

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension

**CDHS Tracking #:** 22-08-02-02

**CCR #:** 9 CCR 2503-5

**Office, Division, & Program:** Office of Economic Support, Phone: 303-866-2751  
Division of Economic and  
Workforce Support, Adult  
Financial

**Rule Author:** Laura Sartor **E-Mail:** laura.sartor@state.co.us

**RULEMAKING PACKET**

**Type of Rule:** (complete a and b, below)

a.  Board  Executive Director

b.  Regular  Emergency

**This package is submitted to State Board Administration as:** (check all that apply)

<input type="checkbox"/> AG Initial Review	<input type="checkbox"/>	<input type="checkbox"/> Initial Board Reading	<input type="checkbox"/>	<input type="checkbox"/> AG 2 <sup>nd</sup> Review	<input checked="" type="checkbox"/>	<input type="checkbox"/> Second Board Reading / Adoption
--	--------------------------	--	--------------------------	--	-------------------------------------	--

This package contains the following types of rules: (check all that apply)

Number	
<input checked="" type="checkbox"/>	Amended Rules
<input checked="" type="checkbox"/>	New Rules
<input type="checkbox"/>	Repealed Rules
<input checked="" type="checkbox"/>	Reviewed Rules

What month is being requested for this rule to first go before the State Board? December 2022

What date is being requested for this rule to be effective? December 10, 2022

Is this date legislatively required? Yes

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director’s Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION**

Comments:

Estimated Dates:	1st Board 12/09/2022	2nd Board 01/06/2023	Effective Date 12/10/2022 (Emer) 3/2/2023 (Perm)
------------------	----------------------	----------------------	---

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension

**CDHS Tracking #:** 22-08-02-02

**CCR #:** 9 CCR 2503-5

**Office, Division, & Program:** Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

**Phone:** 303-866-2751

**Rule Author:** Laura Sartor

**E-Mail:** laura.sartor@state.co.us

**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*

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- to comply with state/federal law and/or
- to preserve public health, safety and welfare

Justification for emergency: Senate Bill 21-199 eliminated lawful presence as a requirement for state funded programs. An initial rule was passed updating Adult Financial Programs that was effective July 1, 2022. However, upon further review, additional rule updates are needed to fully comply with the legislation.

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2022)	State Board to promulgate rules

**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
26-1-109, C.R.S. (2022)	State department to coordinate with federal programs
26-1-111, C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities
24-76.5-103, C.R.S. (2022)	Verification of lawful presence is prohibited as an eligibility requirement for State benefits

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

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension  
**CDHS Tracking #:** 22-08-02-02  
**CCR #:** 9 CCR 2503-5  
Office, Division, & Program: Office of Economic Support, Phone: 303-866-2751  
Division of Economic and  
Workforce Support, Adult  
Financial  
Rule Author: Laura Sartor EMail: laura.sartor@state.co.us

**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?*

This rule change impacts all applicants for the Old Age Pension in the Adult Financial programs. Additionally, this rule change affects all county departments of human services that process applications for Adult Financial programs.

**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?*

This rule will eliminate the need for an applicant to be lawfully present in order to be eligible for the Old Age Pension in the Adult Financial programs. This change will substantially alter the eligible populations for these programs. We estimate this change will increase the number of people eligible for the Old Age Pension between 3,000 and 32,833 people. The possible increase is wide because, based on 2019 census data, 32,833 additional non-citizens are potentially eligible for OAP based on their reported income; however, no information is known about individual liquid assets, which are also considered in determining eligibility. We are estimating that about 10% of the individuals identified in census data would qualify and apply for OAP benefits.

**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. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

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)*

The cost to update CBMS is approximately \$45,172, these updates will be made within the existing pool hours.

The anticipated increase to the caseload is 3,000. Assuming these clients qualify for the full Old Age Pension, this is an increased cost of \$31,644,000. The funding for the Old Age Pension is continually appropriated. In SFY 2022-23, \$78,905,051 was formally appropriated for OAP cash assistance. Our most recent projects indicate that we think we'll spend about \$56.4 million in SFY 2022-23 based on current trends. This leaves about \$22.5 million remaining from the appropriation. Accordingly, the added costs associated with expanded eligibility could result in a possible deficit of approximately \$9.1 million. A request for additional funding may be made if the spending matches these projections.

County Fiscal Impact

Old Age Pension is a 100% State funded program and counties do not contribute to the Old Age Pension payments. There is an administrative impact on counties based on the anticipated increase of 3,000

<b>Title of Proposed Rule:</b>	Elimination of Lawful Presence for Old Age Pension	
<b>CDHS Tracking #:</b>	22-08-02-02	
<b>CCR #:</b>	9 CCR 2503-5	
<b>Office, Division, &amp; Program:</b>	Office of Economic Support, Division of Economic and Workforce Support, Adult Financial	Phone: 303-866-2751
<b>Rule Author:</b>	Laura Sartor	EMail: laura.sartor@state.co.us

cases statewide for the OAP caseload for individuals that previously did not qualify for OAP due to citizenship requirements. Specific data or estimates of the administrative impacts on counties are not available. The State will monitor the impacts to the counties and the fiscal implications.

Federal Fiscal Impact

There is no federal fiscal impact as the Old Age Pension is entirely State funded.

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

There are no additional fiscal impacts identified.

**4. Data Description**

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

Ad hoc caseload and demographic data from the statewide automated system was used. In addition, information available in the Census American Community Survey (ACS) was used to gather information on the general population.

**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. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

There is no alternative because, as of 07/01/2022, section 24-76.5-103, C.R.S. (2022) prohibits lawful presence as a requirement for State or local benefits programs. State rules for Adult Financial which currently require lawful presence, need to be updated in order to comply with the law.

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension

**CDHS Tracking #:** 22-08-02-02

**CCR #:** 9 CCR 2503-5

**Office, Division, & Program:** Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

**Phone:** 303-866-2751

**Rule Author:** Laura Sartor

**E-Mail:** laura.sartor@state.co.us

**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	Reason / Example / Best Practice	Public Comment No / Detail
3.510 DEFINITIONS	No definition for non-citizen	N/A	"NON-CITIZEN' MEANS ANY PERSON WHO IS NOT A "CITIZEN OF THE UNITED STATES".	Adding definition	
3.520.5 INTERFACE VERIFICATIONS	Includes SAVE query for OAP	Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below.  D. The county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:	Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below.  D. FOR AND ONLY ¶the county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:	Removed SAVE query requirement for OAP	
3.520.61 NON-FINANCIAL ELIGIBILITY REQUIREMENTS	Includes lawful presence as a requirement for OAP	To be eligible for Adult Financial programs, a client shall:  C. Be a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.67; and,  D. Have a valid SSN, as outlined in Section 3.520.65; and	To be eligible for Adult Financial programs, a client shall:  C. FOR AND ONLY, BBe a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.67; and,  D. FOR AND ONLY, ¶Have a valid SSN, as outlined in Section 3.520.65; and,	Eliminates lawful presence as a requirement for OAP	
3.520.65 SOCIAL SECURITY NUMBERS	Includes valid social security number	A. Each Adult Financial program client shall provide his or her SSN to the county department.  2. If a client is unable to provide their SSN, the client shall be required to apply for an SSN at the local Social Security office and provide the county department with verification of application for an SSN.  3. Refusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs.  B. The county department shall verify the client's SSN with the SSA in accordance with procedures	A. Each Adult Financial program client WHO HAS A SOCIAL SECURITY NUMBER OR IS ELIGIBLE TO OBTAIN A (SSN) shall provide his or her SSN to the county department.  2. If a client is unable to provide their SSN, the client shall be required to apply for an SSN at the local Social Security office and provide the	Eliminates social security number requirement for OAP	

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension

**CDHS Tracking #:** 22-08-02-02

**CCR #:** 9 CCR 2503-5

**Office, Division, & Program:** Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

**Phone:** 303-866-2751

**Rule Author:** Laura Sartor

**E-Mail:** laura.sartor@state.co.us

		<p>established by the State Department for the SVES.</p> <p>3. If the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.</p>	<p>county department with verification of application for an SSN. THIS REQUIREMENT DOES NOT APPLY TO OAP CLIENTS WHO ARE NON-CITIZENS OR QUALIFIED NON-CITIZENS.</p> <p>3. WHEN A CLIENT IS ELIGIBLE FOR A SSN, Refusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs.</p> <p>B. The county department shall verify the client's SSN with the SSA in accordance with procedures established by the State Department for the SVES.</p> <p>3. FOR CLIENTS ELIGIBLE TO RECEIVE A SSN, if the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.</p>		
3.520.66 IDENTITY	Identity requirements	IDENTITY	IDENTITY  IN ORDER TO VERIFY CLIENTS IDENTITY, THE CLIENT SHALL PRODUCE AND PROVIDE TO THE COUNTY DEPARTMENT:	Adding an explanation of identity	
3.520.67 CITIZENSHIP AND QUALIFIED NON-CITIZENS	Citizenship requirements for Adult Financial programs	3.520.67 CITIZENSHIP AND QUALIFIED NON-CITIZENS  A. The following are citizens of the United States and are eligible to apply for Adult Financial programs:  B. The county department shall verify citizenship when:  E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs.  F. Qualified non-citizens applying for Adult	3.520.67 CITIZENSHIP, AND QUALIFIED NON-CITIZENS, AND NON-CITIZENS  A. The following are citizens of the United States and are eligible to apply for AND Adult Financial programs:  B. The county department shall verify citizenship FOR AND when:	Eliminates citizenship requirements for OAP	

Title of Proposed Rule: Elimination of Lawful Presence for Old Age Pension

CDHS Tracking #: 22-08-02-02

CCR #: 9 CCR 2503-5

Office, Division, & Program: Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

Phone: 303-866-2751

Rule Author: Laura Sartor

E-Mail: laura.sartor@state.co.us

		<p>Financial programs shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document.</p> <p>G. The following non-citizens and temporary residents shall not be eligible for Adult Financial programs:</p>	<p>E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs AND ALL NON-CITIZENS ARE ELIGIBLE TO APPLY FOR OAP.</p> <p>F. Qualified non-citizens applying for Adult Financial programs AND shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document.</p> <p>G. The following non-citizens and temporary residents shall not be eligible for AND Adult Financial programs:</p>		
3.520.68 FIVE YEAR BAR FROM ELIGIBILITY	Five-year bar is required for OAP	<p>A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from receiving Adult Financial programs for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE, unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613(b) as in effect January 24, 2020.</p> <p>B. For OAP only, a client that has a documented hardship, as follows, shall not be subject to a five-year bar from benefits:</p> <p>1. Abuse or mistreatment by the sponsor(s). Suspension of five-year bar from benefits is permitted if there is credible evidence that the qualified non-citizen client has been physically abused, battered, or subjected to extreme cruelty by his or her sponsor(s) in the United States, and meets the following requirements:</p> <p>a. The qualified non-citizen client subject to such physical abuse, battery, or extreme cruelty does not live in the same household with the individual responsible for the physical abuse, battery, or extreme cruelty; and,</p> <p>b. There is a substantial connection between the physical abuse, battery, or extreme cruelty and the</p>	<p>A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are <del>generally</del> barred from receiving <del>Adult Financial programs</del> AND for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE <del>unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613(b) as in effect January 24, 2020.</del></p> <p><del>B. For OAP only, a client that has a documented hardship, as follows, shall not be subject to a five-year bar from benefits:</del></p> <p><del>1. Abuse or mistreatment by the sponsor(s). Suspension of five-year bar from benefits is</del></p>	Eliminates five-year bar for OAP	

Title of Proposed Rule: Elimination of Lawful Presence for Old Age Pension

CDHS Tracking #: 22-08-02-02

CCR #: 9 CCR 2503-5

Office, Division, & Program: Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

Phone: 303-866-2751

Rule Author: Laura Sartor

E-Mail: laura.sartor@state.co.us

	<p>need for benefits; and,</p> <p>c. There is documented credible evidence of physical abuse, battery, or extreme cruelty, including, but not limited to:</p> <ol style="list-style-type: none"> <li>1) A copy of the protection order issued against the abuser or batterer of the qualified non-citizen client; or,</li> <li>2) A copy of the verdict and the judgment or sentence against the abuser or batterer committing the act of violence against the qualified non-citizen client; or,</li> <li>3) Reports or affidavits from police, judges, or other court officials; or,</li> <li>4) Written statements from medical/health professionals treating the client; or,</li> <li>5) Verification from the USCIS or the Executive Office for Immigration Review (EOIR) that a petition to qualify under this category has been approved.</li> </ol> <p>2. Indigence: Suspension of the five-year bar from benefits is permitted if the qualified noncitizen's income and resources, and income and resources of the qualified non-citizen's sponsor(s) are inadequate. If the qualified non-citizen does not have a sponsor, then their own income and resources would be considered.</p> <p>a. It is the responsibility of the qualified non-citizen to obtain all required information and documentation from the sponsor(s).</p> <p>b. The county department shall determine if the total household income available exceeds 125% of the Federal poverty guidelines as defined in 3.510 for the household size.</p> <ol style="list-style-type: none"> <li>1) For purposes of this section, the household includes the qualified noncitizen, the qualified non-citizen's spouse, the qualified non-citizen's dependent children, the sponsor(s), the spouse of the sponsor(s), and the sponsor(s)' dependent children, i.e., the children the sponsor(s) claim on his or her income tax.</li> <li>2) The county department shall total the countable income of the household by adding together income of the non-citizen, and that of his or her spouse, and the sponsor(s) and the sponsor(s) spouse(s).</li> <li>3) If the total household income available exceeds the monthly amount of 125% of the Federal poverty guidelines, as defined in 3.510, for the</li> </ol>	<p><del>permitted if there is credible evidence that the qualified non-citizen client has been physically abused, battered, or subjected to extreme cruelty by his or her sponsor(s) in the United States, and meets the following requirements:</del></p> <p><del>a. The qualified non-citizen client subject to such physical abuse, battery, or extreme cruelty does not live in the same household with the individual responsible for the physical abuse, battery, or extreme cruelty; and,</del></p> <p><del>b. There is a substantial connection between the physical abuse, battery, or extreme cruelty and the need for benefits; and,</del></p> <p><del>c. There is documented credible evidence of physical abuse, battery, or extreme cruelty, including, but not limited to:</del></p> <ol style="list-style-type: none"> <li><del>1) A copy of the protection order issued against the abuser or batterer of the qualified non-citizen client; or,</del></li> <li><del>2) A copy of the verdict and the judgment or sentence against the abuser or batterer committing the act of violence against the qualified non-citizen client; or,</del></li> <li><del>3) Reports or affidavits from police, judges, or other court officials; or,</del></li> <li><del>4) Written statements from medical/health professionals treating the client; or,</del></li> </ol>		
--	--	--	--	--

Title of Proposed Rule: Elimination of Lawful Presence for Old Age Pension

CDHS Tracking #: 22-08-02-02

CCR #: 9 CCR 2503-5

Office, Division, & Program: Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

Phone: 303-866-2751

Rule Author: Laura Sartor

E-Mail: laura.sartor@state.co.us

		<p>household size, the indigence exception does not apply. If the total household income is less than 125% of the monthly Federal poverty guidelines as defined in 3.510 for the household size, then,</p> <p>a) Determine the sponsor(s) countable resources. Resources are attributed to the sponsor in the same manner as the non-citizen, as outlined throughout 3.520.72.</p> <p>b) All countable resources over the sponsor(s) resource limit, as outlined in Section 3.520.72, are then applied to the non-citizen.</p> <p>c) This is added to the non-citizen's countable resources and compared to the non-citizen's resource limit, as outlined in Section 3.520.72.</p> <p>d) If the non-citizen is under the resource limit, the indigence hardship exception applies.</p> <p>c. The county department shall determine if the non-citizen is receiving free room and board from another source, such as a family member, friend, or a non-profit agency. If yes, the indigence exception does not apply.</p> <p>3. Abandonment by the sponsor(s): suspension of the five-year bar from benefits may be applicable when the qualified non-citizen is abandoned by his or her sponsor(s) and the qualified non-citizen's income and resources are so inadequate that the qualified noncitizen is unable to obtain food and shelter.</p> <p>a. The county department shall contact the sponsor to confirm the non-citizen's allegations regarding amounts of income and resources the sponsor provides or makes available to the non-citizen. If the non-citizen does not know the sponsor's whereabouts, the county department shall obtain this information if available through SAVE.</p> <p>b. If the county cannot locate the sponsor of the sponsored non-citizen, or no support is being provided, a signed allegation from the non-citizen (if the allegation is credible and does not conflict with other information in the file) shall be utilized to determine abandonment. If the allegations are not credible or conflict with other information in file, the county department shall weigh all information and use the prudent person principle to make a decision regarding the applicability of the abandonment hardship based on all the information obtained. If support is being provided, the abandonment hardship exception shall not apply.</p> <p>c. When a determination of abandonment is made,</p>	<p><del>5) Verification from the USCIS or the Executive Office for Immigration Review (EOIR) that a petition to qualify under this category has been approved.</del></p> <p><del>2. Indigence: Suspension of the five-year bar from benefits is permitted if the qualified noncitizen's income and resources, and income and resources of the qualified non-citizen's sponsor(s) are inadequate. If the qualified non-citizen does not have a sponsor, then their own income and resources would be considered.</del></p> <p><del>a. It is the responsibility of the qualified non-citizen to obtain all required information and documentation from the sponsor(s).</del></p> <p><del>b. The county department shall determine if the total household income available exceeds 125% of the Federal poverty guidelines as defined in 3.510 for the household size.</del></p> <p><del>1) For purposes of this section, the household includes the qualified noncitizen, the qualified non-citizen's spouse, the qualified non-citizen's dependent children, the sponsor(s), the spouse of the sponsor(s), and the sponsor(s) dependent children, i.e., the children the sponsor(s) claim on his or her income tax.</del></p> <p><del>2) The county department shall total the countable income of the household by adding together income of the</del></p>		
--	--	--	---	--	--

Title of Proposed Rule: Elimination of Lawful Presence for Old Age Pension

CDHS Tracking #: 22-08-02-02

CCR #: 9 CCR 2503-5

Office, Division, & Program: Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

Phone: 303-866-2751

Rule Author: Laura Sartor

E-Mail: laura.sartor@state.co.us

	<p>the county department shall notify the United States Department of Homeland Security.</p> <p>C. For OAP only, if approved for a hardship exception to the five-year bar, the county department shall process the application or redetermination to determine whether the qualified non-citizen meets the eligibility criteria for OAP. Requirements for the hardship exception shall be reassessed at each redetermination or when circumstances change.</p> <p>D. For OAP only, the county department shall pursue recovery of OAP grant payments from the sponsor(s).</p> <p>1. The qualified non-citizen shall be notified of the recovery requirement at the time of request for a hardship exception from the five year bar from benefits; and,</p> <p>2. If granted a hardship, the client shall be notified during the interview of each redetermination of the requirement to recover funds from the sponsor(s).</p>	<p>non-citizen, and that of his or her spouse, and the sponsor(s) and the sponsor(s) spouse(s).</p> <p><del>3) If the total household income available exceeds the monthly amount of 125% of the Federal poverty guidelines, as defined in 3-510, for the household size, the indigence exception does not apply. If the total household income is less than 125% of the monthly Federal poverty guidelines as defined in 3-510 for the household size, then,</del></p> <p>a) <del>Determine the sponsor(s) countable resources. Resources are attributed to the sponsor in the same manner as the non-citizen, as outlined throughout 3-520.72.</del></p> <p>b) <del>All countable resources over the sponsor(s) resource limit, as outlined in Section 3-520.72, are then applied to the non-citizen.</del></p> <p>c) <del>This is added to the non-citizen's countable resources and compared to the non-citizen's resource limit, as outlined in Section 3-520.72.</del></p> <p>d) <del>If the non-citizen is under the resource limit, the indigence hardship exception applies.</del></p> <p>e. <del>The county department shall determine if the non-citizen is receiving free room and board from another source, such as a family member, friend, or a non-profit agency. If</del></p>		
--	---	---	--	--

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension

**CDHS Tracking #:** 22-08-02-02

**CCR #:** 9 CCR 2503-5

**Office, Division, & Program:** Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

**Phone:** 303-866-2751

**Rule Author:** Laura Sartor

**E-Mail:** laura.sartor@state.co.us

			<p>yes, the indigence exception does not apply.</p> <p>3. Abandonment by the sponsor(s): suspension of the five-year bar from benefits may be applicable when the qualified non-citizen is abandoned by his or her sponsor(s) and the qualified non-citizen's income and resources are so inadequate that the qualified noncitizen is unable to obtain food and shelter.</p> <p>a. The county department shall contact the sponsor to confirm the non-citizen's allegations regarding amounts of income and resources the sponsor provides or makes available to the non-citizen. If the non-citizen does not know the sponsor's whereabouts, the county department shall obtain this information if available through SAVE.</p> <p>b. If the county cannot locate the sponsor of the sponsored non-citizen, or no support is being provided, a signed allegation from the non-citizen (if the allegation is credible and does not conflict with other information in the file) shall be utilized to determine abandonment. If the allegations are not credible or conflict with other information in file, the county department shall weigh all information and use the prudent person principle to make a decision regarding the applicability of the abandonment hardship based on all the</p>		
--	--	--	--	--	--

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension

**CDHS Tracking #:** 22-08-02-02

**CCR #:** 9 CCR 2503-5

**Office, Division, & Program:** Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

**Phone:** 303-866-2751

**Rule Author:** Laura Sartor

**EMail:** laura.sartor@state.co.us

			<p><del>information obtained. If support is being provided, the abandonment hardship exception shall not apply.</del></p> <p><del>c. When a determination of abandonment is made, the county department shall notify the United States Department of Homeland Security.</del></p> <p><del>C. For OAP only, if approved for a hardship exception to the five year bar, the county department shall process the application or redetermination to determine whether the qualified non-citizen meets the eligibility criteria for OAP. Requirements for the hardship exception shall be reassessed at each redetermination or when circumstances change.</del></p> <p><del>D. For OAP only, the county department shall pursue recovery of OAP grant payments from the sponsor(s).</del></p> <p><del>1. The qualified non-citizen shall be notified of the recovery requirement at the time of request for a hardship exception from the five year bar from benefits; and,</del></p> <p><del>2. If granted a hardship, the client shall be notified during the interview of each redetermination of the requirement to recover funds from the sponsor(s).</del></p>		
3.520.69 SPONSORS HIP OF QUALIFIED NON-CITIZENS	Income and resources of the sponsor(s) are deemed to the OAP client	<p>This section shall apply to qualified non-citizens who entered the country on or after August 22, 1996.</p> <p>D. Income and resources of the sponsor(s) shall be deemed to the client, as follows:</p>	<p>This section shall apply to qualified non-citizens who entered the country on or after August 22, 1996.</p> <p>D. Income and resources</p>	Eliminates Income and resources of the sponsor(s) deeming to the OAP client	

Title of Proposed Rule: Elimination of Lawful Presence for Old Age Pension

CDHS Tracking #: 22-08-02-02

CCR #: 9 CCR 2503-5

Office, Division, & Program: Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

Phone: 303-866-2751

Rule Author: Laura Sartor

E-Mail: laura.sartor@state.co.us

	<p>5. For OAP only, the hardship exceptions as described in Section 3.520.68.B-D, shall also be evaluated in relation to sponsor deeming. If it is determined that hardship has been established, sponsor deeming shall not be applied to the non-citizen. a. Upon determination that a non-citizen is granted a hardship exception, the county department will notify the sponsor of its determination and requirement of repayment of the full amount of the grant payments made to the non-citizen. This requirement may be waived by the county department in cases utilizing the hardship exceptions. Such waiver must be documented in the case record.</p> <p>b. If the sponsor fails to comply with the repayment terms established by the county department, the county department will pursue other remedies for repayment, which shall include but are not limited to:</p> <ol style="list-style-type: none"><li>1) Income assignments;</li><li>2) State income tax refund offset;</li><li>3) State lottery winnings offset; and,</li><li>4) Administrative lien and attachment</li></ol>	<p>of the sponsor(s) shall be deemed to the client, as follows:</p> <p><del>5. For OAP only, the hardship exceptions as described in Section 3.520.68.B-D, shall also be evaluated in relation to sponsor deeming. If it is determined that hardship has been established, sponsor deeming shall not be applied to the non-citizen.</del></p> <p><del>a. Upon determination that a non-citizen is granted a hardship exception, the county department will notify the sponsor of its determination and requirement of repayment of the full amount of the grant payments made to the non-citizen. This requirement may be waived by the county department in cases utilizing the hardship exceptions. Such waiver must be documented in the case record.</del></p> <p><del>b. If the sponsor fails to comply with the repayment terms established by the county department, the county department will pursue other remedies for repayment, which shall include but are not limited to:</del></p> <ol style="list-style-type: none"><li><del>1) Income assignments;</del></li><li><del>2) State income tax refund offset;</del></li><li><del>3) State lottery winnings offset; and,</del></li><li><del>4) Administrative lien and attachment.</del></li></ol>		
--	--	---	--	--

**Title of Proposed Rule:** Elimination of Lawful Presence for Old Age Pension

**CDHS Tracking #:** 22-08-02-02

**CCR #:** 9 CCR 2503-5

**Office, Division, & Program:** Office of Economic Support,  
Division of Economic and  
Workforce Support, Adult  
Financial

**Phone:** 303-866-2751

**Rule Author:** Laura Sartor

**E-Mail:** laura.sartor@state.co.us

			6-5. Because the sponsor, not the non-citizen, is solely liable for repayment, the sponsor cannot use the sponsored non-citizen's grant payments to repay the payments.		
3.520.71 FINANCIAL ELIGIBILITY REQUIREMENTS	OAP clients are required to apply for SSI	FINANCIAL ELIGIBILITY REQUIREMENTS  D. For OAP, the client shall apply for SSI, and shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:	FINANCIAL ELIGIBILITY REQUIREMENTS  D. For OAP, IF the client HAS OR IS ELIGIBLE TO OBTAIN A SSN, THEY shall apply for SSI, UNLESS THE CLIENT IS A NON-CITIZEN OR QUALIFIED NON-CITIZEN THAT DOES NOT QUALIFY TO RECEIVE A SSN. A CLIENT WITH A SSN <del>and</del> shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:	Eliminate the requirement for OAP clients to apply for SSI	

**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):* The Food and Energy Assistance Division and Economic Security Sub-PAC.

**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:* County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; PAC & Economic Security Sub-PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing.

**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

Name of Sub-PAC	Economic Security Sub-PAC		
Date presented	12/08/2022		
What issues were raised?	Administration fiscal implications for counties		
Vote Count	<i>For - 15</i>	<i>Against - 1</i>	<i>Abstain - 0</i>
	Absent - 1		
If not presented, explain why.			

**PAC**

Have these rules been approved by PAC?

Yes     No

Date presented	12/08/2022		
What issues were raised?	Administration fiscal implications for counties		
Vote Count	<i>For - 14</i>	<i>Against - 1</i>	<i>Abstain - 0</i>
	Absent - 1		
If not presented, explain why.			

**Other Comments**

Comments were received from stakeholders on the proposed rules:

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.*

A letter of support for the rule package was received from Colorado Center for Law and Policy (CCLP) was received on 12/08/22.

## ADULT FINANCIAL PROGRAMS

### 9 CCR 2503-5

3.510 “NON-CITIZEN” MEANS ANY PERSON WHO IS NOT A “CITIZEN OF THE UNITED STATES”.

\*\*\*\*\*

### 3.520.5 INTERFACE VERIFICATIONS

Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below.

\*\*\*\*\*

D. FOR AND ONLY ¶The county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:

\*\*\*\*\*

### 3.520.61 NON-FINANCIAL ELIGIBILITY REQUIREMENTS

To be eligible for Adult Financial programs, a client shall:

\*\*\*\*\*

C. FOR AND ONLY, BBe a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.67; and,

D. FOR AND ONLY, HHave a valid SSN, as outlined in Section 3.520.65; and,

\*\*\*\*\*

### 3.520.65 SOCIAL SECURITY NUMBERS (SSN)

A. Each Adult Financial program client WHO HAS A SOCIAL SECURITY NUMBER (SSN) OR IS ELIGIBLE TO OBTAIN A SSN shall provide his or her SSN to the county department.

\*\*\*\*\*

2. If a client is unable to provide their SSN, the client shall be required to apply for a SSN at the local Social Security office and provide the county department with verification of application for an SSN. THIS REQUIREMENT DOES NOT APPLY TO OAP CLIENTS WHO ARE NON-CITIZENS OR QUALIFIED NON-CITIZENS.

3. WHEN A CLIENT IS ELIGIBLE FOR A SSN, RRefusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs.

\*\*\*\*\*

- B. The county department shall verify the client's SSN with the SSA in accordance with procedures established by the State Department for the SVES

\*\*\*\*\*

3. FOR CLIENTS ELIGIBLE TO RECEIVE A SSN, if the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.

\*\*\*\*\*

### 3.520.66 IDENTITY

IN ORDER TO VERIFY CLIENTS IDENTITY, THE CLIENT SHALL PRODUCE AND PROVIDE TO THE COUNTY DEPARTMENT:

\*\*\*\*\*

### 3.520.67 CITIZENSHIP, ~~AND~~ QUALIFIED NON-CITIZENS, AND NON-CITIZENS

\*\*\*\*\*

- A. The following are citizens of the United States and are eligible to apply for ~~AND Adult Financial programs~~:

\*\*\*\*\*

- B. The county department shall verify citizenship FOR AND when:

\*\*\*\*\*

- E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs ~~AND ALL NON-CITIZENS ARE ELIGIBLE TO APPLY FOR OAP.~~

\*\*\*\*\*

- F. Qualified non-citizens applying for ~~Adult Financial programs~~ AND shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document.

- G. The following non-citizens and temporary residents shall not be eligible for ~~AND Adult Financial programs~~:

\*\*\*\*\*

### 3.520.68 FIVE YEAR BAR FROM ELIGIBILITY

- A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are ~~generally~~ barred from receiving ~~Adult Financial programs~~ AND for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent

residence, as verified through SAVE unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613(b) as in effect January 24, 2020.

~~B. For OAP only, a client that has a documented hardship, as follows, shall not be subject to a five-year bar from benefits:~~

~~1. Abuse or mistreatment by the sponsor(s). Suspension of five-year bar from benefits is permitted if there is credible evidence that the qualified non-citizen client has been physically abused, battered, or subjected to extreme cruelty by his or her sponsor(s) in the United States, and meets the following requirements:~~

~~a. The qualified non-citizen client subject to such physical abuse, battery, or extreme cruelty does not live in the same household with the individual responsible for the physical abuse, battery, or extreme cruelty; and,~~

~~b. There is a substantial connection between the physical abuse, battery, or extreme cruelty and the need for benefits; and,~~

~~c. There is documented credible evidence of physical abuse, battery, or extreme cruelty, including, but not limited to:~~

~~1) A copy of the protection order issued against the abuser or batterer of the qualified non-citizen client; or,~~

~~2) A copy of the verdict and the judgment or sentence against the abuser or batterer committing the act of violence against the qualified non-citizen client; or,~~

~~3) Reports or affidavits from police, judges, or other court officials; or,~~

~~4) Written statements from medical/health professionals treating the client; or,~~

~~5) Verification from the USCIS or the Executive Office for Immigration Review (EOIR) that a petition to qualify under this category has been approved.~~

~~2. Indigence: Suspension of the five-year bar from benefits is permitted if the qualified noncitizen's income and resources, and income and resources of the qualified non-citizen's sponsor(s) are inadequate. If the qualified non-citizen does not have a sponsor, then their own income and resources would be considered.~~

~~a. It is the responsibility of the qualified non-citizen to obtain all required information and documentation from the sponsor(s).~~

~~b. The county department shall determine if the total household income available exceeds 125% of the Federal poverty guidelines as defined in 3.510 for the household size.~~

~~1) For purposes of this section, the household includes the qualified noncitizen, the qualified non-citizen's spouse, the qualified non-citizen's dependent children, the sponsor(s), the spouse of the~~

~~sponsor(s), and the sponsor(s)' dependent children, i.e., the children the sponsor(s) claim on his or her income tax.~~

- ~~2) The county department shall total the countable income of the household by adding together income of the non-citizen, and that of his or her spouse, and the sponsor(s) and the sponsor(s) spouse(s).~~
- ~~3) If the total household income available exceeds the monthly amount of 125% of the Federal poverty guidelines, as defined in 3.510, for the household size, the indigence exception does not apply. If the total household income is less than 125% of the monthly Federal poverty guidelines as defined in 3.510 for the household size, then,
  - ~~a) Determine the sponsor(s) countable resources. Resources are attributed to the sponsor in the same manner as the non-citizen, as outlined throughout 3.520.72.~~
  - ~~b) All countable resources over the sponsor(s) resource limit, as outlined in Section 3.520.72, are then applied to the non-citizen.~~
  - ~~c) This is added to the non-citizen's countable resources and compared to the non-citizen's resource limit, as outlined in Section 3.520.72.~~
  - ~~d) If the non-citizen is under the resource limit, the indigence hardship exception applies.~~~~
- ~~e. The county department shall determine if the non-citizen is receiving free room and board from another source, such as a family member, friend, or a non-profit agency. If yes, the indigence exception does not apply.~~
- ~~3. Abandonment by the sponsor(s): suspension of the five-year bar from benefits may be applicable when the qualified non-citizen is abandoned by his or her sponsor(s) and the qualified non-citizen's income and resources are so inadequate that the qualified noncitizen is unable to obtain food and shelter.
  - ~~a. The county department shall contact the sponsor to confirm the non-citizen's allegations regarding amounts of income and resources the sponsor provides or makes available to the non-citizen. If the non-citizen does not know the sponsor's whereabouts, the county department shall obtain this information if available through SAVE.~~
  - ~~b. If the county cannot locate the sponsor of the sponsored non-citizen, or no support is being provided, a signed allegation from the non-citizen (if the allegation is credible and does not conflict with other information in the file) shall be utilized to determine abandonment. If the allegations are not credible or conflict with other information in file, the county department shall weigh all information and use the prudent person principle to make a decision regarding the applicability of the abandonment hardship based~~~~

~~on all the information obtained. If support is being provided, the abandonment hardship exception shall not apply.~~

~~c. When a determination of abandonment is made, the county department shall notify the United States Department of Homeland Security.~~

~~C. For OAP only, if approved for a hardship exception to the five-year bar, the county department shall process the application or redetermination to determine whether the qualified non-citizen meets the eligibility criteria for OAP. Requirements for the hardship exception shall be reassessed at each redetermination or when circumstances change.~~

~~D. For OAP only, the county department shall pursue recovery of OAP grant payments from the sponsor(s).~~

~~1. The qualified non-citizen shall be notified of the recovery requirement at the time of request for a hardship exception from the five-year bar from benefits; and,~~

~~2. If granted a hardship, the client shall be notified during the interview of each redetermination of the requirement to recover funds from the sponsor(s).~~

\*\*\*\*\*

### 3.520.69 SPONSORSHIP OF QUALIFIED NON-CITIZENS

This section shall apply to qualified non-citizens who entered the country on or after August 22, 1996.

\*\*\*\*\*

D. Income and resources of the sponsor(s) shall be deemed to the client, as follows:

\*\*\*\*\*

~~5. For OAP only, the hardship exceptions as described in Section 3.520.68.B-D, shall also be evaluated in relation to sponsor deeming. If it is determined that hardship has been established, sponsor deeming shall not be applied to the non-citizen.~~

~~a. Upon determination that a non-citizen is granted a hardship exception, the county department will notify the sponsor of its determination and requirement of repayment of the full amount of the grant payments made to the non-citizen. This requirement may be waived by the county department in cases utilizing the hardship exceptions. Such waiver must be documented in the case record.~~

~~b. If the sponsor fails to comply with the repayment terms established by the county department, the county department will pursue other remedies for repayment, which shall include but are not limited to:~~

~~1) Income assignments;~~

~~2) State income tax refund offset;~~

~~3) State lottery winnings offset; and,~~

4) ~~Administrative lien and attachment.~~

65. Because the sponsor, not the non-citizen, is solely liable for repayment, the sponsor cannot use the sponsored non-citizen's grant payments to repay the payments.

\*\*\*\*\*

3.520.71 FINANCIAL ELIGIBILITY REQUIREMENTS

\*\*\*\*\*

D. For OAP, IF the client HAS OR IS ELIGIBLE TO OBTAIN A SSN THEY shall apply for SSI, UNLESS THE CLIENT IS A NON-CITIZEN OR QUALIFIED NON-CITIZEN THAT DOES NOT QUALIFY TO RECEIVE A SSN. A CLIENT WITH A SSN ~~and~~ shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:

\*\*\*\*\*