMERS OF SUCH HOME CARE AGENCY. 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 COMPLETION OF A CRIMINAL BACKGROUND CHECK IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION AND A FINDING IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION. A SECOND PROVISIONAL LICENSE MAY BE ISSUED, FOR A LIKE

TERM AND FEE, TO EFFECT COMPLIANCE. NO FURTHER PROVISIONAL LICENSES MAY BE ISSUED FOR THE CURRENT YEAR AFTER THE SECOND ISSUANCE.

(7) IF REQUESTED BY THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE DEPARTMENT MAY ISSUE A PROVISIONAL LICENSE FOR A PERIOD OF NINETY DAYS TO AN AGENCY THAT HAS APPLIED TO BE A CERTIFIED HOME CARE AGENCY AS DEFINED IN SECTION 25-27.5-102. A PROVISIONAL LICENSE SHALL NOT BE GRANTED PRIOR TO THE COMPLETION OF A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION AND A FINDING IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION. A SECOND PROVISIONAL LICENSE MAY BE ISSUED, FOR A LIKE TERM AND FEE, TO EFFECT COMPLIANCE. NO FURTHER PROVISIONAL LICENSES MAY BE ISSUED FOR THE CURRENT YEAR AFTER THE SECOND ISSUANCE.

25-27.5-107. Employee criminal history record check. ON AND AFTER JUNE 1, 2009, PRIOR TO EMPLOYING OR PLACING ANY PERSON, THE HOME CARE AGENCY OR HOME CARE PLACEMENT AGENCY SHALL REQUIRE THE PERSON SEEKING EMPLOYMENT OR PLACEMENT TO SUBMIT TO A CRIMINAL HISTORY RECORD CHECK. THE HOME CARE AGENCY OR HOME CARE PLACEMENT AGENCY OR THE PERSON SEEKING EMPLOYMENT WITH THE HOME CARE AGENCY SHALL PAY THE COSTS OF SUCH INQUIRY. THE CRIMINAL HISTORY RECORD CHECK SHALL BE CONDUCTED NOT MORE THAN NINETY DAYS PRIOR TO THE EMPLOYMENT OF THE APPLICANT.

25-27.5-108. License denial - suspension - revocation. (1) UPON DENIAL OF AN APPLICATION FOR AN ORIGINAL LICENSE, THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN WRITING OF SUCH DENIAL BY MAILING A NOTICE TO 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 THE APPLICANT, WITHIN THIRTY DAYS AFTER RECEIVING SUCH NOTICE, PETITIONS THE DEPARTMENT TO SET A DATE AND PLACE FOR HEARING, AFFORDING 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 HOME CARE AGENCY THAT IS OUT OF COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE OR THE RULES PROMULGATED PURSUANT TO THIS ARTICLE. 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.; EXCEPT THAT THE DEPARTMENT MAY IMPLEMENT A SUMMARY SUSPENSION PRIOR TO A HEARING IN ACCORDANCE WITH 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 HOME CARE AGENCY;

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

(E) PAYING A CIVIL FINE NOT TO EXCEED TEN THOUSAND DOLLARS PER CALENDAR YEAR FOR ALL VIOLATIONS.

(II) (A) IF THE DEPARTMENT IMPOSES AN INTERMEDIATE RESTRICTION OR CONDITION THAT IS NOT A RESULT OF A SERIOUS AND IMMEDIATE THREAT TO HEALTH OR WELFARE, 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 SERIOUS AND IMMEDIATE THREAT TO HEALTH, SAFETY, OR WELFARE, THE DEPARTMENT SHALL NOTIFY THE LICENSEE IN WRITING, BY TELEPHONE, OR IN PERSON DURING AN ON-SITE VISIT. THE LICENSEE SHALL REMEDY THE CIRCUMSTANCES CREATING HARM OR POTENTIAL HARM 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, 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) IF 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) IF 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 HOME CARE AGENCY CASH FUND CREATED IN SECTION 25-27.5-105.

(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 HOME CARE CONSUMERS AND THEIR FAMILIES ABOUT RESOLVING PROBLEMS WITH A HOME CARE AGENCY, RIGHTS OF HOME CARE CONSUMERS, AND RESPONSIBILITIES OF HOME CARE AGENCIES;

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

(E) MONITORING AND ASSISTING IN THE TRANSITION OF HOME CARE CONSUMERS TO OTHER HOME CARE AGENCIES, WHEN THE TRANSITION IS A RESULT OF THE REVOCATION OF A LICENSE, OR OTHER APPROPRIATE MEDICAL SERVICES; OR

(F) MAINTAINING THE OPERATION OF A HOME CARE AGENCY PENDING CORRECTION OF VIOLATIONS, AS DETERMINED NECESSARY BY THE DEPARTMENT.

(3) THE DEPARTMENT SHALL REVOKE OR REFUSE TO RENEW THE LICENSE OF A HOME CARE AGENCY WHERE THE OWNER OR LICENSEE HAS BEEN CONVICTED OF A FELONY OR MISDEMEANOR INVOLVING MORAL TURPITUDE OR INVOLVING CONDUCT THAT THE DEPARTMENT DETERMINES COULD POSE A RISK TO THE HEALTH, SAFETY, OR WELFARE OF THE HOME CARE CONSUMERS OF SUCH HOME CARE AGENCY. SUCH REVOCATION OR REFUSAL SHALL BE MADE ONLY AFTER A HEARING IS PROVIDED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

25-27.5-109. Enforcement. THE DEPARTMENT IS RESPONSIBLE FOR THE ENFORCEMENT OF THIS ARTICLE AND THE RULES ADOPTED PURSUANT TO THIS ARTICLE.

25-27.5-110. Repeal of article - sunset review. (1) THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2014.

(2) PRIOR TO SUCH REPEAL, THE LICENSING OF HOME CARE AGENCIES SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

SECTION 4. 24-34-104 (45), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (45) The following agencies, functions, or both shall terminate on July 1, 2014:

(g) THE LICENSING OF HOME CARE AGENCIES IN ACCORDANCE WITH ARTICLE 27.5 OF TITLE 25, C.R.S.

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the home care agency cash fund created in section 25-27.5-105, Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2008, the sum of one hundred eighty-four thousand three hundred eighty-nine dollars (\$184,389) cash funds, and 2.9 FTE, or so much thereof as may

be necessary, for the implementation of this act. Of said sum, two thousand eight hundred eighty-one dollars (\$2,881) shall be allocated to administration and support for the purchase of legal services from the department of law and one hundred eighty-one thousand five hundred eight dollars (\$181,508) and 2.9 FTE shall be allocated to the health facilities and emergency medical services division.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2008, the sum of two thousand eight hundred eighty-one dollars (\$2,881) or so much thereof as may be necessary, for the provision of legal services to the department of public health and environment related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of public health and environment, executive director's office out of the appropriation for legal services in subsection 1 of this section.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of public safety, Colorado bureau of investigation, for the fiscal year beginning July 1, 2008, the sum of eighteen thousand one hundred seventy dollars (\$18,170), or so much thereof as may be necessary, for fingerprint processing services related to the implementation of this act. Of this sum, ten thousand two hundred thirty-five dollars (\$10,235) shall be cash funds from fingerprint and name check processing fees collected by the department, and seven thousand nine hundred thirty-five dollars (\$7,935) shall be cash funds from fingerprint and name check processing fees collected by the department for transmittal to the federal bureau of investigation.

SECTION 6. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 5, 2008