Title of Rule:	Repeal of Adult Foster Care and Home Care Allowance Regulations
Rule Number:	MSB 06-09-05-C
Division / Contact / Phone:	Safety Net Financing / Greg Tanner / 5177

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The purpose of this rule is to repeal the Department of Health Care Policy and Financing's regulations for the Adult Foster Care and Home Care Allowance programs, Sections 8.483 to 8.483.80 and 8.484 to 8.484.30, respectively, from the Department of Health Care Policy and Financing's Medical Assistance Rules (10-CCR-2505-10). Senate Bill 06-219 removed the administrative responsibility for these programs from the Department of Health Care Policy and Financing and transfered this responsibility to the Department of Human Services along with the corresponding appropriations. The Department of Human Services' rules will pass before the Medical Services Board passes these as final.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

   Senate Bill 06-219 requires the Department of Health Care Policy and Financing to transfer the administrative responsiblities for the Adult Foster Care and Home Care Allowance programs to the Department of Human Services.

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2006);
   Senate Bill 06-219

Initial Review		Final Adoption	**02/09/2007**
Proposed Effective Date	**01/01/2007**	Emergency Adoption	**12/08/2006**

DOCUMENT #01

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The groups affected by the proposed rule are the county departments of human services, Single Entry Point Agencies, the Department of Health Care Policy and Financing, the Department of Human Services and public assistance applicants and recipients. Senate Bill 06-219 did not alter these programs it only required the transfer of administrative responsibility from the Department of Health Care Policy and Financing to the Department of Human Services.

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

The groups referenced above will only be impacted by policy and procedural changes related to the transfer of administrative responsibilities for the Adult Foster Care and Home Care Allowance programs. This rule does not address these policy and procedural changes; therefore the quantitative and qualitative impact is unknown at this time.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department of Human Services may experience additional costs due to the additional resources the Department may require to administer the Adult Foster Care and Home Care Allowance programs. Senate Bill 06-219 transferred the appropriations for the Adult Foster Care and Home Care Allowance programs from the Department of Health Care Policy and Financing to the Department of Human Services. In addition, this bill provided the Department of Human Services with 1.0 FTE to oversee these two programs.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The implementation of this rule is required by Senate Bill 06-219 and is therefore not optional.

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

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The Department of Health Care Policy and Financing is implementing this rule as required by law. The Department of Human Services' rules will pass before the Medical Services Board passes these as final.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

The Department of Health Care Policy and Financing considered no other alternative methods because Senate Bill 06-219 required the Department to implement this rule.

8.483 ADULT FOSTER CARE

8.483.10 ADULT FOSTER CARE (AFC) means care provided on a 24-hour basis for no more than sixteen (16) residents in a non-medical facility certified by the agency designated by the State for frail elderly, physically or emotionally disabled adults, 18 years of age and over, who do not require 24-hour medical care.

8.483.20 DEFINITIONS/SERVICES REQUIREMENTS

.21 ADULT FOSTER CARE FACILITY means a licensed Assisted Living Residence (ALR) that meets all applicable federal, state, and local laws and regulations, and that has been additionally certified by the State Department of Health Care Policy and Financing or its designee as a provider of Adult Foster Care Services. AFCs shall provide the following:

A. Twenty-four hour residential care for no more than 16 residents;

B. An environment which is sanitary and safe from physical harm;

C. Adequate sleeping and living areas; and

D. Adequate recreational areas.

.22 ADULT FOSTER CARE SERVICES means those services which shall be provided by an AFC to each resident. These services shall include but are not limited to:

A. Availability of three balanced meals per day with provision for special diets when those diets have been prescribed as part of a medical plan;

B. Assistance with transportation;

C. Protective oversight;

D. Assistance with basic personal tasks such as bathing, hair care, and dressing;

E. Supervision of self-administration of medications;

8.483.20 DEFINITIONS/SERVICES REQUIREMENTS (Continued)

F. Housekeeping services such as changing of bed linen, cleaning of living areas, and rearrangement of furniture as needed to promote freer mobility;

G. Laundering of residents' clothing and bedding; and

H. Opportunities for structured recreational activities and socializing.

.23 OPERATOR means any person who owns an AFC facility, or an individual with authority delegated by the owner who manages, controls or performs the day-to-day tasks for operating an AFC facility.

.24 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: Being aware of a resident's general whereabouts, although the resident may travel independently in the community; monitoring the activities of the resident while on the premises to ensure the health, safety, and well-being of the resident, including monitoring of prescribed medications; reminding the resident to carry out activities of daily living; and reminding the resident of any important activities, including appointments.

.25 RESIDENT means an individual who has met all the eligibility requirements for Adult Foster Care, has met the appropriate placement criteria for the AFC Program, and has been approved for placement or currently resides in a certified Adult Foster Care facility.

.26 RESTRAINT means any physical or chemical device, application of force, or medication which is designed or used for the purpose of modifying, altering, or controlling behavior for the convenience of the facility and excludes medication prescribed by a physician as part of an on-going treatment plan or pursuant to a diagnosis. Restraints as defined herein are prohibited.

.27 STAFF means a paid employee of the facility.

8.483.20 DEFINITIONS/SERVICES REQUIREMENTS (Continued)

.28 SUBSTANCE ABUSE means the use of any mind or mood altering material in a manner which deviates from standard medical practice in the community, which acts to the detriment of the individual residents, or the public, and which includes but is not limited to, alcohol, dangerous drugs, or narcotic drugs.

A. Alcohol refers to beverage alcohol, ethylene alcohol, or ethanol.

B. Dangerous Drugs refers to cannibus or any depressing drug, hallucinogenic drug, stimulant drug, or tranquilizer, or any such mixture or compound with any other substances.

C. Narcotic Drugs refers to any drug to which the Federal Controlled Substance Act of 1970 may apply and any drug found by the State Board of Health to be addiction forming or to have an addiction sustaining character similar to morphine or cocaine.

.29 UNIVERSAL PRECAUTIONS refers to a system of infection control which assumes that every direct contact with body fluids is potentially infectious. This includes any reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood, blood-tinged body fluids, or other potentially infectious materials.

~~8.483.30 ELIGIBILITY~~

~~Eligibility for the Adult Foster Care program shall be based on financial need, the client's need for 24 hour supervision and assistance with activities of daily living, appropriateness for the AFC Program and available appropriations. A legal immigrant, as defined in 26-2-103(5.7), C.R.S., who meets the eligibility requirements for Adult Foster Care shall be eligible for the program.~~

~~.31 FINANCIAL ELIGIBILITY FOR AFC PLACEMENT~~

~~Financial eligibility for Adult Foster Care shall be determined by County Income Maintenance staff in the client's county of residence. In determining financial need, the client's total countable income is subtracted from the AFC grant amount to derive the net payment to the client.~~

~~A. In addition to the needs of the individual, an Adult Foster Care allowance shall be included in the grant of an AND/AB/SSI-CS or OAP recipient when~~:

~~1. The need for such care has been determined by the single entry point agency;~~

~~2. The care is authorized by the single entry point agency; and~~

~~3. The individual is or will be residing in a currently certified Adult Foster Care facility.~~

~~B. The maximum amount which can be allowed as Adult Foster Care is the difference between the AND/AB/SSI-CS or OAP standard and the negotiated Adult Foster Care rate of $680 plus $50 personal needs allowance. This increase for Adult Foster Care is applicable January 1, 1999. If, for example, the rate for Adult Foster Care negotiated with the provider is $680 (which is the maximum), computation of the amount to be added to the AND/AB/SSI/-CS or OAP grant is:~~

8.483.31 FINANCIAL ELIGIBILITY FOR AFC PLACEMENT (Continued)

1. AND/AB/SSI-CS AFC Standard Calculation

$680	Maximum AFC provider payment
+50	Reserve for recipient's personal needs
730	Total AFC and personal needs
500	AND income (basic grant and/or income)
$230	Maximum allowance for AND-AFC add-on

2. OAP AFC Standard Calculation

$680	Maximum AFC provider payment
+ 50	Reserve for recipient's personal needs
$730	Total AFC and personal needs
$536	OAP income (basic grant and/or income)
$194	Maximum allowance for OAP-AFC add-on

C. The AFC provider rate is $680 per month. Effective January 1 of subsequent years, this payment shall be permitted to rise in a dollar-for-dollar relationship to any increase in the SSI grant standard. In addition, the AFC payment to providers may be adjusted by the State, as funding becomes available.

D. Assets in a disability trust, as described in 15-14-409.8., C.R.S., or a pooled trust as described in 15-14-409.9., C.R.S., are counted as available resources in determining eligibility for Adult Foster Care.

~~8.483.32 FUNCTIONAL ASSESSMENT~~

~~A. Single entry point agencies shall utilize the Uniform Long Term Care Assessment Instrument (ULTC-100) developed by the State to determine functional capacity and need for paid care. Along with the ULTC-100, the functional eligibility of the client for AFC placement shall be determined using the Appropriateness of Placement Form .~~

~~B. The ULTC-100 and the Appropriateness of Placement Criteria shall be completed on an annual basis or more frequently if there are changes in the client's circumstances.~~

~~.33 Persons who are developmentally disabled or who are receiving, or are eligible to receive services administered by the Department of Human Services, Developmental Disabilities Services, are not eligible for AFC.~~

~~.34 Residents with a primary diagnosis of mental illness must be willing to comply with medications prescribed by the physician and must be receiving on-going services from the local mental health center or other mental health professional.~~

~~.35 Adult Foster Care clients shall not receive other public or private funded service which duplicate those services which are mandated to be provided in the Adult Foster Care Program in 8.483.21 and 22.~~

8.483.40 ADMISSION PROCEDURES

..41 CLIENT INTAKE

Refer to 8.393.21, A, 1 for SEP intake procedures.

.42 ASSESSMENT

Refer to 8.393.21 and 22 for SEP assessment procedures.

A. After the ULTC 100 and the Appropriateness of Placement Forms have been completed by the case manager, the information from these forms shall be used in determining if the client is functionally eligible for Adult Foster Care.

B. If determined functionally eligible, the client cannot be placed and the AFC payment cannot begin until an appropriate AFC facility is found.

.43 APPROPRIATE FACILITY REVIEW

The case manager shall review available Adult Foster Care facilities to determine if the client's needs can be met by a current facility. This review may include contact with other counties which have AFC facilities.

8.483.44 AGREEMENT TO PLACEMENT SERVICES

A client shall not be placed in an Adult Foster Care Facility unless one or more of the following conditions are met:

A. The competent client gives informed consent for placement; or

B. The court-appointed guardian of the client requests placement; and

C. The client or his legal representative understands and agrees to adhere to facility rules.

~~8.483.45 CARE PLANNING~~

~~When the decision is made that the applicant is appropriate for Adult Foster Care and that an appropriate AFC facility exists, the case manager shall:~~

~~A. Discuss the needs of the client with the Adult Foster Care provider to determine if the provider is capable of meeting the client's needs;~~

~~B. Discuss the facility and the provider with the client;~~

~~C. Arrange for an initial visit by the client to the facility;~~

~~D. Have a care plan negotiated with and signed by the client and case manager prior to admission. The care plan shall be developed in conjunction with the ALR Board and Care Plan required in Section 8.483.63, R. of this staff manual, and must be renewed at least every twelve months or sooner if there is a change in the client's condition;~~

~~E. Have a current provider agreement signed by the manager of the Adult Foster Care facility prior to placement. This agreement shall be renewed at least annually, contingent upon the facility meeting all requirements for certification as an AFC facility.~~

~~F. After supervisory review and sign-off, the case manager shall send a signed copy of the Uniform Long Term Care Assessment Instrument (ULTC-100) to the Income Maintenance staff authorizing the Adult Foster Care payment; and within thirty (30) days, shall also send a copy to the State.~~

~~G. In all cases, Adult Foster Care payments shall be made directly to the client or the client's designated representative. The client or representative is responsible for paying the AFC provider the agreed amount on a regular monthly basis.~~

~~H. The case manager shall explain that the client or client's designated representative is responsible to pay the AFC provider on a monthly basis.~~

8.483.45 CARE PLANNING (Continued)

I. When the client has been determined to be financially and functionally eligible for AFC, the Adult Foster Care payment effective date shall be the date that the applicant was assessed for appropriateness for the AFC program using the Appropriateness of Placement Form. The date on the Appropriateness of Placement Form shall not exceed a period longer than forty-five (45) calendar days prior to the client's placement in an AFC Facility. If the date is past the forty-five day period, the case manager must reassess the client, make needed changes on the form, enter the date of the new assessment and re-sign the form.

8.483.46 ON-GOING SERVICES TO CLIENTS IN ADULT FOSTER CARE

A. Single entry point agency staff shall monitor client records to ensure that a client with a primary diagnosis of mental illness is receiving on-going services from the community mental health center or other mental health professional;

B. Reassessment

1. Single entry point agency staff shall conduct the reassessment in accordance with 8.393.25.

2. An Appropriateness of Placement Form must also be completed at the time of the reassessment. If a client is determined to be inappropriate for the Adult Foster Care Program, that client must be discontinued from the AFC program. (See 8.393.28 D. 2. b. (2)).

3. The case manager must also determine if the facility continues to meet the client's needs. If the facility no longer meets the client's needs, the case manager must review other AFC facilities to determine the possibility that one will meet the client's needs.

4. If there is no other AFC facility which meets the client's needs, the client will be discontinued from the Adult Foster Care Program and discharged from the facility. (See 8.393.28, D. 5.)

8.483.47 DISCONTINUATION OF ADULT FOSTER CARE

Denial or termination of Adult Foster Care shall be in accordance with Long Term Care Single Entry Point System regulations at 8.393.28 APPLICANT/CLIENT NOTICE AND APPEAL PROCESS.

8.483.48 CLIENT NOTIFICATION AND APPEAL RIGHTS

Applicants and clients for the Adult Foster Care Program shall be notified of their eligibility status, authorized Adult Foster Care amount, and appeal rights in accordance with Staff Manual Volume 8, Section 8.393.28 APPLICANT/CLIENT NOTICE AND APPEAL PROCESS.

8.483.49 COMPLAINTS, SERIOUS INJURY OR DEATH

A. Complaints

When the staff of the single entry point agency receives a complaint regarding an Adult Foster Care facility, the single entry point agency shall:

1. Investigate the complaint within three (3) working days;

2. Provide same day investigation if the situation appears life threatening or in emergency situations;

3. Notify local law enforcement within twenty-four (24) hours if the complaint involves possible criminal activity.

4. Notify the Adult Protective Services Unit of the county department of social services within twenty-four (24) hours if abuse, neglect or exploitation is suspected;

5. Notify the local long term care ombudsman if the complaint involves violation of resident's rights.

6. Notify the Health Facilities Division of the State Department of Public Health and Environment if the complaint is unresolved and is in violation of Health Facilities regulations for Assisted Living Residences;

7. Notify the mental health case manager, if the complaint involves a client of a community mental health center; and

8.483.49 COMPLAINTS, SERIOUS INJURY OR DEATH (Continued)

8.Develop a corrective action plan, if needed, and monitor for compliance.

9. Notify the State Department of Health Care Policy and Financing in writing, within ten working days concerning the nature of the complaint, the findings of the investigation and what corrective action, if any, is being initiated.

B. Serious Injury or Death

When the staff of the single entry point agency receives notice of the serious injury or death of any individual living in an Adult Foster Care facility with an ALR Board and Care Plan, the single entry point agency shall:

1. Investigate the circumstance of the serious injury or death within 24 hours of receiving the report; and

2. Within 24 hours of the investigation, refer the case to the Adult Protective Services Unit and notify the following if the cause of serious injury or death is unexplained or there are suspicions of abuse and/or neglect:

a. Local law enforcement if the circumstances indicate possible criminal violations;

b. The Health Facilities Division of the State Department of Public Health and Environment;

c. The local long term care ombudsman;

d. The mental health case manager, if resident was a client of a community mental health center; and

e. The State Department of Health Care Policy and Financing.

f. A written report concerning the findings of the investigation and what further steps are being taken shall be submitted to the State Department of Health Care Policy and Financing within ten (10) working days. A format prescribed by the State shall be used for this purpose.

8.483.50 FACILITY CERTIFICATION PROCEDURES

.51 NEW ADULT FOSTER CARE FACILITIES

A. Facilities that are not currently certified as Adult Foster Care providers must make application to the agency designated by the State to become certified.

B. After the applicant(s) has completed and returned the State-prescribed Adult Foster Care application, the following actions shall occur:

1. The agency designated by the State shall accept and process all applications for AFC certification and notify the applicants of the certification decision within 30 days of the receipt of the completed application by the agency designated by the State.

2. The agency designated by the State shall conduct an on-site inspection of the facility using State-prescribed certification forms and procedures to determine if the facility meets all the AFC regulations as contained in this staff manual.

C. Prior to approving the application for certification, agencies designated by designated by the State shall have on file:

1. Signed and dated local city and single entry point agency approval forms documenting that the facility is in full compliance with local zoning, housing, fire, sanitation and other codes and ordinances;

2. A signed and dated copy of the Assurance of Compliance with the Department of Health and Human Services Regulation under Title VI of the Civil Rights Act of 1964.

.51 NEW ADULT FOSTER CARE FACILITIES (Continued)

3. A copy of the current general liability and, if applicable, auto insurance policy or policies, issued by a company authorized to do business in Colorado. These liability insurance policies must be in at least the minimum amounts set annually by the Department of Health Care Policy and Financing.

4. Current physician's statement(s) that all required staff have current staff have current TB test and are free of infectious and communicable disease.

D. As a result of the on-site inspection the agency designated by the State shall take one of the following actions:

1. A full certificate shall be issued when it is determined that the applicant has met all the requirements for Adult Foster Care certification as specified in this staff manual and has signed the provider agreement. Such certificate shall expire after a period not to exceed one year from the date issued, unless revoked.

2. The certification and the provider agreement must be signed by the Director of the single entry point agency.

3. A one time provisional certificate may be issued for up to ninety (90) days when the applicant needs additional time to meet all the requirements for Adult Foster Care certification and clients' health and safety is not at risk; or

4. Certification may be denied for good cause as stated in Section 8.483.55 of this staff manual.

E. A copy of the Certification Form and Certificate of Approval for the Adult Foster Care Facility shall submitted to the state within fifteen (15) days of certification decision.

~~8.483.52 CURRENT ADULT FOSTER CARE FACILITIES~~

~~A. Facilities that are currently certified as AFC providers must apply for renewal of certification not less than thirty (30) days prior to the expiration of the certificate.~~

~~B. The case manager shall follow the requirements in the Section on New AFC Facilities in this staff manual with the addition of the following:~~

~~1. If the application for renewal of certification is not received thirty (30) days prior to the date of expiration of the current certificate, the facility shall be treated as a new applicant.~~

~~2. If the application for renewal is received thirty (30) days prior to the date of expiration of the current certificate, the existing certificate shall not expire until the application for certification has been acted upon by the county, provided that the application for certification is complete.~~

~~8.483.53 CHANGE IN OWNERSHIP, MANAGEMENT, NAME OR LOCATION OF A CERTIFIED AFC FACILITY~~

~~A. The Adult Foster Care certificate shall be valid only in the hands of the person(s), association, partnership, corporation or government unit to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary, nor shall the certificate be valid for any premises other than for which originally issued.~~

~~B. The agency designated by the State shall be notified and an application for certification shall be submitted thirty (30) days in advance of a change in ownership, management, name or location of the facility.~~

~~C. A change in ownership, management or location of a facility shall be treated as a new application. The agency designated by the State shall follow the requirements in the Section on Adult Foster Care Facilities in this staff manual.~~

.54 CERTIFICATION OF ALTERNATIVE CARE FACILITIES (ACF'S) AS ADULT FOSTER CARE FACILITIES

A. Facilities which have current certifications as Alternative Care Facilities may be deemed to have met the requirements for certification as AFC Facilities.

B. ACF's requesting certification as AFC's shall apply to the agency designated by the State in which the facility is located and shall satisfactorily complete the introductory training on AFC rules and regulations required in the Section on Training in this staff manual prior to AFC certification by the agency designated by the State.

C. AFC certification of deemed facilities shall be for a period not to exceed the period of ACF certification or one year from the date the AFC certification is issued, whichever is less.

D. On an ongoing basis, deemed facilities shall meet all AFC requirements in this staff manual and shall apply for recertification as AFC's in accordance with the Section on Current Adult Foster Care Facilities in this staff manual.

E. Failure to meet all requirements of the AFC Program may result in denial or revocation of certification for AFC in accordance with the Section on Denial or Revocation of Certification for Adult Foster Care in this staff manual.

F. Denial or revocation of certification for ACF shall result in immediate denial or revocation of certification for AFC.

~~8.483.55 DENIAL OR REVOCATION OF CERTIFICATION FOR ADULT FOSTER CARE~~

~~A. Denial of Certification for New AFC~~

~~1. The agency designated by the State shall deny the certification for Adult Foster Care of a facility not currently certified as an AFC for any good cause, based on adequate and documented evidence. Good cause is defined as follows:~~

~~a. The owner/operator (applicant):~~

~~1)has demonstrated a high probability of inability to perform his/her obligations under a provider agreement by his/her prior conduct;~~
~~2)has failed to conform to and abide by the applicable laws and/or regulations of the State of Colorado and the United States;~~
~~3)has failed to conform to and abide by the applicable rules and regulations of the Colorado Department of Health Policy and Financing and/or the Colorado Department of Public Health and Environment;~~
~~4)as, either by omission or commission, endangered or is endangering the health, safety, or well-being of AFC recipients;~~
~~5)has previously been found ineligible to participate in federal or state assisted residential programs by this or other federal or state agency; or~~
~~6)refuses to accept the payment rate established by the Colorado State Department of Health Care Policy and Financing for the Adult Foster Care Program.~~
~~7)has failed to remove a resident who does not meet the Appropriateness for Placement Criteria within the required timelines as specified in 8.483.55, D, 2.~~
~~8)has failed to remove a resident whose needs cannot be met by the facility within the required time frames as specified in 8.483.55, D, 2 and E.~~

~~b.The owner/operator, staff or volunteers who are in a position of trust in an AFC facility have violated that trust by sexually, financially or otherwise exploiting a resident.~~

~~8.483.55 DENIAL OR REVOCATION OF CERTIFICATION FOR ADULT FOSTER CARE~~

~~2.The agency designated by the State shall notify any applicant by regular mail of the denial within thirty (30) calendar days of the completed application. Good cause shall be documented and the cause shall be specified. See Section 8.483.55, A, 1 for definition of good cause.~~

~~3.The denied applicant shall have fifteen (15) calendar days from the mailing date of the denial in which to request a hearing to the Colorado State Department of Administration, Office of Administrative Courts. The denied applicant shall have the burden of proof to show by a preponderance of evidence that the denial is arbitrary and capricious.~~

~~4.For applicant denials, the decision of the administrative law judge shall constitute the initial agency action subject to review and final agency action by the State Department of Health Care Policy and Financing.~~

~~B. Denial of Previously Certified Facility~~

~~Provided timely and sufficient application has been made for renewal, denial at time of recertification shall be treated in all respects as a revocation and the requirements in Section 8.483.55, C, shall be followed.~~

~~C. Revocation of Current Certification~~

~~1.The agency designated by the State may revoke certification for any good cause, as defined in 8.483.55, A, 1, based on adequate and documented evidence.~~

~~2.The agency designated by the State shall notify the AFC owner/ operator by certified mail of its intent to revoke certification, stating the findings and conclusions which necessitate revocation.~~

~~8.483.55 DENIAL OR REVOCATION OF CERTIFICATION FOR ADULT FOSTER CARE (Continued)~~

~~3.Within thirty (30) calendar days of the date of mailing of the notice of intent to revoke the certification, the owner may submit to the agency designated by the State written data, views and arguments with respect to the facts or conduct specified in the notice.~~

~~4.Except in the case of deliberate and willful violation of local, state, or federal ordinances, laws or agency rules and regulations applicable to, or concerning Adult Foster Care, or deliberate or willful breach of the Adult Foster Care agreement, the owner shall have thirty (30) calendar days from the date of the mailing of the notice of intent to revoke the certification to comply with all requirements concerning Adult Foster Care and/or the Adult Foster Care provider agreement.~~

~~5.The effective date of the revocation shall be stated in the notification. Revocation (other than emergency) shall not be effective sooner than thirty (30) calendar days from the mailing date, except as provided herein. In the case of deliberate and willful violation, the effective date shall be contingent upon the safe relocation of the residents.~~

~~6.The agency designated by the State shall notify all residents affected by the action as soon as is reasonably possible, in a manner calculated to apprise the residents of the contemplated action. Residents shall be advised of the plan developed by the agency designated by State for safeguarding their persons or property during any disruption of service.~~

~~7.Except as otherwise provided herein, the operator shall have thirty (30) calendar days from the mailing date in which to request a hearing from the Colorado State Department of Administration, Office of Administrative Courts. If an appeal is timely lodged, the effective date of revocation shall be stayed until a final decision is reached.~~

~~8.For revocation of an existing Adult Foster Care facility certification, the decision of the administrative law judge shall constitute the final agency action.~~

8.483.55 DENIAL OR REVOCATION OF CERTIFICATION FOR ADULT FOSTER CARE (Continued)

D. Revocation of AFC Certification Due to Failure to Remove A Resident Who Does Not Meet The Appropriateness For Placement Criteria

1. All residents in an Adult Foster Care Facility shall meet the Appropriateness of Placement criteria in 8.483.63 of this Staff Manual.

2. If a resident through mental and/or physical deterioration or because of inappropriate placement is unable to meet the Appropriateness of Placement criteria, that resident shall:

a.If determined to be an imminent danger to him/ herself or others be removed from the facility within 24 hours of the determination;

b.If determined to be a danger but the danger is not imminent, be removed within ten (10) calendar days.

c.If determined to be inappropriate but not a danger to him/ herself or others, be removed within thirty (30) calendar days:

3. Failure to remove a resident who does not meet the Appropriate of Placement criteria by above time frames shall be cause for revocation of Adult Foster Care Certification.

E. Revocation of AFC Certification Due to Inability to Appropriately Meet a Resident's Needs

If the AFC facility does not or cannot meet a resident's needs within thirty (30) calendar days of notification, and refuses to remove the resident, the facility's certification shall be revoked.

F. Untimely Application for Renewal of Certification

When a timely and sufficient application has not been made for renewal of certification, the agency designated by the State shall notify the operator of the facility by regular mail of the loss of certification within thirty (30) calendar days after the missed renewal date.

.56 CONFIDENTIALITY OF RECORDS

A. The records concerning the certification of facilities are open by the right of the Open Records Law (24-72-202 through 24-72-206, C.R.S.).

B. Anyone wishing to read a certification record must make a written request written request to the agency designated by the State. Parts of the record not available are:

1. Names of residents and their families shall be deleted from the record upon such inspection. All facts learned about residents and their families shall be deemed confidential both by the facility and the agency designated by the State.

2. References received by the agency designated by the State for the purposes of certification.

3. Client-specific reports received from other agencies.

8.483.60 CIVIL RIGHTS/CERTIFICATION REQUIREMENTS

A. Any person providing any service under these regulations shall strictly comply with all federal, state and local laws, regulations and ordinances. A provider shall not discontinue or refuse services to a client unless documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.

B. All facilities shall operate in full compliance with the requirements of the zoning, housing, fire, sanitation and other codes and ordinances imposed by any city, city and county, county, town, or other political subdivision in which they are located to the extent that such codes are consistent with the Federal Fair Housing Amendment Act of 1988, as amended, 42 U.S.C., Sec. 3601 et seq., and shall be currently licensed as an Assisted Living Residence.

8.483.61 OPERATOR/STAFF QUALIFICATIONS

Qualifications for operator(s), staff and volunteers shall be as follows:

A. Any person providing any service under these regulations shall strictly comply with all federal, state and local laws, regulations and ordinances.

B. All operators and staff shall read, be familiar with, and follow the rules and regulations for the operation of AFCs. Ignorance of these rules and regulations is not an acceptable defense for their violation.

C. All operators and staff must be trained as defined in 8.483.62.

D. The operator or staff person responsible for protective oversight of the residents must be able to recognize and respond to emergencies, including contacting emergency services such as 911, ambulance, fire and police departments.

E. At all times there must be at least one staff person on duty who is 18 years of age or older and who is trained to provide protective oversight.

1. If a facility can document to the State or its designee the provision for one staff person on duty at all times may be waived in writing by the State.

2. The criteria which must be met and documented in order for the State to waive the requirement that one person shall be on duty at all times shall include, but not be limited, to:

a. All residents must be in a day treatment program, in a job training program or on the job. This must be written in each resident's treatment or care plan. A staff person must be at the facility at the time the first resident returns.

b.If a resident becomes ill, leaves the day treatment program, job training or work early, the facility must have a telephone number which is manned at all times for the resident to call. A staff person who can meet the resident at the facility and stay with him/her until permanent staff arrives must be available at all times;

8.483.61 OPERATOR/STAFF QUALIFICATIONS (Continued)

c. If a resident cannot be depended upon to follow his/her treatment plan and either stay at day placement or call the designated telephone number, then s/he is not appropriate for that facility and must be moved into a licensed facility that is staffed 24 hours per day or a waiver cannot be granted to that facility;

d. If a resident is ill or refuses to go to day placement or work, a staff member must stay with him/her or s/he must be taken to a licensed/certified residential facility that is staffed 24 hours per day; and

e. At no time may a resident be present in an Adult Foster Care facility without a staff member also being present in the facility who is trained to provide protective oversight.

F. Operator and staff must, prior to beginning duties, have a doctor's statement that they are free of communicable and infectious diseases.

G. All operators, staff and volunteers providing direct client care or food preparation must have TB testing prior to beginning duties and annually thereafter.

H. Facilities must maintain a 1:10 staff-to-resident ratio unless the operator can document to the State Department of Health Care Policy and Financing or its designee that a ratio of less than 1:10 does not jeopardize the health and safety of the residents. Based on adequate documentation, a written staffing waiver may be issued by the state.

1. A written request for a staff-to-resident waiver must be submitted to the state. The state may request further information which will be reviewed along with the most current Assisted Living Residence deficiency report and fire safety survey. Information which must be submitted to the state for review includes, but is not limited to:

a.the types of physical/mental limitations of residents in the facility such as confusion, Organic Brain Syndrome or Alzheimer;

8.483.61 OPERATOR/STAFF QUALIFICATIONS (Continued)

b.a diagram of the layout of the facility;

c.the number and type of staff and their location during day and night;

d.the number of back up staff who will respond to the emergency and the distance they must travel;

e.. types of training regular staff and back up staff has had in fire safety and other emergency procedures and how often this is done;

f.the facility's procedure for evacuation in case of fire or other emergency;

g.the number of fire drills held each year;

h.time scores in evacuating residents during a fire drill;

i.the distance of the nearest fire department that will respond to the call;

j.a description of the facility's sprinkler system, smoke alarms, special items for fire safety which have been installed in the facility (dedicated alarm line directly to fire station, 2 hour fire wall, alarms in each room hooked to a central alarm, etc.);

k.assurance that staff carry two-way radios or pagers for use in an emergency; and

l.staff-to-resident ratio requested.

I. Any person who is involved in substance abuse, uses alcohol excessively uses narcotic drugs or dangerous drugs shall not be approved as an operator; nor be employed, act as a volunteer, or reside in a certified facility.

~~8.483.62 TRAINING~~

~~A. Facility operators must satisfactorily complete an introductory training on AFC rules and regulations prior to certification of the facility. This introductory training shall be conducted by the State Department of Health Care Policy and Financing.~~

~~B. Certified facilities having operators who have not yet had this introductory training will be required to have their operator attend the next available training offered, or document to the State Department of Health Care Policy and Financing or its designee, that they have had previous training equivalent to the required training.~~

~~C. The operator, staff, and volunteers who provide direct client care or protective oversight must be trained in first aid and in emergency procedures prior to assuming responsibilities. Facilities certified prior to the effective date of this rule shall have sixty (60) days to satisfy this training requirement.~~

~~D. The operator and staff must have training specific to the needs of the populations served, (e.g., chronically mentally ill, frail elderly, acquired immune deficiency syndrome, Alzheimer's disease).~~

~~E. Thereafter, periodic training may be required of facility operators and/or staff, addressing needs identified by operators and/or by the agency designated by the State and/or State Department of Health Care Policy and Financing.~~

~~F. Training in the use of universal precautions for the control of infectious or communicable disease shall be required of all operators, staff, and volunteers. Facilities certified prior to the effective date of these rules shall have sixty (60) days to satisfy this training requirement.~~

8.483.63 APPROPRIATENESS OF PLACEMENT

Only residents whose needs can be met by the facility shall be admitted to that facility. A facility shall not admit or keep any resident requiring a level of care or type of service which the facility does not provide or is unable to provide. In no event shall a facility admit or keep a resident who:

A. Needs skilled services on more than an intermittent basis. If skilled services are provided on an intermitted basis they must be provided by a skilled provider;

B. Is unable or unwilling to meet his/her own personal hygiene needs under supervision;

C. Has an acute physical illness which cannot be managed through medications or prescribed therapy;

D. Has a substance abuse problem, unless the substance abuse is no longer acute and physician determines it to be manageable;

E. Has ambulation limitation, unless compensated for by an assistive device with minimal assistance from staff;

F. Has a reportable communicable or infectious disease, unless the transmittal of the disease can be managed through the use of universal precautions and appropriate medical and/or drug treatment;

G. Is consistently disoriented to time, person and place to such a degree that he/she poses a danger to self or others;

H. Has seizure disorders which are not adequately controlled by medications;

I. Requires tray food services on a continuous basis;

8.483.63 APPROPRIATENESS OF PLACEMENT (Continued)

J. Exhibits behavior which poses a physical threat to self or others. Such behavior includes, but is not limited to, violent and disruptive behavior and/or any behavior which involves physical, sexual or psychological force or intimidation;

K. Requires intravenous or tube feeding;

L. Is consistently unwilling to take medications prescribed by a physician;

M. Is incapable of self-administration of medications unless the facility has a staff member trained in medication administration, in accordance with CRS 25-1-107, et seq., or who possesses all necessary licenses to do so;

N. Is a person whose physical safety cannot be assured in an AFC;

O. Is consistently, uncontrollably incontinent of bowel or bladder that cannot be managed by resident with assistance from staff;

P. Needs restraints, as defined herein, of any kind; or

Q. Has a primary diagnosis of mental illness and is unwilling to comply with medications prescribed by the physician and is not receiving services from the local community mental health center or other mental health professional.

R. A copy of the ALR Board and Care Plan, jointly developed by the resident, family, caseworker and operator, must be provided to all parties prior to admission to the facility.

S. Any client admitted for respite care in an AFC must meet the requirements for appropriate placement described above.

8.483.64 RESIDENT RIGHTS/HOUSE RULES

All facilities must ensure the following residents rights are not violated:

A.Residents may voluntarily participate in performing housekeeping duties and other tasks but cannot be required to perform duties of staff.

B. If a resident is reimbursed by the facility for services performed, there must be a written agreement regarding duties and reimbursement between the resident and the operator. The amount of compensation must be reported to the income maintenance staff of the county department of social services and the single entry point agency case manager.

C.All house policies regarding smoking and the use of alcohol shall apply equally to operator, staff, volunteers, residents and others residing in the facility.

D.The withholding of food and water is prohibited unless indicated by written physician's orders or a pharmacist's medication instructions.

E.The facility must provide an environment free from physical restraint, involuntary confinement, financial, sexual or any other exploitation or threat of intimidation.

F.The facility must provide an accessible telephone with toll free local calls; and

G.The facility shall provide residents with written information about the individual's rights under state law to accept or refuse medical treatment; the right to formulate advance directives; and the providers' policies respecting the implementation of such rights. Documentation shall be kept in the individual's record as to whether the individual has executed an advance directive.

H.The operator must have the resident or designated guardian sign that the house rules and resident rights have been read, were explained, and are understood.

8.483.65 SERVICES PROVIDED

Facilities shall provide those services indicated in Section 8.483.21 and 8.483.22 of this staff manual.

8.483.66 PROVIDER AGREEMENT

A.Providers who meet all the AFC certification requirements in this staff manual may enter into a provider agreement with the State Department of Health Care Policy and Financing or its designee.

B.Facilities shall not accept Adult Foster Care payments from AFC clients unless the facility is currently licensed as an Assisted Living Residence, certified as an AFC and has signed a provider agreement with the State Department of Health Care Policy and Financing or its designee.

8.483.67 RECORDS AND REPORTING REQUIREMENTS

A.The facility shall maintain records sufficient to document compliance with the State Department of Health Care Policy and Financing rules and contract requirements, including proof of insurance, licenses, permits, and surety bonds, for a period of at least six (6) years.

B.The facility shall notify the State Department of Health Care Policy and Financing or its designee within five (5) working days of any suspension, revocation or termination of any required license, permit, insurance, or surety bond.

C.Facilities which accept responsibility for residents' personal funds shall post a surety bond in a minimum amount of $10,000.

D.Personnel records for each employee or volunteer must include name, age, sex, home address and phone number, documentation of training and/or work experience, and results of TB testing for any employee or volunteer providing direct care to residents or involved in meal preparation or food handling.

E.Residents' records shall include, as appropriate, the name and address of a spouse, the date of termination or transfer from the facility, and the new forwarding address of the resident.

F.The facility shall notify the case manager within five (5) days of the need for changes to the Board and Care Plan.

G.The facility shall, within twenty-four (24) hours, notify the case manager of the death or serious injury of any individual living in an AFC facility with an ALR Board and Care Plan, and any severe deterioration in a resident's medical condition or behavior.

8.483.80 REIMBURSEMENT METHOD FOR ADULT FOSTER CARE

A.AFC facilities shall negotiate a standard rate of payment per resident, per month with the agency designated by the State. For maximum allowable rate refer to this staff manual, section 8.483.31, B.

B.AFC facilities shall not submit bills or otherwise attempt to collect payments from recipients or recipients' estates for any services provided to recipient which are benefits reimbursable under the program in accordance with the rules of the State Department of Health Care Policy and Financing.

C.AFC facilities shall charge private pay residents an amount at least equal to that charged to AFC residents.

D.Adult Foster Care payments shall not be made to residents in non-certified facilities.

E. AFC operators must immediately notify the single entry point agency of any planned or unplanned absence of a resident for more than 24 hours. The single entry point agency may continue to fund an Adult Foster Care placement while a resident is on medical, programmatic or non-medical leave; however, the combined leave may not exceed a total of forty-two (42) days in a 12 month period beginning with the date the client was admitted into the program. The three types of leave are defined as follows:

1.Medical leave is the absence of the resident from the Adult Foster Care facility due to admittance to a hospital or other institution. This must be on the order of a physician, and there must be a presumption on the part of the physician that the resident will be returning to the AFC facility.

2.Non-medical leave days are defined generally as days of leave from the AFC for non-medical reasons and are not part of a client's care plan.

3.Programmatic leave days are days of leave prescribed by a physician for participation in therapeutic and/or rehabilitative programs and may entail visits to family, friends, or guardians. Any therapeutic and/or rehabilitative programs and visits to family, friends, or guardians must be prescribed by a physician and documented as part of the client's care plan to qualify as programmatic leave.

~~8.484 HOME CARE ALLOWANCE~~

~~8.484.10 Definition~~

~~A. The Home Care Allowance (HCA) is a special allowance for the purpose of securing services to an individual in his/her home, based on the case manager's assessment. The Home Care Allowance is a non-entitlement program designed to serve those clients with the lowest functional abilities and the greatest need for paid care. Eligibility for and authorized amounts of the Home Care Allowance are subject to available appropriations.~~

~~B. Medicine management is the supervision of self-administration of medications. This means inquiring if a person has taken his/her medications, and/or reminding him/her to take his/her medications and assisting him/her by opening the medication container and handing the container to the person. This includes prescription medications. the container must have legibly written or printed directions of the attending physician or other authorized practitioner on the prescription label. Supervision of self-administration of medications does not include the monitoring of self-administration or the administration of medications: assisting a person in the injections, application, or inhalation of medications; injecting of medications or any intravenous procedure; or the repackaging of medications for ingestion at a later date.~~

~~8.484.20 Eligibility~~

~~Eligibility for the Home Care Allowance program shall be based on financial need, the client's functional capacity score, the client's need for paid care score and available appropriations. A legal immigrant, as defined in 26-2-103(5.7), C.R.S., who meets the eligibility requirements for Home Care Allowance shall be eligible for the program.~~

~~A.Financial eligibility is determined in accordance with the CDHS Income Maintenance Staff Manual (9 CCR 2503-1) for aged, blind and disabled persons. In determining financial need, the client's Home Care Allowance authorized amount is added to the appropriate categorical grant standard (OAP, AND/SSI-CS, or State only AB or AND). Total countable income is deducted from the total of the Home Care Allowance authorized amount and the categorical grant standard to derive the net payment to the client. Assets in a disability trust, as described in 15-14-409.8., C.R.S., or a pooled trust as described in 15-14-409.9., C.R.S., are counted as available resources in determining eligibility for Home Care Allowance.~~

~~B.The difference in the amount of Home Care Allowance (HCA) payments made to a client while he/she was on State AND/AB and the amount of HCA payments made to the client when he/she becomes eligible for SSI and the total State AND/AB received by State AND or AB clients will be recoverable as an interim assistance payment upon SSI approval and SSI retroactive payment for the same period, in accordance with the regulations set forth in CDHS Income Maintenance Staff Manual (9 CCR 2503-1) under AND/AB Payment Policies. At the time of application, the SSI payment recovery procedure shall be explained to the applicant and his/her representative.~~

~~Single entry point (SEP) agencies shall utilize the state prescribed form to determine Home Care Allowance (HCA) eligibility and authorized amounts for all applicants and clients.~~

8.484.20 ELIGIBILITY (Continued)

D. In order to be eligible for the Home Care Allowance Program, each applicant or client must meet the minimum client functional capacity score of 21 points in the following areas and shall score a minimum of one (1) point on the total need for paid care score:

1. Activities of daily living - - includes transfers, bladder care, bowel care, mobility, dressing, bathing, hygiene, eating;

2. Basic instrumental activities of daily living -- includes meal preparation, housework, laundry, shopping;

3. Supportive services -- includes medicine management, appointment management, money management, accessing resources, and telephoning.

4. The need for skilled personal care shall not be included in the case manager's scoring of the need for paid care score. Skilled personal care is not a paid service of the Home Care Allowance Program. See Section 8.489.21 and 8.489.31 for the definition of skilled personal care.

E. The need for paid care score shall be based on the frequency of the client's or applicant's need for paid care as follows:

Frequency of Need for Paid Care	Need for Paid Care Score
No need for paid care	0
Up to and including once a week	1
More than once a week and up to seven days a week	2
At least two times per day five days per week	3

8.484.20 ELIGIBILITY (Continued)

F. Each applicant or client meeting the minimum requirements for the HCA program shall be assigned an authorized amount of Home Care Allowance by the case manager. The case manager shall determine the authorized HCA amount up to the maximum amount allowable based upon the need for paid care score as identified below. The case manager shall not approve the maximum authorized HCA amount, if the client's needs can be fully or partially met from other paid or unpaid sources, if the HCA provider is able to provide the authorized services for less than the maximum authorized amount, or if the client is unwilling or unable to use the maximum authorized amount. In determining the authorized HCA amount, the case manager shall ensure nonduplication of services in accordance with Section 8.393.23, C. 4., Care Planning.

Need for Paid Care Score	Authorized Home Care Allowance Amount per Month
1 - 23	$1.00 up to - $126
24 - 37	$1.00 up to - $265
38 and over	$1.00 up to - $396

G. There shall be no retroactive Home Care Allowance payments for hardship provisions.

H. The Home Care Allowance financial standard calculations are found in CDHS Income Maintenance Staff Manual (9 CCR 2503-1), Section 3.360.4 in the Old Age Pension Standards and in Section 3.460.45 in the AND/AB Standards.

I. HCA payments shall be adjusted by the Department based on available funding.

~~8.484.30 DUTIES OF SINGLE ENTRY POINT AGENCY FOR HOME CARE ALLOWANCE CASES~~

~~A. Intake~~

~~Refer to 8.393.21, A. 1 for SEP intake procedures.~~

~~B. Assessment~~

~~Refer to 8.393.21 & 22 for SEP assessment procedures.~~

~~8.484.30 DUTIES OF SINGLE ENTRY POINT AGENCY FOR HOME CARE ALLOWANCE CASES (continued)~~

~~C. Care Planning~~

~~If the Client is found eligible for the Home Care Allowance program, the case manager shall work with the client or the client's representative to develop a care plan.~~

~~1.The client may select any person(s), age 18 or over, to provide services to be paid for by the Home Care Allowance. The case manager shall assess (face-to-face) each care provider's ability and willingness to provide the services, using the guidelines included in the Uniform Long Term Care Assessment Instrument instructions.~~

~~2.The case manager shall negotiate with the client and care provider(s) to arrive at the total number of paid hours to be provided weekly. The client or client's representative and the provider, shall sign the State prescribed provider agreement and each shall receive a copy of the agreement.~~

~~3.In all cases, Home Care Allowance payments shall be made directly to the client or the client's designated representative. The client or representative is responsible for paying the designated provider(s) the agreed amount on a regular monthly basis. No portion of the Home Care Allowance may be withheld for the client's personal use. The full HCA authorization, including the client's contribution, if applicable, must be spent for HCA services.~~

~~8.484.30 DUTIES OF SINGLE ENTRY POINT AGENCY FOR HOME CARE ALLOWANCE CASES (Continued)~~

~~3.The case manager shall explain that the client is responsible to pay each care provider on a monthly basis for the services provided.~~

~~4.With the client's agreement per the release of information form, a copy of the provider agreement shall be sent to each care provider specifying the services to be provided, total hours per month, and agreed upon monthly provider reimbursement.~~

~~5.After supervisory review and sign-off, the case manager shall send a signed copy of the Uniform Long Term Care Assessment Instrument to the Income Maintenance staff authorizing payment of the Home Care Allowance and to the state.~~

~~6.Payment of the Home Care Allowance will begin on the first day of the month following the month in which the HCA is authorized.~~

~~7.There shall be no retroactive Home Care Allowance payments.~~

~~8.The Home Care Allowance may be used for clients residing in congregate settings. A congregate setting is defined as three or more unrelated individuals living in a commonly shared facility which provides room, board and protective oversight. All congregate settings shall be in compliance with all state and local licensing requirements. The maximum HCA authorized amount shall not cause the amount paid by the client to the facility to exceed the maximum rate paid for Adult Foster Care.~~

~~9.Authorized HCA amounts for individuals who have been receiving a Home Care Allowance and who have been residing in the same congregate setting since prior to November 1, 1985, may exceed the AFC rate if the client is eligible to receive a higher authorized HCA amount.~~

8.484.30 DUTIES OF SINGLE ENTRY POINT AGENCY FOR HOME CARE ALLOWANCE CASES (Continued)

12. Services for HCA include;

a.the seventeen (17) areas on page 3 of the ULTC 100. See Section 8.484.20, C;

b.electronic monitoring; and

c.one-time deep cleaning if referral is initiated by Adult Protective Services and determined necessary by the single entry point case manager.

D. Monitoring

Services shall be monitored in accordance with 8.393.24 E.

E. Reassessment

Single entry point agency staff shall complete the reassessment in accordance with 8.393.25.

F. Discontinuation of Home Care Allowance

Denial or termination of Home Care Allowance shall be in accordance with Long Term Care Single Entry Point System regualtions at 8.393.2 APPLICANT/CLIENT NOTICE AND APPEAL PROCESS.

G. Notification and Appeal Rights

Applicants and clients for the Home Care Allowance program shall be notified of their eligibility status and changes in the authorized Home Care Allowance amount, in accordance with the procedures in Section 8.393.28, APPLICANT/CLIENT NOTICE AND APPEAL PROCESS.