



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

# 2022 Sunrise Review

Host Home Residential Providers



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October 14, 2022



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 14, 2022

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed its evaluation of the sunrise application for the regulation of Host Home Residential Providers and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and whether the public can be adequately protected by other means in a more cost-effective manner.

To learn more about the sunrise review process, among COPRRR's other functions, visit [coprrr.colorado.gov](http://coprrr.colorado.gov).

Sincerely,

Patty Salazar  
Executive Director



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## Background

### Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:<sup>1</sup>

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner; and
- (IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

### Methodology

During the sunrise review process, COPRRR staff contacted and interviewed the sunrise applicant and other stakeholders and reviewed licensure laws in other states. To determine the number and types of complaints filed against host home providers in Colorado, COPRRR staff contacted state agencies.

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<sup>1</sup> § 24-34-104.1(4)(b), C.R.S.

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## Profile of the Profession

Host home residential providers (hereinafter referred to as host home providers) are individuals who provide a home and care for persons with developmental disabilities in the home of the host home provider. The duties and responsibilities of the host home provider depend upon the needs and wants of the individual resident, but the overall goal is to enable residents to live in a family-like setting within the community.

In other words, a host home provider is someone who agrees to care for someone with developmental disabilities in the home (i.e., the host home) of the host home provider. The idea behind this model is for the resident to essentially be treated as a member of the host home provider's family, thereby enabling the resident to live and participate in the community, as opposed to being housed in an institution.

In order to participate in the host home program, a person with disabilities must qualify for the Home and Community-Based Services Waiver for Persons with Developmental Disabilities (DD waiver) through the Colorado Medicaid Program, which is administered through the Colorado Department of Health Care Policy and Financing (HCPF).

To enroll in the DD waiver, a person with disabilities must meet the following financial and program criteria:<sup>2</sup>

### Level of Care

- Qualify for Intermediate Care Facility for individuals with intellectual disabilities level of care as determined by the functional needs of needs assessment.

### Eligibility Group

- Must be determined to have a developmental disability,
- Must be at least 18 years of age, and
- Must require access to services and supports 24 hours a day.

### Financial

- Income must be less than three times the current Federal Supplemental Security Income per month;
- For a single person, countable resources must be less than \$2,000; and
- For a couple, countable resources must be less than \$3,000.

In general, individuals with developmental disabilities who qualify for a DD waiver obtain services from a host home provider by working through their local community

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<sup>2</sup> Colorado Department of Health Care Policy and Financing. *Developmental Disabilities Waiver (DD)*. Retrieved June 13, 2022, from [hcpf.colorado.gov/developmental-disabilities-waiver-dd](https://hcpf.colorado.gov/developmental-disabilities-waiver-dd)

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centered board (CCB), which, as the individual's case manager, will determine eligibility. Once eligibility is determined, the CCB will issue a request for proposal to the Program Approved Service Agencies (PASAs) within its service area.

A PASA is a developmental disabilities service agency that has received program approval from HCPF.<sup>3</sup>

Both the CCB and the PASA must be approved by HCPF.<sup>4</sup>

PASAs may provide a range of services, either directly or, as in the case of host home providers, by contract. Each of these contracts must be in writing and include:<sup>5</sup>

- The name of the host home provider;
- The responsibilities of the PASA and the host home provider, including responsibility for the safety and accessibility of the host home;
- The payment rate and method;
- The beginning and ending dates of the contract;
- An agreement describing the living arrangements and duties of the host home provider;
- A provision that generally prohibits the host home provider from subcontracting with others to perform the host home provider duties; and
- The processes for:
  - Correcting non-compliance,
  - Modifying the contract,
  - Relocating the resident if they are in immediate danger, and
  - Coordinating the care of the resident.

Generally, the host home provider is a contractor, not an employee of the PASA. Each PASA must maintain a current list of the host home providers with which it contracts.<sup>6</sup>

The host home must be the primary residence of the host home provider,<sup>7</sup> and the host home provider must provide to the PASA the names of everyone who lives in the host home.<sup>8</sup> Further, the PASA must ensure that criminal history background checks are conducted on anyone over the age of 18 who lives in the host home.<sup>9</sup> The PASA must also conduct a Colorado Adult Protective Services check on the host home provider.<sup>10</sup>

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<sup>3</sup> 10 CCR § 2505-10 8.600.4, Medical Services Board Rules.

<sup>4</sup> 10 CCR §§ 2505-10 8.601.1(A) and 8.603(A), Medical Services Board Rules.

<sup>5</sup> 10 CCR § 2505-10 8.609.7(B)(8)(b), Medical Services Board Rules.

<sup>6</sup> 10 CCR § 2505-10 8.609.7(B)(8)(a), Medical Services Board Rules.

<sup>7</sup> 10 CCR § 2505-10 8.609.7(A)(1)(d), Medical Services Board Rules.

<sup>8</sup> 10 CCR § 2505-10 8.609.7(B)(9), Medical Services Board Rules.

<sup>9</sup> 10 CCR § 2505-10 8.609.7(B)(9), Medical Services Board Rules.

<sup>10</sup> § 26-3.1-111(7)(d), C.R.S.

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Host home providers may house up to three persons with the DD waiver, and they are responsible for providing for the day-to-day care of the needs of clients who live in their home. Day-to-day care includes, but is not limited to:<sup>11</sup>

- Providing meals,
- Medication administration, and
- Arranging for medical care and treatment.

According to HCPF staff, there are currently 2,313 host home providers serving 3,254 persons with a DD waiver throughout the state of Colorado.

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<sup>11</sup> Support, Inc. *Host Home Services*. Retrieved June 13, 2023, from [supportinc.com/residential-services/host-home-program/#:-:text=The%20Host%20Home%20Provider%20is,specific%20needs%20you%20might%20have](https://supportinc.com/residential-services/host-home-program/#:-:text=The%20Host%20Home%20Provider%20is,specific%20needs%20you%20might%20have).

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## Proposal for Regulation

The Colorado Cross Disability Coalition (Applicant) submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application did not request a specific level of regulation; instead, it requested that COPRRR evaluate the situation and assess the current level of regulation, or lack thereof.

The Applicant asserts that there is no formal complaint or grievance process for host home providers, leaving the most vulnerable clients at risk. The Applicant requests increased professionalism of host home providers to ensure the safety and security of Coloradans with intellectual and developmental disabilities who live in host homes.



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## Summary of Current Regulation

### Federal Laws and Regulations

While there are no known federal laws or regulations that directly regulate host homes or host home providers, Colorado's host home program operates under a Home and Community-Based Services (HCBS) waiver to the federal Medicaid program. Specifically, section 1915(c) of the Social Security Act permits waivers that provide habilitation services, which are defined, in pertinent part, as

services designed to assist individuals in acquiring, retaining and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings . . .<sup>12</sup>

Any income host home providers receive through the HCBS Waiver program is excludable from their gross income for income tax purposes.<sup>13</sup> In short, such funds are income tax free.

### The Colorado Regulatory Environment

Multiple state agencies play a role in the oversight of host homes and host home providers:

- Colorado Department of Health Care Policy and Financing (HCPF),
- Colorado Department of Public Health and Environment (CDPHE),
- Colorado Department of Local Affairs (DOLA), and
- Colorado Department of Human Services (DHS).

As the administrator of the state's Medicaid program, HCPF is the lead oversight agency with respect to host homes. HCPF, in turn, has interagency agreements with CDPHE and DOLA's Division of Housing to both approve host homes and to conduct various types of surveys and inspections.

Additionally, the state's community centered boards (CCBs) play a role in both the placement of residents in host homes, as well as oversight of those who contract with host homes. Finally, DHS's Colorado Adult Protective Services Program (CAPS) can respond to complaints found to be within its jurisdiction.

A host home provider is "an individual who provides residential supports in his/her home to persons receiving comprehensive services who are not family members . . ."<sup>14</sup>

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<sup>12</sup> 42 U.S.C. § 1396n(c)(5).

<sup>13</sup> Internal Revenue Service. *Certain Medicaid Waiver Payments May Be Excludable From Income*. Retrieved June 10, 2022, from [irs.gov/individuals/certain-medicaid-waiver-payments-may-be-excludable-from-income](https://irs.gov/individuals/certain-medicaid-waiver-payments-may-be-excludable-from-income)

<sup>14</sup> 10 CCR § 2505-10 8.600.4, Medical Services Board Rules.

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The purpose of a host home is to provide a full day of

services and supports to ensure the health, safety and welfare of the [resident], and to provide training and rehabilitation services or a combination of training (i.e., instruction, skill acquisition) and supports in the areas of personal, physical, mental and social development and to promote interdependence, self-sufficiency and community inclusion.<sup>15</sup>

These services and supports are intended to satisfy the unique needs of each individual host home resident.<sup>16</sup>

In other words, a host home provider is someone who agrees to care for someone with developmental disabilities in the home (i.e., the host home) of the host home provider. The idea behind this model is for the resident to essentially be treated as a member of the host home provider's family, thereby enabling the resident to live and participate in the community, as opposed to being housed in an institution.

In general, individuals obtain services from a host home provider by working through their local CCB, which, as the individual's case manager, will determine eligibility. Once eligibility is determined, the CCB will issue a request for proposal to the Program Approved Service Agencies (PASAs) within its service area.

A PASA is a developmental disabilities service agency that has received program approval from HCPF.<sup>17</sup> Each PASA must maintain a comprehensive general liability insurance policy, a fidelity bond to cover the activities of its officers or agents, automobile insurance, and a surety bond or irrevocable letter of credit to cover the personal needs funds of host home residents.<sup>18</sup>

PASAs may provide a range of services, either directly or, as in the case of host home providers, by contract. Each of these contracts must be in writing and include:<sup>19</sup>

- The name of the host home provider;
- The responsibilities of the PASA and the host home provider, including responsibility for the safety and accessibility of the host home;
- The payment rate and method;
- The beginning and ending dates of the contract;
- An agreement describing the living arrangements and duties of the host home provider;
- A provision that generally prohibits the host home provider from subcontracting with others to perform the host home provider duties; and

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<sup>15</sup> 10 CCR § 2505-10 8.609.5, Medical Services Board Rules.

<sup>16</sup> 10 CCR § 2505-10 8.609.5, Medical Services Board Rules.

<sup>17</sup> 10 CCR § 2505 8.600.4, Medical Services Board Rules.

<sup>18</sup> 10 CCR § 2505-10 8.603.8, Medical Services Board Rules.

<sup>19</sup> 10 CCR § 2505-10 8.609.7(B)(8)(b), Medical Services Board Rules.

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- The processes for:
    - Correcting non-compliance,
    - Modifying the contract,
    - Relocating the resident if they are in immediate danger, and
    - Coordinating the care of the resident.

Generally, the host home provider is a contractor, not an employee of the PASA. Each PASA must maintain a current list of the host home providers with which it contracts.<sup>20</sup>

The host home must be the primary residence of the host home provider,<sup>21</sup> and the host home provider must provide to the PASA the names of everyone who lives in the host home.<sup>22</sup> Further, the PASA must ensure that criminal history background checks are conducted on anyone over the age of 18 who lives in the host home.<sup>23</sup> The PASA must also conduct a Colorado Adult Protective Services check on the host home provider.<sup>24</sup>

Additionally, each PASA must:<sup>25</sup>

- Maintain written policies concerning the handling of personal needs funds and recordkeeping systems for personal possessions of the resident;
- Conduct an evaluation of consumer satisfaction with services and supports at least every three years;
- Maintain a record for each resident;
- Comply with CAPS requirements;
- Comply with incident reporting requirements;
- Monitor the conditions of the host home and provide oversight and guidance to safeguard the resident's health, safety and welfare; and
- Maintain a protocol for the emergency placement of the resident if a host home is deemed not safe by DOLA.

The PASA must have an organized orientation and training program for host home providers that is sufficient to enable them to carry out their duties “efficiently, effectively and competently.” In general, this program must include training that is:<sup>26</sup>

- Related to having unsupervised contact with residents,
- Related to health safety and services and supports, and
- Specific to the individual needs of the resident.

The PASA must ensure that the host home provider has the appropriate knowledge, skills, and training to meet the individual needs of each resident before the resident

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<sup>20</sup> 10 CCR § 2505-10 8.609.7(B)(8)(a), Medical Services Board Rules.

<sup>21</sup> 10 CCR § 2505-10 8.609.7(A)(1)(d), Medical Services Board Rules.

<sup>22</sup> 10 CCR § 2505-10 8.609.7(B)(9), Medical Services Board Rules.

<sup>23</sup> 10 CCR § 2505-10 8.609.7(B)(9), Medical Services Board Rules.

<sup>24</sup> § 26-3.1-111(7)(d), C.R.S.

<sup>25</sup> 10 CCR §§ 2505-10 8.609.5(A)(1-3 and 9-11) and 8.609.7(C)(2), Medical Services Board Rules.

<sup>26</sup> 10 CCR § 2505-10 8.603.9(D), Medical Services Board Rules.

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moves in. Additionally, host home providers must receive training in resident rights; the prevention of abuse and neglect and the reporting of abuse, neglect, mistreatment and exploitation and training specific to the resident's needs, including medical protocols and activities of daily living.<sup>27</sup>

A PASA must conduct an on-site visit of a host home before a resident moves in. In addition, on-site visits must be conducted at least once per quarter, and at least one of those must be unscheduled. During these visits, the inspector must, at a minimum:<sup>28</sup>

- Inspect all smoke alarms and carbon monoxide detectors,
- Ensure that all exits are free from blockages,
- Review each resident's emergency and disaster assessment, and
- Review each resident's medication administration records and physician orders.

If the host home provider administers medication to the host home resident, the host home provider must become a qualified medication administration person (QMAP) through the QMAP program administered by CDPHE.

A host home must satisfy all applicable fire, building, licensing, and health regulations,<sup>29</sup> and pass a DOLA inspection every two years.<sup>30</sup>

Pursuant to an interagency agreement between HCPF and DOLA, an amendment to which was finalized in January 2020, DOLA's Division of Housing must conduct an inspection of each host home within 60 days of the first placement of a resident in the host home, and then every two years thereafter. Each host home in existence at the time of the amendment was required to pass an inspection by January 1, 2022; inspections are conducted pursuant to the U.S. Department of Housing and Urban Development's Section 8 Housing Quality Standards (HUD Standards), plus any additional criteria required by state statute or rule.<sup>31</sup>

HUD Standards are fairly comprehensive and include inspections of the host home's electrical, heating and plumbing systems; security; ceiling and floor conditions and electrical hazards, as well as the structural soundness of the host home. In short, DOLA's inspections are intended to ensure that the host home provides a safe living environment.

Additionally, the interagency agreement requires DOLA to develop and maintain a tracking system to monitor the duration of host home provider contracts and to notify

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<sup>27</sup> 10 CCR § 2505-10 8.609.7(A)(3), Medical Services Board Rules.

<sup>28</sup> 10 CCR § 2505-10 8.609.5(A)(12), Medical Services Board Rules.

<sup>29</sup> 10 CCR § 2505-10 8.609.5(A)(5), Medical Services Board Rules.

<sup>30</sup> 10 CCR § 2505-10 8.609.7(C)(1), Medical Services Board Rules.

<sup>31</sup> Interagency Agreement, Amendment No. 3, between HCPF and DOLA, effective January 9, 2020. Statement of Work § 1.2.20.

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HCPF within 24 hours of any emergency situations identified during the course of an inspection.<sup>32</sup>

A host home must:<sup>33</sup>

- Be maintained in good repair;
- Protect the health, safety and comfort of the resident;
- Be free of offensive odors and the accumulation of dirt, rubbish and dust;
- Have two unobstructed means of exiting floors with rooms for sleeping;
- Have entry and emergency exits that are accessible to the resident;
- Have a bedroom for the resident that is at least 80 square feet for a room intended for one person and 120 square feet for a bedroom intended for two people; and
- Have a fire extinguisher.

Host home residents must have 24-hour supervision, which may be on-site (the host home provider is present) or accessible (the host home provider is not on-site but is available to respond if needed).<sup>34</sup>

The PASA must ensure that the host home provides balanced meals, based on an individual resident's capabilities, preferences and nutritional needs. Furthermore, residents must have access to food at all times, choose when and what to eat, have the opportunity to participate in menu planning, choose their own seat for meals and have access to food preparation areas.<sup>35</sup>

Host home residents are presumed to be able to manage their own funds and possessions,<sup>36</sup> and they must have:<sup>37</sup>

- A key to the host home,
- A bedroom door with a lock,
- Access to a bathroom with lockable doors,
- Access to all common areas of the home, and
- A residential agreement that provides protections for evictions.

A resident has the right to furnish their bedroom in a manner that suits them, so long as it is safe and sanitary.<sup>38</sup>

A host home may serve as such to no more than three residents.<sup>39</sup>

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<sup>32</sup> Interagency Agreement, Amendment No. 3, between HCPF and DOLA, effective January 9, 2020. Statement of Work §§ 2.3.1.8, 2.3.1.9 and 2.3.1.11.

<sup>33</sup> 10 CCR §§ 2505-10 8.609.7(C)(3-7 and 10), Medical Services Board Rules.

<sup>34</sup> 10 CCR § 2505-10 8.609.5(A)(4), Medical Services Board Rules.

<sup>35</sup> 10 CCR § 2505-10 8.609.7(B)(12), Medical Services Board Rules.

<sup>36</sup> 10 CCR § 2505-10 8.609.5(B)(1), Medical Services Board Rules.

<sup>37</sup> 10 CCR § 2505-10 8.609.5(B)(2), Medical Services Board Rules.

<sup>38</sup> 10 CCR § 2505-10 8.609.7(C)(9), Medical Services Board Rules.

<sup>39</sup> 10 CCR § 2505-10 8.609.7(A)(2), Medical Services Board Rules.

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A resident must be given at least 15-days' notice of any proposed changes in their placement.<sup>40</sup>

Furthermore, PASA's are also subject to surveys by CDPHE. Pursuant to an interagency agreement between HCPF and CDPHE, HCPF is to provide CDPHE with a list of all host home residents receiving services from each PASA. CDPHE is required to "conduct surveys of sufficient scope, duration, and frequency to determine that . . . [PASAs] have met necessary state and federal regulatory requirements . . . ."<sup>41</sup> In short, CDPHE conducts a survey of the PASA's records, and may similarly survey a sampling of host home providers with whom the PASA being surveyed contracts. CDPHE may also conduct site visits of PASAs and host homes.

CDPHE surveys are conducted prior to initial PASA approval. Once approved, the PASA is subject to being surveyed by CDPHE every three years. CDPHE is required to report to HCPF any deficiencies noted during an inspection, and HCPF may review any plans of correction.<sup>42</sup>

Complaints against host home providers can be submitted to CDPHE, DOLA and HCPF, though most complaints will ultimately be referred to HCPF. Additionally, complaints can be submitted to the CCB, as the resident's case manager, and CAPS.

The CAPS program is supervised by DHS, but it is administered at the county level. CAPS jurisdiction is limited to cases involving self-neglect and mistreatment<sup>43</sup> of at-risk adults, which is defined as "abuse, caretaker neglect, exploitation or a harmful act."<sup>44</sup>

When the county receives a report of mistreatment or self-neglect, it must assess the level of risk, determine whether the report falls within the jurisdiction of CAPS<sup>45</sup> and report any allegation of mistreatment to local law enforcement within 24 hours.<sup>46</sup> If the investigation reveals that the host home resident is being mistreated or self-neglected, the resident may, but is not required to receive protective services,<sup>47</sup> which are defined as:

services provided . . . in order to prevent the mistreatment or self-neglect of an at-risk adult. Such services include but are not limited to: Providing casework services and arranging for, coordinating, delivering, where appropriate, and monitoring services, including medical care for physical or mental health needs; protection from mistreatment and self-neglect;

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<sup>40</sup> 10 CCR § 2505-10 8.609.5(B)(3), Medical Services Board Rules.

<sup>41</sup> Interagency Agreement between HCPF and CDPHE, Amendment No. 4, effective August 7, 2020, Statement of Work § 5.3.4.1.

<sup>42</sup> Interagency Agreement between HCPF and CDPHE, Amendment No. 4, effective August 7, 2020, Statement of Work §§ 5.2.5, 5.3.4.2 and 5.3.4.3.

<sup>43</sup> § 26-3.1-102(1)(a), C.R.S.

<sup>44</sup> § 26-3.1-101(7), C.R.S.

<sup>45</sup> § 26-3.1-103(1), C.R.S.

<sup>46</sup> 12 CCR § 2518-1 30.410(D), Adult Protective Services Rules.

<sup>47</sup> § 26-3.1-104(1), C.R.S.

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assistance with application for public benefits; referral to community service providers; and initiation of probate proceedings.<sup>48</sup>

Additionally, if the allegation is substantiated, the perpetrator (in this case, the host home provider) is notified of such and the finding is documented in the CAPS database.<sup>49</sup>

CCBs may also receive and investigate complaints about PASAs and host home providers.

Finally, HCPF may revoke a PASA's approval, and thus its ability to receive Medicaid funds and to contract with host home providers, if the PASA is found to have violated state law, federal law or HCPF rules.<sup>50</sup>

Ultimately, the PASA is responsible for the living environment<sup>51</sup> and maintains overall responsibility for the services provided to host home residents.<sup>52</sup>

## Regulation in Other States

According to the sunrise application, nine states currently require either minimum qualifications, license or certification, or minimum training requirements for host home providers. In an attempt to understand the regulatory environment in other states, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff attempted to contact regulators in other states, including Arizona, Illinois, Kansas, Missouri, Oklahoma and Oregon; however, COPRRR staff did not receive any responses to several requests for information.

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<sup>48</sup> § 26-3.1-101(9), C.R.S.

<sup>49</sup> 12 CCR 2518-1 30.910(A), Adult Protective Services Rules.

<sup>50</sup> 10 CCR § 2505-10 8.603(H), Medical Services Board Rules.

<sup>51</sup> 10 CCR § 2505-10 8.609.7(B)(1), Medical Services Board Rules.

<sup>52</sup> 10 CCR § 2505-10 8.603(A), Medical Services Board Rules.

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## Analysis and Recommendations

### Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

Before moving forward in the analysis of harm concerning host home providers, it is important to identify what constitutes harm to the public. Host home providers serve an important role for those with developmental disabilities as they agree to care for persons with developmental disabilities in their home. Host home providers deliver a variety of services to host home residents depending on their needs, including, but not limited to administering medication, transporting them to day programs, feeding them and taking care of any other needs of the resident.

There are a variety of types of harm that host home providers could inflict upon residents, such as physical and mental abuse, financial abuse and neglect.

In order to determine whether the regulation of host home providers is necessary, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) requested that the Colorado Cross Disability Coalition (Applicant) provide specific examples of harm to the public. The following examples were provided by the Applicant as well as other stakeholders.

#### Example 1

A person with developmental disabilities lived in a host home for two and one-half years after the death of his mother. According to the person's sister he experienced many negative situations. For example, the host home provider contacted the person's sister in September 2020, informing her that the person was hospitalized because he had fallen and fractured his femur. The host home provider stated to the sister that the person wanted to walk for exercise instead of using his walker. The sister stated that the person was afraid to walk on his own and questioned the circumstances of the incident.

The person was hospitalized again in January 2022 and was diagnosed with a brain tumor. The sister learned that the person had a seizure the day prior to being admitted into the hospital. The host home provider did not seek medical attention on the day of the seizure due to concerns about the COVID-19 pandemic. While in the hospital, the person told his sister that since the host home provider



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switched to a different Program Approved Service Agency (PASA), he had not received his weekly spending money.

The person also told his sister that the host home provider allowed him to wear a t-shirt only because the host home provider did not want to change the person's pants if he urinated on them.

The person asserted that he was not allowed to have visitors because that was the "house rules." When the sister visited the person, the host home provider called to ask who he was visiting with, and the second call was to ensure that the person was still in the house.

While visiting the person, the sister was concerned with the amount of weight loss the person had experienced. The person said that he was always hungry.

The host home provider also told the person that he would not be allowed to stay in the home if he was negative. The host home provider packed the person's suitcase and left it on a chair in the person's room to reinforce that he could be moved out at any time.

### Analysis

*This example demonstrates instances where the host home provider acted unprofessionally and, at times, appears to have at least assisted in facilitating the physical harm incurred by the resident. However, the example does not clearly demonstrate that the host home provider did not let the person use his walker, thereby causing the person to fall and break his femur.*

*Also, when the resident suffered a seizure, the host home provider should have sought medical attention.*

*While it is clear that the resident in this example suffered harm, it is not clear whether the resident's situation was brought to the attention of HCPF or CDPHE, or whether any inspections were conducted. More robust enforcement of existing mechanisms might have alleviated some of the harm in this case.*

### Example 2

A 21-year-old woman who has low muscle tone, seizures, schizophrenia, autism, intellectual disabilities, speech impairment, severe constipation (multiple hospitalizations) and a history of trauma lived in a host home.

The woman was severely abused in a cult for the first five years of her life. She was ultimately adopted into a safe and loving home.

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The woman requires assistance with grooming, teeth brushing, and washing her nails. She can shower and dress herself with support from others. She can walk but has coordination issues.

The woman requires structure and consistent behavioral support. She also requires line of sight supervision when taking medication as well dietary support. When she does not have her needs met, she engages in self harm, excessive calls to 911 and asks to go to the hospital.

The woman has been in nine host homes since she was 18 years old. Her most recent host home was accused of neglect, and an investigation substantiated the claim. The most recent host home provider failed to take her to medical appointments.

The woman has endured inappropriate sexual behavior, sudden rejection and other traumatic experiences in various host homes.

### Analysis

*The example highlighted above illustrates an instance where a host home provider neglected the woman who was living in the home. Since the allegation was substantiated, the PASA should have been notified and the PASA should have terminated the contract with the host home provider. Although not delineated in the example, if the Colorado Adult Protective Services (CAPS) substantiated the neglect claim, the host home provider will be entered into the CAPS system as a substantiated instance of neglect, and if they attempt to provide services as a host home provider in the future, the CAPS check completed by the PASA will reveal the incident.*

*Also, the fact that the host home provider failed to take the woman to medical appointments presents a situation where medical conditions could continue to worsen, and it could ultimately compromise the woman's health.*

*The current structure for host home provider oversight entails home visits, both announced and unannounced, by a variety of agencies. For instance, the Community Centered Board (CCB) case manager and PASA staff conduct periodic visits with persons who live in host homes, as well as investigators, when a complaint is filed, at the Colorado Department of Public Health and Environment (CDPHE). These visits are intended to, among other things, ensure that persons living in host homes are safe and being cared for properly. In this example, it is unclear if or how often those visits occurred.*

*It is unclear whether an additional regulatory program for host home providers would provide a greater level of protection to consumers. Regulatory programs are inherently reactive. That is, regulatory programs typically respond to complaints once they have occurred. The current structure in place for host*

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*home providers is intended to provide some level of preventative protection to persons living in host homes by periodically visiting persons in host homes to identify any issues with, among other things, health and safety issues. The example does not highlight whether those visits occurred.*

### **Example 3**

A 52-year-old woman with cerebral palsy is in a wheelchair and requires full physical assistance with bathing and toileting tasks. The woman has limited motion with her arms and hands and requires assistance with eating.

In the past three years, the woman has been in approximately seven host homes due to difficulties in finding adequate and compassionate care. One of the host homes retained a psychiatrist who overmedicated the woman. The woman became frightened and experienced hallucinations and psychotic episodes. The woman's employer became concerned. When this occurred, the host home provider and PASA threatened to institutionalize the woman as punishment for complaining.

### **Analysis**

*This example demonstrates an instance where perhaps a licensed psychiatrist violated their practice act. If so, the psychiatrist may be subject to formal discipline by the Colorado Medical Board.*

*Threatening or attempting to intimidate the resident is unprofessional, and the CCB case manager and CDPHE investigators should have been notified, and, if the claim was substantiated, CDPHE could have required the PASA to submit a corrective plan.*

*From the information presented above, it is unclear whether additional oversight would have prevented the situation from occurring or would provide greater protection to the women. If a traditional regulatory program would be in place, presumably a complaint would have been filed and investigated. This process is already in place, enabling authorized CDPHE staff to investigate complaints.*

### **Example 4**

In May 2020, a Colorado Adult Protective Services (CAPS) Performance Audit concluded that a host home provider waited four hours to call poison control and 911 after an at-risk adult consumed a different adult's medication, which resulted in the at-risk adult overdosing and suffering multiple organ failure. The host home provider claimed that the delay in calling 911 occurred because they were not aware that the at-risk adult consumed the medication. The CAPS case file showed that the host home provider's employer, a police detective and a

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county case worker believed the act was deliberate, particularly since the host home provider called poison control before calling 911.

### Analysis

*This example demonstrates a situation where a criminal act may have occurred, and the person who ingested the medication may have sustained life-threatening injuries.*

*Although not highlighted in the example, if the CAPS investigation substantiated that a violation occurred, the information is included in the system and if the person attempts to provide services in the future as a host home provider, the PASA can easily identify this issue. This provides some reassurance the host home provider will be unable to act as such in the future.*

*Additionally, if law enforcement determines that it was a criminal act, the host home provider could face criminal charges, which would preclude them from providing services as a host home provider.*

*The implementation of additional oversight via a regulatory program would likely not have prevented this situation from occurring and would likely not provide a greater level of protection than already exists.*

### Example 5

In 2021, a 52-year-old woman with developmental disabilities moved into a host home and was well cared for; however, the home was not in compliance with current regulations. Since the host home was not in compliance with existing regulations, the PASA decided to move the woman to a different host home.

The woman's sister and brothers were not informed of the move to a new host home until the day the move was taking place. The sister and brothers had less than two hours' notice to attend an online meeting to discuss the move. During the meeting, the PASA explained to the woman that she could either move to a group home, where she had unpleasant experiences, a temporary home or maybe a permanent home.

Ultimately the woman was placed in another host home, and it was a perfect match for her. However, the experience was stressful and traumatic for the entire family.

One of the host home providers became sick with COVID-19 and ultimately died. Upon his death, the family was once again in a stressful situation due to the uncertainty of whether the woman could continue to live in the home.

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### Analysis

*This example illustrates an instance where the PASA staff potentially did not effectively communicate with family members. However, the PASA did ensure that the woman would be removed from a potentially unsafe environment.*

*The example does not highlight a situation where the actions of the host home provider harmed a resident. Instead, the family member was in stressful situations due to the uncertainty of the availability of host home providers.*

*As such, it is unclear whether the regulation of host home providers is necessary.*

### Example 6

A woman with developmental disabilities was removed from her host home after contracting gangrene resulting in amputation of her leg and upper hip. The woman ultimately died from the condition. Law enforcement and the district attorney's office did not prosecute the host home provider.

### Analysis

*This example details an unfortunate situation where the woman suffered a fatal condition. The information detailed in the example does not delineate what actions the host home provider did or did not take prior to removal. As such, it is unclear whether additional oversight of host home providers would have offered any additional protection to the woman.*

### Example 7

A host home provider who was caring for a man with developmental disabilities persuaded him to terminate his relationship with the advocate who was working with him. Also, the host home provider changed the PASA he was working with as well as the CCB case manager. The host home provider then began restricting the man from seeing and communicating with his family by not allowing home visits during the COVID-19 pandemic and taking his phone.

The man suffered a broken leg and a fractured shoulder while being cared for by the host home provider. The injuries were not properly reported and investigated. The man was also diagnosed with a brain tumor and the family was able to visit him in the hospital. The man ultimately died due to the brain tumor, and the family is exploring the possibility of suing the host home provider for negligence.

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## Analysis

*This example details an instance where the host home provider persuaded the resident to terminate the relationship with his advocate. It is unclear the reasoning or rationale for the decision, but the example does not highlight where the resident was harmed due to the change. Also, the host home provider changed his PASA and CCB case manager. Again, this does not demonstrate that this change ultimately harmed the resident.*

*The host home provider restricted visits during the COVID-19 pandemic, which was a practice utilized by many during the height of the pandemic. It is unclear why the host home provider would deny the resident access to his phone.*

*The example states that the resident suffered a broken leg and fractured shoulder, but it is unclear whether these unfortunate injuries were due to the action or inaction of the host home provider. It was also reported that the resident suffered from a brain tumor, and it is unclear whether the host home provider was negligent in seeking care for the man.*

*The information highlighted above demonstrates a situation where the PASA and CCB case manager should have been in regular contact with the resident to ensure that his needs were being met, including safety and welfare issues. The information provided in the example does not delineate whether the CCB case manager or PASA staff was in regular contact with the resident.*

*Providing additional oversight will not serve to enhance protection of the resident. Regulatory programs are inherently reactive, and investigations are typically initiated when a complaint is filed. Under the current structure, there are mechanisms in place to ensure that the resident is safe and being cared for properly, which are communication and periodic visits by the CCB case manager and PASA staff.*

## Example 8

A man with developmental disabilities was physically attacked by the host home provider who was providing care. The man lived in the house for approximately two years before the attack occurred.

According to the mother of the man who was attacked, the PASA stated that the host home provider was properly vetted and was approved to provide services as a host home provider. The mother then attempted to file a complaint with CDPHE, but CDPHE staff informed her that they investigate cases to ensure only that the current rules were followed.

The host home provider was ultimately charged with two felonies for attacking the man.

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### Analysis

*This example delineates an instance where a resident was physically harmed by a host home provider. As stated in the example, the resident lived in the host home for two years before the incident and the PASA contends that the host home provider was properly vetted, so it is unlikely that additional regulation would have prevented this situation from occurring. If the host home provider was convicted of the charges, any future PASA would likely detect that conviction through a criminal background check.*

### Example 9

A woman with developmental disabilities lived in a host home, and there were concerns that the host home provider was not properly caring for the woman. There were concerns that the woman's hair was constantly greasy and only got washed at the day program she was attending. There were also concerns that day program staff were giving the woman showers, brushing her teeth, assisting her with cleaning and doing chores and taking her on community outings. Additionally, the woman had an extensive acne outbreak, and the host home provider was not assisting her in treating it.

There were also disagreements with staff and the host home provider concerning the time of day the woman was getting up in the morning, as well as the way the host home provider was spending the woman's money for extra things like flavored water drops and vitamins.

Day program staff felt that the current host home was not a good placement for the woman. The concern, among others, was that the woman needed a female host home provider who could assist her with hygiene and self-care issues.

### Analysis

*This example provides information concerning a situation where the daily needs of the woman were not being met by the host home provider. The current living arrangement was not a good fit for the woman.*

*It is unclear whether additional oversight of host home providers would have prevented this situation from occurring. Instead, the current oversight, which includes the CCB case manager and PASA staff, should have been monitoring the living situation through communication and regular visits to the home to ensure that the woman's needs were being met.*

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### Example 10

In 2014, a man who has intellectual and developmental disabilities was hospitalized for seven days in an intensive care unit. The man was hospitalized for, among other things, severe dehydration, and extreme levels of sodium in his blood.

The reason for the dehydration and extreme sodium levels was due to withholding liquids and nutrition by the host home provider. The man ultimately recovered from the incident but continues to struggle to regain his strength.

After the incident, the host home provider's contract was terminated by the PASA, and the host home provider was no longer eligible to care for the man. Also, the incident was investigated by the CDPHE. The CDPHE investigation determined that the PASA failed to protect the man from neglect. The PASA failed to comply with applicable regulations pertaining to the subject of the allegation. The investigation revealed that the PASA failed to thoroughly investigate a medical crisis that resulted in an allegation of neglect. CDPHE subsequently required the PASA to submit a plan of correction.

Although the host home provider's contract was terminated, there were no formal charges filed against him and he could continue to provide host home services to others in the future.

### Analysis

*This example demonstrates an instance where the actions of the host home provider caused extreme physical harm to the resident. The host home provider's contract was terminated by the PASA, and CDPHE initiated an investigation, which resulted in the submission of a plan of correction by the PASA.*

*It is unclear whether the unfortunate actions of the host home provider that physically harmed the man could have been prevented if additional oversight of host home providers were implemented.*

*PASA staff and the CCB case manager should have conducted periodic visits at the host home to ensure that the man was safe and being cared for properly. Such visits could detect any problems in the future, should the host home provider again act as such.*



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### Example 11

In 2021, an article from *The Denver Channel*<sup>53</sup> stated that a man who has intellectual and developmental disabilities fell and hit his head and later died. According to the article, the host home provider got into a physical altercation with the man and pushed the man who fell back approximately five feet. The man hit his head on the frame of the couch and again on the floor.

When police officers arrived, the man was unresponsive lying on the floor. He was transported to a local hospital, where he died. The initial medical assessment concluded that the man died of head trauma. An autopsy ultimately concluded that the cause of death was from blunt force trauma.

The host home provider was arrested for investigation of second-degree murder.

### Analysis

*This example demonstrates an instance where the host home provider physically harmed the resident resulting in death.*

*The implementation of additional oversight of host home providers would not have prevented this tragic event from occurring. Instead, this was a criminal act that is within the jurisdiction of the criminal justice system. Also, if the host home provider is convicted of second-degree murder, the conviction would be identified on a criminal background check if he were to attempt to become a host home provider in the future, which would disqualify him.*

### Example 12

In 2020, an article from *Rocky Mountain PBS*<sup>54</sup> highlighted instances where three people with intellectual and developmental disabilities (two women and one man) were harmed by host home providers. First, a 39-year-old woman died in a fire when she could not escape by herself in her wheelchair. The woman, who had cerebral palsy, was unable to evacuate the house when she noticed a fire on the front porch outside her bedroom. Two others, who did not have disabilities, also died in the fire.

Investigators determined that the fire was started by the host home provider and her partner when they were smoking cigarettes on the porch and carelessly disposed of their cigarettes.

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<sup>53</sup> The Denver 7 Team, "Authorities ID Disabled Man Who Died at Caretaker's Home in Denver," *The Denver Channel*, September 29, 2021. Retrieved March 15, 2022, from <https://www.denver7.com/news/local-news/man-with-disabilities-dies-at-caretakers-home-in-denver#:~:text=According%20to%20an%20arrest%20affidavit,room%20floor%20of%20the%20home.>

<sup>54</sup> Lori Jane Gliha, "Death and Mistreatment of Disabled Adults Prompts Action," *Rocky Mountain PBS*, April 13, 2020. Retrieved March 15, 2022, from <https://www.rmpbs.org/blogs/news/stronger-state-regulations-to-come-after-deadly-fire-killed-disabled-woman/>

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An investigation determined that the host home was equipped with a fire alarm monitoring system, but it had not worked for several years. Also, host homes are required to have a fire extinguisher and smoke detectors as well as first aid supplies and a written plan of action in case of an emergency. It is unclear if this host home complied with this requirement.

The host home provider and her partner plead guilty to the negligent deaths of the people who died in the home.

The second woman who was harmed by a host home provider in the *Rocky Mountain PBS* article was 37 years old and is non-verbal and has autistic-like tendencies and intense behaviors and self-abuse issues.

According to an affidavit filed in court, police found the woman chewing on a pair of underwear in a storage room, and the storage room was blocked by a chair. The storage room contained a mattress that smelled of urine.

The host home providers were charged with neglect of an at-risk person, false imprisonment, and reckless endangerment.

The man in the *Rocky Mountain PBS* article was 62 years old and lived in a host home. The host home provider was accused of neglect when it was discovered that the host home provider had moldy food and cluttered areas in the home.

The host home provider initially faced felony charges, but ultimately plead guilty to a misdemeanor neglect charge.

### Analysis

*This example demonstrates three instances where host home providers neglected residents. In all three examples, the host home providers were criminally charged with neglect.*

*The implementation of additional oversight of host home providers would not have prevented these events from occurring. However, there are current mechanisms in place to prevent situations of neglect from occurring. CCB case managers and PASA staff should be visiting the host homes frequently, including unannounced visits, to ensure that residents are safe and being properly cared for in the home. Additionally, safety issues should be identified during DOLA inspections.*

As highlighted above, most of the examples of harm identified were related to some form of neglect or criminally physically harming residents. The current structure for oversight for host home providers may have identified several of the issues prior to the escalation of many of the situations, had the required inspections and surveys occurred, or had the appropriate state agencies been informed. For example, active oversight

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from the CCB case managers and PASA staff could have prevented or mitigated several of the examples of harm from escalating.

Additional oversight for host home providers would not have prevented any of the examples of harm from occurring. As such, the implementation of additional oversight appears to be unnecessary. Instead, a more robust application of existing mechanisms would likely increase the protection of persons with developmental disabilities.

Also, in an attempt to further identify harm to residents by host home providers, COPRRR staff reviewed a sample of surveys completed by CDPHE staff related to PASAs. A review of the surveys identified instances where non-compliance issues were documented. It is important to note that in reviewing the surveys, some PASAs were not surveyed by CDPHE staff in the past five years. Some of the issues highlighted in the surveys included PASAs failing to:

- Provide sufficient training to host home providers;
- Comply with background check and CAPs checks requirements for host home providers;
- Conduct an investigation of possible mistreatment, abuse, neglect or exploitation;
- Safeguard personal and confidential records;
- Identify and investigate instances of possible mistreatment;
- Provide on-site monitoring of host home providers;
- Accurately administer medication;
- Provide adequate medication storage;
- Provide adequate supervision of resident;
- Provide staff with necessary information; and
- Provide wheelchair accessibility to the primary entrance of the home.

Additionally, in the past two years, CDPHE recommended that one PASA's program approval be revoked by HCPF. HCPF ultimately revoked the PASAs program approval, which ensures that the PASA is unable to provide services to those with developmental disabilities. The recommendation was based on past surveys in which numerous issues were identified. The issues include the PASA failing to, among other things:

- Ensure that various host homes complied with safety regulations; and
- Ensure quality of care such as failing to maintain individual plans of care for those with developmental disabilities, improperly administering medications, physical abuse and restricting clients' rights.

As illustrated above, CDPHE staff identified several issues related to host home providers when conducting surveys of PASAs. Generally, the deficiencies identified through the survey process were addressed through plans of correction, which seek to ensure that deficiencies are corrected. Also, in one instance, CDPHE surveys

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highlighted numerous issues that were egregious enough to warrant a CDPHE recommendation to remove the PASA's program approval to provide services.

The current survey system through CDPHE provides protection to consumers by identifying deficiencies and requiring them to be corrected, as well as, if necessary, recommending the revocation of program approval. It is unclear whether implementing additional oversight of host home providers will provide additional protection to consumers.

Further, during this sunrise review, COPRRR staff interviewed the Department of Local Affairs, Division of Housing staff. The Division of Housing staff is responsible for inspecting host homes to ensure that the home is in compliance with all safety requirements. According to Division of Housing staff, inspections typically reveal minor violations, but no major safety concerns.

COPRRR staff also interviewed Department of Human Services staff who oversee the CAPs program. According to staff, the most common issues identified related to host home providers are: neglect in terms of supervision and medication, not following protocols and behavioral issues that are controlled with constraints.

The current oversight of host home providers can be sufficient to provide protection to consumers. However, a more robust application of the tools available to PASAs, CCB case managers, DOLA, HCPF and CDPHE staff, such as increasing the number and frequency of site visits, will serve to enhance consumer protection.

## **Need for Regulation**

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

This criterion addresses the proposition of whether the state should require a certain level of education and/or impose a requirement that host home providers acquire a certain level of education and/or pass an examination before offering host home services in Colorado.

This sunrise review did not identify situations where host home providers lacked competency; instead, there were issues associated with neglect and abuse. As such, there is insufficient evidence to justify requiring host home providers to possess a minimum level of education or pass an examination in order to provide host home services in Colorado. As a result, the implementation of minimum requirements could potentially impose an unnecessary barrier to entry for host home providers.

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## Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

Public protection for host home residents could be realized in a cost-effective manner by retaining the current oversight of host home providers.

Multiple state agencies play a role in the oversight of host homes and host home providers:

- Colorado Department of Health Care Policy and Financing (HCPF),
- Colorado Department of Public Health and Environment (CDPHE),
- Colorado Department of Local Affairs (DOLA), and
- Colorado Department of Human Services (DHS).

As the administrator of the state's Medicaid program, HCPF is the lead oversight agency with respect to host homes. HCPF, in turn, has interagency agreements with CDPHE and DOLA's Division of Housing to both approve host homes and to conduct various types of surveys and inspections.

Additionally, CCBs play a role in both the placement of residents in host homes, as well as oversight of those who contract with host homes, and DHS's CAPS program can respond to complaints found to be within its jurisdiction.

In general, individuals obtain services from a host home provider by working through their local CCB, which, as the individual's case manager, will determine eligibility. Once eligibility is determined, the CCB will issue a request for proposal to the PASAs within its catchment area.

A PASA is a developmental disabilities service agency that has received program approval from HCPF.<sup>55</sup> PASA's enter into a contract to provide services as a host home provider. A PASA must conduct an on-site visit of a host home before a resident moves in. In addition, on-site visits must be conducted at least once per quarter, and at least one of those must be unscheduled.

PASA's are also subject to surveys by CDPHE. Pursuant to an interagency agreement between HCPF and CDPHE, HCPF is to provide CDPHE with a list of all host home residents receiving services from each PASA.

CDPHE surveys are conducted prior to initial PASA approval. Once approved, the PASA is subject to being surveyed by CDPHE every three years. CDPHE is required to report

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<sup>55</sup> 10 CCR § 2505 8.600.4, Medical Services Board Rules.

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to HCPF any deficiencies noted during an inspection, and HCPF may review any plans of correction.<sup>56</sup>

Complaints against host home providers can be submitted to CDPHE, DOLA and HCPF, though most complaints will ultimately be referred to HCPF. Additionally, complaints can be submitted to the CCB, as the resident's case manager, and CAPS.

Pursuant to an interagency agreement between HCPF and DOLA, an amendment to which was finalized in January 2020, DOLA's Division of Housing must conduct an inspection of each host home within 60 days of the first placement of a resident in the host home, and then every two years thereafter.

Since the framework highlighted above already exists to provide oversight of host home providers, it is unclear whether the implementation of additional oversight would provide a greater level protection to host home residents.

## Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, re-licensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

The sunrise application for the regulation of host home providers did not specifically identify a criminal history check as a requirement for regulation. However, current HCPF rules require Program Approved Service Agencies (PASAs) to ensure that criminal history background checks are conducted on anyone over the age of 18 who lives in the host home.<sup>57</sup> Also, section 26-3.1-111(7)(d), Colorado Revised Statutes, requires the PASA to conduct a CAPS check on the host home provider,<sup>58</sup> which constitutes a form of background check.

Based on current requirements additional criminal history checks are unnecessary.

## Conclusion

The sunrise application for host home providers asks COPRRR to evaluate the situation related to host home providers and assess the current state of regulation, or lack thereof. Further, the sunrise application asserts that there is no formal complaint or grievance process for host home providers, leaving the most vulnerable clients at risk.

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<sup>56</sup> Interagency Agreement between HCPF and CDPHE, Amendment No. 4, effective August 7, 2020, Statement of Work §§ 5.2.5, 5.3.4.2 and 5.3.4.3.

<sup>57</sup> 10 CCR § 2505-10 8.609.7(B)(9), Medical Services Board Rules.

<sup>58</sup> § 26-3.1-111(7)(d), C.R.S.

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The Applicant requests increased professionalism of host home providers to ensure the safety and security of Coloradoans with intellectual and developmental disabilities who live in host homes.

Host home providers are individuals who provide a home and care for persons with developmental disabilities in the home of the host home provider. In order to participate in the host home program, a person with disabilities must qualify for the Home and Community-Based Services Waiver for Persons with Developmental Disabilities (DD waiver) through the Colorado Medicaid Program, which is administered through the Department of Health Care Policy and Financing (HCPF).

According to HCPF staff, there are currently 227 PASAs that contract with host home providers, 2,313 host home providers serving 3,254 persons with a DD waiver throughout the state.

Currently, multiple state agencies play a role in the oversight of host homes and host home providers:

- Colorado Department of Health Care Policy and Financing (HCPF),
- Colorado Department of Public Health and Environment (CDPHE),
- Colorado Department of Local Affairs (DOLA), and
- Colorado Department of Human Services (DHS).

As the administrator of the state's Medicaid program, HCPF is the lead oversight agency with respect to host homes. HCPF, in turn, has interagency agreements with CDPHE and DOLA's Division of Housing to both approve host homes and to conduct various types of surveys and inspections.

Additionally, the state's community centered boards (CCBs) play a role in both the placement of residents in host homes, as well as oversight of those who contract with host homes; DHS's Colorado Adult Protective Services Program (CAPS) can respond to complaints found to be within its jurisdiction.

In general, individuals obtain services from a host home provider by working through their local CCB, which, as the individual's case manager, will determine eligibility. Once eligibility is determined, the CCB will issue a request for proposal to the Program Approved Service Agencies (PASAs) within its catchment area.

A PASA is a developmental disabilities service agency that has received program approval from HCPF.<sup>59</sup> PASAs enter into a contract to provide services as a host home provider. A PASA must conduct an on-site visit of a host home before a resident moves in. In addition, on-site visits must be conducted at least once per quarter; at least one of those must be unscheduled.

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<sup>59</sup> 10 CCR § 2505 8.600.4, Medical Services Board Rules.

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PASA's are also subject to surveys by CDPHE. Pursuant to an interagency agreement between HCPF and CDPHE, HCPF is to provide CDPHE with a list of all host home residents receiving services from each PASA.

CDPHE surveys are conducted prior to initial PASA approval. Once approved, the PASA is subject to being surveyed by CDPHE every three years. CDPHE is required to report to HCPF any deficiencies noted during an inspection, and HCPF may review any plans of correction.<sup>60</sup>

Complaints against host home providers can be submitted to CDPHE, DOLA and HCPF, though most complaints will ultimately be referred to HCPF. Additionally, complaints can be submitted to the CCB, as the resident's case manager, and CAPS.

Pursuant to an interagency agreement between HCPF and DOLA, an amendment to which was finalized in January 2020, DOLA's Division of Housing must conduct an inspection of each host home within 60 days of the first placement of a resident in the host home, and then every two years thereafter.

Additionally, HCPF has promulgated regulations this past year to assist in strengthening the safety and oversight of host home settings. For example, PASAs are required to work with the host home provider to ensure the provider has the capacity to serve the members in their home as well as the appropriate back-up should any additional support be required. This rule was put in place to verify the host home provider is not overextending themselves by serving more individuals for which they have the capacity.

As highlighted above, there are many mechanisms in place to provide oversight of host home providers. Most of the examples of harm submitted for this sunrise review were related to neglect and abuse. One of the most effective mechanisms in place in the current system is conducting periodic site visits of host homes. Site visits can be conducted by PASA staff, CCB case managers, CDPHE staff and DOLA staff. Site visits ensure that host home residents are properly cared for and in homes free of health and safety concerns. Perhaps a more robust utilization and application of the current site visit process will decrease the number of neglect cases in Colorado.

Since there is currently a significant amount of oversight of host home providers with the aforementioned state agencies, it is unclear whether adding additional oversight will enhance consumer protection. Traditional regulatory programs are inherently reactive. That is, if a complaint is filed, then an investigation ensues. Instead, the current oversight authorizes site visits, which are proactive and may better ensure that persons living in host homes are safe.

Also, PASA's are authorized to terminate contracts with host home providers if there are violations of any regulations or policies. According the HCPF staff, since 2021, there have been 34 terminations of host home provider contracts by PASAs for various

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<sup>60</sup> Interagency Agreement between HCPF and CDPHE, Amendment No. 4, effective August 7, 2020, Statement of Work §§ 5.2.5, 5.3.4.2 and 5.3.4.3.



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violations. Once a termination occurs, the host home provider is no longer eligible to provide services as a host home provider.

In sum, the current oversight of host home providers can be sufficient to provide protection to consumers. However, a more robust application of the tools available to PASAs, CCB case managers and HCPF and CDPHE staff, such as increasing the number and frequency of site visits, will serve to enhance consumer protection. As such, the implementation of additional oversight of host home providers is unnecessary.

**Recommendation - Do not require additional oversight of host home providers.**