DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities Regulation Division

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

CHAPTER II, GENERAL LICENSURE STANDARDS

6 CCR 1011-1 Chap 02

Part 2, LICENSURE PROCESS

2.2 Definitions

For purposes of this Part 2, the following definitions shall apply:

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2.2.7 "ENFORCEMENT ACTIVITY" MEANS THE IMPOSITION OF REMEDIES SUCH AS CIVIL MONEY PENALTIES; APPOINTMENT OF A RECEIVER OR TEMPORARY MANAGER; CONDITIONAL LICENSURE; SUSPENSION OR REVOCATION OF A LICENSE; A DIRECTED PLAN OF CORRECTION; INTERMEDIATE RESTRICTIONS OR CONDITIONS, INCLUDING RETAINING A CONSULTANT, DEPARTMENT MONITORING, OR PROVIDING ADDITIONAL TRAINING TO EMPLOYEES, OWNERS, OR OPERATORS; OR ANY OTHER REMEDY PROVIDED BY STATE OR FEDERAL LAW OR AS AUTHORIZED BY FEDERAL SURVEY, CERTIFICATION, AND ENFORCEMENT REGULATIONS AND AGREEMENTS FOR VIOLATIONS OF FEDERAL OR STATE LAW. *[statutory definition from HB 1294]*

2.2.~~7~~8 "Health Care Entity" means a health care facility or agency that is required to obtain a license from the Department pursuant to section 25-3-101, C.R.S. Unless otherwise indicated, the term "health care entity" is synonymous with the terms "health facility" or "facility" as used elsewhere in 6 CCR 1011-1, Standards for Hospitals and Health Facilities.

2.2.~~8~~9 "Indirect Ownership" means any ownership interest in an entity that has an ownership interest in the applicant, including an ownership interest in any entity that has an indirect ownership interest in the applicant.

2.2.~~9~~10 "Licensee" means the person, business entity or agency that is granted a license or certificate of compliance to operate a health care entity and that bears legal responsibility for compliance with all applicable federal and state statutes and regulations.

2.2.1~~0~~1 "Management Company" means the person, business entity or agency that is paid by the licensee and has a contractual agreement with the licensee to manage the day-to-day operation of the health care entity on behalf of the licensee.

2.2.1~~1~~2 "Review" means any type of administrative oversight by the Department including, but not limited to, examination of documents, desk audit, complaint investigation, SURVEY, REVISIT or on-site inspection.

2.2.13 "REVISIT" MEANS A FOLLOW-UP SURVEY CONDUCTED AFTER DEFICIENCIES HAVE BEEN CITED. THE PURPOSE IS TO DETERMINE IF THE HEALTH CARE ENTITY IS NOW IN COMPLIANCE WITH THE APPLICABLE STATE REGULATIONS OR FEDERAL CONDITIONS OF PARTICIPATION.

2.2.14 "SURVEY" MEANS AN INSPECTION OF A HEALTH CARE ENTITY FOR COMPLIANCE WITH APPLICABLE STATE REGULATIONS OR FEDERAL CONDITIONS OF PARTICIPATION.

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2.2.15 "TIERED INSPECTION" MEANS AN ON-SITE RELICENSURE SURVEY THAT HAS A REDUCED SCOPE AND REVIEWS FEWER ITEMS FOR COMPLIANCE WITH APPLICABLE STATE REGULATIONS THAN A FULL RE-LICENSURE SURVEY. *[definition necessary to implement section 2 of HB 1294]*

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2.11 Department Oversight

2.11.1 The Department and any duly authorized representatives thereof shall have the right to enter upon and into the premises of any licensee or applicant for a license in order to determine the state of compliance with the law and regulations, and shall initially identify themselves to the person in charge of the health care entity at the time.

(A) In accordance with section 25-1.5-103, C.R.S., routine unannounced on-site inspections shall be made only between the hours of 7 a.m. and 7 p.m.

2.11.2 LICENSURE SURVEYS AND TIERED INSPECTIONS *[proposed changes necessary to implement section 2 of HB 1294.]*

FOR EACH HEALTH CARE ENTITY THAT IS ELIGIBLE, THE DEPARTMENT WILL EITHER EXTEND THE STANDARD LICENSURE SURVEY CYCLE TO EVERY THREE (3) YEARS OR UTILIZE A TIERED LICENSURE INSPECTION SYSTEM. THE DEPARTMENT WILL IMPLEMENT THE EXTENDED SURVEY CYCLE OR TIERED LICENSURE INSPECTION SYSTEM IN PHASES BY LICENSE CATEGORY WITH FULL IMPLEMENTATION TO BE ACCOMPLISHED NO LATER THAN JULY 1, 2014.

THE EXTENDED SURVEY CYCLE OR TIERED INSPECTION SYSTEM IS DESIGNED TO REDUCE THE TIME NEEDED FOR AND COSTS OF LICENSURE INSPECTIONS FOR BOTH THE DEPARTMENT AND THE LICENSED HEALTH CARE ENTITY; REDUCE THE NUMBER, FREQUENCY, AND DURATION OF ON-SITE INSPECTIONS; REDUCE THE SCOPE OF DATA AND INFORMATION THAT HEALTH CARE ENTITIES ARE REQUIRED TO SUBMIT OR PROVIDE TO THE DEPARTMENT IN CONNECTION WITH THE LICENSURE INSPECTION; REDUCE THE AMOUNT AND SCOPE OF DUPLICATIVE DATA, REPORTS, AND INFORMATION REQUIRED TO COMPLETE THE LICENSURE INSPECTION; AND BE BASED ON A SAMPLE OF THE FACILITY SIZE.

(A) IN ORDER TO BE ELIGIBLE, THE HEALTH CARE ENTITY SHALL MEET ALL OF THE FOLLOWING CRITERIA:

(1) LICENSED FOR AT LEAST THREE (3) YEARS;

(2) NO ENFORCEMENT ACTIVITY WITHIN THREE (3) YEARS PRIOR TO THE DATE OF THE SURVEY;

(3) NO PATTERNS OF DEFICIENT PRACTICES, AS DOCUMENTED IN THE INSPECTION AND SURVEY REPORTS ISSUED BY THE DEPARTMENT WITHIN THE THREE (3) YEARS PRIOR TO THE DATE OF THE INSPECTION; AND

(4) NO SUBSTANTIATED COMPLAINT RESULTING IN THE DISCOVERY OF SIGNIFICANT DEFICIENCIES THAT MAY NEGATIVELY AFFECT THE LIFE, HEALTH, OR SAFETY OF PATIENTS, RESIDENTS OR CONSUMERS OF THE HEALTH CARE ENTITY WITHIN THE THREE (3) YEARS PRIOR TO THE DATE OF THE SURVEY.

(B) THE DEPARTMENT MAY EXPAND THE SCOPE OF A TIERED INSPECTION TO AN EXTENDED OR FULL SURVEY IF THE DEPARTMENT FINDS DEFICIENT PRACTICE DURING THE TIERED INSPECTION PROCESS,

(C) NOTHING IN THIS SECTION 2.11.2 LIMITS THE ABILITY OF THE DEPARTMENT TO CONDUCT A PERIODIC INSPECTION OR SURVEY THAT IS REQUIRED TO MEET ITS OBLIGATIONS AS A STATE SURVEY AGENCY ON BEHALF OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES OR THE DEPARTMENT OF HEALTH

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CARE POLICY AND FINANCING TO ASSURE THAT THE HEALTH FACILITY MEETS THE REQUIREMENTS FOR PARTICIPATION IN THE MEDICARE AND MEDICAID PROGRAMS.

2.11.~~2~~3 If the Department has information about an applicant or licensee or its employees or managers that has been acquired in the context of a Department review, and provides such information to any state or federal agency that may have a statutory or regulatory interest in the entity or its employees, the Department shall also forward to the other agency any responses it has received from the licensee or applicant to the matter under review, if applicable.

2.11.~~3~~4 The Department may use the following measures to ensure a licensee's full compliance with the applicable statutory and regulatory criteria.

(A) Unscheduled or unannounced reviews. The Department may conduct an unscheduled or unannounced review of a current licensee based upon, but not limited to, the following criteria:

(1) Routine compliance inspection,

(2) Reasonable cause to question the applicant's continued fitness to conduct or maintain licensed operations,

(3) A complaint alleging non-compliance with license requirements,

(4) Discovery of previously undisclosed information regarding a licensee or any of its owners, officers, managers or other employees if such information affects or has the potential to affect the licensee's provision of care, or

(5) The omission of relevant information from documents requested by the Department or indication of false information submitted to the Department.

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2.7 Change of Ownership *[proposed changes necessary to implement section 4 of HB 1294]*

2.7.1 THE DEPARTMENT SHALL CONSIDER THE FOLLOWING CRITERIA IN DETERMINING WHETHER THERE IS A CHANGE OF OWNERSHIP OF A HEALTH CARE ENTITY THAT REQUIRES A NEW LICENSE:

(A) SOLE PROPRIETORS:

(1) THE TRANSFER OF ANY AMOUNT OF OWNERSHIP INTEREST IN THE HEALTH CARE ENTITY FROM A SOLE PROPRIETOR TO ANOTHER INDIVIDUAL SHALL BE CONSIDERED A CHANGE OF OWNERSHIP.

(2) A SOLE PROPRIETOR WHO FORMS A CORPORATION WITH THE PROPRIETOR AS THE SOLE SHAREHOLDER IS NOT CONSIDERED A CHANGE OF OWNERSHIP.

(B) PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS AND LIMITED LIABILITIES COMPANIES:

(1) THE TRANSFER OF 50 PERCENT OR MORE OF A LICENSED HEALTH CARE ENTITY'S DIRECT OR INDIRECT OWNERSHIP INTEREST TO ONE OR MORE NEW OWNERS, WHETHER OR NOT THE TRANSACTION AFFECTS THE TITLE TO REAL PROPERTY, SHALL BE CONSIDERED A CHANGE OF OWNERSHIP.

(2) THE CONVERSION OF THE HEALTH CARE ENTITY'S LEGAL STRUCTURE, OR THE LEGAL STRUCTURE OF A HEALTH CARE ENTITY THAT HAS A DIRECT OR INDIRECT ***[correcting typo in previous draft]*** OWNERSHIP INTEREST IN THE HEALTH CARE ENTITY IS NOT A CHANGE OF OWNERSHIP UNLESS THE CONVERSION ALSO INCLUDES A TRANSFER OF AT LEAST 50 PERCENT

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OF THE LICENSED HEALTH CARE ENTITY'S DIRECT OR INDIRECT OWNERSHIP INTEREST TO ONE OR MORE NEW OWNERS.

(C) MANAGEMENT CONTRACTS, LEASES OR OTHER OPERATIONAL ARRANGEMENTS:

(1) ANY ACTION THAT RESULTS IN THE CURRENT LICENSEE RETAINING NO CONTROL OF THE OPERATION OR MANAGEMENT OF THE HEALTH CARE ENTITY SHALL BE CONSIDERED A CHANGE OF OWNERSHIP.

2.7.~~1~~2 When a currently licensed health care entity anticipates a change of ownership, the current licensee shall notify the Department within the specified time frame and the prospective new licensee shall submit an ~~initial license~~ application for CHANGE OF OWNERSHIP along with the requisite fees and documentation within the same time frame. The time frame for submittal of such notification and documentation shall be least ninety (90) calendar days before a change of ownership involving any health care entity except those specifically enumerated in subsection (A) below.

(A) Notification and documentation regarding the change of ownership of an assisted living residence; facility for persons with developmental disabilities; outpatient mental health care facility, including but not limited to a community mental health center or clinic; and any extended care facility or hospice with sixteen (16) or fewer inpatient beds, including but not limited to nursing homes or rehabilitation facilities, shall be submitted to the Department at least thirty (30) calendar days before the change of ownership.

2.7.~~2~~3 EACH APPLICANT FOR A CHANGE OF OWNERSHIP SHALL PROVIDE THE FOLLOWING INFORMATION:

(A) THE LEGAL NAME OF THE ENTITY AND ALL OTHER NAMES USED BY IT TO PROVIDE HEALTH CARE SERVICES. THE APPLICANT HAS A CONTINUING DUTY TO NOTIFY THE DEPARTMENT OF ALL NAME CHANGES AT LEAST THIRTY (30) CALENDAR DAYS PRIOR TO THE EFFECTIVE DATE OF THE CHANGE.

(B) CONTACT INFORMATION FOR THE ENTITY INCLUDING MAILING ADDRESS, TELEPHONE AND FACSIMILE NUMBERS, E-MAIL ADDRESS AND, IF APPLICABLE, WEBSITE ADDRESS.

(C) THE IDENTITY OF ALL PERSONS AND BUSINESS ENTITIES WITH A CONTROLLING INTEREST IN THE HEALTH CARE ENTITY, INCLUDING ADMINISTRATORS, DIRECTORS, MANAGERS AND MANAGEMENT CONTRACTORS.

(1) A NON-PROFIT CORPORATION SHALL LIST THE GOVERNING BODY AND OFFICERS.

(2) A FOR-PROFIT CORPORATION SHALL LIST THE NAMES OF THE OFFICERS AND STOCKHOLDERS WHO DIRECTLY OR INDIRECTLY OWN OR CONTROL FIVE PERCENT OR MORE OF THE SHARES OF THE CORPORATION.

(3) A SOLE PROPRIETOR SHALL INCLUDE PROOF OF LAWFUL PRESENCE IN THE UNITED STATES IN COMPLIANCE WITH SECTION 24-76.5-103(4), C.R.S.

(D) THE NAME, ADDRESS AND BUSINESS TELEPHONE NUMBER OF EVERY PERSON IDENTIFIED IN SECTION 2.7.3(C) AND THE INDIVIDUAL DESIGNATED BY THE APPLICANT AS THE CHIEF EXECUTIVE OFFICER OF THE ENTITY.

(1) IF THE ADDRESSES AND TELEPHONE NUMBERS PROVIDED ABOVE ARE THE SAME AS THE CONTACT INFORMATION FOR THE ENTITY ITSELF, THE APPLICANT SHALL ALSO PROVIDE AN ALTERNATE ADDRESS AND TELEPHONE NUMBER FOR AT LEAST ONE INDIVIDUAL FOR USE IN THE EVENT OF AN EMERGENCY OR CLOSURE OF THE HEALTH CARE ENTITY.

(E) PROOF OF PROFESSIONAL LIABILITY INSURANCE OBTAINED AND HELD IN THE NAME OF THE LICENSE APPLICANT AS REQUIRED BY THE COLORADO HEALTH CARE AVAILABILITY ACT, SECTION 13-64-301, *ET*

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SEQ., C.R.S., WITH THE DEPARTMENT IDENTIFIED AS A CERTIFICATE HOLDER. SUCH COVERAGE SHALL BE MAINTAINED FOR THE DURATION OF THE LICENSE TERM AND THE DEPARTMENT SHALL BE NOTIFIED OF ANY CHANGE IN THE AMOUNT, TYPE OR PROVIDER OF PROFESSIONAL LIABILITY INSURANCE COVERAGE DURING THE LICENSE TERM.

(F) ARTICLES OF INCORPORATION, ARTICLES OF ORGANIZATION, PARTNERSHIP AGREEMENT, OR OTHER ORGANIZING DOCUMENTS REQUIRED BY THE SECRETARY OF STATE TO CONDUCT BUSINESS IN COLORADO; AND BY-LAWS OR EQUIVALENT DOCUMENTS THAT GOVERN THE RIGHTS, DUTIES AND CAPITAL CONTRIBUTIONS OF THE BUSINESS ENTITY.

(G) THE ADDRESS OF THE PHYSICAL LOCATION THAT IS TO CONSTITUTE THE ENTITY, AND THE NAME(S) OF THE OWNER(S) OF EACH STRUCTURE ON THE CAMPUS WHERE LICENSED SERVICES ARE PROVIDED IF DIFFERENT THAN THOSE IDENTIFIED IN PARAGRAPH (C) OF THIS SECTION.

[deleted previous item H re floor plans from previous draft & re-lettered remaining items below]

(H) A COPY OF ANY MANAGEMENT AGREEMENT PERTAINING TO OPERATION OF THE ENTITY THAT SETS FORTH THE FINANCIAL AND ADMINISTRATIVE RESPONSIBILITIES OF EACH PARTY.

(I) IF AN APPLICANT LEASES ONE OR MORE BUILDING(S) TO OPERATE AS A LICENSED HEALTH CARE ENTITY, A COPY OF THE LEASE SHALL BE FILED WITH THE LICENSE APPLICATION AND SHOW CLEARLY IN ITS CONTEXT WHICH PARTY TO THE AGREEMENT IS TO BE HELD RESPONSIBLE FOR THE PHYSICAL CONDITION OF THE PROPERTY.

(J) A STATEMENT SIGNED AND DATED CONTEMPORANEOUS WITH THE APPLICATION STATING WHETHER, WITHIN THE PREVIOUS TEN YEARS, ANY OF THE NEW OWNERS HAVE BEEN THE SUBJECT OF, OR A PARTY TO, ONE OF MORE OF THE FOLLOWING EVENTS, REGARDLESS OF WHETHER ACTION HAS BEEN STAYED IN A JUDICIAL APPEAL OR OTHERWISE SETTLED BETWEEN THE PARTIES. *[proposed changes necessary to implement section 4 of HB 1294]*

(1) BEEN CONVICTED OF A FELONY OR MISDEMEANOR INVOLVING MORAL TURPITUDE UNDER THE LAWS OF ANY STATE OR OF THE UNITED STATES. A GUILTY VERDICT, A PLEA OF GUILTY OR A PLEA OF NOLO CONTENDERE (NO CONTEST) ACCEPTED BY THE COURT IS CONSIDERED A CONVICTION,

(2) HAD A STATE LICENSE OF FEDERAL CERTIFICATION DENIED, REVOKED, OR SUSPENDED BY ANOTHER JURISICTION,[**addition of statutory criteria that was inadvertently left out of first draft**]

(3) HAD A CIVIL JUDGMENT OR A CRIMINAL CONVICTION IN A CASE BROUGHT BY THE FEDERAL, STATE OR LOCAL AUTHORITIES THAT RESULTED FROM THE OPERATION, MANAGEMENT, OR OWNERSHIP OF A HEALTH FACILITY OR OTHER ENTITY RELATED TO SUBSTANDARD PATIENT CARE, HEALTH CARE FRAUD, OR INVOLVING ENFORCEMENT ACTIVITY AS DEFINED IN THIS PART 2.

(K) ANY STATEMENT REGARDING THE INFORMATION REQUESTED IN PARAGRAPH (K) SHALL INCLUDE THE FOLLOWING, IF APPLICABLE:

(1) IF THE EVENT IS AN ACTION BY FEDERAL, STATE OR LOCAL AUTHORITIES; THE FULL NAME OF THE AUTHORITY, ITS JURISDICTION, THE CASE NAME, AND THE DOCKET, PROCEEDING OR CASE NUMBER BY WHICH THE EVENT IS DESIGNATED, AND A COPY OF THE CONSENT DECREE, ORDER OR DECISION.

(2) IF THE EVENT IS A FELONY OR MISDEMEANOR CONVICTION INVOLVING MORAL TURPITUDE, THE COURT, ITS JURISDICTION, THE CASE NAME, THE CASE NUMBER, A DESCRIPTION OF THE

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MATTER OR A COPY OF THE INDICTMENT OR CHARGES, AND ANY PLEA OR VERDICT ENTERED BY THE COURT.

(3) IF THE EVENT INVOLVES A CIVIL ACTION OR ARBITRATION PROCEEDING, THE COURT OR ARBITER, THE JURISDICTION, THE CASE NAME, THE CASE NUMBER, A DESCRIPTION OF THE MATTER OR A COPY OF THE COMPLAINT, AND A COPY OF THE VERDICT, THE COURT OR ARBITRATION DECISION.

~~The Department shall consider any of the following circumstances to constitute a change of ownership.~~

~~(A) Partnerships: Dissolution of the partnership and conversion thereof into any other entity or the substitution of one or more of the partners.~~

~~(1) Change of ownership does not include dissolution of the partnership to form a corporation with the same persons retaining the same shares of ownership in the new corporation. For purposes of this subsection, "substitution" means any arrangement whereby a person other than the original partner can participate in the management or administration of the partnership business or affairs.~~

~~(B) Sole proprietors: Transfer of title to the business, whether or not title to real property is transferred to another person.~~

~~(1) Change of ownership does not include forming a corporation from the sole proprietorship with the proprietor as the sole shareholder.~~

~~(C) Corporations: Consolidation of two or more corporations resulting in the creation of a new corporate entity; formation of a corporation from a partnership or a sole proprietorship except as provided in subsections (A)(1) and (B)(1) above; or the transfer, purchase or sale of shares in the corporation such that it changes at least 75 percent of the direct or indirect ownership of the corporation.~~

~~(D) Management contracts, leases or other arrangements: Any action that results in the current licensee retaining no control of the operation or management of the entity.~~

~~(E) Limited Liability Companies: The transfer of 50 percent or more of the ownership interest in the company or the termination or dissolution of the company and the conversion thereof into any other entity accompanied by changes in the principals with ownership interest.~~

~~(1) Change of ownership does not include transfers of ownership interest between existing members if the transaction does not involve the acquisition of ownership interest by a new member. For the purposes of this subsection, "member" means a person or entity with an ownership interest in the limited liability company.~~

2.7.~~3~~ 4 The existing licensee shall be responsible for correcting all rule violations and deficiencies in any current plan of correction before the change of ownership becomes effective. In the event that such corrections cannot be accomplished in the time frame specified, the prospective licensee shall be responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless the prospective licensee submits a revised plan of correction, approved by the Department, before the change of ownership becomes effective.

2.7.~~4~~5 If the Department issues a license to the new owner, the previous owner shall return its license to the Department within five (5) calendar days of the new owner's receipt of its license.

2.8 Fitness Review Process

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2.8.2 THE DEPARTMENT MAY CONDUCT A FITNESS REVIEW OF AN EXISTING OWNER OF A LICENSED HEALTH CARE ENTITY THAT HAS SUBMITTED AN APPLICATION FOR A CHANGE OF OWNERSHIP ONLY WHEN THE DEPARTMENT HAS NEW INFORMATION NOT PREVIOUSLY AVAILABLE OR DISCLOSED THAT BEARS ON THE FITNESS OF THE EXISTING OWNER TO OPERATE OR MAINTAIN A LICENSED HEALTH CARE ENTITY. *[proposed change necessary to implement section 4 of HB 1294]*

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2.10 Continuing Obligations of Licensee

2.10.1 Each licensee shall have and maintain electronic business communication tools, including, but not limited to, a facsimile machine, internet access and a valid e-mail address. The licensee shall use these tools to receive and submit information, as required by the Department.

2.10.2 The license shall be displayed in a conspicuous place readily visible to patients, residents or clients who enter at the address that appears on the license. The license is only valid while in the possession of the licensee to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than those for which it was originally issued.

2.10.3 THE LICENSEE SHALL PROVIDE ACCURATE AND TRUTHFUL INFORMATION TO THE DEPARTMENT DURING INSPECTIONS, INVESTIGATIONS AND LICENSING ACTIVITIES. ***[Deleted second sentence from previous draft.*** *This proposed change is intended to harmonize with section 2.14(A)(2).]*

2.10.~~3~~4 The licensee shall provide, upon request, access to such individual patient, resident, client or consumer records as the Department requires for the performance of its regulatory oversight responsibilities.

(A) A licensee shall provide, upon request, access to or copies of reports and information required by the Department including, but not limited to, staffing reports, census data, statistical information, and such other records as the Department requires for the performance of its regulatory oversight responsibilities.

(B) The Department shall not release to any unauthorized person any information defined as confidential under state law.

2.10.~~4~~5 Where a licensed health care entity is subject to inspection, certification, or review by other agencies, accrediting organizations, or inspecting companies, the licensee shall provide and/or release to the Department, upon request, any correspondence, reports or recommendations concerning the licensee that were prepared by such organizations.

2.10.~~5~~6 Each licensee shall notify the Department in writing of any change in the information required by sections 2.4.3 OR 2.7.3 of this Chapter from what was contained in the last submitted license application. Except for the operational changes that require Department approval as set forth in subsection (A) below or the changes requiring advance notice as set forth in subsection (B), the licensee shall notify the Department of all changes in information as soon as practicable, but no later than thirty (30) calendar days after the change becomes effective.

(A) The following changes to the operation of the licensed health care entity shall not be implemented without prior approval from the Department. A licensee shall, at least thirty (30) calendar days in advance, submit a written request to the Department regarding any of these proposed changes.

(1) Increase in licensed capacity.

(a) If a licensee requests an increase in licensed capacity that is approved by the Department, an amended license shall be issued upon payment of the appropriate fee.

(b) The Department has the discretion to deny a requested increase in licensed capacity if it determines that the increase poses a potential risk to the health, safety or welfare of the health care entity's patients, clients or residents based upon the entity's compliance history, life safety code requirements, or because the entity is unable to meet the required health and environmental criteria for the increased capacity.

(2) Change in a management company or proposed use of a management agreement not previously disclosed in sections 2.4.3 or 2.7.3.

(3) Change in license category or classification.

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2.13 License Fees

Unless explicitly set forth elsewhere in 6 CCR 1011-1 or statute, the following non-refundable fees shall apply and be submitted to the Department with the corresponding application or notification. More than one fee may apply depending upon the circumstances.

Initial license	$ 360.
Renewal license	$ 360.
Conditional license	$1,500.
First provisional license	$1,000.
Second provisional license	$1,000.
Change of ownership	$ 360.
Change in licensed capacity	$ 360.
Change of name	$ 360.
Renewal application late fee	Equal to the applicable renewal license fee including bed fees or operating/procedure room fees.

2.14 PERFORMANCE INCENTIVE *[proposed changes necessary to implement section 2 of HB 1294]*

(A) A LICENSED HEALTH CARE ENTITY SHALL BE ELIGIBLE FOR A PERFORMANCE INCENTIVE IF THE DEPARTMENT'S ON-SITE RELICENSURE INSPECTION DEMONSTRATES THE LICENSEE HAS:

(1) NO SIGNIFICANT DEFICIENCIES THAT HAVE NEGATIVELY AFFECTED THE LIFE, SAFETY OR HEALTH OF ITS CONSUMERS;

(2) HAS FULLY AND TIMELY COOPERATED WITH THE DEPARTMENT DURING THE ON-SITE INSPECTION;

(3) THE DEPARTMENT HAS FOUND NO DOCUMENTED ACTUAL OR POTENTIAL HARM TO CONSUMERS; AND

(4) IF SIGNIFICANT DEFICIENCIES ARE FOUND THAT DO NOT NEGATIVELY AFFECT THE LIFE, SAFETY OR HEALTH OF CONSUMERS, THE LICENSEE HAS SUBMITTED AND THE DEPARTMENT HAS ACCEPTED A PLAN OF CORRECTION AND THE DEPARTMENT HAS VERIFIED THAT THE DEFICIENT PRACTICE WAS CORRECTED WITHIN THE PERIOD REQUIRED BY THE DEPARTMENT.

(B) THE AMOUNT OF THE INCENTIVE PAYMENT SHALL NOT EXCEED 10 PERCENT OF THE LICENSEE'S TOTAL RENEWAL FEE. IF THE DEPARTMENT DETERMINES THAT IT MAY BE UNABLE TO FUND A 10 PERCENT PERFORMANCE INCENTIVE, THE DEPARTMENT WILL CONSULT WITH THE STAKEHOLDER FORUM.

(C) DEPARTMENTAL DECISIONS REGARDING ELIGIBILITY FOR A PERFORMANCE INCENTIVE ARE NOT SUBJECT TO APPEAL. [*This refers to formal appeals through final agency action or the office of administrative courts. The department will consider instituting through policy an internal mechanism by which a licensee may petition for reconsideration*]

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PART 4 WAIVER OF REGULATIONS FOR HEALTH CARE ENTITIES

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4.105 Termination, Expiration and Revocation of Waiver

(1) *General*. The term for which each waiver granted will remain effective shall be specified at the time of issuance.

(a) The term of any waiver shall not exceed any time limit set forth in applicable state or federal law.

(b) At any time, upon reasonable cause, the Department may review any existing waiver to ensure that the terms and conditions of the waiver arc being observed, and/or that the continued existence of the waiver is otherwise appropriate.

(c) Within thirty (30) calendar days of the termination, expiration or revocation of a waiver, the Applicant shall submit DOCUMENTATION to the Department THAT DEMONSTRATES THE LICENSEE IS NOW IN FULL COMPLIANCE WITH THE PREVIOUSLY WAIVED REGULATION. ~~an attestation, in the form required by the Department, of compliance with the Regulation to which the waiver pertained~~.

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Chapter VII – ASSISTED LIVING RESIDENCES

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1.103(2) ***License Fees***

~~103(2)(g) Fee Cap~~

~~Notwithstanding the fees that become effective January 1, 2009, any fee increases requested by the Department for adoption by the Board of Health before June 30, 2014, shall be subject to the following restriction: the dollar amount increase in total annual revenue generated by the changed fees shall not be more than a dollar amount equal to 37 percent of the total annual revenue generated during state fiscal year 2010-11.~~ *[conforming change to harmonize with section 7 of HB 1294.]*

1.105(2) **Resident Agreement.**

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105(2)(c) Disclosures. There shall be written evidence that the following have been disclosed, upon admission unless otherwise specified, to the resident or the resident's legal representative, as appropriate:

(i) the facility policies and procedures listed under Section 1.104(5).

(ii) the method for determining staffing levels based on resident needs, INCLUDING WHETHER OR NOT THE FACILITY HAS AWAKE STAFF 24 HOURS A DAY, *[addition suggested by ALR advisory committee]* the on-site availability of first aid certified staff, and the extent to which certified or licensed health care professionals are available on-site.

(iii) types of daily activities, including examples of such activities, that will be provided for the residents.

(iv) whether or not the facility has automatic fire sprinkler systems.

(v) if the facility uses restrictive egress alert devices, the types of individuals exhibited by persons that need such devices.

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CHAPTER XXI - HOSPICES

6 CCR 1011-1 Chap 21

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SECTION 14 LICENSE FEES

14.3 Annual Renewal License

(A) Effective October 1, 2011, the base renewal fee shall be $3,900 per hospice. The total renewal fee shall reflect all applicable adjustments as set forth below.

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~~(5) A discount of $425 shall apply if the hospice is deemed by an accrediting organization recognized by the Centers for Medicare and Medicaid Services and remains in good standing with that organization. To be considered for this discount, the hospice shall authorize its accrediting organization to submit directly to the department copies of all the hospice's surveys and plan(s) of correction for the previous license year, along with the most recent letter of accreditation showing the hospice has full accreditation status.~~ *[conforming change to harmonize with section 5 of HB 1294 which requires deeming recognition for all health care entities.]*

(~~6~~5) Upon request, the department may waive the fee for a hospice that demonstrates it is a not for profit organization that charges no fees and is staffed entirely by uncompensated volunteers.

(~~7~~6) For hospices that have the same ownership and governing body and that provide hospice care in both the home and inpatient hospice settings, the fee shall be as follows and no other discounts shall apply:

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CHAPTER XXVI - HOME CARE AGENCIES

6 CCR 1011-1 Chap 26

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~~5.4.4 Performance incentive~~

~~(A) An HCA may be eligible for a performance incentive if the department's onsite relicensure inspection demonstrates the HCA has no deficiencies that have negatively affected, or have the potential to negatively affect, its consumers.~~

~~(1) A negative effect is one that constitutes more than a minor inconvenience to a consumer.~~

~~(B) The incentive payment shall be calculated at 10 percent of the agency's renewal license fee and shall apply when:~~

~~(1) The inspection is completed with the full and timely cooperation of the agency,~~

~~(2) Inspection findings do not document harm or potential harm to consumers, and~~

~~(3) Correction of the deficient practice is verified by the department on or prior to the respective due dates.~~

~~(C) The incentive payment shall be paid to the licensee within 60 days following the acceptance of the validation of correction of all cited deficiencies, or within 60 days of the inspection exit date if no deficiencies were cited.~~ *[conforming change to harmonize with section 7 of HB 1294 and section 2.14 of these proposed rules regarding a performance incentive for all health care entities.]*

5.4.~~5~~4 Branch and workstation fees

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5.4.~~6~~5 Revisit fee

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5.4.~~7~~6 Change of ownership fee

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