

Title of Proposed Rule: 8 CCR 1404-1 – Additional Eligibility, Preschool Services, and Rate Setting

CDEC Tracking #: 2022-11-003

Office, Division, & Program:	Rule Author: Dawn Odean	Phone: 720-483-5505
Division of Universal Preschool		E-Mail: dawn.odean@state.co.us

RULEMAKING PACKET

Type of Rule: Regular Emergency

This package is submitted for: *(check all that apply)*

- | | | | |
|--|---|---|---|
| <input checked="" type="checkbox"/> County Subcommittee Review (if needed) | <input checked="" type="checkbox"/> Rules Advisory Council Review | <input checked="" type="checkbox"/> Review by Attorney General's Office | <input checked="" type="checkbox"/> Final Public Rulemaking Hearing by the Executive Director |
|--|---|---|---|

Estimated Dates – What dates are you hoping to have this reviewed by the following groups?

County Subcommittee (if required)	11/3/2022
Rules Advisory Council	11/10/2022
Public Rulemaking Hearing	11/21/2022
Effective Date	11/21/2022
Is this date legislatively required?	No, however the universal preschool program must be in effect for the 2023-2024 school year.

What other state departments, offices, and/or divisions have been consulted in the creation or revision of this rule package? (examples could include: Colorado Department of Human Services; Colorado Department of Education; Office of Information Technology; CDEC Legislative and Policy Division; etc.):

This rule package only impacts the Universal Preschool Program administered by the Colorado Department of Early Childhood (CDEC) and the Office of Information Technology personnel assigned to CDEC to support the implementation of the Universal Preschool technology systems. The Colorado Department of Education and the Colorado Department of Public Health and Environment were provided weekly, written updates.

Comments / Notes from Review by Rules Advisory Council Manager:

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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 Character max***

HB22-1295 created the Universal Preschool Program which the Colorado Department of Early Childhood (Department) is charged with administering starting in the 2023-2024 school year. Because this is a brand-new program, the Department must promulgate all of the rules to implement the program. This set of proposed rules establishes the eligibility criteria for preschool services and additional preschool services.

In accordance with HB 22-1295, specifically (26.5-4-204(4), 26.5-2-208(1)(d), C.R.S.2022, the Department must establish by rule the following:

- 1) The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor.
- 2) The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten.
- 3) The allocation of specified purpose funding to achieve the purpose of increasing whole child developmental outcomes and meeting family needs, by expanding universal access to preschool programs to a minimum of half-day preschool service.
- 4) The formulas for setting the per-child rates for:
 - a) Universal preschool services
 - b) Preschool services for children with disabilities
 - c) Preschool services for children who are three years of age or younger
 - d) Additional preschool services

In addition, to ensure that families have the ability to enroll in a participating preschool program of their choosing, and in an effort to assist families in meeting their needs for a minimum of half-day preschool services, to establish that for families enrolled in a preschool program for more than the number of hours covered by the per child rate, the rate will act as a tuition credit available to all families enrolled in a participating preschool program.

The rate funding formula is designed to be updated and refined over time, enabling the department to employ responsive funding strategies according to experience.

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:

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Statute requires that the Universal Preschool Program be operational by the 2023-24 school year. These proposed rules are necessary to deliver universal preschool services to eligible Colorado families by July 2023 and must be effective as soon as possible so that children and providers may begin enrollment in the program.

Executive Director Authority for Rule:

Code	Description
26.5-1-105(1) C.R.S. (2022)	The executive director is authorized to promulgate all rules for the administration of the department and for the execution and administration of the functions specified in <u>section 26.5-1-109</u> and for the programs and services specified in this title 26.5.

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
26.5-4-204(4), C.R.S. (2022)	The Executive Director shall adopt rules to implement the preschool program. The Department must establish by rule the following: 1) The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor. 2) The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten. 3) The formulas for setting the per-child rates for: a) Universal preschool services b) Preschool services for children with disabilities c) Preschool services for children who are three years of age or younger d) Additional preschool services
26.5-4-208(1)(d)	The department may by rule distribute funding to achieve a specified purpose, which may include funding for administrative units to provide special education services through the preschool program and funding for measures related to recruiting, training, and retaining preschool educators.

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

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If yes, please explain.

The rule includes definitions and other language found in statute.

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? How will the rule impact particular populations, such as populations experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

Families of three and four-year-old children will benefit from this rule which implements requirements for eligibility to receive preschool program services.

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?

The Department anticipates that there will be approximately 64,000 children eligible for preschool services in the 2023-2024 fiscal year under this rule.

3. Alignment and Coordination.

Do the proposed rules or rule revisions (indicate all that apply):

	Reduce the administrative burden on families and providers of accessing programs and services, implementing programs, and providing services
	Decrease duplication and conflicts in implementing programs and providing services
X	Increase equity in access to programs and services and in child and family outcomes
	Increase administrative efficiencies among the programs and services provided by the department
X	Ensure that the rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family and provider experience, and ease of implementation by state, local, and tribal agencies

4. 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)

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No impact as these changes will not impact existing systems within the Department or other agencies.

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County Fiscal Impact

No impact as the program for which these changes are being made is not administered by counties.

Federal Fiscal Impact

No impact as these changes affect state operations only.

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

No negative impact to families, providers, or local governments as these changes are meant to implement a new program.

5. Data Description

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

N/A

6. Describe the monitoring and evaluation.

How will implementation of this proposed rule or rule revision be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

26.5-4-201, C.R.S. (2022) requires the Department to contract with an independent evaluator to measure the success of the Colorado Universal Preschool Program and that independent evaluator will be selected in the future.

7. 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 are no alternatives as these rules are required by section 26.5-4-204, 26.5-4-208, C.R.S. (2022).

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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 RAC Subcommittee):

Discussion on the development of this rule package included the Division of Early Learning Access & Quality and the Head Start Collaboration Office in the Colorado Department of Early Childhood. Additionally, the Rules Advisory Council, Early Childhood Leadership Commission, and others have been consulted on the per-child rate setting formula in accordance with 26.5-4-208 C.R.S.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the Rule Advisory Council / CDEC:

Discussion on this rule package included but was not limited to: Local Coordinating Organizations; the Early Childhood Community Coalition; the Rules Advisory Council County Subcommittee; the Rules Advisory Council; school district ECE leaders; Colorado Association of School Executives; Colorado Association of School Boards; and miscellaneous advocacy organizations.

Other State Agencies

Are other State Agencies (such as CDHS, CDE, 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?

Colorado Department of Education (CDE), Colorado Department of Public Health and Environment (CDPHE)

RAC County Subcommittee

Do the proposed rules have an impact on the functions, programs or services delivered by counties?

Yes No

If yes, have these rules been reviewed by the County Subcommittee?

Yes No

Date presented: November 16, 2022

What issues were raised?
If not presented, explain why.

Other Comments

Comments were received from stakeholders on the proposed rules:

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Yes No

If “yes,” summarize and/or attach the feedback received, 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

4.101 DEFINITIONS

“FULL-DAY” MEANS THIRTY TO FORTY (30 to 40) HOURS OF PRESCHOOL SERVICE.

“HALF-DAY” MEANS FIFTEEN TO TWENTY (15 TO 20) HOURS OR PRESCHOOL SERVICE.

“PART-TIME OR SLOT” MEANS TEN (10) HOURS OF PRESCHOOL SERVICE.

“PROVIDER RATE FORMULA” MEANS THE FORMULAS FOR SETTING THE PER-CHILD RATES FOR UNIVERSAL PRESCHOOL SERVICES, FOR PRESCHOOL SERVICES FOR CHILDREN WITH DISABILITIES, FOR PRESCHOOL SERVICES FOR ELIGIBLE CHILDREN WHO ARE THREE (3) YEARS OF AGE OR YOUNGER AND FOR ADDITIONAL PRESCHOOL SERVICES.

4.104 ADDITIONAL ELIGIBILITY AND PRESCHOOL SERVICES

- A. SUBJECT TO THE AMOUNT DISTRIBUTED TO SCHOOL DISTRICTS TO PROVIDE PRESCHOOL SERVICES FOR CHILDREN THREE (3) YEARS OF AGE, A CHILD THREE (3) YEARS OF AGE WHO IS NOT ELIGIBLE TO ENROLL IN KINDERGARTEN IN THE NEXT SCHOOL YEAR, AND IS IN A LOW-INCOME FAMILY PER SECTION 4.103.B.1, ABOVE, OR MEETS AT LEAST ONE QUALIFYING FACTOR IN SECTION 4.103.B.2-5, MAY RECEIVE A MINIMUM OF TEN (10) HOURS PER WEEK PER WEEK OF PRESCHOOL PROGRAM SERVICES.
- B. SUBJECT TO THE AMOUNT DISTRIBUTED TO SCHOOL DISTRICTS WITH A WAIVER TO SERVE CHILDREN UNDER THREE (3) YEARS OF AGE, A CHILD WHO IS UNDER THREE (3) YEARS OF AGE AND IS IN A LOW-INCOME FAMILY PER SECTION 4.103.B.1, OR MEETS AT LEAST ONE QUALIFYING FACTOR IN SECTION 4.103.B.2-5, MAY RECEIVE A MINIMUM OF TEN (10) HOURS PER WEEK OF PRESCHOOL PROGRAM SERVICES.
- C. SUBJECT TO AVAILABLE APPROPRIATIONS, AND AFTER THE DEPARTMENT ALLOCATES THE AMOUNTS NECESSARY TO FUND PRESCHOOL SERVICES FOR ELIGIBLE CHILDREN WHO ARE THREE (3) YEARS OF AGE OR YOUNGER, FOR CHILDREN WITH DISABILITIES, AND TO FULLY FUND UNIVERSAL PRESCHOOL SERVICES FOR CHILDREN WHO ENROLL, THE DEPARTMENT MAY DISTRIBUTE ADDITIONAL FUNDING EQUIVALENT TO FIVE (5) HOURS OF PRESCHOOL PROGRAMMING PER WEEK TO CHILDREN WHO ENROLL IN THE YEAR PRECEDING ELIGIBILITY FOR ENROLLMENT IN KINDERGARTEN TO ACHIEVE THE SPECIFIED PURPOSE OF INCREASING WHOLE CHILD DEVELOPMENTAL OUTCOMES AND MEETING FAMILY NEEDS, BY EXPANDING UNIVERSAL ACCESS TO PRESCHOOL PROGRAMS TO A MINIMUM OF HALF-DAY PRESCHOOL SERVICE.
- D. SUBJECT TO AVAILABLE APPROPRIATIONS AND AFTER MAKING THE EFFORTS IN SECTION F, BELOW, A CHILD WHO IS IN A LOW-INCOME FAMILY PER SECTION

4.103.A, OR WHO MEETS AT LEAST ONE QUALIFYING FACTOR IN SECTION 4.103.B, MAY RECEIVE FIFTEEN (15) ADDITIONAL HOURS **PER WEEK** OF PRESCHOOL PROGRAM SERVICES IN THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH THE CHILD IS ELIGIBLE TO ENROLL IN KINDERGARTEN TO ACHIEVE FULL-DAY PRESCHOOL SERVICE.

- E. EXCESS FUNDS ALLOCATED TO THE PRESCHOOL PROGRAM THROUGH UNDERSPENT FUNDING FOR CHILDREN THREE (3) YEARS OF AGE, OR YOUNGER IN WAIVER DISTRICTS, AND/OR FUNDS REMAINING AFTER MEETING THE USES DESCRIBED IN SECTION 26.5-4-209(3)(a), C.R.S., MAY BE DISTRIBUTED BY THE DEPARTMENT THROUGH ADDITIONAL HOURS OF PRESCHOOL SERVICES FOR CHILDREN WHO ENROLL IN THE YEAR PRECEDING ELIGIBILITY FOR ENROLLMENT IN KINDERGARTEN.
- F. THE DEPARTMENT, WORKING WITH LOCAL COORDINATING ORGANIZATIONS, SHALL MAKE EVERY EFFORT TO BLEND AND BRAID PRESCHOOL PROGRAMMING FUNDS **WHERE POSSIBLE** WITH HEAD START, LOCAL FUNDING DOLLARS, AND **WHERE POSSIBLE**, THE COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP), PRIOR TO DISTRIBUTING ADDITIONAL PRESCHOOL PROGRAMMING FUNDS TO A CHILD WHO IS IN A LOW INCOME FAMILY PER SECTION 4.103.A, OR WHO MEETS AT LEAST ONE QUALIFYING FACTOR IN SECTION 4.103.B.
- G. PARTICIPATING PRESCHOOL PROVIDERS MAY SERVE **UP TO -ONLY** THE NUMBER OF PRESCHOOL STUDENTS ALLOWED FOR BY THEIR CURRENT CHILD CARE LICENSE.

4.105 PER-CHILD RATES AND FUNDING FORMULA

- A. FOR FAMILIES ENROLLED IN A PRESCHOOL PROGRAM FOR MORE THAN THE NUMBER OF HOURS COVERED BY THE PART-TIME PER-CHILD RATE, OR THE PER CHILD RATE FOR HALF DAY, THE PER-CHILD RATE WILL ACT AS A TUITION CREDIT AVAILABLE TO ALL FAMILIES ENROLLED IN A PARTICIPATING PRESCHOOL PROGRAM. THIS TUITION CREDIT WILL BE PAID DIRECTLY TO THE PROVIDER AND WILL BE DEDUCTED FROM THE TOTAL TUITION COSTS FOR THE PROGRAM.
- B. PARTICIPATING PROVIDERS MUST AGREE TO GUARANTEE FAMILIES AT LEAST THE MINIMUM NUMBER OF HOURS DEFINED IN THIS RULE FOR THE RATE THAT IS PROVIDED.
- C. PER-CHILD RATE FUNDING FORMULA APPLIES TO THE FOLLOWING CATEGORIES OF SERVICES SPECIFIED IN STATUTE AND CLARIFIED IN THESE RULES:
 - a. UNIVERSAL PRESCHOOL PROGRAM SERVICES FOR CHILDREN IN THE SCHOOL YEAR BEFORE THEY ARE ELIGIBLE FOR KINDERGARTEN.
 - b. PRESCHOOL SERVICES FOR CHILDREN 3 OR 4 YEARS OF AGE WITH DISABILITIES.
 - c. PRESCHOOL SERVICES FOR ELIGIBLE AND QUALIFYING CHILDREN 3 YEARS OF AGE AND UNDER IN WAIVER DISTRICTS.
 - d. ADDITIONAL SERVICES TO ACHIEVE A SPECIFIED PURPOSE.

- e. SUPPLEMENTAL HOURS OF PRESCHOOL SERVICES FOR ELIGIBLE CHILDREN 4 YEARS OF AGE BASED ON LOW-INCOME STATUS OR MEETING AT LEAST ONE QUALIFYING FACTOR.

D. **FORMULA AND PARAMETERS.** THE UNIVERSAL PRESCHOOL PROGRAM COLORADO RATE FORMULA IS EXPRESSED AS $((PKC*PS*PA) + (PKC*(1-PS))*CL)*L_i_c*GF*QE*CPI$. THE FORMULA INCLUDES A BASE RATE COST OF HIGH QUALITY PRESCHOOL SERVICES (PKC) WITH SPECIFIC PARAMETERS ADJUSTING FOR PERSONNEL COSTS (PS) AND VARIANCES TO COSTS BY REGION (PA). FURTHER ADJUSTMENTS ARE APPLIED FOR LOCAL COSTS OF LIVING (CL), CONSIDERATIONS OF A COMMUNITY'S POVERTY LEVEL (L_i_c), GEOGRAPHICAL FACTORS (GF), INCREASED QUALITY OF SERVICES (QE), AND AN ANNUAL ADJUSTMENT FOR INFLATION (CPI).

- a. **PKC (PRE-K COSTS)** MEANS THE BASE COST OF PROVIDING HIGH QUALITY PRESCHOOL SERVICES BASED ON UNIQUE CHARACTERISTICS OF PROVIDER SETTINGS AND THE FAMILIES/CHILDREN THEY SERVE, RECOGNIZED BEST PRACTICES AND EVIDENCE-BASED STANDARDS, PURSUANT TO SECTIONS 26.5-4-208(1)(A)(I) AND 26.5-4-205(2), C.R.S.
- b. **PS (PERSONNEL SHARE)** MEANS THE SHARE OF COSTS ACCOUNTED FOR BY PERSONNEL COSTS, INCLUDING SALARIES AND BENEFITS.
- c. **PA (PERSONNEL ADJUSTMENT)** MEANS THE ADJUSTMENT FACTOR THAT ACCOUNTS FOR REGIONAL VARIATIONS IN PERSONNEL COSTS.
- d. **CL (COST OF LIVING)** MEANS A COST OF LIVING ADJUSTMENT DETERMINED AT THE COUNTY LEVEL TO REFLECT EVOLVING LOCAL ECONOMIC REALITIES AND SUPPORT RECRUITMENT AND RETENTION OF A HIGH-QUALITY WORKFORCE, AS REQUIRED BY SECTION 26.5-4-208(1)(A)(III), C.R.S.
- e. **LIC (LOW INCOME BY COUNTY)** MEANS THE PARAMETER DETERMINED AT THE COUNTY LEVEL TO ACCOUNT FOR THE IDENTIFICATION OF CHILDREN IN LOW-INCOME FAMILIES, AS DEFINED BY SECTION 4.103.A AND PURSUANT TO SECTION 26.5-4-208(1)(A)(IV), C.R.S.
- f. **GF (GEOGRAPHIC FACTOR)** MEANS THE FACTOR THAT ADJUSTS FOR REGIONAL DIFFERENCES AND CIRCUMSTANCES UNIQUE TO RURAL COMMUNITIES THAT RESULT IN VARIATIONS IN THE COST OF PROVIDING PRESCHOOL SERVICES, WHICH MAY INCLUDE DIFFICULTIES IN ACHIEVING ECONOMIES OF SCALE IN RURAL AREAS AND IN RECRUITING AND RETAINING PRESCHOOL EDUCATORS, AS REQUIRED BY SECTION 26.5-4-208(1)(A)(III), C.R.S.
- g. **QE (QUALITY ENHANCEMENT)** MEANS THE COMPONENT THAT ACCOUNTS FOR THE COST OF PROVIDING PROFESSIONAL DEVELOPMENT ACTIVITIES AND SALARY INCENTIVES TO TEACHERS AND PARAPROFESSIONALS PURSUANT TO SECTIONS 26.5-4-208(1)(A)(I) AND 26.5-4-205(2), C.R.S.
- h. **CPI (CONSUMER PRICE INDEX)** MEANS THE ANNUAL RATE OF INFLATION ESTIMATED FOR THE DENVER-AURORA-LAKEWOOD CORE BASED STATISTICAL AREA THAT IS APPLIED TO ACCOUNT FOR EXIGENT ECONOMIC CHANGES.