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| Title of Proposed Rule: | Lawful Presence for Foster Homes | |
| CDHS Tracking #: | 22-09-27-01 | |
| Office, Division, & Program: | Rule Author: | Phone: 303.801.8681 |
| OCYF, DCW | Cheryl Estrick | Email: cheryl.estrick@state.co.us |

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

The Office of Children Youth and Families (OCYF) coordinates Colorado's foster care system, in which foster parents provide a safe, temporary home for children and youth whose parents or caregivers are unable to care for them. The rules for child care facilities currently require applicants for licenses for child care facilities to provide proof of lawful presence in the United States with the application. OCYF requested the Attorney General's Office reexamine the requirement that a foster parent be legally/lawfully present after reviewing information from the Children's Bureau's Child Welfare Policy, Colorado Revised Statutes Title 24, and the repeal of previous language in Colorado statute. On September 22, 2022 the Assistant Attorney General issued a Memorandum concluding that Colorado law prohibits the consideration of lawful presence when determining eligibility to receive state or local public benefits, unless a determination is required by federal law. Colorado law no longer requires those receiving state and local public benefits to be lawfully present and the federal government considers the payment made to a foster parent to be a benefit to the child and not the foster parent. The Department is revising the rule to align with federal and state laws.

State Board Authority for Rule:

| Code | Description |
|-------------------------------|---|
| 26-1-107(5)(b), C.R.S. (2022) | State Board to promulgate rules for programs administered and services provided by the state department |
| 26-1-109(1), C.R.S. (2022) | State department rules to coordinate with federal programs |

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

| Code | Description |
|----------------------------|---|
| 26-6-909(1), C.R.S. (2022) | State Department board to promulgate rules for child care facility licensing |
| 24-76.5-103, C.R.S. (2022) | Verification of lawful presence is prohibited as an eligibility requirement for State benefits |
| 8 U.S.C. 1621(d) | A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit. |

| | | | | |
|--|--------------------------|-----|-------------------------------------|----|
| Does the rule incorporate material by reference? | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| Does this rule repeat language found in statute? | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
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| If yes, please explain. | | | | |

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

County departments of human/social services; licensed child placement agencies; certified family foster care applicants and providers.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

It is anticipated the rule change will allow more people to apply to become certified foster parents and will increase the availability of certified family foster homes for both county departments of human services and licensed child placement agencies.

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.

No fiscal impact is anticipated.

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

No fiscal impact is anticipated.

County Fiscal Impact:

No fiscal impact is anticipated.

Federal Fiscal Impact

No fiscal impact is anticipated.

Other Fiscal Impact (such as providers, local governments, etc.)

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

SB 21-077 and SB 21-199; Children’s Bureau’s Child Welfare Policy

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5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative.

No other alternatives are available at this time. There is no alternative because as of July 1, 2022, section 24-76.5-103, C.R.S. (2022) prohibits lawful presence as a requirement for State or local benefits programs. The rule for applicants for child care facilities currently requires proof of lawful presence so the rule needs to be updated in order to comply with the law.

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

| Rule section Number | Issue | Old Language | New Language or Response | Public Comment No / Detail |
|---------------------|---|--|---|----------------------------|
| 7.701.31, A | Delete lawful presence affidavit no longer required. | A completed original application accompanied by the appropriate fee and proof of lawful presence in the United States (see Section 3.140.11) must be submitted to the State Department a minimum of sixty (60) days prior to the proposed opening date for the facility. For 24-hour agencies or facilities, the addendum with specific requirements must be completed and submitted with the application. | A completed original application accompanied by the appropriate fee and proof of lawful presence in the United States (see Section 3.140.11) must be submitted to the State Department a minimum of sixty (60) days prior to the proposed opening date for the facility. For 24-hour agencies or facilities, the addendum with specific requirements must be completed and submitted with the application. | None |
| 7.710.33, A, 5 | Add federal tax or social security number requirement | None | Any application accepted by the CPA from an individual(s) or couple who | |

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| | for foster care provider applicants | | <p>wishes to be certified to operate a foster care home shall be on the Department approved form and shall include:</p> <ol style="list-style-type: none"> 1. The names and addresses of child placement agencies and county departments of social services that had previously certified the applicant. Information as to whether the applicant has been licensed or certified for child care in the past or is licensed or certified for child care at the time of the application, what agency issued the certificate or license, and the type of child care the license or certificate authorizes. 2. Information about an applicant or individual living in the proposed foster care home who has been convicted of a felony or charged or convicted of child abuse or an unlawful sexual offense. 3. Information about whether the applicant is currently licensed by the State Department to provide day care. | |
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| | | | <p>4. Include a statement on the application for certification as a foster care home that states: "Any applicant who knowingly or willfully makes a false statement of any material fact or thing in this application is guilty of perjury in the second (2nd) degree as defined in Section 18-8-503, C.R.S., and, upon conviction thereof, shall be punished accordingly.</p> <p>5. THE SOCIAL SECURITY NUMBER OR INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER ISSUED BY THE FEDERAL GOVERNMENT FOR EACH APPLICANT.</p> | |
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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

Division of Child Welfare Permanency Unit

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

None

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

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| Name of Sub-PAC | | | |
| Date presented | | | |
| What issues were raised? | | | |
| Vote Count | <i>For</i> | <i>Against</i> | <i>Abstain</i> |
| | | | |
| If not presented, explain why. | This rule is specific to Child Placement Agencies | | |

PAC

Have these rules been approved by PAC?

Yes No

| | | | |
|--------------------------------|---|----------------|----------------|
| Date presented | | | |
| What issues were raised? | | | |
| Vote Count | <i>For</i> | <i>Against</i> | <i>Abstain</i> |
| | | | |
| If not presented, explain why. | This rule is specific to Child Placement Agencies | | |

Other Comments

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Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

7.701.3 APPLICATION PROCESS

7.701.31 Original Application

- A. A completed original application accompanied by the appropriate fee ~~and proof of lawful presence in the United States (see Section 3.140.11)~~ must be submitted to the State Department a minimum of sixty (60) days prior to the proposed opening date for the facility. For 24-hour agencies or facilities, the addendum with specific requirements must be completed and submitted with the application.
- B. A licensing evaluation will occur only after the State Department has received the complete application and appropriate fee.
- C. If a county or agency establishes and plans to sponsor a Specialized Group Facility, the governing body for the Specialized Group Facility is the licensee. A written plan for the supervision of the Specialized Group Facility must accompany the application.

7.701.32 Use of Records and Reports of Child Abuse or Neglect for Background and Employment Inquiries

- A. An operator of a licensed facility, guest child care facility as defined in Section 26-6-102(16), C.R.S., or an exempt family child care home provider must submit a request to determine if an operator, applicant for employment or current employee has been found responsible for a confirmed report of child abuse or neglect in the State Department's automated system (Trails).
- B. Foster Homes must also obtain a child abuse or neglect records check for each adult eighteen (18) years of age or older living in the home in every state where the adult has resided in the five (5) years immediately preceding the date of application.
- C. An child abuse or neglect records check is not necessary regarding out-of-state employees of a children's resident camp or school-age child care center for a camp or center that is in operation for fewer than ninety (90) calendar days; out-of-state employees operating under this exemption must be supervised at all times by a staff member who has successfully completed all background checks.
- D. The Trails child abuse or neglect records request must be made on the State prescribed form, accompanied by the required fee (for fee assessment see Section 7.000.73) within the following required time frames:
 - 1. Child care centers (less than 24-hour care), school-aged child care facilities, family child care homes, and qualified exempt providers must meet the following:
 - a. For all individuals whose activities involve the care or supervision of children or who have unsupervised access to children, requests must be submitted and successfully completed prior to caring for children or allowing unsupervised access to children.
 - 1) Individuals who have obtained a successfully completed CBI or FBI record check may care for children, for no longer than ninety (90) calendar days, while waiting for all other required background checks to be completed. The individual must be supervised at all times by an individual who has successfully completed all required background checks.

7.710.33 Application and Inspection for Certification of Foster Care Homes

- A. Any application accepted by the CPA from an individual(s) or couple who wishes to be certified to operate a foster care home shall be on the Department approved form and shall include:
1. The names and addresses of child placement agencies and county departments of social services that had previously certified the applicant. Information as to whether the applicant has been licensed or certified for child care in the past or is licensed or certified for child care at the time of the application, what agency issued the certificate or license, and the type of child care the license or certificate authorizes.
 2. Information about an applicant or individual living in the proposed foster care home who has been convicted of a felony or charged or convicted of child abuse or an unlawful sexual offense.
 3. Information about whether the applicant is currently licensed by the State Department to provide day care.
 4. Include a statement on the application for certification as a foster care home that states:

"Any applicant who knowingly or willfully makes a false statement of any material fact or thing in this application is guilty of perjury in the second (2nd) degree as defined in Section 18-8-503, C.R.S., and, upon conviction thereof, shall be punished accordingly.
 5. **THE SOCIAL SECURITY NUMBER OR INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER ISSUED BY THE FEDERAL GOVERNMENT FOR EACH APPLICANT.**
- B. No application shall knowingly be accepted from an individual who is currently certified by another county or CPA to operate a foster care home until that individual has terminated the certification by the other county or CPA, or the current certifying CPA has given written notice to the foster homes of the agency's closure.
- C. No board member, director or staff member of a CPA shall knowingly contact or recruit foster homes currently certified by another county department or CPA.
- D. A CPA must take an application from an applicant(s) before the CPA has authority to complete the family assessment, and background checks.
- E. An applicant may apply to become a dual care provider to operate a family child care home as well as a foster care home. The foster home will be certified by the CPA and the family child care home will be licensed by the Colorado Department of Human Services. Both sets of standards shall be met. The CPA will monitor the foster care standards and the State Department will monitor the family child care home standards. The CPA shall counsel the family if it believes such a situation is not in the best interest of any foster child who may be placed in the home. The CPA must approve the home to be licensed as a family child care home when the home is certified for foster care.
- F. A home that is licensed as a family child care home may only be certified for foster care for one child or for a group of siblings. A foster care home dually licensed as a family child care home shall not be certified as a host family home providing shelter to homeless youth.
- G. A CPA that has a foster/adoptive home that is certified for foster care and also licensed as a family child care home must notify the Division of Child Care when any of the following situations occur in the foster/adoptive home: