

## **DEPARTMENT OF HUMAN SERVICES**

### **Income Maintenance (Volume 3)**

#### **COLORADO WORKS PROGRAM**

##### **9 CCR 2503-6**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

---

#### **3.600 COLORADO WORKS PROGRAM [Rev. eff. 9/15/12]**

##### **3.600.1 INTRODUCTION [Rev. eff. 4/1/13]**

Colorado Works is Colorado's Temporary Assistance for Needy Families (TANF) program that provides public assistance to families in need. Colorado Works program is designed to assist customers in becoming self-sufficient by strengthening the economic and social stability of families. Families may receive a separate county diversion grant or Family Preservation and/or other assistance under the Colorado Works program as determined by the county and subject to available appropriations and program requirements in these rules. Nothing in these rules shall be construed to convey any entitlement to receipts of benefits under the Colorado Works program.

The Colorado Works program shall conform to all applicable federal laws and regulations including, but not limited to, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and Title VI of the Civil Rights Act of 1964, incorporated herein by reference. This rule does not contain any later amendments or editions of those parts. Copies are available from: Colorado Department of Human Services, Division of Colorado Works, 1575 Sherman, Denver, Colorado 80203, or at any state publication depository library.

##### **3.600.2 COUNTY POLICIES [Rev. eff. 9/15/12]**

County departments shall submit to the State Department county policies regarding their implementation of the Colorado Works program. The State Department is responsible for assuring that all counties are complying with the terms of their county policies and they are in compliance with all federal and state statutes and regulations. Counties have the flexibility in determining the approaches needed to achieve these requirements. The State Department will communicate a list of required policy submittals with county departments.

##### **3.600.3 CONTRACTING [Rev. eff. 9/15/12]**

###### **3.600.31 Private Contracting [Rev. eff. 9/15/12]**

The Board of County Commissioners may contract all or part of the Colorado Works program operation to private or public providers. Contracts which are paid for with county block grant funds and which are designed to invest in the development of community resources pursuant to Section 26-2-707.5(1), C.R.S., do not require that Colorado Works participants complete an application, a written agreement, or an Individual Responsibility Contract (IRC). Counties continue to have the authority to require such written documentation in their individual contracting procedures. The contracting procedures for benefits or services provided through community resource investment contracts must:

- A. Ensure that county block grant funds be used only to support the purposes of the Colorado Works program.

- B. Approximate, with reasonable certainty, the number of Temporary Assistance for Needy Families (TANF) eligible persons to be served and include the method used to calculate this number. This number and the calculation used must be documented and made available upon request by the State Department for audit purposes.
- C. Outline the provider's eligibility verification process.
- D. Explain the methodology used as the basis upon which the costs for the services are calculated. Such methodology must be an accounting or statistical system that gives a reasonably accurate calculation of the costs for TANF-eligible services that support TANF-eligible applicants or participants.
- E. Prohibit supplantation: "supplantation" means the replacement of county funds serving Colorado Works participants with block grant funds and the use of those county fund savings for purposes other than Colorado Works.
- F. Include a regular accounting of activity at least twice a year. All expenditures for goods, services, or start-up funds must be documented with purchasing document.
- G. Ensure that the agency has the ability to clearly identify Colorado Works participants and/or recipients from others in situations where an agency receives funding from multiple sources.

#### 3.600.32 County Contract with Religious Organizations [Rev. eff. 9/15/12]

Counties who contract with religious organizations for the payment of cash assistance or provision of services must provide alternative means for families to receive benefits, assistance, or services if the individual objects to being served by the religious provider chosen as a contractor by a county. Contract agencies providing services to individuals must have the ability to provide services that are equitable and make all services available offered to every participant.

#### 3.601 PROGRAM DEFINITIONS [Rev. eff. 9/15/12]

"Application" shall mean a request on a state approved form for benefits and/or services, which can include the electronic state prescribed form.

"Authorized representative" shall mean someone acting for the applicant, recipient, or participant with the authority to make decisions on behalf of the applicant/participant and who has taken responsibility for the case including but not limited to signing documents and speaking with county departments. If an authorized representative is needed, the appropriate authorized representative release form shall be included in the case file.

#### "Payments and Services"

- A. "Cash assistance shall mean payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. Cash assistance includes supportive services to families based upon the assessment completed, such as transportation and child care assistance. All short-term payments of less than four (4) consecutive months are not cash assistance.
- B. "Basic Cash Assistance" shall mean a recurrent cash payment. In addition to a cash payment, an eligible assistance unit also may receive cash assistance in the form of a cash-equivalent payment, voucher, or other form of cash benefit that is designed to meet the basic ongoing needs of the persons in the assistance unit. Components that basic cash

assistance are intended to cover include: food, clothing, shelter, utilities, household goods, personal care items, general incidental expenses, and other items deemed necessary per the assessment by the county department to address an ongoing need. In addition to cash assistance, persons in an assistance unit that are eligible for ongoing assistance may receive supportive services and/or special needs payments.

- C. "Diversion Payment" shall mean a needs-based, cash or cash-equivalent payment designed to meet the short-term needs of the participant. A diversion payment is designed to address a specific crisis situation or episode of need and is not designed to meet the basic ongoing needs of the participant. A diversion payment may not extend beyond four (4) months. In addition to a diversion payment, a participant who is eligible for diversion may receive supportive services. Diversion payment includes two types:
1. A state diversion is a needs-based, cash or cash-equivalent payment made to a participant who is eligible for basic cash assistance;
  2. A county diversion is a needs-based, cash or cash-equivalent payment made to a participant who is eligible for assistance pursuant to the maximum eligibility criteria for non-recurrent, short-term benefits established in the state plan, in the county-defined expanded eligibility based on federal poverty and other standardized guidelines, and in county policies.
- D. "Supportive Services" shall mean a payment and/or a service based on an assessed need. An eligible participant/recipient may receive supportive services, including but not limited to:
1. Supportive services such as child care and transportation provided to families who are employed or working toward self-sufficiency; or,
  2. Other or additional supportive services the county department deems appropriate/necessary; or,
  3. Additional payments made to the assistance unit to benefit the child.
- E. "Other assistance/special needs payments" shall mean assistance provided to a participant including, but not limited to, cash assistance in addition to the basic cash assistance grant. Such assistance shall be based upon a participant's assessed needs.
- F. "Non-assistance" shall mean a payment and/ or service based on an assessed need. Such payment and/ or service shall:
1. Be designed to deal with a specific crisis situation or episode of need;
  2. Not be intended to meet recurrent or ongoing needs; and,
  3. Not extend beyond four months.

An eligible participant/ recipient may receive non-assistance including, but not limited to:

1. Work subsidies such as payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training.
2. Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement and other employment-related services that do not provide basic income support.

“Collateral Contact” shall mean a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted or by telephone. Acceptable collateral contacts include but are not limited to: employers, landlords, social/migrant service agencies, and medical providers who can be expected to provide accurate third party verification. The name/title of the collateral contact as well as the information obtained must be documented in the case file and/or statewide benefit management system.

“County worker” shall mean an employee or designated representative of the county department.

“County approved setting” shall mean a living arrangement evaluated and deemed appropriate by the county department.

A “dependent child(ren)” shall mean a person who resides with a parent or a specified caretaker and who is:

- A. Under eighteen (18) years of age; or,
- B. Between the ages of eighteen (18) and nineteen (19) and a full-time student in a secondary school or in the equivalent level of vocational or technical training (including obtaining a General Equivalency Diploma-GED) and expected to complete the program before age nineteen (19). Such child(ren) are eligible while making satisfactory progress and through the month of completion of such schooling or until the time it is discovered they will not graduate before his/her 19th birthday.

A “disqualified or excluded person” shall mean a person who would be a member of the assistance unit but is ineligible due to program prohibitions.

“Eligibility requirements” shall mean criteria used to determine individuals eligible or ineligible to receive assistance and/or services.

“Employed” shall mean that an individual is considered an employee by the employer, or is self-employed.

“Guardian” shall mean a person appointed by court order to be the guardian of another person.

“Income” shall mean the receipt by an individual of a gain or benefit in cash or in-kind during a calendar month.

“Medical services” are those services that are allowable or reimbursable under Title XIX of Social Security Act.

“Needs based” shall mean a request that is supported by information provided by the applicant/participant related to a specific need of the applicant/participant. Any supportive service or other assistance payment shall not be a predetermined amount created by the county without consideration to individual need and shall be solely determined and related to the need of the individual.

A “noncustodial parent” shall mean an individual who, at the time he or she requests and receives program services:

- A. Is a parent of a minor child; and,
- B. Is a resident of Colorado; and,
- C. Does not live in the same household as the minor child.

A “parent” shall mean an adoptive or natural/biological parent, including an expectant parent, upon

verification of that pregnancy.

A “participant” shall mean an individual who receives any form of assistance or services or who participates in a specific component of the Colorado Works program.

A “person with disabilities” shall mean a person who has a physical, mental or learning impairment, including a learning disability, that substantially limits one or more major life activities, such as mobility, understanding and use of language, self care, self-direction or capacity for independent living, or has a history or record of such impairment or is regarded as having such an impairment.

“Received” for the purpose of income shall mean the date on which the income becomes legally available. “Received” for the purpose of documentary evidence and reporting shall mean the date a change is reported and verified to the county department of residence.

“Responsibility/exercising responsibility” shall mean the accountability for and obligation to make decisions on behalf of a child(ren).

### **3.602 APPLICATIONS FOR COLORADO WORKS**

#### **3.602.1 Applications [Rev. eff. 7/1/13]**

##### **A. Right and Opportunity to Apply**

An individual shall have the opportunity to apply for assistance without delay. When an individual is unable to make an application in person at the county department, the county department upon request of the applicant shall mail the State Department’s prescribed public assistance application form or assist the individual in applying for assistance utilizing other forms of the State Department’s prescribed application.

1. County departments shall not require any pre-eligibility screening process designed to deter individuals from applying for Colorado Works benefits, services, and/or payment. All applications shall be accepted by the county department and entered into the statewide benefit management system to determine the applicants’ eligibility for the program.
2. County departments shall accept applications for Colorado Works during normal business hours. They shall not be restricted to a certain day or time of day. County departments shall not deter applicants from applying for Colorado Works by creating pre-eligibility requirements or referring applicants to community resource providers in place of allowing them to apply for Colorado Works benefits or otherwise limiting opportunities to apply for Colorado Works. In addition, county departments shall accept applications at all Human/Social Services department for public assistance locations. The application date shall be the date that the application is received in the public assistance office.
3. If the applicant wishes to terminate the process before the application is completed, it shall be treated as an “inquiry” and the application will not be acted upon for a determination of eligibility. An inquiry is a request of information about eligibility requirements for public assistance. If the applicant wishes to terminate the process after the application is submitted, it shall be treated as a “withdrawal/denial.”
4. An applicant may choose to withdraw his or her application anytime during the application process. A decision by the applicant to withdraw shall be treated as a denial by the county department. The applicant shall be notified of the action of

the county department on the State-approved Notice of Action form.

**B. Administrative Review**

All Colorado Works applicants and participants whose benefits have been denied, reduced or terminated shall receive timely and adequate notice of the denial or change in benefits with the exceptions of when a recipient requests benefits stop, there is fraud or an IPV present, or there is a death in the assistance unit causing the case to close. In addition the participant shall have the right to appeal a county department's action in accordance with state rules pursuant to Section 3.609.7, G, and Section 3.609.9. A Colorado Works participant receiving basic cash assistance shall have benefits continued if an appeal is filed timely in accordance with rules at Section 3.609.3, F.

**C. General information concerning public assistance programs shall be provided to all persons seeking information. This shall be provided in writing by the county department. In addition, verbal notice shall be provided to all persons seeking information when requested. Available information shall include:**

1. Information about coverage;
2. Conditions of eligibility;
3. Scope of benefits;
4. Time limits;
5. Related services available;
6. Domestic Violence Waivers; and,
7. Rights and responsibilities of applicants, recipients, and participants.

**D. The county department shall ensure that no information is released concerning an applicant. In circumstances when an applicant needs assistance with the application process, information shall not be released by the county department to the assisting individual(s) unless the individual is accompanied by the applicant, or a written authorization to release information is obtained from the applicant. Upon request, the county department shall provide assistance in completing the application form.**

When an applicant is a person with disabilities and is unable to complete the forms the spouse, other relative, friend, responsible party, or representative may complete the forms. When no such person is available to assist in these situations, the county department must assist the applicant in the completion of the necessary forms. The county department also may refer the applicant to a legal or other resource. The county department shall make referral to the Social Security Administration (SSA) office for all aged, disabled, or blind applicants. However, this shall not negate the county department's responsibility to obtain and process the application. In the event that an applicant needs assistance in submitting and completing an application, the individual providing this assistance is not considered to be the authorized representative unless the required prescribed or approved state form has been signed indicating such authority for the individual to be the authorized representative on the case.

Applications for applicants in special situations shall be handled as follows:

1. Applicants who cannot write their names shall make a mark, and such mark shall be

witnessed by the signature of at least one witness. The printed name and address of such witness shall follow the signature. County workers may act as witnesses if not related to the applicant.

2. An applicant receiving medical treatment in a medical facility shall submit an application to the county department in which the facility is located. When a county department receives an application for an applicant whose place of residence is in another county, the application shall be forwarded to that county department for processing. When an applicant has no determinable county of residence, the county department in which the facility is located shall process the application.
3. An application for an applicant in a public institution shall be processed by the county department where the applicant has established residence or the county in which the court is located which issued a confinement order. When the application process is completed, the case shall become the responsibility of the county department in which the institution is located.
4. All applicants', recipients', and/or participants' rights shall be preserved. The signed Release of Information form/authorization to release information form may be used only for the entities/agencies for which it is intended. No subset of that agency or legal entity attached to that agency shall be included in the authorization to release information unless specified by the applicant, recipient, and/or participant.

#### E. Receiving Applications for Colorado Works Benefits

1. When receiving applications for benefits, county workers shall:
  - a. Receive applications;
  - b. Review applications for completeness and determine eligibility for assistance;
  - c. Make a home visit when required by county policy to determine a county approved setting for a minor applicant; and,
  - d. Refer the applicant or participant to other services when appropriate.
2. The application process shall consist of all activity from the date the application is received from the applicant until a determination concerning eligibility is made. Language translation via interpreter shall be provided by the county department of residence as needed. The major steps in the application process shall include:
  - a. The application shall be date stamped by the county department to secure the application date for the applicant;
  - b. An explanation shall be provided to the applicant of the various benefit options;
  - c. An explanation shall be provided to the applicant of the eligibility factors;
  - d. An explanation shall be provided to the applicant of the applicant's responsibility to accurately and fully complete the application, provide documents to substantiate eligibility factors, and that the applicant may use friends, relatives, or other persons to assist in the completion of the

application;

- e. An assurance shall be provided to the applicant of the county worker's availability to assist in the completion of the application and to secure needed documentation which the applicant is unable to otherwise secure;
- f. An explanation shall be provided to the applicant of the process to determine eligibility;
- g. An explanation shall be provided to the applicant of the applicant's rights and responsibilities including confidentiality of records and information, the right to non-discrimination provisions, the right to a county dispute resolution process, the right to a state-level appeal, the right to apply for another category of assistance and that a determination of the applicant's eligibility for such other assistance will be made;
- h. An explanation shall be provided to the applicant that the applicant may terminate the application process at any time.
- i. The agency shall inform all applicants in writing at the time of application that the agency will use all Social Security Numbers (SSN) of required household members to obtain information available through state identified sources. One interface includes, but is not limited to, the Income and Eligibility Verification System (IEVS) used to obtain information of income, eligibility, and the correct amount of assistance payments. Information gathered through State identified sources may be shared with other assistance programs, other states, the Social Security Administration, the Department of Labor and Employment, and the Child Support Enforcement Program; and,
- j. An explanation shall be provided to the applicant of all Colorado Works program benefits and requirements applicable to the family members in the household. The county department shall, when appropriate, provide the information verbally and in written form.

- 3. An application has been made when the county department receives the signed public assistance application forms prescribed by the State Department. An application is distinguished from an inquiry. Eligibility requirements can be found at Section 3.604 Eligibility Criteria for Colorado Works Payments and Services.
- 4. An application must be accepted by any county department; however, it is the responsibility of the county of residence to determine eligibility. The county department that received the application incorrectly shall forward the application to the county of residence promptly.
- 5. An application may be submitted by the applicant or by an individual acting on the applicant's behalf when the applicant is unable to submit an application.
- 6. Applications for Colorado Works shall be made by a specified caretaker with whom a dependent child(ren) is living.

#### F. Minimum Application Requirements

- 1. County workers shall ensure that the signature of the applicant or the specified



caretaker and the date is on the application form as required, except for family preservation services as defined in Section 3.606.8, C. If the application does not contain a signature and date, the county worker shall ensure that the proper notice for denial of benefits is sent to the applicant.

2. The county department shall require a written application, signed under penalty of perjury, using the State Department's prescribed public assistance form.
3. The date of application shall be the date the county department receives a signed application form, which indicates the applicant's desire to receive public assistance. The application must be date stamped with the date the county department receives the signed application to secure the application date.

#### G. Information Sharing

There are public assistance programs that are to be jointly administered by county departments. This requires sharing of information. Communications from one division to the other shall be formalized so that they serve a purpose, and there is a record of that purpose.

#### H. Confidentiality

Information regarding families shall remain confidential and available only for the purposes authorized by federal or state law as described in Section 3.609.94, Protections to the Individual.

#### I. Normal Processing Standard

1. For applications containing a request for both Food Assistance and Colorado Works, the county department shall act to determine eligibility for expedited food assistance benefits within seven (7) calendar days and to make changes in food assistance eligibility and benefits as applicable.
2. The county department shall consider an application for Colorado Works to be an application for all programs of public assistance, except for child welfare services, for which the applicant has requested assistance. County departments shall make applicants aware of other services and assistance under other public assistance programs that they may be eligible. The determination of eligibility for Colorado Works shall be made as soon as eligibility criteria is met and all required verification is provided, but not more than forty-five (45) calendar days of the original date of application unless the applicant has requested and the county department has approved the extension of time.
3. The county department shall make an eligibility determination on a case as soon as eligibility criteria is met and all required verification is provided, but not more than forty-five (45) calendar days from the application date. The determination should be followed by a written notification of eligibility status to the household. Applicants who refuse to cooperate in completing the application processes shall be denied based upon timely noticing in accordance to Section 3.609.7, E, 4, F, 4. In cases where verification is incomplete, the county department shall provide the household with a statement of required verification on the State prescribed notice form and offer to assist the household in obtaining the required verification. The county department shall allow the household ten (10) calendar days to provide the missing verifications, unless the household can provide good cause or the verification falls under the programs verification at an individual level

described in Section 3.609.4, O. If good cause is provided, the applicant shall have until the twentieth (20th) calendar day following the date of application to provide the necessary verification. The state prescribed notice form shall reflect specific months of eligibility and ineligibility.

4. Following a determination of ineligibility, applications remain valid for a period of thirty (30) calendar days. Households reapplying for benefits more than thirty (30) calendar days from the date of the original application date must submit a new application. For households reapplying for benefits within thirty (30) calendar days of the original application, the date the county is contacted and a request for assistance is made shall be the new application date.
5. County departments shall require no more than one interview for a Colorado Works applicant. When an interview is conducted, the county worker shall review the application for completeness and secure, if necessary, signed copies of the Authorization for Release of Information form, and any other forms or documentation necessary to determine eligibility.

J. Person(s) Who May be Eligible for Benefits Under Colorado Works or SSI or OAP-A:

1. Must be advised of the benefits available under each program;
2. May apply for a determination of eligibility under all programs;
3. Have the option to receive benefits under the program of their choice, but may not receive benefits under Colorado Works and the other programs at the same time; and,
4. May change their selection if their circumstances change or if they decide later that it would be more to their advantage to receive benefits from the other program.

K. Information Concerning Immunizations

At the time of application, the county department shall provide information concerning immunizations to all applicants seeking benefits through the Colorado Works program. The information shall include parent education of vaccines, information concerning where to access vaccines in the local community, and the exemptions listed in Section 25-4-903, C.R.S. The Department of Public Health and Environment or the County or District Public Health Agency shall provide the immunization information to the county department for this purpose.

L. Reporting Case Actions

1. "Approval," is the action that shall be completed when assistance is authorized by the county department and received by the applicant. The applicant shall be notified within 10+1 calendar days of the county department's action by the State-approved Notice of Action form.
2. An application shall be "denied," when the applicant fails to meet the eligibility requirements of the category of assistance desired. A denial also may be on the basis of such factors as, but not limited to:
  - a. The applicant refuses to furnish information necessary to determine eligibility;
  - b. The applicant is unwilling to have the county department contact a collateral

source to secure information, and the applicant refuses to sign the State-approved Authorization for Release of Information form;

- c. The applicant does not supply information or otherwise fails to cooperate with the county department within ten (10) calendar days of the request for information unless good cause is granted and after having received notification of the reason for delay;
- d. The applicant moves to an unknown address before determination of eligibility has been completed;
- e. A third party refuses to provide documentation of essential verifications and the applicant is unwilling to cooperate in obtaining such information personally.

- 1) Authorization of the release of such information alone does not constitute cooperation if the county department requests further assistance from the applicant. Documentation of lack of cooperation must be entered in the case record.

- 2) However, if the applicant is willing to cooperate but unable to obtain the information, no denial or delayed action shall be taken. The county shall assist the participant in gaining the information required to make a determination of eligibility.

- 3. A decision by the applicant to "withdraw," shall be treated as a denial by the county department. The applicant shall be notified of the county department's action by the State-approved Notice of Action form within 10+1 calendar days of the action.
- 4. A recipient, applicant, or participant shall be notified within 10+1 calendar days of the county department's action to terminate benefits by the State-approved Notice of Action form, taking into account the prior notice rule.
- 5. A recipient shall be notified within 10+1 calendar days of any negative action or change causing a decrease to the amount of money payment by the State-approved Notice of Action form unless otherwise stated.
- 6. The recipient shall be notified within 10+1 calendar days of the action of the county department to discontinue assistance by the state-approved Notice of Action form, taking into account the prior notice rule.

### **3.602.2 Right and Opportunity to Register to Vote [Rev. eff. 9/15/12]**

An applicant for public assistance shall be provided the opportunity to register to vote. The county department shall provide public assistance applicants the prescribed voter registration application at application and redetermination for public benefits.

### **3.603 CASE FILE MAINTENANCE [Rev. eff. 9/15/12]**

#### **3.603.1 Purpose and Use of Case File Records [Rev. eff. 9/15/12]**

##### **A. Preparation of Case Record**

Preparation of the case record shall begin at the point of initial application with the applicant and case maintenance shall continue as long as the case is open for

assistance.

#### B. Purpose

The major purposes of a case record shall be:

1. To assist the county worker in reaching a valid decision concerning eligibility or case action, and the amount of payment and type of assistance;
2. To ensure assistance is based on factual information and verifications received;
3. To provide for continuity of assistance when a worker is absent, when a case is reopened, and when a case is transferred from one county worker/ department to another;
4. To ensure valid administration of the county department in keeping with its function and purposes;
5. To serve as a valuable basis for research, for interpretation of the work of the county department, and as a basis for development and evaluation of policy and procedure.

#### C. Case Numbering

A case number shall be assigned to the applicant at the time of application for assistance.

#### D. Narrative/Case Comments on a Case

Information pertaining to eligibility, verifications, assessments, program participation and associated expenditures and further contact with the participant shall be documented in the case file and/or in the statewide benefit management system. These comments shall be entered at time of application, when changes are made to the case, throughout the duration of the case, at redetermination, and when a case is closed. This information shall include actions taken by the county department, the basis of such actions, and the result or outcome of the action taken on the case.

#### E. Arrangement of Case Record and Content of the Case Record

All material pertaining to a case shall be secured to a durable folder plainly labeled with the name and number of the case. A method such as use of a "charge-out divider" shall be used for location of any record not in the storage area in order that the record may be readily obtained and/or accounted for. All case files, including electronic files, shall contain all documents necessary to determine the eligibility and participation in program requirements. All case files, including electronic files at a minimum shall be:

1. Labeled clearly,
2. Easily accessible for state reviews and/or audit purposes, and,
3. Accessible without specific software requirements.

#### F. County Policy and Procedure for the Content in the Case Record

Each county department shall develop a written policy stipulating the contents of the case record, and the content of all records in that county shall be filed according to that county

department policy. With an electronic file, the documents contained in the file must be clearly labeled with a document name and date received.

G. Employee, Employee Related Cases, or Cases Determined Identified as a "Conflict of Interest" Case

Each county department shall develop written policy stipulating certain requirements for the maintenance of employee, employee related cases, and/or cases that have been identified as a case with a conflict of interest.

H. Storing County Records

The county department shall be responsible for the provision of a safe place for storage of case records and other confidential material to prevent disclosure by accident or as a result of curiosity of persons other than those involved in the administration of the programs. Data of any form shall be retained for the current year, plus three previous years unless:

1. There is a written statutory requirement, rule, or regulation available from a county (i.e., a broader county policy), state or federal agency requiring a longer retention period; or,
2. There has been a claim, audit, negotiation, litigation or other action started before the expiration of the three-year period. If a county department shares building space with other county offices, locked files to store case material shall be used. Facility and other maintenance personnel shall be instructed concerning the confidential nature of information.

I. Removal of Case Records

Case records are the property of and shall be restricted to use by the State Department and County Department.

**3.604 ELIGIBILITY CRITERIA FOR COLORADO WORKS PAYMENTS AND SERVICES [Rev. eff. 9/15/12]**

**3.604.1 Program Verifications [Rev. eff. 4/1/13]**

A. Request of Verifications

The county department shall not require any documentary evidence (verification) and/or written statements for eligibility determination until the county department receives a signed and dated application. The applicant/participant has the primary responsibility for providing documentary evidence for required verification and to resolve questionable information. The county worker shall assist the individual in obtaining the necessary documentation provided the individual is cooperating with county workers. The individual may supply documentary evidence in person, through mail, by facsimile, through an electronic device, or through an authorized representative. The county worker shall accept all pertinent documentary evidence provided by the applicant/participant, and shall be primarily concerned with how adequately the verification proves the statements on the application and/or program participation if applicable. If written verification cannot be obtained, county workers shall substitute an acceptable "collateral contact" if available as defined in Section 3.601 Program Definitions and E-F of this Section.

If proper verification is not received and a collateral contact is unavailable the participant

will be noticed (in writing or verbally) with inform that the county worker will assist with obtaining verification, provided that he or she is cooperating with the county department.

The applicant/participant must provide all verification within thirty (30) calendar days from the date of application. At redetermination or while receiving cash payment, the participant shall have ten (10) days from the date the change occurred to notify the county department of any change and provide all necessary verifications in order to continue to receive payment unless specified otherwise in the Individual Responsibility Contract or per limited reporting requirements specified in Section 3.606.1, C, 16.

Verification is an eligibility requirement. Failure to provide requested verification may result in the case and/or individual being denied, closed, terminated, or discontinued. This process shall begin the date the application is date stamped by the county and shall continue throughout the life of the case, including program participation and applicable verifications for ongoing redeterminations of eligibility.

#### B. Required Primary Verifications

1. All information received through the Income and Eligibility Verification (IEVS) system shall be reviewed and verified. Assistance shall not be denied, delayed or discontinued pending receipt of information requested through IEVS, if other evidence establishes the individual's eligibility for assistance.
2. All applicants/participants shall provide to the county the following information:
  - a. Verification of lawful presence in the United States; Section 3.604.1, N, 5.
  - b. Verification of citizenship or qualified non-citizenship status: Section 3.604.1, N, 1-4.
  - c. A Social Security Number (SSN) for each individual applying for benefits or proof that an application for a SSN has been made. The agency shall explain to the applicant or recipient that refusal or failure without good cause to provide an SSN or a receipt of a SSN application will result in exclusion of the applicant for whom an SSN or receipt is not obtained. This exclusion applies only to the applicant for whom the SSN or receipt is not provided and not to the entire assistance unit.
  - d. Verification of relationship used to establish the assistance unit for a specific case. If verification of relationship does not exist, verification of a specified caretaker's responsibility for the child(ren) must be provided.
  - e. Verification of income of any member of the assistance unit or other household member whose income is used to determine eligibility and payment.
  - f. Verification of Colorado residency.
3. Counties may require further verification of any information that is received that is determined to be questionable or inconsistent. Such a determination must be documented in the applicant's case file.
4. An applicant may request an extension of time beyond the forty-five (45) day maximum to process an application for Colorado Works benefits in order to obtain necessary verification. The extension may be provided at county

discretion. The worker must document the reason for the extension in the statewide benefit management system and/or case file.

5. All immigrants shall have non-citizen status verified through the Systematic Alien Verification for Entitlements (SAVE) system. Assistance shall not be delayed or discontinued pending this verification.

#### C. Secondary Verifications

When applicable, secondary verifications for eligibility and program participation, may include, but are not limited to:

1. Verification of relationship of a dependent child to other household members;
2. Verification of good cause, to include good cause for a delay in providing verifications for assistance, good cause for not cooperating with Child Support Enforcement, and good cause for not participating in work activities as specified in Section 3.604.2, L;
3. Verification of child support, to include information of the noncustodial parent and/or child support income/expenses as specified in Section 3.604.2, L;
4. Verification of self-employment including applicable expenses;
5. Verification of school attendance for all school-aged children included in the assistance unit, including home school, GED and online attendance;
6. Verification of work participation;
7. Verification establishing allowable absences of an adult or child in the assistance unit if leaving the state/home and requesting to continue benefits; and/or,
8. Verification of pregnancy, if applicable.

#### D. Sources of Verification

Documentary evidence shall be used as the primary source of verification. This consists of written confirmation of a household's circumstances (e.g., wage stubs, lease agreements, and/or child support obligations). When documentary evidence cannot be obtained, an alternate source of verification such as collateral contact shall be used.

#### E. Use of a Collateral Contact, Review, and Follow-Up

Applications shall be reviewed and any necessary follow-up activities such as collateral contacts, verifications, etc., shall be initiated within five (5) calendar days that the county department obtains information containing the collateral contacts information from the applicant, recipient, and/or participant. Priority shall be given to those applications where critical and emergent need is apparent.

#### F. Requirements for Collateral Contact to Make a Determination of Eligibility

1. The applicant or recipient shall be given the opportunity to provide documentation necessary to determine eligibility. When necessary, the county department shall assist the individual to secure documentation. If documentation that is necessary to determine eligibility is not received, a notice shall be sent to the individual to

advise him or her of the proposed action to deny or discontinue the case. The notice to the individual shall also include a specific description of the documentation necessary to determine eligibility.

In general, the county department shall rely on the applicant or recipient to provide the documentation necessary to determine eligibility. The individual shall be advised that a collateral contact or home visit may be used only when documentary evidence is insufficient to make a determination of eligibility or benefit level, or cannot be obtained otherwise.

2. A collateral contact is an oral or written confirmation of a household's circumstances by a person outside of the household. The signature on the application shall be considered consent for the use of collateral contacts. The county department may rely on members of the household to provide the name of any collateral contact. If the individual provides an unacceptable collateral contact whom cannot be expected to provide accurate verification, the county department shall:
  - a. Request the name of another collateral contact; or,
  - b. Ask for alternative forms of verification; or ,
  - c. Substitute a home visit to establish a county approved setting when applicable.
3. Confidentiality shall be maintained when talking with collateral contacts. The county department shall disclose only the information that is absolutely necessary to obtain information being sought. If the applicant/participant fails to provide a collateral contact or provides a contact that is unacceptable to the eligibility worker, the county worker may select a collateral contact that can provide information that is needed. Except for contacts to verify information provided through the Colorado Income and Eligibility Verification System, the collateral contact selected by the county worker shall not be contacted without first obtaining the prior written or verbal approval of an adult household member or the authorized representative. Collateral contacts for the Colorado Income and Eligibility Verification System do not require household designation or prior contact approval. The notice of proposed action shall advise the household that they have the option to consent to the contact, to provide acceptable verification in another form, or to withdraw the application. If the household refuses to choose one of the above options, the application shall be denied. The case file shall be documented to support action taken by the county department. The county department shall not determine the household to be ineligible when a person outside the household fails to cooperate with a request for verification. Household members who are disqualified or in an ineligible status are not considered individuals outside the household.
4. In cases in which the information from another source contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to an eligibility determination.

#### G. Prudent Person Principle

The rules contained herein are intended to be sufficiently flexible to allow the eligibility worker to exercise reasonable judgment in executing his/her responsibilities to determine a specified caretaker other than a parent, guardian, legal custodian, or a relative within the fifth (5<sup>th</sup>) degree.



In this regard, the concept of a prudent person can be helpful. The term refers to reasonable judgments made by an individual in a given case. In making a certification decision, the eligibility worker should ask whether his/her judgment is reasonable, based on experience and knowledge of the program. The eligibility worker is also responsible for exercising reasonable judgment in determining if a given number of individuals applying for Colorado Works fit the Colorado Works requirements of a household/assistance unit specifically the specified caretaker other than a parent, guardian, legal custodian, or relative within the fifth (5<sup>th</sup>) degree and/or when determining good cause for non-cooperation with work program activities or Child Support Enforcement.

#### H. Authorization to Contact Banks

A county department may selectively contact one or more local banks to establish whether an applicant or recipient has any bank account or has an account in addition to those declared.

#### I. Documentation

The means and detail of value determination, including verification sources, must be entered on the eligibility review record meaning the case record and/or in the statewide benefit management system.

#### J. Sufficient Details

The applicant or recipient can usually supply all or most of the needed documentation. Entries on the review record of documentary information must be in sufficient detail so that the source document is accurately reflected and can be returned to the applicant or recipient for safekeeping.

#### K. Social Security Number

##### 1. Requirement to Provide Social Security Number

Each applicant for, or recipient of, financial assistance is required to provide a Social Security Number (SSN) to the county department. If an applicant has more than one number, all numbers shall be required.

For an applicant or recipient who is unable to provide an SSN, an application form to obtain a SSN(s) shall be completed by the applicant or recipient for each member of the assistance unit without an SSN for whom assistance is requested and the receipt of this application provided to the county department as verification until a SSN(s) is obtained.

The county department shall verify the Social Security Numbers provided by the assistance unit with the Social Security Administration (SSA) in accordance with procedures established by the State Department for the State On Line Query (SOLQ).

Upon proof of application for an SSN, the time required for issuance or to secure verification of the number shall not be used as a basis for delaying action on the public assistance application.

The county department shall accept as verified a Social Security Number that has been verified by any program agency participating in the State On Line

Query (SOLQ).

## 2. When SSN Cannot be Verified

When the county department receives notification through SOLQ that an SSN cannot be verified or is otherwise discrepant (e.g., name or number do not match SSA records), the county department shall:

- a. Conduct a case record review to confirm that the SSN in the case record matches the SSN submitted to the SSA for verification. If an error occurred in the original submittal (e.g., digits transposed, incorrect name submitted) the county department shall correct the error and the SSN will be resubmitted through SOLQ for verification.
- b. If no error is identified in a., above, the county department shall advise the assistance unit in writing that an SSN could not be verified, and instruct the assistance unit to contact the county department to resolve the discrepancy. However, this notice shall not constitute advance notice of adverse action.

The county department shall make every effort to assist the applicant(s) in resolving the discrepancy. This includes referral to the appropriate SSA office, and assisting to obtain available documents, etc., which may be required by the SSA.

## L. General Requirements for the Income and Eligibility Verification System (IEVS)

### 1. County Reporting Requirements

The county department shall report the results of the verification in accordance with reporting requirements established by the State Department for the Income and Eligibility Verification System (IEVS).

### 2. Notification

At initial application and at redetermination an applicant or recipient of Colorado Works shall be notified through written statement provided on or with the application form that the information available through IEVS will be requested, and that such information will be used, and shall be verified through sources, such as collateral contacts with the applicant or recipient when discrepancies are found by the county department; and that such information may affect the assistance unit's eligibility and level of payment.

- a. All verification types (pay stubs, employer verification, etc.) obtained by a third party to validate or invalidate the IEVS discrepancy shall be kept in the case file;
- b. Information directly obtained from the statewide benefit management system such as screen shots shall not be included in the case file;
- c. Case documentation shall be available in the case file or statewide benefit management system documenting action taken on the case within forty-five (45) calendar days of initial receipt. Appropriate case documentation includes the purpose of the review, the fact that the case was reviewed, the action taken on the case, and how determination was made that the

information was or was not correct.

### 3. Income and Eligibility Verification System (IEVS)

The Income and Eligibility Verification System (IEVS) provides for the exchange of information on Colorado Works with the Social Security Administration (SSA), Internal Revenue Service (IRS) and the Colorado Department of Labor and Employment (DOLE). Through IEVS, recipient SSNs will be matched with source agency records on a regular basis to identify potential earned and unearned income, resources and/or assets, including the following:

#### a. SSA (BENDEX, SDX)

Social Security benefits, SSI, pensions, self employment earnings, federal employee earnings.

#### b. IRS

Unearned income information including interest on checking or savings accounts, dividends, royalties, winnings from betting establishment, capital gains, etc.

#### c. DOLE

Wage and unemployment insurance benefits.

The county department shall act on all information received through the Income and Eligibility Verification System (IEVS). The county department shall at a minimum, prior to approval of benefits, verify potential earnings or unemployment benefits through the DOLE for all applicants, except institutionalized applicants. However, benefits shall not be delayed pending receipt of verification from a collateral source (e.g., employers). In addition, in cases where the county department has information that an institutionalized or group home recipient is working, wage and Unemployment Insurance Benefits (UIB) matches are required at application. All other matches will be initiated through IEVS upon approval of benefits.

### M. Verification of Fact or Statement

Verification of a fact or statement means confirming the correctness by obtaining written evidence or other information that proves such fact or statement to be true.

### N. General Requirements for Citizenship and Lawful Presence

#### 1. Citizenship and Non-Citizen Status

The following are citizens of the United States and are generally eligible to receive social services and public assistance.

a. Persons born in the United States, Puerto Rico, Guam, Virgin Islands (U.S.), American Samoa, or Swain's Island;

b. Persons who have become citizens through the naturalization process;

- c. Persons born to U.S. citizens outside the United States with appropriate documentation.

## 2. Verification of Citizenship in the United States

Citizenship may be verified by a birth certificate, possession of a U.S. passport, a certificate of U.S. citizenship (CIS form N-560 or NH-561), a certificate of naturalization (CIS form N-550 or N-570), a certificate of birth abroad of a citizen of the United States (Department of State forms FS-545 or DS-1350), or Identification Cards for U.S. citizens (CIS-I-179 or CIS-I-197). Documents that are acceptable as verification of citizenship can be found in the Department of Revenue rules at 1 CCR 201-17, Attachment A.

## 3. Verification of Questionable Citizenship Information

The following guidelines shall be used in considering questionable statement(s) of citizenship from an applicant:

- a. The claim of citizenship is inconsistent with statements made by the applicant, or with other information on the application, or on previous applications.
- b. The claim of citizenship is inconsistent with information received from another source.
- c. The claim of citizenship is inconsistent with the documentation provided by the applicant/recipient.

Application of the above criteria by the eligibility worker must not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or Native Americans shall not be targeted for special verification. The eligibility worker shall not rely on a surname, accent, or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the eligibility worker rely on a lack of English speaking, reading or writing ability as grounds to question a claim to citizenship.

## 4. Ineligible Until Proof of Citizenship Obtained

The member whose citizenship is in question shall be ineligible to participate until proof of citizenship is obtained. If a non-citizen is unable to provide any CIS document at all, there is no responsibility to offer to contact CIS on the non-citizen's behalf. Responsibility exists only when the non-citizen has a CIS document that does not clearly indicate eligible or ineligible non-citizen status. The county department shall contact the State Department, not the CIS, to obtain information about the non-citizen's correct status. The method used to document verification of citizenship and the result of that verification shall be contained in the case file.

## 5. Verification of Lawful Presence in the United States

Section 24-76.5-103, C.R.S., requires verification of lawful presence in the United States, by the county departments, for applicants of state or local benefits, and federal benefits provided by the Colorado Department of Human Services or by the county departments of human/social services under the supervision of the State Department. All persons eighteen years of age or older must establish

lawful presence in the United States prior to receiving public benefits with the exception of those exempt in the list provided in this section. The requirements of this section do not apply to applicants under the age of eighteen (18).

a. For purposes of this section:

- 1) "Affidavit" means a State prescribed form wherein an applicant attests, subject to the penalties of perjury, that he or she is lawfully present in the United States. An affidavit need not be notarized.
- 2) "Applicant" means a natural person eighteen years of age or older who submits an application to receive a state or local public benefit, or a federal public benefit, on his or her own behalf.
- 3) "Application" means an initial or new application for benefits and renewal applications or redeterminations.
- 4) "Federal public benefits" has the same meaning as provided in 8 U.S.C. Section 1611; no later amendments or editions of this section are incorporated. Copies may be available for inspection by contacting the Colorado Department of Human Services, Division of Colorado Works, 1575 Sherman Street, Denver, Colorado 80203, or any State Publications Library.
- 5) "Produce" means to provide for inspection either: 1) an original or 2) a true and complete copy of the original document. A document may be produced either in person or by mail.
- 6) "State or local public benefits" has the same meaning as provided in 8 U.S.C. 1621; no later amendments or editions of this section are incorporated. Copies may be available for inspection by contacting the Colorado Department of Human Services, Division of Colorado Works, 1575 Sherman Street, Denver, Colorado 80203, or any State Publications Library.

b. In order to verify his or her lawful presence in the United States, an applicant must:

- 1) Produce and provide to the county department:
  - a) A valid Colorado driver's license or a Colorado identification card issued pursuant to Article 2 of Title 42, C.R.S.; or,
  - b) A United States military card or military dependent's identification card; or,
  - c) A United States Coast Guard Merchant Mariner Card; or,
  - d) A Native American tribal document; or,
  - e) Any other document authorized by rules adopted by the Department of Revenue (1 CCR 201-17); or,
  - f) Those applicants who cannot produce one of the required

documents may demonstrate lawful presence by both executing the affidavit and executing a Request for Waiver.

The Request for Waiver must be provided to the Colorado Department of Revenue in person, by mail, or online, and must be accompanied by all documents the applicant can produce to prove lawful presence. A Request for a Waiver can be provided to the Department of Revenue by an applicant representative.

Once approved by the Department of Revenue, the waiver is assumed to be permanent, but may be rescinded and cancelled if, at any time, the Department of Revenue becomes aware of the applicant's violation of immigration laws. If the waiver is rescinded and cancelled, the applicant has the opportunity to appeal. The county department is responsible for verifying that the applicant is the same individual indicated as being lawfully present through the waiver; and,

2) Execute an affidavit saying that:

a) He or she is a United States citizen or legal permanent resident; or,

b) He or she is otherwise lawfully present in the United States pursuant to federal law.

c. The requirements of lawful presence found in this section apply only to those programs that are considered either a "federal public benefit" or a "state or local public benefit" and require an application including TANF/ Colorado Works.

d. The requirements of this section do not apply to the following applicants, programs and services:

1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or rule;

2) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure;

3) For short-term, non-cash, in-kind emergency disaster relief;

4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are cases by a communicable disease;

5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that:

6) Deliver in-kind services at the community level, including services through public or private non-profit agencies;

- 7) Do not condition the provision of assistance provided on the individual recipient's income or resources; and,
- 8) Are necessary for the protection of life or safety;
- 9) Pregnant women;
- 10) For individuals over the age of eighteen years of age and under the age of nineteen years who continue to be eligible for medical assistance programs after their eighteenth birthday;
- 11) Applications for the Food Assistance program;
- 12) Applications for Medicaid where federal law has prescribed a different verification process (see 8.100.53, A, 2, of the Colorado Department of Health Care Policy and Financing rules – 10 CCR 2505-10);
- 13) Child welfare services, except for application for family foster homes, adoptive homes, and youth eighteen to twenty-one (18-21) years of age;
- 14) Adult protective services;
- 15) Refugee services;
- 16) Services provided under the Older Americans Act and state funding for senior services;
- 17) Crisis Intervention Program under the Low-Income Energy Assistance Program (LEAP);
- 18) Child support enforcement; and,
- 19) For the adult member of the child care application in the Child Care Assistance Program (CCAP).

#### 6. Legal Immigrant

Legal immigrant means an individual who is not a citizen or national of the United States and who was lawfully admitted to the United States by the Citizenship and Immigration Services (CIS) as an actual or prospective permanent resident or whose physical presence is known and allowed by the CIS.

#### 7. Documentation of Legal Immigrant

A non-citizen considered a legal immigrant will normally possess one of the following forms provided by the Citizenship and Immigration Services (CIS) as verification:

- a. I-94 Arrival/Departure Record.
- b. I-551: Resident Alien Card (I-551).
- c. Forms I-688B or I-766 Employment Authorization Document.

- d. A letter from CIS indicating a person's status.
- e. Letter from the U.S. Dept. of Health and Human Services (HHS) certifying a person's status as a Victim of a Severe Form of Trafficking.
- f. Iraqi and Afghan individuals who worked as translators for the U.S. Military, or on behalf of the U.S. Government, or families of such individuals; and have been admitted under a Special Immigrant Visa (SIV) with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, or SQ9. Eligibility limitations are outlined in Section 3.710.31, H.
- g. Any of the documents permitted by the Colorado Department of Revenue rules for evidence of lawful presence (1 CCR 201-17, Attachment B).

#### 8. Verification with Systematic Alien (Non-Citizen) Verification of Entitlement (SAVE) Program

Legal immigrants applying for public assistance must present documentation from CIS showing the applicant's status. All documents must be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document. Benefits shall not be delayed, denied or discontinued awaiting the SAVE verification.

#### 9. Determination of Eligibility for Financial Assistance

As a condition of eligibility for financial assistance a legal immigrant must provide income information about such legal immigrant and the legal immigrant's sponsor(s) if a sponsor exists. It shall be presumed that an affidavit of support demonstrates the sponsor's ability to make income available to an immigrant whom he or she sponsors at a minimum of one hundred twenty-five percent (125%) of the federal poverty level. The applicant or recipient may rebut the county department's determination that the income of the sponsor is available. If such a determination is made, the applicant or recipient may be eligible for financial assistance.

If it is determined that the legal immigrant received financial assistance benefits that were the responsibility of the sponsor, the State Department or county department may recover such funds from the sponsor or the legal immigrant via the following:

- a. Income assignments;
- b. State income tax refund offset;
- c. State lottery winnings offset; and,
- d. Administrative lien and attachment.

Enforcement of duties under affidavit of support shall be the responsibility of the sponsored immigrant.

#### 10. Affidavit of Support

As a condition of eligibility for financial assistance, any legal immigrant applying for or receiving financial assistance shall agree in writing that, during the time



period the recipient is receiving financial assistance, the recipient will not sign an affidavit of support for the purpose of sponsoring a non-citizen seeking permission from the CIS to enter or remain in the United States. A legal immigrant's eligibility for financial assistance shall not be affected by the fact that the legal immigrant has signed an affidavit of support for a non-citizen before July 1, 1997.

#### 11. Qualified Non-Citizen

A qualified non-citizen is defined as follows consistent with the provisions of federal regulations found at 45 CFR 1626.7 as of October 1, 2010, herein incorporated. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library:

- a. A non-citizen lawfully admitted for permanent residence;
- b. A non-citizen paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act (INA) for a period of at least 1 year;
- c. A non-citizen granted conditional entry pursuant to Section 203(a)(7) of the INA prior to April 1, 1980;
- d. A refugee under Section 207 of the INA;
- e. An asylee under Section 208 of the INA;
- f. A non-citizen whose deportation is withheld under Section 243(h) or 241(B)(3) of the INA;
- g. A Cuban or Haitian entrant as defined in Section 501(3) of the Refugee Education Assistance Act of 1980;
- h. A Victim of Severe Form of Trafficking who has been certified as such by the U.S. Dept. of Health and Human Services (HHS).
- i. Iraqis and Afghans granted Special Immigrant Visa status under Section 101(A)(27) of the INA.
- j. A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a family member;
- k. A non-citizen admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. No. 100-461);
- l. An individual who was born in Canada and possesses at least fifty percent (50%) American Indian blood or is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450B(E).

#### 12. Five Year Period

Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from federal programs for five years unless they meet one of the

following exceptions consistent with the provisions of federal regulations found at 45 CFR 286.5 as of February 18, 2000, herein incorporated by reference. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library.

- a. An honorably discharged U.S. veteran or active U.S. military personnel and/or spouse, unmarried children, widow and widower, including a lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war; or,
- b. A refugee, asylee, deportation withheld, or non-citizen granted status as a Cuban or Haitian entrant, a certified Victim of Severe Form of Trafficking (these humanitarian immigrants maintain their original status when adjusting to Legal Permanent Resident (LPR) status and remain exempt from the five year bar); or,
- c. An individual who (1) was born in Canada and possesses at least fifty percent (50%) American Indian blood, or (2) is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450 B(e); or,
- d. An individual admitted to the U.S., as an Amerasian immigrant pursuant to Section 584 amended by Public Law No. 100-461; or,
- e. A lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war.
- f. An Afghan Special Immigrant Visa (SIV) holder and an Iraqi SIV are exempt for eight months from the five-year bar.

### 13. Non-citizens and Temporary Residents Not Eligible for Assistance

The following individuals are not eligible for public assistance or social services programs:

- a. Non-citizens with no status verification from CIS;
- b. Non-citizens granted a specific voluntary departure date;
- c. Non-citizens applying for a status; or,
- d. Citizens of foreign nations residing temporarily in the United States on the basis of visas issued to permit employment, education, or a visit.

### O. Participant Unable to Provide Verification(s)/Verification at an Individual Level

When a participant is unable to provide verification for citizenship, qualified non-citizenship status, lawful presence, identity, and/or their Social Security Number, the county department shall grant thirty (30) calendar days to the participant to provide the verification. If the verification is provided in the allotted time, the same application may be used to determine eligibility and benefits provided.

Verification shall be provided for each individual requesting/receiving payments. In addition, supportive services, special needs payments and assistance in obtaining

verifications shall be provided.

Individuals unable to provide this verification will not receive payment for themselves and their income will be used to determine eligibility for the household.

### **3.604.2 Assistance Unit [Rev. eff. 7/1/13]**

#### **A. Assistance Unit**

An assistance unit consists of members of the household who live together and whose income and other circumstances are considered to determine eligibility and payment amount.

Members of the same assistance unit who meet the requirements of the Colorado Works program shall receive basic cash assistance or shall be considered when determining diversion grant amounts.

- B. Persons not required to be in one assistance unit, but residing in the same household, shall have the option of applying for Colorado Works as separate units. Each assistance unit shall be budgeted using the appropriate need standard for the unit.

#### **C. Mandatory Members of an Assistance Unit**

Mandatory members of an assistance unit shall conform to the following requirements:

1. Dependent child(ren) who live in the home of a specified caretaker
2. Specified caretakers other than a parent(s) who are requesting assistance.
3. Parents, siblings, and half siblings of the dependent child shall apply for Colorado Works as one assistance unit.
  - a. A half sibling who is receiving child support shall not be required to be in the assistance unit or budgetary unit (see budgetary unit described in Section 3.604.2, D, below). The parent or legal guardian of the half sibling receiving child support shall decide whether to include such half sibling receiving child support in the assistance unit.
  - b. A sibling is not required to be in the assistance unit or budgetary unit if there is an established court order, child welfare involvement or an adoption is present.
4. In cases where a parent lives in the home of another specified caretaker, and retains legal custody of a child, that parent is a mandatory member of the assistance unit. A parent who no longer has legal custody of a child, but lives in the home, is not a mandatory member of the assistance unit or budgetary unit.

A parent shall never be separated from a child, unless responsibility is established with another specified caretaker through court order, child welfare, or adoption.

#### **D. Budgetary Unit**

Budgetary unit members of the assistance unit are those in the household whose income and expenses are considered in the determination of eligibility and payment calculation.

1. The budgetary unit consists of individuals from the household who choose to apply for benefits and who meet non-financial eligibility requirements; and people who must apply

for benefits because of their relationship to those people. If the budgetary unit does not include at least one applicant who meets all non-financial eligibility requirements, the assistance unit is ineligible. Individuals must provide any information or verification needed to determine who must be in the assistance unit. The following must be included in the budgetary unit:

- a. A dependent child (or unborn child if pregnancy exists);
  - b. Parents of dependent child(ren) in the household;
  - c. Expectant parent;
  - d. Siblings;
  - e. Specified caretakers other than a parent requesting assistance.
2. A parent who no longer has legal custody of a child, but lives in the home is not a mandatory member of the budget unit. A referral to child support services shall occur unless good cause exists.
  3. The following can be excluded from the budgetary unit:
    - a. A specified caretaker other than a parent who chooses not to receive assistance for himself or herself.
    - b. Individuals who are eligible for and receive an SSI cash payment
- E. A dependent child is considered to be living in the home of a specified caretaker as long as the parent, guardian, or other specified caretaker exercises the responsibility for the care of the child even if the following occurs:
1. The child or the caretaker is temporarily absent from the home to receive medical treatment;
  2. The child is under the jurisdiction of the court;
  3. Legal custody is held by an agency that does not have physical possession of the child;
  4. The child is in regular attendance at a school away from home.
- F. School-aged, dependent children must be in school, home school, pursuing a GED, or attending online courses to obtain a high school diploma or GED to be considered eligible to receive assistance. A dependent child is still considered to be a student in regular attendance during official school or training program vacation periods, absences due to illness, convalescence or family emergencies.
- G. Assistance units may remain eligible and payment for the child shall continue for Colorado Works when children are absent from the home for a period greater than forty-five (45) consecutive calendar days for the following reasons:
1. Child(ren) receiving medical care or education that requires him or her to live away from the home; or,
  2. Child(ren) visiting a noncustodial parent, as specified in a parenting plan entered by the court or by both parties not to exceed six (6) months unless otherwise specified and must be signed by both parties; or,

3. Child(ren) residing in voluntary foster care placement for a period not expected to exceed three (3) months. Should the foster care plan change within three months and the placement become court-ordered, the child is not longer considered to be living in the home as of the time the foster care plan is changed.

H. A "specified caretaker" is a person who exercises the responsibility for the child. The following hierarchy shall be followed. A specified caretaker:

1. Is a parent; or,
2. Is a relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child (not to be separated due to death or divorce); or is appointed by the court to be the legal guardian or legal custodian of the dependent child; or,
3. If those identified in a-b above are not available, is a person who exercises responsibility for a dependent child within the person's home and provides verification of such responsibility.

The individual who exercises responsibility shall be deemed the specified caretaker for the assistance unit. Parents are both mandatory and budgetary members of the assistance unit. Work eligible parents must participate in program work requirements. A relative or unrelated work eligible specified caretaker(s) must participate in program work requirements if they choose to be a member of the assistance unit. A specified caretaker described in 1 and 2 above has the opportunity to choose if he or she is a member of the assistance unit and therefore possibly a member deemed work eligible who must participate in the work requirements of the program.

I. A parent, guardian or specified caretaker is considered to be living in the home and may continue as a member of the assistance unit/ family needs unit if the individual is temporarily away from home if one of the following occurs:

1. Is on active duty in the uniformed service of the United States.
2. Is temporarily absent from the home to receive medical treatment.
3. Is temporarily absent from the home for less than forty-five (45) calendar days and has established an intent to return.

J. Adding and Removing Members of the Assistance Unit

The application for Colorado Works assistance shall be the only required application for the assistance unit. This application shall cover all members who join the assistance unit after initial application. Verification is still needed to establish eligibility for the member joining the assistance unit.

1. New Members

- a. A new member(s) who is added to an existing assistance unit shall be added effective the first day of the following month that the assistance unit reported the change and provided any necessary verifications. If income exists, it shall be used to determine eligibility and payment for the first month following the reporting month. The assistance unit shall receive assistance according to the negative and positive change rules in Sections 3.606.1, J and 3.606.2, J and K.

- b. If a pregnancy has been previously verified, documentation shall consist of the birth

date and a Social Security Number (SSN) or an SSN application. No other documentation is required to add a baby to the assistance unit after the birth is reported unless there is questionable information regarding relationship to a parent(s), citizenship, or qualified non-citizenship status, no delay in taking case action.

## 2. Member Leaving the Home

When a member of the assistance unit leaves the home, the county department shall act on this change by entering the change into the statewide benefit management system. If this change was reported timely, the individual's income shall be excluded beginning the first day of the month following the month the individual reported they left the home and the basic cash assistance grant adjusted accordingly.

If the member leaving the home is the only dependent child on the case, or if a pregnancy is terminated and that pregnancy was the eligibility factor that set the certification period, the case shall be terminated the month following the date the change is reported timely.

## 3. Member Leaving One Assistance Unit and Entering Another Assistance Unit

When a member leaves the home and applies for assistance and/or someone is requesting assistance for that member during the original assistance unit's certification period, the new assistance unit may apply for the member as he/she leaves the original assistance unit.

A member requesting assistance in a new assistance unit shall not receive a portion of the assistance unit's basic cash assistance grant until benefits have been terminated for that member in the original assistance unit.

For a member who requests assistance stop for him or herself, a reduction or termination in basic cash assistance for the original assistance unit shall affect the case after timely notice is applied to the original assistance unit.

When there is no formal request to stop benefits, that individual is considered to be a part of the assistance and budgetary units during the adverse action period. For the new assistance unit, that member who received assistance in the original assistance unit shall not receive assistance until benefits have been terminated for that member in the original assistance unit. For the original assistance unit, the grant amount will be recalculated using the new household size and benefits will continue as long as eligibility continues for that assistance unit until the certification period ends.

For the new assistance unit, the individual shall be considered part of the household. The individual who is receiving payment in the original assistance unit shall not receive payment in the new assistance unit until payment for that individual in the original assistance unit is terminated. All other members of the new assistance unit may receive assistance if they are determined to be eligible for assistance.

## 4. Individual leaving the home, not a required member of the assistance unit

If an individual leaves and was not a mandatory member of the assistance unit, but one whose income was used to determine eligibility and payment for the assistance unit, the individual's income shall be excluded as of the first day of the month following the month the person reported they left the home.

K. Indian Tribe Eligibility

Members of an Indian Tribe not eligible for assistance under a Tribal Family Assistance Plan are eligible for Colorado Works.

L. Applicant/Participant Criteria

To participate in Colorado Works, an applicant or participant must:

1. Be a resident of Colorado. There shall be no durational residence requirement and an individual who establishes intent to remain in Colorado shall be considered a resident. Residence shall be retained until abandoned. Persons receiving TANF assistance from another state shall not be eligible for Colorado Works cash assistance during any month an assistance payment was made by the other state;
2. Be:
  - a. A citizen of the United States; or,
  - b. A Qualified Legal Non-Citizen who entered the United States prior to August 22, 1996; or,
  - c. A Qualified Legal Non-Citizen who entered the United States on or after August 22, 1996, who has been in a qualified non-citizen status for a period of five years or, if less than five years, is in a federal exempt category pursuant to the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", 8 U.S.C. 1613(B); no amendments or editions are included. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Colorado Works Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State publications library.
    - 1) A qualified legal non-citizen includes a legal permanent resident non-citizen with forty (40) quarters of work by the individual, his or her spouse or parent, battered spouse under certain circumstances and defined at 3.604.1, L, 7 and 11; and,
    - 2) Refugees are qualified non-citizens exempt from the five-year bar. Those refugees eligible for assistance through Colorado Works shall submit an application to their county of residence. Those applications that have been approved shall be referred to the Colorado Refugee Services Program for other ongoing case management and services offered through Colorado Works.
  - 3) Child(ren) residing in voluntary foster care placement.
3. Be a member of an assistance unit who meets eligibility requirements and who is:
  - a. A dependent child(ren) under the age of eighteen (18); or,
  - b. A dependent child(ren) between the ages of eighteen (18) and nineteen (19) who is a full-time student in a secondary school, home school, or in the equivalent level of vocational or technical training and expected to complete the program or graduate before age nineteen (19). Such children are eligible through the month of completion; or,

- c. A specified caretaker age eighteen (18) or older or an emancipated individual, such as a parent(s) or specified relative(s) of a dependent child, including pregnant parents upon providing verification from a medical provider of the pregnancy if applicable; or,
- d. An unemancipated minor or teen parent under age eighteen (18) who is in a county approved setting.
  - 1) Emancipation shall be considered when a minor is emancipated from a state that has emancipation laws and can provide verification of such emancipated status; or
  - 2) "Emancipated juvenile", as used in Section 19-1-103(45), C.R.S, means a juvenile over fifteen years of age and under eighteen years of age who has, with the real or apparent assent of the juvenile's parents, demonstrated independence from the juvenile's parents in matters of care, custody, and earnings. The term may include, but shall not be limited to, any such juvenile who has the sole responsibility for the juvenile's own support, who is married, or who is in the military.

- 4. Be a noncustodial parent who may receive services, but not basic cash assistance.
- 5. Not be admitted to an institution as a patient for tuberculosis or mental disease, unless the person is a child and receiving "under 21" psychiatric care under Medicaid benefits.
- 6. Not be in the custody of or confined in a county, state, or federal correction facility or institution by definition of an inmate, as one who is serving time identified by the court, except as a patient in a public medical institution. Those considered to not be an inmate include, but are not limited to, those on a work release or court monitoring system.

M. "Program prohibitions" shall mean any of the following that prevents a required member of the assistance unit from participating in the Colorado Works program.

- 1. The individual has misrepresented his or her residence to receive TANF assistance, benefits, or services simultaneously in two or more states;
- 2. The individual is a fugitive or fleeing felon;
- 3. The individual has been convicted of a drug-related felony on or after July 1, 1997, unless the county has determined that the person has taken action toward rehabilitation, such as, but not limited to, participation in a drug treatment program. Convicted includes a plea of guilty, finding of guilt by a judge or jury, deferred judgment and sentence, deferred adjudication, deferred prosecution, plea of *nolo contendere* ;
- 4. The individual is a non-citizen who does not meet the definition of an eligible qualified non-citizen;
- 5. The individual has been convicted of welfare fraud under the laws of this state, any other state, or the Federal government. The individual convicted of fraud shall be excluded from receiving payment but may receive services as deemed necessary;
- 6. The individual lacks or failed to provide a Social Security Number (SSN) or proof of application for a SSN.

N. Applications for Colorado Works



Application for Colorado Works shall be made by a specified caretaker with whom the dependent child is living. A specified caretaker is any relation by blood, marriage or adoption, who is within the fifth degree of kinship to the dependent child. A specified caretaker may also include an individual who exerts the responsibility for a child as defined in the definitions sections.

O. Colorado Works and Child Support Enforcement

1. Cooperation with Child Support Enforcement as an Eligibility Requirement

As a condition of continued eligibility, applicants for Colorado Works are statutorily required to assign all rights to child support on their own behalf or on behalf of any other member of the assistance unit for whom the application is made. An applicant's failure to sign and date the application form to avoid assignment of support rights precludes eligibility for the assistance unit. Failure to cooperate with Child Support Enforcement at application and/or while receiving basic cash assistance, without good cause, will result in the termination or discontinuation of the Colorado Works basic cash assistance grant.

This assignment is effective for child support due and owing during the period of time the person is receiving public assistance, takes effect upon a determination of eligibility for Colorado Works cash assistance, and remains in effect with respect to the amount of any unpaid support obligation accrued under the assignment that was owed prior to the termination of Colorado Works cash assistance to the participant. The application form shall contain acknowledgement of these provisions and shall be signed and dated by the applicant or participant.

- a. Applicants and participants may request that their case not be referred to Child Support Enforcement based upon good cause. Claims found to be valid are:
  - 1) Potential physical or emotional harm to a child(ren).
  - 2) Potential physical or emotional harm to a parent or caretaker relative.
  - 3) Pregnancy or birth of a child related to incest or forcible rape.
  - 4) Legal adoption before court or a parent receiving pre-adoption services.
  - 5) Other reasons documented by the county department.
  - 6) Reasons considered to be in the best interest of the child.
  - 7) Other court order.
- b. Every applicant and participant shall be given notice and the opportunity to claim that his or her case should not be referred to Child Support Enforcement based upon good cause.
- c. Determination of such good cause must be in writing and documented in the case file by the county director or designee of the county director.
- d. Each case not referred based upon good cause shall be reviewed by the county director or designee yearly.

2. Unreimbursed Public Assistance

Basic Cash Assistance shall be considered part of the Unreimbursed Public Assistance

(UPA) as defined in the Child Support Enforcement rule manual at Section 6.002 (9 CCR 2504-1).

3. If a family is ineligible for Colorado Works Basic Cash Assistance due to child support income and the income received from child support is either not received or is less than the family need standard, the family may request to be reinstated for assistance in the that month. The income from the current month will be used to determine eligibility and payment prospectively.

P. Assistance for Eligible Refugees

Refugees are qualified aliens exempt from the five-year bar. Those refugees eligible for assistance through TANF/Colorado Works shall submit an application to their county of residence. Those applications that have been approved shall be referred to the Colorado Refugee Services Program for other ongoing case management and services offered through the TANF/Colorado Works program.

1. The Colorado Refugee Services Program (CRSP) is responsible for performing the eligibility assessment as required by Section 3.625.1 for all refugees referred to them by county departments and will apply uniform guidelines that apply to all county departments regarding the assessment of refugees.
2. Based on the assessment of the refugee, CRSP will make recommendations to the county departments and will apply uniform guidelines that apply to all county departments regarding the assessment of refugees. These recommendations shall include, at a minimum:
  - a. Whether the refugee is determined to be job-ready or not-job-ready;
  - b. The type(s) of activities that will be most beneficial to the refugee; and,
  - c. The amount and duration of supportive services and other assistance payments necessary to achieve self sufficiency for the refugee.
3. The county department shall consider the recommendations of CRSP and the recommended supportive services and other assistance within the county policy, within an agreed upon timeframe not to exceed forty-eight (48) hours.

Q. Individuals Ineligible for Colorado Works Program

The following individuals shall not be eligible under Colorado Works:

1. Fugitive or fleeing felons, parole violators, or probation violators;
2. Specified caretakers who fail to report, without good cause within normal program reporting requirements, a child(ren) who is expected to be out of the home for longer than forty-five (45) calendar days will be ineligible for assistance for ninety (90) calendar days from the date that it is determined he or she should have reported the expected absence;
3. Persons convicted of a drug-related felony on or after July 1, 1997, unless the county department has determined that the person has taken action toward rehabilitation, such as, but not limited to, participation in a drug treatment program;
4. Persons participating in a strike;

5. Qualified legal non-citizens or those who are not federally exempt, who entered the United States on or after August 22, 1996, are ineligible for cash assistance for five (5) years from date of entry into the United States.

R. Penalties for Disqualified and Excluded Persons

Persons who are required members of the assistance unit, but are disqualified or excluded from receiving Colorado Works basic cash assistance or diversion due to program prohibitions or violations, shall be removed from the assistance unit.

The following disqualified or excluded individuals who are removed from the assistance unit shall have such month counted as a month of participation in the calculation of their overall sixty-month lifetime maximum as referenced for adults under "Time Limits". Disqualified individual's income be considered when determining eligibility without applying income disregards.

1. Individuals convicted by a court or whose disqualification was obtained through an Intentional Program Violation (IPV) waiver for misrepresenting their residence in order to obtain assistance in two states at the same time shall have their Colorado Works assistance denied for ten (10) years.
2. Individuals who have committed fraud as determined by a court or determination of an IPV by administrative hearing shall result in the disqualified caretaker being removed from the grant for a twelve (12) month period for the first offense, twenty-four (24) months for the second offense, and lifetime for the third offense. An IPV from another state shall be used to determine eligibility for an individual. The level of the IPV established by the Administrative Law Judge from the other state shall be used to determine the level of the IPV for Colorado Works. The timeframes established herein shall be used; the timeframe established from the other state shall no longer be valid.
3. Individuals who are fugitive or fleeing felons, parole violators, or probation violators (reference Section 3.604.2, J).
4. Individuals who have been convicted of a drug-related felony (reference Section 3.604.2, J).
5. Individuals who have failed to apply for a Social Security Number.
6. Individuals who are non-citizens and do not meet the definition of a qualified legal non-citizen, those who fail to prove citizenship or fail to provide proof that they are otherwise possess a qualified non-citizen status and/or proof of lawful presence (reference Sections 3.604.1, N, 5 and 3.604.2, M, 3).

S. Minor Parent Applicants/Participants

1. Assistance units which include an unmarried minor parent(s) under the age of eighteen (18) who is not living in the home of a specified caretaker or in another arrangement approved by the county shall not be eligible to receive benefits under Colorado Works.
2. Counties shall assist minor parents under age eighteen (18) who are otherwise eligible and are not living in a county approved living arrangement to find an approved arrangement.
3. Counties shall assist assistance units which include an unmarried minor parent(s) under the age of eighteen (18) who has a child at least twelve (12) weeks of age and who has not completed his or her high school education or GED, and who is not participating in educational activities or an approved training program, in participating in such programs within sixty (60) calendar days from the date the initial assessments is completed for

those sixteen (16) or older or within sixty (60) calendar days from the date the eligibility interview takes place for those under the age of sixteen (16). Participation means enrollment, attendance, or an action otherwise specified by the county department. Failure to participate without good cause will result in the termination or discontinuation of Colorado Works Basic Cash Assistance.

#### T. Assistance for Minor Parents

##### 1. Minor Parents and Specified Caretaker

A minor parent living in the home of a specified caretaker may apply for Colorado Works. If the specified caretaker chooses not to be a mandatory member of the assistance unit, the minor must be in a county approved setting. The minor shall receive assistance as a child if approved.

If the specified caretaker chooses to be a mandatory member, the county department may choose if it is necessary to approve the setting before assistance is provided per county policy. The minor shall receive assistance as a child if approved per the payment standard as specified at Section 3.606.2.

A minor living in the home of a parent may apply for Colorado Works. If the parent is a mandatory member of the assistance unit, the minor shall receive assistance as a minor unless the minor has a marital status of married, divorced, or separated.

2. A minor who is a parent may apply for Colorado Works benefits. If the child is emancipated and has the marital status other than single, and does not live in the home of a specified caretaker, the child may not receive benefits until deemed to be in a county approved setting by the county department. The minor shall receive assistance as an adult if approved.

##### 3. Financial Responsibility

In determining eligibility for Colorado Works for household members, financial responsibility is limited to a parent for his or her child. Financial responsibility of parents for a child is not changed by the fact that the child may be pregnant or is a mother/father and caretaker of her/his own child. The income of the parent of a minor child shall be used to determine eligibility per Section 3.605.1, Determining Eligibility for Household Members and the Consideration of Income.

#### U. Two-Parent Assistance Unit

Eligibility and exemption criteria for families with two parents shall be the same as for families with one parent. The basic cash assistance grant will be based upon the need standard for two parents plus child(ren).

#### V. Family Violence Option (FVO) Waiver

The federal government allows state Temporary Assistance for Needy Family (TANF) programs to electively participate in the option to waive certain program requirements for individuals who have been identified as victims of family (domestic) violence.

##### 1. Definition of Terms

- a. Domestic violence (also known as family violence) means: a pattern of coercive control one individual inflicts upon another in the context of familial, household or intimate partner (current or former) relationships including marriage and dating.

Violence may be inflicted through a variety of means including, but not limited to:

- 1) Physical acts threatening or resulting in physical injury to the individual, including hitting, punching, slapping or biting;
- 2) Intimidation resulting in fear of imminent bodily harm through the use of gestures, displays of weapons or destruction of property, including pets;
- 3) Threats of or attempts at physical or sexual abuse or other means of coercion and control, including harm to or threats to harm children, other family members, or pets;
- 4) Sexual abuse or threats to inflict nonconsensual sexual acts, including sexual activity with a minor;
- 5) Mental, emotional, or psychological abuse including degradation, constant put-downs, or humiliation that results in a reduced ability to engage in daily activities;
- 6) Isolation from friends, family, or any type of emotional support system;
- 7) Neglect or deprivation of medical care;
- 8) Stalking;
- 9) Economic abuse or control of finances through withholding money or sabotaging attempts to attain economic self-sufficiency; and/or,
- 10) Child molestation, incest

b. Domestic violence victim means any person who has experienced or is experiencing abuses as defined above.

c. FVO trained worker means a county worker or contract staff who has participated in the Colorado Works approved Core FVO Training.

## 2. Waiver Provisions

a. The FVO waiver allows a county to exempt program participants from the following standard program elements if it is determined that participation in these elements would unfairly endanger or penalize an individual or their child(ren) as a result of their experience of family violence:

- 1) Work Activities
- 2) TANF Time Clock
- 3) Child Support Enforcement

b. The county department shall involve the participant when choosing to invoke a waiver. The individual at their discretion may accept or refuse any waiver offered.

## 3. Requirements for Counties that Grant FVO Waivers:

When a county department and applicant/participant invoke the Family Violence Option

the following are required:

a. Implement County written policies which at a minimum address:

- 1) Domestic violence and FVO;
- 2) How counties intend to provide information about the FVO waiver, related benefits, domestic violence services, and options provided by Colorado Works and others to all participants on an ongoing basis.

This information should be provided in accordance with Section 3.602.1 and at a minimum shall include (1) Procedures for voluntarily and confidentially self-identifying as a victim of domestic violence and how self-disclosed information will be used and (2) Benefits of and procedures for applying for waivers from any program requirements and extension of time limits;

- 3) The process for screening and assessing domestic violence continually.

b. Training and case actions for county staff.

- 1) The Core FVO/Domestic Violence training shall be mandatory for all staff who play a role in determining, modifying, or granting waivers, including intake, assessment, case management, or workforce development staff. CDHS strongly recommends that all county staff, including experienced staff, supervisors, and/or managers, attend the Core FVO training at least once every five (5) years, and attend ongoing and specific training offered or recommended by Colorado Works and local agencies that address domestic violence issues.
- 2) County staff who have participated in the Core FVO training shall be the only staff who shall provide information about and screen for domestic violence, assess for domestic violence waiver eligibility, make waiver determinations, review waivers and extensions, consider sanctions, and/or develop and modify an IRC of a participant who has a waiver.

c. Follow certain processes with regard to all TANF applicants and participants includes:

- 1) Screen Colorado Works applicants and participants by identifying those who are or have been victims of domestic violence by using the Domestic Violence Screening form.
- 2) Assess Colorado Works applicants and participants who are identified as a victim of domestic violence by:
  - a) The nature and extent to which the individual may engage in work activities;
  - b) The resources and services needed to assist the individual in obtaining safety and self-sufficiency; and,
  - c) A plan to increase the individual's safety and self-sufficiency.
- 3) Grant to victims of domestic violence exemptions (or waivers) of certain

TANF requirements, good cause based on circumstances that warrant non-participation in program work requirements of this section, non-cooperation with Child Support Enforcement as defined in Section 3.604.2, L, or by allowing a program extension. Good cause may also be determined through the use of the prudent person principle standard as specified in Section 3.604.1, G.

- a) Good cause for granting an FVO waiver of work activities and/or the 60-month time limit is defined as anything that would potentially endanger or unfairly penalize a participant or the participant's family if he/she participated in the county's standard program/work activity requirements.
- b) Good cause for granting a waiver of the child support enforcement cooperation requirement is defined as anything that is not in the best interest of the child, e.g., potentially endanger or unfairly penalize the individual or child if the individual cooperated with child support enforcement.
- d. Provide certain resources to all TANF applicants and victims of domestic violence. Counties are to make immediate referrals to appropriate services, including: domestic violence services, legal services, health care, emergency shelter, child protection, and law enforcement. Such referrals are to be documented in the individual's case file.

#### 4. FVO Provisions

- a. Screening applicants and participants includes:
  - 1) All applicants and ongoing participants are to be screened continually for domestic violence by trained workers.
  - 2) At any point in Colorado Works program participation, an applicant or participant may be identified or may self-identify as a victim of domestic violence.
  - 3) Workers are to use sensitivity and discretion in selecting the appropriate setting for domestic violence screening. The screening and any information related to the customer's domestic violence shall remain confidential in accordance with Section 3.609.94.
- b. Waiver Provisions, Case Documentation, and the IRC
  - 1) The county shall use only FVO-trained workers to work with victims of domestic violence throughout the application, screening, waiver/IRC development, and case management processes, and when implementing, modifying, and monitoring sanctions for domestic violence victims.
  - 2) Workers shall use the prudent person standard in determining what FVO waiver(s) will most benefit the individual. The IRC shall be developed with a priority on safety and self-sufficiency for the individual and the individual's child (ren).
  - 3) Waivers shall be based on need, and may be granted as long as need is

demonstrated. This can be accomplished at application or throughout the life of the case

4) Waivers shall be accompanied by documentation (e.g., case comments, the waiver, an IRC, and other information gathered to support case actions) describing and taking into account:

a) The past, present, and ongoing impact of domestic violence on the individual and the family;

b) The individual's available resources;

c) The maximized safety of the individual and the individual's family while leading to self-sufficiency;

d) Identification of specific program/work activities requirements being required and/or waived;

e) Prioritization of work, excepting those cases where work would lead to greater risk of family violence; re-assessment should occur every six (6) months, at minimum.

c. Appeal of a Waiver Denial

1) If a waiver is denied, and the applicant wishes to dispute this decision, he or she may appeal through the state Colorado Works Division. The Division will review and make decisions on the appeal. The appellant shall be granted all requested waivers and continue to receive benefits through the appeal process.

2) Any individual may reapply for a waiver at any time.

**3.604.3 Out of the Home [Rev. eff. 9/15/12]**

A. Temporarily Out of the State

For Colorado Works purposes, a recipient who is out of state temporarily shall be provided assistance on the same basis as one who is in the state as long as the individual has established intent to return. Temporarily out of the state shall not exist more than ninety (90) consecutive days.

B. Residents of Institutions

A recipient shall be considered a resident in an institution when the recipient's stay is at least thirty (30) consecutive days. Medical institutions include general medical and surgical hospitals, nursing homes, assisted living residences, and mental institutions. Those considered to be a resident of an institution and continue to have the responsibility of a dependent child may receive assistance if the dependent child resides in the institution as well or continues to be cared for in the home, unless individual needs are provided for through the funds of state/federal funds.

**3.605 INCOME [Rev. eff. 9/15/12]**

**3.605.1 Determining Eligibility for Household Members and the Consideration of Income [Rev. eff. 9/15/12]**



- A. In determining Colorado Works eligibility for household members, financial responsibility is limited to a spouse for his or her spouse and parent for his or her child. Financial responsibility of parents for a child is not changed by the fact that the child may be pregnant or is a mother/father and responsible caretaker of her/his own child. In the following instances, income shall be deemed to the assistance unit to determine eligibility:
1. Parents are still financially responsible for the child not living in the same home for a period of time when visiting the other parent; or,
  2. Parent's income; or,
  3. Stepparent income when there is a child in common; or,
  4. Sponsor's Income; or,
  5. Parent's income of an emancipated minor who is unmarried and living with the parent.
  6. An individual who no longer has legal custody but lives in the home of their child.
  7. Those who meet any of the criteria A-E above, but who are ineligible to receive Colorado Works assistance as specified at Section 3.604.2, J, "Program Prohibitions."
- B. In the following instance, income shall not be deemed to the assistance unit to determine eligibility: parent's income when an emancipated married minor is living with a parent.

### **3.605.2 Income [Rev. eff. 9/15/12]**

- A. For Colorado Works cash assistance, all countable income that the assistance unit has received or is expected to receive shall be used to determine eligibility. If the gross countable income exceeds the need standard for the assistance unit, the assistance unit shall be ineligible.
1. Consideration of Countable Income - For purpose of determining need, all countable income of members of the assistance unit must be considered.
  2. Countable Income - Countable income is the income that is considered to be available to the individual or assistance unit in the month of the application, and in any month benefits are received with the consideration of appropriate exemptions, disregards and deductions as applicable.
  3. Availability of Income - Income shall be countable when actually available, when the applicant or participant has a legal interest in a sum, and has the legal ability to make such sum available for support and maintenance. Income, in general, is the receipt by an individual of a gain or benefit in cash or in-kind during a calendar month. Received means the date on which the income becomes legally available.
  4. Securing Potential Income - An applicant/participant must make every reasonable effort to secure potential income.
    - a. The time required to make income available shall not be used as a basis for delaying the processing of an application.

- b. When the participant is taking appropriate action to secure potential income, the assistance unit shall continue without adjustment until the income is available.
- c. If the applicant/participant refuses to make a reasonable effort to secure potential income, such income must be considered as if available. Timely and adequate notice must be given to the assistance unit regarding a proposed action to deny, reduce or terminate assistance, based on the availability of the income.
- d. If, upon the receipt of the prior notice, the person acts to secure the potential income, the proposed action to deny, reduce or terminate assistance shall be withdrawn and assistance must be approved and/or continued without adjustment until the income is, in fact, available.

#### B. Countable Income

All countable income, including earned and unearned income received, or unearned income an assistance unit expects to receive in the application month and any month following shall be used to determine eligibility for the assistance unit.

#### C. Earned In-kind Income

Earned in-kind income shall be income resulting from the performance of services by the applicant or participant for which he or she is compensated in cash, shelter or other items in lieu of wages.

#### D. Consideration of Earned Income

“Earned Income” is:

- 1. Wages, salaries, and commissions paid for services as an employee, or money payments obligated to the employee and diverted to a third party for the employee’s household or other expenses;
- 2. Wages that are being garnished by a court order;
- 3. With the exception of contract employment, wages that are paid to an employee for a period for which services were rendered are considered available when paid rather than when earned, except that wages held at the request of the employee are considered income in the month they would otherwise have been paid.

#### E. Income from Short-Term Employment

Income received from short-term employment such as temporary employment and subsidized employment (ninety days or less). Such income shall not be considered to determine eligibility as long as the participant has not been terminated or has terminated the employment due to a fault of their own. This employment may be documented in the Individual Responsibility Contract.

#### F. Countable Earned Income

##### 1. Consideration of Earned Income Against the Program Income Standard

Unless otherwise specified, any earned income is countable and the applicable

earned income must be considered against the applicable needs standard.

## 2. Determining Earned Income

The amount of wages, salaries, or commissions available to the applicant/recipient after the applicable disregards is considered the net earned income.

- a. Wages, salaries, and commissions mean all payments for services as an employee, or money payments obligated to the employee and diverted to a third party for the employee's household or other expenses.
- b. Wages that are being garnished by a court order are classified as earned income.
- c. With the exception of contract employment, wages, which are paid to an employee for a period for which services were rendered, must be counted as earned when paid rather than when earned, except that wages held at the request of the employee are considered income in the month they would otherwise have been paid.

## 3. Wages for Providing Home Care Allowance Services

Earned in-kind income shall be income resulting from the performance of services by the applicant or participant for which he or she is compensated in cash, shelter or other items in lieu of wages.

## 4. Income of a Dependent Child not in School

All earned income of dependent children who are not students or making satisfactory progress in an equivalent activity shall be considered in determining eligibility for Colorado Works.

## 5. Earnings from WIA

Earnings received by a specified caretaker from the Workforce Investment Act (WIA) are countable income. Payments for work experience programs and on-the-job training under WIA are considered wages.

## 6. Consideration of the Income of a Non-Participant Stepparent and a Non-Participant Parent of an Unmarried Minor Parent

- a. A stepparent's countable income is considered available to stepchildren included in the assistance unit as dependent children. The countable income of a non-participant parent(s) of an unmarried minor parent who is living in the same home as the minor parent, shall also be deemed to the assistance unit.

The countable income equals gross earned income minus the employment disregard of \$90, the maintenance or child support paid to others outside the assistance unit, the amounts actually paid by the individual to other individuals not living in the home and who could be claimed by the individual for federal income tax purposes, plus any unearned income received by the stepparent or non-participant parent. The needs of the stepparent or parent of the minor parent, and the needs

of individuals living in the home for whom the stepparent or parent are responsible shall be deducted from the result to determine the amount attributed to the assistance unit.

b. Income of Unmarried Minor Parents

Income of parents of unmarried minor parents who apply for or receive Colorado Works benefits living in the same household shall be attributed to the assistance unit.

7. Sponsored Non-Citizens

Net income of a non-citizen's sponsor and the sponsor's spouse shall be deemed to the assistance unit. Sponsor net income equals gross earned income minus twenty percent (20%) or \$175, whichever is less, minus support paid to dependents not living in the sponsor's home, plus any unearned income. The remaining income shall be considered available as unearned income to the non-citizen for the purpose of establishing eligibility and payment for Colorado Works.

8. Excluded Members of the Assistance Unit

Net income of persons who are required to be included in the assistance unit and who are excluded due to failure to meet citizenship, non-citizen status, Lawful Presence or Social Security Number requirements, or are ineligible as defined in Section 3.604.2,J, shall be deemed to the assistance unit. Net income equals gross earned income minus employment disregards and employment incentives plus any unearned income.

9. Work Study Income

Work Study income that exceeds the basic cash assistance grant is earned income in the month received.

G. Self-Employment Income

1. Definition of Self-Employed

An applicant or recipient involved in a profit-making activity shall be classified as self-employed.

a. To determine the net profit of a self-employed applicant or recipient, deduct the cost of doing business from the gross income.

1) These expenses include, but are not limited to, the rent of business premises (if working out of the home, the cost of the room used when doing business shall be used to determine the amount of the expense), wholesale cost of merchandise, utilities, interest, taxes, labor, and upkeep of necessary equipment.

2) Depreciation of equipment shall not be considered as a business expense.

3) The cost of and payments on the principal of loans for capital assets or durable goods shall not be considered as a business expense.

- 4) Personal expenses such as personal income tax payments, lunches, and transportation to and from work are not business expenses, and are included in the applicable earned income disregards computation.
- b. Appropriate allowances for the cost of doing business for applicants or recipients who are licensed, certified, or approved day care providers are:
  - 1) For the first child for whom day care is provided, deduct \$55, and
  - 2) For each additional child deduct \$22. If the applicant or recipient can document a cost of doing business that is greater than the amounts above, the procedure described in (a), above, shall be used.
- c. The result net profit amount, secured after the appropriate deductions described above, shall be treated as described in section 3.605.2, D, concerning earned income.
- d. An allowable form of verification for self-employment is an applicant/participant's ledger of income and expenses.

## 2. Income Received From Self-Employment

All self-employment income shall be considered income in the month it is received.

## 3. Irregular Receipt of Self-Employment Income

All self-employment income of Colorado Works applicants or recipients shall be considered income in the month received. If receipt of self-employment income is irregular, it shall be averaged over a twelve-month period.

## 4. Other Types of Self-Employment Income

Some different types of self-employment income and how they are considered include, but are not limited to, the following:

- a. Farm income – shall be considered in the month it is received.
- b. Rental income – shall be considered as self-employment income only if the participant actively manages the property for an average of twenty (20) hours per week or more.
- c. Board (to provide a person with regular meals only) payments shall be considered earned income in the month received to the extent that the board payment exceeds the maximum Food Assistance allotment for a one-person household per boarder and other documented expenses directly related to the provision of board.
- d. Room (to provide a person with lodging only) payments shall be considered earned income in the month received to the extent that the room payment exceeds other documented expenses directly related to the provision of room.

- e. Room and board payments shall be considered earned income in the month received to the extent that the payment for room and board exceeds the Food Assistance allotment for a one-person household per room and boarder and other documented expenses directly related to the provision of room and board.

#### H. In-Kind Countable Earned Income

1. Donated in-kind countable earned income shall be defined as services donated without pay by an applicant or recipient that:
  - a. Is regular and for a specific time period;
  - b. Is a necessary service; and,
  - c. If not performed by the applicant or recipient, someone would have to be hired to perform the service.
2. If donated services meet these requirements, the value of these services is determined by:
  - a. The going rate in the community; or
  - b. From two employers of like services.
3. The applicant or recipient shall be informed that the continuation of donation of services will result in an income deduction from the assistance grant after all applicable earned income disregards have been applied.

#### I. In-Kind Income In Exchange For Employment

In-kind income received in exchange for employment is employment income and shall have the appropriate earned income disregards applied to the total value of the income.

The amount considered as earned income when an applicant or recipient is paid in-kind is the value of the item supplied. The current market value of the item is used if the value of the item is not provided.

### **3.605.3 Unearned Income [Rev. eff. 7/1/13]**

For the purpose of determining eligibility for Colorado Works, the following shall be exempt from consideration as income:

#### A. Countable Unearned Income

##### Consideration of Unearned Income Against Program Income Standards

Unless otherwise specified, any unearned income is countable and together with all other countable income of the applicant, recipient, or assistance unit it must be considered against the applicable assistance program need and/or grant standards specified in the regulations covering the different programs.

#### 1. Countable Unearned Income

Countable unearned income includes, but is not limited to the following, as well as other

payments from any source, which can be construed to be a gain or benefit to the applicant or recipient and which are not earned income:

- a. Veteran's Compensation and pension.
- b. Income from rental property is considered as unearned income where the applicant or recipient is not actively managing the property on an average of at least twenty (20) hours a week. Rental income is countable to the extent it exceeds allowable expenses. Allowable expenses are maintenance, taxes, management fees, interest on mortgage, and utilities paid. This shall not include the purchase of the rental property and payments on the principal of loans for rental property.
- c. Support and alimony payments including all child support and alimony payments shall be used to determine eligibility. Child support excluding arrears from child support that is returned to families in a county that exercises the option to pass through the state and county share of current child support collection shall be disregarded when determining the Colorado Works grant amount.
- d. Educational loans and grants which are not exempt; the countable amount, after deduction of expenses necessary for school attendance, must be prorated over the period of months intended to be covered by the loan or grant.
- e. VA educational assistance (G.I. Bill) payments or any other benefits which are conditional upon school attendance are income to the extent that they exceed expenses necessary for school attendance; specific instructions for determining the countable amount are contained in the section on "Educational Loans and Grants."
- f. Proceeds of a life insurance policy to the extent that they exceed the amount expended by the beneficiary for the purpose of the insured recipient's last illness and burial which are not covered by other benefits.
- g. Proceeds of a health insurance policy or personal injury lawsuit to the extent that they exceed the amount to be expended or required to be expended for medical care.
- h. Strike benefits.
- i. Income from jointly owned property - in a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.
- j. Lease bonuses (oil or mineral) received by the lesser as an inducement to lease land for exploration are income in the month received.
- k. Oil or mineral royalties received by the lesser are income in the month received.
- l. Stepparent and non-citizens' sponsors' attributable income for Colorado Works cases.
- m. Amounts withheld from unearned income because of a garnishment are countable as unearned income.
- n. Loans or inheritances.
- o. Gifts or prizes.

- p. Dividends and interest received on savings bonds, leases, etc.
- q. Annuities, pensions, or retirements payments.
- r. Disability or survivor's benefits.
- s. Worker's Compensation payments.
- t. Unemployment Compensation.
- u. Social Security benefits.

## 2. Periodic Payments

The following types of periodic payments are countable unearned income:

- a. Annuities - payments calculated on an annual basis which are in the nature of returns on prior payments or services; they may be received from any source;
- b. Pension or retirement payments - payments to an applicant or recipient following retirement from employment, such payments made by a former employer or from any insurance or other public or private fund;
- c. Disability or survivor's benefits - payment to an applicant or recipient who has suffered injury or impairment, or to such applicant's or recipient's dependents or survivors; such payments may be made by an employer or from any insurance or other public or private fund;
- d. Worker's Compensation payments - payments awarded under federal and state law to an injured employee or to such employee's dependents; amounts included in such awards for medical, legal, or related expenses incurred by an applicant or recipient in connection with such claim are deducted in determining the amount of countable unearned income;
- e. Veteran compensation and pension - payments based on service in the armed forces; such payments may be made by the U.S. Veterans Administration, another country, a state or local government, or other organization. Any portion of a VA pension that is paid to a veteran for support of a dependent shall be considered countable unearned income to the dependent rather than the veteran.
- f. Unemployment Compensation - payments in the nature of insurance for which one qualifies by reason of having been employed and which are financed by contributions made to a fund during periods of employment;
- g. Railroad retirement payments - payments, such as sick pay, annuities, pensions, and unemployment insurance benefits, which are paid by the Railroad Retirement Board (RRB) to an applicant or recipient who is or was a railroad worker, or to such worker's dependents or survivors;
- h. Social Security benefits - old age (or retirement), survivors and disability insurance payments (OASDI or RSDI) made by the Social Security Administration; also included are special payments at age seventy-two (72) (Prouty Benefits and Black Lung benefits);
- i. Supplemental Security Income (SSI) - public assistance payments made by the Social



Security Administration to an applicant or recipient age sixty-five (65) or older, or who is blind or disabled;

- j. Child Support Income - payments made by noncustodial parents for the support of children in a Colorado Works assistance unit shall be considered in accordance with the Colorado Works financial eligibility and payment rules. Child support paid to the family by the Child Support Enforcement Unit shall be considered countable unearned income.

- 3. Supplementary Medical Insurance Benefits (SMIB)- Social Security "Medicare" supplementary medical insurance benefit is a voluntary program, therefore the full Social Security award amount is counted as income to determine eligibility and to determine the amount of financial assistance to the applicant or recipient. The lump sum SMIB refund received by the "buy-in" recipient is exempt income as the applicant or recipient has previously been charged with that income.
- 4. Military Allotment- A military allotment received on behalf of an applicant or recipient for those individuals included in the budget unit shall be considered as income in the month received. The military allotment received by the non-recipient spouse, parent, or stepparent on behalf of individuals not in the assistance unit shall be considered as income in the month received to the extent that such income exceeds the need standard concerning those persons not in the budget unit.

#### B. Lump Sum Income

Lump sum income is considered as income for determining eligibility in the month received.

#### C. Exempt Income

- 1. Income Taxes- Since income taxes are included when determining the amount of countable income of an applicant or recipient, a refund of such taxes shall not be counted as income in the month it is received and the following month. The Earned Income Tax Credit (EITC) shall be also be exempt for the month in which the EITC payment is received and for the following month. County departments shall provide assistance to help participants apply for and receive the federal Earned Income Tax Credit (EITC).
- 2. Third-Party Payments- The value of any third-party payment for medical care or social services paid on behalf of an applicant or recipient shall be exempt. This exemption also applies to room and board furnished during medical confinement and paid for by a third party.
- 3. Emergency Assistance- Emergency Assistance other than home energy assistance received on a one-time basis in cash or in kind from other agencies and organizations shall be exempt.
- 4. Energy Assistance- Home energy assistance granted to an applicant or recipient by a private non-profit organization or home energy supplier, whether in kind, by voucher, or vendor payment, is exempt income even if it duplicates the utilities standard component in full.
- 5. Personal Care and Home Care- Personal care or home care allowances paid to a recipient or non-recipient spouse, parent, stepparent or child, from a federal, state or local government program for in-home supportive services (attendant, chore, housekeeping) shall be exempt as income in determining the amount of attributable non-recipient spouse, non-recipient parent or non-recipient stepparent income. However, it shall be classified as employment income in determining the attendant's own eligibility for

assistance.

6. VA Aid and Attendance- VA Aid and Attendance may be paid to qualified veterans in addition to their regular VA benefit. VA Aid and Attendance is exempt income to the applicant or recipient to determine eligibility for public assistance in the applicant's or recipient's own home, if used for medical supplies and medical or attendant care not covered by Medicare or Medicaid, or other health insurance programs. The remainder is deducted from the assistance grant. (Amounts for attendant care are treated in the same manner as specified in the preceding paragraph.)
7. General Assistance- General Assistance granted to an applicant/recipient by the county department prior to or as a supplement to categorical assistance is exempt income.
8. Crime Victims Compensation Act- Assistance granted to an applicant/recipient through the Crime Victims Compensation Act is exempt income.

D. General Income Exemptions – Exemptions from Consideration as Income

For the purpose of determining eligibility for Colorado Works, the following shall be exempt from consideration as income herein incorporated by reference; no later amendments or editions are incorporated. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Colorado Works Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State Publications Library:

1. A bona fide loan. Bona fide loans are loans, either private or commercial, which have a repayment agreement.
2. Benefits received under the Older Americans Act, Nutrition Program for the Elderly.
3. The value of supplemental food assistance received under the special food services program for children provided for in the National School Lunch Act and under the Child Nutrition Act, including benefits received from the special supplemental food program for Women, Infants and Children (WIC).
4. Home produce utilized for personal consumption.
5. Payments received under Title II of the Uniform Reconciliation Act and Real Property Acquisition Policies Act; relocation payments to a displaced homeowner toward the purchase of a replacement dwelling are considered exempt for up to six (6) months.
6. Experimental Housing Allowance Program (EHAP) payments made by HUD under Section 23 of the U.S. Housing Act.
7. Payments from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita; and the initial purchase made with such funds.
8. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) which are in the form of: cash payments up to an amount not to exceed \$2,000 per individual per calendar year; stock; a partnership interest; or an interest in a settlement trust. Cash payments, up to \$2,000, received by a recipient in one calendar year which is retained into subsequent years is excluded as income and resources; however, cash payments up to \$2,000 received in the subsequent year would be excluded from income in the month(s) received, but counted as a resource if retained beyond that month(s).

9. Assistance from other agencies or organizations that are provided for items not included in the need standard or do not duplicate a component of the need standard in total.
10. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided to states, local governments and disaster assistance organizations.
11. Payments received for providing foster care.
12. Payments to volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title I (AmeriCorps VISTA) when the value of all such payments adjusted to reflect the number of hours such volunteers are serving is not equivalent to or greater than the minimum wage, and Title II and Title III of the Domestic Volunteer Services Act.
13. Training allowances or training scholarships granted by Workforce Investment Act (WIA) of 1998 or other programs to enable any individual to participate in a training program is exempt.
14. Payments received from the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conservation and Improvement Projects (YCCIP), and the Youth Employment and Training Programs (YETP) under the Youth Employment and Demonstration Project Act (YEDPA).
15. Social Security benefit payments and the accrued amount thereof paid to a person when an individual plan for self-care and/or self-support has been developed under the following conditions: (a) SSI permits such disregard under such developed plan for self-care-support goal, and (b) assurance exists that the funds involved will not be for purposes other than those intended.
16. Payments made from the Agent Orange Settlement Fund or any fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).
17. Money received from the Radiation Exposure Compensation Trust Fund, P.L. No. 101-426 as amended by P.L. No. 101-510.
18. Reimbursement of out-of-pocket expenses.
19. Payments received by individuals because of their status as victims of Nazi persecution pursuant to P.L. No. 103-286.
20. Individual Development Accounts (IDAs).
21. Retirement savings accounts.
22. Health care savings accounts.
23. Income paid to children of Vietnam veterans who were born with spina bifida pursuant to P. L. No. 104-204.
24. Income of an applicant or participant who is attending school (student in a secondary education or undergraduate degree program) shall be considered as follows:
  - a. Income received from a college work-study program grant shall be exempt when it is

part of a "needs-based" package administered by the U.S. Commission of Education. Work-study income that exceeds the amount specified in a needs-based package shall be considered earned income.

- b. All earned income, including earned income from WIA, that is received by a dependent child who is a full-time student or a part-time student who is not a full-time employee shall be disregarded.

- 25. Educational savings accounts.
- 26. Educational grants, loans, stipends, and/or scholarships.
- 27. The income and resources (including any share in resources or income jointly owned or received) of an individual receiving SSI.
- 28. Income tax refunds.
- 29. Earned Income Tax Credit (EITC).
- 30. Refugee resettlement funds and reception and placement money.
- 31. Interim Cash Payment received through the Colorado Refugee Services Program.
- 32. Life or disability insurance policies that may have a cash value taken
- 33. The benefits provided from the Low-Income Energy Assistance Program (LEAP).
- 34. A child receiving subsidized adoption funds shall be excluded from the assistance unit and his or her income shall be exempt from consideration for Colorado Works eligibility and payment, unless such exclusion results in lower benefits to the family.
- 35. Income that is exempt shall also be exempt if received as a lump sum or excluded if designated or legally obligated for legal fees related to obtaining the lump sum payment, medical bills, funeral and burial expenses or income taxes.
- 36. Income tax credits when identified as exempt by the state or federal government.

#### E. Child Support Income

- 1. Any child support income paid directly to an assistance unit on behalf of a member of the assistance unit that is not turned over to the Child Support Enforcement program shall be counted as unearned income to determine eligibility and payment for the assistance unit.
- 2. The county may pay the participant an amount equal to fifty percent (50%) of the state share and one hundred percent (100%) of the county share of the child support collection made by the noncustodial parent. The county shall not consider the child support returned to the family as income for purposes of calculating the basic cash assistance grant.

### **3.606 COLORADO WORKS ELIGIBILITY DETERMINATION FOR PAYMENTS [Eff. 9/15/12]**

#### **3.606.1 Eligibility Requirements[ Rev. eff. 7/1/13]**

##### A. Countable Gross Income

All countable gross income of the assistance unit, including child support and maintenance

support received and expected to be received in the month prior to (if available) and in the month of application shall be used to determine eligibility.

## B. Determine Eligibility

To determine initial eligibility for Colorado Works cash assistance and state diversion, the countable gross income of an assistance unit shall not exceed the need standard as specified for that unit.

## C. Definitions

The following definitions shall apply to the budgeting process in determining eligibility and payment for Colorado Works cash assistance and diversion.

1. "Best estimate" - an income or circumstance prediction based on past amounts and reasonable, verified knowledge or future circumstances which affect eligibility or income to be received in the payment month.
2. "Budget Month" – the initial calendar month from which circumstances are considered in the determination of eligibility, payment amounts, and the certification period.
3. "Certification period"- a period of six (6) calendar months beginning with the first month of eligibility.
4. "Change Report (CR)" - a form that is used by the participant to report a change in circumstances.
5. "Complete" – the disposition of the redetermination packet when it is filled out to reflect all household circumstances and includes the applicant's signature and county date stamp.
6. "Countable Income" – is the term used for all income taken into consideration for eligibility.
7. "Filing Deadline" – the date by which the Colorado Works participant's complete redetermination packet must be received by the county department if payment is to be made.
8. "Gross Income" – earned income before deductions plus countable unearned income.
9. "Limited reporting standard" - the standard used to report changes.
10. "Negative change" - is a decrease in basic cash assistance due to changes to the assistance unit.
11. "Net result" - the end result after considering all circumstances and changes based upon limited reporting standards and negative and positive changes as compared to the baseline benefit established at initial eligibility.
12. "Positive Change" - is an increase in basic cash assistance due to changes in circumstances of the assistance unit.
13. "Processing month" – the calendar month during which eligibility and/or payment is determined.
14. "Reporting month" – the calendar month in which a change is reported.

15. "Timely reporting of circumstances" – an applicant/participant shall report changes by the tenth (10<sup>th</sup>) of the month following the month in which the change occurs.

### **3.606.2 Basic Cash Assistance [Rev. eff. 7/1/13]**

#### **A. Payment of Basic Cash Assistance (BCA) Grants**

Counties or groups of county departments shall not reduce the basic cash assistance grant, restrict eligibility, or impose sanctions that are inconsistent with state and federal laws or the rules of this Section 3.606.2.

#### **B. Unreimbursed Public Assistance**

The basic cash assistance grant shall be considered part of the unreimbursed public assistance (UPA) as defined in the Child Support Enforcement rule manual at Section 6.002 (9 CCR 2504-1).

#### **C. Recipient's Right to Decide**

In accordance with the principle of the unrestricted money payment, a recipient shall have the right to decide how any payment received shall be spent. The only exception shall be when protective payments are required.

#### **D. Vendor Payments for Participant Protection**

The county may pay the basic cash assistance grant to vendors on behalf of the participant for protective payments or to vendors on behalf of the participant with the participant's voluntary agreement. In all other situations the payment shall be made to the participant.

#### **E. Considering Income for Eligibility and Payment**

Applications received will be certified for six (6) consecutive months beginning the first month the assistance unit is found eligible for basic cash assistance. The certification period consists of the calendar months beginning with the first day of the budget month (day/month the application is received and the assistance unit is found eligible) and ending with the last day of the sixth (6<sup>th</sup>) month (unless found ineligible) in which financial assistance is provided and that is intended to cover the ongoing basic needs of the assistance unit.

For eligibility and payment, income shall be considered in the month of application and throughout the certification period. This is also true for redetermination and establishing a new certification period going forward. The following calculation shall be used: countable earned income minus applicable earned income disregards, plus countable unearned income.

#### **F. Determining Eligibility for Basic Cash Assistance Grant Based on the Standard of Need**

The basic cash assistance grant shall be determined based upon income using the following need standard. If the participant has zero income the following cash payment shall be received based upon those included in the assistance unit:

#### **COLORADO WORKS STANDARDS OF ASSISTANCE CHART**

**Specified Caretaker(s)  
of Children**      **Number of Dependent  
Children**

.	0	1	2	3	4	5	6	7	8	9	10	Ea. Ad
---	---	---	---	---	---	---	---	---	---	---	----	-----------

												<b>d.</b>
<b>No Sp ecif ied Ca ret ak er</b>												
Ne ed Std .	0	117	245	368	490	587	678	755	830	904	977	67
Gra nt A mt.	0	128	269	404	539	646	746	832	913	995	10 86	72
<b>On e Sp ecif ied Ca ret ak er</b>												
Ne ed Std .	253	331	421	510	605	697	770	844	920	992	10 65	67
Gra nt A mt.	278	364	462	561	665	767	847	929	10 12	10 92	117 2	72
<b>Tw o Sp ecif ied Ca ret ak ers</b>												
Ne ed Std	357	439	533	628	716	787	861	937	10 09	10 82	115 5	67

.												
Grant Amt.	392	483	586	691	787	865	947	1032	1111	1190	1271	72

#### G. Pregnancy Allowance

Upon verification of pregnancy, pregnant parents are eligible for the basic cash assistance grant plus a ten dollar (\$10.00) pregnancy allowance. Payment of the pregnancy allowance continues through the month of release from the hospitalization for the delivery or termination of the pregnancy.

#### H. Initial Payment

The initial payment to eligible applicants shall include assistance beginning with the date of application. Should the assistance unit be ineligible on the date of application, but become eligible prior to the time that a determination of eligibility is made, the initial payment shall include assistance beginning with the date on which the assistance unit became eligible. To calculate partial month payments:

1. Determine the grant amount based on the size and composition of the assistance unit;
2. Deduct the total net countable income;
3. Determine the number of days for which payment is made and based on the table below; find the decimal figure corresponding to the number of days of eligibility;
4. Multiply the authorized grant for the entire month by such decimal figure to determine the authorized grant amount for the partial month;
5. Subtract from authorized grant amount any appropriate deductions, unless the authorized grant is less than \$10, in which case no payment is made, or if the deductions from the partial month payment results in an amount less than \$10, such lesser amount shall be paid except when the amount is less than \$1.00.

To calculate the partial month payments, the following table shall be used:

Days	Standard	Days	Standard
1	.03288	11	.36164
2	.06575	12	.39452
3	.09863	13	.42739
4	.13151	14	.46027
5	.16439	15	.49315
6	.19726	16	.52603
7	.23014	17	.55890
8	.26302	18	.59178
9	.29590	19	.62466
10	.32876	20	.65754



#### I. Payment Determination

For the certification period, eligibility and payment shall be determined prospectively.

#### J. Negative and Positive Changes During the Certification Period

1. If the assistance unit will receive an increase in basic cash assistance as indicated by the total net change of all changes in the month, the increase will affect the case the month following the date the change is reported and verified.
2. If the assistance unit will receive a decrease in basic cash assistance, the assistance payment amount will remain the same until redetermination when a new payment amount will be set for the upcoming certification period or the case discontinues.

The only decreases that occur during the certification period are due to a death in the assistance unit, members leaving one assistance unit and entering another, by imposing sanctions or imposing an Intentional Program Violation (IPV) disqualification. These changes take effect after timely noticing is applied.

#### K. Limited Reporting Standard

A recipient with an established certification period must report the required primary and secondary changes in household circumstances by the tenth day of the month following the month the change occurred. Changes in income must be reported in the redetermination packet and when the income of the assistance unit exceeds the income reporting standard for that assistance unit. The county worker shall act on the change within ten calendar days from the date the change is reported by entering the change into the statewide benefit management system.

The income reporting standard for an assistance unit is provided on the change report form and in noticing. The income reporting standard includes increases in income above the need standard with applicable disregards applied and income received from a new source including unearned income.

#### L. Ongoing Eligibility and the Effect of Negative and Positive Changes to the Certification Period

The certification period does not guarantee ongoing eligibility. To remain eligible, the primary eligibility criteria must still be met, including remaining below the need standard.

All changes are compared against the assistance unit size and grant amount.

1. A negative change may result in the reduction of payment or case closure. A payment reduction shall be implemented at redetermination. When a negative change is a cause for case closure, closure shall take place after allowing for adverse action. A negative change shall include, but is not limited to:
  - a. An increase in income or income from a source not previously reported. The payment and certification period shall not be terminated unless the budgetary unit's total countable income is over the need standard after applicable income disregards are applied. If the unit's income is still less than the need standard after the consideration of income disregards, the assistance unit shall continue with the established payment for the certification period. An increase in income shall impact payment at redetermination.
  - b. A member leaves the household. The payment and certification period shall not be terminated unless there is no longer a dependent child in the assistance unit or

when a pregnancy ends when no other dependent child exists in the assistance unit.

- c. Death of a recipient, someone moving from one assistance unit to another, imposing sanctions and/or imposing actual IPV penalties, shall be acted upon within five (5) calendar days by adjusting payments accordingly and/or closing the case regardless of the set certification period.
2. A positive change results in a payment increase and shall be effective the month following the month the change is reported and verified. Payments shall be adjusted accordingly and provided to the recipient timely. A positive change shall include, but is not limited to:
  - a. Termination of or decrease in income.
  - b. Adding a member to the assistance unit.
3. Positive and negative changes may occur at the same time. All changes will be taken into consideration and the net result of the change compared to the participants base eligibility determination. The comparison will be used to determine if there is a negative change, positive change, or complete ineligibility to the assistance unit's basic cash assistance grant.

#### M. Gross Income

To be eligible for Colorado Works basic cash assistance and state diversion payments, the gross earned and unearned income together shall not exceed the need standard for the household size.

#### N. Gross Income and Countable Income

The gross earned income minus the \$90 earned income disregard, plus any countable income received or expected to be received by members of the assistance unit, shall not equal or exceed the need standard for the household size.

#### O. Calculation of the Basic Cash Assistance Grant for an Eligible Assistance Unit

To calculate the basic cash assistance amount for an eligible assistance unit:

1. Deduct the earned income disregard(s) from the gross earned income, received or expected to be received by members of the assistance unit, in the month of application;
2. Add to the result the unearned income received or expected to be received by members of the assistance unit;
3. Deduct the total at 2, above, from the grant amount for the household size.

#### P. Reporting of Earned Income

When the assistance unit reports earned income:

1. Apply the appropriate earned income disregards to the gross earned income of each employed member of the budgetary unit as described in Section 3.606.3; and,
2. Add the unearned income received by each member of the budgetary unit; and,
3. Compare the total to the need standard for the household size.

4. If the net countable income equals or exceeds the need standard, the assistance unit is not eligible for Colorado Works basic cash assistance.

#### Q. Calculation of an Eligible Assistance Unit

To calculate the basic cash assistance grant amount for an eligible assistance unit:

1. Deduct the net countable income from the grant amount for the assistance unit; and,
2. Drop the cents, and the remainder is the authorized grant.

### **3.606.3 EARNED INCOME DISREGARDS [Rev. eff. 7/1/13]**

For all cases with eligible members that have earned income (not including disqualified individuals), payment and eligibility will be determined using the income disregards as described below. All payments shall be calculated by using applicable disregards.

#### A. Earned Income Disregards Calculations

The following earned income disregards shall be applied to gross wages for applicants and participants:

1. At application the gross earned income minus the ninety dollar (\$90) earned income disregard, plus any countable unearned received or expected to be received by members of the assistance unit, shall not exceed the need standard for the household size and shall be applied at application. If income does not exceed the need standard for the household size, the sixty seven percent (67%) disregard shall be applied to determine payment amount.
2. For an assistance unit currently receiving basic cash assistance, the gross earned income minus the sixty seven percent (67%) earned income disregard, plus any countable unearned received or expected to be received by members of the assistance unit, shall not exceed the need standard for the household size and shall be applied during the certification period. If income does not exceed the need standard for the household size, the 67% disregard shall be applied to determine payment amount.

#### B. Calculation Steps

If the assistance unit is eligible, calculate the payment utilizing the following steps:

1. Deduct the earned income disregard(s) from the gross earned income, received by or expected to be received by members of the assistance unit, in the month of application;
2. Add to the result the unearned income received or expected to be received in that month by members of the assistance unit;
3. Deduct the total resulting from step 2, above, from the grant amount for the household size. The remainder is the grant amount.

### **3.606.4 REPORTING CHANGES AND REDETERMINATION OF ELIGIBILITY [Rev. eff. 7/1/13]**

#### A. Reporting Changes

Colorado Works participants shall report information concerning income, household composition, and other primary and secondary eligibility requirements. Such information may be reported to

the county of residence by use of a change report form, a redetermination packet, and/or by making the county aware of the change. Changes shall be reported the tenth (10<sup>th</sup>) of the month following the month the change occurred. The county must act on all changes reported within ten (10) calendar days of the report by entering the change into the statewide benefit management system. By acting on changes, the county department shall determine eligibility.

#### 1. Timely Reporting, Timely Verification, and Timely Processing of Changes

- a. A change is considered reported timely if reported by the participant on or before the tenth (10<sup>th</sup>) of the following month. This shall be considered the timely reported standard for an assistance unit.
- b. A change is considered processed timely if the worker processes the reported change within ten (10) calendar days from the date the change was reported.
- c. Timely reported and timely processed changes that result in a positive change shall affect a case the month following the month the change was reported by the recipient and verified. Timely reported and timely processed changes that result in a negative change or total ineligibility shall affect a case following adverse action and/or timely noticing requirements.
- d. Timely reported and untimely processed changes that result in a positive change shall affect the case the month following the month the change was reported by the recipient and verified if a positive change. Due to untimely processing recipients may see a delay in receiving a portion of their basic cash assistance. Timely reported and untimely processed changes that result in a negative change or total ineligibility shall affect the case following adverse action and/or timely noticing requirements.
- e. Untimely reported and timely processed changes that result in a positive change shall occur the month following the month in which the change is reported and verified by the recipient. Untimely reported and timely processed changes that result in a negative change or total ineligibility shall take into account timely reporting standards for the assistance unit and shall affect the case following adverse action and/or timely noticing requirements.
- f. Untimely reported and untimely processed changes that result in a positive change shall affect the case the month following the month the change was reported by the recipient and verified. Untimely reported and untimely processes changes that result in a negative change or total ineligibility shall take into account timely reporting standards for the assistance unit and shall affect the case following adverse action and/or timely noticing requirements.

#### 2. Verification of Changes

If the change is a negative change to the assistance unit (decrease in benefits), verification of the change is not required until redetermination. If the change is a positive change to the assistance unit (increase to benefits), verification may be required before the positive change is applied to the case. Positive changes causing an increase to the basic cash assistance grant may include, but are not limited to:

- a. Decrease in income;
- b. Birth of a child;

- c. Verification of a pregnancy;
  - d. Providing individual level verification as described in section 3.604.1, O;
  - e. Individual no longer ineligible as described in section 3.604.2, N;
  - f. Individuals joining the assistance unit.
3. The income reporting standard for an assistance unit is provided on the change report form and in noticing. The income reporting standard includes increases in income above the need standard with applicable disregards applied and income received from a new source including unearned income.

#### B. Filing a Redetermination (RRR) to Continue Benefits

Colorado Works participants shall file their redetermination with the county by the 15<sup>th</sup> of the month as specified in the redetermination packet. A recipient's failure to file a RRR timely may delay the determination of benefits and income disregards will not be applied unless good cause is established. Complete forms received timely must be acted upon by the county department by the last day of the month. Complete forms received after the filing deadline must be acted upon by the tenth (10th) calendar day in the month following the month the redetermination was due. Participants must have a minimum of five working days from the date they receive the Redetermination packet (RRR) to return the packet to the county.

A redetermination of eligibility shall mean a case review/determination of necessary information and verifications to determine eligibility at least once every six (6) months. An interview for Colorado Works basic cash assistance cases shall take place every six (6) months with necessary verifications to determine whether the participant continues to be eligible for Colorado Works. To redetermine eligibility a case review must be conducted and necessary verification must be received to determine ongoing eligibility.

##### 1. Use of Home Visits or Office Appointments

County departments may use a home visit or office appointment procedure as an alternative to the mail-out process described in Section 3.606.4, D. These procedures may be used for all cases. A face-to-face redetermination is required annually. When a redetermination interview is scheduled, the recipient shall be notified at least ten (10) calendar days in advance, in writing, of:

- a. The date and time for the interview;
- b. Any documentation that may be needed including, but not limited to:
  - 1) Income verification;
  - 2) Any other eligibility factors such as household composition or school attendance that require verification.
- c. The opportunity to reschedule the appointment or make other arrangements in the event the recipient is ill or for other reasons cannot keep the appointment.

##### 2. Appointments

When the recipient does not keep the appointment and does not request an alternate time or arrangement, benefits will be terminated.

### 3. Redetermination Process

During the redetermination process, the county worker shall:

- a. Conduct an interview;
- b. Explain the purpose of the interview and the use of the information supplied by the recipient on the redetermination form and any additional required forms;
- c. Inform all recipients in writing at the eligibility redetermination that Social Security Numbers for all recipients will be used to request and exchange information with other agencies as part of the eligibility process, including the Department of Labor and Employment (state wage and unemployment data), Social Security Administration, and Internal Revenue Service (unearned income). IEVS information may also be exchanged with other state or federal agencies administering public assistance programs, including the Department of Labor and Employment, Child Support Enforcement and the Social Security Administration;
- d. Have the recipient complete the forms or complete the form on behalf of the recipient;
- e. Explain the appeal rights to the recipient;
- f. Witness the signature of the recipient and sign as a person who helped complete the forms, when applicable;
- g. Review documents, verifications, and any other information supplied by the recipient with the recipient in order to obtain clarification if needed. Information requested shall include:
  - 1) Income;
  - 2) Other eligibility factors shall be verified unless satisfactory documentation is in the case record;
  - 3) If reopened, Child Support Enforcement and other appropriate units shall be advised.

#### C. Request for Redetermination of Eligibility

Any time while receiving basic cash assistance, if there is questionable information regarding the circumstances of a household, the county worker can request a redetermination.

#### D. Redetermination Procedures- Mail Out

Forms that the recipient is required to complete shall be mailed to the recipient at least thirty (30) calendar days prior to the first of the month in which eligibility redetermination is due. This is considered the prior notice period. A review of the case record will indicate the forms required based on individual case circumstances. The following procedures relate to mail-out redetermination:

1. A redetermination form shall be mailed to the recipient together with any other forms to be completed;
2. Forms shall be completed, signed by the recipient, and returned to the county department no later than two weeks after their receipt; and,

3. When the recipient is unable to complete the forms due to physical, mental, or emotional disabilities, and has no one to help, the county department shall either assist the recipient or refer the recipient to a legal or other resource.
4. When initial arrangements or a change in arrangements are being made, an extension of up to thirty days may be allowed. The assistance or referral action of the county department shall be recorded in the case record.

#### E. Redetermination Procedures- Mail Out

A complete redetermination form is a form that has all questions applicable to Colorado Works and/or specific to the household's circumstances complete and the form contains the signature and the county date stamp. Additional verifications necessary to complete the redetermination process, as determined by the county department, may be requested by written or verbal notice.

#### F. Processing of Forms

When the county department receives redetermination forms or any report of a change in circumstances, the department shall date stamp them.

Changes reported must be acted upon within ten (10) calendar days of receipt. Redetermination forms shall follow processing guidelines outlined in B, above. The department shall thoroughly review forms for completeness, accuracy, and consistency. All factors shall be evaluated as to their effect on eligibility and payment. Verifications shall be documented in the case file. The case file shall be used as a checklist in the redetermination process and when a change is made on the case, and shall be used to keep track of matters requiring further action. When additional information is needed:

1. Due to incomplete forms or lack of verification, a notice shall be mailed to the recipient. The notice shall specify the items that are required for a redetermination to be completed in order to determine eligibility and/or payment;
2. Due to inaccurate or inconsistent data, the recipient may be contacted by telephone or be requested to make an office visit, to secure the proper information.
3. Complete forms must be acted upon promptly by the county.

#### G. Redetermination Not Returned

When the redetermination forms are not returned timely a State-approved notice of proposed action form shall be mailed to notify the recipient of the proposed discontinuation of benefits due to the recipient's failure to complete the redetermination of eligibility forms. This action to discontinue shall not be taken, however, if the completed and signed forms are returned within the prior notice period as defined in Section 3.606.4, D. If no response is received by the end of the prior notice period, the case shall be discontinued upon the effective date of the notice sent to the recipient. If the form was not filed timely, no income disregards shall be applied unless good cause exists.

#### H. Incomplete Redetermination Forms (RRR)

If the redetermination form is received by the first filing deadline, but it is incomplete, a correction notice shall be sent to the participant advising the participant that the redetermination form is incomplete and must be corrected by the correction deadline to avoid termination and/or the county department shall work with the participant to complete the form. The earned income disregards shall be applied when a redetermination form is filed by the first filing deadline and

corrected by the correction deadline. A redetermination form corrected after the correction deadline shall be processed upon receipt without the application of disregards.

#### I. Termination of Benefits and Adequate Notice

When the information provided on the redetermination form, or otherwise provided by the participant, is the basis for reduction in the amount of assistance or in termination of assistance, such actions shall be taken after adequate notice, as defined in Section 3.609.7, A, 3, is given.

#### J. Termination of Benefits and Adequate Notice Redetermination Requirements

A redetermination of eligibility shall be complete for Colorado Works when:

1. All necessary forms concerning the redetermination are completed and have been reviewed;
2. Requested verification is obtained and recorded in the case file;
3. All factors are evaluated and decisions on continued eligibility and amount of money payment have been reached; and
4. Notice of change in payment, if applicable, is completed and mailed to the recipient. A State-approved notice of proposed action form shall be used for positive actions and for negative or adverse actions.

#### K. Voter Registration

The county department shall provide to the participant the opportunity to register to vote, in accordance with the provisions of Section 3.602.2 at each eligibility redetermination.

#### L. Reopening and Reinstatements

Cases may be reopened prior to the effective date of closure with good cause and reinstated if closed less than thirty (30) calendar days. If a case closure occurred due to failure to file an RRR, income disregards shall not be applied unless good cause exists.

1. Reinstatement in Lieu of an Application- When a request is made for the category of assistance from which the recipient was discontinued within thirty (30) calendar days following the effective date of discontinuation, the following procedures shall be followed:
  - a. A redetermination form or current application shall be in the case file or completed and signed by the recipient;
  - b. Income shall be verified;
  - c. Other eligibility factors shall be verified unless satisfactory documentation is in the case record;
  - d. Medical documentation shall be obtained unless the certified period of disability covers the current date; and,
  - e. Eligibility determination shall be completed and appropriate actions shall be taken.
2. Reopening in Lieu of an Application- When a recipient requests assistance prior to the effective date of the recipient's discontinuation from assistance, the following procedures shall be followed:



- a. A redetermination form or current application form shall be in the case file or completed and signed by the recipient;
- b. Income shall be verified;
- c. Other eligibility factors shall be verified unless satisfactory documentation is in the case record;
- d. Medical documentation shall be obtained unless the certified period of disability covers the current date; and,
- e. Eligibility determination shall be completed and appropriate actions shall be taken;
- f. If reopened, Child Support Enforcement and other appropriate units shall be so advised.

### **3.606.5 Participants Moving to a New County of Residence [Rev. eff. 9/15/12]**

- A. Colorado Works participants transferring from one county to another shall remain eligible for the basic cash assistance and shall continue to be eligible until assessed by the new county. The benefits shall continue without interruption.
- B. Recipients who are transferring to another county are required to continue to report changes and the transferring county shall continue to process the participant's changes during the period in which the transfer to another county is in process.
  - 1. Participants shall continue to report changes within ten (10) calendar days from the date the change occurred and complete redeterminations as required by the paying county; and,
  - 2. The paying county shall continue its activities; and,
  - 3. The paying county shall resolve all issues concerning the participants continuing eligibility or termination before the transfer is completed; and,
  - 4. The paying county shall assure that the case is updated in a timely way to enable acceptance of the county of residence.

### **3.606.6 Time Limits and Extensions [Rev. eff. 4/1/13]**

#### **A. Time Limits**

Each month for which a basic cash assistance grant is received shall be counted toward the time limits for any adult participant. Any adult participant may receive Federal TANF assistance for up to sixty (60) cumulative months.

#### **B. Time Limits and Sanction Periods**

Months spent in first and second sanction periods shall be counted toward the time limit.

#### **C. Extensions**

An assistance unit containing an individual who has received Federal TANF assistance in Colorado or another state as an adult for sixty (60) or more cumulative months shall not be eligible for Federal TANF assistance in Colorado unless granted an extension by the

county department due to hardship or domestic violence.

1. The State shall send a notification to participants who are approaching the sixty (60) month time limit on Federal TANF assistance. The county department shall make all reasonable efforts to contact these participants by phone or in person to explain the extension process and to accept a request for an extension.
2. All participants shall have the opportunity to request an extension. Requests for an extension of Federal TANF assistance shall be made in the county of residence and may be made in person, by phone, or in writing. The applicant's county of residence shall approve or deny an extension request.

The county department shall provide to the individual applying for an extension notification of the decision pursuant to "Applicant/Recipient's Right to Notice of Action" , Section 3.609.7.

3. The county department shall have thirty (30) days after the receipt of a request for an extension to make a decision whether to grant or deny the extension. The county shall send a notice to the participant concerning the decision.
4. If the request for an extension is denied, the notice shall include the reason for the denial and the right to appeal the decision per Section 3.609.8. A participant who has been granted an extension may request an additional extension prior to the end of the current extension period. If a timely request is not made, the county department may grant an extension if the participant is able to demonstrate good cause. Good cause shall be determined by the county department and may not be appealed.
5. An extension may be granted for up to six (6) months. A participant who has been granted an extension may request additional extensions, but the request must be made prior to end of the current extension period.
6. Nothing in these rules shall be construed to prohibit a former participant from requesting a hardship or domestic violence extension, after the lapse of the 60-month lifetime limit, when new hardship or domestic violence factors occur, to the extent permissible under state and federal law.
7. The participant receiving an extension shall meet with the county worker on a regular basis to address specific needs and to identify a plan in an IRC to move off of assistance.

#### D. Hardship

Hardship is defined as one or more of the following that prevents the adult member(s) of the assistance unit from securing or maintaining employment:

1. Disability of the caretaker relative, his or her spouse, the dependent child(ren) or immediate relative for whom the caretaker is the primary caregiver, pursuant to the definition of "persons with disabilities" at Section 3.604.1; or,
2. Involvement in the judicial system because a member of the assistance unit has an existing case; or,
3. Family instability which may include a caretaker with proven inability to maintain stable employment or inability of the caretaker to care for the children in his or her own

home or in the home of a relative; or,

4. Inadequate or unavailable:

- a. Child care,
- b. Housing,
- c. Transportation; or,
- d. Employment opportunities.

County departments shall include additional criteria for Item "d", regarding employment opportunities specific to the county. A county department may define additional reasons for granting an extension due to hardship. The detailed information and additional hardship reasons shall be defined and described in the county policies and procedures.

E. Hardship Due To Domestic Violence

Domestic violence extension may be granted when domestic violence problems, as defined at Section 3.604.2, S, prevent the adult member(s) from participating in work activities or securing employment.

F. Required Individual Responsibility Contract (IRC) and Participation

All appropriate members of the assistance unit that are granted an extension of Colorado Works assistance due to any hardship, including domestic violence, shall complete an Individual Responsibility Contract (IRC). The IRC shall include the participation activities required of the participant(s) as a condition of eligibility, the extension, as well as the IRC requirements at Section 3.607.2. Failure to comply with all terms and conditions of the IRC without a determination of good cause shall result in sanctions or termination of assistance pursuant to Section, 3.608.4, "Sanctions and Disqualifications for Basic Cash Assistance Grants."

G. Exemptions From the 60-Month Time Limit

Any month of receipt of assistance by an adult while living in Indian Country, or a Native Alaskan village where at least fifty percent (50%) of the adults were not employed, shall not be counted toward the sixty (60) cumulative months of federal TANF assistance. Indian Country is defined in Section 1151 of Title 18, Part 1, Chapter 53, United States Code, as of January 6, 1999, of the federal law; no later amendments or editions of this section are incorporated. Copies of these federal laws are available from the Colorado Department of Human Services, Division of Colorado Works, 1575 Sherman Street, Denver, Colorado 80203, or at any state publications library.

H. Twenty Percent (20%) Allocation of Extensions

Up to twenty percent (20%) of the statewide caseload receiving Federal TANF assistance may be granted an extension beyond the sixty (60) month time limit due to hardship or domestic violence. A county department shall have the authority to provide an extension of Colorado Works assistance due to hardship or domestic violence, to a specified number of the statewide caseload as determined by the Colorado Department of Human Services. The number of extensions for each county department shall be based on the percentage of the county department's cases used to establish the twenty percent (20%)

maximum statewide caseload pursuant to federal law. Each county department shall begin with a minimum of at least one allocation. The state shall notify county departments of their allocation. At any point that records indicate that the state will exceed the twenty percent (20%) maximum on the number of Colorado Works extensions granted to assistance units, the state shall determine if this is due to the provision of federally recognized good cause domestic violence waivers. If the records support this determination, as allowed by federal law, the state shall provide information to the federal government to demonstrate that the reason for exceeding the twenty percent (20%) maximum was due to granting federally recognized good cause domestic violence waivers.

### **3.606.7 Funeral, Burial, and Cremation Expenses [Rev. eff. 9/15/12]**

#### **A. Death Reimbursement**

1. A death reimbursement benefit shall in some circumstances be available to assist in paying for the funeral, burial, and cremation expenses of a deceased recipient of medical and/or public assistance. Death reimbursement benefits paid for the disposition of a deceased recipient under these rules are not entitlements. Benefit levels for such dispositions shall be adjusted by the State Department in order to contain expenditures within the available legislative appropriation.
2. The total amount of death reimbursement benefit paid by the county department pursuant to this section shall not exceed one thousand five hundred dollars (\$1,500). To be eligible for a state contribution, the total combined reasonable charges (including those paid by the deceased recipient's estate, family, State Department funds, or any other source) for services, property, and supplies shall not exceed two thousand five hundred dollars (\$2,500).
3. A birth certificate and death certificate shall not be required for a burial in the circumstances of a stillborn child or a pregnancy ended by miscarriage. Documentation from a medical provider and/or a collateral contact shall take the place of the birth and death certificate.

#### **B. When State Funds may be Contributed**

A death reimbursement benefit covering reasonable funeral expenses or reasonable cremation or burial expenses or any combination thereof shall be paid by the State Department for a deceased recipient, subject to state appropriations, as follows:

1. The expenses are incurred for the disposition of a deceased recipient who received public assistance and/or medical assistance while alive; and,
2. The deceased recipient's estate is insufficient to pay all or part of such expenses (a deceased recipient's estate is defined as property of any kind that the deceased recipient owned at the time of death); and,
3. The county department shall issue a written authorization and itemization of the services, property, and supplies for which the State Department funds shall be contributed. The total charge and amount of State Department funds authorized for each item shall be included in this authorization; and,
4. The total combined reasonable charges (including those paid by the deceased recipient's estate, family, State Department funds, or any other source) for services, property, and supplies which have been authorized by the county

department shall not exceed two thousand five hundred dollars (\$2,500).

#### C. Disposition by Funeral, Burial, and Cremation

In those cases where disposition of a deceased recipient is by funeral/memorial service and burial or cremation, the county department may authorize that State Department funds shall be contributed toward the expenses for the following:

1. Transportation of the deceased recipient's body from the place of death to a funeral home or other storage facility;
2. Storage of the body during the time prior to final disposition;
3. Embalming, where necessary for preservation of the body;
4. Funeral or memorial service;
5. Purchase of casket;
6. Preparation of body for placement in casket;
7. Transportation of body and casket to site of funeral/memorial service and/or cemetery;
8. Purchase of gravesite;
9. Purchase of vault (liner), when required by the cemetery;
10. Opening and closing of grave;
11. Purchase and placement of grave marker;
12. Perpetual care of gravesite by owner of cemetery;
13. Cremation of body;
14. Purchase of an urn or other receptacle for the cremated remains of the decedent;
15. Burial of the cremated remains of the decedent, including purchase of gravesite, vault (liner) if required by the cemetery, opening and closing of grave, purchase and placement of grave marker, and perpetual care of gravesite;
16. Storage of the cremated remains for no more than one hundred twenty (120) days, in those cases where they are not buried and are not claimed by the decedent's family or friend; and/or,
17. Any other items that are incidental to the funeral/memorial service and burial/cremation.

#### D. Arranging for Details of Disposition

Even though State Department funds may be contributed toward the expenses for the items listed in the preceding sections, some of those items will not be requested, necessary or affordable in some situations (e.g., in the case of a direct burial with or without graveside service, or immediate cremation with no burial). In the course of contacting relatives of the deceased recipient in order to arrange for disposition, the

county department and any provider which is involved (e.g., a funeral home or cemetery) should consult with the family members about the applicable regulatory provisions, the resources of the decedent's estate and family/friends, and the relative costs of the various types of disposition.

In those cases where the recipient or family has requested that the disposition include items which cannot be provided within the limitations of these regulatory provisions, and where the family is unable or unwilling to make separate financial arrangements without a State Department contribution, the county department shall make arrangements for disposition of the recipient's body in a reasonable, dignified manner which approximates the wishes and the religious and cultural preferences of the recipient or family.

#### E. Limitation of Total Charges for Disposition

Regardless of the manner of disposition, State Department funds shall not be contributed if the total charges (including those paid by the deceased recipient's estate, family, state funds, or any other source) for services, property, and supplies related to the disposition exceed two thousand five hundred dollars (\$2,500).

#### F. Procedures to be Followed by County Departments

The county department in which the deceased recipient's case is active shall be responsible for determining whether and in what amounts State Department funds may be contributed for the disposition of the deceased recipient's body.

1. When assistance for funeral, burial, or cremation services is requested on behalf of a deceased recipient of public or medical assistance, the county department shall obtain a completed application for funeral/burial/cremation assistance as prescribed by the State Department. This form is used to make a determination of eligibility for State Department funds for such services. The county department shall ensure that a choice of disposition by the recipient or a family member is made in writing. The choice of disposition may be made in the recipient's will, on the application for funeral/burial/cremation assistance, or by any other document that the county department deems to be credible. When a choice of disposition between burial and cremation was made by the recipient in writing, and the recipient is determined to be eligible for burial assistance, the choice shall be honored by the county department within the limits of costs and reimbursement available. If a choice of disposition was not previously made by the recipient, the county department shall request a family member (spouse, adult children, parents, or siblings) to make the choice. The application form provides a section to be used by the family to make a written choice of disposition. Once the choice of disposition is determined, the appropriate providers shall be contacted to obtain signed proposals of items and charges for disposition. The Provider's Proposed Charges for Funeral/Burial/Cremation of Deceased Recipient of Assistance form shall be used for this purpose. If more than one provider is involved, a separate form for each provider shall be used.

Once the application and proposals from providers are received, the county department shall be able to determine if a State Department funded death reimbursement is appropriate.

If the combined charges from the providers exceed two thousand five hundred dollars (\$2,500), no death reimbursement shall be paid from State Department funds. Providers may seek contributions from non-responsible persons only to the extent that monies are available from such parties.

2. In determining the extent of the State Department funded contribution, if any, toward the expenses of disposition, the county department shall proceed in accordance with the following steps:
  - a. If the recipient did not make a written choice between burial and cremation, the county department shall determine whether the recipient's family has any preference. The county department shall encourage such relatives, in making a choice of disposition, to consider the relatives' ability to contribute to the costs of the available options.
  - b. After determining the method of disposition for the deceased recipient, the county department shall next determine whether any funds for disposition are available from the deceased recipient's estate or from those individuals legally responsible for the deceased recipient's support. The county department shall also inquire about the availability of such funds from persons who appear to be interested in the manner of the deceased recipient's disposition, even if such persons are not legally responsible for the deceased recipient's support.
  - c. The county department shall require the legally responsible person to financially participate towards the charges for funeral, burial, or cremation unless their resources are less than the Supplemental Security Income (SSI) resource limit which is \$2,000 for an individual and \$3,000 for a couple. The amount of resources over the SSI limit shall be used to reduce the State Department funded Death Reimbursement payment. Money voluntarily contributed by the responsible party towards the burial, funeral, or cremation costs by the responsible party is also used to reduce the Death Reimbursement Benefit.
  - d. The value of a prepaid burial plot of two thousand dollars (\$2,000) or less when purchased is exempt and not counted toward the total funeral, cemetery, or burial expenses. If the final resting place was purchased by someone other than the decedent and donated to the deceased recipient, it shall not be counted as personal resource of the deceased recipient or legally responsible person.
  - e. Social Security lump sum death benefits payable to a legally responsible person shall not be used in reducing the maximum Death Reimbursement Benefit.
  - f. Funds disbursed from any insurance policy of the deceased recipient to a legally responsible person or non-responsible person who is named as beneficiary or a joint beneficiary of the deceased recipient's policy, are counted as available and shall be used to reduce the maximum Death Reimbursement. Providers may seek contributions from non-responsible persons to the extent that monies are available from such parties.
  - g. Contributions made by non-responsible parties shall not reduce the Death Reimbursement Benefit. These funds are used to offset the maximum combined charges to the providers. The county department shall make every reasonable effort to minimize the contribution of State Department funds for a deceased recipient's disposition. The State Department may limit the maximum State Department contribution to a figure lower than one thousand five hundred dollars (\$1,500) in order to contain total State Department expenditures within the available legislative appropriation. The State prescribed form shall be used to inform the county department

accounting office of itemized total charges and the total State Department contribution.

3. The county department shall use the following procedures in cases where the county department becomes aware of a deceased recipient of public or medical assistance, and a family member cannot be located:
  - a. If a family member has not been located within twenty-four hours after the recipient dies, the county department shall have the deceased recipient's body refrigerated or embalmed.
  - b. If a family member has not been located within seven days, the county department shall make the determination to bury or cremate the deceased recipient based on the best option available.
  - c. The county department shall complete and send the State required form, Authorization of Cremation, to the appropriate funeral home/crematorium to authorize the cremation.
  - d. The county department may authorize payment for funeral, burial, and cremation expenses up to one year after the death of the recipient. Those persons who made arrangements for the disposition of the deceased recipient's body must provide all necessary information to enable the county department to determine whether and to what extent a contribution of State Department funds is appropriate.

#### G. Provider Agreement

The county department shall have a statement of agreement between the providers that sets forth the charges and the amounts of any disbursement of funds by the county department. The agreement shall assure that the distributions of death reimbursement benefits are equitable. All vendor(s) who are providing the services must sign the agreement. The form must be approved and signed by the county department before death reimbursement is provided. Payment shall be made pursuant to the agreement.

### **3.606.8 Diversion, Supportive Services, Other Assistance, and Family Needs Payments [Rev. eff. 9/15/12]**

#### A. State and County Diversion

A Colorado Works applicant or participant may receive a diversion payment to address a specific crisis situation or episode of need. Such payments are not designed to meet participants' basic ongoing needs. A diversion payment may address needs over a period of no more than four months. In addition to a diversion payment, a participant who is eligible for diversion may receive supportive services based on a defined need.

A Colorado Works applicant or participant may receive a diversion payment (diversion grant) under the following terms and conditions:

1. The applicant or participant does not need long-term cash assistance or basic cash assistance as determined by the assessment.
2. The applicant or participant demonstrates a need for a specific item or type of assistance, including but not limited to, cash, supportive services, housing, or transportation. Such assistance may be provided in the form of cash payment,



vendor payments, or in-kind services.

3. The applicant or participant enters into a written mutual agreement that shall be the IRC. The IRC shall:
  - a. Document the reason why the participant does not need basic cash assistance; and,
  - b. Define the expectations and the terms of the diversion payment; and,
  - c. Specify the need(s) for and the specific type(s) of non-recurring cash payment; and,
  - d. Specify the possible impacts on other assistance including Medicaid, Food Assistance, and Child Care.
4. The applicant or participant shall agree not to apply for any further Colorado Works assistance in the county where he or she received the diversion payment or any other county for a period of time to be established by the county that issued the payment. This Period of Ineligibility (POI) shall start in the month that the payment is provided.
5. If the participant is unable to sustain the agreement of the IRC because of circumstances beyond his or her control he or she may apply for and the county may grant basic cash assistance or another diversion payment prior to the end of the POI. The county department can end the POI before it expires if good cause exists and is granted by the county department.
6. There are two types of diversion payments, state and county.
  - a. A state diversion payment is a needs-based, cash or cash-equivalent payment made to a participant who is eligible for basic cash assistance. All recipients of a state diversion payment who receive a one-time cash payment are not required to assign child support rights, and receipt of such payment does not count toward their Federal TANF assistance time limit.
  - b. A county diversion payment is a needs-based, cash or cash-equivalent payment made to a participant who is eligible for assistance pursuant to the maximum eligibility criteria for non-recurrent, short-term benefits established in the state plan. Counties shall define in county policy expanded eligibility criteria up to this maximum, and based on federal poverty and other standardized guidelines.
    - 1) A county may establish a separate and optional county diversion program for applicants who are not eligible for basic cash assistance under Colorado Works. The county may use Colorado Works funds to fund this optional program.
    - 2) A county shall establish any other eligibility criteria for such a diversion program. The county diversion program shall be based upon fair and objective criteria and shall include eligibility criteria as determined by county policy.
    - 3) Supportive services (see below) paid to working families as an county

diversion payment is non-assistance and is not cash assistance.

#### 7. Two Payments of Assistance in the Same Month

A participant shall not receive a state diversion grant for any month in which he/she receives basic cash assistance.

### B. Supportive Services

1. Supportive services paid to employed participants and/or participants who are engaged in a work activity per Colorado Works program rules shall be intended to provide the appropriate supports to gain or maintain employment. These services may include but are not limited to transportation, personal care items, and Individual Responsibility Contract bonuses and do not apply towards the unreimbursed public assistance (UPA).
2. Counties shall provide referrals for any available supportive services to applicants and participants who are:
  - a. Homeless; or,
  - b. In need of mental health services; or,
  - c. In need of substance abuse counseling or services.
3. Counties may provide the following assistance to an assistance unit whose income is below seventy-five thousand dollars (\$75,000) per year, or lower, as defined by the county department policy. The assistance unit must meet all non-financial eligibility criteria for the Colorado Works program.
  - a. Work subsidies such as payments to employers or third parties to help cover the cost of employee wages, benefits, supervision and training;
  - b. Supportive services such as child care and transportation provided to families who are employed;
  - c. Refundable Earned Income Tax Credits;
  - d. Contributions to, and distributions from, Individual Development Accounts (IDAs);
  - e. Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support.

### C. Family Preservation Eligibility

To receive Family Preservation Services as provided in the Social Services rule manual, Section 7.304.21 (12 CCR 2509-4) under "Title IV-A Emergency Assistance," a family's income and resources must meet all of the following guidelines:

1. The family income must be under \$75,000 yearly; and,
2. The child must meet out-of-home placement criteria; and,

3. The child lived with a specified relative within the last six months.

D. Other Assistance and Family Needs Payments

A county may provide other assistance or a family needs payment including, but not limited to, supportive services and other cash assistance in addition to the basic cash assistance grant. This assistance shall be based on the assessed need of the assistance unit. Any other assistance with a monetary value to the participant shall be included as unreimbursed public assistance (UPA) as defined in the Child Support Enforcement rule manual at Section 6.002 (9 CCR 2504-1) with the exception of those payments that are considered non-assistance such as transportation and/ or child care paid to employed individuals.

E. County Department's Right to Decide

The county department may provide, by means of its own funds, items which are needed by a recipient and which are not included in the standards of assistance. Such provision for "unmet need" shall not be deducted as income in the budgeting process.

**3.607 ASSESSMENT AND OTHER PROGRAM REQUIREMENTS**

**3.607.1 Assessment [Rev. eff. 9/15/12]**

A. Requirement of Assessment

As a condition of continued eligibility, all work eligible individuals must complete an initial assessment within thirty (30) calendar days from the date the application was submitted. Failure to complete the assessment within thirty (30) calendar days will result in the termination or denial of payment.

B. Complete Assessment

A county department shall perform an skills assessment which shall consist of an evaluation of basic skills, past employment, employability, educational level, needs of the assistance unit, and other relevant factors for an applicant or participant who is eighteen (18) years of age or older, or who is sixteen (16) years of age or older, but is not yet eighteen (18) years old and has not completed high school or obtained a certificate of high school equivalency, and is not attending high school or a high school equivalency program. Supportive services, other assistance, and/or family needs cash payments shall be based on the results of the assessment. The assessment shall also provide information needed to determine whether an eligible applicant should receive basic cash assistance or a diversion payment.

The applicant(s) or participant(s) shall complete the assessment with the county worker responsible for the case maintenance. In addition, updated assessments may be conducted at county department discretion.

**3.607.2 Individual Responsibility Contract (IRC) [Rev. eff. 9/15/12]**

As a condition of continued eligibility, individuals applying for Colorado Works benefits are subject to the required assessment and those deemed work eligible shall be required to enter into an Individual Responsibility Contract (IRC) with the county department.

A. Developing an IRC

As a condition of eligibility, county departments shall develop an Individual Responsibility Contract (IRC) for applicants/participants receiving basic cash assistance (BCA) or diversion payments. The initial IRC for receiving BCA shall be completed within thirty (30) calendar days after completion of the applicant's/participant's initial assessment. IRCs shall be limited in scope to matters relating to securing and maintaining training, education, or work. The initial IRC for receiving diversion payments are a requirement for the receipt of such payments. IRCs must at a minimum outline clearly the expectations of the participant and county. No abbreviations or acronyms shall be used. The county department shall involve the participant in developing the IRC. The IRC shall be clearly written, signed and dated by the participant and the county worker shall ensure the participant understands the terms of the contract. An applicant or participant shall indicate by his or her signature and date on the IRC that he or she either agrees with the terms and conditions of the IRC or that he or she requests a county dispute resolution conference of the proposed IRC, pursuant to a county department's written policy. The county worker shall also indicate by his or her signature and date on the IRC that he or she agrees with the terms and conditions of the IRC.

#### B. Consequences and Conditions

All consequences and conditions associated with the IRC shall be listed clearly on the IRC and explained to the applicant/participant.

#### C. Notification

Every IRC must notify a participant of the following in bold print at the top of the document:

1. No individual is legally entitled to any form of assistance under Colorado Works; and,
2. The IRC is a contract between the participant and the county department that specifies the terms and conditions under which a participant may receive assistance under Colorado Works and specifies the responsibilities of the county and the participant. The Individual Responsibility Contract does not create a legal entitlement to benefits; and,
3. A participant's failure to comply with the IRC without a determination of good cause shall result in sanctions or termination of assistance; and,
4. A participant's refusal to comply with components outlined in the IRC without good cause may result in the termination of the basic cash assistance grant by closure for demonstrable evidence; and,
5. Either a county or applicant/participant may request modification of the IRC.

#### D. Modification Request

Either a county department or an applicant or participant may request a modification of their contract. Any modification made to the IRC shall result in a new IRC that must be signed and dated by both the applicant/participant and the county worker, acknowledging the agreement made in the contract. The county worker and the applicant or participant may initial changes made to the IRC that are small in scope.

#### E. Extension IRC

All work eligible members of the assistance unit who are granted an extension of

Colorado Works assistance due to any hardship, including domestic violence, shall have an Individual Responsibility Contract (IRC). The IRC shall include the participation activities required of the participant(s) and must be based on the assessment completed by the county worker and work eligible member as a condition of the extension as well as the IRC requirements. Failure to comply with terms and conditions of the IRC without a determination of good cause shall result in sanctions or termination of assistance pursuant to Section 3.608.4 "Noncompliance."

**F. Signatures on the IRC/County Dispute Resolution Request**

If an applicant or participant requests a county dispute resolution conference, the county department shall facilitate the county dispute resolution conference and conduct a review that shall be limited to the terms of the IRC. The facilitator shall be a county worker not directly involved in the initial determination or action taken on the case per county policy.

**3.608 COLORADO WORKS WORKFORCE DEVELOPMENT**

**3.608.1 Workforce Development [Rev. eff. 9/15/12]**

**A. Work Eligible Individuals**

The following are defined as work eligible individuals and are subject to work activities under Section 3.608.2, A, "Engaged in Work Activities," or other county-defined work activities as determined through the participant assessment:

1. An adult or minor child head-of-household receiving assistance under TANF or a separate State program, unless excluded in 2, below.
2. A non-recipient parent living with a child receiving assistance, unless the parent is a member of one of three excluded groups:
  - a. A minor parent who is not a head-of household or spouse of head-of household;
  - b. An non-citizen who is ineligible to receive assistance due to his or her immigration status; or,
  - c. At State option on a case-by-case basis, a recipient of supplemental Social Security Income (SSI) benefits.
3. A specified caretaker who is a member of the assistance unit and receiving a portion of the grant.

**B. Requirements for Receipt of Cash Assistance/ Basic Cash Assistance**

As a condition of continued eligibility, all assistance units that include an adult member who is receiving basic cash assistance, shall have such adult member in a work activity, either federal or county defined in Section 3.608.2 "Work Activities." Work Eligible Individuals shall have the work activity(s) outlined in his or her Individual Responsibility Contract (IRC) in order to receive Colorado Works cash assistance. A single parent with a child(ren) under age six (6) shall be notified in writing of the terms and conditions under which a county determines that child care is unavailable.

This notification shall be in written format and shall include the county's definition of the unavailability of child care. This definition must include the criteria listed at Section

3.608.4 “Noncompliance.” This notice shall inform an individual of the procedures for applying for and being considered for an exemption from the work requirements and the procedures for applying for the exemption. The notice shall also include the statement that this exemption does not exempt the single parent from program time limits.

C. Reasonable Accommodation

County departments shall make reasonable accommodations for persons with disabilities that assure equal access to Colorado Works benefits and services based on an individualized assessment, unless the reasonable accommodation fundamentally alters the Colorado Works program.

D. Options for Including Drug and Alcohol Treatment as a Benefit Under the IRC

When an assessment and rehabilitation plan is developed by a certified drug or alcohol treatment provider, a county department may require a participant to participate in a drug or alcohol abuse control program purchased by the county department. Such requirements must be written into a participant's Individual Responsibility Contract. The participant's Individual Responsibility Contract may include, but is not limited to, the following:

1. Random drug and alcohol testing.
2. Drug or alcohol treatment or other rehabilitation activities. If a participant does not follow his or her rehabilitation plan, tests positive on a random test, or refuses to participate in drug and alcohol testing, the county department may impose a sanction for not participating in a work activity.

**3.608.2 Work Activities [Rev. eff. 9/15/12]**

A. Engaged in Work Activities

As a condition of continued eligibility, a parent or specified caretaker receiving assistance as an adult is required to engage in one or more of the following work activities or any county-defined work activities. This requirement includes dependent children between the ages of sixteen (16) and eighteen (18) years old who are not attending school. All activities in the IRC shall relate to the outcome of both initial and ongoing assessments. A parent is required to engage in a work activity and is a mandatory member of the assistance unit. A specified caretaker has the opportunity to be a mandatory member of the assistance unit and, as such, receive a cash payment. As a mandatory member, the specified caretaker must engage in a work activity per the definition of a specified caretaker at Section 3.601 “Program Definitions.”

B. Allowable Work Activities

Work activities are defined as:

1. Unsubsidized employment - Part-time or full-time employment in the public or private sector that is not subsidized by TANF or other public program.
2. Subsidized private or public sector employment - Part-time or full-time work with any private or public sector employer for which wages are paid by the employer and for which the employer receives a subsidy; from TANF or other public funds to offset some or all of the wages and costs of employing a recipient.

3. Work experience - a work activity performed in return for Colorado Works cash assistance payments, that provides an individual with an opportunity to acquire the general skills, training, knowledge and work habits necessary to obtain employment. Work experience assignments must improve the employability of those who cannot find unsubsidized employment.
4. On-The-Job-Training - training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.
5. Job search and job readiness assistance - Job search may be conducted in either a group or individual setting and may include employer contacts either in person, by telephone, or by electronic methods; job readiness assistance includes activities supporting preparation of an individual to seek or obtain employment. This includes activities such as preparing a resume or job application, training in interviewing skills, instruction in work place expectations, as well as life skills training. Substance abuse treatment, mental health treatment, or rehabilitation activities are allowed for those who are otherwise employable. Such treatment or therapy must be determined necessary and certified by a qualified medical or mental health professional.
6. Community service programs - Structured work programs performed for the direct benefit of the community under the auspices of public or non-profit organizations. Community services programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.
7. Vocational educational training - Organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training.
8. Child care for community service participants - Providing child care services to an individual who is participating in a community service program. It does not include providing child care to enable a TANF recipient to participate in any of the other ten allowable work activities. Child care provided to individuals in community service must adhere to established child care licensing rules and statutes.
9. Job skills training directly related to employment - Training and education for job skills required by an employer or to advance or adapt to the changing demands of the workplace, including basic remediation, English as a Second Language, and/or short-term training directly related to local labor market demands.
10. Education directly related to employment shall be an option only in the case of a participant who has not received a high school diploma or a certificate of high school equivalency. This work activity is used for education courses designed to provide knowledge and skills for specific occupations or work settings and may include adult basic education, English as a Second Language (ESL) and education leading to a General Education Development (GED) or high school equivalency diploma.
11. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence shall be an option only in the case of a participant who has not completed secondary school or received such a certificate. Regular attendance, in accordance with the requirements of the

secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate. This activity may not include other related educational activities, such as adult basic education or language instruction.

- a. Full-time attendance in secondary school, vocational or technical school, or cooperative training programs means twenty-five (25) clock hours per week or as defined by the school system.
- b. Part-time attendance means a minimum of twelve hours of school attendance per week, or as defined by the school system.

#### C. Work Activity Outlined in the IRC

For purposes of meeting the work participation requirements of this section, a Colorado Works participant shall be considered to be engaged in work program requirements if they are participating in the work activities listed in Section 3.608.2, B, or in any other work activities designed to lead to self sufficiency as determined by the county department and as outlined in their IRC.

#### D. Unable to Assign a Participant to Activities

No person in a work activity shall be employed by, or assigned to, an employer if:

- 1. Any other person is on layoff from the same or any substantially equivalent job with such employer; or,
- 2. Such employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of the work force in order to fill the vacancy with a participant; or,
- 3. Placement of the person with the employer will result in a reduction of hours, regular or overtime, wages, or benefits of a person currently employed by the employer; or,
- 4. The position is available due to a labor dispute, strike, lockout, or violation of a collective bargaining agreement.

#### E. Grievance Procedure

A uniform statewide grievance procedure for resolving complaints of alleged violations of displacements shall be established by the Department of Labor and Employment.

#### F. State and Federal Law

- 1. All State and Federal laws affecting workers and employers shall apply to all participants.
- 2. All participants shall be entitled to the same wages and benefits, including but not limited to, sick leave and holiday and vacation pay, as are offered to employees who are not participants and who have similar training or experience performing the same or similar work at a specific work place.

### **3.608.3 Work Participation Rate [Rev. eff. 9/15/12]**



A separate work participation rate will be established by the State Department based on federal requirements for all families and for two parent families. The rate to be achieved by each county department shall be negotiated and will be included in the annual performance contract.

#### A. Federal Participation Rate Calculations

A Colorado Works participant is considered to be engaged in work for a month if he or she is participating in the work activities defined in the Work Verification Plan for at least the minimum number of hours per week as required by Federal law. The federal work participation rate guidelines are outlined below:

1. The federal all families work participation rate requirement is an average of thirty (30) hours per week per calendar month.
2. The federal two-parent participation rate requirement is an average of thirty-five (35) hours per week if no federally funded child care is provided. If federal child care is provided, the average weekly hours must meet or exceed fifty-five (55) hours per calendar month.
3. A parent(s) under twenty (20) years of age is considered to be engaged in a work activity if he or she is maintaining satisfactory attendance in high school or GED, or participating in education directly related to employment for an average of at least twenty (20) hours per week during a calendar month.
4. A single parent with a child(ren) under age six (6) is deemed to be meeting work participation requirements if he or she is engaged in work for an average of twenty (20) hours per week during a calendar month.
5. Excused absences and holidays will be counted as hours toward the federal work participation rate for only scheduled work activities as outlined in Section 3.608.2, B, and contained in the participant's Individual Responsibility Contract. Absences and holiday hours are allowed only as approved in the most current Colorado Works work verification plan submitted and approved by the U.S. Department of Health and Human Services, Office of Family Assistance.
6. All cases subject to time limitations shall be included in the denominator for calculating the work participation rate.

#### B. Job Placement Agencies

In addition to other categories of expenditures, counties may use Colorado Works funds to provide vouchers for approved job placement agencies.

#### C. Employment Incentives

In addition to other categories of expenditures, county departments may provide employment incentives to participants or employers as provided in a county policy.

### **3.608.4 Noncompliance [Rev. eff. 7/1/13]**

#### A. Reasons for Counties to Impose Sanctions or Closures for Demonstrable Evidence

Counties shall impose sanctions or closures for demonstrable evidence on all Colorado Works applicants or participants who fail to comply with the terms and conditions of his or her Colorado Works IRC without good cause. County departments must follow the state prescribed non-

compliance process to include the conciliation process, sanctioning a participant, and closing a case for demonstrable evidence.

Sanctions for failure to participate cannot be imposed if transportation or child care is not available, if services required are not available, or if the costs of the services are prohibitive as determined by the county department.

#### B. Sanctioning/Closing a Case for Demonstrable Evidence

1. Colorado Works applicants and participants shall not be required to participate in work activities if good cause exists as defined in county policy. Good cause does not constitute an exemption from work or time limits. However, good cause is a proper basis for not imposing a sanction for non-participation in a work activity.
2. Colorado Works applicants and participants who are caring for a child(ren) who is under age six (6) may not be sanctioned if the individual has a demonstrated inability to obtain needed child care due to the lack of:
  - a. Appropriate child care within a reasonable distance from the person's home or work site; or,
  - b. Available or suitable child care by a relative or other individual; or,
  - c. Appropriate and affordable child care arrangements within the rate structure defined in the approved county child care rate plan.

#### 3. Denial or Discontinuation Due to Refusal to Cooperate with the Terms of an IRC

Refusal to participate in training, education, or work as evidenced by an affirmative statement by the applicant or participant or demonstrable evidence, may result in denial or termination of the basic cash assistance grant in its entirety. Basic cash assistance for an applicant or participant of Colorado Works may be denied or discontinued in its entirety as determined by the county for a minimum of one month, if the applicant or participant refuses to participate in the IRC. A refusal for this purpose is:

- a. An affirmative statement by the applicant or participant that he or she will not comply; or,
- b. Demonstrable evidence that the applicant or participant has made no attempt to comply with the IRC; or,
- c. The applicant or participant fails to update the IRC without good cause.

Demonstrable evidence of refusal to participate is demonstrated when a participant complies with none of the IRC requirements, has given an affirmative statement that he or she will not comply, or the county has repeated documentation of non-compliance. If a participant complies with some of the tasks agreed to in the IRC but not all, demonstrable evidence of refusal to participate is not present and a sanction may be imposed rather than denial or termination.

#### C. Time Limits

The time limits on the receipt of Federal TANF assistance shall continue during the first and second sanction periods.

D. Recognizing Sanctions From Other Counties

All sanctions shall be served and cured when a participant moves from one county to another. If a sanction occurred in a county of previous residence, it must be cured in the new county prior to cash assistance approval. The criteria that are used to cure such sanction can be found at Section 3.608.4, H, 8.

E. Recognizing Sanctions from Other States

IRC sanctions coming from other states will not be recognized in the State of Colorado.

F. Affect of a Colorado Works Sanction on Food Assistance and Medicaid

Sanctions imposed shall not adversely affect the participant's eligibility to receive Medicaid or Food Assistance beyond what is allowable under federal and state law.

G. County Department Good Cause Policy

Counties shall set forth in county policy with guidance from the State good cause for not imposing sanction(s).

H. Affect of a Sanction on the Basic Cash Assistance Grant

The Colorado Works basic cash assistance grant shall be affected due to a sanction imposed against a member of the assistance unit as follows:

1. First Level Sanction

The sanction for the first violation of rules shall be twenty-five percent (25%) of an assistance unit's cash payment. The first sanction shall be in effect for one (1) month. A first violation not cured by the end of the sanction time period shall be subject to the sanction as set forth in "H, 2", below.

2. Second Level Sanction

The sanction for a second violation by a member of the assistance unit, or as a progression of the sanction from "H, 1", above, shall be fifty percent (50%) of an assistance unit's cash assistance. The second sanction shall be in effect for one (1) month. A violation, sanctioned in accordance with this subsection and not cured by the end of the sanction time period, shall progress to the sanction set forth in "H, 3", below.

3. Third Level Sanction

The sanction for a third violation by a member of the assistance unit, or as a progression from sanction level "H, 2", above, shall result in the termination of cash assistance for the assistance unit. The sanction shall be in effect for three (3) months. If a participant has had a break in payment for more than 180 calendar days due to a closure of the case for a reason other than the sanction, the sanction shall be considered served.

4. Serving a Sanction

A sanction shall be considered served if there has been a break in benefits for more than one hundred and eighty (180) days due to a closure of the case for a reason other than the sanction. If a participant reapplies for benefits anytime within the one hundred and eighty (180) calendar days, the participant must serve the sanction by having a reduction

in benefits according to the first and second level sanctions, or by having a case closed for a third level sanction.

5. Continuing a Sanction that has not Been Cured

Assistance units that include an individual who has not cured a third level sanction by the end of the sanction time period shall continue to have cash assistance terminated until the sanction is cured. A new application shall cure the sanction. A new application must be completed prior to receipt of cash assistance.

6. Sanctioning a Participant That Has Been Sanctioned Previously

Once a participant serves a sanction, all subsequent sanctions shall be sanctioned in accordance with the level following the sanction previously served.

7. Sanctioning More Than One Participant in an Assistance Unit

Each violation of these rules by a member of the assistance unit shall be counted separately and sanctioned cumulatively if the violations occur in the same month. If two members of the same assistance unit each violate a requirement at Section 3.608.4,A, the sanction(s) would result in a fifty percent (50%) reduction in the grant for the assistance unit.

8. Serving and Curing A Sanction

All sanctions imposed by a county must be served and cured by the individual. If that sanction is not otherwise cured, a new application following a sanction shall be considered the action for curing that sanction.

a. Revision to the Individual Responsibility Contract

For the purpose of this section, revisions to the Individual Responsibility Contract (IRC) means that once an IRC is negotiated, agreed upon and signed by both the county worker and the participant that IRC agreement is binding and the participant is subject to sanction or closure if the terms of the agreement are not met by the participant, without good cause. If, at any time during the timeframe of the IRC, the participant and the county worker revise the IRC for any reason, the prior IRC is void. The new IRC with new time periods and new requirements will be used as the basis for determining whether the participant is complying, or failing or refusing to cooperate with the requirements of the IRC. If a new IRC is the result of a "good cause" conciliation meeting, the content of the new IRC and not any prior IRC and/or activities associated with a prior IRC shall be taken into consideration when determining failure or refusal to participate.

b. Good Cause Conciliation Period

For the purpose of this section, good cause conciliation period means the period prior to sanction or closure for demonstrable evidence, during which the program participant and the county worker are attempting to resolve any dispute related to the IRC. If, during the state specified timeframe, it becomes apparent that the participation dispute cannot be resolved through good cause conciliation efforts, the process shall terminate and the participant shall be sanctioned or the participant's case closed for demonstrable evidence. The criteria for the determination of sanction versus closure for demonstrable evidence are outlined in 3.608.4 (B). The county department must provide the participant with the

following Good Cause Conciliation Period for both the sanction process and closure for demonstrable evidence:

- 1) Good cause conciliation period shall begin on the day the county worker determines that the participant is non-compliant.
- 2) The county worker must send a conciliation letter to the participant within five (5) working days from the date the worker becomes aware of the non-compliance. The letter must:
  - a) Explain the reason why the participant is out of compliance; and
  - b) Specify the time, date, and location of the conciliation appointment, the worker's name with whom the participant will meet, and the contact information of the worker requesting the conciliation appointment.
- 3) The conciliation appointment must take place within approximately 10+1 calendar days but no longer than fifteen (15) working days, from the date that the letter is sent to the participant.
- 4) If the participant is unable to make it to the conciliation appointment, only one rescheduled appointment shall occur unless good cause exists. If good cause exists due to employment or circumstances beyond the participant's control, the county department shall make other arrangements as defined in each county policy to complete an IRC and resolve any issues related to non-compliance with work program requirements.
- 5) During the good cause conciliation appointment, the participant and the county worker meet in person to renegotiate the IRC. The participant shall enter into the Good Cause Conciliation period/and continue in the activity for no longer than thirty (30) calendar days. In this period, the participant has the opportunity to come back into compliance with Colorado Works. All activities and expectations of the participant must be clearly outlined in an IRC. The participant shall not be expected to do hours of work participation above and beyond those identified through program rules at Section 3.608.1, B, for that assistance unit.
- 6) When a Good Cause Conciliation period ends due to participation/compliance with work program activities, the case shall continue with no sanction request or closure for demonstrable evidence.
- 7) When a Good Cause Conciliation period ends due to non-participation/non-compliance with work program activities, and within the thirty (30) calendar days after the Good Cause Conciliation appointment and the participant:
  - a) Did not attend the scheduled meeting; and/or,
  - b) Failed to participate without good cause; and/or,
  - c) Failed to provide good cause for not participating.

The Notice of Adverse Action shall be sent to the participant with the

result of the good cause conciliation period within five (5) working days of that determination.

- 8) In general, good cause is considered to be a circumstance or circumstances beyond the participant's control. Good cause reasons for not imposing sanctions for failure to cooperate with Colorado Works include but are not limited to:
  - a) Physical or mental disability or illness of the participant or an individual in the participants care.
  - b) A parent being called frequently to a child's school.
  - c) Required/frequent court appearances of client or child in client's care.
  - d) Temporary breakdown in transportation.
  - e) Temporary breakdown in child care/unavailability of child care.
  - f) Homelessness/eviction/housing crisis.
- 9) County departments shall submit policies and procedures defining good cause in each county. The policy and procedure at a minimum shall include general guidelines specified by the state.
- 10) The Good Cause Conciliation period begins the date the worker becomes aware that the participant is not in compliance with Colorado Works and shall also be the date that the formal conciliation period commences. The case worker shall contact the participant and:
  - a) Enter the date and activity of the contact by the county worker into the statewide benefit management system; and,
  - b) If the participant fails to show for the appointment to revise the IRC, the Good Cause Conciliation period is considered failed and the sanction or closure due to demonstrable evidence shall be entered. Only one reschedule of this meeting will be allowed unless the county determines good cause exists; or,
  - c) If the participant attends the appointment, revises the IRC, and is scheduled to attend work activities as outlined in the IRC, the sanction/case closure shall not be initiated as long as the participant continues successfully in implementing the IRC through the Good Cause Conciliation period.
  - d) The Good Cause Conciliation period, as outlined in "x", above, shall not last for more than thirty (30) calendar days. On or before the thirtieth (30th) day, action shall be taken to request a sanction, closure for demonstrable evidence or to continue the participant in a work activity as agreed upon in a revised IRC.
  - e) If the determination is made that the sanction or closure for demonstrable evidence shall be initiated because the Good Cause Conciliation period ended due to noncompliance, the

notice of proposed action shall be issued to the participant and the sanction/case closure entered into the statewide benefit management system within five (5) working days of the determination.

#### I. Curing a Sanction

For the purpose of this section, curing the sanction occurs after a notice of proposed action has been sent to a participant notifying him or her of the impending sanction. When the participant contacts the county worker and indicates an interest in participating or curing the cause of the sanction, that conference or meeting shall be set. The appointment must take place within 10+1 calendar days but not to exceed fifteen (15) calendar days. The notice of the scheduled meeting shall be sent to the participant once the meeting or conference is set or documented in the case file or statewide benefit management system if the meeting is set through a telephone conversation. The date the participant contacts the county worker shall be the date that the formal cure process commences which shall include:

1. Entering the date and activity of the contact by the county worker, the formal cure start date, into the statewide benefit management system.
2. If the participant fails to show for the meeting or conference to revise the IRC, the cure is considered failed and the sanction remains uncured. Only one reschedule of this meeting will be allowed unless good cause exists.
3. If the participant attends the cure meeting, revises the IRC and is scheduled to attend work activity and/or county defined work activities as outlined in the IRC.
4. The cure period, as outlined in "3," above, shall not last for more than ten (10) working days. On or before the tenth (10th) day, action shall be taken to continue a sanction or to cure.
5. If the determination is made that the sanction is cured, the notice to cure shall be issued to the participant within 10+1 calendar days and the determination entered into the statewide benefit management system within five (5) working days of the determination.

#### J. Appeal of a Sanction or Case Closure

A recipient of Colorado Works has the right to appeal the county department's action to sanction or close a case. The applicant can utilize the local level dispute resolution process and/or a state level hearing per Section 3.609.9. The appeal period for proposed sanctions for Colorado Works begins with the mailing of a notice of proposed action, listing the proposed action and the individual's appeal rights.

A notice of proposed action shall not be issued by the county department for proposed Colorado Works sanctions/case closure until the Good Cause Conciliation period has been completed.

### **3.609 COLORADO WORKS OVERPAYMENT, CLAIMS, INTENTIONAL PROGRAM VIOLATIONS, AND FRAUD PREVENTION AND DETECTION**

#### **3.609.1 Colorado Works/AFDC Intentional Program Violations (IPV) [Rev. eff. 7/1/13]**

##### A. Applicant and Participant Rights

1. All Colorado Works applicants and participants must be provided with their rights in relation to IPV as follows:

- a. Applicants and participants have the right to have an Administrative Intentional Program Violation Hearing. That right is lost if the Waiver of Intentional Program Violation Hearing form is signed;
  - b. If an applicant or participant chooses to appear at the hearing they will be provided with the right to represent him or herself or to be represented by an attorney or any other person he or she chooses;
  - c. An applicant, participant, and/or their representative may look at their case file with the exception of information that specifically references IEVS in accordance with IEVS rules, including all the evidence that will be used at the hearing. They have the right to look at all the evidence before deciding whether to give up the right to a hearing. If the client chooses to continue with a hearing, they have the right to look at their case file before the hearing as well as during the hearing. The county department of human/social services will provide a free copy of their evidence and any other parts of the case file that the client determines is needed at the hearing upon request;
  - d. An applicant or participant may bring witnesses to speak on his or her behalf at the hearing;
  - e. The applicant, participant, or representative has the right to question or deny any evidence or statements made against them at the hearing. This includes the right to ask questions of persons testifying against them;
  - f. The applicant or participant has the right to present any evidence that he or she, or the representative feels is important to prove his or her case;
  - g. The applicant or participant has the right to a hearing.
2. All applicants for Colorado Works program must be provided with a written notice of the penalties for an IPV on the Colorado Works application form. All Colorado Works participants or prior AFDC recipients shall be notified of the penalties for an IPV when reporting changes, on change report forms, and on the redetermination form (RRR).
  3. A county department is required to refer the investigation to the appropriate investigatory agency any individual member of a family who has applied for or received Colorado Works or AFDC whenever there is an allegation or reason to believe that individual has committed an IPV as described below.

When conducting an interview for IPV and/or fraud, the county department investigator or representative has the responsibility to ensure the following:

- a. An explanation has or had been given to the individual as to the reason the interview is taking place; and,
- b. The individual's rights have been provided to him or her (Section 3.609.7); and,
- c. The individual's rights and responsibilities including confidentiality of records and information, the right to non-discrimination provisions, the right to a county dispute resolution process, and the right to a State-level appeal have been provided to him or her; and,
- d. The rights of the individual to the rights and responsibilities the participant acknowledged when he or she signed the Rights and Responsibility form have



not been violated; and,

- e. The county and/or representative of the county shall not threaten or engage in any other intimidation tactics.
- 4. If information received that is considered necessary to continue eligibility for an assistance unit is questionable and requested documentation is not supplied per verification request timeframes, benefits may be reduced and/ or the case closed and benefits terminated for a recipient's failure to prove eligibility. The assistance unit must be notified of the negative action on the case. Such actions and notification shall not be used as an intimidation tactic or threat.
  - 5. Following an investigation, action must be taken on cases where documented evidence exists to show an individual has committed one or more acts of IPV. Action must be taken through:
    - a. Obtaining a "Waiver of Intentional Program Violation"; or,
    - b. An administrative disqualification hearing (ADH); or,
    - c. Referral for civil or criminal action in a county or district court; or,
    - d. If no action is taken based on documented evidence to support the decision not to pursue an IPV, the county shall clearly document the final decision, establish a claim if appropriate, and clearly document the case file.

In proceeding against such an individual, the county department must coordinate any action with actions taken under the Food Assistance Program where the factual issues are the same or related.

- 6. Overpayment actions shall be initiated within ten (10) calendar days of the investigation's conclusion, unless otherwise specified in the case file. This is required in all cases even if administrative disqualification procedures or referral for prosecution is not initiated, except in instances where notification of overpayments may prejudice the case. In these instances, the county may make the determination to postpone notification of claims if the over issuance is being referred to an IPV hearing or a court of appropriate jurisdiction. This determination must be clearly documented.
- 7. The State department will not condone any actions of the county department that could be determined to be a violation of state or federal law. Any actions taken by a county department that is determined to be in violation of state or federal law may be subject to corrective action per Section 1.150 et seq. (9 CCR 2501-1).

#### B. Intentional Program Violation (IPV) Definition

An IPV is an intentional act committed by an individual, for the purpose of establishing or maintaining a household's eligibility to:

- 1. Receive benefits for which the individual or household is not eligible; or,
- 2. Increase benefits for which the individual or household is not eligible; or,
- 3. Prevent a denial, reduction or termination of benefits.

An IPV is committed when an individual makes a false or misleading statement or fails to disclose

by misrepresentation or concealment of facts, or acts in a way that is intended to mislead or conceal any eligibility factor on any application or other written and/or electronic communication whether or not they were direct recipients of assistance or non-assistance as defined in Section 3.601.

C. Criteria for Determining Intentional Program Violation (IPV)

These rules apply to all required adult household members who commit the IPV who are recipients or representative payees of assistance and/or services. Previously established AFDC disqualifications will be continued under the Colorado Works Program.

The determination of IPV shall be based on clear and convincing evidence that demonstrates intent to commit IPV.

"Intent" is defined as a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.

"Clear and convincing" evidence is stronger than "a preponderance of evidence" and is unmistakable and free from serious or substantial doubt.

D. Waiver of Administrative Disqualification Hearing

Supporting evidence warranting the scheduling of an IPV must be documented with a county department supervisory review. If the county department determines there is evidence to substantiate that a person has committed an IPV, the county shall allow that person the opportunity to waive the right to an Administrative Disqualification Hearing (ADH).

A state approved Notice of Alleged Intentional Program Violation form including the individual's rights, the Waiver of Intentional Program Violation Hearing form, and the request for an Administrative Disqualification Hearing for Intentional Program Violation form shall be provided to the individual suspected of an IPV. This may be offered to the individual during the investigation or mailed once it has been suspected an IPV has occurred and there is no plan to pursue criminal charges. The individual shall have fifteen (15) calendar days from the date these forms are provided by the county to return the completed Waiver of IPV Hearing form.

The completion of the waiver is voluntary and the county department may not require its completion nor by its action appear to require the completion of the request of waiver.

E. Intentional Program Violation (IPV) Administrative Disqualification Hearings (IPV/ADH)

1. An IPV/ADH is to be requested whenever facts of the case do not warrant civil or criminal prosecution, where documentary evidence exists to show an individual has committed one or more acts of IPV, and the individual has failed to sign and return the Waiver of IPV form.
2. An IPV/ADH may be requested against an accused individual whose case is currently being referred for prosecution on a civil or criminal action in county or district court.
3. A county department may conduct an IPV/ADH or may use the Department of Administration to conduct the IPV/ADH. A state prescribed form to request IPV/ADH must be used for this purpose.
4. The individual may request that the State Department of Administration conduct the ADH/IPV in lieu of a county level hearing. Such a hearing must be requested ten (10) calendar days before the scheduled date of the county hearing.

5. Notice of the date of the administrative disqualification hearing on a form prescribed by the Colorado Department of Human Services must be mailed by certified mail by the Administrative Courts or the county department, return receipt requested, to the individual alleged to have committed an IPV at least thirty (30) calendar days prior to the hearing date, at his or her last known address. The notice form shall include a statement that the individual may waive the right to appear at an administrative disqualification hearing.
6. The Administrative Law Judge (ALJ) or hearing officer shall not enter a default judgment against the individual for failure to file a written answer to the notice of hearing or failure to appear at the IPV hearing, but shall base the initial decision upon the evidence introduced at the hearing.
7. The administrative disqualification hearing must be continued at the accused individual's request once good cause is shown. The request for continuance must be received by the affected hearing officer at least ten (10) calendar days prior to the disqualification hearing.

The hearing shall not be continued for more than a total of thirty (30) calendar days from the original hearing date. One additional continuance is permitted at the hearing officer or ALJ's discretion. If the hearing officer or ALJ considers it necessary, a medical assessment may be ordered to substantiate or disprove a statement of an accused individual. Such assessment shall be obtained at the agency's expense and made part of the record.

#### F. Disqualification for IPV

1. If the individual signs and returns the request for waiver of IPV within fifteen (15) days from the date the waiver is sent that person and/ or the specified caretaker as defined for Colorado Works effective January 1, 2011, or a caretaker relative in accordance with Colorado Works rules prior to January 1, 2011, if a different person, shall be provided with a notice of the period of disqualification.
2. If the county makes a request for a hearing the Office of Administrative Courts will notify both the county and the individual with a Notice of Hearing.
3. For both 1 and 2 above, the disqualification period shall begin no later than the first day of the following month from the date determined through the hearing process or if a waiver is utilized, the date the waiver is signed.
  - a. Once the disqualification is imposed it shall continue without interruption. To consider a disqualification period served, the participant shall have a break in benefits totaling the time period of the disqualification. The penalty period shall remain in effect unless and until the finding is reversed by the Office of Appeals or a court of appropriate jurisdiction or until the period of disqualification is served per Section c below.
  - b. When other program sanctions are imposed on the individual, such as failure to cooperate with Colorado Works work participation requirements, the Colorado Works or AFDC IPV disqualification must be served concurrently with other program sanctions. The disqualification penalties may be in addition to any other penalties which may be imposed by a court of law for the same offenses.
  - c. Time Period of Disqualification/Penalty

The penalty shall be in effect for twelve (12) months upon the first occasion of

any such offense; twenty-four (24) months upon the second occasion of any such offense and permanently upon the third such offense. The penalty period for a dual participation disqualification shall be in effect for ten (10) years. All disqualifications imposed shall run and be served consecutively. The penalty period shall remain in effect unless the Office of Appeals or a court of appropriate jurisdiction reverses the finding.

#### 4. Affect of the Disqualification at an Individual Level

The disqualification penalties affect only the individual(s) concerned. The disqualified individual's needs shall not be considered for the period of the disqualification. Any income when applicable to the Colorado Works program of the disqualified individual will be considered available to the assistance unit and used for determining eligibility. Disqualified persons are not entitled to the earned income disregards. The disqualified individual may have the ability to access services but shall not access assistance or non-assistance offered through the Colorado Works program.

#### 5. Recognizing a Penalty from Another County

A penalty imposed by one county department shall be used when determining the appropriate disqualification penalty for that individual in another county department.

#### 6. Recognizing a Penalty from Another State

A penalty imposed by another state shall be used when determining the appropriate disqualification period for that individual. The level of the IPV established from the other state shall be used to determine the level of the IPV for Colorado Works. The timeframes established in (c) above shall be used; the timeframe established from the other state shall no longer be valid.

#### 7. Additional Penalties

Disqualification penalties may be in addition to any other penalties, which may be imposed by a court of law for the same offenses.

Individuals convicted by a court or whose disqualification was obtained through an IPV waiver for misrepresentation of his or her residence in order to obtain assistance in two states at the same time shall be disqualified from receiving Colorado Works assistance for ten (10) years.

### G. Notification of the Hearing Decision

If, as a result of the hearing, the local level hearing officer or ALJ finds the individual has committed an IPV a written notice shall be provided to notify the individual and the specified caretaker or caretaker relative, if a different person, of the decision. The county department shall notify the individual and specified caretaker or caretaker relative, if different, of the amount of the Colorado Works payment as a result of the disqualification. The local level hearing decision notice shall be a state prescribed form, which includes a statement that a state level hearing may be requested.

#### 1. Initial Decision

In a hearing before an Administrative Law Judge (ALJ), the determination of IPV shall be an initial decision, which shall not be implemented while pending State Department review and final agency action. The initial decision shall advise the applicant or participant that failure to file exceptions to provisions of the initial decision will waive the

right to seek judicial review of a final agency decision affirming those provisions.

## 2. Waiving Rights

When an individual waives his or her right to a disqualification hearing, a written notice of the disqualification penalty and the amount of the Colorado Works payment as a result of the disqualification shall be mailed to the individual and the specified caretaker and/or caretaker relative, if a different person. This notice shall be on a state prescribed notice form.

### **3.609.2 Overpayments and Underpayments [Rev. eff. 9/15/12]**

For the purpose of this section, an overpayment occurs when a recipient or payee receives a payment for which they were not eligible. This includes assistance and non-assistance cash payments. All overpayments shall be established within ten (10) calendar days unless otherwise specified in the case file as an "accounts receivable."

- A. An overpayment shall be adjusted if there is a record of any underpayment(s) for a prior period. The hierarchy of such adjustments shall be:
  - 1. Fraud or IPV claims first,
  - 2. Client error claims second; and,
  - 3. Administrative error claim last.
- B. For overpayments to non-active cases, the county shall establish a monthly repayment plan with the family which shall be no more than ten percent (10%) but not less than five percent (5%), of the family's gross income, or an amount defined by the recipient in excess of ten percent (10%), or the amount can be paid in full unless hardship is established.
- C. A county shall correct any underpayments by the month following the discovery of such underpayments.

### **3.609.3 Payments [Rev. eff. 9/15/12]**

#### A. Right to Payment

The right of an eligible individual to receive the current month's payment vests at 12:01 a.m. on the first day of the month.

Recipients are not entitled to benefits or payments that were paid in error or mistakenly provided to the recipient based on a data entry error into the statewide benefit management system or an error resulting from the statewide benefit management system(s). In instances where benefits were issued to a recipient in the circumstances identified in 3.609.2, A, the county may retrieve the benefits from the recipient's Electronic Benefit Transfer (EBT) card within twenty-four (24) hours of the issuance without prior written authorization by the recipient. The recipient shall have no appeal rights in relation to this payment based on not being eligible for the initial receipt of the payment(s). When benefits issued in error are not retrieved within twenty-four (24) hours, the county shall notify the recipient and State Department of their retrieval.

#### B. When to Establish a Recovery

When the county department determines that a recipient was ineligible for all or a part of a money payment, the county department shall, subject to prior notice and recovery rules, establish a recovery.

C. Death of a Participant/Recipient

1. When a recipient of any category of assistance dies before 12:01 a.m. on the first day of a month, no eligibility for a money payment for the following month exists.
2. When a recipient of any category of assistance dies after 12:01 a.m. on the first day of a month, any payment to which the person was eligible shall be kept available, for release to the recipient's personal representative, for a maximum of three (3) months. The following rules apply:
  - a. The personal representative may present a court order to the county department, in which case the payment is made available to the person named in the order;
  - b. The personal representative may present an affidavit to the county department to collect the payment, in which case the county department shall consult its legal advisor to ensure that the affidavit is proper and to protect the department in releasing the payment to the affiant;
  - c. A payment payable to a deceased Colorado Works payee may be released to a personal representative when such person presents a court order or a proper affidavit, or it may be released to the person who has assumed financial responsibility for the children when such person presents a proper affidavit.

D. Amount of Payment (Not Applicable to AFDC)

The initial payment to eligible applicants shall mean assistance beginning with the first day of the month of the date of application. Should the applicant be ineligible on the date of application but become eligible prior to the time a determination of eligibility is made, the initial payment shall include assistance beginning the month the applicant became eligible. Thereafter, eligible recipients shall receive monthly assistance payments.

E. Recipients Rights and Use of Assistance Received

The recipient of assistance has the same rights and responsibilities in the use of his or her money and the discharge of his or her obligations as any other person. For this reason:

1. The requirements used to set the standards of assistance lose their identity when the net payment amount is established;
2. The county department shall not impose any restriction including, but not limited to, requesting a recipient to provide receipts or proof of how the money has been spent, either direct or implied, on a recipient's use of his or her money payment;
3. The county department shall not require the recipient to account for the use of the money payment.
4. The county department may request any necessary documentation at the time they are determining the recipient's need. Such documentation may include, but is not

limited to, an eviction notice, utility invoice, or repair estimate.

5. The county department shall establish any payment made above and beyond the basic cash assistance grant on the assessed need of the participant before the payment is authorized.
6. The county department shall not give assistance to creditors in the collection of the recipient's debts.

#### F. Continued Benefits

1. If a recipient requests a local dispute resolution conference or state level fair hearing within the prior notice period, financial assistance or the basic cash assistance grant under the Colorado Works program shall continue during the dispute resolution process or state level appeal period until the final agency decision is entered unless the recipient voluntarily agrees to the reduction/discontinuation of benefits or abandons the appeal.
2. Any payments received during the appeal process that the client was subsequently determined to be ineligible for shall be recovered as defined in Section 3.609.4, C.

#### G. Holding and Disposing of Payments

A payment shall not be held beyond the normal authorization date. The following are the only exceptions:

1. The ten (10) day due process period has expired;
2. A recipient has made a voluntary written request;
3. A final agency decision has been made authorizing the action;
4. In cases where a corrected payment is to be issued, the corrected payment shall be issued by the effective date of the original warrant and the incorrect payment shall be cancelled.
5. When it is verified that the recipient no longer resides at the last known address and attempts to locate the person through the Post Office, relatives, friends, etc., have been unsuccessful, the current payment and two additional payments may be held. If the recipient has not contacted the county department and the address is still unknown at the end of the third month, the payments shall be canceled and the case discontinued. If the recipients whereabouts become known during the payment period, the recipient shall receive the benefits they are eligible for;
6. When a recipient dies after 12:01 a.m. on the first day of the month, the payment shall be held for three (3) months for possible release to the recipient's personal representative. If not released, it shall be canceled subject to reissue if claimed at a later date not to exceed three hundred sixty (360) days from the date of the program termination.
7. When the county department obtains facts, which indicate an overpayment because of probable fraud or an intentional program violation (IPV), and such facts have been verified to the extent possible, the payment may be held after a five-day due process period has expired.

## H. Correction of Underpayments

The county department shall take prompt action to correct underpayments to former AFDC applicants/recipients, as well as current recipients of Colorado Works cash assistance. There are two types of underpayments: 1) a cash assistance payment(s) received by or for an assistance unit that is less than the amount which the assistance unit should have received but not a denial or termination, or 2) the failure of the county department to issue a financial assistance payment to an eligible assistance unit if such payment should have been issued (i.e., denials or termination of Colorado Works benefits).

1. When a claim of an underpayment is brought to the attention of the county department, after the appeal time specified in sections titled "Local Level Dispute Resolution Process" and "Appeal and State Hearings" has expired, the county department shall:
  - a. Determine if an underpayment occurred; and,
  - b. Record the facts and basis of its determination in the case record.
2. If the county department determines that there is an underpayment, it shall correct the underpayment within ten (10) working days.
3. Underpayments shall be used to pay any outstanding established claims unless the county department has determined this action will cause an undue hardship to the recipient as determined on a case-by-case basis based on the following hierarchy:
  - a. Fraud/IPV claims.
  - b. Client error claims.
  - c. Administrative error claims.
4. If the action giving rise to the claim of an underpayment is a denial or termination, the county department shall notify the assistance unit, via a notification letter, of its determination on the claim of underpayment, the facts and basis for the determination and that the determination may not be appealed.
5. If the action giving rise to the claim of an underpayment is a reduction in benefits, other than a denial or termination, the county department shall notify the assistance unit of its determination on the claim of underpayment, the facts and basis for the determination and that the determination may be appealed as outlined in sections entitled "Local Level Dispute Resolution Process" and "Appeal and State Hearings."

A "retroactive payroll" is used for correction of underpayments. Prompt action shall be taken to correct underpayments that occurred within the past twelve (12) months from the discovery date. The county department shall ensure the payment amount and authorization for the month of eligibility are in agreement and shall issue a retroactive payment when the authorization is incorrect. Retroactive payments shall not be made unless the amount is one dollar (\$1.00) or more.

Authorization for payments above the basic cash assistance grant shall be



approved and final authorization entered into the statewide benefit management system by a supervisor or other county worker as defined by the county.

I. Reissuance of Payment

The county department shall reissue a lost or stolen payment if it is determined that such loss was beyond the recipient's control.

**3.609.4 Criteria for Establishing and Recovering AFDC or Colorado Works/ TANF Overpayments [Rev. eff. 9/15/12]**

A. Definitions

1. A "recovery" is the receipt of repayment for excess cash payments; short-term cash payments, supportive services, and/or family needs payments paid for which a recipient was not eligible.
2. To "legally establish" the amount of overpayment means a generally accepted legal method has been used to create an obligation to pay. This includes but is not limited to:
  - a. An executed promissory note;
  - b. A court judgment;
  - c. A final agency action;
  - d. A signed public assistance repayment agreement.
3. If hardship would be imposed on the recipient by a deduction for the same length of time, as were the overpayments, the rate of recovery shall be at least five percent (5%) of the net assistance payment. If this rate would cause irreparable harm to the recipient, the recovery rate shall be established at one percent (1%) of the net monthly assistance payment.

B. When an AFDC or Colorado Works Overpayment Shall be Recovered

When it is determined that the overpayment is to be recovered, the county department shall act to recover the overpayment within ten (10) calendar days from the date the worker becomes aware that an overpayment has occurred unless otherwise specified in the case file. There is no time limit for the identification of an overpayment.

For AFDC overpayments and Colorado Works overpayments created before October 31, 2007, the county department shall take one of the following three actions by the end of the quarter following the quarter in which an overpayment is first identified to ensure prompt recovery of the overpayment. For Colorado Works overpayments issued on or after November 1, 2007, the county shall take one of the following three (3) actions within ten (10) calendar days of identification of the overpayment unless otherwise specified in the case file:

1. Recover the overpayment; and,
2. Take action to locate and/or recover the overpayment from a former recipient including appropriate legal remedies; and,

3. Begin recovery deductions from the subsequent assistance payments of a current recipient or obtain a public assistance repayment agreement.

Overpayments may be recovered from the member(s) of the assistance unit who was considered an adult recipient or a payee of the Colorado Works program at the time of the overpayment and/or who was the caretaker relative, specified caretaker, authorized representative, sponsor, or payee who was overpaid or fraudulently received the assistance. Overpayments shall be recovered from such individual's estate.

#### C. Recovery Process

When it is determined that an overpayment has occurred, the county department shall:

1. Take action to research the overpayment and determine if the overpayment amount is accurate;
2. Document the facts and situation that produced the overpayment and retain all associated documentation and notices until the overpayment is repaid in full;
3. Initiate timely and adequate notice as set forth in the "Prior Notice" section in the chapter on "Administrative Procedures." Such notice shall include a complete explanation of the following:
  - a. The individual responsible for repayment;
  - b. The amount of the claim/recovery;
  - c. The period the claim was for;
  - d. The reason for the overpayment;
  - e. The type of claim created;
  - f. The recipient's rights and responsibilities;
  - g. The method of repayment;
  - h. The availability of continued benefits;
  - i. How to obtain free legal assistance;
  - j. All applicable rules concerning the overpayment and recovery sought; and,
  - k. Quarterly statements with the balance due.
4. Following the ten (10) day prior notice period and the county dispute resolution and/or state appeal hearing process, take action to ensure prompt recovery;
5. Pursue all legal remedies in order to recover the overpayment. Legal remedies include, but are not limited to, judgments, garnishments, claims on estates and the State Income Tax Refund Intercept process.
6. In accordance with Sections 26-2-133 and 39-21-108, C.R.S., the state and county departments may recover overpayments of public assistance benefits through

the offset (intercept) of a taxpayer's state income tax refund. Rent rebates are subject to the offset procedure. This method may be used to recover overpayments that have been:

- a. Determined by final agency action; or,
- b. Ordered by a court as restitution; or,
- c. Reduced to judgment.

Prior to certifying the taxpayer's name and other information to the Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer, in writing at his or her last-known address, that the state intends to use the tax refund offset to recover the overpayment. In addition to the requirements of Section 26-2-133(2), C.R.S., the pre-offset notice shall include the name of the county department claiming the overpayment, a reference to TANF as the source of the overpayment, and the current balance owed.

Effective August 1, 1991, the taxpayer is entitled to object to the offset by filing a request for a county dispute resolution conference or state hearing within thirty (30) calendar days from the date that the State Department mails its pre-offset notice to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those that are stated elsewhere in this staff manual. At the hearing on the offset, the county department or ALJ shall not consider whether an overpayment has occurred, but may consider the following issues if raised by the taxpayer in his or her request for a hearing:

- a. Whether the taxpayer was properly notified of the overpayment;
- b. Whether the taxpayer is the person who owes the overpayment;
- c. Whether the amount of the overpayment has been paid or is incorrect; and/or,
- d. Whether debt created by the overpayment has been discharged through bankruptcy.

#### D. Repayment

The county department is required to pursue collection of the overpayment from the responsible payee who managed and administered the AFDC/Colorado Works funds. The county department shall pursue all available overpayment recovery options to collect the overpayment from the specified caretaker or responsible payee first, and during this time all collection actions against other members of the assistance unit shall be suspended if the caretaker/ responsible payee has been located.

In the event the specified caretaker or responsible payee cannot be located or is deceased, collection must be pursued from the other adult members of the overpaid assistance unit or their current assistance units until the debt has been paid in full. Once the caretaker or responsible payee is located, the responsibility of the other members of the overpaid assistance unit is suspended unless the caretaker or responsible payee subsequently dies or cannot be located.

Located means: a) the physical whereabouts of the caretaker or responsible payee has been identified; and, b) the recoupment can be obtained from the AFDC or Colorado Works payment, or appropriate state law remedies can be pursued to collect the

overpayment from the specified caretaker or responsible payee.

1. If the courts have issued an order or judgment requiring the caretaker or responsible payee to repay the AFDC/Colorado Works overpayment, no collection of the overpayment shall be initiated against any individual deemed not liable or the dependent children on the overpaid AFDC/Colorado Works case.

The county department shall only pursue collection of unpaid AFDC overpayments from individual members of the assistance unit who were dependent children at the time of the overpayment, when the individual has reached ninety five (95) years old, and whose individual income is at or above two hundred and fifty percent (250%) of the federal poverty level for that household's size.

2. When the caretaker relative was not a member of the overpaid assistance unit, there is no priority regarding the order in which recovery from the overpaid members is to be pursued. Failure to recover from one member or their current assistance unit does not discharge the remaining members or their current assistance units.

- a. For Repayments of AFDC and Colorado Works, repayment of overpayments shall be the responsibility of:

- 1) The assistance unit which was overpaid; or,
- 2) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or
- 3) Any individual members of the overpaid assistance unit whether or not currently a recipient.

- b. The following hierarchy of repayment for overpayments with two adults on the case shall be used:

- 1) Payee/applicant;
- 2) Direct recipient of the payment required as part of the assistance unit.

- c. Colorado Works overpaid benefits shall not be pursued from individual members of the assistance unit who were dependent children at the time the overpayment occurred.

#### E. Determining Overpayment Amounts for Colorado Works Recovery

The amount of the overpayment shall be determined without inclusion of normally applicable employment income disregards when the overpayment involves earned income and the recipient either:

1. Terminated or reduced employment without good cause as defined in county department policy; or,
2. Failed, without good cause, to make a timely report of additional earned income or an increase in earnings; or,
3. The overpayment was due to fraud activity for failure to report income.

The amount of overpayment shall be determined by inclusion of applicable employment income disregards, if the client reported the income timely, when the overpayment involves earned income and the basis is erroneous administrative action, or inaction ("administrative error").

#### F. Computation of the Colorado Works Overpayment

Computation of recoveries for Colorado Works is based on the amount received that a recipient was originally deemed eligible for. All earned and unearned income received by the assistance unit and any child support payments received by the county Child Support Enforcement office is taken into consideration in the computation.

In the instances where the overpayment is the direct result of actions tied to the determination of IPV and/or fraud, which resulted in receipt of benefits in error, or benefits received that the recipient was not eligible to receive shall be recovered.

#### G. Procedure for Computing Monthly Over/Under Payments

The calculation of overpayment shall begin in the month that the overpayment occurred. Claims as a result of the overpayment shall be established within ten (10) calendar days following adverse action notification unless otherwise specified and documented by the county department in the case file.

##### 1. Determine the "as paid" Colorado Works amount by:

- a. Starting with the amount of the payment;
- b. Add any withholding amounts;
- c. Subtract child support payments used to reimburse the payment;
- d. The result is the "as paid" amount, also known as the "monthly non-reimbursed public assistance" (UPA).

##### 2. Determine the "correct" payment by:

- a. Determining the need standard for the correct assistance unit for the month;
- b. Subtract all earned income (without employment disregards when the income is not reported timely); and,
- c. Subtract the result from the amount of the payment plus any withholdings; and,
- d. Calculate partial month payments utilizing the table found in Section, 3.606.2, H.

##### 3. UPA and/or arrears shall not be used to offset and/or pay client error, fraud, or IPV overpayments

##### 4. Compare the total "monthly UPA" to this "correct" payment amount and collect as an overpayment the lesser of the two. The arithmetic result may indicate an underpayment.

The overpayment amount is reported to the Automated Child Support

Enforcement System (ACSES) and reduces the total case UPA once the claim is paid. In the event the overpayment amount is less than the total case UPA, the recovery amount is the lesser of the two.

#### H. Establishing Recovery Deductions for Colorado Works/TANF Cases

When the recovery amount is not to be repaid immediately, or other arrangements have not been made for repayment, and the assistance case remains active, the county department shall establish a monthly recovery deduction from subsequent assistance payments.

#### I. Monthly Recovery Reduction Amount

The following procedure shall be used to arrive at the monthly recovery deduction amount:

1. If the error is a result of an agency error and the recipient does not meet criteria set forth at Section 3.609.4, M, "When An Overpayment Is Not Recovered," compute five percent (5%) of the authorized payment amount or, if the error is result of a client error, compute ten percent (10%) of the authorized payment amount. If the resulting percentage amount is less than ten dollars (\$10), the deduction from the authorized payment amount shall be ten dollars (\$10).
2. Deduct the percentage amount, or ten dollars (\$10) when the percentage amount is less than ten dollars (\$10), from the authorized payment to arrive at the payment amount. This amount shall be rounded to the next lower whole dollar amount, if not already a whole dollar amount. This rounded amount is the final payment amount.
3. When recovery deductions reduce the payment amount to less than ten dollars (\$10), such lesser amount shall be paid except when that amount is less than one dollar (\$1.00) in which case no payment is made and that month shall not count towards the recipient's federal TANF time limit. The client shall continue to receive services as applicable.
4. When the authorized payment amount is less than ten dollars (\$10), no deduction shall be made from such "no payment" case.
5. When recovery deductions reduce the payment amount to less than one dollar (\$1.00) and as a result no payment is made, such case shall not be considered to be an active Colorado Works case.
6. When the recovery is due to a fraudulent action on the part of the recipient and interest may be added thereto in accordance with rules in the "Fraudulent Acts" section of these rules, the interest amount shall not be included in the payroll deduction unless the recipient agrees to such inclusion. If the recipient does not so agree, the interest amount shall be collected separately.
7. The amount of recovery deduction shall be recorded in the recipient's case file and collected via the statewide benefit management system.
8. Previously established claims will be deducted from cash assistance under the Colorado Works program in accordance with the AFDC Recoupment policy.
9. Claims shall not be collected against supportive services and/or other assistance

payments unless such claim is due to fraud and/or IPV claims.

#### J. Write-off

For individuals no longer receiving Colorado Works, a county department shall write-off an unpaid overpayment of less than one hundred twenty five dollars (\$125.00) for administrative error claims. The write off shall not occur until ninety (90) days after the termination of all public assistance.

The county may choose to write-off an unpaid client error, fraud, or IPV overpayment of less than three hundred dollars (\$300.00) as defined in county policy.

In addition, the county may write-off an unpaid overpayment of more than one hundred twenty five (\$125.00) dollars for an individual who:

1. Was not convicted of an IPV or fraud tied to the specific overpayment; and,
2. Is no longer receiving any form of public assistance; and,
3. It has been six (6) or more years since the overpayment was established; and/or,
4. The county department has determined that it is no longer cost effective to pursue collection. The recovery policies for the Colorado Works program, including the basis for the determination of no longer cost effective to pursue, shall be included in a county policy.

#### K. County Incentive

Counties shall receive fiscal incentives to pursue fraud recoveries for the Colorado Works program. The procedures for claiming these incentives are contained in the Finance rule manual (11 CCR 2508-1). For the purpose of these fiscal incentives, "fraud recovery" means a recovery that involves one or more of the following conditions:

1. The district attorney prosecutes;
2. The district attorney establishes deferred prosecution;
3. A *nolo contendere* plea is entered;
4. A public assistance recovery is established using the same basis as was used to establish a Food Assistance or AFDC recovery through an administrative hearing or waiver of the administrative hearing.

#### L. When an Overpayment is Recovered

When the county department has determined that a recipient has received Colorado Works/AFDC for which he or she was not eligible due to an increase in income or any other change in circumstances that would affect the recipient's eligibility or payment, the department shall:

1. Determine if the overpayment is to be recovered;
2. Determine whether there was willful withholding of information, and considers or rules out possible fraud/ IPV;

3. Establish the amount of overpayment;
4. Notify the recipient of the amount due and the reason for the recovery using the prior notice rules;
5. Enter the amount of the overpayment and other specific factors of the situation in the case record.

To establish the amount of the overpayment when eligibility is due to excess resources for an overpayment which occurred due to the resources prior to January 1, 2011. Resources are not applicable to Colorado Works on or after January 7, 2011.

1. Determine the amount, on a monthly basis, that the countable resources exceeded the allowable limit;
2. Determine the amount on a monthly basis, of the assistance payments received by the recipient;
3. Compute the total amount due by using the lesser of the excess resources or the assistance payment made for each month of ineligibility;
4. If, in addition to excess resources, the recipient had income not considered in computing the money payment, the two claims are established with the excess resource claim taking precedence.

#### M. When an Overpayment is Not Recovered

In any case in which more than the correct amount of payment has been made, there shall be no recovery from any person:

1. Who is without fault in the creation of the overpayment; and,
2. Who has reported any increase in income or other circumstances affecting the recipient's eligibility within the timely reporting requirements for the program; and,
3. If such recovery would deprive the person of income required for ordinary and necessary living expenses or would be against equity and good conscience. The definition of against equity and good conscience must be consistently defined in county policy. The fact that the recipient is receiving public assistance shall not be the only factor in making a determination that the person would be deprived of income required for ordinary and necessary living expenses or that equity and good conscience exist.

#### N. Case Record

When the overpayment is not to be recovered, such fact, together with the reason, is to be entered in the case record. All information pertaining to the reason, establishment, and collection of claims shall be retained in the case record until the claim is written off or paid in full.

#### O. Recoveries Concerning Misuse by the Recipient's Power of Attorney

In instances where the individual holding the recipient's power of attorney has used the power for purposes other than for the benefit of the recipient, the county department shall:



1. Determine whether an overpayment has occurred; and,
2. Consult with the county attorney or other legal source to assure proper procedure; and,
3. Advise the holder of the power of attorney of the overpayment circumstances; and,
4. If the holder of the power of attorney disagrees with the overpayment circumstances, pursue the recovery establishment and collection through appropriate legal means; or,
5. Take appropriate steps to secure repayment with the cooperation of the holder of the power of attorney; or,
6. Take such other legal action against the holder of the power of attorney as deemed necessary to assure protection of the recipient's rights and benefits.

### **3.609.5 Methods of Recovery- Not applicable to AFDC [Rev. eff. 9/15/12]**

#### **A. Definitions**

1. "Refund" means the immediate repayment by a recipient of public assistance to which he or she was not eligible.
2. "Future Collection" means a legally established claim for repayment at a later time when the recipient is self-sufficient and able to repay. Repayment from a former recipient is not sought when such repayment will cause financial hardship for the individual or his family. Repayment plans shall not exceed twenty-five percent (25%) of available monthly income.
3. "Deduction from Assistance Payment" means when overpayment is caused by the recipient's willful withholding concerning income or changes in circumstances, recipient error, or administrative error concerning income, such prior overpayment shall be deducted from subsequent assistance payments.
4. "Installment Payment" means when overpayment is caused by the recipient's willful withholding concerning income or changes in circumstances, recipient error, or administrative error, such overpayment shall be based upon the repayment agreement. This method should only be used for inactive cases. (Requirements for establishing the amount of the payment can be found at Section 3.609.2, B).

#### **B. Removal of Benefits from EBT Card**

The county department shall immediately retrieve the benefits from the recipient's Electronic Benefit Transfer (EBT) card when:

1. When an amount is issued incorrectly due to county department and/ or system error.
2. For all other instances, funds shall not be taken from the card using this method unless permission is granted from the recipient in writing using the State prescribed form. All Recovery rules apply and can be found in Section 3.609.4, C.

#### **C. Voluntary Deductions**

Voluntary deductions are considered to be an amount in addition to the deduction from the assistance payment as established through the recovery methods. In addition overpayment may be voluntarily deducted from subsequent assistance payments if:

1. The recipient shall be notified of the action to be taken, including any fact of willful withholding of information determined by the county, using the prior notice rules and the recipient notified in writing that he or she has the right to stop the voluntary deduction at any time by written request;
2. Generally, the deduction will be for the same length of time as were the overpayments.

#### D. Claim Against an Estate

When a claim is filed against the estate of a recipient for repayment for excess public assistance paid for which the recipient was ineligible. This includes cases where overpayments were made and not recovered. The department's legal advisor is consulted in determining the amount of assistance payments for which claim is to be filed.

#### E. Offset Against Taxpayer's State Income Tax Refund

1. In accordance with Sections 26-2-133 and 39-21-108, C.R.S., the state and county departments may recover overpayments of public or medical assistance benefits through the offset (intercept) of a taxpayer's state income tax refund. Tax refunds shall not be offset in instances where the taxpayer is making regular, ongoing payments as agreed to as part of the payment agreement and/or based on arrangements between the taxpayer and the county(s). The county shall not offset tax refunds during the same month a payment on a claim is made if the payment agreement was established prior to the offset unless agreed to by the recipient. Rent rebates are subject to the offset procedure. This method may be used to recover overpayments that have been:
  - a. Determined by final agency action; or,
  - b. Ordered by a court as restitution; or,
  - c. Reduced to judgment. Prior to certifying the taxpayer's name and other information to the Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer, in writing at his or her last-known address, that the state intends to use the tax refund offset to recover the overpayment. In addition to the requirements of Section 26-2-133(2), C.R.S., the pre-offset notice shall include the name of the county department claiming the overpayment, the program that made the overpayment, and the current balance owed.
2. Effective August 1, 1991, the taxpayer is entitled to object to the offset by filing a request for a county dispute resolution conference or state hearing within thirty (30) calendar days from the date that the State Department mails its pre-offset notice to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those, which are stated elsewhere in this rule manual. At the hearing on the offset, the county department or ALJ shall not consider whether an overpayment has occurred, but may consider the following issues if raised by the taxpayer in his or her request for a hearing:
  - a. Whether the taxpayer was properly notified of the overpayment;

- b. Whether the taxpayer is the person, who owes the overpayment;
  - c. Whether the amount of the overpayment has been paid or is incorrect;
  - d. Whether the debt created by the overpayment has been discharged through bankruptcy; or,
  - e. Whether other special circumstances exist including, but not limited to the circumstances described in Section 3.810.21, (i.e., facts that show that the taxpayer was without fault in creating the overpayment and will incur financial hardship if the income tax refund is offset).
3. If an offset is established, an overpayment shall not be recovered using another method in the month that the overpayment is recovered through an offset unless prior authorization is received from the individual making the overpayment.

### **3.609.6 Fraudulent Act [Rev. eff. 9/15/12]**

#### **A. Definitions**

"Fraud" means an individual secured or attempted to secure or aided or abetted another person in securing public assistance and/or services to which the individual was not eligible by means of willful misrepresentation or intentional concealment of an essential fact.

"Willful Withholding of Information" shall mean:

- 1. Willful misstatement, including understatement, overstatement, or omission, whether oral or written, made by a recipient in response to oral or written questions from the department;
- 2. Willful failure by a recipient to report changes in income or other circumstances which may affect the amount of payment; and/or,
- 3. Willful failure by the recipient to report receipt of a payment made by the county department to the recipient which the recipient knew represented an overpayment or to notify the county department of receipt of a payment made to the assistance unit which exceeded the amount to which he or she was eligible.

#### **B. Willful Withholding of Information**

When the county department determines that a recipient has willfully withheld information, referral is made to the District Attorney or appropriate investigative authority when sufficient evidence of fraud exists. The following rules apply except in instances where the case is transferred to the District Attorney and prosecuted through the courts, at which point counties shall establish the repayment amount or percentage as set by the courts:

- 1. The recipient is notified of the action to be taken, including the fact of willful withholding of information, using the prior notice rules;
- 2. Generally, the deduction will be for the same length of time as were the overpayments;
- 3. If hardship would be imposed on the recipient by a deduction for the same length of time, as were the overpayments, the rate of recovery shall be at least five

percent (5%) of the net assistance payment. If this rate would cause irreparable harm to the recipient, the recovery rate shall be established at one percent (1%) of the net monthly assistance payment;

4. The recipient may choose to repay the county department the entire amount of the overpayment at one time. In such an instance, the fraud charge should be discussed with the District Attorney or appropriate investigative authority.

#### C. Proving Fraud

Fraud is subject to criminal action and must be clear and convincing or proven beyond a reasonable doubt. The three basic elements, which have to be proven, are:

1. The misrepresentation or concealment must have been deliberate and done intentionally. Fraud does not exist if the misrepresentation or concealment is the result of an unintentional act, a misunderstanding, or mental disability;
2. The fraudulent act must have been for the express purpose of receiving or attempting to receive or obtain assistance to which the individual was not eligible;
3. It must be shown that, if the county department had been aware of the facts, assistance should not have been granted or should have been granted in a lesser amount.

#### D. Establishing Fraud

The misrepresentation or concealment must concern a fact that would affect eligibility or payment. This includes household composition, income, work participation, and any other eligibility factor.

1. The misrepresentation may be oral or written. It can be in the form of an application for assistance, a written communication to the department, a redetermination form, a conversation with a technician, a telephone conversation, or failure to notify the department of a change in circumstances that would affect eligibility or payment.
2. A county worker knowingly aided in providing benefits to a recipient for benefits that he or she was not eligible for, whether or not he or she was a direct recipient of such benefits. In addition, if fraud is proven for such acts, the county worker shall not have the ability to access Colorado Works benefits for a lifetime.
3. Criminal intent must be proved beyond a reasonable doubt for court cases; therefore, the misrepresentation or concealment must be verified by written documentation and must relate to facts that existed at the time of the misrepresentation or concealment.
4. Colorado statutes provide for fraud charges to be filed against a person who aided another person in securing public assistance for which he or she was ineligible by misrepresenting or concealing essential facts.
5. In collecting evidence of fraud, the county department shall not violate the legal rights of the individual (i.e., such violation would be invasion of the privacy of the home, unreasonable search and seizure, denial of due process of law, denial of the right to legal counsel, etc.). When the department questions whether an action it contemplates might violate the legal rights of the individual, it shall seek the advice of its legal advisor.

6. Determination of whether fraud exists and referral to the District Attorney are within the administration of public assistance programs involved and are not considered a violation of safeguards and instructions provided by confidentiality rules.

#### E. Referral to the District Attorney

When the county department determines that it has paid or is about to pay a recipient an assistance payment as a result of a fraudulent act, the facts used in the determination may be reviewed with the department's legal counsel and/or a representative from the District Attorney's office. If suspected the available evidence substantiates fraud, the case may be referred to the District Attorney. All referrals to the District Attorney shall be made in writing and shall include the amount of assistance fraudulently received by the recipient.

1. When the District Attorney prosecutes, the amount of overpayment due will be taken into consideration and probably included in the court decision and order. If a deduction is being made from the recipient's assistance payment it may need to be adjusted to agree with the court order. If the individual is no longer a recipient, another method of recovery shall be used.
2. Interest may be charged from the month in which the overpayment was received until the date it is recovered. Interest shall be calculated at the legal rate.
3. When the District Attorney decides not to prosecute or the county department chooses not to refer the case to the District Attorney, the amount of overpayment due, as established by the department, will continue to be recovered by deduction from subsequent assistance payments or other method of recovery if the individual is no longer a recipient.

### **3.609.7 Applicant/ Recipients and Due Process [Rev. eff. 9/15/12]**

#### A. Applicant/Recipient's Right to Notice of Action

Each applicant for or recipient of public and financial assistance, or a basic cash grant or other services provided under Colorado Works Program, is entitled to receive prior written notice of any agency action affecting his or her eligibility for or receipt of benefits or services.

1. Notice of Favorable Action-The applicant or recipient shall be notified in writing of county department approval of:
  - a. An application for financial assistance or cash assistance or services through the Colorado Works Program;
  - b. A request for public assistance or social services; and,
  - c. An increase in the amount of assistance. To the extent practicable, notice shall be in his or her primary language and shall be mailed or delivered after the determination is made, within 10+1 calendar days. If the client needs assistance in understanding the action, the action shall be explained verbally. If the applicant or recipient is dissatisfied with the effective date of eligibility, or the amount or type of assistance or services authorized, he or she has the right to a county dispute resolution conference and/or state level fair hearing.

2. Notice of Adverse Action- An applicant or recipient shall be given adequate and timely notice of any action by the county department, or any person or agency acting on its behalf, which adversely affects the person's eligibility for, or right to public or medical assistance benefits, or cash assistance or services provided or authorized under the Colorado Works Program.
3. Adequate Notice- Failure to give adequate prior notice of an adverse action shall be grounds for setting aside the action on appeal. To be "adequate," the notice must meet the following standards:
  - a. The notice must be in writing; and,
  - b. It must describe clearly in terms that are understandable to the applicant or recipient the action to be taken and the reason(s) for the action; and,
  - c. It must refer specifically by number to the section(s) of the State Department's rules and/or in the Colorado Works Program, the county's official written policy(s) that require or permit the action being taken, or cite the specific changes in federal or state law requiring the action; and,
  - d. It must state the effective date of the proposed action; and,
  - e. It must explain the individual's right to request a local level dispute resolution conference and state level fair hearing, the time period for requesting a conference or hearing, and the steps which must be taken to obtain a conference or hearing; and,
  - f. It must explain the recipient's right to continued benefits and the obligation to repay if it is determined that the recipient was not eligible to receive them; and,
  - g. It must inform the individual of his or her right to be represented or assisted by legal counsel, a relative, a friend or a spokesperson of his or her choosing.
  - h. To the extent practicable, notice shall be in his or her primary language. If he or she is illiterate, the action shall also be explained verbally.
4. Timely Written Notice- Any adverse action shall be preceded by a prior notice period of at least ten (10) calendar days. "Timely" notice means that written notice is mailed to the applicant or recipient at least ten (10) calendar days before the effective date stated in the notice. The prior notice period begins the day following the date of certification of mailing of the Notice form. The ten (10) day prior notice period constitutes the period during which assistance is continued and no adverse action is to be taken during this time.
5. Exceptions to the 10-Day Prior Notice Requirement- Timely prior notice, (i.e., at least ten (10) day prior notice, is not required):
  - a. When the proposed adverse action is based on a clear, written statement signed by the individual, which states that he or she no longer wishes to receive assistance or services.
  - b. When the county department/agency has confirmed the death of a recipient or of the payee when there is no relative available or willing to act as the

new payee.

#### B. Applicant/Recipient Rights Regarding Proposed Actions

An applicant or recipient who disagrees with a proposed action has the right to:

1. A local level dispute resolution conference that must be requested prior to the effective date of the proposed action;
2. If the individual does not wish to utilize the local/county conference to resolve the dispute, a state level fair hearing before an Administrative Law Judge, if the issue is appealable, and if the written request is mailed or delivered to the Office of Administrative Courts no later than ninety (90) calendar days from the date the notice of action is mailed to the applicant/recipient;
3. If the individual is dissatisfied with the outcome of the local dispute resolution conference, a state level fair hearing before an administrative law judge if the written request for hearing is mailed or delivered to the Office of Administrative Courts no later than ninety (90) calendar days after the date the notice of proposed action was mailed by the county department/agency;
4. Judicial review of the final agency decision in the appropriate state district court, after exhausting the administrative appeal rights granted under these rules; and,
5. If the appellant is receiving financial assistance, medical assistance, social services, or cash assistance under the Colorado Works Program at the time a conference or fair hearing is requested, all benefits shall be continued pending the outcome of the state level fair hearing and final agency decision, only if the request for local conference and/or state level fair hearing is made prior to the effective date of the proposed action being appealed or the ten (10) day period for appealing a county dispute resolution decision to the State Department. Continued benefits shall be authorized unless the appellant states in writing that continued benefits are being waived.

#### C. Categorical Payment Adjustments

When changes in either state or federal law require payment adjustments for all persons receiving a particular category of assistance, timely notice shall be given which shall be adequate if it includes a statement of the intended action, the reasons for such action, the specific change in law requiring such action, and the circumstances under which a county dispute resolution conference and/or state level hearing may be obtained and financial assistance continued.

A county conference or state appeal need not be granted unless the reason for an individual appeal is incorrect grant computation.

#### D. County Dispute Resolution Process

In order to resolve disputes between county departments of social services or the service delivery agency and applicants/recipients, county departments shall adopt procedures for the resolution of disputes consistent with this section. The procedures shall be designed to establish a simple non-adversarial format for the informal resolution of disputes.

#### E. Opportunity for Conference

The county department or local service delivery agency, prior to taking action to deny, terminate, recover, initiate vendor payments or modify financial assistance, public assistance, or cash assistance or services provided under the Colorado Works Program to an applicant or recipient, shall, at a minimum, provide the individual opportunity for a county dispute resolution conference.

1. The right of an individual to a local conference is primarily to assure that the proposed action is valid, to protect the person against an erroneous action concerning benefits, and to assure reasonable promptness of county action. The individual may choose, however, to bypass the county dispute resolution process and appeal directly to the state Office of Administrative Courts, pursuant to the section on "Appeal and State Hearing".
2. The applicant/recipient is entitled to:
  - a. Representation by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he or she may represent her/himself;
  - b. With the exception of names of confidential informants, privileged communications between the county department and its attorney, and the nature and status of pending criminal prosecutions, examine the contents of the case file and all documents and records used by the county department or agency in making its decision at a reasonable time before the conference as well as during the conference;
  - c. Present new information or documentation to support reversal or modification of the proposed adverse action.
3. Failure of the applicant/recipient to request a local conference within the prior notice period, or failure to appear at the time of the scheduled conference without making a timely request for postponement, shall constitute abandonment of the right to a conference, unless the applicant/recipient can show good cause for his or her failure to appear.
4. "Good cause" includes, but is not limited to: death or incapacity of an applicant/recipient, or a member of his or her immediate family, or the representative; any other health or medical condition of an emergency nature; or, other circumstances beyond the control of the applicant/recipient, and which would prevent a reasonable person from making a timely request for a conference or postponement of a scheduled conference.

#### F. Conduct of County Dispute Resolution Conference

The local dispute resolution conference shall be held in the county department or agency where the proposed decision is pending, before a person who was not directly involved in the initial determination of the action in question. The individual who initiated the action in dispute shall not conduct the local level dispute resolution conference.

1. The person designated to conduct the conference shall be in a position which, based on knowledge, experience, and training, would enable him or her to determine if the proposed action is valid.
2. Two or more county departments/service delivery agencies may establish a joint dispute resolution process. If two or more counties/service delivery agencies



establish a joint process, the location of the conference need not be held in the county or agency taking the action, but the conference location shall be convenient to the applicant/recipient.

3. The local level conference may be conducted either in person or by telephone. A telephonic conference must be agreed to by the applicant/recipient.
4. The county/agency caseworker or other person who initiated the action in dispute, or another person familiar with the case, shall attend the local level conference and present the factual basis for the disputed action.
5. The local level dispute resolution conference shall be conducted on an informal basis. Every effort is to be made to assure that the applicant/recipient understands the county department/agency's specific reasons for the proposed action, and the applicable State Department's rules, or county policy. In the event the applicant/recipient does not speak English, an interpreter shall be provided by the county department/agency.
6. The county/agency shall have available at the conference all pertinent documents and records in the case file relevant to the specific action in dispute.
7. To the extent possible, the local dispute resolution conference shall be scheduled and conducted within the prior notice period. If the county department cannot conduct the conference within this period for whatever reason, the adverse action shall be delayed and benefits continued until a conference can be held, unless the individual waives benefits. The county department/local service agency shall provide reasonable notice to the individual of the scheduled time and location for the conference, or the time of the scheduled telephone conference. Notice should be in writing; however, verbal notice may be given to facilitate the resolution process.
8. The county department may consolidate disputes regarding other assistance payments programs, the Colorado Works Program, the food stamp program, Medicaid eligibility, or any other public assistance program if the facts are similar and consolidation will facilitate resolution of all disputes.

### **3.609.8 Notice of Dispute Resolution Conference Decision [Rev. eff. 9/15/12]**

#### **A. Agreement**

At the conclusion of the conference, the person presiding shall have the agreement entered into by the parties reduced to writing. Such agreement shall be signed by the parties and/or their representatives and shall be binding upon the parties. A copy of the written decision shall be provided to the applicant/recipient and/or his or her representative. If the conference is held by telephone, the person presiding need only sign the agreement. A copy of the agreement will be mailed within 10+1 calendar days or delivered to the other party(s). In the event the dispute is not resolved, the person presiding shall prepare a written statement indicating that the dispute was not resolved.

#### **B. Right to Request a State Level Fair Hearing**

The decision shall include a statement explaining the applicant or recipient's right to request a state level fair hearing before an Administrative Law Judge, the time limit for requesting a state level hearing, and if appropriate, a statement that financial assistance will continue pending a final state decision if appealed to the state within ten (10)

calendar days from the date of the conference decision.

### **3.609.9 Appeal and State Level Fair Hearing [Rev. eff. 9/15/12]**

#### **A. Opportunity for State Level Fair Hearing**

These rules apply to all state-level appeals of county department actions concerning assistance payments, social services, medical assistance eligibility, child welfare services, child care, and actions taken pursuant to state rules or official county policies governing the Colorado Works Program. An affected individual who is dissatisfied with a county department action or the result of a county dispute resolution conference or failure to act concerning benefits may appeal to the Office of Administrative Courts for a fair hearing before an independent Administrative Law Judge. This will be a full evidentiary hearing of all relevant and pertinent facts to review the decision of the county department. The time limitations for submitting a request for an appeal are:

1. When the individual elects to avail himself of a county dispute resolution conference, but is dissatisfied with that decision, the request must be submitted in writing and mailed or delivered within ten (10) calendar days of the date the county dispute resolution conference decision was mailed or delivered to the applicant or recipient in order to receive continued benefits pending state appeal, otherwise the ninety (90) day period specified in (2), below, applies;
2. When the individual elects not to avail himself of a county dispute resolution conference but wishes to appeal directly to the state, a written request for an appeal must be mailed or delivered no later than ninety (90) calendar days from the date prior notice of the proposed action was mailed to the person;
3. A request for an appeal must be mailed or delivered to the Office of Administrative Courts.

#### **B. Reasons for a State Level Hearing**

Requests for state hearings may result from such reasons as:

1. The opportunity to make application or reapplication has been denied;
2. An application for assistance or services has not been acted upon within the maximum time period for the category of assistance;
3. The application for assistance has been denied, the benefit has been modified or discontinued, vendor payments have been initiated, requested reconsideration or a benefit amount deemed incorrect has been refused or delayed, payment has been delayed through the holding of payments, the county department is demanding repayment for any part of an award to a recipient or former recipient which the recipient does not believe is justified, or the applicant or recipient disagrees with the type or level of benefits or services provided .

#### **C. Objectives and Purposes of a State Level Hearing**

The basic objectives and purposes of the appeal and state hearing process are:

1. To safeguard the interests of the individual applicant or recipient;
2. To provide a practical means by which the applicant or recipient is afforded a

protection against incorrect action on the part of the representative of the State or county department;

3. To bring to the attention of the State Department and county department information that may indicate need for clarification or revision of State and county policies and procedures;
4. To assure equitable treatment through the administrative process without resort to legal action in the courts.

#### D. Clear Expression in Writing

Any clear expression in writing by the individual, or someone legally authorized to act for him, that he wants an opportunity to have a specific action of a county department reviewed by the State Department is considered an appeal and a request for a hearing. The county department shall, when asked, aid the person in preparation of a request for a hearing. If the request for a hearing is made orally, the county department shall prepare a written request within ten (10) calendar days for the individual's signature or have the recipient prepare such request, specifying the action on which the request is based and the reason for appealing that action.

1. The applicant/recipient is entitled to:
  - a. Representation by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself;
  - b. With the exception of the names of confidential informants, privileged communications between the county departments and its attorney, and the nature and status of pending criminal prosecutions, examine the complete case file and any other documents, records, or pertinent material to be used by the county at the hearing, at a reasonable time before the date of hearing and during the hearing.
2. The applicant/recipient, staff of the county department, and staff of the State Department are entitled to:
  - a. Present witnesses;
  - b. Establish all pertinent facts and circumstances;
  - c. Advance any arguments without undue interference;
  - d. Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

### 3.609.91 Hearing Procedures

#### 3.609.911 Authority and Duties of a State Administrative Law Judge [Rev. eff. 9/15/12]

One or more persons from the Colorado Department of General Support Services/Personnel, Office of Administrative Courts, are appointed to serve as Administrative Law Judges for the State Department of Human Services.

##### A. Review of Initial Decision

The State Administrative Law Judge shall, prior to the hearing, review the reasons for the decision under appeal and be prepared to interpret applicable departmental rules and/or official written county policies governing the Colorado Works Program and pertaining to the issue under appeal in preparation for conducting the hearing.

#### B. County Policies

For purposes of these rules, the terms "official written county policies governing the Colorado Works Program", or "county policies" are policies or amendments which have been formally adopted by the county board of commissioners setting forth the nature of the Colorado Works Program in that county, subject to the requirements of state rules, state law, federal regulations, and federal law. Such policies include county plan submittals required by the State Department.

The county department shall forward copies of its policies and any subsequent amendments, including effective dates, to the State Department and to the Office of Appeals. Individuals appealing a county action shall be provided reasonable opportunity to examine the county's policies.

#### C. No Legal Counsel

When legal counsel does not represent the applicant/recipient and/or the department, the Administrative Law Judge shall assist in bringing forth all relevant evidence and issues relating to the appeal. This will include granting the right of either party to submit pertinent questions to the other pursuant to appropriate rules of civil procedure.

#### D. State Responsibilities

Upon receipt by the Office of Administrative Courts of an appeal request, it is assigned a number. A hearing date is set at least ten (10) days in advance, and a letter by First Class or Certified Mail is sent to the appellant and the county department notifying them of the date, time, and place of the hearing. The appellant is told that if these arrangements are not satisfactory to notify the Office of Administrative Courts and, if good cause therefore exists, consideration will be given to changing them. An information sheet shall be enclosed to explain the hearing procedures to the appellant. The appellant is informed of his or her right to representation, that the representative has the right to examine all materials to be used at the hearing, before and during the hearing. The appellant also is informed that failure to appear at the hearing as scheduled, without having secured a proper extension in advance, or without having shown good cause for failure to appear, shall constitute abandonment of the appeal and cause a dismissal thereof. Information that the appellant or his or her representative does not have an opportunity to see shall not be made available as a part of the hearing record or used in a decision on an appeal. No material made available for review by the Administrative Law Judge may be withheld from review by the appellant or his or her representative.

1. In assistance payments, Colorado Works Program and medical assistance eligibility appeals, the Administrative Law Judge has twenty (20) calendar days from the hearing date to arrive at an initial decision. The initial decision shall not be implemented pending review by the Office of Appeals and entry of a final agency decision. All agency decisions on these appeals shall be made within ninety (90) calendar days from the date the request for hearing is received.

2. In all other appeals, the Administrative Law Judge shall arrive at an initial decision (which is not to be implemented) within a reasonable timeframe. All final agency decisions on those matters shall also be made within a reasonable period of time.
3. Once the initial decision has been made, it shall immediately be delivered to the Colorado Department of Human Services, Office of Appeals, for determination of the final agency decision.

#### E. County Responsibilities

When the applicant/recipient has had a local dispute resolution conference and wishes to appeal the county department's decision, the following procedures are to be followed:

1. As part of the local conference the applicant or recipient is informed that if he or she wishes to appeal to the Office of Administrative Courts for a hearing, the county department shall assist in organizing the facts supporting the appellant/recipient's claim, if he or she so desires, and that he or she may have the opportunity to examine materials as described in the Section 3.609.9;
2. The county department shall forward a copy of the decision and a copy of the written notification given to the applicant or recipient of the proposed adverse action to the Office of Administrative Courts.
3. When the applicant or recipient makes his or her appeal directly to the Office of Administrative Courts, a copy of the notice to the appellant setting a date for the hearing is forwarded to the county department. Upon receipt by the county department, the county department shall prepare and mails a letter to the appellant with a copy to the Office of Administrative Courts, no later than five (5) business days prior to the hearing, giving the following information:
  - a. The reasons for the decision of the county department and specific explanation of each factor involved, such as the amount of excess property or income, assignment or transfer of property, residence factors, service needs;
  - b. The specific state rules and/or the official written county policies governing the Colorado Works Program on which the decision is based and numeric reference to each such rule, including the appropriate Code of Colorado Regulations (CCR) cites;
  - c. Notice that the county department will assist him or her in organizing the facts supporting his or her claim, if he or she so desires, and that he or she may have the opportunity to examine rules and other materials to be used at the hearing concerning the basis of the county decision.
4. If the dispute concerns Colorado Works Program services or benefits, the county shall forward a copy of the county's official written policy(s) to the Office of Administrative Courts. If the appellant indicates that he or she desires to withdraw the appeal, a statement to that effect shall be obtained from him or her in writing and forwarded to the Office of

Administrative Courts. The county department shall also advise the Office of Administrative Courts by telephone, as soon as it is ascertained that the appeal has been withdrawn and that the appellant will not attend the hearing.

5. If an individual who files an appeal is to be represented by legal counsel or other department representative, at the pending hearing, the county department will not discuss with the individual the merits of the appeal or the question of whether or not to proceed with it unless in the presence of, or with the permission of, such counsel or such other designated representative.
6. If the county department learns that legal counsel will represent the applicant or recipient, the county department shall make every effort to ensure that it too is represented by an attorney at the hearing. The county department may be represented by an attorney in any other appeal that it considers such representation desirable.
7. If the appellant has a language difficulty, the county department shall arrange to have present at the hearing a qualified interpreter who will be sworn to translate correctly.
8. The fact that an appellant and the county department have been notified that a hearing will be held does not prevent the county department from reviewing the case and considering any new factors which might change the status of the case, taking such action as may be indicated to reverse its decision or otherwise settle the issue. Any change, which results in a voiding of the cause of appeal, shall be immediately reported to the Office of Administrative Courts by telephone.
9. Upon receipt of notice of a State hearing on an appeal, the county department shall arrange for a suitable hearing room appropriate to accommodate the number of persons, including witnesses, who are expected to be in attendance, taking into consideration such factors as privacy; absence of distracting noise; need for table, chairs, electrical outlet, adequate lighting and ventilation, and conference telephone facilities.

#### F. Conduct of State Hearings

Conference telephonic hearings may be conducted unless otherwise requested by any of the parties, as an alternative to face-to-face hearings. All applicable provisions of the face-to-face hearings procedures will apply, such as the right to be represented by counsel, the right to examine and cross-examine witnesses, the right to examine the contents of the case file, and the right to have the hearing conducted at a reasonable time and date.

1. The Administrative Law Judge shall conduct the hearings in accordance with the Colorado Administrative Procedure Act (Section 24-4-105, C.R.S.).
2. The county department shall have the burden of proof, by a preponderance of the evidence, to establish the basis of the ruling being appealed. Every party to the proceeding shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements,

where a hearing will be expedited and the interests of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.

#### G. Procedure of Hearing

1. The following provisions govern the procedure at state hearings before the Administrative Law Judge:
  - a. The hearing is private; however, any person or persons whom the appellant wishes to appear for or with him or her may be present, and, if requested by the appellant and in the record, such hearing may be public;
  - b. The purpose of the hearing is to determine the pertinent facts in order to arrive at a fair and equitable decision in accordance with the rules of the State Department. In arriving at a decision, only the evidence and testimony introduced at the hearing is considered, except that the Administrative Law Judge may permit the introduction of medical or other evidence after the hearing, provided the opposing party is also furnished a copy and is afforded the opportunity to controvert or otherwise respond to such evidence, in circumstances when it is shown, at the hearing, that such evidence could not, for good cause, be obtained in time for the hearing. Delays in rendering the Initial Decision will be charged to the party requesting the delay;
  - c. Although the hearing is conducted on an informal basis and an effort is made to place all the parties at ease, it is essential that the evidence be presented in an orderly manner so as to result in an adequate record;
  - d. A complete and exact record of the proceedings shall be made by electronic or other means. When required, the Office of Administrative Courts shall cause the proceedings to be transcribed.
2. When the Administrative Law Judge dismisses an appeal for reasons other than failure to appear, the decision of the Administrative Law Judge shall be an initial decision, which shall not be implemented pending review by the Office of Appeals and entry of an agency decision.
3. The Administrative Law Judge shall not enter a default against any party for failure to file a written answer in response to the notice of hearing, but shall base the initial decision upon the evidence introduced at the hearing. An appellant may be granted a postponement of the hearing, however, if the county department has failed to provide the statement required by section 3.609.9, E, 3, and the appellant has therefore been unable to prepare for the hearing.
4. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and an order

of dismissal shall be entered by the Administrative Law Judge and served upon the parties by the Office of Administrative Courts. The dismissal order shall not be implemented pending review by the Office of Appeals and entry of an agency decision.

The appellant, however, shall be afforded a ten (10) calendar day period from the date the order of dismissal was mailed, during which the appellant may explain in a letter to the Administrative Law Judge the reason for his or her failure to appear. If the Administrative Law Judge then finds that there was acceptable good cause for the appellant not appearing, the Administrative Law Judge shall vacate the order dismissing the appeal and reschedule another hearing date.

If the appellant does not submit a letter seeking to show good cause within the ten (10) day period, the order of dismissal shall be filed with the Office of Appeals of the State Department. The Office of Appeals shall confirm the dismissal of the appeal by an agency decision, which shall be served upon the parties. The county department shall carry out the necessary actions within ten (10) calendar days to provide assistance or services in the correct amount, to terminate assistance or services, to recover assistance incorrectly paid, and/or other appropriate actions in accordance with the rules. If the appellant submits a letter seeking to show good cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, the Administrative Law Judge shall enter an initial decision confirming the dismissal. The appellant may file exceptions to the initial decision pursuant to Section 3.609.92, B.

### 3.609.92 Decision and Notification [Rev. eff. 9/15/12]

#### A. Initial Decision

Following the conclusion of the hearing, the Administrative Law Judge shall promptly prepare and issue an initial decision and file it with the Colorado Department of Human Services, Office of Appeals.

The initial decision shall make an initial determination whether the county or State Department or its agent acted in accordance with, and/or properly interpreted, the rules of the State Department and/or the official written policies of the county board of social services for administering the Colorado Works Program.

The Administrative Law Judge has no jurisdiction or authority to determine issues of constitutionality or legality of Departmental rules or county policy governing the county's Colorado Works Program.

The initial decision shall advise the applicant/recipient that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency decision, which affirms those provisions.

The Office of Appeals shall promptly serve the initial decision upon each party by first class mail, and shall transmit a copy of the decision to the division of the State Department, which administers the program(s) pertinent to the appeal.

The initial decision shall not be implemented pending review by the Office of Appeals and entry of an agency decision.



## B. Review by the Office of Appeals

The State Department, Office of Appeals, as the designee of the Executive Director, shall review the initial decision of the Administrative Law Judge and shall enter a final agency decision affirming, modifying, reversing, or remanding the initial decision. Any party seeking an agency decision which reverses, modifies, or remands the initial decision of the Administrative Law Judge shall file exceptions to the decision with the State Department, Office of Appeals, within fifteen (15) days (plus three days for mailing) from the date the initial decision is mailed to the parties. Exceptions must state specific grounds for reversal, modification or remand of the initial decision.

If the party asserts that the Administrative Law Judge's findings of fact are not supported by the weight of the evidence, the party shall simultaneously with or prior to the filing of exceptions request the Office of Administrative Courts to cause a transcript of all or a portion of the hearing to be prepared and filed with the Office of Appeals. The exceptions shall state that a transcript has been requested, if applicable. Within five (5) days of the request for transcript, the party requesting it shall advance the cost therefore to the transcriber designated by the Office of Administrative Courts unless the transcriber waives prior payment.

A party who is indigent and unable to pay the cost of a transcript may file a written request, which need not be sworn, with the Office of Appeals for permission to submit a copy of the hearing recording instead of the transcript. If submission of a tape is permitted, the party filing exceptions must promptly request a copy of the recording from the Office of Administrative Courts and deliver it to the Office of Appeals. Payment in advance shall be required for the preparation of a copy of the tape. If the exceptions do not challenge the findings of fact, but instead assert only that the Administrative Law Judge improperly interpreted or applied State rules or statutes, the party filing exceptions is not required to provide a transcript or recording to the Office of Appeals.

The Office of Appeals shall serve a copy of the exceptions on each party by first class mail. Each party shall be limited to ten (10) calendar days from the date exceptions are mailed to the parties in which to file a written response to such exceptions. The Office of Appeals shall not permit oral argument.

The Office of Appeals shall not consider evidence, which was not part of the record before the Administrative Law Judge. However, the case may be remanded to the Administrative Law Judge for rehearing if a party establishes in its exceptions that material evidence has been discovered which the party could not with reasonable diligence have produced at the hearing.

1. While review of the initial decision is pending before the Office of Appeals, the record on review, including any transcript or recording of testimony filed with the Office of Appeals, shall be available for examination by any party at the Office of Appeals during regular business hours.
2. The State Department's division(s) responsible for administering the program(s) relevant to the appeal may file exceptions to the initial decision, or respond to exceptions filed by a party, even though the division has not previously appeared as a party to the appeal. The division's exceptions or responses must be filed in compliance with the requirements of 3.850.72, A. Exceptions filed by a division that did not appear as a party at the hearing shall be treated as requesting review of the initial decision upon the State Department's own motion.
3. In the absence of exceptions filed by any party or by a division of the State Department of Human Services, the Office of Appeals shall review the initial

decision, and may review the hearing file of the Administrative Law Judge and/or the recorded testimony of witnesses, before entering a final agency decision. Review by the Office of Appeals shall determine whether the decision properly interprets and applies the rules of the State Department, or relevant statutes, and whether the findings of fact and conclusions of law support the decision. If a party or division of the State Department objects to the agency decision entered upon review by the Office of Appeals, the party or division may seek reconsideration pursuant to "C" , below.

4. The Office of Appeals shall mail copies of the final agency decision to all parties by First Class mail.
5. For purposes of requesting judicial review, the effective date of the final agency decision shall be the third day after the date the decision is mailed to the parties, even if the third day falls on Saturday, Sunday, or a legal holiday. The parties shall be advised of this in the agency decision.
6. The state or county department shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The department shall comply with the decision even if reconsideration is requested, unless the effective date of the agency decision is postponed by order of the Office of Appeals or a reviewing court.

#### C. Reconsideration of Agency Decision

A motion for reconsideration of a final agency decision may be granted by the Office of Appeals for the following reasons:

1. Upon a showing of good cause for failure to file exceptions to the initial decision within the fifteen (15) day period allowed by section 3.609.92; or,
2. Upon a showing that the agency decision is based upon a clear or plain error of fact or law. An error of law means failure by the Office of Appeals to follow a rule, statute, or court decision, which controls the outcome of the appeal.

No motion for reconsideration shall be granted unless it is filed in writing with the Office of Appeals within fifteen (15) days of the date that the agency decision is mailed to the parties. The motion must state specific grounds for reconsideration of the agency decision.

The Office of Appeals shall mail a copy of the motion for reconsideration to each party of record and to the appropriate division of the State Department.

#### D. Incorrect Action

When an appeal decision is that an action of the county or State Department was not in accordance with rules of the department, or when the county or State Department so determines after a request for a hearing is made, the adjustment or corrective payment is made retroactively to the date of the incorrect action.

#### E. Right to Judicial Review

The applicant/recipient is to be fully informed by the final agency decision of his further right to apply for judicial review of the Agency Decision by the filing of an action for review in the appropriate State District Court. Any such action must be filed in accordance with

the Rules of Civil Procedure for Courts of Record in Colorado within thirty (30) days after the Final Agency Decision becomes effective.

F. Decision of Appeal

The State Department will establish and maintain a method for informing, in summary and depersonalized form, all county departments and other interested persons concerning the issues raised and decisions made on appeals.

G. Order of the Executive Director or Designee

The Executive Director or designee shall have the power to enter declaratory orders. The Executive Director or designee may, in his or her discretion, entertain and dispose of petitions within thirty (30) calendar days for declaratory orders to terminate controversies and/or remove uncertainties as to the applicability to the petitioners of any statutory provisions or of any rule. The order of the Executive Director or designee disposing of the petition shall constitute final agency action subject to judicial review.

3.609.93 Group Hearings and Exceptions [Rev. eff. 9/15/12]

A. Group Hearing

When a number of individual requests for hearing are received and if the sole issue involved is one of state or federal law or changes in state or federal law, a single group hearing may be conducted. In all group hearings, the policies governing hearings must be followed. Each individual shall be permitted to present his own case or be represented by his authorized representative and is entitled to receive a copy of the written decision.

B. Automatic Benefit Adjustment

A hearing shall not be granted when either state or federal law requires an automatic benefit adjustment for classes of recipients unless the sole reason for an individual appeal is incorrect benefit computation. Furthermore, a hearing shall not be granted when either state or federal law requires or results in a reduction or deletion of a medical benefit.

3.609.94 Protections to the Individual [Rev. eff. 9/15/12]

A. Confidentiality

All information obtained by the county department concerning an applicant for or a recipient of assistance payments is confidential information. This is to prevent exploitation of applicants and recipients, to eliminate embarrassment to them, and is in recognition of their rights as self-determining individuals who are not limited because of their need for assistance.

1. The county department shall acquaint county officials and other persons who have dealings with the department as to the confidential nature of information, which may come into their possession through transaction of department business.

When a technician consults a bank, former employer of an applicant, another social agency, etc., to obtain information or eligibility verification information, the identification of the technician as an employee of the county department will, in itself, disclose that an application for assistance has been made by an individual. In this type of contact, as well as other community contacts, the department shall

strive to maintain confidentiality whenever possible.

2. Interviewing privacy and information confidentiality are essential. This involves both office facilities and technician discretion. Office procedures and facilities should be such that information is not inadvertently revealed to persons not concerned with the affairs of a particular individual. The technician must also use discretion in mentioning department business outside the office.

#### B. Information that is Not Confidential

1. General information not identified with any individual is not confidential and may be released for any purpose. This includes:
  - a. Total expenditures;
  - b. Number of recipients;
  - c. Statistical data obtained from studies;
  - d. Social data obtained from studies, reports, or surveys.
2. Newspapers may publish information not deemed confidential. This includes:
  - a. Expenditures by category of assistance;
  - b. Expenditures for administration;
  - c. Salaries paid employees;
  - d. Sum of all department expenditures.

#### C. Confidential Information

1. Information secured by the county department for the purpose of conducting the administration of the assistance payments programs; e.g., determining eligibility and need is deemed confidential.
2. Unless disclosure is specifically permitted by the State Department, the following types of information are the exclusive property of and are restricted to use by the state, and county departments:
  - a. Names and addresses of applicants for and recipients of assistance, and/or the amounts of assistance;
  - b. Information contained in applications, reports of medical examinations, correspondence, and other information concerning any person from whom, or about whom, information is obtained by the county department;
  - c. Records of state or county departmental evaluations of the above information.
  - d. All information obtained through the Income and Eligibility Verification System (IEVS).

#### D. Disclosure of Confidential Information

1. No one outside the county department shall have access to records of the department except for individuals executing Income and Eligibility Verification System (IEVS); Child Support Enforcement officials; federal and state auditors and private auditors for the county; and the applicant/recipient of public assistance. These individuals shall have access only for purposes necessary for the administration of the program. The following individuals shall have access to the records of the department if one of the following conditions is met:
  - a. The applicant or recipient is notified and his or her prior permission for release of information is obtained unless the information is to be used to verify income, eligibility or the amount of medical assistance payment under administration of the Income and Eligibility Verification System (IEVS). If, because of an emergency situation in which the applicant/recipient is physically or mentally incapacitated to the extent that he or she cannot sign the release form, and time does not permit obtaining an applicant's or recipient's consent prior to release of information, the county department must notify the applicant or recipient within 10+1 calendar days after supplying the information.

The notification shall include the name and address of the agency which requested the information, the reason the information was requested and a summary of the information released. If the applicant or recipient does not have a telephone or cannot be contacted within 10+1 calendar days, the county department must send written notification containing the required information within three (3) working days from the date the information was released.
  - b. A District Attorney requests information for the purpose of either prosecution for fraud or tracing a parent who has deserted a child.
  - c. Verified information obtained from the Internal Revenue Service through the Income and Eligibility Verification System may be provided only to persons or agencies directly connected with the administration of the Child Support Enforcement program (if administered by an agency outside of the county department), Department of Labor and Employment, the Social Security Administration and other agencies in the state when necessary for the administration of the AFDC, Medicaid, Food Assistance or other state or federally funded means tested assistance programs, or the unemployment insurance program. County departments shall not release information regarding applicants or recipients to law enforcement agencies unless a search warrant is received by the county department.
  - d. Upon request to the State Department by the Colorado Bureau of Investigation, with the responsibility for location and apprehension of fugitive felons (i.e., a person with an outstanding felony arrest warrant), the addresses of a fugitive felon who is a recipient of OAP, AND, AB, or AFDC shall be released.
2. The applicant/recipient shall have an opportunity to examine such pertinent records concerning him or her as constitute a basis for adverse action and in the case of a county evidentiary hearing or a State appeal. Other requests for information shall be honored only when the individual makes the request in person and his or her identity is verified or the request is in the form of a written, signed, notarized statement.

The applicant/recipient may designate an individual, firm, or agency to represent him at conferences, hearings, and appeals. The representative shall be designated by the completion of Form IM-I7, "Designation of Representative." The representative shall have access to all pertinent records.

3. Information concerning applicants for or recipients of assistance may be released to District Attorneys or County Commissioners upon presentation of a written request accompanied by evidence that a fraud or deserting parent situation is the reason for the request.

The release is strictly conditioned upon the information being used solely for one of the two purposes authorized and the person requesting the information must certify the use to be made of the information and that it will not be disclosed or used for any other purpose. No certification shall be required of the county board of social services when its members are acting in their official capacity in social services programs administration.

4. The applicant/recipient may give a formal written release for disclosure of information to other agencies, such as hospitals; advocate agencies or the permission may be implied by the action of the other agency in rendering service to him or her. Before information is released, the county department should be reasonably sure the confidential nature of information will be preserved, the information will be used only for purposes related to the function of the inquiring agency, and the standards of protection established by the inquiring agency are equal to those established by the State Department. If the standards for protection of information are unknown, a written consent from the recipient shall be obtained.

5. Information provided to agencies and/ or individuals must be limited to the specific information required to determine eligibility, conduct ongoing case management, or otherwise necessary for the administration of the Colorado Works program. Information obtained through the Income and Eligibility Verification System (IEVS) will be stored and processed so that no unauthorized personnel can acquire or retrieve the information. County departments are responsible for limiting IEVS data to only those individuals requiring access to determine eligibility or otherwise administer the programs.

All persons with access to information obtained pursuant to the Income and Eligibility Verification requirements will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

6. The name of a recipient is not given to a group or individual sponsoring Christmas or other holiday projects without first obtaining the recipient's permission to participate in such a project. In most cases, plans may be worked out by which recipients may benefit by the projects without violation of the confidential nature of records.
7. Case records shall not be available to volunteer workers for reading. Selected case information will be available to a volunteer only if such information is determined necessary by the volunteer's supervisor.
8. When a County Commissioner or a District Attorney needs information about a recipient that is not in the possession of the county department, the requestor, with the aid of the department, contacts the State Department, as to the appropriate methods of securing it.

9. Upon request of the county board, county directors, State Department, or District Attorney of the State, the county department shall supply all information on hand regarding a noncustodial parent including but not limited to location, employment, income, and property. This information shall be used only in enforcing the noncustodial parent's support liability or for the prosecution of such persons and shall not be used for any other purpose.

3.609.95 Protection Against Discrimination [Rev. eff. 4/1/13]

- A. County departments are to administer assistance programs in such a manner that no person will, on the basis of race, color, gender, age, religious belief, political affiliation, national origin, or physical or mental disability, be excluded from participation, be denied any aid, care, services, or other benefits of, or be otherwise subjected to discrimination in such program.
- B. The county department shall not, directly or through contractual or other arrangements, on the grounds of race, color, gender, age, religious belief, political affiliation, national origin, or disability:
  1. Provide any aid, care, services, or other benefits to an individual which is different, or is provided in a different manner, from that provided to others;
  2. Subject an individual to segregation barriers or separate treatment in any manner related to access to or receipt of assistance, care services, or other benefits;
  3. Restrict an individual in any way in the enjoyment or any advantage or privilege enjoyed by others receiving aid, care, services, or other benefits provided under assistance programs;
  4. Treat an individual differently from others in determining whether he or she satisfies any eligibility or other requirements or conditions which individuals must meet in order to receive aid, care, services, or other benefits provided under assistance programs;
  5. Deny an individual an opportunity to participate in programs of assistance through the provision of services or otherwise, or afford him or her an opportunity to do so which is different from that afforded others under programs of assistance.
  6. Deny a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.
- C. The references to "aid, care, services or other benefits" includes all forms of assistance, including direct and vendor payments, work programs, social services, and information and referral services.
- D. No distinction on the grounds of race, color, sex, age, religion, political belief, national origin, or disability is permitted in relation to the use of physical facilities, intake and application procedures, caseload assignments, determination of eligibility, and the amount and type of benefits extended by the county department to assistance recipients.
- E. The county department shall assure that other agencies, persons, contractors and other entities with which it does business are in compliance with the above prohibition of discrimination requirements on a continuing basis. The county department staff is responsible for being alert of any discriminatory activity of other agencies and for notifying the State Department concerning the situation.

- F. The State Department, through its various contacts with agencies, persons, and referral sources, will be continuously alert to discriminatory activity and will take appropriate action to assure compliance by the offender. If corrective action is not taken, the State Department will notify the agency of termination of payments and association in regard to recipients or applicants. The county department, on notification by the State Department, will also terminate payments to or association with any agency, person, or resource being used which has been found to continue discriminatory activity in regard to applicants or recipients.
- G. An individual who believes he or she is being discriminated against may file a complaint with the county department, the State Department, or directly with the federal government. When a complaint is filed with the county department, the county director is responsible for an immediate investigation of the matter and taking necessary corrective action to eliminate any discriminatory activities found. If such activities are not found, the individual is given an explanation. If the person is not satisfied, he or she is requested to direct his or her complaint, in writing, to the State Department, Complaint Section, which will be responsible for further investigation and other necessary action consistent with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act (ADA), the Age Discrimination Act of 1975, incorporated herein by reference. This rule does not contain any later amendments or editions of those parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Colorado Works, 1575 Sherman, Denver, Colorado 80203, or at any state publication depository library. The State Department will also carry out these activities in regard to a complaint received directly from an individual.
- H. Upon receipt of a complaint alleging discrimination due to race, color, sex, age, religion, political belief, national origin, or disability, the State Department shall explain public assistance policy to the individual. If there is insufficient information as to the nature or other detail concerning the complaint, the State Department shall contact the county department in writing to obtain such information. Copies of the letter shall be sent to the complainant and field administrator. The county department shall reply in writing.

If the State Department determines the county department action is not discriminatory and the applicant/recipient disagrees, the applicant/recipient has the right to appeal the case to the State Department. This appeal shall be filed in accordance with the appeal rules as described in the "Protections to the Individual", Section 3.609.94.

If it is found that a county department practice or action is discriminatory, the State Department shall initiate a corrective action to assure that any and all discriminatory practices are permanently terminated.

### 3.609.96 Additional Programs and Services

#### 3.609.961 Optional Noncustodial Parent Programs [Rev. eff. 9/15/12]

A county may provide services under the Colorado Works Program to a noncustodial parent (as defined in Section 3.601), in accordance with the county's policy. A noncustodial parent shall not be eligible to receive basic cash assistance under the program.

- A. Such services provided to a noncustodial parent shall be intended to promote the sustainable employment of the noncustodial parent and enable such parent to pay child support.
- B. Provision of such services shall not negatively impact the custodial parent's eligibility



for benefits or services.

C. Any services offered to a noncustodial parent shall be based on the county's review of:

1. The noncustodial parent's request for services; and,
2. The county's assessment of the noncustodial parent's needs.

D. All services offered to a noncustodial parent shall be outlined in an Individual Responsibility Contract entered into by the county and the noncustodial parent.

E. Services may include, but are not limited to, parenting skills, mediation, workforce development, job training activities, job search, and county diversion.

**3.609.962 Options for Including Drug and Alcohol Treatment as a Benefit Under the IRC [Rev. eff. 9/15/12]**

When an assessment and rehabilitation plan is developed by a certified drug or alcohol treatment provider, a county department may require a participant to participate in a drug or alcohol abuse control program purchased by the county and incorporate those requirements into a participant's Individual Responsibility Contract. The participant's Individual Responsibility Contract may include, but is not limited to, the following:

- A. Random drug and alcohol testing.
- B. Drug or alcohol treatment or other rehabilitation activities.

If a participant does not follow his or her rehabilitation plan, tests positive on a random test, or refuses to participate in drug and alcohol testing, the county department may impose a sanction for not participating in a work activity.

Sanctions for failure to participate cannot be imposed if transportation or child care is available, if services required are not available, or if the costs of the services are prohibitive as determined by the county.

**3.639 STATEWIDE STRATEGIC USE FUND [Eff. 04/01/2009]**

**3.639.1 PURPOSE**

The Statewide Strategic Use Fund (SSUF) is intended to support strategic initiatives that will address the purposes of the Temporary Assistance for Needy Families (TANF) program and are delivered on behalf of Colorado's TANF eligible population. SSUF funding is contingent upon an annual legislative appropriation. SSUF funds shall be used for projects and initiatives that:

- A. Address at least one of the four purposes of the Colorado Works Program, as specified in Section 26-2-705, C.R.S.; and,
- B. Either have demonstrated effectiveness in achieving, or represent an innovative approach that is likely to achieve, one or more of the following goals:
  1. Enhancing the long term self-sufficiency of eligible, low-income Colorado families;
  2. Reducing the number of children and families living in poverty;

3. Strengthening families who are living in poverty; or,
4. Increasing the participation of Colorado Works participants in meaningful work activities.

#### 3.639.11 Entities Eligible for SSUF Funds

Entities eligible to receive allocations from the SSUF include:

- A. County departments of social/human services; and,
- B. Nonprofits or not-for profits; and,
- C. State agencies; and,
- D. Other entities specified by State Board.

#### 3.639.12 Application Process [Rev. eff. 5/16/10]

No eligible entity will receive an allocation from the SSUF unless that entity has successfully complied with the application process.

#### 3.639.13 Application Process for SSUF Grants [Eff. 5/16/10]

The application process for SSUF grants shall:

- A. Establish and announce an application release and due date; and,
- B. Require that the submitted applications be a complete document; and,
- C. Require that the submitted application must be received by the State Department on or before the date specified as due for review by the Strategic Allocation Committee (SAC); and,
- D. Establish and provide for a technical assistance forum, including the ability to submit questions and receive answers from the Colorado Works Program staff; and,
- E. Require that all applications be reviewed by the Strategic Allocation Committee (SAC); and,
- F. Require that each entity submitting an application receive a response regarding the decision of the Executive Director.

#### 3.639.14 Reporting Requirement [Rev. eff. 5/16/10]

Eligible entities or group of entities receiving allocations from the SSUF shall report at least annually to the State Department and the SAC on their progress. The State Department, in consultation with SAC, shall:

- A. Regularly review entities' implementation of their respective initiatives; and,
- B. Report to the State Board of Human Services on an annual basis.

### **3.639.2 STRATEGIC ALLOCATION COMMITTEE'S CHARGE**

The Strategic Allocation Committee (SAC) is charged with making recommendations to the Executive Director of the Colorado Department of Human Services (CDHS) regarding allocations from the Statewide

Strategic Use Fund (SSUF). The Committee will also advise the Executive Director regarding the criteria and procedures by which the allocations are made.

#### 3.639.21 Grant Recommendations

- A. The SAC shall review all applications received that meet the minimum qualifications as specified in Section 3.639.12 and make recommendations to the Executive Director for allocations from the Statewide Strategic Use Fund, within available appropriations. Each recommendation by the SAC shall require the approval of at least nine of the committee members.
- B. The Executive Director of the Colorado Department of Human Services may approve or not approve the recommendations of the Strategic Allocation Committee for allocation by the State Department of moneys in the Statewide Strategic Use Fund.

#### 3.639.22 Denial of Grant Recommendation

- A. If the Executive Director does not approve a recommendation for approval from the Strategic Allocation Committee, the Committee may submit the recommendation to the State Board of Human Services for action.
- B. If the State Board approves the recommendation, the State Department shall allocate the moneys as recommended by the SAC.

---

#### Editor's Notes

Primary sections of 9 CCR 2503-1 have been recodified effective 09/15/2012. See list below. Versions and rule history prior to 09/15/2012 can be found in 9 CCR 2503-1. Prior versions can be accessed from the History link located above the rule text.

Rule section 3.000 – 3.100, et seq. has been recodified as 9 CCR 2503-1, GENERAL RULES.

Rule section 3.200, et seq. has been recodified as 9 CCR 2503-2, GENERAL FINANCIAL ELIGIBILITY CRITERIA.

Rule section 3.300, et seq. has been recodified as 9 CCR 2503-3, OLD AGE PENSION.

Rule section 3.400, et seq. has been recodified as 9 CCR 2503-4, AID TO THE NEEDY DISABLED AND AID TO THE BLIND.

Rule section 3.500, et seq. has been recodified as 9 CCR 2503-5, (Reserved for Future Use).

Rule section 3.600, et seq. has been recodified as 9 CCR 2503-6, COLORADO WORKS PROGRAM.

Rule section 3.700, et seq. has been recodified as 9 CCR 2503-7, OTHER ASSISTANCE PROGRAMS.

Rule section 3.800, et seq. has been recodified as 9 CCR 2503-8, ADMINISTRATIVE PROCEDURES.

Rule section 3.900, et seq. has been recodified as 9 CCR 2503-9, COLORADO CHILD CARE ASSISTANCE PROGRAM.

**History**

Sections 3.600 – 3.609 eff. 09/15/2012. Sections 3.610 – 3.638 repealed eff. 09/15/2012.

Sections 3.600.1, 3.604.1, 3.605.3, 3.606.6, 3.608.4, 3.609.95 eff. 04/01/2013.

Sections 3.602.1.E, 3.602.1.I, 3.604.2, 3.605.3.D, 3.605.3.E.1, 3.605.3.E.2, 3.606.1 – 3.606.3, 3.606.4.A, 3.606.4.B, 3.606.4.F – G, 3.606.4.L, 3.608.4.H.1 – 3.608.4.H.4, 3.608.4.I – 3.608.4.J, 3.609.1.A.1 – 3.609.1.A.2 eff. 07/01/2013.