



March 11, 2009

**VIA E-Mail**

Colorado Department of Health and Environment  
Linda Shearman  
Program Assistant  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Dr. South EDO-A5  
Denver, CO 80246-1530

RE: Proposed Regulation on Home Care Agencies, Chapter XXVI,

Dear Mr. Roitman,

Below are Rocky Mountain Health Plans' (RMHP) comments on the rules proposed by the Department of Public Health and Environment (Department) regarding Standards for Hospitals and Health Facilities, 6 CCR 1011-1, Chapter XXVI, Home Care Agencies. These rules are being promulgated pursuant to Senate Bill 08-153 (SB 153), found in section 25-27.5-101, C.R.S.

We understand that the primary purpose of SB 153 was to empower the Department to address substandard home health care through appropriate enforcement mechanisms "sufficient to assure the health, safety, and welfare of home care consumers."

Section 25-27.5-104(1), C.R.S., of the new law requires the State Board of Health to promulgate rules "providing minimum standards" for "Home Care Agencies" (HCAs) operating within Colorado. Regarding these "minimum standards," this law requires the State Board to consider the different requirements for the different types of providers of home care services, and that "this differentiation may consider the requirements already imposed by other federal and state regulatory agencies."

With respect to federally-certified HCAs providing skilled home health services, the rules, however, exceed the requirements in section 25-27.5-104(1), C.R.S. Specifically, the proposed rules fail to recognize that federally-certified HCAs are already subject to comprehensive certification requirements under federal statutes, specifically, sections 1861(o) and 1891(a) of the Social Security Act, as well as federal regulations found at 42 C.F.R. Part 484 ("Conditions of Participation" or "COPs").

These well-established and rigorous federal COPs already provide substantial standards that federally-certified HCAs providing skilled care are required to meet through

the existing survey and certification process. Section 42 C.F.R 484.1(a) of the Code of Federal Regulations provides:

(1) Sections 1861(o) and 1891 establish the conditions that an HHA [Home Health Agency] must meet in order to participate in Medicare.

. . .

(b) This part also sets forth additional requirements that are considered necessary to ensure the health and safety of patients.

Thus, these federal standards are designed to ensure that federally-certified HCAs are providing skilled home health care in a manner that protects the health, safety and welfare of home care consumers.

In addition, by imposing a second set of regulations on federally-certified HCAs, the rules proposed by the Department fail to “consider the requirements already imposed by other federal . . . regulatory agencies” (25-27.5-104(1), C.R.S.). This additional burden will increase the expense of providing skilled home health care for federally-certified HCAs, and may negatively impact the ability of such agencies to deliver skilled home care to patients due to the increased staff time that will need to be devoted to largely duplicative regulatory requirements

With respect to federally-certified HCAs providing skilled home health care, RMHP is not aware of a finding by the Department that the current federal COPs are deficient in a manner that would justify the additional expense and burden imposed by the proposed state regulations.

Further, the proposed rules will likely impact the state’s costs and resources by embedding a duplicative structure into the oversight of certified agencies that provide skilled home health care. Examples of potential expenses would include additional staffing at the state level to monitor a group of providers already being monitored through the state’s on-site audits for compliance with the federal COPs. Such additional expenses will unnecessarily burden the state’s budget at an already difficult time. Finally, these additional costs will ultimately be borne by the intended beneficiaries of such rules, home care consumers, at a time when many are finding it difficult to deal with the rising costs of health care.

Therefore, to minimize unnecessary burden, duplication and expense for both the state and for federally-certified HCAs providing skilled home health care, RMHP recommends adding the following new subsection (E) to section 5.1 of the proposed rules:

(E) Notwithstanding any other provision in these rules, a Home Care Agency that is certified by the Centers for Medicare and Medicaid Services to provide skilled home health care shall be required to comply with the

following sections of these proposed rules: Sections 5.1 through 5.4, 5.7 through 5.10, 6.3, 6.7, 6.10, 6.12, and 6.16. A Home Care Agency that is certified by the Centers for Medicare and Medicaid Services to provide skilled home health care shall be deemed to be in compliance with all other applicable sections of these rules.

RMHP believes this approach will give the Department the tools to address substandard care in a timely and appropriate manner while avoiding the costs and inefficiencies associated with imposing a duplex set of rules on federally-certified HCAs.

We appreciate this opportunity to provide feedback on the Department's proposed rules. We would be happy to discuss our ideas and suggestions with you. Please feel free to contact me at 970-248-5124 if you have any questions or need more information.

Sincerely,



Lori Stephenson  
Director, Home Health  
Rocky Mountain Health Plans

cc: Mike Huotari, Vice President, Legal and Government Affairs, RMHP  
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