

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0292.01 Christy Chase x3286

HOUSE BILL 14-1360

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HOUSE SPONSORSHIP

Young, Ginal, Primavera, Schafer, Singer

SENATE SPONSORSHIP

Aguilar,

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House Committees

Public Health Care & Human Services

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE REGULATION OF HOME CARE  
102 AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND  
103 ENVIRONMENT, AND, IN CONNECTION THEREWITH,  
104 IMPLEMENTING THE RECOMMENDATIONS OF THE 2013 SUNSET  
105 REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES, AS  
106 MODIFIED BY THE LEGISLATIVE SUNSET COMMITTEE.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

**Sunset Process - House Public Health Care and Human Services.** The bill implements the recommendations contained in the department of regulatory agencies' sunset report on the regulation of home care agencies and home care placement agencies by the Colorado department of public health and environment (department), as modified by the house public health care and human services committee (sunset committee) during the sunset hearing, by:

- ! Continuing the department's licensure of home care agencies for 5 years, until 2019;
- ! Clarifying that owners and managers or administrators must obtain a criminal history record check with respect to an application for a home care agency license or home care placement agency registration, and, in connection therewith, defining "owner", "manager" and "administrator";
- ! Excluding from the definition of "home care agency" a program of all-inclusive care for the elderly (PACE) that is regulated by the department of health care policy and financing, but specifying the department's regulatory authority over PACE providers that furnish PACE home care services;
- ! Identifying which convictions may serve as a basis for a home care agency's or a home care placement agency's denial of employment or a referral of a provider and directing the state board of health (state board) to promulgate rules to provide factors for the agencies to consider in determining whether a conviction for an offense should disqualify a provider;
- ! Directing the state board to promulgate rules requiring home care placement agencies to retain their records for inspection by the department and to set fees for home care placement agency registration to cover the direct and indirect costs of the department's oversight of home care placement agencies; and
- ! Authorizing the department to inspect home care placement agencies' records and to remove a home care placement agency from the registry if the inspection reveals that the agency is noncompliant with the statutory requirements connected to the agency's registration.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-27.5-102, **amend**

1 (3) (b) (VIII) and (3) (b) (IX); and **add** (1.3), (3) (b) (X), (5.3), (5.5), and  
2 (5.7) as follows:

3 **25-27.5-102. Definitions.** As used in this article, unless the  
4 context otherwise requires:

5 (1.3) "CMS" MEANS THE FEDERAL CENTERS FOR MEDICARE AND  
6 MEDICAID SERVICES IN THE UNITED STATES DEPARTMENT OF HEALTH AND  
7 HUMAN SERVICES.

8 (3) (b) "Home care agency" does not include:

9 (VIII) A home care placement agency as defined in subsection (5)  
10 of this section; ~~or~~

11 (IX) Services provided by a qualified early intervention service  
12 provider and overseen jointly by the department of education and the  
13 department of human services; OR

14 (X) A PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY  
15 ESTABLISHED IN SECTION 25.5-5-412, C.R.S., AND REGULATED BY THE  
16 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING AND THE CMS;  
17 EXCEPT THAT PACE HOME CARE SERVICES ARE SUBJECT TO REGULATION  
18 IN ACCORDANCE WITH 25-27.5-104 (4).

19 (5.3) "MANAGER" OR "ADMINISTRATOR" MEANS ANY PERSON WHO  
20 CONTROLS AND SUPERVISES OR OFFERS OR ATTEMPTS TO CONTROL AND  
21 SUPERVISE THE DAY-TO-DAY OPERATIONS OF A HOME CARE AGENCY.

22 (5.5) "OWNER" MEANS A SHAREHOLDER IN A FOR-PROFIT OR  
23 NONPROFIT CORPORATION, A PARTNER IN A PARTNERSHIP OR LIMITED  
24 PARTNERSHIP, MEMBER IN A LIMITED LIABILITY COMPANY, A SOLE  
25 PROPRIETOR, OR A PERSON WITH A SIMILAR INTEREST IN AN ENTITY, WHO:

26 (a) HAS AT LEAST A FIVE-PERCENT INTEREST IN A PRIVATELY HELD  
27 COMPANY; OR

1 (b) HAS AT LEAST A TEN-PERCENT INTEREST IN A PUBLICLY  
2 TRADED COMPANY.

3 (5.7) "PACE HOME CARE SERVICES" MEANS SKILLED HOME  
4 HEALTH SERVICES OR PERSONAL CARE SERVICES:

5 (a) OFFERED AS PART OF A COMPREHENSIVE SET OF MEDICAL AND  
6 NONMEDICAL BENEFITS, INCLUDING PRIMARY CARE, DAY SERVICES, AND  
7 INTERDISCIPLINARY TEAM CARE PLANNING AND MANAGEMENT, BY PACE  
8 PROVIDERS TO AN ENROLLED PARTICIPANT IN THE PROGRAM OF  
9 ALL-INCLUSIVE CARE FOR THE ELDERLY ESTABLISHED IN SECTION  
10 25.5-5-412, C.R.S., AND REGULATED BY THE DEPARTMENT OF HEALTH  
11 CARE POLICY AND FINANCING AND THE CMS; AND

12 (b) PROVIDED IN THE ENROLLED PARTICIPANT'S TEMPORARY OR  
13 PERMANENT PLACE OF RESIDENCE.

14 **SECTION 2.** In Colorado Revised Statutes, 25-27.5-104, **amend**  
15 (1) introductory portion; and **add** (1) (i), (1) (j), (1) (k), (1) (l), and (4) as  
16 follows:

17 **25-27.5-104. Minimum standards for home care agencies -**  
18 **rules - advisory committee.** (1) The state board shall promulgate rules  
19 pursuant to section 24-4-103, C.R.S., providing minimum standards for  
20 the operation of home care agencies within the state of Colorado. In  
21 promulgating these rules, the state board shall establish different  
22 requirements appropriate to the various types of skilled home health and  
23 personal care services, including differentiating requirements for  
24 providers that are substantially funded through medicare and medicaid  
25 reimbursement, providers for the program of all-inclusive care for the  
26 elderly established in section 25.5-5-412, C.R.S., providers that are  
27 already licensed under this title, and providers that are solely or

1 substantially privately funded. This differentiation ~~shall consider~~ MUST  
2 INCLUDE CONSIDERATION OF the requirements already imposed by other  
3 federal and state regulatory agencies, ~~shall~~ MUST require the department  
4 of health care policy and financing and the department of ~~public health~~  
5 ~~and environment~~ to work jointly to resolve differing requirements. ~~and~~  
6 ~~shall only regulate a provider for the program of all-inclusive care for the~~  
7 ~~elderly consistent with the federal requirements established for the~~  
8 ~~provider pursuant to a three-way agreement between the provider, the~~  
9 ~~centers of medicare and medicaid services, and the department of health~~  
10 ~~care policy and financing; except that the department may require~~  
11 ~~additional information from the provider with regard to reporting~~  
12 ~~instances of abuse. Such~~ THE rules must include the following:

13 (i) PURSUANT TO SECTION 25-27.5-107 (2), FACTORS FOR HOME  
14 CARE AGENCIES AND HOME CARE PLACEMENT AGENCIES TO CONSIDER  
15 WHEN DETERMINING WHETHER AN APPLICANT'S CONVICTION OF OR PLEA  
16 OF GUILTY OR NOLO CONTENDERE TO AN OFFENSE OTHER THAN AN  
17 OFFENSE LISTED IN SECTION 25-27.5-107 (2) (a) DISQUALIFIES THE  
18 APPLICANT FROM EMPLOYMENT OR A REFERRAL. THE STATE BOARD MAY  
19 DETERMINE WHICH OFFENSES REQUIRE CONSIDERATION OF THE FACTORS.

20 (j) RULES CONCERNING THE DISQUALIFYING CRIMES LISTED IN  
21 SECTION 25-27.5-107 (2) (a);

22 (k) REQUIREMENTS FOR HOME CARE PLACEMENT AGENCIES TO  
23 RETAIN THEIR RECORDS FOR A LENGTH OF TIME DETERMINED BY THE  
24 STATE BOARD TO BE AVAILABLE FOR INSPECTION BY THE DEPARTMENT  
25 PURSUANT TO SECTION 25-27.5-106 (8); AND

26 (l) FEES FOR THE REGISTRATION OF HOME CARE PLACEMENT  
27 AGENCIES TO COVER THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH

1 IMPLEMENTING THE DEPARTMENT'S OVERSIGHT OF HOME CARE  
2 PLACEMENT AGENCIES.

3 (4) THE DEPARTMENT SHALL REGULATE A PROVIDER OF PACE  
4 HOME CARE SERVICES FOR MINIMUM STANDARDS FOR THE OPERATION OF  
5 HOME CARE AGENCIES AS FOLLOWS:

6 (a) FOR A PACE PROVIDER THAT SERVES ONLY MEDICAID OR  
7 MEDICARE CLIENTS, IF A FULL FEDERAL RECERTIFICATION SURVEY  
8 REQUIRED BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING  
9 IS CONDUCTED AT LEAST EVERY THREE YEARS, THE DEPARTMENT SHALL  
10 ACCEPT THE FEDERAL RECERTIFICATION SURVEY IN LIEU OF A SEPARATE  
11 SURVEY FOR RELICENSURE;

12 (b) THE DEPARTMENT SHALL NOT IMPOSE ANY REQUIREMENT ON  
13 A PACE PROVIDER THAT IS MORE STRINGENT THAN THE FEDERAL AND  
14 STATE MEDICAID PACE REGULATIONS, THE THREE-WAY AGREEMENT  
15 ENTERED INTO BY THE PROVIDER, CMS, AND THE DEPARTMENT OF HEALTH  
16 CARE POLICY AND FINANCING, AND THE PACE PROVIDER'S POLICIES AND  
17 PROCEDURES;

18 (c) IN REVIEWING A PACE PROVIDER'S COMPLIANCE WITH HOME  
19 CARE LICENSURE, THE DEPARTMENT SHALL COORDINATE WITH THE  
20 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING REGARDING BOTH  
21 LICENSE AND CERTIFICATION REQUIREMENTS TO ENSURE THAT THE  
22 DEPARTMENTS' SIMILAR REGULATIONS ARE CONGRUENTLY MET;

23 (d) AT THE TIME THAT A PACE PROVIDER ENROLLS A PACE  
24 PARTICIPANT IN A PACE PROGRAM, THE PACE PROVIDER SHALL GIVE THE  
25 CLIENT THE DEPARTMENT'S CONTACT INFORMATION IN WRITING TO ALLOW  
26 THE CLIENT TO REPORT ANY COMPLAINTS THAT MAY ARISE OUT OF THE  
27 CLIENT'S PACE HOME CARE SERVICES. THE DEPARTMENT SHALL

1 UNDERTAKE ANY INVESTIGATION ARISING FROM A COMPLAINT, OTHER  
2 THAN A COMPLAINT ALLEGING MATTERS THAT ARE OUTSIDE OF THE  
3 DEPARTMENT'S LICENSING AUTHORITY.

4 (e) UNDER THE DEPARTMENT'S LICENSING AUTHORITY, THE  
5 DEPARTMENT HAS COMPLETE AUTHORITY TO ENFORCE ALL HOME CARE  
6 REQUIREMENTS APPLICABLE TO A PACE PROVIDER. IF THE DEPARTMENT  
7 IS UNABLE TO TAKE CORRECTIVE ACTION CONGRUENTLY WITH THE  
8 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE DEPARTMENT  
9 SHALL FORWARD THE PROPOSED CORRECTIVE ACTION TO AND CONSULT  
10 WITH THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING BEFORE  
11 TAKING FINAL ACTION AGAINST A PACE PROVIDER.

12 **SECTION 3.** In Colorado Revised Statutes, 25-27.5-106, **amend**  
13 (3) (a); and **add** (8) as follows:

14 **25-27.5-106. License - application - inspection - issuance.**

15 (3) (a) With the submission of an application for a license granted  
16 pursuant to this article, each owner ~~applicant, or licensee shall~~ OF A HOME  
17 CARE AGENCY OR HOME CARE PLACEMENT AGENCY AND EACH MANAGER  
18 OR ADMINISTRATOR OF A HOME CARE AGENCY OR HOME CARE PLACEMENT  
19 AGENCY MUST submit a complete set of his or her fingerprints to the  
20 ~~department. The department shall forward such fingerprints to the~~  
21 Colorado bureau of investigation for the purpose of conducting a state  
22 and national fingerprint-based criminal history record check utilizing ~~the~~  
23 records of the Colorado bureau of investigation and the federal bureau of  
24 investigation. ~~The EACH owner applicant, or licensee shall pay the costs~~  
25 ~~associated with~~ AND EACH MANAGER OR ADMINISTRATOR IS RESPONSIBLE  
26 FOR PAYING THE FEE ESTABLISHED BY THE COLORADO BUREAU OF  
27 INVESTIGATION FOR CONDUCTING the fingerprint-based criminal history

1 record check to the Colorado bureau. of investigation. UPON COMPLETION  
2 OF THE CRIMINAL HISTORY RECORD CHECK, THE BUREAU SHALL FORWARD  
3 THE RESULTS TO THE DEPARTMENT. THE DEPARTMENT MAY ACQUIRE A  
4 NAME-BASED CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT WHO  
5 HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL HISTORY  
6 RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE.

7 (8) (a) THE DEPARTMENT MAY INSPECT A HOME CARE PLACEMENT  
8 AGENCY'S RECORDS AS THE DEPARTMENT DEEMS NECESSARY DURING THE  
9 HOME CARE PLACEMENT AGENCY'S NORMAL BUSINESS HOURS TO ENSURE  
10 THAT THE HOME CARE PLACEMENT AGENCY IS IN COMPLIANCE WITH THE  
11 CRIMINAL HISTORY RECORD CHECK AND DISCLOSURE REQUIREMENTS SET  
12 FORTH IN SECTIONS 25-27.5-104 (1) (c) AND 25-27.5-107.

13 (b) (I) IF, UPON INSPECTION OF A HOME CARE PLACEMENT  
14 AGENCY'S RECORDS, THE DEPARTMENT DETERMINES THAT THE HOME CARE  
15 PLACEMENT AGENCY IS NOT IN COMPLIANCE WITH THE CRIMINAL HISTORY  
16 RECORD CHECK REQUIREMENT OR THE DISCLOSURE REQUIREMENT, THE  
17 DEPARTMENT MAY REMOVE THE HOME CARE PLACEMENT AGENCY FROM  
18 THE REGISTRY REQUIRED BY SECTION 25-27.5-103 (2) (a) FOR  
19 NONCOMPLIANCE.

20 (II) A HOME CARE PLACEMENT AGENCY THAT HAS BEEN REMOVED  
21 FROM THE REGISTRY PURSUANT TO SUBPARAGRAPH (I) OF THIS  
22 PARAGRAPH (b) MAY BE REINSTATED ON THE REGISTRY IF THE HOME CARE  
23 PLACEMENT AGENCY DEMONSTRATES TO THE SATISFACTION OF THE  
24 DEPARTMENT THAT THE AGENCY HAS REMEDIED ITS NONCOMPLIANCE.

25 **SECTION 4.** In Colorado Revised Statutes, **amend** 25-27.5-107  
26 as follows:

27 **25-27.5-107. Employee criminal history record check - rules.**



1     ~~(1) On and after June 1, 2009, prior to employing or placing any person,~~  
2     The home care agency or home care placement agency shall require ~~the~~  
3     A person seeking employment or placement to submit to a criminal history  
4     record check BEFORE EMPLOYMENT OR REFERRAL TO A CONSUMER. The  
5     home care agency or home care placement agency or the person seeking  
6     employment with the home care agency shall pay the costs of ~~such inquiry~~  
7     THE CRIMINAL HISTORY RECORD CHECK. The criminal history record check  
8     shall be conducted not more than ninety days ~~prior to~~ BEFORE the  
9     employment of the applicant.

10           (2) (a) A HOME CARE AGENCY OR HOME CARE PLACEMENT AGENCY  
11     SHALL DENY EMPLOYMENT OR A REFERRAL TO A PERSON WHOSE CRIMINAL  
12     HISTORY RECORD CHECK SHOWS THAT THE PERSON HAS BEEN CONVICTED  
13     OF OR HAS PLED GUILTY OR NOLO CONTENDERE TO HOMICIDE, ASSAULT, OR  
14     OTHER VIOLENT CRIME; A SEXUAL ASSAULT OR OTHER SEXUAL OFFENSE;  
15     OR A CRIME AGAINST AN ELDERLY ADULT, AN AT-RISK ADULT, AS DEFINED  
16     IN SECTION 26-3.1-101, C.R.S., OR A CHILD.

17           (b) FOR ANY OFFENSE SPECIFIED BY THE STATE BOARD BY RULE,  
18     OTHER THAN THE OFFENSES LISTED IN PARAGRAPH (a) OF THIS SUBSECTION  
19     (2), A HOME CARE AGENCY OR HOME CARE PLACEMENT AGENCY SHALL  
20     CONSIDER FACTORS ESTABLISHED BY THE STATE BOARD BY RULE WHEN  
21     DETERMINING WHETHER A PERSON'S CONVICTION OF OR PLEA OF GUILTY  
22     OR NOLO CONTENDERE TO THE OFFENSE DISQUALIFIES THE PERSON FROM  
23     EMPLOYMENT OR A REFERRAL. THE FACTORS ESTABLISHED BY THE STATE  
24     BOARD MAY INCLUDE:

25           (I) THE NUMBER OF OFFENSES; AND

26           (II) FOR EACH OFFENSE:

27           (A) THE NATURE AND SERIOUSNESS OF THE OFFENSE;

1 (B) THE TIME THAT HAS ELAPSED SINCE THE OFFENSE; AND

2 (C) WHETHER THERE ARE ANY MITIGATING CIRCUMSTANCES  
3 SURROUNDING THE OFFENSE.

4 **SECTION 5.** In Colorado Revised Statutes, **amend** 25-27.5-110  
5 as follows:

6 **25-27.5-110. Repeal of article - sunset review.** (1) This article  
7 is repealed, effective ~~July~~ SEPTEMBER 1, ~~2014~~ 2019.

8 (2) ~~Prior to such~~ BEFORE repeal, the DEPARTMENT OF  
9 REGULATORY AGENCIES SHALL REVIEW THE licensing of home care  
10 agencies ~~shall be reviewed~~ as provided for in section 24-34-104, C.R.S.

11 **SECTION 6.** In Colorado Revised Statutes, 24-34-104, **repeal**  
12 (45) (g); and **add** (50.5)(h) as follows:

13 **24-34-104. General assembly review of regulatory agencies**  
14 **and functions for termination, continuation, or reestablishment.**

15 (45) The following agencies, functions, or both, terminate on July 1,  
16 2014:

17 (g) ~~The licensing of home care agencies in accordance with article~~  
18 ~~27.5 of title 25, C.R.S.;~~

19 (50.5) The following agencies, functions, or both, terminate on  
20 September 1, 2019:

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

23 **SECTION 7. Effective date.** This act takes effect July 1, 2014.

24 **SECTION 8. Safety clause.** The general assembly hereby finds,  
25 determines, and declares that this act is necessary for the immediate  
26 preservation of the public peace, health, and safety.